
(2019) 06 MAN CK 0008
In the Manipur High Court
Case No : Writ Petition (Cril.) No. 11 Of 2018

Ranju Singh

APPELLANT

Vs

State Of Manipur And Others

RESPONDENT

Date of Decision : 12-06-2019

Acts Referred:

Constitution Of India, 1950 — Article 21, 21(1), 22(2), 22
Regulations For The Army, (Revised Edition) 1987 — Regulation 364
Army Act, 1950 — Section 3, 26, 27, 50, 122

Citation : (2019) 06 MAN CK 0008

Hon'ble Judges : Ramalingam Sudhakar, CJ; Khwairakpam Nobin Singh, J

Bench : Division Bench

Advocate : N. Ibotombi, N. Savitri, R.K. Umakanta, S. Suresh

Final Decision : Disposed Off

Judgement

Kh. Nobin Singh, J

[1] Heard Shri N. Ibotombi, learned Senior Advocate assisted by Ms.N. Savitri, learned advocate appearing for the petitioner; Shri R.K. Umakanta, learned Government Advocate appearing for the State respondents and Shri S. Suresh, learned ASG appearing for the Union of India.

[2] By the instant writ petition, the petitioner has prayed for issuing a writ in the nature of Habeas Corpus directing the respondent Nos. 3 to 6 to release the husband of the petitioner. The prayer in the writ petition reads as under:

"PRAYER

In view of the facts and circumstances stated above, the petitioner begs to pray that the Hon'ble Court may be graciously please.

(i) To admit this petition.

(ii) To issue Rule Nisi;

(iii) To issue a writ in the nature of Habeas Corpus directing the Respondent Nos. 3 to 6 for releasing the husband of the Petitioner forthwith.

(iv) In the interim, to pass an order to safeguard the human rights/ liberty of the humble petitioner's husband and direct the Respondent Nos. 4, 5 and 6 to produce the Petitioner's husband before the Hon'ble Court through the Respondent No. 3.

And

(v) To issue such other writ or direction which the Hon'ble High Court may deem fit, proper and just for the ends of justice and of equity."

[3.1] Facts and circumstances as narrated in the writ petition, are that the petitioner is the wife of Lt. Col. Dharamvir Singh, Officer Commanding, 2 FID/3CISU (M Sector, Imphal) who is going to retire on 09-10-2020 and accordingly, her husband submitted an application dated 23-11-2017 to the authority concerned for last Leg posting at Mumbai being the last choice of posting from 3 Corps Int. & Svl. Unit, C/o 99 APO. His prayer was rejected and consequently, he was transferred as Addl. Officer, Stn. HQ, Belgaum vide order dated 07-03-2018. Being aggrieved by this order, the petitioner's husband submitted a representation dated 28-03-2018 for reviewing the order dated 07-03-2018 and to post him in Mumbai as his last choice of posting.

[3.2] As no positive action was taken by the authority concerned, the petitioner's husband approached this court by way of a writ petition being WP(C) No. 276 of 2018 wherein this court passed an order dated 05-04-2018 directing the respondents therein to consider and dispose of the representation within a period of one month from the date of order. However, the representation dated 28-03-2018 was rejected vide order dated 04-05-2018 issued by the authority concerned on the ground that the petitioner retained a quarter in Mumbai for 10 years. Being aggrieved by the said order dated 04-05-2018, the petitioner's husband approached this court again by way of a writ petition being WP(C) No. 409 of 2018 which was disposed of by this court on 19-06-2018 directing the authorities to reconsider the posting of the petitioner's husband to another field/ NMS in the vicinity of Mumbai to meet his requirements and in the event of a fresh order being passed towards his posting, the petitioner's husband should immediately vacate the accommodation occupied by his family at Mumbai. The aforesaid order dated 19-06-2018 was passed by this court based on the averments made in the affidavit-in-opposition and considering the facts that the mother of the petitioner's husband was undergoing treatment in a Hospital in Mumbai and that it was his last leg posting. On 27-06-2018 the petitioner's husband through his counsel requested the authority concerned to comply with the said order of this court but to no effect.

