

(2002) 10 PAT CK 0004
In the Patna High Court
Case No : C.W.J.C. No. 1629 of 1990

Sadanand Singh

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 04-10-2002

Acts Referred:

Army Act, 1950 — Section 20, 20(1), 20(3), 56, 64
Army Rules, 1954 — Rule 17, 23

Citation : (2003) 2 PLJR 129

Hon'ble Judges : S.N. Jha, J;A.K. Verma, J

Bench : Division Bench

Advocate : Ashutosh Ranjan Pandey and Jai Shankar Pathak, for the Appellant;
S.N. Pathak, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Jha and A.K. Verma, JJ.—The Petitioner, an ex-Naib Subedar of 14 E.M.E. Battalion (Command) of the Indian Army has approached this Court for quashing the order of his dismissal from the Army and for direction to pay retirement benefits such as pension, gratuity, provident fund etc. to him.

2. The case of the Petitioner may briefly be set out as follows. The Petitioner was enrolled as Naib Subedar in the junior commissioned rank on 14.12.1963. While he was posted under the 14 EME Battalion (Command) Udampur, two letters of his were intercepted on 7.1.1986 in which he had mentioned about recruitment of certain persons for monetary considerations. On 2.11.1987 a court of inquiry was constituted. On 20.1.1988 a convening order was issued with a tentative charge sheet. On 22.8.1988 a fresh tentative charge sheet was served and without giving opportunity of showing cause, summary of evidence was recorded. In the meantime the Petitioner was informed about his impending retirement on completing his tenure as 26 years on 14.12.1989 in December 1989. In the summary of evidence recorded on 22.8.88; list of 10 witnesses was given out of whom only four including the Petitioner were examined. On 3.12.89 after more

than a year of recording of summary of evidence when he was about to retire, he received a communication dated 29.11.89 asking him to show cause as to why he should not be dismissed u/s 20 of the Army Act read with Rule 17 of the Army Rules. On 11.12.89 he submitted his show cause. On 29.12.89 when he had only two days left to retire the impugned order of dismissal was issued depriving him of his retirement benefits which he would have in the normal course received upon his retirement. The case of the Petitioner is that the dismissal order is in violation of the provisions of the Army Act and the Rules.

3. The Respondents have filed counter affidavit sworn by Major O.N. Sharma of Bihar Regimental Centre, Danapur wherein it has been stated that the summary of evidence recorded against the Petitioner disclosed that he had received sum of Rs. 36,000/- as illegal gratification for securing enrolment to six persons. The summary of evidence was placed before the Chief of the Army Staff who was satisfied that the trial of the Petitioner by Court Martial was time barred but his retention in service is not desirable and accordingly on his direction the Petitioner was asked to submit show cause and upon consideration of the facts and circumstances order of dismissal was passed.

Adverting to the details it has been stated in the counter affidavit that the Petitioner on his own admission, during his tenure under the 14 EME Battalion (Command), while posted at Station Workshop, Gaya between February 1983 and June 1985 got two persons recruited in the Army through BRO, Gaya by paying sum of Rs. 12,000/- to the recruiting Officer. He accepted further sum of Rs. 36,000/- for the same purpose from six persons, namely, Jawahar Prasad Singh, Pawan Kumar Singh, Vinod Kumar Singh, Uma Shankar Rana, Virendra Kumar Singh and Vineet Kumar Rana. These appointments however, did not materialize and in the meantime the Petitioner was transferred from Gaya. He wrote letters from Udhampur, his new place of posting-one addressed to his brother Arjun Prasad and the other to Uma Shankar Rana, one of the six candidates aforesaid, respectively. The contents of the letters have been mentioned in paragraph 4 of the counter affidavit and it would be useful to quote the same as under:

Brother I am finding it difficult to live as the money of six persons has been swindled. I am hiding my face from village society and near and dears, because ail are from our family itself. I am repenting for involving myself in such acts where openly, we have been cheated. I am in a fix and not able to decide what to do. All are giving threatening letters to me. When I was in Gaya, there was no trouble. I had got all of them passed in tests as well as medical tests. After that I came on my duty here and later on all of them were declared as failed and money was swindled by the staff. The money left with me is Rs. 5000/-. I do not know how I can return the money to all. All are threatening me.

