

(2007) 04 DEL CK 0206
In the Delhi High Court
Case No : Writ Petition (C) 7844 of 2002

Shalendra Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-04-2007

Acts Referred:

Army Act, 1950 — Section 162, 40
Army Rules, 1954 — Rule 33, 34

Citation : (2007) 142 DLT 587

Hon'ble Judges : T.S. Thakur, J;S.N. Aggarwal, J

Bench : Division Bench

Advocate : Virendra Kumar, Ad, for the Appellant; Kanhiya Singhal and Vineet Malhotra, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Thakur, J.—In this petition for a writ of certiorari, the petitioner calls in question the summary court martial proceedings held against the petitioner culminating in his discharge from service and for a mandamus directing the respondents to reinstate him in service with all consequential benefits. The challenge arises in the following circumstances.

2. The petitioner is a Gunner Lans Naik and was posted in 74, Medium Regiment. On 26th May 2001 he is alleged to have used criminal force and slapped Subedar (Regimental Gunner Surveyor) Lok Nath Sharma on the face. A court of inquiry was ordered by the Commanding Officer into the incident which, on the basis of evidence recorded by it, came to the conclusion that the petitioner had assaulted Subedar Lok Nath Sharma and recommended disciplinary action against him. Summary of evidence was, thereafter, recorded in which the statements of as many as 5 witnesses were recorded. The petitioner, however, refused to sign the summary of evidence proceedings or to lead any evidence in defense. He even declined to sign the statement to the effect that he did not wish to lead any evidence in defense. He was eventually charged with an

offence punishable u/s 40(a) of the Army Act and put to trial. The charge framed against him was, in the following words:

In that he, at Jalandhar Cantt on 26 May 2001 used criminal force to with, slapped on the face of JC-255591W Subedar (Regimental Gunner Surveyor) Lok Nath Sharma of the same unit.

3. Copies of the summary of evidence recorded earlier and a charge sheet were handed over to the petitioner, required under Army Rules 33 and 34, he was also got examined from the regimental Medical Officer of 74, Medium Regiment, who found the petitioner medically fit to stand trial at the Summary Court Martial. He was also referred to Major J.S. Rana specialist in psychiatry who certified that the patient was in touch with the reality and had no features of Psychosis/depression or any cognitive debit or behavioral abnormality during his stay and repeated interviewing. He was accordingly declared fit for dies charge and discharged from the psychiatric ward. The Summary Court Martial eventually found the petitioner guilty for an offence punishable u/s 40(a) of the Army Act and sentenced him to suffer rigorous imprisonment for three months in a civil prison and dismissal from service. Aggrieved, the petitioner has filed the present petition as already noticed earlier.

4. Appearing for the petitioner Capt. Virendra Kumar made a three fold submission before us. Firstly he argued that the entire action taken against the petitioner was malafide and an outcome of bias and prejudice against him, hence liable to be quashed. Secondly he contended that the Reviewing Officer had not reviewed the sentence and that the counter signatures of the Reviewing Officer was a subsequent interpolation. Thirdly, it was contended that the Reviewing Officer had not applied his mind while confirming the sentence. It was also argued by Capt. Virendra Kumar that the petitioner was a mad man and had been tried even when he was not fit to face such trial. On behalf of the respondents, it was, on the other hand, argued that the allegations of bias or prejudice against the petitioner were wholly unsupported by any particulars apart from being without any basis. So also the contention that the Reviewing Officer had not reviewed the sentence was based on the assumption that the signature of the Reviewing Officer was an interpolation for which there was again no basis whatsoever. The fact that the Reviewing Officer had not recorded the reasons in support of the confirmation of proceedings by him did not, according to the learned Counsel, demonstrate non-application of mind as alleged by the petitioner. Reliance in support of that submission was placed by the learned Counsel upon a decision of the Supreme Court in S.N. Mukherjee Vs. Union of India, . It was also argued that the petitioner had been medically examined by the doctors and certified to be fit to face the Summary Court Martial before he was tried for the charge framed against him. There was, Therefore, no miscarriage of justice or procedural irregularity to warrant interference by this Court.

5. We have carefully considered the submission made at the bar and perused the

record.

6. The writ petition does not lay any factual foundation for the allegation that the action taken against the petitioner was the outcome of any malafide, bias or prejudice against the petitioner harbored by any person in authority, leave alone particulars of any such malafides. There is not even a murmur in the petition about the disciplinary action taken against him being malafide, biased or the outcome of any prejudice against him. The petition does not even name the person who harbored any bias or malafide against the petitioner. It is fairly well settled that malice in order to provide a ground for interference must be clearly supported by sufficient particulars to enable the court to investigate the allegation especially if the petitioner alleges malice, in fact. It is also well settled that anyone against whom malice is alleged, must be impleaded as a party to the proceedings to provide him an opportunity of meeting the said charge before the court pronounces upon the correctness or otherwise of any such allegation. The writ petition, in the instant case, is blissfully silent and deficient in both these respects. We have in that view no hesitation in rejecting the first limb of the petitioner's case that the action against him was malafide, biased or the outcome of any prejudice or malice against him.

