

(2004) 04 AHC CK 0073
In the Allahabad High Court
Case No : Writ Petition No. 2789 (S/S) of 1995

Rect Shilesh Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 30-04-2004

Acts Referred:

Army Rules, 1954 — Rule 115, 115(2), 180

Citation : (2004) 4 AWC 3588

Hon'ble Judges : A.N. Varma, J

Bench : Single Bench

Advocate : R.D. Singh, for the Appellant; H.B. Singh and U.K. Dhaon, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Varma, J.—Through the instant petition the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing Annexure-4 to the writ petition whereby he has been discharged from Army Services pursuant to the proceedings of Summary Court Martial against him. A further relief has been prayed for, for issuance of a writ in the nature of mandamus commanding the opposite parties to reinstate him with his original seniority and full back salary and other allowances as if the petitioner had never been dismissed from service. The action of the opposite parties has been challenged on the ground that proceedings of Summary Court Martial are not supported by the summary evidence and it is nowhere established that the petitioner had furnished false address knowing it to be false. Another ground of challenge is that the impugned action of the opposite parties in discharging the petitioner from service is tainted with malice and prejudice.

2. The petitioner who at the relevant time, was working in the Indian Army in Army Service Corps as Driver Mechanical Transport (M.T.) was recruited as such at the Zonal Recruitment Office. One of the pre-requisite of the recruitment was that a domicile certificate was required to be furnished, before the authority

concerned. According to the petitioner the brother of the petitioner obtained a domicile certificate from the office of the District Magistrate, Lucknow, a copy of which has been filed along with writ petition as Annexure-2 (Bearing No. 1409/4/Ra. Sa.2/92) which was submitted along with application form in October, 1993, before the office of Zonal Branch Recruiting Office, Lucknow. As per petitioner's version the address shown in the said certificate as per record is 538 Kha/367 Deen Dayal Nagar, Khadra, tahsil and district Lucknow, which according to him, is his residential address. The petitioner thereafter appeared in open competition said to be conducted by the Zonal Branch Recruiting Office sometime in February, 1994. He qualified for the written test, physical test and medical test. A fresh domicile certificate was also required which too he filed (dated 4.2.1994 bearing No. 399/4/Ra.Sa.2/94). On 28.2.1994, the petitioner was duly recruited as a Driver (MT) in ASC Corps. Both the domicile certificates submitted by the petitioners, i.e., one at the time of applying for the post and the other at the time of recruitment were sent to the District Magistrate, Lucknow for verification by the Recruitment Officer vide a letter dated 4.3.1994.

3. Vide letter dated 27.7.1994, a copy of which has been filed along with counter-affidavit as Annexure-7, the Recruiting Officer was intimated that photocopy of the certificate was checked from the record and the certificate bearing No. 399/4/Ra.Sa.2/94 dated 4.2.1994 was found to be recorded and issued by their office. However, the certificate bearing No. 1409/4/Ra.Sa 2/92, dated 6.10.1993, did not appear to have been issued from the said office as the endorsement, serial and date did not find mention as per their record. This act of furnishing a wrong certificate during the process of recruitment having been detected by the authorities, the petitioner was summarily court martialled by opposite party Nos. 4 and 5 and thereafter he was discharged.

4. I have heard the learned counsel for the petitioner Major R. D. Singh and Sr. K. D. Nag learned Additional Standing Counsel for the Central Government.

5. Learned counsel for the petitioner vehemently argued that both the domicile certificates had been issued from the office of the District Magistrate, Lucknow, on the basis of the report obtained from the Tehsildar indicating therein that the petitioner was residing on the address specified therein. He further submitted that there was absolutely no difference in both the certificates wherein the details of the residential address of the petitioner was given. It was also argued that in the enrolment form he had given his correct residential address at which he was residing. Therefore, the letter dated 27.4.1994 issued from the office of the Zila Adhikari, Lucknow, has no bearing in so far as furnishing of his correct address is concerned. According to the learned counsel, a bare perusal of Annexures-1 and 2 to the writ petition reflects that the residential address stated therein are the same in both the certificates, also the said certificates have been signed and issued from the office of the Zila Adhikari after having obtained the report from the Tehsildar, therefore, there was absolutely no occasion to proceed against him by the Summary Court Martial and Impose punishment of discharge

from service. The learned counsel further stated that the statutory complaint that he made before the concerned authority has also been wrongly rejected.

6. A counter-affidavit has been filed on behalf of opposite party where in paragraph 6 it has been stated that at the time of recruitment the petitioner submitted the domiciles certificate dated 6.10.1993 (No. 1409/4/Ra.Sa.2/92) which was never issued by the District Magistrate, Lucknow and he knowingly and deliberately produced the said certificate for purposes of securing recruitment which had already been confirmed by the District Magistrate vide letter dated 27.7.1994 that the said domicile certificate had never been issued from his office. In paragraph 12 it has been averred that the recruitment of the petitioner was made on the basis of fake certificate and false averments. The services in Army require utmost discipline and truthfulness of highest order. The persons of such casual and irresponsible behaviour pattern has no place in Army where the entire security and welfare of the country at large is involved. It has also been pointed out that during the proceedings of summary court martial the petitioner was given full opportunity and in the said proceedings he himself admitted that he produced the false certificates.