[3.3] In order to meet her husband, the petitioner left Mumbai along with her children and reached Imphal on 30-06-2018 at about 03:30 pm and thereafter, the petitioner spent her good time with her husband and children at the official

quarter allotted to the petitioner's husband at M Sector, Imphal. On 01-07-2018, at around 06:30 am while the petitioner was in the official quarter along with her husband and children, two officers namely, Lt. Col. Nanda, respondent No.5 and Major Rathod, respondent No.6, along with one JCO and 8 to 10 jawans in uniform armed with weapons, knocked the door of the quarter. When the petitioner and her husband went outside, they saw them along with some jawans. The respondent No.5 informed her husband that as per the direction of the respondent No.4, the petitioner's husband was taken into custody and thereafter, without any warrant or giving any reason, the petitioner's husband was taken away by the respondent Nos.5 and 6 and their parties. Thereafter, the petitioner lodged an FIR at City Police Station, Imphal for taking appropriate action. Since the respondent Nos.4, 5 and 6 did not give any official information, the whereabouts of her husband was not known and her husband had been detained illegally by them. The factum of arrest and detention of the petitioner's husband was published in the local daily newspapers as well as the National Newspapers.

[3.4] The illegal detention of the petitioner's husband by the respondent Nos.4, 5 and 6 was hit by Article 21 of the Constitution of India inasmuch as the life and personal liberty of the petitioner's husband had been violated by them. The petitioner submitted that it was a case where the rights and personal liberty of the petitioner's husband had been put in peril and had been irreparably violated by the respondents. The action of the respondent Nos. 4, 5 and 6 was also hit by Article 21(1) and (2) of the Constitution which called for intervention by this court.

[4.1] An affidavit-in-opposition on behalf of the respondent Nos. 2 and 3 was filed, denying the averments made in the writ petition, wherein the backgrounds of the case were narrated stating that the petitioner's husband was posted as Officer Commanding, Z Section, 3 Corps Intelligence & Surveillance Unit, Rangapahar (Dimapur) vide order dated 20-05-2016. Due to organizational requirements, he was sent to officiate as Officer Commanding, No. 2 Field Intelligence Detachment/3 Corps Intelligence & Surveillance Unit, Imphal vide movement order dated 20-09- 2016. On 26-06-2018, Lt. Col. Nanda reported at Imphal on permanent posting as the Officer Commanding, No. 2 Field Intelligence Detachment/ 3 Corps Intelligence & Surveillance Unit, Imphal for which the petitioner's husband was required to handover the charge and move to his original place of posting. After about four days when handing/taking over period was over, on 29-06-2018 the petitioner's husband was informed to move to his original place of posting, to which he exhibited his reluctance quoting the representation/Court case filed by him relating to his last leg of posting. On 30-06-2018, a movement order was issued and handed over to the petitioner's husband for his move from M Sector, Imphal. However, on 01-07-2018 while on move to Dimapur, the Officer on reaching Kanglatongbi informed that he left his movement order with his wife and as such a copy of the said movement order was again handed over to the Officer which was duly received by him. On

reaching Dimapur at 2045 hours on 01-07-2018, the petitioner's husband reported there and the reporting was endorsed in the movement order by the person on duty.[4.2] On 01-07-2018, Lt. Col. Nanda along with Major Rathod went to inform the petitioner's husband that all necessary arrangement for his move from Imphal to his original place of posting had been made and the vehicles along with the Quick Reaction Team, provided for his protection as the movement was on non-road opening day, were waiting for his departure. After due packing, the petitioner's husband left the place on the vehicles provided to him at 0852 hours.

