
(2002) 07 P&H CK 0102

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 16391 of 1999

Saravjit Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 29-07-2002

Acts Referred:

Army Rules, 1954 — Rule 177, 179, 180, 181

Citation : (2003) 133 PLR 117

Hon'ble Judges : Amar Dutt, J

Bench : Single Bench

Advocate : Rajneesh Bansal, for the Appellant; Gurpreet Singh, Asst. Central Govt. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Amar Dutt, J.—Saravjit Singh, Colonel, through this petition, seeks issuance of a writ of certiorari for quashing the preliminary inquiry, the second Court of inquiry proceedings and attachment order dated 20.11.1999 and of mandamus directing the respondents to initiate a fresh Court of inquiry in accordance with law after transferring him out of the Head quarters Western Command.

2. The basic facts necessary for adjudication of the petition, which can be culled out from the pleadings, are that the petitioner was commissioned in the Army in Engineer Regiment on 12.5.1974 and after putting in 25 years of service is presently holding the rank of Colonel, on account whereof, he is in the line for next promotion to the rank of a Brigadier. On 27.12.1996, the petitioner was posted as Commander, Works Engineer (in short "C.W.E.") Hisar. At that time, Major General J.S. Dhillon was the Chief Engineer in Western Command and in that capacity was the Final Technical Officer for rendering the A.C.R. of the petitioner, who was serving under Brig S.N. Mukherjee, the Chief Engineer, Chandigarh Zone. Due to re-structuring of MES Units, the unit of the petitioner was brought under the Chief Engineer, Bathinda Zone i.e. Brig B.S. Dhaliwal. On 8.5.198, a complaint was alleged to have been received by Major General J.S.

Dhillon from M/s Chaudhary Associates, a firm of the contractors, who were antagonised with the petitioner because they were not awarded certain contracts and on 12.7.1998 Major P.K. Sauntra, who was workings Garrison Engineer (P) Hisar, made a false complaint against the petitioner. A third complaint, which contained the allegations made in the above two complaints, was made against the petitioner by one Shri Hari Om, the Secretary, All India M.E.S. Civilian Engineers Association. In the end of July 1998, the petitioner came to know that one Colonel Jatinder Singh, who had come to his Unit in order to attend the Technical Board of Officers for Job No. W-1567, was conducting an inquiry and checking the files of the Unit. This according to the petitioner, was beyond the brief of Colonel Jatinder Singh, who also complains that the inquiry was conducted on his own by the said officer without associating him. Thereafter, the petitioner received a letter on 23.4.1999 addressed to the Head quarters C.W.E. for convening of a Court of Inquiry to go into the irregularities connected with the works and improprieties in the conduct of C.W.E. Hisar on the basis of a complaint made by Major P.K. Sauntra, M/s Chaudhary Associates and the Secretary All India MES Civilian Engineers Association. Brig B.S. Panwar of Equine Breeding Stud (in short "EBS") was appointed as Presiding Officer and Col. S. Mukherjee of 33 Armed Div. Col. Yadav of 16 Inf Div and Lt. Col. P.K. Sanyal were appointed as Members. The grouse of the petitioner against this Court of Inquiry was that Brig B.S. Panwar was personally interested and biased against the petitioner because EBS unit was itself a defaulter towards CWE in clearing of rent and allied charges as regards regimental run dairy to the tune of Rs. 3.69 lacs. Apart from this, the petitioner asserted that Lt. Col. P.K. Sanyal, who was given the important role of a technical person, is much junior to the petitioner. The petitioner further adverted to certain circumstances, on the basis of which, he sought to assert that the Court of Inquiry was being conducted in a totally biased and illegal manner as also on account of the fact that a request of the petitioner for a number of defence witnesses was turned down. The irregularities detailed in the petition for the purpose of challenging the proceedings of the Court of Inquiry were ultimately not relied upon by the petitioners' counsel during the course of arguments because the main ground, on which converting of the Court of Inquiry was sought to be challenged in the present petition was its validity in view of the fact that an earlier inquiry, which had already been completed by Col. Jatinder Singh, had not been acted upon. The second ground, on which the Court of Inquiry was sought to be challenged, was the fact that the petitioner had been ordered to be attached with Head quarter 615 Independent AD Brigade under the provisions of Army Instructions 30/86 till final decision of the disciplinary proceedings against him vide order dated 20.11.1999. This order, according to the petitioner, was void ab initio being violative of the provisions of Para 453 of the Regulations for the Army, 1987 (in short "the R.A.") and, therefore, rendered the proceedings illegal and void.