7. The learned additional standing counsel for the Central Government submitted that before recording the plea of "guilty", the Court called upon (he petitioner and explained him the meaning of the charges and also ascertained that the accused understood the nature of the charge that had been levelled against him. The Court also informed the accused the general effect of the plea. This also would appear from perusal of the proceedings of the summary court martial which have been annexed along with the writ petition as Annexure-4. The petitioner however, pleaded guilty he was also provided a chance to cross-examine the witnesses but he declined to cross-examine.

8. Rules 115 {1}, (2) and (2A) of the Army Rules, 1954 (hereinafter referred as the Rules, reads as follows) :

115. General plea of "guilty or not guilty".- (1) The accused person's plea-"Guilty" or "not guilty" (or if he refuses to plead, or does not plead intelligible either one or the other, a plea of "not guilty", shall be recorded on each charge.

(2) If an accused person pleads "guilty", that plea shall be recorded as the finding of the Court, but before it is recorded, the Court shall ascertain that the accused understands the nature of the charge to which he has pleaded guilty and shall inform him of the general effect of that plea, and in particular of the meaning of the charge to which he has pleaded guilty and of the difference in procedure which will be made by the plea of guilty, and shall advise him to withdraw that plea if it appears from the summary of evidence (if any) or otherwise that the accused ought to plead not guilty.

(2A) Where an accused pleads "guilty", such plea and the factum of compliance of sub-rule (2) of this rule, shall be recorded by the Court in the following

manner :

Before recording the plea of "guilty" of the accused the Court explained to the accused the meaning of the charge (s) to which he had pleaded "guilty" and ascertained that the accused had understood the nature of the charge(s) to which he had pleaded "guilty". The Court also informed the accused the general effect of the plea and the difference in procedure, which will be followed consequent to the said plea. The Court having satisfied itself that the accused understands the charge (s) and the effect of his plea of "guilty", accepts and records the same. The provisions of Rule 115 (2) are thus complied with.

9. As would appear from the perusal of the aforesaid rules if an accused person pleads guilty the said plea shall be recorded as the finding of the Court, but before it is recorded the Court shall ascertain that the accused understands the nature of the charge to which he has pleaded guilty and shall also inform him the general effect of the plea. In the case at hand too, the petitioner having pleaded guilty, was explained and informed about the general effect of the plea. Thereafter the same was recorded as the finding of the Court. Therefore, this Court is of the considered view that Rule 115 (2) of the Rules duly stands complied with.

10. The learned counsel for the petitioner submitted that no opportunity was afforded to him to defend the charges levelled against him. He further submitted that Rule 180 of the Rules have not been complied with. In this connection he placed reliance upon a Division Bench decision in R.P. Shukla and Others Vs. Central Officer Commanding-in-Chief, Lucknow and Others, and Major Sarup Singh Siddhu v. Union of India 2000 Mil LJ 34. On the basis of the said judgment learned counsel for the petitioner argued that the court of inquiry is required by mandatory Rule 180, to observe the principles of natural justice and, therefore, even during the course of investigation a court of inquiry cannot flout rules of natural justice and if it does so it cannot be said that the accused. persons had an opportunity of hearing during the course of summary court martial. The said cases do not apply in so far as the facts and circumstances of the case at hand is concerned inasmuch as the petitioner was present throughout the course of inquiry proceedings. The Court explained to him the meaning of the charge and also read the summary of the evidence and explained to him about the veracity of the same. He was also provided an opportunity to cross- examine the witnesses, but he declined to do so and pleaded guilty. In such circumstances, it cannot be said that reasonable opportunity had not been afforded to him. Having pleaded guilty the petitioner did not choose to avail whatever opportunity had been afforded to him. Thus, it cannot be said that it is a case of denial of opportunity and violation of Rule 180. The argument of the learned counsel for the petitioner with regard to the same has no force and thus fails.

11. Army is one branch where discipline, honesty and integrity of highest order is to be maintained. If a person makes an effort to obtain an appointment by playing fraud, concealment of fact or by filing fabricated documents, his integrity

in the defence force can never be said to be aboveboard. The petitioner started his service career by a fraudulent and a deceitful act. Such act and attitude can even mar and put at stake, the security of the country. Persons like petitioner, if retained, for their gain can even go to the extent of leaking out the secret information of the country.

12. The summary court martial proceedings against the petitioner thus are neither violative of principles of natural justice, nor run contrary to any provision of the Rules, nor do they suffer from any illegality or infirmity. The order of discharge, in the considered view of this Court, has rightly been passed.

13. In view of the above, the writ petition lacks merits and as such is hereby dismissed.