[4.3] No. 2 Field Intelligence Detachment/ 3 Corps Intelligence & Surveillance Unit is administratively dependent on Station Headquarters, Leimakhong. Therefore, as per para 1021 of Regulations for the Army, 1987 with other relevant regulations, the petitioner's husband was required to obtain prior permission before calling his family in station. The petitioner arrived at M Sector, Imphal without any permission being taken by her husband. The entire thing happened in the Unit lines where the petitioner along with her children were present and therefore, the allegation of the petitioner in the police complaint that she was not aware where her husband had been taken, was nothing but false and misleading. After her husband left for Dimapur, the petitioner moved to unknown place in civil area. As seen from the press conference held on 03-07-2018, the petitioner admitted that she had talked to her husband over his mobile phone. Despite knowing the fact that her husband was safe and sound performing his duties, the instant writ petition was filed by the petitioner.

[5] On 05-07-2018 when the writ petition came up for consideration, the learned Single Judge of this court while issuing notice to the respondents, directed the respondent No.3 to ensure the presence of the petitioner's husband before this Court along with Lt. Col. Nanda and Major Rathod on the next date. It was further directed that the matter be listed before the appropriate Division Bench of this Court. As directed by this Court, the petitioner's husband was present in the Court on 11-07-2018 along Lt. Col. Nanda and Major Rathod. Accordingly, this court observed that as on that day, Lt. Col. Dharamvir Singh was not prima facie in illegal custody. On 13-07-2018 when the matter was listed again, Shri N. Ibotombi, the learned counsel appearing for the petitioner submitted that he would like to file a detailed affidavit as regards the detention of the petitioner's husband by the army authorities which was denied by Shri S. Suresh, ASG. The affidavit dated 20-07-2018 was filed by the petitioner's husband making serious allegations against the respondents who were granted sufficient time to file a reply. The respondents filed their reply affidavit on 10-09-2018.

[6] It has been submitted by Shri N. Ibotombi, the learned counsel appearing for the petitioner that the petitioner's husband was detained by the army personnel including his co-officer without any authority of law; that such acts of restraint and detention of the petitioner's husband were illegal being violative of the provisions of Article 21 and 22 of the Constitution of India and that an

independent investigating agency be directed to investigate into the allegations of illegal detention. The allegations were denied by Shri S. Suresh, the learned ASG contending that it was a malicious intent to defame the army; that it was done with an ulterior motive to cause embarrassment to the army and that the provisions of the Army Act, 1950 and the regulations made thereunder, are sufficient to deal with the issue involved herein. From the aforesaid pleadings and the submissions made by the counsels appearing for the parties, the issue which falls for consideration by this Court is as to whether the petitioner's husband has a remedy before a superior officer as against the alleged acts of restraint and illegal detention by the co-officers of the same Department which, according to him, is contrary to law?

[7] The Indian Army Act, 1911 was enacted by the British India applicable to the regular army in India but since the provisions thereof were becoming out of date and insufficient for modern requirements, the need for its revision became imperative. Some of the objects for revision were to make it self-sufficient by incorporating the relevant provisions from certain other related enactments and to adapt the existing provisions to suit the new constitutional set up and the present day requirements. Keeping the said objects in mind, the Army Act, 1950 (hereinafter referred to as "the Act") came to be enacted by the parliament. Section 26, 27 and 50 thereof read as under:

"26. Remedy of aggrieved persons other than officers:

(1) Any person subject to this Act other than an officer who deems himself wronged by any superior or other officer may, if not attached to a troop or company, complain to the officer under whose command or orders he is serving ; and may, if attached to a troop or company, complain to the officer commanding the same.

(2) When the officer complained against is the officer to whom any complaint should, under sub-section (1), be preferred, the aggrieved person may complain to such officer's next superior officer.

(3) Every officer receiving any such complaint shall make as complete an investigation into it as may be possible for giving full redress to the complainant; or, when necessary, refer the complaint to superior authority.

(4) Every such complaint shall be preferred in such manner as may from time to time be specified by the proper authority.

(5) The Central Government may revise any decision by the Chief of the Army Staff under sub-section (2), but, subject thereto, the decision of the Chief of the Army Staff shall be final.

