
(1989) 04 DEL CK 0008

In the Delhi High Court

Case No : Criminal Writ Petition No. 187 of 1988

Ram Chander

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 21-04-1989

Acts Referred:

Citation : (1989) 04 DEL CK 0008

Hon'ble Judges : M. Sharief-ud-din, J;Charanjit Talwar, J

Bench : Division Bench

Judgement

Charanjit Talwar, J.—The petition is on behalf of Ram Chander who was a Havildarin the Education Corps of the Indian Army. At the relevant time, he was posted at Headquarters 41, Sub Area, somewhere in Assam. He was tried by a Summary Court Martial; convicted for two separate offences under S. 64(e) of the Army Act and sentenced to (1) dismissal from service and (2) to suffer rigorous imprisonment for one year. S. 64 of the Army Act deals with miscellaneous offences committed by any person subject to the Army Act. Sub-Section (e) of S. 64 reads as under :

"(e) directly or indirectly accepts or obtains, or agrees to accept or attempts to obtain, for himself or for any other person, any gratification as a motive or reward for procuring the enrolment of any person, or leave of absence, promotion or any other advantage or indulgence for any person in the service."

2. The allegations against Ram Chander were that he had obtained for himself, gratification from two persons as a motive for procuring their enrolment in the Army. The relevant portion of the charge sheet dt. the 17th June, 1987 reads as under :

"First charge Obtaining for Himself a gratification as a motive for Army Act procuring the enrolment of a person Section 64(e) in that he, at Jorhat, sometime during June 1984, while working in Headquarters 41 Sub Area obtained Rs. 2,000/- (Rupees two thousand only) from Shri Ranjit Datta, son of

Shri Sonai Dutta as a motive for procuring his enrolment in the Army. Second Charge Obtaining for himself a gratification as a motive for Army Act procuring the enrolment of a person Section 64(e) in that he, at Jorhat, sometime during February 1985, while working in Headquarters 41 Sub Area obtained Rs. 3,000/- (Rupees three thousand only) from ABSI Profulla Saikia through No. 4345997 Hav. Amulya Saikia of same Headquarters, as a gratification for procuring the enrolment of his nephew, in the Army."

3. The Summary Court Martial, which was presided over by the Officiating Commending Officer of the Unit, after trial, held him guilty on 13th August, 1987 of the above charges and sentenced him to the punishment as noticed above.

4. By this petition under Art. 226 of the Constitution the legality and validity of the proceedings of the Summary Court Martial are being challenged. Mr. R. P. Bansal, learned counsel for the petitioner submits that the proceedings are vitiated because the period of limitation for trial as provided under S. 122 of the Army Act had expired by 17th June, 1987, the date on which the charge sheet was served. According to him, the offences, if any, had been committed three years prior to that date.

5. He has further urged that the law prescribing the procedure for trial has also not been complied with. His reliance is on Rs. 28 to 30 of the Army Rules, 1954. R. 28 of the Rules reads as under :

"28. Charge-sheet and charge - (1) A charge sheet shall contain the whole issue or issues to be tried by a court-martial at one time.

(2) A charge means an accusation contained in charge-sheet that a person subject to the Act has been guilty of an offence.

(3) A charge-sheet may contain one charge or several charges."

6. R. 30 of the Rules which according to the learned counsel has also not been followed is to this effect :-

"30. Contents of charge - (1) Each charge shall state one offence only and in no case shall an offence be described in the alternative in the same charge.

(2) Each charge shall be divided into two parts -

(a) statement of the offence; and

(b) statement of the particulars of the act, neglect or omission Constituting the offence.

(3) The offence shall be stated, if not a civil offence, as nearly as practicable, in the words of the Act, and if a civil offence, in such words as sufficiently describe that offence, but not necessarily in technical words.

(4) The particulars shall state such circumstances respecting the alleged offence as will enable the accused to know what act, neglect or omission is intended to

be proved against him as Constituting the offence.

(5) The particulars in one charge may be framed wholly or partly by a reference to the particulars in another charge, and in that case so much of the latter particulars as are so referred to shall be deemed to form part of the first mentioned charge as well as of the other charge.

(6) Where it is intended to prove any facts in respect of which any deduction from pay and allowances can be awarded as a consequence of the offence charged, the particulars shall state those facts and the sum of the loss or damage it is intended to charge."

7. The further submission was that only the Commanding Officer of the Signal Regiment to which Ram Chander was attached, was competent to hold the Summary Court Martial. The plea is that although Col. Krishnan Nair was present in the Unit, yet it was his second in command Lt. Col. S. Banerji, who had conducted the trial. This was in contravention of Section 116 of the Army Act, it is urged.

