
(2002) 08 DEL CK 0125
In the Delhi High Court
Case No : CWP 823 of 2001

Shri. V.S. Pathak

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 29-08-2002

Acts Referred:

Army Rules, 1954 — Rule 149, 177, 180

Citation : (2002) 08 DEL CK 0125

Hon'ble Judges : S.B. Sinha, C.J.; A.K. Sikri, J

Bench : Division Bench

Advocate : R.S. Mishra, for the Appellant; Barkha Babbar, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—In this writ petition, the petitioner has questioned an order dated 24th September 1999 sentencing him to undergo rigorous imprisonment for one year, dismissing him from service as also reduction of rank by the District Court Martial.

2. The petitioner was enrolled in Indian Air Force as clerk on 23rd June 1999. Purported to be for disobeying lawful command given by his superior officer as also on the charge absenting him without leave from 24th June 1999 to 14th July 1999, the afore-mentioned Court Martial was constituted.

3. In the said proceedings, the petitioner was found guilty of both the charges and was awarded the afore-mentioned punishment.

4. The contention of the petitioner is that in relation to the self-same charges, whereas in the memo dated 14th July 1999, only Wg. Cdr. A.K. Agarwal and Sgt. Laxman were cited as witnesses, in another memo of the same date Flt. Lt. S. Singh and Sgt. Pandey were also cited as witnesses.

5. The further case of the petitioner was that although a purported endorsement had been made to the effect that he was informed that he was at liberty to make

any statement or call any witness in defense, from a perusal of the cross-examination of Gp Capt. R. Kacker, it appears that he stated as follows:

"The witness states that the names of Flt. Lt. S. Singh and Sgt. Pandey HM were shown as witnesses by mistake and that these two person wee not examined by him as prosecution witnesses during the charge-trial of the accused. However, they were examined as prosecution witnesses during the SOE by the officer who recorded the SOE.

The witness further states that the word "Nil" is written by mistake in para 3 against Sgt. Laxman"s name, whereas the said witness produced a document.

The witness further states that in Para 3 of the above said document against the name of Wg. Cdr. Agarwal "Yes" is written in the last column, whereas the accused declined to cross-examine that witness. This is also due to clerical mistake by oversight."

6. However, it was further contended that the petitioner was not informed about his right of cross-examination nor was he informed about his right to examine defense witness. In this connection, our attention has been drawn to the following evidence of the said Gp Capt. R. Kacker:

"I do not remember the exact sequence of actions. I did not specifically ask the accused whether he wants to call any defense witnesses. I did not specifically ask the accused after examining the witnesses whether he wants to make any statement. However, the accused was repeatedly saying "I made a mistake. Please forgive me. I was afraid. People are after me, and I am prepared to withdraw all my ROG applications" or words to that effect. Therefore, I did not find it necessary to specifically ask the above question.

The witness states that para 5 of the above-said document was not properly filled.

Fg. Offr. S. Garg was present during the charge-trial. I did not detail any other officer as an independent officer in addition to her."

7. The purported infirmities pointed out by learned counsel for the petitioner, in our opinion, cannot be accepted. Apart from the fact that, as noticed hereinbefore, the said witness categorically stated that names of two witness had been stated by mistake. It appears from the records that the petitioner had not cross-examined the said witnesses except Gp. Capt. R. Kacker.

8. In that view of the matter, as the petitioner had declined to cross-examination the two witnesses to prove the afore-mentioned charges, in our opinion, he has singularly failed to prove any prejudice caused to him by reason thereof. Furthermore, the said witnesses were cited at pre-trial stages. It may further be placed on record that the contention of the petitioner to the effect that he had no knowledge that he can cross-examine the witnesses, cannot be accepted in view of the fact that he did cross-examine the afore-mentioned Gp. Capt. R. Kacker.

In that view of the matter, it cannot be said that the petitioner was so ignorant which may lead to an inference that he had gravely been prejudiced by reason of a mistake on the part of the said Gp. Capt. R. Kacker that he had not specifically informed the petitioner that he could examine any defense witnesses. Furthermore, even such a point had not been taken in the writ petition, nor it appears from the records that such a contention had been raised before the post-confirmation proceedings. It is now a well-settled principle of law that any infirmity in a pre-trial procedure would not vitiate the trial itself.

9. In Union of India (UOI) and Others Vs. Major A. Hussain (IC-14827), , referring to Rule 149 of the Army rules, it had been held that when court martial proceedings had been conducted under the Act and the Rules, it is not mandatory for the High Court to examine the records of the general Court Martial as if sitting in an appeal. It was observed therein:

"18. Provisions of Rules 180 and 184 had been complied. Rule 184 does not postulate that an accused is entitled to a copy of the report of court of inquiry. Proceedings before a court of inquiry are not adversarial proceedings and is also not a part of pre-trial investigation. In Major General Inderjit Kumar Vs. Union of India (UOI) and Others, this Court has held that the Court of Inquiry is in the nature of a fact-finding enquiry committee. The appellant in that case had contended that a copy of the report of the Court of Inquiry was not given to him and that had vitiated the entire court martial. He had relied upon Rule 184 in this connection. With reference to Rule 184, the Court said that there was no provision for supplying the accused with a copy of the report of the Court of Inquiry. This Court considered the judgment in Major G.S. Sodhi Vs. Union of India (UOI), and observed that supply of a copy of the report of enquiry to the accused was not necessary because proceedings of the Court of enquiry were in the nature of preliminary enquiry and further that rules of natural justice were not applicable during the proceedings of the court of enquiry though adequate protection was given by Rule 180. This Court also said that under Rule 177, a Court of inquiry can be set up to collect evidence and to report, if so required, with regard to any matter which may be referred to it. Rule 177, Therefore, does not mandate that a court of inquiry must invariably be set up in each and every case prior to recording of summary of evidence of convening of a Court-martial."

10. In Major G.S. Sodhi Vs. Union of India (UOI), , it was observed:

"21. ...It must be noted that the procedure is meant to further the ends of justice and not to frustrate the same. It is not each and every kind of defect preceding the trial that can affect the trial as such. In the instant case we have referred to almost all the so-called defects pointed out in the procedure preceding the court-martial and we are not convinced even remotely that any one of them is of vital nature so as to affect the trial substantially."

11. For the reasons afore-mentioned, we do not find any merit in this writ petition. It is dismissed accordingly but without any order as to costs.