3. In the written statement filed by the respondents, it was submitted that the formal Court of Inquiry had been convened by the competent disciplinary

authority vide order dated 23.3.1999 and during progress thereof no complaint had been received from the petitioner. It was submitted that the inquiry has since been completed and the recommendations of the Commander 81 Sub Area had been forwarded to the General Officer Commanding. 10 Corps, who after application of mind had directed the initiation of disciplinary action against the petitioner on 15.10.1999. It was thereafter that, according to the policy which is to be followed in all such cases, the case of the petitioner for disciplinary attachment was taken up and the orders of GOC-in-C, Western Command were issued vide signal No. A-1652 dated 20.11.1999 for attachment of the petitioner to Headquarter 615 (I) AD Brigade. The averments in the petition about the service record of the petitioner were not denied except to the extent that the petitioner was unlikely to be considered for promotion till the year 2003. It was also submitted that the three complaints made by M/s Chaudhary Associates of Hisar dated 8.5.1998 addressed to Major General J.S. Dhillon Chief Engineer Western Command; Major P.K. Sauntra Garrison Engineer (P) No. 3 dated 22.7.1998 addressed to Brig S.N. Mukherjee, Chief Engineer, Chandigarh Zone and Shri Hari Om, Secretary, All India MES Civilian Engineers Association Area Headquarter Hisar Cantt dated 15.12.1998 were enquired into by the Court of Inquiry. Regarding the averments contained in the petition about the inquiry having been conducted by Col. Jatinder Singh, the respondents admitted that a preliminary inquiry was done by the said officer and upon its basis, a subsequent Court of Inquiry was convened. The respondents denied the averments about both Jatinder Singh and Brig B.S. Panwar being biased against the petitioner and submitted that these averments could not be taken into consideration in the absence of these officers being arrayed as respondents. The averment regarding an amount of Rs. 3.69 lacs being due from the Regimental Dairy Far qf EBS Hisar too was denied. The assertions made about the defects in which the Court of Inquiry proceedings have been sought to be explained, need not be adverted to here for the reasons already indicated by me. The fact that Lt. Col. P.K. Sanyal was junior to the petitioner was not denied but it was mentioned that he was only associated in the proceedings as a Technical Adviser and was not a member of the Court of Inquiry and therefore, this fact would not vitiate the proceedings. The plea that a second Court of Inquiry could not be conducted was, according to the respondents, not available because only one Court of Inquiry has been convened which has since been completed. This objection, according to the respondents, was emanating from a mis-conception that a Court of Inquiry amounts to a prosecution of the delinquent official whereas actually it is a fact finding body, which collects evidence on the basis whereof cognizance of the offence may be taken and disciplinary action may be initiated. It is only when an individual is being tried by the Court Martial or a Court of Law that word "prosecution" can be used and becomes relevant. In view of the circumstances highlighted by them, the respondents submitted that the writ petition is devoid of merit and should be dismissed.

4. In the replication filed by the petitioner, apart from reiterating the objection

that Ms attachment is contrary to the provisions of Para 453 of the R.A. for the purposes of disciplinary action, the petitioner again tried to highlight the fact that the respondents have held more than one Court of Inquiry on the subject of the complaints made against him. He also pointed out that on earlier occasion, the complaint made by M/s Chaud-hary Associates, which was addressed to Major General J.S. Dhillon was investigated by a Court of Inquiry vide Headquarter Chief Engineer, Chandigarh Zone Convening Order No. 18801/448/EID dated 5.6.1998 and because nothing worthwhile was found against the petitioner, the same has been disposed of by the competent authority which advised the petitioner to be more careful. The same was position regarding the complaint filed by Hari Om and, therefore, convening order dated 23.3.1999 was void ab initio, illegal and contrary to the Rules and Regulations. The petitioner referred to the provisions of Army Rules, 1987 for emphasising the necessity of providing adequate opportunity to him during the proceedings of the Court of Inquiry and for the first time in the replication evinced an apprehension that he would not get justice in the proceedings, which are conducted under the command of Major General J.S. Dhillon. Although he has made this averment, he still does not choose to seek the impleadment of said officer despite the fact that the respondent's had objected to the adjudication of the averments and mala fides were made against particular individuals behind their back.