27. Remedy of aggrieved officers- Any officer who deems himself wronged by his commanding officer or any superior officer and who on due application made to his commanding officer does not receive the redress to which he considers himself entitled, may complain to the Central Government in such manner as

may from time to time be specified by the proper authority.⁵⁰ Irregularity in connection with arrest or confinement.-Any person subject to this Act who commits any of the following offences, that is to say,-

(a) Unnecessarily detains a person in arrest or confinement without bringing him to trial, or fails to bring his case before the proper authority for investigation ; or

(b) Having committed a person to military custody fails without reasonable cause to deliver at the time of such committal, or as soon as practicable, and in any case within forty-eight hours. thereafter, to the officer or other person into whose custody the person arrested is committed, an account in writing signed by himself of the offence with which the person so committed is charged;

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

Regulation 364 of the Regulations for the Army, 1987 reads as under:-

"364. Complaints-General-(a) Complaints may be of two kinds:

(i) Statutory Complaints - These are made under the provisions of Army Act Sections 26 and 27 by the following:-

(aa) Any person subject to the Army Act other than an officer who deems himself wronged by any superior or other officer.

(ab) Any officer who deems himself wronged by his commanding officer or any other superior officer.

(ii) Non Statutory Complaints - These can be made under the authority of the Army Order on the subject when the complaints considers himself wronged by any authority other than those mentioned in sub-sub-para (i) above and is not covered under Army Act Sections 26 and 27.

Statutory Complaints-(b) Number and Extent- An officer has the right to complain to the Central Government. JCO or OR can complain to the COAS in the first instance. In case they are not satisfied with the decision of COAS, they may complain to the Central Government whose decision shall be final. This right can be exercised only once. A second complaint to these authorities will be allowed only if fresh facts and circumstances have come to light necessitating reconsideration of the case.

Procedure for Submission and Channel to be Followed

(c) Statutory complaints will be addressed to the following authorities.

(i) Central Government by officers.

(ii) COAS by JCOs, WOs and OR in the first instance and thereafter to the Central Government.

(d) All statutory complaints will be made through proper channel as given in sub-para (e) below and copies will not be forwarded direct to higher authorities. If the final decision on the statutory complaint is not taken within a period of six months from the date such a complaint is submitted to the immediate superior, the applicant will have a right to represent direct to Army Headquarters or the Central Government as the case may be after informing his commanding officer.

(e) The following channels will be followed while forwarding statutory complaints:

(i) Company commander or other immediate superior.

(ii) Commanding Officer.

(iii) Brigade Commander or Sub-Area Commander.

(iv) Divisional Commander or Area Commander

(v) GOC Corps where applicable.

(vi) COAS

(vii) Central Government.

(f) Statutory complaints from officers of AMC and ADC and from all JCOs, WOs and OR which pertain to matters relating to promotion, appointment, posting, release and discharge, will be processed through departmental channels.

Layout of Complaints.

(g) The general layout of complaints will be as per the specimen reproduced at Appendix 'P'. The essentials of a complaint are as follows:-

(i) An introduction which would state whether the complaint is statutory or non-statutory and the provisions of the Statute or Rules under which it is made. In the case of statutory complaints, this para will not be stated as the authority under which the complaint is being made.

(ii) Background of the case, if required.

(iii) Facts of the case set out briefly in logical and chronological order, giving specific grievances.

(iv) A conclusion containing the specific redress sought for by the complainant.

(h) It will be ensured that the complaint is couched in respectful and proper language. A complaint containing a false statement or a false accusation would render the complainant liable for disciplinary action under the Army Act. If a complaint contains accusations or allegations the complainant will render a certificate as under which will be annexed to the complaint.

"I understand that any false statement or false accusation made by me in this complaint will render me liable for disciplinary action."