8. Mr. Bansal further urged that the present is a case of no evidence and on that ground alone, this Court is empowered to set aside the conviction and sentence by the Court Martial.

9. With the assistance of the counsel for the parties, we have gone through the proceedings of the Summary Court Martial. It appears that there were complaints that certain Army personnel - posted in Headquarters 41 Sub Area had been accepting money from civilians with a promise to procure their enrolment as Sepoys in the Army. The Liaison Unit of the Eastern Command was asked to look into these complaints. It seems that those persons who had already been enrolled were not willing to involve any Army personnel, yet the suspects had somehow come to know that their conduct was being investigated. It took about six months for the Liaison Unit to file its report. The relevant portion of the confidential report of the Liaison Unit relating to the activities of the accused was brought on record as Ex. N. It shows that amongst others, one Assistant Sub-Inspector namely Profulla Saikia wanted to get his nephew recruited in the Army. He paid Rs. 3,000/- to another Havildar Amulya Saikia who was also posted in the Headquarters 41 Sub Area. The understanding was that this amount had to be paid by Hav. Amulya Saikia to Hav. Ram Chander by way of illegal gratification. The nephew of ABSI Profulla Saikia, however, was not enrolled in the Army. ABSI Saikia thereafter approached Hav. Amulya Saikia for refund of the money who informed him that the amount had been paid to Ram Chander. ABSI Saikia also reported to the Security Unit who asked him to meet Ram Chander and to tape the conversation. ABSI Profulla Saikia twice met Hav. Ram Chander to seek the refund. The talk between ABSI Profulla Saikia and Ram Chander was tape recorded. The relevant portion of the report (Ex. N), which refers to the tape recorded talk, is as follows :

"(a) Tape recorded conversation between Hav Ram Chander and ABSI Profulla

Saikia. This talk was recorded when ABSI Profulla Saikia met Hav. Ram Chander on 31 December 85 in the office area of HO 41 Sub Area. In this conversation Hav. Ram Chander has agreed to refund the money but the entire amount will be shared by Hav. Amulya Saikia and he himself. He has also mentioned to recruit more boys by accepting Rs. 2500/- for each candidate. For this refer side A of the recorded cassette."

10. The said Police Officer, ABSI Profulla Saikia, who had paid the amount of Rs. 3,000/- for procuring the enrolment of his nephew in the Army was the second prosecution witness in the trial The above said cassette was played by the Court in the presence of the witness. On this aspect of the conversation, the questions asked and the answers of the witness are as follows :

"Q.1 You have just heard a recorded cassette. Can you recognise the voices ?

A.1 Yes, the thin voice is mine and the heavy voice is that of Hav. Ram Chander.

Q.2 What is that you are talking about in the cassette ?

A.2 I had gone to Hav. Ram Chander's office for the money and he had said that "aadha main doonga aadha voh dega". When I had asked about other candidates enrolment, he said come later.

Q.3 When had you done the recording in Hav. Ram Chander's office ?

A.3 I do not remember the date, but it was some time in December 85.

Q.4 When had you done the recording in the library ?

A.4 I do not remember the date, but that was in December 85. The recording in the office was done prior to the recording in the library.

Cross examined by the accused

Q.10 What was the gap in days between the first and second recording ?

A.10 10 to 12 days.

The accused has no further questions to ask. AR 141(2), (3) and (4) has been complied with."

11. Hav. Ram Chander in his defense completely denied the allegations of the prosecution but admitted having told ABSI Profulla Saikia that he would return half of the amount. On this aspect this is what he stated :

"I had told ABSI Profulla Saikia about paying half the money and about getting the boys enrolled because I was suspicious about their intentions and after reporting the matter to my senior Edn. JCO, I wanted to catch them ABSI Profulla Saikia came to meet me several times and I am not aware as to when he has taped our conversation. How could I have got boys recruited, when I was not in the recruiting office and nor did I know anyone there ?"

12. We have highlighted the factum of tape recorded conversation between ABSI Profulla Saikia and Hav. Ram Chander to show that it cannot be said by any stretch of imagination that this was a case of no evidence. As per the admission of Ram Chander, he had agreed to refund half of the money. The inculpatory statement proves his guilt. The Explanation by the accused has not been considered worthy of credit, and in our opinion rightly so. The Summary Court Martial has even given its reasons for awarding the sentence. Under the Army Act and the Rules, it was not obliged to do so. Its reasons which are founded on grave anxiety to maintain discipline in the Army and to root out corruption there from are as follows :

"1. The two charges framed against the NCO stand proved unequivocally. At no stage of the proceedings did he display a sense of compunction, remorsefulness or repentance which is sine qua non for granting him the grace of continuance in the army vis-a-vis the gravity of the crime. His re-entry in the service will be a symbolic failure of the attempt to abolish corruption in the army at the grass root level.

