

(2006) 01 P&H CK 0020
In the Punjab And Haryana At Chandigarh
Case No : Criminal W.P. No. 224 of 2001

Vito Singh

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 27-01-2006

Acts Referred:

Army Act, 1950 — Section 52(a), 63

Citation : (2006) 4 RCR(Civil) 179 : (2006) 4 RCR(Criminal) 203

Hon'ble Judges : Rajive Bhalla, J

Bench : Single Bench

Advocate : G.S. Ghuman, for the Appellant; Gurpreet Singh, Central Govt. Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Rajive Bhalla, J.—Prayer in the present petition is for the issuance of an appropriate writ, order or direction, quashing the proceedings of the

Summary Court Martial, the order dated 12.3.1998, whereby the petitioner was reduced to ranks and also for quashing the order dated 8.9.2000,

vide which the petitioner was confined to lines for 10 days.

2. Charged with commission of offences under Sections 52(a) and 63 of the Army Act, the petitioner was brought before a Summary Court

Martial and upon conclusion of its proceedings, a punishment of reduction to ranks awarded. The charges, were that the petitioner stole two

magazines and 60 bullets of AK 47 Rifles from a colleague and then returned the above articles, after receiving a sum of Rs. 1,000/-.

3. Counsel for the petitioner, urges that the petitioner declined to sign a list of medicines without physical entrustment of the medicines. Thereafter,

he was forced to sign the list by his superior officer. After the petitioner declined

a similar order, he was falsely implicated in the present case and, therefore, the proceedings against him are mala fide. It is further argued that after the Court of Inquiry and the summary of evidence, a charge-sheet was served upon the petitioner. However, the charge-sheet was not accompanied by copies of the summary of evidence. The petitioner repeatedly demanded copies of the summary of evidence but despite repeated demands copies were never provided to the petitioner. On 12.3.1998, the petitioner was marched upto the office of the Commanding Officer and asked to affix his signatures on certain papers. He was informed that charges against him had been dropped. The petitioner, affixed his signatures, in good faith and was asked to wait outside. After some time, he was called into the office and the Commanding Officer announced that as the petitioner had been found guilty, he was punished with reduction to ranks.

4. The petitioner, thereafter, was asked to proceed on one month's annual leave from 14.3.1998 to 12.4.1998. Upon return, he was served with movement orders, for transfer to 328 Field Ambulance. The petitioner made a request for the supply of a copy of the order, reducing him to ranks, but no orders were supplied. The petitioner, thereafter, approached the Free Legal Aid Cell at Meerut to take up his case and file an appeal and, thereafter, that cell filed an appeal u/s 164 of the Army Act and prayed for supply of relevant documents and information. Instead of deciding the aforementioned application on merits, the authority unfairly formed an opinion that the petitioner had levelled false allegations against the Commanding Officer and, therefore, addressed a letter to the Commandant, Military Hospital, Ambala, the then disciplinary authority, that disciplinary action be initiated against the petitioner for levelling false allegations. The petitioner was charge-sheeted and awarded another punishment of confinement to lines for 10 days, vide order dated 8.9.2000 Annexure P-6. The petitioner forwarded another written request to the Commanding Officer of 27 Rashtriya Rifles, to provide a copy of the Summary Court Martial proceedings but to no avail. Thereafter, the petitioner filed CWP No. 13284 of 2000 and after issuance of notice in the aforementioned petition, the respondents made available copies of the Summary Court Martial, summary of evidence and the charge-sheet etc. The

petitioner impugned the aforementioned punishment by way of criminal writ petition No. 187 of 2001. However, the said writ petition was dismissed as withdrawn, as the proceedings of Summary Court Martial were not appended therewith. After appending the proceedings of the Summary Court Martial, the petitioner has filed the present petition.

5. On the basis of the aforementioned facts, counsel for the petitioner contends that the punishment imposed upon the petitioner, pursuant to the order passed by the Summary Court Martial, is void. As per a note appended to Section 52(a) of the Army Act, 1950 (hereinafter referred to as the Act") pre-trial advice was required to be taken from the Commandant, Military Hospital, DJAG. However, advice was taken from the HQ 10 Infantry Brigade DJAG and thus, the very constitution of the Summary Court Martial, being violative of the aforementioned note, the order inflicting punishment upon the petitioner is without jurisdiction and thus void.

6. It is further contended that as per regulation 448, while considering a question of punishment, a Summary Court Martial is required to take into consideration the rank of the delinquent official. In the present case, the petitioner's rank has been wrongly noticed as Naik, (Paid Acting Havildar) whereas the petitioner was a Substantive Havildar. As the Summary Court Martial has considered a wrong rank, the impugned proceedings and orders are void.

7. It is further argued that the petitioner's trial commenced at 11.10 hours and finished at 1200 hours, a total 50 minutes. It is, thus, apparent that sufficient opportunity was not granted to the petitioner to defend himself.

It is further contended that a copy of the Court of Inquiry was not supplied to the petitioner, therefore, serious prejudice was caused while defending the charges levelled against him.

8. The last argument raised is that the punishment imposed is grossly disproportionate to the alleged offence and, therefore, should be set aside or reduced.

9. Counsel for the respondent on the other hand contends that the petitioner was arraigned before the Commanding Officer for offences committed under Sections 52(a) and 64(e) of the Act. After hearing the charges, the Commanding Officer directed the evidence to be reduced into writing.

