
(2007) 07 KAR CK 0023
In the Karnataka High Court
Case No : Writ Appeal No. 1833 of 2006

Union of India (UOI) and Others

APPELLANT

Vs

Lt. Col. Rakesh Gautam

RESPONDENT

Date of Decision : 31-07-2007

Acts Referred:

Army Act, 1950 — Section 122, 122 (1) (b)

Citation : (2008) 6 KarLJ 202 : (2008) 3 KCCR 1530

Hon'ble Judges : Cyriac Joseph, C.J;S. Abdul Nazeer, J

Bench : Division Bench

Advocate : Aravind Kumar, Assistant Solicitor General, for the Appellant;
Bhupinder Singh (Retired), for the Respondent

Final Decision : Dismissed

Judgement

Cyriac Joseph, C.J.—This writ appeal is filed against the judgment dated 31-7-2006 in Writ Petition No. 10327 of 2003 which was allowed by the learned Single Judge. The appellants are the respondents in the writ petition.

2. While the writ petitioner was serving as a Lieutenant Colonel in the Army, a Court of inquiry was ordered against him by respondent 6 on 28-8-1998. The said Court of inquiry was in respect of alleged misuse of railway warrants by the writ petitioners. The Court of Inquiry was ordered to inquire into the following:

(a) The exact number of railway warrants and Form Ds issued and used by IC-33219P Lt. Col. Rakesh Gautam of 50 Coy ASC (Sup.) Type "C" while performing the duties of OC 50 Coy ASC (Sup.) Type "C" and if the same have been issued to him as per auth. This may also be checked from CDA, if felt necessary.

(b) To pinpoint the blame, if any regarding issue procedure and auditing of the railway warrants by the unit concerned.

3. The proceedings of the Court of inquiry were commenced only on 17-2-2000

and concluded in August 2000. After the Court of inquiry, a summary of evidence was ordered in September 2000 and it was completed on 19th December, 2000. Additional summary of evidence was ordered on 26th April, 2001 and it was completed in July 2001. On 25-2-2002 a General Court Martial was ordered against the writ petitioner under the provisions of the Army Act, 1950. The proceedings of the General Court Martial were commenced on 13th March, 2002 and were concluded on 1st April, 2002. The petitioner was held guilty and was ordered to be dismissed from service. When the matter was placed before the Competent Authority for confirmation, the sentence of dismissal was modified as forfeiture of 12 years past service for the purpose of pension and severe reprimand. Even though the petitioner had raised a contention before the General Court Martial that the trial was barred by limitation u/s 122 of the Army Act, it was overruled. The same contention was raised by the petitioner in his appeal before the Chief of Army Staff, but while rejecting the appeal the contention was overruled. Hence, the petitioner filed the writ petition challenging the General Court Martial proceeding's and the punishment imposed on him.

4. Though several contentions were raised in the writ petition, the learned Single Judge considered only the question regarding the bar of trial u/s 122 of the Army Act. Even though the petitioner specifically contended in the writ petition that the time gap between the knowledge of the alleged offence and the holding of the Court Martial was approximately three years and six months and hence the trial was barred by limitation u/s 122 of the Army Act, there was no specific reply to the said contention in the statement of objections filed by the respondents. A vague reply was given by the respondents stating that the contention of the petitioner that the trial was barred by limitation was totally frivolous and baseless and that the trial was not barred by limitation. After referring to the relevant facts and the provisions contained in Section 122 of the Army Act, the learned Single Judge held that the trial was barred by limitation and accordingly Annexure-A and AI were quashed.

5. Having heard the learned Assistant Solicitor General appearing for the appellants and having considered the facts and circumstances of the case, we do not find any merit in the writ appeal. It is not disputed that u/s 122(1)(b) of the Army Act, no trial by Court Martial of any person for any offence shall be commenced after the expiration of a period of three years. The period of three years shall commence, where the commission of the offence was not known to the person aggrieved by the offence or to the authority competent to initiate action, on the first day on which such offence comes to the knowledge of such person or authority, whichever is earlier.

6. In this case when the appellants came to know about the alleged misuse of railway warrants by the writ petitioner, a Court of inquiry was ordered on 28-8-1998. Hence it cannot be disputed that the offence had come to the knowledge of the authority competent to initiate action at least on 28-8-1998. The General Court Martial was ordered on 25-2-2002 only and the proceedings of

General Court Martial commenced only on 13th March, 2002. Hence, it is clear that the trial of the writ petitioner by Court Martial was ordered and it commenced after the expiration of a period of three years from the first day on which the offence came to the knowledge of the authority competent to initiate action. Therefore the General Court Martial held against the petitioner was clearly barred by limitation u/s 122 of the Army Act. Therefore, the entire General Court Martial proceedings against the writ petitioner were illegal and unauthorised and the learned Single Judge was right and justified in quashing Annexure-A and A1.

7. Hence there is no merit in the writ appeal. The writ appeal is dismissed.