

(2007) 08 DEL CK 0149

In the Delhi High Court

Case No : Writ Petition (C) . No. 5899 of 2002

Sub. B.K. Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-08-2007

Acts Referred:

Army Act, 1950 — Section 164(2), 3, 53

Army Rules, 1954 — Rule 182

Constitution of India, 1950 — Article 226

Citation : (2008) 2 SLJ 287

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

Bench : Division Bench

Advocate : C.K. Sharma, for the Appellant; Dalip Mehra and Siddharth Singh, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Aggarwal, J.—In short the facts leading to filing of this writ petition are as stated below:

The petitioner at the time of his court martial was a Junior Commissioned Officer in the Indian Army. He was holding the rank of Subedar at the time he was tried by the court martial and had already served for about 21 years before he was dismissed from service pursuant to the General Court Martial held against him from 07.09.2000 to 09.02.2001. The petitioner in this writ petition has called in question his dismissal from service and for a writ of certiorari quashing the proceedings of the General Court Martial and for directions to the respondents to reinstate him in service with all consequential benefits.

2. The petitioner was posted on deputation from Army Ordinance Corps to Headquarter Inspector General Assam Rifles (North) and was attached with 12 Assam Rifles. He was detailed for duties to carry out ammunition inspection in 21 Army Rifles w.e.f. 13.08.1999 to 30.08.1999. During inspection, the petitioner discovered certain procedural lapse on the part of the personnel in handling

ammunition arising out of incorrect documentation and accounting. It was alleged against him that he had threatened the concerned Ammunition-in-charge(s) of 21 Assam Rifles by using abusive language and telling them that his reporting of irregularities would invite their trial by court martial and termination of services and demanded money to cover up the same. The matter came to the notice of Major Satish Kumar (PW-16 at GCM) who was performing the duties of Delta Coy Commander through Rifleman P.V. Varghese (PW-9 at GCM) who claimed that the petitioner has extorted Rs. 6,000/- from him. Subsequent investigation revealed that the petitioner though having noticed the irregularities did not report the same to his Headquarter and instead has put personnel-in-charge of ammunition under pressure. The investigation also led to the discovery of counterfoils of two State Bank of India demands drafts made by the petitioner between the dates on which he had allegedly extorted money from the personnel of 21 Assam Rifles. The demand drafts recovered from his possession also revealed that the petitioner had used a false name "S.D. Singh" in place of his name "B.K. Singh". These demand drafts were allegedly sent by the petitioner to his relative. After investigation, the petitioner was tried by a General Court Martial under Army Act Section 53(a) on six charges for committing extortion. The charges for which he was tried are as follows:

First Charge COMMITTING EXTORTION Army Act Section 53(a) in that he, at field, between 18 Aug 99 and 02 Sep 99, while carrying out Annual Technical Inspection of Ammunition of 21 Assam Rifles, by putting No. 2102055 K Hav. Balbir Singh Bisht, the ammunition NCO of Battalion Magazine of the said unit, in fear of certain injury, to wit, fear of being subjected to punishment, extorted Rs. 10,000/- (Rupees Ten Thousand only) from him.

Second Charge COMMITTING EXTORTION Army Act Section 53(a) in that he, at field, between 18 Aug 99 and 02 Sep 99, while carrying out Annual Technical Inspection of Ammunition of 21 Assam Rifles, by putting No. 2102735K L/Nk Anil Kumar, the ammunition NCO of "B" Coy of the said unit, in fear of certain injury, to wit, fear of being subjected to punishment, extorted Rs. 3,000/- (Rupees Three Thousand only) from him.

Third Charge COMMITTING EXTORTION Army Act Section 53 (a) in that he, at field, between 18 Aug 99 and 02 Sep 99, while carrying out Annual Technical Inspection of Ammunition of 21 Assam Rifles, by putting No. 2101917L Hav. Ganesh Prasad, the ammunition NCO of "C" Coy of the said unit, in fear of certain injury, to wit, fear of being subjected to punishment, extorted Rs. 3,000/- (Rupees Three Thousand only) from him.