Action by the Intermediary Authorities:- (j) An intermediary authority will examine the grievances set forth by the complainant and will either grant the redress sought for in the complaint or forward the complaint to the next higher authority alongwith his comments and recommendations. The immediate superior authority in chain will, in addition, also offer his detailed parawise comments on the complaint. He will also ensure that the stipulation made in sub-para (h) above has been complied with. In case any of the conditions mentioned below is not satisfied, he will withhold the complaint and inform the next superior authority and the complainant the reasons for withholding the complaint:-

- (i) That the complaint is complete in all respects and is in the correct form.
- (ii) That the complaint is not couched in a discourteous, disrespectful or improper language.
- (k) If an intermediary authority grants the redressal asked for, the complainant will be informed and the case closed under intimation to higher authorities in chain. Before forwarding the complaint to the next higher authority, the immediate superior authority of the aggrieved individual will endeavour to interview the complainant and make such investigations as he considers necessary. He will then forward the complaint, his detailed parawise comments and recommendations to the next superior intermediary authority. While forwarding he statutory complaint to the next higher authority, concerned formation headquarters shall invariably inform Army Headquarters about the progress of the case and also inform the complainant through his commanding officer.

Time-frame for Processing of Complainants- (l) All complaints will be dealt with expeditiously at all levels. The following time schedule will be strictly followed:-

(i) Time taken to reach Army Headquarters (including transit period).

(aa) Unit 20 days (where parawise comments are require be forwarded)

(ab) Bde or Sub Area 15 days

(ac) Div or Area 15 days

(ad) Corps Headquarters 20 days

(ae) Command Headquarters 20 days

Total 90 days

During the period of collective training, or where the complaint pertains to a period more than two years earlier, an additional period of 30 to 45 days will be permissible for the complaint to reach Army Headquarters.

(ii) Time taken at Army Headquarters - 45 days

(m) In case of delay, a report explaining in detail the reasons for delay will be

forwarded to the next higher authority.

(n) Final Disposal of Complaints-Orders of the authority competent to finally dispose of the complaint will be communicated to the complainant through normal channels.

(o) Non-Statutory Complaints- Non-statutory complaints will only be addressed to the immediate superior, company commander or the commanding officer as the case may be. Such complaints will neither be addressed direct to higher authorities other than those mentioned in this paragraph nor will copies be endorsed to such authorities. Where the authority addressed considers action by higher authorities necessary, he may forward the complaint, alongwith his recommendations, to the next superior authority.

(p) Non-statutory complaints will also be dealt with expeditiously. Sub-paras (g), (h) and (n) above will also apply to non-statutory complaints."

[8] The conjoint reading of the provisions of Section 26 and 27 makes it very clear that Section 26 deals with a remedy available to an aggrieved person other than an officer, who deems himself wronged by any superior or other officer, while Section 27 deals with a remedy available to an officerwho deems himself wronged by his commanding officer or any superiorofficer. The petitioner's husband being an officer, this court is concernedwith the provisions of Section 27 of the Act. In order to attract theprovisions of Section 27 of the Act, four conditions are to be fulfilled:

(a) The aggrieved person must be an officer;

(b) He deems himself wronged by his commanding officer or any superior officer;

(c) On his application made to his commanding officer, he does not receive the redress to which he considers himself entitled;

(d) He may complain to the Central Government in such manner as may be specified from to time by the proper authority.

The term "wrong" is not defined in the Act and therefore, the same is to be understood with reference to the meaning given in the dictionary. As per the meaning given in the Advanced Learners' Dictionary, the term "wrong" means "not right or not correct", while in Black's Law Dictionary, it means "a violation of legal rights of another". Similarly, the expression "proper authority" is not defined in the Act. Section 50 provides for imposition of a penalty on a person who is found to have committed the offences mentioned therein including the unnecessary arrest or confinement without trial. The detailed procedures as to how the complaint under Section 26 or 27 of the Act can be made and the manner in which it shall be disposed of, are specified in the Regulation 364 which provides that there are two kinds of complaints-one, statutory complaints made Section 26 and 27 of the Act and two, non statutory complaints under the authority of the Army order other than those mentioned therein.