2. To permit him to continue in the army will be to profane the credibility and the purity of the system of selection in the army which presently stands atrophied in the eyes of local population.

3. To Permit him to continue in the army is fraught with the dangerous situation of fostering a sense of corruption around him since he is obdurate to the crime committed.

4. It is very probable that a number of aspirants must have succeeded in their attempt to join the army by bribing. This situation offers the following detriments :

(a) Such entrants will remain corrupt through out their service.

(b) Not only does the prestige of the army remain lowered in the public eye, but also a disparate disrepute has been generated, the ill effects of which cannot be ephemeral. Hence, logically the accused should not be permitted to continue in the organisation.

5. For the army personnel in and around, the NCO has given an example of scheming a lucrative past time indulgence. This warrants exemplary punishment so, as to deter other from emulating him.

6. The retention of the NCO is contraindicative to good military discipline and natural justice. Hence any thought for his retention in the service should by force be spurned.

7. Apropos, the dismissal of the accused from the service is the viable and necessary solution."

13. We are asked to set aside the findings of guilt and the sentence awarded by the Summary Court Martial. In fact what is being sought is that we should

convert ourselves into a court of appeal. We are forbidden by the Constitution to interfere on merits or assess the prosecution case afresh. Sub-Art. (4) of Art. 227 of the Constitution lays down that :

"(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces."

14. We do not think it necessary for us to notice the prosecution case further in view of the tape recorded conversation. Ram Chander's admission that he had promised to pay half of the amount to ABSI Profulla Saikia, can be legitimately construed to be an admission of acceptance of amount as a motive for procuring enrolment of Profulla Saikia's nephew in the Army. We have highlighted it only to analyze the submission that it was a case of no evidence.

15. We now advert to the plea of limitation.

15A. According to the charge, the amount of Rs. 3,000/- was paid by the said Police Officer as illegal gratification sometime during the month of February, 1985. Mr. Bansal has pointed out that the prosecution witness No. 2 ABSI Profulla Saikia in cross-examination could not positively state whether it was in the year 1984 or in the year 1985. The argument is that if it was in February, 1984, apparently three years had elapsed and the trial was in violation of Section 122 of the Army Act. Sub-section (1) of that Section reads as follows :

"122. Period of limitation for trial :-

(1) Except as provided by sub-section (2), no trial by court-martial of any person subject to this Act for any offence shall be commenced after the expiration of a period of three years from the date of such offence."

16. Mr. Bansal submitted that as far as the charge regarding payment by Shri Ranjit Datta is concerned, he is stated to have paid Rs. 2,000/- to Ram Chander in June, 1984. He appeared as P.W. 3. He deposed that the amount was paid by him in the presence of Hav. Amulya Saikia. He had mortgaged his land to pay this amount. His complaint was that nevertheless he was not enrolled in the Army. Mr. Bansal is right to the extent that even this witness could not give the exact date of payment of the money. The cross-examination by the accused (Ram Chander) of this witness is as follows :

"Q.1 Do you remember the date of giving your land for Rs. 2,000/- and the date of giving the money to me ?

A.1 I do not remember the dates.

Q.2 How many days after you mortgaged your land, did you come to give me the money ?

A.2 The very next day.

Q.3 Did you report about this case to anyone ?

A.3 Yes, at Bhalukmara

Q.4 Did you come to 41 Sub Area ?

A.4 Yes once in 85. I do not remember date and month. CMP at Sub Area gate also asked me whom I wished to meet and took my signatures in register."

17. As we have noticed, in examination-in-chief this witness had stated that he had paid the money in June, 1984. However, in cross-examination he could not give the exact date. Mr. Bansal submitted that even if the money had been paid in the first or second week of June, 1984, three years had elapsed by the time, the accused was charge sheeted on 17th June, 1987. Thus the plea is that both the charges could not be tried.

18. The question of limitation is not purely a question of law. It is a mixed question of fact and law. We may note that the second charge qua the acceptance of illegal gratification from ABSI Saikia being beyond time is not even pleaded in the petition. In any case, after weighing the evidence, the Court Martial has found that the trial was within time. We are not sitting as an appellate court. We are of the opinion that while exercising our jurisdiction under Art. 226 of the Constitution, in the facts of the present case, we ought not to interfere with the findings of the Court Martial on this question.

