
(2002) 11 AHC CK 0119
In the Allahabad High Court
Case No : Special Appeal No. 122 of 2001

Sher Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-11-2002

Acts Referred:

Army Act, 1950 — Section 56

Citation : (2003) 1 AWC 414

Hon'ble Judges : S.K. Sen, C.J; R.K. Agrawal, J

Bench : Division Bench

Advocate : Ajay Bhanot, for the Appellant; S.N. Srivastava and Narendra Prasad Shukla and S.C., for the Respondent

Final Decision : Allowed

Judgement

R.K. Agrawal, J.—The present special appeal has been filed against the judgment and order dated 10.1.2001 passed by the learned single Judge in C.M. Writ Petition No. 35346 of 1997, whereby the writ petition has been dismissed.

2. Briefly stated the facts giving rise to the present special appeal are as follows :

According to the appellant-writ petitioner, he was enrolled in the Indian Army on 25.2.1984. He was shifted to Holding Battery Depot Regiment Nasik Road Camp on 12.6.1996 and thereafter to R. P. Section Depot on 3.7.1996 on medical grounds. According to the appellant-writ petitioner, he was admonished by one Shri Sulkhan Singh, R.P. Hawaldar on 4.7.1996 and was asked to work under him. It is alleged that he was required to give a Bottle of Rum (wine) as bribe otherwise he was to face dire consequences. The appellant writ petitioners did not oblige and instead reported the matter to the Commanding Officer vide representation dated 16.7.1996. An inquiry was initiated but the appellant writ petitioner was not associated and he was not afforded any opportunity to examine or cross-examine the witnesses and summary Court Martial was held and the appellant writ petitioner was dismissed from service vide order dated

28.10.1996 passed by the Commanding Officer, Artillery Regiment, Nasik Road. The appellant writ petitioner preferred a departmental appeal before the General Officer Commanding in Chief, Southern Command, Poona, Maharashtra which was sent by registered post on 24.12.1996. When the appeal was not being decided, he approached the Court by means of a writ petition which was disposed of with the direction to the concerned authority to decide the appeal within two months. The appeal was dismissed vide order dated 25.6.1997. Both the orders of dismissal dated 28.10.1996 and the order dated 25.6.1997 rejecting his appeal was challenged by the appellant writ petitioner before this Court by means of a C.M. Writ Petition No. 35346 of 1997 which has been dismissed by the learned single Judge vide judgment and order dated 10.1.2001, which is under challenge in the present special appeal.

3. We have heard Shri Ajai Bhanot, learned counsel for the appellant writ petitioner and Shri Narendra Prasad Shukla, learned standing counsel appearing for the respondents. The learned counsel for the appellant writ petitioner submitted that the summary Court Martial proceedings were in flagrant violation of mandatory provisions of Army Act, 1950 (hereinafter referred as the Act) and the Army Rules, 1954 (hereinafter referred as Rules) which went to the very root of the constitution and the proceedings of the summary Court Martial were enough to vitiate the entire proceedings including the punishment imposed thereunder. He further submitted that the punishment awarded to the appellant writ petitioner was strikingly disproportionate to the misconduct alleged on the part of the appellant writ petitioner and it should shock the conscience of this Court. The following charge was framed.

"Making a false accusation against a person subject to the Army Act knowing such accusation to be false.

In that he, at Nasik Road Camp on 16.7.1996 made written false accusation to Commanding Officer against Number 14348093-M Lance Hawaldar (General Duties) Sulkhan Singh, Regimental Police stating that he takes Rs. 50 (Rupees Fifty Only), or a bottle of Rum from new comers and Rs. 100 (Rupees Hundred Only) from Regimental Staff for any default well knowing the said statement to be false."

which shows that the summary Court Martial proceedings were initiated against the appellant writ petitioner to check the guilt in respect of the aforesaid offence which resulted in the dismissal. The charge was not so grave so as to warrant the extreme penalty of dismissal from service. He relied upon a decision of the Hon^{ble} Supreme Court in the case of Ranjit Thakur Vs. Union of India (UOI) and Others, and Ex.-Naik Sardar Singh v. Union of India and Ors. AIR 1992 SC 417. He further submitted that the mandatory provisions were violated and procedural impropriety were committed in the Court Martial proceedings which was observed more in breach rather than in adherence. He further submitted that Rule 33 (7) and Rule 34 of the Army Rules, 1954, which provided for right of accused to prepare defence and warning of accused for trial was not complied

with neither any charge-sheet was served nor the summary of evidence was given to the appellant writ petitioner throughout the proceedings left alone 96 hours interval prescribed by the said provisions between the supply of the aforesaid documents 4n the commencement of the proceedings. He submitted that the violation of the aforesaid Rule is sufficient and grave enough to vitiate the entire Court Martial proceedings. In support thereof, he relied upon a decision in the case of Ram Pravesh Rai v. Union of India and Ors. 1988 UPLBEC 783 wherein this Court has held that failure to provide a copy of the charge-sheet and summary of evidence 96 hours before the actual trial and allowing the gap of 96 hours between the petitioner being so informed of his actual trial would vitiate the entire Court Martial proceedings. However, the information should be given from the Presiding Officer as provided in the Rules.