Fourth Charge COMMITTING EXTORTION Army Act Section 53(a) in that he, at field, between 18 Aug 99 and 02 Sep 99, while carrying out Annual Technical Inspection of Ammunition of 21 Assam Rifles, by putting No. 2102006F L/nk PV VArghese, the ammunition NCO of "D" Coy of the said unit, in fear of certain injury, to wit, fear of being subjected to punishment, extorted Rs. 6,000/- (Rupees Six Thousand only) from him.

Fifth Charge COMMITTING EXTORTION Army Act Section 53(a) in that he, at field, between 18 Aug 99 and 02 Sep 99, while carrying out Annual Technical Inspection of Ammunition of 21 Assam Rifles, by putting No. 2101871N Hav. Jasram Kohli, the ammunition NCO of "E" Coy of the said unit, in fear of certain injury, to wit, fear of being subjected to punishment, extorted Rs. 3,000/- (Rupees Three Thousand only) from him.

Sixth Charge COMMITTING EXTORTION Army Act Section 53 (a) in that he, at field, between 18 Aug 99 and 02 Sep 99, while carrying out Annual Technical Inspection of Ammunition of 21 Assam Rifles, by putting No. 2101926M Hav. HB Chhetri, the ammunition NCO of "F" Coy of the said unit, in fear of certain injury, to wit, fear of being subjected to punishment, extorted Rs. 2,000/- (Rupees Two Thousand only) from him.

3. The General Court Martial was held against the petitioner in accordance with the provisions of the Army Act and the Rules. He was given opportunity in accordance with law to defend himself at the trial in consonance with the principles of natural justice. After conclusion of the proceedings of the Court Martial, the Court Martial found the petitioner not guilty of charges No. 3, 4 and 5 and accordingly acquitted him of the said charges. However, the petitioner was held guilty by the Court Martial in respect of 1st, 2nd and 6th charges. He was awarded sentence of dismissal of service by the Court Martial vide order passed on 09.02.2001. Aggrieved by the order of the Court Martial, the petitioner filed a statutory petition u/s 164(2) of the Army Act, 1950 on 10.08.2001. The statutory petition so filed by the petitioner was dismissed by the Chief of Army Staff vide order dated 13.06.2002 communicated to the petitioner vide covering letter dated 19.06.2002. The order passed by the Chief of Army Staff confirming the findings and sentence awarded by the Court Martial is extracted hereinbelow:

ORDERS OF THE CHIEF OF THE ARMY STAFF ON THE PETITION DATED 10 AUGUST 2001 SUBMITTED BY JC-722890X EX SUBEDAR (AMMUNITION TECHNICIAN) BINOD KUMAR SINGH OF HEADQUARTERS INSPECTOR GENERAL ASSAM RIFLES (NORTH) ATTACHED TO 12 ASSAM RIFLES

1. In exercise of the powers conferred on me vide Army Act 164(2), I have examined petition dated 10th August 2001 submitted by JC-722890 X ex Subedar (Ammunition Technician) Binod Kumar Singh of Headquarters Inspector General Assam Rifles, attached to 12 Assam Rifles, against the findings and sentence of General Court Martial (General Court Martial), held from 07 September 2000 to 09 February 2001, in the light of proceedings of the said Court Martial and all relevant documents on record.

2. The petitioner was arraigned on six charges, all under Army Act Section 53 (a) for "committing extortion". The accused pleaded not guilty to all the charges. However, the court after trial found him not guilty of third, fourth and fifth charges and guilty of first, second and sixth charges and sentenced him "to be dismissed from service."

3. The contentions of the petitioner as mentioned in the petition are misconceived and devoid of merit and substance. Perusal of GCM proceedings clearly establishes the fact that the petitioner misused his position as an inspecting officer and accepted cash amounts from various persons by putting them in a fear of punishments. The finding of the court is supported by cogent and reliable evidence on record which inspire confidence. The sentence awarded is commensurate to the gravity of the offence for which he stands convicted.

4. I, Therefore, reject the post confirmation petition submitted by aforesaid JCO as it lacks merit.

4. The petitioner in this writ petition has prayed for quashing the proceedings of the General Court Martial as also the aforementioned order of the Chief of Army Staff by which his statutory petition was dismissed.