7. Equally untenable, in our opinion, is the second contention urged on behalf of the petitioner that the Reviewing Officer had not reviewed the proceedings and the sentence. The argument actually was built by Capt. Virendra Kumar on the basis of a copy of the court martial proceedings furnished to the petitioner before the same were reviewed by the officer competent to do so. The absence of any sentence or remarks in the column meant for the Reviewing Officer's signatures and remarks was, according to Mr. Kumar, indicative of no review having taken place. That, however, does not appear to us to be the correct position. The original record, which was produced before us by the respondents shows, that the matter had gone to the Reviewing Officer who has counter signed the proceedings without any interference either with the finding of guilt recorded by the Summary Court Martial or the sentence imposed upon the petitioner by it. The argument that the counter signatures of the Reviewing Officer is a subsequent interpolation must, in our opinion, be rejected out of hand. There is indeed no real basis to support that argument except the ingenuity of the counsel. We have, Therefore, no hesitation in rejecting the said contention also.

8. Coming then to the question whether the Reviewing Officer's failure to record reasons signifies non-application of mind on his part, an authoritative answer is provided by the decision of the Supreme Court in S.N. Mukherjee's Case (Supra). Their lordships were in that case examining whether recording of reasons was an essential requirement of the Principles of Natural Justice that permeates every action affecting the rights of a citizen. The court reviewed the entire case law on the subject including the pronouncements of the courts in UK and Australia and came to the conclusion that any authority making an order in exercise of the quasi judicial function must record its reasons in support of the order it makes.

The rule requiring reasons to be given in support of an order was held to be a basic Principle of Natural Justice which must apply uniformly to every quasi judicial process and which must be observed in its spirit instead of just making a pretence of compliance of the same. The court further held that while reasons recorded by an administrative authority facilitates exercise of the jurisdiction by the appellate or supervisory authority and excludes the chances of arbitrariness in the decision making process, the extent and the nature of the reasons to be recorded would depend on the particular facts and circumstances. The Court observed:

The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provision to that effect as those contained in the Administrative Procedure Act, 1946 of USA and the Administrative Decisions (Judicial Review) Act, 1977 of Australia whereby the orders passed by certain specified authorities are excluded from the ambit of the enactment. Such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of the enactment. The public interest underlying such a provision would outweigh the salutary purpose served by the requirement to record the reasons. The said requirement cannot, Therefore, be insisted upon in such case.

9. Having said so, the court went on to examine whether the review of summary court martial proceedings u/s 162 of the Army Act must necessarily be supported by a speaking order stating reasons for the view taken by the Reviewing Authority. The court held that confirmation of the finding and sentence of the Court Martial was an integral part of the proceedings of the court martial. The findings and sentence of the court martial are examined by the Deputy or Assistant Judge Advocate General of the command which operates as check on the legality and propriety of the proceedings as well as the finding and the sentence of the court martial. More importantly, the court noted that Section 162 of the Army Act made recording of reasons necessary only in cases where the said proceedings were set aside or the sentence reduced. The following passage is, in this regard, apposite:

Moreover we find that in Section 162 an express provision has been made for recording of reasons based on merits of the case in relation to the proceedings of the summary court martial in cases where the said proceedings are set aside or the sentence is reduced and not other requirement for recording of reasons is laid down either in the Act or in the Rules in respect of proceedings for

confirmation. The only inference that can be drawn from Section 162 is that reasons have to be recorded only in cases where the proceedings of a summary court martial are set aside or the sentence is reduced and not when the findings and the sentence are confirmed. Section 162 thus negatives a requirement to give reasons on the part of the confirming authority while confirming the findings and sentence of the court martial and it must be held that the confirming authority is not required to record reasons while confirming the findings and sentence of the court martial.

10. The above passage, in our opinion, provides a complete answer to the argument advanced by Capt. Virendra Kumar. There was and is no legal requirement for the Reviewing Officer to record reasons while reviewing the findings and the sentence awarded by a Summary Court Martial. The absence of reasons cannot, ipso facto, mean that the Reviewing Authority had not applied its mind nor would the absence of reasons be a ground for striking down the order passed by the Court Martial or the proceedings on the ground that the same were violative of the Principles of Natural Justice

11. That leaves us with the question whether the petitioner was medically fit to face the Court Martial. According to Capt. Kumar, the petitioner was a mad man suffering from psychiatric problems. He could not, Therefore, have been declared fit for facing the Court Martial. The medical evidence on record comprising the reports of the doctors who had examined the petitioner before he was put to trial, however, shows that the petitioner was found fit to face the trial. There is nothing before us to show that the said opinion of the medical experts was perverse or vitiated by any other infirmity. There is, Therefore, no room for our interference with either the findings or the sentence awarded by the Court Martial on that ground.

12. In the result this writ petition fails and is hereby dismissed but in the circumstances without any order as to costs.