4. He further submitted that the provisions of Section 33 of the Act and Rule 44 of the Rules have also been violated as the petitioner was not informed about the name of the Presiding Officer and the Members so that he may raise his objection, if any, which vitiate the entire proceedings. He relied upon the decisions of the Hon'ble Supreme Court in the case of Ranjeet Thakur v. Union of India 1987 SC 2386 and Lt.-Col. Prithi Pal Singh Bedi and Others Vs. Union of India (UOI) and Others, He further submitted that Section 129 of the Act and Rule 33 of the Army Rules, have also been violated as he was not given the help of any person to assist him during the trial which would violate the principle of natural justice. He relied upon a decision of this Court in the case of Union of India v. Rameshwar Mahto 1993 AWC 883.

5. Learned counsel for the petitioner further pressed into aid the principle of bias against the Commanding Officer which had vitiated the entire proceedings. According to him the appellant writ petitioner had made a complaint against Regimental Havaldar to Col. Chandrashekhhar Chaturvedi, Commanding Officer, Artillery Depot Regiment which was taken cognizance of by the said Officer. The summary Court Martial proceedings was initiated by the same Commanding Officer which went on to preside over the proceedings of the summary Court Martial and dismissed him from service.

6. According to him, the complaint was made to the Commanding Officer Col. Chaturvedi, who alone could have proved the aforesaid complaint as a witness before the summary Court Martial proceedings which was the cause and basis of the entire Court Martial against him. Instead of being a witness the Commanding Officer Col. Chaturvedi presided over the summary Court Martial and finally he was dismissed from service. Thus, the complaint which formed the cause and basis of Court Martial was never proved. According to him the Commanding Officer had also punished the appellant writ petitioner twice on 19.9.1996 and 6.10.1996.

7. He further submitted that the appellant was summarily tried u/s 41(2) and awarded 28 days rigorous imprisonment on 19.9.1996 and immediately after his release at the conclusion of his sentence, the appellant was again awarded a

punishment to undergo rigorous imprisonment on 6.10.1996. Both these sentences were successively handed out to the petitioner by the same Commanding Officer namely Col. Chandrashekhar Chaturvedi. However, such punishments were not preceded by any Court Martial or trial, as envisaged in Section 41(2).

8. He further submitted that during his internment in pursuance of the aforesaid sentence, the appellant fell seriously ill. The appellant accordingly reported sick and was examined by the military doctors namely Lt. Col. (Doctor) A.K. Shukla and Lt. Col. (Doc.) V.K. Nair. The said doctors (in particular Lt. Col. Doc V.K. Nair) opined that the case of the appellant was serious and he needed specialist medical care which was not available in the M.I. room of his Regiment. Hence, the doctor recommended that the appellant be moved to M.H. Deolali where he could be administered specialist care and attention to cure his illness. However, the Commanding Officer was so single minded in his desire to harass and punish the petitioner that he overruled the aforesaid specialist's medical opinion. Needless to add Col. Chandrashekhar Chaturvedi had no expertise to overrule the aforesaid Medical advice. Thus, the Commanding Officer ensured that the appellant was precluded from availing specialist Medical attention and he continued to suffer with an aggravated ailment. The aforesaid facts wherein the said Col. Chandrashekhar Chaturvedi awarded consecutive and successive punishments to the appellant in a short span of 2 months prevented the appellant from getting medical treatment, presiding over a Court Martial where in fact he should have been a witness shows the bias of the Commanding Officer against the appellant. It is logical to conclude from the aforesaid factual matrix that the said Court Martial proceedings presided over by Col. Chandrashekhar Chaturvedi were a mere formality, in view of his bias and mala fide intentions. It is clear that after initiating the Summary Court Martial proceedings by Col. Chandrashekhar Chaturvedi steered them to their predetermined destination of finding the appellant guilty and dismissing him from service.