5. We have heard learned Counsel for the parties and have also perused the record.

6. Appearing for the petitioner Col. Sharma had argued that the petitioner was falsely framed on charges of extortion with mala fide intention to implicate him so as to save respondents No. 6 and 7 who according to him were actively involved in serious thefts, discrepancies and surplus/deficiency of the arms and ammunitions of 21 Assam Rifles. It was contended by him that neither any complaint to the superior authority nor any documentary evidence to substantiate the allegations was either available or even produced before the General Court Martial. Learned Counsel had further argued that findings of guilt in respect of 1st, 2nd and 6th charges are contradictory and without any basis and he urged that the said findings are liable to be set aside in the present proceedings. The contention of learned Counsel was that the General Court Martial failed to take into account while passing the sentence that there was not a single witness who testified that the petitioner had taken money or extended any threat to the personnel of the Assam Rifles with an intention to extort money from them. Learned Counsel relied upon the contradictions in the testimony of the witnesses examined during the Court Martial and by reference to the same, he submitted that the evidence was not properly appreciated by the Court Martial in holding the petitioner guilty of 1st, 2nd and 6th charges.

7. We have given our careful consideration to the above contentions made on behalf of the petitioner. On going through the record, we have found that the findings of the General Court Martial are supported and corroborated by cogent and reliable evidence on record led by the witnesses examined at the trial which also included counterfoils of two demand drafts in favor of relative using false name of the petitioner therein as "S.D. Singh" instead of "B.K. Singh" The Court Martial has given strong reasons in support of its findings contained in the impugned dismissal order dated 09.02.2001. We do not find any merit in the contention that the petitioner was falsely framed in the extortion case with an intention to save respondents No. 6 and 7. The record does not support the said

plea. It is borne out from the record that respondent No. 6 who at the relevant time was performing the duties of Delta Coy. Commandant had immediately reported the incident of having come to know of the allegations of irregularities/ discrepancies in the ammunition stores to the superior authorities whereas the petitioner had not reported the discrepancies in the ammunition stores of 21 Assam Rifles to the higher ups. As far as respondent No. 7 is concerned, he had taken over the charge as Delta Coy. Commander only on 15.09.1999 and as such it cannot be said that he was involved in the alleged irregularities in the ammunition stores of 21 Assam Rifles. We do not find any plausible reason why respondents No. 6 and 7 would falsely implicate the petitioner on charges of extortion alleged against him. It is apparent from the evidence taken during Court Martial that the petitioner had put the personnel of 21 Assam Rifles under a fear on the pretext that he would bring the allegation irregularities/ discrepancies in the ammunition stores to the knowledge of the higher authorities with an intention to extort money from them. We are of the view that this Court while exercising extra ordinary writ jurisdiction under Article 226 of the Constitution cannot look into the quality of the evidence or reappraise the evidence adduced before the Court Martial. We can interfere only in case the decision of the Court Martial is based on no evidence or legally inadmissible evidence. In the present case, we do not find any such thing in the impugned order of the Court Martial or of the order dated 13.06.2002 passed by the Chief of Army Staff which may warrant our interference.

8. Col. Sharma, learned Counsel for the petitioner had further argued that the proceedings of the General Court Martial are even otherwise bad in law as the same are in complete violation of the Army Act and the Rules. By reference to Rule 182 of the Army Rules 1954, learned Counsel had argued that the proceedings of a court of inquiry were not admissible in evidence in proceedings before the Court Martial and according to him since the Court Martial had relied upon the proceedings of the court of inquiry, the findings of the General Court Martial are, Therefore, liable to be set aside on this ground.

9. Rule 182 to which reference was made by the petitioner's learned Counsel does not prevent the use of the proceedings of a court of inquiry during Court Martial by the prosecution or the defense for the purposes of cross-examining any witness before the Court Martial. Rule 182 of the Army Rules 1954 is reproduced hereinbelow:

182. Proceedings of court of inquiry not admissible in evidence.- The proceedings of a court of inquiry, or any confession, statement, or answer to a question made or given at a court of inquiry, shall not be admissible in evidence against a person subject to the Act, nor shall any evidence respecting the proceedings of the court be given against any such person except upon the trial of such person for willfully giving false evidence before that court. Provided that nothing in this rule shall prevent the proceedings from being used by the prosecution or the defense for the purpose of cross-examining any witness.

