

(2003) 10 P&H CK 0087

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 1171 of 2003

Ranjit Singh, Ex.Sepoy

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 09-10-2003

Acts Referred:

Citation : (2004) 2 Cri.CC 244 : (2004) 1 RCR(Criminal) 138 : (2004) 1 RSJ 647 : (2004) 1 SCT 136

Hon'ble Judges : M.M.Kumar, J

Advocate : Mr. Brig. B.S. Tounque, Retd. Advocate., Advocates for appearing Parties

Judgement

M.M. Kumar, J.

1. This petition filed under Section 482 of the Code of Criminal Procedure, 1973 read with Article 226 of the Constitution prays for issuance of a writ of Certiorari quashing order dated 9.2.2002 (Annexure P.1) passed by Summary Court Martial dismissing the petitioner from service and awarding him three months R.I. A further prayer has been made for quashing the order of the Chief of Army Staff dated 13.1.2003 (Annexure P3) confirming the sentence passed by the Summary Court Martial. The consequential relief of reinstatement and full backwages have also been claimed.

2. The petitioner was enrolled in Territorial Army as a Sepoy in May 1993 and was allocated to 103 Infantry Battalion. On 23.1.2002 when the petitioner was on patrolling duty, he is alleged to have committed an indecent act at about 2300 hours. The aforementioned act is covered by Section 46 of the Army Act, 1950 (for brevity 'the Act'). On 9.2.2002, a Summary Court Martial was held, by Col. T.P.S. Gill, Commanding Officer 152 Infantry Battalion (T.A.) Sikh at Ludhiana for an offence committed by the petitioner under Section 46 for committing a disgraceful conduct of an indecent kind. The particulars of the charge are that on 23.1.2002 at about 11.00 PM, the petitioner with indecent intention forced drinks on No. NYA Recruit Surinder Singh of the same battalion and then open his

trouser. The petitioner was held guilty of the charge as he pleaded guilty. He was awarded the punishment of three months R.I. and dismissal from service. Thereafter, his appeal filed under Section 164(2) of the Act was also rejected by the Chief of the Army Staff on 13.1.2003. Feeling aggrieved, the petitioner has approached this Court.

3. Mr. B.S. Tounque, learned counsel for the petitioner has urged that no enquiry as stipulated in Rule 22 of the Army Rules, 1954 (for brevity 'the Rules') was conducted as hearing of the charge was required to be afforded to the petitioner and the same has not been done. According to the learned counsel, the petitioner has been unfairly treated by alleging and pronouncing him guilty of the offence of a disgraceful conduct of indecent kind. According to the learned counsel, the provisions of Rule 22 are mandatory in character and its failure must vitiate the whole Summary Court Martial. As a consequence, the petitioner is entitled to be reinstated in service with all the benefits.

4. After hearing the learned counsel and perusing the record, I find that on 9.2.2002, the petitioner appeared before the Summary Court Martial and the charge sheet was read over the explained to him. The charge sheet was marked as B2. In answer to the question No. 1 as to whether he is guilty or not to the charge against him, the petitioner answered 'guilty' and the same is signed. However, before recording the same as finding of the Court that the petitioner had pleaded guilty, the Court was to ascertain that the petitioner understood the nature of the charge, to which he had pleaded guilty. Accordingly, Rule 115(2) of the rules was followed and the petitioner was again asked as to whether he pleaded guilty or not to the charge, to which the petitioner pleaded guilty. The findings were thereafter recorded that at field on 23.1.2002 at 11 P.M., the petitioner with indecent intent forced drinks on, and opened the trouser of, NYA Recruit Surinder Singh of the same battalion. He was sentenced to rigorous imprisonment for three months and he was also dismissed from service. Even his appeal filed under Section 164(2) of the Act was dismissed on 13.1.2003 vide Annexure P3. The observation of the Chief of the Army Staff while dismissing the appeal reads as under ;

"2. The petitioner was arraigned on a charge under Army Act Section 46 (? Sic) for, 'DISGRACEFUL CONDUCT OF AN INDECENT KIND', the particulars of the charge averring that he, at Field, on 22 Jan 2002 at about 2300 hours, with indecent intent forced drinks and opened the trouser of No. NYA Recruit Surinder Singh of the same battalion. The accused pleaded 'GUILTY' of the charge and the Court, after complying with the provisions of AR 115(2) and (2A), found him accordingly and sentenced him to suffer rigorous imprisonment for three months and to be dismissed from service.

3. In his petition, the petitioner inter alia, contended that the charge against him was fabricated, that the finding of guilty by the Court is illegal being based on false evidence, that he was denied the service of a civil counsel as friend of the accused, that he was not supplied with a copy of the SCM proceedings, and that

the sentence awarded to him was extremely harsh and illegal.

4. The contentions of the petitioner as mentioned in his petition are devoid of merit and substance. The finding of the Summary Court Martial is legal and justified, which inspires confidence. The sentence awarded is fair, legal and commensurate with the gravity of the offence committed by him.

5. I, therefore, reject the petition as it lacks merit and substance."

It is pertinent to mention that the act of the petitioner is fully covered by Section 46 of the Act, which reads as under :

"46. Certain forms of disgraceful conduct

Any person subject to this Act who commits any of the following offences, that is to say

(a) is guilty of any disgraceful conduct of a cruel, indecent or unnatural kind;

shall, on conviction by courtmartial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned."

5. A perusal of Section 46 of the Act shows that any person, who is guilty of any disgraceful conduct of an indecent or unnatural kind is liable to suffer imprisonment for a term, which may extend to seven years. The petitioner in this case is alleged to have forced drinks on NYA recruit Surinder Singh belonging to his battalion and then opened the buttons of his trouser with indecent intention. The charge sheet had been explained to the petitioner, to which he pleaded guilty. Therefore, I do not find any legal infirmity in the order of the Court Martial. There is no lack of compliance with any mandatory provisions warranting interference of this Court in these proceedings.

6. The argument of the learned counsel that the provisions of Rule 22 of the Rules have not been complied with, would not require any detailed consideration because it is factually incorrect. A perusal of Annexure P1 makes it evident that the charge sheet mark `B2" was read and explained to the petitioneraccused. He pleaded guilty. Thereafter, the Court made the petitioneraccused understand the charge and also the general effect of his admission. It was also explained to him that the procedure would be different in case he pleaded guilty and advised him that he could withdraw the plea. Therefore, it cannot be concluded that the mandate of Rule 22 of the Rules were not complied with. The charge sheet mark `B2" as mentioned in Annexure P1 clearly demonstrates the aforementioned factual position. The other argument that forcing drinks on an NYA recruit or opening the button of his trouser would not amount to committing an offence has also not impressed me because under Section 46 of the Act, this type of conduct has been described as an `offence". There is no challenge to the vires of Section 46. The petitioner is a member of a disciplinary force and is expected to demonstrate a conduct, which is consistent with the norms established by the

Act. In such organisation, strict discipline is required to be maintained. Therefore, I do not find any substance in the argument raised by the learned counsel and the instant petition is liable to be dismissed.

For the reasons recorded above, this appeal fails and the same is dismissed with costs.