9. He further submitted that Rule 22 of the Rules have also been violated as no pre-trial, as contemplated in the said Rules was conducted which is mandatory in nature, that the entire proceedings have been vitiated. In support thereof he relied upon a decision of the Hon'ble Supreme Court in the case of Lt. Col. Preti Pal Singh v. Union of India 1982 SC 1413. He submitted that in any event u/s 56 of the Act making a false accusation simplicitor against any person is not an offence unless the person making the false accusation makes accusation knowing or having reason to believe such accusation to be false and the conviction upon by Court Martial can be made to suffer imprisonment for a term which may extend to 5 years. The accusation in the present case was not made knowingly and no punishment could have been given. He relied upon a decision of this Court in C. M. Writ Petition No. 29244 of 1999 No. 13883630-K Ex. Sep. Dvt. (MT) M.Z.H. Khan v. Chief of the Army Staff, Army Headquarters, New Delhi and Ors. dated 29.8.2001.

10. Shri Narendra Prasad Shukla, learned standing counsel submitted that the appellant writ petitioner was detained on duty on 4.7.1996 in the MT Area of the Unit. He was found absent from duty, he was again found missing from the Unit lines and instead was found on 4.7.1996 at 7.45 at Railway Station Nasik. He was ordered to perform duty on the main gate of Artillery Depot Regiment on 7.7.1996 but he refused to obey and declined to perform the duty. He was detained in his place. The incident was reported to the Higher Officer. On 16.7.1996 he wrote a personal letter addressed to the Commanding Officer of Artillery Depot Regiment alleging that Lance Hawaldar Sulkhan Singh demanded a Bottle of Rum from every new inductee and Rs. 100 from each member of the Regiment, Police Section for any mistake committed by them and/or to recommend their leave to the appropriate authority. A Court Martial Enquiry was conducted and the evidence was reduced in writing which established that the appellant writ petitioner had made a false allegations against Lance Hawaldar Sulkhan Singh knowing fully well that they were false. On 12.9.1996, he did not obey the order passed by the Superior Officer and he was placed under arrest for which he was awarded 28 days rigorous imprisonment. While undergoing the punishment he became violent with provocation and broke two glass panes of the ventilator cell. He was given full opportunity to defend and he was provided a copy of the charge sheet and summary of the evidence, but he refused to take documents which have been witnessed by two independent witnesses. He was tried on 26.10.1996 by Summary Court Martial u/s 56(a) of the Act for making a false accusation against a person subject to the Army Act knowing such accusation to be false. He was dismissed from service taking a sympathetic view whereas the offence is punishable with 5 years rigorous imprisonment.

11. According to the learned standing counsel the appellant writ petitioner declined to receive and sign the documents whereupon a complete set of facts of Court Martial proceedings were sent to him by post at his home address. He further submitted that the provisions of Rule 33 (7) of the Army Rules are not applicable as it has application only to General Court Martial and District Court Martial and not to summary Court Martial. According to him the contention of the learned counsel for the appellant writ petitioner that the Commanding Officer became disqualified as he has taken cognizance of the complaint made by him is incorrect. The said Officer only ordered for a Court of enquiry on the basis of complaint made by him. The Court of enquiry examined the witnesses and submitted the report to the Officer and the provisions of Rule 22 are complied with by making a tentative charge-sheet. The summary Court Martial procedure was followed and the officer was competent to hold the summary Court Martial. He relied upon a decision of the Hon"ble Supreme Court in the case of Vidya Parkash Vs. Union of India (UOI) and Others, and Major General Inder Jit Kumar Vs. Union of India (UOI) and Others, and Bhuwadeshwar Singh Vs. Union of India (UOI) and Others,

12. Having heard the learned counsel for the parties, we find that as per Annexure-1 enclosed with the counter-affidavit filed by Major Purushottaman on

behalf of the respondents, on 18.9.1996 the charges were explained to the accused, i.e., (appellant writ petitioner) and he was apprised of his right to cross-examine all the prosecuting witnesses under Army Rules 23 (2) as also produced in his own defence. The summary of evidence was also given to the accused and he had also cross-examined the prosecution witness No. 1 Sulkhan Singh, but he declined to cross-examine prosecution witness Nos. 2, 3, 4 and 5. Further he did not give any statement and he declined to call any witness for his defence. Evidence was recorded in his presence and has been signed by independent witness. Thus, all the procedure as prescribed in the various Rules have been complied with. So far as the violation of Rule 33 (7) and Rule 34 of the Rules are concerned, it may be mentioned here that there is no averment that he was not given summary of evidence before ninety six hours. Neither any violation of Rule 33 (7) or Rule 34 of the Army Rules have been pleaded. We have already found that appellant writ petitioner was provided with the summary of evidence and was also given an opportunity to cross-examine, which he availed in respect of P.W. 1 but declined in respect of remaining prosecution witnesses. Thus, no breach of Rule 33 (7) or Rule 34 has been made out. The decision of this Court in the case of Ram Pravesh Rai v. Union of India (supra), would not be applicable to the facts of the present case. So far as non-compliance of Section 130 and Rule 44 of the Rules are concerned, the position is that there is no averment in the writ petition regarding its non-compliance and, therefore, it cannot be raised for the first time in appeal. However, it may mention here that the decision of the Hon'ble Supreme Court in the case of Ranjeet Thakur (supra), wherein the provisions of Section 130 of the Army Act has been held to be mandatory for summary Court Martial proceedings already appears to have been reviewed as noticed by Jammu and Kashmir High Court in the case of Balwant Singh Vs. Union of India (UOI) and Another, wherein the said position has been rectified. The relevant portion of paragraph 8 of the judgment in Balwant Singh's case is reproduced below :

