

(1997) 09 AHC CK 0013

In the Allahabad High Court

Case No : Civil Miscellaneous Habeas Corpus Writ Petition No. 10990 of 1995

Subedar B.K. Saikia

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 24-09-1997

Acts Referred:

Army Act, 1950 — Section 102, 103, 123, 37

Army Rules, 1954 — Rule 27

Constitution of India, 1950 — Article 226

Citation : (1997) AWC 528 Supp

Hon'ble Judges : R.K. Singh, J;G.S.N. Tripathi, J

Bench : Division Bench

Advocate : Rajesh Pathik, for the Appellant; A.K. Sinha and Addl. S.C., for the Respondent

Final Decision : Dismissed

Judgement

G.S.N. Tripathi

1. In this petition, the following reliefs have been sought:

(i) issue a writ, order or direction in the nature of mandamus commanding the Respondents to set the Petitioner at liberty forthwith from his illegal Military confinement,

(ii) issue a writ, order or direction in the nature of habeas corpus directing the Respondents to produce the Petitioner before this Court forthwith,

(iii) issue a writ, order or direction in the nature of mandamus commanding the Respondents to pay to the Petitioner compensation amounting to Rs. 5 lacs,

(iv) issue any other writ, order or direction which this; Court may deem fit and proper in the circumstances of the case,

(v) to award the cost of the petition in favour of Petitioner.

2. The admitted position is that the Petitioner was due to retire after putting 28 years" of service from the post of Subedar, on 28.2.95 but he was taken into illegal Military custody with effect from the afternoon of the same day under the provisions of Section 123 of the Army Act, and after 55 days, he was let off by the opposite party after finding that there was no material to proceed against him. The detention was unlawful, prejudiced and biased, being against the provisions of Sections 102 and 103 of the Act and Rule 27 of the Army Rules. The charge levelled against the Petitioner by the Respondents, was false and the Respondents had no jurisdiction to proceed against the Petitioner under the provisions of the Army Act.

3. In the counter-affidavit filed by Sri T. S. Negi, posted as a Captain at Record 39, Gorkha Training Centre, Varanasi, the allegation of bias, illegality and irregularity have been denied. The Petitioner was serving with 2 U.P. E.M.E. Company N.C.C. in March, 1993 and Lt. Col. Satish Chandra was performing duties of O.C. at that time. On 6th March, 1993, a Barakhana to elebrate Holi was organized. The Petitioner also took part. Lt. Col. Satish Chandra left the unit for his residence around 14.30 hours. After his departure from the place, there was a heated exchange followed by exchange of physical Glows between Sri S. B. Singh and Sri S. B. Mazumdar, the Head Clerk and Col. Satish Chandra was informed about the incident by driver Shri S. P. Upadhayay. Lt. Col. Satish Chandra came back to the unit around 17 hours on the same day. By that time, everything had been pacified and Sri S. B. Mazumdar had been sent home. Lt. Col. Satish Chandra had admonished the Petitioner for not being able to control the situation and hit him on the chest, who was also present at the time of incident and, thereafter, Sub. B. K. Saikia (Petitioner) reported sick to Military Hospital, Varanasi on 9th March, 1993 and gave history that he sustained injury because he was hit by his Officer Commanding Lt. Col. Satish Chandra on 6.3.93.

4. Thereafter a Court of Enquiry was ordered by Headquarters N.C.C. Group A vide order dated 16.4.93 to investigate the circumstances under which Sub. B. K. Saikia, the Petitioner sustained injury as per statement furnished by him. However, it was not established that the Petitioner was hit by Lt. Col. Satish Chandra, during the Court of enquiry. Disciplinary proceedings started against the Petitioner for making false allegations against the officer commanding Lt. Col. Satish Chandra, which was taken seriously by the Headquarters Sub-Area, Allahabad, under whose jurisdiction, Varanasi falls. The hearing could not be concluded till 18.4.95 because Lt. Col. Satish Chandra arrived very late. Meanwhile, the Petitioner was taken into Military custody on 28.2.95 u/s 123 of the Army Act as he was to proceed on pension. It is wrong to say that the Army Act does not empower the authorities to proceed against an army personnel, who has retired. Prima facie a case had been made out against the Petitioner and proceedings were launched. But ultimately the matter could not be crystallized for want of proper evidence and the Petitioner was let off on 22.5.95 as noted above.

5. The main thrust of the Petitioner's learned Counsel was that after retirement, the Petitioner could not be proceeded against u/s 123 of the Army Act. But it is not correct. Section 123 of the Army Act reads as below:

123 (1) Where an offence under this Act had been committed by any person while subject to this Act, and he has ceased to be so subject, he may be taken into and kept in Military custody, and tried and punished for such offence as if he continued to be so subject.

(2) No such person shall be tried for an offence, unless his trial commences within six months after he had ceased to be subject to this Act:

Provided that nothing contained in this sub-section shall apply to the trial of any such person for an offence of desertion or fraudulent entitlement or for any of the offences mentioned in Section 37 or shall effect the jurisdiction of a criminal court to try any offence triable by such Court as well as by a Court-martial.

(3) When a person subject to this Act is sentenced by a Court-martial to transportation or imprisonment, this Act shall apply to him during the term of his sentence, though he is cashiered or dismissed from the regular Army, or has otherwise ceased to be subject to this Act, and he may be kept, removed, imprisoned and punished as if he continued to be subject to this Act.

(4) When a person subject to this Act is sentenced by a court-martial to death, this Act shall apply to him till the sentence is carried out.

6. Learned Counsel for the Petitioner admits that now even after retirement, the Petitioner could be proceeded against for an act of indiscipline committed by him u/s 123 of the Army Act.

7. Then he changes the plank and argues that there was no sufficient material before the authority to proceed against the Petitioner. We do not agree.

8. Sufficiency of material, is a question, which this Court cannot go into under Article 226 of the Constitution of India unless, it is proved that there was no material at all or material upon which a normal and prudent man could not act. This Court will keep its hands off and that is what we are proposing to do. It is well-settled law that under Article 226 of the Constitution, the High Court does not sit as an appellate Court. Hence, if the department finds that there was sufficient material to proceed against the Petitioner, they were justified in proceeding against the Petitioner. We cannot substitute our satisfaction for the satisfaction of the authorities.

9. It was again urged that the enquiry proceedings were biased against the Petitioner. It is a question of fact. Secondly, no material has been brought on the record to conclude that the department was biased against the Petitioner. He has not given any background for the authorities to be biased against him.

10. Taking the totality of the evidence and circumstances on the record, we dismiss the petition. Cost easy.