[9] Any decision rendered by the Hon'ble Supreme Court on the issue involved herein has not been brought to the notice of this court by any of the parties in the case. However, some of the decisions rendered by the High Courts in the country have been cited by the counsel appearing for the parties. In *Brig Iqbal Singh, VSM (Retd) Vs. Union of India & ors.*, (2005) 119 DLT 715, the issue was as regards the validity and correctness of the decisions of the respondents therein placing the petitioner under close arrest/ military custody. The writ petition was dismissed by the Hon'ble High Court of Delhi as misconceived. Although the facts of that case are not identical to that of the present case, the Hon'ble High Court observed as under:"

109. So far as the issue of non-decision of the various complaints made by the petitioner is concerned, Section 26 and 27 of the Army Act, 1950 provide remedies to aggrieved persons against decisions taken by the authorities against them. Section 27 of the Army Act confers a right of redressal to any officers who deems himself wrong by his Commanding Officer or any superior officer who on due application made to such Commanding Officer does not receive redressal to which he considers himself entitled. Such officer is given the right to make a complaint to the Central Government in such manner as may from time to time be specified by the proper authority."

In *Union of India & ors. Vs. Yatish Chandra Mishra*, (2011) 2JKJ 443, the controversy revolved around promotion of the appellant Nos.5 & 6 over the head of the respondent on the ground of adverse remarks given by the Higher Technical Officer against him. The facts of this case also are not identical but the Hon'ble High Court of J & K observed as under:"

19. The Army Act and the Regulations for the Army (1987) provide a grievance redressal mechanism for an officer aggrieved of the order of the Promotion Board. Such an officer may file a non-statutory complaint u/s 27 Army Act read with para 364 of DSR to be considered by Chief of the Army Staff/ Chief of the Naval Staff/Chief of the Air Force, depending upon the service to which the officer belongs. In the event the officer is not satisfied with the decision on his non-statutory complaint, he is given an option to file a statutory complaint to the Central Government."

[10] As is evident from the objects sought to be achieved by the Army Act, 1950, it can be said to be a complete Code. This Court's conclusion is substantiated by the decision rendered by the Hon'ble Supreme Court in *Radha Krishan Vs. Union of India*, AIR 1996 SC 3091 wherein it has been held that Section 122 of the Army Act is a complete Code in itself. Although the decisions rendered by the above two High Courts are not binding on this court except their persuasive values, there is no reason as to why this court shall take a different view from the observations made therein and therefore, this court does endorse them except the portion of the observation made by the High Court of Jammu & Kashmir to the effect that an officer may file a non-statutory complaint under Section 27 Army Act. The complaint to be filed under Section 27 ought to be a

statutory complaint and not a non-statutory complaint. Therefore, this court is of the view that the petitioner has a remedy under the provisions of the Army Act and there is no need of an enquiry being conducted by an independent investigating agency into the allegations made by him. In the present case, the main allegation is that the petitioner's husband was detained by the army personnel including his co-officer without any authority of law thereby infringing his fundamental rights guaranteed under the provisions of Article 21 and 22 of the Constitution of India. From the pleadings as aforesaid, the petitioner's husband appears to have not approached the concerned authority as provided under the provisions of Section 27 of the Army Act, 1950 for redressal of his grievance. It is imperative on his part to exhaust the remedy available in the Army Act, 1950 before his grievance being considered by this court particularly when this court vide its order dated 11-07-2018 had observed that the petitioner's husband was not prima facie in illegal custody, as on that day, because of his being produced before this Court.

[11] In view of the above and for the reasons stated hereinabove, the instant writ petition stands disposed of with the direction that it is open to the petitioner to approach the concerned authority as prescribed under the provisions of Section 27 of the Army Act, 1950 for redressal of his grievance strictly in accordance with the procedure specified under the Regulation 364 of the Regulations for the Army, 1987. In the event of such a complaint being filed by the petitioner's husband, the same shall be considered and disposed of by the concerned authority strictly in accordance with law by issuing a speaking order. It is made clear that this court has not expressed any opinion on the legality and correctness of the allegations made by the petitioner against the respondents.