
(2012) 04 DEL CK 0241

In the Delhi High Court

Case No : Writ Petition (C) No. 2313 of 2012

Sepoy Rohtash Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 24-04-2012

Acts Referred:

Army Act, 1950 — Section 164(2), 69
Constitution of India, 1950 — Article 226

Citation : (2012) 130 DRJ 110

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Major K. Ramesh, for the Appellant; Ankur Chhibber, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner has sought the quashing of the verdict of "guilty" passed by the Summary Court Martial and the sentence of deduction in the rank by order dated 13th February, 2010 and the order dated 31st January, 2011 rejecting the petition dated 15th May, 2010 submitted by the petitioner against the Summary Court Martial's findings to the Chief of Army Staff. The petitioner has also sought the quashing of retirement order dated 2nd August, 2011. Brief facts to comprehend the disputes are that the petitioner was enrolled as a Sepoy on 23rd August, 1995 and was promoted to the rank of Naik. The petitioner was performing the duties of a Driver of a school bus.

2. On 20th December, 2006, after dropping the children from school by bus, when the petitioner was returning with his vehicle, the school bus met with an accident. A young boy Master Simarjeet Singh son of Sh. Gurwinder Singh died on the road in Bhatinda. The said boy who died in the accident, was going on the bicycle on the same road and in the same direction in which the bus was driven by the petitioner.

3. An FIR was registered against the petitioner and the challans were filed.

However, the case of the petitioner had been taken over by the Army from the civil authorities for disposal under the provisions of the Army Act as the Act mandates effectual proceedings against the individual.

4. The Court of Enquiry was also held before the case had been taken over by the Army, however, in the Court of Enquiry the culpability of the petitioner could not be pinpointed according to the petitioner.

5. In the meantime after the accident, the petitioner had been also promoted to the next rank of Hawaldar in Oct, 2008. Three years after the accident, the Army had taken over the case of the petitioner from the civil authorities, a Summary of Evidence was ordered and consequent thereto chargesheet was framed on 13th November, 2009 u/s 69 of the Army Act for committing a civil offence of causing death by rash or negligent act not amounting to culpable homicide.

6. A Summary Court Martial was convened on 1st December, 2009 and the petitioner had pleaded "not guilty". Before the Summary Court Martial, a total of 9 witnesses were examined and the Summary Court Martial was concluded on 13th February, 2010.

7. On perusal of the evidence on record, the Summary Court Martial returned the verdict of "guilty" and sentenced the petitioner "to be reduced to ranks". The petitioner was consequently reduced from the rank of Hawaldar to the rank of Sepoy.

8. Aggrieved by the order of the Summary Court Martial dated 13th February, 2010, the petitioner submitted a post confirmation petition in terms of Section 164(2) of the Army Act on 15th May, 2010 to the Chief of Army Staff. The petition to the Chief of the Army Staff was, however, rejected on 25th January, 2011.

9. Consequent to the reduction in rank and the petitioner becoming a Sepoy, his service as Hawaldar with 25 years of service had been reduced to 17 years and the petitioner was ordered to be proceeded on pension as a Sepoy with effect from 31st August, 2012.

10. The petitioner has challenged the order of the Summary Court Martial, rejection of his petition by the Chief of the Army Staff and the order dated 2nd August, 2011. The petitioner has filed the present petition, inter-alia, on the ground that the petitioner was not in the accident zone at Bhatinda when the accident had taken place. Relying on the post mortem report, it has been contended on behalf of the petitioner that though the deceased did not die due to any heart attack or fear of ghost or a natural cause, but on account of internal subdural haemorrhage, however, the report did not disclose that the impact on the boy's head was on account of hitting the ground or the Army vehicle.

11. Relying on the testimonies of the witnesses, it has been contended on behalf of the petitioner that the road, on which the victim was going on bicycle, was under construction with huge stones and perhaps seeing a huge Army vehicle the

boy could have lost his balance and fallen to his right and hit his head on the left side of the truck or may be directly on the road and due to the hard direct hit and impact on account of the fall there could have been an internal haemorrhage. On behalf of the petitioner, it is contended that now a days in many instances people going on the scooter slip and fall down resulting in a straight head on collision/impact hit on the tar road resulting in their death or coma due to head injury.

