
(2004) 08 BOM CK 0015
In the Bombay High Court
Case No : Writ Petition No. 2170 of 1992

Ramrao Rakha

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-08-2004

Acts Referred:

Army Act, 1950 — Section 106, 108, 116, 120, 120(4)
Constitution of India, 1950 — Article 226

Citation : (2005) 2 MhLj 1022

Hon'ble Judges : S.B. Mhase, J; M.G. Gaikwad, J

Bench : Division Bench

Advocate : M.A. Kulkarni, for the Appellant; Alok Sharma, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Mhase, J.—Heard the learned Counsel for the parties.

2. By this petition, the petitioner has invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India, challenging the order passed by the Summary Court Martial, dated 23-5-1984, sentencing the petitioner to suffer rigorous imprisonment for one month in Civil Prison and to be dismissed from service, for an offence of absenteeism u/s 39 of the Army Act, 1950 and as a deserter u/s 106 of the said Act.

3. The factual matrix in this matter is as under :--

The petitioner was employed as a driver with the respondent on 8th February, 1979 and he was posted at Udampur in the year 1984. While he was at Udampur, he applied for the leave and before grant of leave, he left the Head-Quarters and remained absent for 25 days. After 25 days, he was apprehended by the Military personnel and thereafter put up to the Court Martial, on the charge of absenteeism and desertion. It is further to be noted that after the petitioner was absent, the Court inquiry was held at 874 AT Bn. ASC and he was declared Deserter on 3-2-1984.

4. In the Court Martial, the petitioner was convicted and punished as afore-stated. The learned Counsel for the petitioner has submitted that Summary Court Martial was conducted in respect of the offence u/s 39 of the Army Act, 1950 and punishments of rigorous imprisonment in civil prison and dismissal from service have been awarded. Learned Counsel for the petitioner further submitted that Summary Court Martial is not having a power to impose additional punishment; however, in respect of one and the same misconduct, two punishments have been awarded i.e. sentence of imprisonment for one month and dismissal from the service, and therefore, the order impugned in this petition is vitiated and may be quashed and set aside. On the other hand, Shri Alok Sharma, learned Standing Counsel for the Union of India submitted that u/s 73 of the Army Act, the combination of the punishment is permissible, and therefore, the order of dismissal is justified. In reply to this argument, the learned Counsel for the petitioner submitted that u/s 73 of the Army Act, the word "Court Martial" is used and there is no wording as "Summary Court Martial" in the said provision, and therefore, the Summary Court Martial is not having power to impose a combination of punishments.

5. In the background of above rival contentions, we are required to scrutinize validity or legality of the impugned order.

Sub-section (vii) of Section 3 of the Army Act defines the word "Court Martial" and it means a court-martial held under the said Act. Section 108 of the Act enumerates different types of Court Martials, namely, (a) general court-martial; (b) district courts-martial; (c) summary general courts-martial; and (d) summary courts-martial. Section 116 of the Act lays down provisions in respect of the Summary Court Martial, which is reproduced hereunder.

"116. (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 not be officers or junior commissioned officers or one of either, and who shall not as such, be sworn or affirmed."

Section 120 of the Act lays down powers of a Summary Court Martial, and for the purpose of the present matter, the relevant portion thereof is quoted below :

"120. (4) A summary court-martial may pass any sentence which may be passed under this Act, except a sentence of death or transportation, or of imprisonment for a term exceeding the limit specified in Sub-section (5).

(5) The limit referred to in Sub-section (4) shall be one year if the officer holding the summary court-martial is of the rank of lieutenant colonel and upwards, and three months if such officer is below that rank."

6. What we find is that in the present case, the sentence is only for one month and that is as per the provisions of Sub-section (5) of Section 120 of the Act,

which is within the power of Summary Court-Martial. Sub-section (4) of Section 120 lays down that Summary Court-Martial may pass any sentence which may be passed under this Act, except a sentence of death or transportation, or of imprisonment for a term exceeding the limit specified in Sub-section (5). Thus, the power to impose a sentence is reflected in Sub-section (5) and the power to inflict any sentence is reflected in Sub-section (4) referred to above.

7. Section 71 of the Army Act prescribes the punishments awardable by the Court-Martial, and in the said punishment, Sub-section (c) speaks about the "imprisonment, either rigorous or simple, for any period not exceeding fourteen years". Sub-section (e) of Section 71 provides for punishment of dismissal from the service. Rest of the provisions of other sub-sections of Section 71 are not quoted here as they are not relevant here.

8. u/s 73 of the Army Act, combination of punishments is permissible, including the dismissal from service. The only controversy which was raised in respect of provisions of Section 73 is that the Court Martial does not include the Summary Court-Martial. However, as we have demonstrated hereinabove that the "Court-Martial" does include the "Summary Court Martial" under the provisions of the Army Act. What we have noted is that the four types of Court Martials as stated in Section 108 are all Court-Martials for the purpose of this Act and therefore, any of the Court Martials classified u/s 108 will have the power u/s 73 to make a combination of the punishments. In the light of these provisions, the argument advanced by the learned Counsel for the petitioner is without any merit. Except this, no other grounds are raised before us for consideration. The punishment as is awarded by way of impugned order is, therefore, justified.

9. In the result, Writ Petition is dismissed.

10. Rule discharged, with no order as to costs.

11. In view of above order, the Civil Application No. 85/1998 filed in this Writ Petition stands disposed off.