19. The next question to be considered is whether any mandatory provisions of the Army Rules have not been complied with in the present case. According to Mr. Bansal, the charge sheet dt. the 17th June, 1987 is entirely vague, and in contravention of the Army Rules 28 and 30. He urged that it neither discloses the exact date on which the amounts were paid nor does it give the name of the nephew of ABSI Profulla Saikia, for whose enrolment in the Army, the bribe was accepted.

20. In our view this contention has also no force. In the present case it cannot be held that the accused was misled by the alleged "error" or omission in the statement of offence contained in the charge. We do not find that the omission pointed out by Mr. Bansal caused any prejudice to his client or it has occasioned a failure of justice. It may be noticed that prior to the trial, a summary of evidence had been recorded. A copy of the summary of evidence is on record of the Summary Court Martial. One of the complainants, Shri Ranjit Datta had appeared as witness No. 5 in that summary of evidence. He had stated therein that in the year 1984 he had paid the gratification to Master Ji meaning thereby Hav. Ram Chander. In cross-examination Hav. Ram Chander had asked him the following questions on this aspect :

"Q.2 In 1984 on which date did you give me the money ?

A.2 In June 84.

Q.3 On which date ?

A.3 I do not know.

Q.4 In your earlier statement you had said that you had given me the money in July 85, now you say in June 84, why this difference ?

A.4 In June 84.

21. Witness No. 8 in the summary of evidence was ABSI Profulla Saikia, the other complainant. In his statement he more or less disclosed the same facts which he re-affirmed during the trial. Thus it cannot be said that Hav. Ram Chander did not know or did not understand the allegations leveled against him in the trial. The underlined principles of the Rules (28 & 30) on which Mr. Bansal is relying are that the accused ought not to be taken by surprise. He should be clearly informed of the charges so that he can meet them at the trial. Also he ought to be clearly informed of the particulars of the accusations and the offences under which those are covered. In his statement, Hav. Ram Chander did not make any grievance on this score. He fully understood the charges.

22. The last contention was that although Col. Krishnan Nair, the Commanding Officer of the Signal Regiment to which Hav. Ram Chander had been attached was performing his duties in the Unit, yet his second in command Lt. Col. S. Banerji had conducted the trial. Section 116 of the Army Act lays down that a Summary Court Martial is to be held by the Commanding Officer. That Section reads as under :

"116. Summary court martial - (1) A summary Court martial may be held by the commanding officer of any corps, department or detachment of the regular Army, and he shall alone constitute the Court.

(2) The proceedings shall be attended throughout by two other persons who shall be officers of junior commissioned officers or one of either, and who shall, not as such, be sworn or affirmed."

23. Mr. Bansal submits that the charge as well as the convening order were signed by the Commanding Officer. He, however, admits that the Commanding Officer did proceed on annual leave and on 22nd June, 1987, the day the summary court martial was held at Jorhat, Lt. Col. S. Banerji was the Offtg. Commanding Officer. His case, however, is that the court martial ought to have been adjourned to await the return of Col. Krishnan Nair. He further pointed out that Col. Nair had rejoined the Unit on 30th June, 1987 and at least thereafter, he ought to have held the trial. Mr. Bansal's contention is that on Col. Nair's rejoining the Unit, the trial ought to have been held de novo by him. The argument seems to be that after 30th June, 1987, the dates on which the sittings were held, Col. Krishnan Nair conveniently took leave for those days so that Lt. Col. Banerji could continue with the trial. This submission has not been raised in the petition, the way it is contended before us. The case made out in the petition is that Lt. Col. S. Banerji as Offtg. Commanding Officer ought to have issued a fresh charge sheet as Col. Nair had proceeded on leave on 21st June, 1987.

24. As we have noticed above, it is being admitted that Col. Krishnan Nair did proceed on leave. On taking over as a Commanding Officer, Lt. Col. Banerji issued an addendum directing that the summary court martial would be held by him. Admittedly he had recorded most of the evidence by the time Col. Nair returned from leave. The respondents case is that subsequent to 30th June 1987 when the trial was held on the adjourned dates, the Commanding Officer was in fact on leave for those few days also. We do not find any irregularity or any illegality in Lt. Col. Banerji continuing with the trial which had been initially started by him.

25. There is no merit in this contention also.

26. The result is that the writ petition fails and it is dismissed. The Rule is discharged.

27. Petition dismissed.