12. The petitioner further asserted that the statements of all the 9 witnesses recorded by the Summary Court Martial were not consistent with each other, and that there is no consistency regarding the speed of the offending vehicle to the extent that one witness deposed that the victim was not on the bicycle at all. The petitioner has further contended that perusal of the 12-15 pages of the Summary Court Martial proceedings does not lead to any such inference as has been drawn by the Summary Court Martial. According to the petitioner, the testimonies of the witnesses could not be relied on as they were relatives and had vested interests. The petitioner has contended that since there were no blood stains on the vehicle, therefore, it could not be inferred that the victim had lost his balance and had fallen on the bus or was hit by the bus and thus the probability of the victim falling on the road and his head hitting the road cannot be ruled out. It is contended that had the victim fallen on account of the impact from the Army lorry driven by the petitioner, the cycle of the victim would have fallen on his left whereas the injuries suffered by the victim were on the right side of the temporal region as also were the injuries on the right knee and abrasion in the right thighs. In the circumstances, it is contended that thus the Summary Court Martial has erred in holding that the charge against the petitioner was made out.

13. Mr. Ankur Chhibber, Learned Counsel for the respondents who has appeared on advance notice has refuted the pleas and contentions raised on behalf of the petitioner. He has contended that this Court in exercise of its power under Article 226 of the Constitution of India will not sit as an appellate Court and will not reappreciate the evidence and draw its inferences and substitute the inferences drawn by the Summary Court Martial. The Learned Counsel contended that this Court should not interfere with the findings of the fact arrived at by the Summary Court Martial. He also emphasised that on behalf of the petitioner no malafides or perversities have even been alleged against the concerned authorities. According to him, the findings of the Summary Court Martial are based on evidence and it cannot be held that the findings are such that anyone acting reasonably or with objectivity would not have arrived at such findings. The petitioner was given reasonable opportunity to defend himself and it cannot be held, in the facts and circumstances, that there is non application of mind.

14. Mr. Chhibber, Learned Counsel contended that even from the perusal of the testimonies of the witnesses recorded before the Summary Court Martial it is revealed that there is sufficient evidence to inculcate the petitioner. He referred to the statement of Mr. Sukhdev Kumar, the 4th witness who categorically

deposed that he has a workshop outside the shop of Vishkarma Furniture, and on the fateful day he saw a small child riding a bicycle moving towards Bibiwalli Chowk. He had also seen an Army school bus driven by the petitioner came from behind and that the front left portion of the vehicle near the tyre had hit the bicycle handle and the child had fallen. The said witness was cross examined at length by the petitioner. The testimony of another witness Sh. Maninder Singh, 6th witness, has also been referred to who had deposed that they were on the scooter when they saw that an Army school bus had hit the cycle of the child who had fallen down on account of the impact and he was taken to "Nagpal Hospital" by a "Sahara Club" Ambulance. The said witness categorically denied the suggestion that the accident could have been caused by some other scooter or motorcycle. Referring to the testimonies of other witnesses, Mr. Chibber, Learned Counsel for the respondents has contended that perusal of the testimonies clearly reveal that there is sufficient evidence and in any case this Court is not to exercise its appellate jurisdiction under Article 226 of the Indian Constitution.

15. this Court has heard the Learned Counsel for the parties and has also perused the record annexed with the writ petition. It cannot be disputed that the grounds on which decision of the Summary Court Martial can be interfered by judicial review are, "illegality"; "irrationality" and "procedural impropriety". The Court will not interfere in such matters unless the decision is tainted by any vulnerability like illegality, irrationality and procedural impropriety. Whether action falls within any of the categories is to be established and mere assertion in that regard may not be sufficient. To be "irrational" it has to be held that on material, it is a decision "so outrageous" as to be in total defiance of logic or moral standards. If the power is exercised on the basis of facts which do not exist or reaching conclusions which are patently erroneous, such exercise of power shall be vitiated. Exercise of power will be set aside if there is manifest error in the exercise of such power or the exercise of power is manifestly arbitrary. To arrive at a decision on "reasonableness" the Court has to find out if the respondents have left out a relevant factors or taken into account irrelevant factors. It was held in *M.V. Bijlani Vs. Union of India (UOI) and Others*, that the. Judicial review is of decision making process and not of re-appreciation of evidence. The Supreme Court in para 25 at page 96 had held as under:

25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analyzing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant

testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.