5. I have heard the learned counsel for the parties and have gone through the record with their assistance.

6. The main grouse raised by the petitioner in this petition is the passing of an order dated 23.3.1999 for convening of Court of Inquiry to collect evidence and report regarding the complaints made by M/s Chaudhary Associates of Hisar dated 8.5.1998; Major P.K. Sauntra, Garrison Engineer (P) No. 3 dated 22.7.1998 and Hari Om, Secretary, All India MES Civilian Engineers Association Area Headquarters Hisar Caatt dated 15.12.1998. The objection to this order is sought to be raised because according to the petitioner, these complaints had been earlier enquired into and no action taken on the evidence collected against him by the competent authority. Courts of Inquiry are ordered under Rule 177 of the Army Rules, 1954, which reads as under:-

"Courts of Inquiry. - (1) A court of inquiry is an assembly of officers or of offices and junior commissioned officers or warrant officers or non-commissioned officers directed to collect evidence, and, if so required, to report with regard to any matter which may be referred to them.

(2) The court may consist of any number of officers of any rank, or of one or more officers together with one or more junior commissioned officers or warrant officers or non-commissioned officers. The members of court may belong to any branch or department of the service, according to the nature of the investigation.

(3) A court of inquiry may be assembled by the officer in command of any body of troops, whether belonging to one or more corps." Rule 179 reads as under:-

"Procedure. - (1) The court shall be guided by the written instructions of the authority who assembled the court. The instructions shall be full and specific and shall state the general character of the information required. They shall also state whether a report is required or not.

(2) The officer who assembled the court shall, when the court is held on a returned prisoner of war or on a prisoner of war who is still absent, direct the court to record its opinion whether the person concerned was taken prisoner through his own wilful neglect of duty, or whether he served with or under, or aided the enemy; he shall also direct the court to record its opinion in the case of a returned prisoner of war, whether he returned as soon as possible to the service and in the case of a prisoner of war still absent whether he failed to return to the service when it was possible for him to do so. The officer who assembled the court shall also record his own opinion on these points.

(3) Previous notice should be given of the time and place of the meeting of a court of inquiry, and of all adjournments of the court, to all persons concerned in the inquiry except a prisoner of war who is still absent.

(4) The court may put such questions to a witness as it thinks desirable for testing the truth or accuracy of any evidence he has given and otherwise for eliciting the truth.

(5) The court may be re-assembled as often as the officer who assembled the court may direct, for the purpose of examining additional witnesses, or further examining any witness, or recording further information.

(5-A) Any witness may be summoned to attend by order under the hand of the officer assembling the court. The summons shall be in the Form provided in Appendix III.

(6) The whole of the proceedings of a court of inquiry shall be forwarded by the presiding officer shall be forwarded by the presiding officer to the officer who assembled the court." Rule 180 reads as under:-

"Procedure when character of a person subject to the Act is involved. - Save in the case of a prisoner of war who is still absent whenever any inquiry affects the character or military reputation of a person subject to the Act, full opportunity must be afforded to such person of being present throughout the inquiry and of making any statement, and of giving any evidence he may wish to make or give, and of cross-examining any witness whose evidence in his opinion, affects his character or military reputation and producing any witnesses in defence of his character or military reputation. The presiding officer of the court shall take such steps as may be necessary to ensure that any such person so affected and not previously notified receives notice of and fully understands his rights, under this rule."

Rule 181 also reads as under:-

"Evidences when to be taken on oath or affirmation. - Evidence shall be recorded on oath or affirmation when a court of inquiry is assembled -

(a) on a prisoner of war, or

(b) to inquire into illegal absence u/s 106, or

(c) in any other case when so directed by officer assembling the court.

Explanation. - The court shall administer the oath or affirmation to witnesses as if the court were a court-martial."