You are not only one, every body is demanding his money back. Total demand of Rs. 37,000/-. Every body is threatening me. I am upset and what face shall I show to my near and dear ones. I am crushing myself for doing this. For a gain

of Rs. 2000/- to Rs. 4000/- I have lost praise, but defame has been to me Uma Shankar, I gave this money to Col. Sahib at his residence. You all are quite aware that this money was given to Dr. Sahib. You all know that previously Col. Sahib managed to recruit 4-5 persons using his influence. He was getting money in advance and we had full faith in him. After my leaving that place Col. Sahib and Ramalu failed all the candidates and embezzled all the money. I met Col. Sahib with the individual Nos. but Col. Sahib told me that after my leaving the place, Ramalu met him and told that S.N. Singh Sahib was no more interested in anybody's recruitment because he was going on posting and wanted the return of money. Over my loose talk, Col. Sahib ordered me to leave the place. With great difficulty, somehow I came back.

In the same paragraph, the voluntary statement of the Petitioner in course of recording of summary of evidence has been quoted and the same may be quoted as under:

I am serving in Station Workshop, Gaya from February, 1983 to July, 1985 before coming; to 14 EME Bn. (Command) on posting. During this period, I got two persons recruited into Army through BRO, Gaya by paying a sum of Rs. 12000/- to the recruiting officer Lt. Col. Y.P. Khanna through No. Dvr. (MT) Ramalu of No. 3 Arg Bn ASC Centre (N) Gaya, who was attached with a veh to BRO, Gaya for some period.

Subsequently, I also paid Rs. 36,000/- to Nk. Ramalu on 3rd January, 1985 for handing over to Lt. Col. Y.P. Khanna as bribe for recruiting six more persons. I stood in front of the officers' house and Nk. Ramalu went inside the house of Lt. Col. Y.P. Khanna to hand over the money. He came back after half an hour and confirmed to me that recruitment will be done. I then moved on posting to 14 EME Bn. (Command) and reported to the Unit on 11th July, 1985.

I later came to know that the recruitment of the six persons from whom I had taken the money to hand over to Lt. Col. Y.P. Khanna was not done as promised. I, therefore, proceeded to Gaya availing 20 days casual leave and met Lt. Col. Y.P. Khanna. He was absolutely indifferent to me and told me to leave his office and contact the person to whom I paid the money. I then tried to contact Nk. Ramalu but could not do so since he was kept in the quarter guard of 3 Trg. Bn. for protection and I was not allowed to meet him. There were many people including civilians who had paid money to Nk. Ramalu but were finally cheated. All those people were also running for him. I again went to No. 1 P1 of Veh Coy 3 Trg. Bn. on 6th August, 1985 and learnt from the CHM of the Company that Nk. Ramalu was dispatched on retirement by ASC Centre (N) from Aurangabad which is about 50 KM away from Gaya on the night of 5th August, 1985.

Since I was required to repay the money collected from the six individuals for recruitment, I wrote letters in this connection to my brother Shri Arjun Prasad Singh, Senior Pars at Dhaura Collieries District Dhanbad (Bihar) and to Uma Shanker Rana of village Shankarpur, P.O. Ishipur, District Godda (Bihar).

The above statement has been read to me in language I understand and I sign it as correct.