16. In Judicial review of the decision of the Summary Court Martial this Court will not take over the functions of the Summary Court Martial. The writ petition is not an appeal against the findings of the Summary Court Martial, nor this Court is exercising or assuming the role of the Appellate Authority. It cannot interfere with the findings of the fact arrived at by the Summary Court Martial except in the case of mala-fides or perversity i.e., where there is no evidence to support a finding, or where the finding is such that no one acting reasonably or with objectivity could have arrived at, or where a reasonable opportunity has not been given to the accused to defend himself, or it is a case where there has been non application of mind on the part of the Summary Court Martial, or if the charges are vague, or if the punishment imposed is shocking to the conscience of the Court. Reliance for the scope of Judicial Review can be placed on State of U.P. and Others Vs. Raj Kishore Yadav and Another, ; V. Ramana Vs. A.P.S.R.T.C. and Others, ; R.S. Saini Vs. State of Punjab and Others, Kuldeep Singh v. The Commissioner of Police, JT 1998 (8) SC 603 ; B.C. Chaturvedi Vs. Union of India and others, ; Transport Commissioner, Madras-5 Vs. A. Radha Krishna Moorthy, ; Government of Tamil Nadu and another Vs. A. Rajapandian, ; Union of India (UOI) and Others Vs. Upendra Singh, .

17. In B.C. Chaturvedi Vs. Union of India and others,
the Supreme Court at page 759 has held as under:-

12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappraise the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no

evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

18. The Learned Counsel for the petitioner repeatedly only pointed out the alleged discrepancies and the fact that had there been an impact between the cycle driven by the deceased and the bus driven by the petitioner, the deceased child would have fallen to the left and not to the right, since the injuries caused to the child were on the right side. As already held this Court is not to reappreciate the evidence and has to arrive at a finding different from that of the Summary Court Martial unless the findings of the Summary Court Martial are based on no evidence or there is illegality, irregularity or perversity. Perusal of the testimonies of the witnesses rather reveals that the prosecution witness Dr. Gurjeet Singh of Nagpal Hospital, Bhatinda, 9th witness, was not even cross examined on behalf of the petitioner. Since the petitioner had declined to cross examine the said witness it was categorically recorded that the Army Rule 141(2), (3) & (4) had been complied with.

19. While considering the petition dated 15th May, 2010 submitted by the petitioner against the sentence passed by the Summary Court Martial, it was categorically noticed that the case of the petitioner had been taken over by the Army from the civil authorities for disposal under the provisions of the Army Act which mandates effectual proceedings against the individual and the Court of Enquiry does not comprise a part of thereof. The testimony of witness No. 7, who was the co driver of the vehicle driven by the petitioner, was also carefully examined and on considering the evidence it was inferred and held that the Army Rule 22 had been properly complied with. The petitioner had been awarded the sentence "to be reduced to ranks" and contradictions and discrepancies were noted, however, they were held to be minor which are commonly known to be prevalent in human affairs. The respondents, in the facts and circumstances, had rejected the alleged inconsistencies and discrepancies relied on and referred to on behalf of the petitioner in the deposition of the prosecution witnesses. The respondents had held that the pre trial and the SCM proceedings are legal and in order and, therefore, the sentence awarded was legal and just. The Learned Counsel for the petitioner, Major K. Ramesh has not been able to point out any such procedural illegalities or irregularities which will entail any interference by this Court except for reiterating that the evidence led before the Summary Court Martial was sufficient to inculcate the guilt of the petitioner. For the foregoing reasons, therefore, in the facts and circumstances there are no grounds for this Court to interfere with the punishment awarded to the petitioner pursuant to the Summary Court Martial, in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition is without any merit and it is, therefore, dismissed. CM No. 4948/2012 Since the writ petition of the petitioner has been dismissed, the application seeking stay of order of retirement of the petitioner from 31st August, 2012 by order dated 2nd August, 2011 is also dismissed.