7. A perusal of the aforesaid Rules shows that there is no bar to a matter being inquired into for a second time. These Rules vest the power in the Officer-in-Command of any body of troops to set up a court of inquiry for collecting evidence into any matter. Courts of inquiry, thus, perform function of investigating agency and in cases where the said body collects incriminating evidence, which is likely to affect character or military reputation of personnel whose conduct is being inquired into, the provisions of Rule 180 are to be complied with. Since there is nothing in the Rules which prevents the Officer-in-Command from instituting a second inquiry, which may be in the nature of re-investigation as contemplated u/s 173(8) of the Code of Criminal Procedure, the petitioner cannot, in law, object to such a procedure being followed in order to assail the result of the inquiry so conducted on the ground of technicality. The petitioner has tried to object to the convening of fresh Court of inquiry on the principle of double jeopardy which, in my opinion, would not be available for the simple reason that at no point of time the petitioner has been called upon to explain any evidence, which may have been collected against him, which stage would come only when on the basis of the evidence collected, the appropriate authority under Rule 22 proceeds to commence a Court Martial for going into the charges that may be framed as a result of the report of the Court of Inquiry and only after the completion of the Court Martial would the official be entitled to invoke the principle of Double Jeopardy. This stage not having been reached in the case of the petitioner, the first objection cannot be sustained.

8. In this writ petition, the petitioner has also tried to assail order Annexure P16 by which he has been attached to Headquarter 615 Independent AD Brigade, which contravene the provisions of Para 453 of the R.A. The objection of the petitioner is that the transfer of a personnel from a command before completion of the disciplinary case is not permissible in view of this Para. This objection, to my mind, is unsustainable on two grounds: firstly, because the order talks of attachment with Brigade, which by itself does not amount to transfer of the personnel from his unit of formation. According to Reader's Digest Universal Dictionary, the word "attachment" means "to assign (personnel) to a unit on a temporary basis". In centra-distinction with this transfer has a sense of permanency about the change of location/place of posting. Looking it at idiomatically, the distinction is very clear inasmuch as the word "attachment" does not convey any sense of permanency in the shifting. Seen in this context,

the attachment does not amount to transfer and, therefore, there is no question of the order contravening the provisions of Para 453 (a) and, therefore, the objection is unsustainable. A perusal of paragraph 453 of the R.A., which reads as under:-

"Transfer of a Personnel from a Command before completion of Disciplinary Cases: (a) No individual against whom a disciplinary case is pending should be posted away from his unit/formation until disposal of the disciplinary cases against him. However, this may be permitted due to administrative expediency with prior approval of DV Directorate, AG's Branch, Army Headquarters.

(b) If the offence alleged to have been committed by an individual comes to light after his transfer to a unit/formation to another station, he should be recalled and disciplinary action against him should be completed at the earliest possible date. Before recalling, the formation concerned should satisfy itself that a prima facie case exists and that disciplinary action is definitely possible, as otherwise such recall will result in unnecessary expenses to the state.

In cases where disciplinary action is not possible, that is, it is doubtful that the individual will be convicted, his new CO should be informed of the full details of the case."

indicates that the said paragraph has been introduced to facilitate the expeditious disposal of the complaint of disciplinary cases that may be pending against any personnel. The retention of an officer at the place where the disciplinary proceedings are initiated against him would be advisable in view of the fact that the witnesses to be examined would normally be belonging to areas near the place where violation of discipline took place. This administrative order would, in my opinion, not warrant judicial interference for in case the officer is posted away from the unit of formation as even according to Para 453 this can be done with prior approval of the D.V. Directorate A.G. Branch Headquarters.

9. The petitioner has also tried to assail the Court of Inquiry proceedings on account of some defects, which need not be gone into by me for the reason that the objection can be raised if the report of the Court of Inquiry goes against him during the Court Martial proceedings that may be initiated on the basis of the evidence so collected. This Court in the exercise of extra ordinary jurisdiction would discourage any attempt on the part of the petitioner to pre-empt such proceedings by raising objections which can be taken into consideration after the time when any adverse action is taken in the disciplinary proceedings that may be initiated against him.

10. For the reasons recorded above, this petition fails and is dismissed.