10. Appearing for the respondents Mr. Mehra had argued that merely because the proceedings of the court of inquiry were retained by the Court Martial and were ordered to be returned at the conclusion of the Court Martial, it cannot be said that the proceedings of court of inquiry were used in evidence against the petitioner during his trial by the Court Martial except to the extent that the same might have been used by the prosecution or the defense for the purpose of cross-examining the witnesses examined during Court Martial. We find merit in this contention. We do not see anything in the record to suggest that the proceedings of the court of inquiry were used in evidence by the Court Martial while holding the petitioner guilty of 1st, 2nd and 6th charges.

11. In view of the above, we do not find any infirmity or illegality in the findings of the Court Martial holding the petitioner guilty of 1st, 2nd and 6th charges. In our view charges of extortion were adequately proved against the petitioner before the Court Martial and as the said charges, in our view, are of serious nature, he was rightly dismissed from service. In the facts and circumstances of the case, we do not wish to interfere in the sentence awarded by the Court Martial to the petitioner dismissing him from service w.e.f. 09.02.2001.

12. The petitioner's learned Counsel had next argued that the petitioner had clean record of 21 years of service before he was tried by the Court Martial and was found guilty of charges of extortion. He had contended that the Court Martial did not pass any order forfeiting the pension, gratuity and other retirement benefits of the petitioner and Therefore according to him the petitioner is entitled to get all these benefits in view of the judgment of the Supreme Court in Major G.S. Sodhi Vs. Union of India (UOI), wherein their Lordships of the Supreme Court have held that a dismissed army personnel would be entitled to service benefits like pension, gratuity and provident fund, etc. if the Court Martial has not inflicted any punishment forfeiting either of these benefits.

13. The decision in Major G.S. Sodhi's case (Supra) was explained in a subsequent decision of the Supreme Court in Union of India and Others Vs. Subedar Ram Narain, . In Subedar Ram Narain's case (Supra) their Lordships drew a distinction between the provisions of Regulation 113 of the Pension Regulations for the Army and Regulation 16 (a) of the Pension Regulation for the Army. The Court noticed that there was a difference in the language employed in the two provisions inasmuch as while Regulation 113(a) is applicable to the PBROs including the JCOs and the same provide for denial of pensionary benefits upon dismissal of the defense personnel. Under Regulation 16 (a) when an officer, as defined in Section 3(xviii) of the Army Act, 1950 is cashiered, dismissed or removed from service, the President has the discretion of either forfeiting the pension or ordering that he be granted pension at a lesser rate. The dismissal, removal, etc., of a commissioned Officer, as observed by the Court, did not automatically result in forfeiting or lessening of his pension as was the position in the case of PBROs governed by Regulation 113. The following passage in Subedar Ram Narain's case (Supra) explain the difference between the

provisions as applicable to PBROs on the one hand and those applicable to the Commissioned Officers on the other:

...10. The terms of Regulation 16(a) are clearly different from Regulation 113 (a). According to Regulation 16(a), when an officer as defined in Section 3(xviii) of the Army Act, 1950, is cashiered or dismissed or removed from service, then the President has the discretion of either forfeiting his pension or ordering that he be granted pension at a lesser rate. The dismissal, removal etc of a commissioned officer does not, in other words, automatically result in the forfeiting or lessening of his pension. Power is, however, given to the President that in such a case he may either direct the forfeiture of the officer's pension or reduction in the rate thereof. Major Sodhi case was one which dealt with the question of forfeiture of a commissioned officer's pension on his being dismissed from service. It is in the context of Regulation 16 (a) that it was observed that as no order was passed under the said Regulation, Therefore, the officer concerned would be entitled to the receipt of full amount of pension or gratuity which would normally be payable to him.

14. There is, in the light of the above authoritative pronouncement, no merit in the contention that the dismissal of the petitioner from service upon proof of charges of misconduct leveled against him does not result in an automatic loss of pensionary benefits. Since the petitioner is not governed by Regulation 16 (a) applicable to the commissioned officer, there was no need for passing a separate order for forfeiture. Such a forfeiture as declared by the Supreme Court fall from the dismissal order itself having regard to the language employed in Regulation 113.

15. In the result, this writ petition fails and is hereby dismissed but with no order as to costs.