"8. The submission regarding breach of provisions of terms of Sections 130 and 116 is misplaced and invites rejection on the very threshold. Even a cursory look at Section 130 would show that it brings within its ambit only trials by General, District or Summary General Court Martial. The fourth category of Court Martial i.e., Summary Court Martial is per se excluded. Therefore, there was no question or occasion to ask the petitioner accused as to whether he wanted to object to be tried by an officer sitting on the Court. It is true that in Ranjit Thakur Vs. Union of India (UOI) and Others, the Hon'ble Supreme Court held this section to be applicable even to Summary Court Martial. But on a review, the error stands rectified. Therefore, this issue is no more res integra."

Likewise in the writ petition, there is no averment that the provisions of Rules 133 and 129 have been violated.

13. So far as the question as to whether the Commanding Officer was biased or not, it may be mentioned here that neither in the writ petition as originally filed

nor even after its amendment by incorporating as many as 23 paragraphs, the plea of bias against the Commanding Officer Col. Chandra Shekhar Chaturvedi was alleged. Bias is basically a question to be decided on the basis of the plea and material filed in support thereof. In the absence of any plea, the appellant writ petitioner cannot be permitted to raise such a plea for the first in the special appeal. The submission that the provisions of Rule 22 of the Rules have been violated also does not stand scrutiny. We have already found that the charges were read over to the appellant writ petitioner, the evidence was recorded in his presence, he was also permitted to cross-examine. Whether or not he availed of that opportunity of cross-examination is another thing. From the record, it appears that the appellant writ petitioner cross-examined P.W. 1 and declined to cross-examine any other prosecution witnesses. He also declined to give his statement. The summary of the proceedings have been signed by independent witnesses. In this background, we are of the considered opinion that the procedure of Rule 22 has been complied with.

14. So far as the question regarding the punishment being disproportionate to the evidence said to have been committed by the appellant writ petitioner is concerned, we find that the charge which was framed against the appellant writ petitioner was making a false accusation against a person subject to the Army Act knowing such accusation to be false. The charge was framed u/s 56(a) of the Army Act.

Section 56 of the Act is reproduced below :

"56. False accusations.--Any person subject to his Act who commits any of the following offences, that is to say :

(a) makes a false accusation against any person subject to this Act, knowing or having reason to believe such accusation to be false ; or

(b) in making a complaint u/s 26 or Section 27 makes any statement affecting the character of any person subject to this Act, knowing or having reason to believe such statement to be false or knowingly and wilfully suppresses any material facts ; 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 in this Act mentioned."

The condition precedent for making out of an offence u/s 56(a) is that person making false accusation knows or has reason to believe such accusation to be false, it does not provide that every false accusation which is made unknowingly or under some mistake to be an offence unless it is proved that the false accusation has been made knowingly or having reason to believe such accusation to be false, the offence cannot be said to have been committed. From the proceedings of the Summary Court Martial and the sentence awarded, it does not appear that any finding has been recorded by the Summary Court Martial that the appellant writ petitioner was making false accusation knowingly or having reason to believe it to be false. Thus, the punishment could not have been

awarded at all.

15. The learned single Judge of this Court in the case of No. 13883630-K Ex. Sep. Dvt. (MT) M.Z.H. Khan v. Chief of the Army Staff, Army Headquarters, New Delhi and Ors., has held that unless accusation made by a person or known to that person to be false or he has reason to believe to be false is found, no offence u/s 56(a) of the Act is made out.

16. There is nothing on record to show that any finding has been recorded in the Summary Court Martial proceedings that the false accusation made by the appellant writ petitioner was known to him to be false or he has reason to believe it to be false. Thus, no punishment could have been awarded for the alleged offence committed u/s 56(a) of the Army Act. The punishment is vitiated.

17. In view of the fact that we are setting aside the punishment, it is not necessary for us to go into the question that the punishment is disproportionate to the alleged offence.

18. In view of the foregoing discussion, the special appeal succeeds and is allowed the punishment awarded to the appellant writ petitioner by Summary Court Martial dated 28.10.1996 and 23.7.1997 are hereby set aside and he shall be entitled for all consequential benefits.