

(1994) 05 P&H CK 0096
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 8615 of 1987

Surinder Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-05-1994

Acts Referred:

Army Rules, 1954 — Rule 129, 34
Constitution of India, 1950 — Article 226, 227

Citation : (1994) 107 PLR 580

Hon'ble Judges : N.K. Sodhi, J

Bench : Single Bench

Advocate : K.S. Gill, for the Appellant; S.K. Pipat, Senior Standing Counsel and Vivek Bhatia, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Sodhi, J.—What is challenged in this petition under Article 226 of the Constitution is the legality and validity of the summary Court Marital proceedings held against the petitioner whereby he was sentenced to suffer rigorous imprisonment for nine months in civil prison and was Ordered to be dismissed from service. The order passed by the General Officer Commanding-in-Chief rejecting the post confirmation petition filed by the petitioner u/s 164(2) of the Army Act, 1950 (for short, "the Act) has also been impugned.

2. Petitioner joined the army as a signal man and while he was on duty as on operator on the Madhopur military exchange on August 29, 1985 he misconducted himself. He was charged u/s 63 of the Act for having committed an act prejudicial to good order and military discipline. His commanding officer exercising his summary powers u/s 80 of the Act awarded him 28 days rigorous imprisonment in military custody. On October 1, 1985 he was again awarded 28 days rigorous imprisonment by the commanding officer for having committed another offence which was also said to be prejudicial to good order and military discipline. While he was undergoing these sentences the petitioner was charged

for having committed an offence u/s 40(a) of the Act for using criminal force to his superior officer while undergoing rigorous imprisonment in military custody. The gravamen of the charge was that on October 4, 1985 he tried to hit Capt. P.K. Sharma with an iron bar in his office with a motive to hurt him. He was produced before his commanding officer on the same day who after informing him of the charge directed a summary of evidence to be recorded on that very day. He was also served with a charge sheet and was informed that he would be tried by a summary Court Martial on the following day at 11.00 A.M. The petitioner was tried by the summary Court Martial on 5.10.1985 and was sentenced to suffer rigorous imprisonment for nine months in civil prison and was also dismissed from service. Feeling aggrieved by the finding and sentence of the summary Court Martial he presented a petition to the General Officer Commanding-in-Chief for passing such orders thereon as he may think fit. This petition was rejected by an order dated July 21, 1987 (Annexure P3/1 with the petition). Hence, the present petition.

3. Mr. K.S. Gill, Advocate appearing for the petitioner challenged the proceedings of the summary Court Martial on the following four grounds:-

(i) The Commanding Officer violated the mandatory provisions of Rule 22, 23 and 24 of the Army Rules, 1954. (hereinafter called "the Rules").

(ii) The petitioner was not provided a friend of his choice to assist him during the trial which was in violation of the mandatory provisions of Rule 129 of the Rules.

(iii) Rule 34 of the Rules had also been violated in as much as the petitioner was not given not given 96 hours interval after being informed of his trial by the summary Court Martial and his arrangement.

(iv) The petitioner was tried on a charge different from the one that was supplied to him in the charge sheet.

4. I have heard counsel for the parties at length and after going through the pleadings find no merit in this petition.

5. As regards the first contention, Rule 22 requires that every charge against a person who is subject to the Act other than an Officer shall be heard in the presence of the accused who will have full liberty to cross-examine any witness against him and to call any witness and make any statement in his defence. The grievance of the petitioner is that he was not heard by the commanding officer before he was charged and nor was he given the opportunity to call any witness or cross-examine any witness against him. This grievance has no basis. From the record produced by the respondents it is amply clear that the petitioner was heard by the commanding officer and the procedure prescribed in Rules 22, 23 and 24 was adhered to. After seeing the record, learned counsel for the petitioner did not press this submission any further.

6. So far as the second submission of the petitioner's counsel is concerned, it is the categorical stand of the respondents in their written statement that the

petitioner never made a request for the services of a legally qualified officer or a lawyer from the local Courts as is alleged in the petition and that the respondents on their own provided him the assistance of one Lt. K.G. Kutty who was detailed as a friend of the accused in accordance with Rule 129 of the Rules. Counsel for the petitioner could not point out anything from the record that the petitioner had ever made a request for a legally qualified officer of his own choice. In the circumstance, it cannot be said that Rule 129 of the Rules was violated.

7. As regards violation of Rule 34 of the Rule, it is admitted by the respondents that the occurrence took place on October 4, 1985 and the petitioner was informed of the proceedings of the summary court martial on the same day and that he was tried by a summary Court Martial on the following day at 11.00 A.M. It is true that Rule 34 requires that an accused has to be informed of every charge for which he is to be tried and the interval between his being so informed and his arraignment shall not be less than 96 hours. Admittedly, in the present case, the interval is less than 96 hours. The question that arises for consideration is as to what is the effect when the interval between the information and the arraignment is less than 96 hours. However, observance of Rule 34 can be dispensed with if under Rule 36 it appears to the Officer convening a Court Martial that military exigencies or necessities of discipline render it impossible or inexpedient to observe that rule. Of course, the officer has to make a declaration to that effect specifically in regard to such exigencies or necessities if they existed. This has not been done in the present case but it is averred in the written statement that 96 hours interval could not be allowed due to necessities of discipline. Be that as it may, since the Rules themselves provide for situations when Rule 34 need not be observed, it must be held that the observance of Rule 34 is only directory and its non-observance will not invalidate the Court Martial proceedings. Moreover, there is nothing on the record to show as to how the petitioner was prejudiced in the course of the trial. This contention of the petitioner too must fall.

8. Lastly, it was urged that in the charge sheet (Annexure P1 with the petition) on the basis of which the petitioner was tried it was stated that the offence was committed at 11.00 hours in the office of Capt. R.K. Sharma. But, in the charge sheet which was given to the petitioner on 4.10.1985 when he was warned for trial, the offence is said to have been committed at 11.30 hours in the unit quarter guard. The argument is that the two charge Sheets differ on particulars as to the time and place of the occurrence and, therefore, the whole incident becomes doubtful and the summary Court Martial proceedings are liable to be quashed. There is no force in this submission either. The charge sheet Annexure P1 was only a draft charge sheet on which summary of evidence was recorded. After reducing the evidence into writing the correct time and place of occurrence were mentioned in the final charge sheet which is Annexure P8 with the petition and the petitioner pleaded guilty at the trial to this charge sheet. No other question, in fact, arises in view of his confession.

9. In the result, the petition is dismissed leaving the parties to bear their own costs.