4. The Petitioner has filed reply to the counter affidavit. While dealing to the statements made in paragraph 4 of the counter affidavit he has simply denied to have written the letters and pleaded innocence. In our opinion such a bald denial cannot be treated to be sufficient in view of the fact that the allegations/statements are based on records. This Court while making judicial review is not supposed to sit as appellate authority and appraise the materials on record or the findings arrived at by the disciplinary authority. In other words, the Court is not supposed to go into correctness or otherwise of the conclusions. The court has merely to see whether the decision making process was correct or not. A grievance is made of the violation of the procedure laid down in Rule 23 of the Army Rules, 1954. We have doubts if Rule 23 of the Army Rules, 1954 laying down the manner of recording summary of evidence, is applicable in the instant case, for the procedure indicated in Rule 23 is precursor to the Court Martial proceedings. This is evident from the fact that the Rule 23 occurs in Chapter V. titled Investigation of charges and trial by Court Martial. Nevertheless, even if it be assumed that the summary of evidence in the instant case was recorded in terms of Rule 23, we do not find any violation of the procedure. Rule 23 lays down that where the case is adjourned for the purpose of having the evidence reduced to writing, at the adjourned hearing evidence of the witnesses who were present and gave evidence before the commanding officer, whether against or for the accused, and of any other person whose evidence appears to be relevant, shall be taken down in writing in the presence and hearing of the accused before the commanding officer or such officer as he directs. The accused may put in cross-examination such questions as he thinks fit to any witness, and the questions together with the answers thereto shall be added to the evidence recorded. The evidence of each witness after it has been recorded as provided in the rule when taken down, shall be read over to him, and signed by him. Thereafter the accused is to be given opportunity to make any statement. He is not obliged to say anything. However, if he makes statement the same shall be taken down and read to him but he will not be cross-examined upon it. The accused may call witnesses if he so desires.

5. In the instant case there is categorical statement in the counter affidavit that the Petitioner denied to cross-examine the witnesses including Lt. Col. Y.P. Khanna. It is not in dispute that the Petitioner was present at the time of examination of witnesses on 22.8.88 and in his presence the witnesses were examined. If he did not avail of the opportunity of cross-examination of the witnesses, he has only to thank himself.

6. The Petitioner has been held guilty of committing offence u/s 64(e) and Section 56(e) of the Army Act. Section 64(e) provides that any person subject to this Act who 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 etc. shall, on conviction by court martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is mentioned in the Act. Section 56(a) provides that any person subject to this Act who makes a false accusation against any person subject to this Act, knowing or having reason to believe such accusation to be false shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is mentioned in the Act. The summary of evidence coupled with the materials on record clearly made out a case against the Petitioner of having committed offence under Sections 64(e) and Section 56(a) of the Act. However with the passage of time the trial by Court martial had become time barred but in the opinion of the competent authority namely the Chief of the Army Staff, it was not proper to allow him to go scot-free and in this view of the matter, he decided to proceed in accordance with the provisions of Section 20 of the Army Act read with Rule 17 of the Rules. Section 20 confers plenary power on the Chief of the Army Staff to dismiss or remove from service any person (other than an Officer) subject to the Act. Rule 17 provides that-

Save in the case where a person is dismissed or removed from service on the ground of conduct which has led to his conviction by a criminal court or a court-martial, no person shall be dismissed or removed under Sub-section (1) or Sub-section (3) of Section 20; unless he has been informed of the particulars of the cause of action against him and allowed reasonable time to state in writing any reasons he may have to urge against his dismissal or removal from service:

Provided that if in the opinion of the officer competent to order the dismissal or removal, it is not expedient or reasonably practicable to comply with the provisions of this rule he may after certifying to that effect, order the dismissal or removal without complying with the procedure set out in this rule. All cases of dismissal or removal under this rule where the prescribed procedure has not been complied with shall be reported to the Central Government.

The exercise of the power of the Chief of the Army Staff was thus clearly within the ambit of Section 20(1) of the Army Act and Rule 17 proviso of the Army Rules.

7. We find in retrospect, that it is a case in which the Petitioner voluntarily admitted his guilt even at the threshold stage of the proceeding. One of the persons to whom he had written letter was none else than the candidate from whom he had taken money, namely, Uma Shankar Rana, while the other one Arjun Prasad. Singh was his brother. Therein he admitted to have received Rs. 12000/- for securing employment to the persons concerned. He made voluntary statement admitting the guilt. It appears that having succeeded in getting two persons enrolled, as per his own admission, he felt encouraged to indulge in similar act and accordingly accepted Rs. 36,000/- from six above named persons for securing employment to them. It is thus a case where the Petitioner had hardly any defence to offer. In the facts and circumstances, we do not find the

Petitioner has suffered any prejudice in the eye of law to warrant interference by this Court in writ jurisdiction.

8. In the result, we do not find any merit in this writ petition which is accordingly dismissed.