Summary of evidence was recorded on 31.1.1998 and after complying with the relevant provisions of the Army Act, an application was

forwarded to HQ 10 Infantry Brigade (A Branch), vide letter dated 3.2.1998, for obtaining pre-trial advice from DJAG HQ 16 Corps, which was

later returned with the pre-trial advise. The petitioner was tried by Summary Court Martial on 12.3.1998 and was awarded a sentence of

reduction to ranks". The summary Court Martial proceedings were duly approved by the HQ 16 Corps DJAG, vide letter dated 6.4.1998 and

the punishment implemented.

10. It is argued that contention of counsel for the petitioner as regards pre-trial advice is factually incorrect. Pre-trial advice was obtained from the

competent authority as pleaded in the written statement. The grievance of the petitioner that a copy of the Court of Inquiry was not supplied is

contrary to the Army Act, as there is no provision in the Army Act that requires the authorities to supply a copy of the Court of Inquiry. As held in

Union of India v. Major A. Hussain (IC-14827), 1998 (1) SCT 288 : 1998 (1) RCR (Crl.) 300, Rule 184 of the Rules does not mandate supply

of a copy of the Court of Inquiry. The official can, if he so desires, apply for a copy, which would then be supplied. As the petitioner never applied

for a copy of the Court of Inquiry, his grievance is imaginary. It is further contended that the Court of Inquiry is a mere preliminary investigation and

not a trial as no findings are returned or recorded and, thus, even otherwise, no prejudice could be caused to the petitioner by the non-supply of its

copies. In so far as, the plea that no evidence was adduced, it is submitted that as the petitioner pleaded guilty of the charges levelled, no evidence

was required to be produced. The petitioner cannot now turn around and urge that his plea of guilty be discarded as no evidence was adduced. It

is further argued that stealing of ammunition and then returning it to another official, by taking money, is a serious offence. The petitioner could have

been punished with a more severe punishment but has only been reduced to ranks and, therefore, submission of counsel for the petitioner that the

petitioner's rank has not been taken into consideration, cannot be accepted.

11. In so far as the punishment inflicted for levelling false and scandalous allegations in a subsequent letter, it is contended that the petitioner

levelled false and baseless allegations, against the Commanding Officer, who

imposed punishment upon him and, therefore, the punishment was justified. The punishment is in no manner illegal or contrary to the provisions of the Act or rules. In so far as the severity of the punishment, it is contended that the punishment is in no manner disproportionate to the offences complained. The petitioner, in fact, has been shown a degree of leniency.

12. I have heard learned counsel for the parties and perused the record.

13. It is apparent from the record that the petitioner was brought before a Summary Court Martial to stand trial u/s 52(a) and Section 63 of the

Act namely, for committing theft of property belonging to the Government and committing an act prejudicial to good order and military discipline.

The charge-sheet, alleges that on 17.1.1998, the petitioner committed theft in respect of 2 magazines and 60 rounds of AK 47 Rifle ammunition.

On 19.1.1998, the petitioner improperly took Rs. 1,000/- from Sowar Mohan Singh, of the same regiment in consideration for returning the two

magazines and 60 rounds of ammunition. A Summary Court Martial was convened by the Commanding Officer and charges were read out and

explained to the petitioner. A perusal of the proceedings of the Summary Court Martial reveals that the petitioner pleaded guilty to both charges. It

is recorded in the proceedings that the Court satisfied itself that the accused had understood the charges and the effect of his plea of guilty.

Thereafter, separate proceedings with respect to the plea of guilty were recorded and a question was put to the petitioner, as to whether he

desired to make any statement with regard to the charges or mitigation of the punishment. The petitioner declined to make any statement,

whereupon, the Summary Court Martial proceeded to pronounce sentence i.e. ""to be reduced to ranks"". It would be appropriate to mention that

the aforementioned order was passed on 12.3.1998. The petitioner, did not file any post-confirmation petition or impugn the punishment in any

manner. It was only on 16.7.2000 that the petitioner addressed a letter to the Commanding Officer, 27 Rashtriya Rifles, praying for supply of copy

of the Summary Court Martial and connected documents, which were eventually supplied to the petitioner after he filed a writ petition in this Court.

14. The first contention urged by counsel for the petitioner that pre-trial advice was not sought from the Commandant Military Hospital, DJAG, as

is required by Note 1 to Section 52(a) of the Army Act, is factually incorrect. A perusal of the written statement reveals that a communication dated 3.2.1998 was addressed to HQ 10 Infantry Brigade (A Branch), for obtaining pre-trial advice of (DJAG) HQ 16 Corps. The said communication was despatched to HQ 16 Corps (DJAG) by HQ 10 Infantry Brigade, vide letter No. 21215/A dated 13.2.1998, which was later returned from DJAG along with the requisite pre-trial advice, vide letter No. 3005/190/JAG dated 23.2.1998. It is, thus, apparent that there was no violation of the aforementioned note. Even if, it is to be presumed that there was some technical violation, counsel for the petitioner has failed to establish any prejudice, that visited the petitioner. Mere violation of technical rules of procedure, without any corresponding miscarriage of justice would not cast a shadow upon the Summary Court Martial.

15. The next contention raised, by counsel for the petitioner, that the punishment imposed upon the petitioner is disproportionate to the offence

alleged, in my opinion, merits outright rejection. The seriousness of the charge, namely; stealing annunition and thereafter receiving a sum of Rs.

1,000/- for restoring it to a colleague, who was apparently being charged for loss of the ammunition, in my considered opinion, could have

attracted a far serious punishment, like dismissal from service and/or imprisonment. What to talk of the punishment being disproportionate, in my

considered opinion, in the facts and circumstances of the present case, the punishment awarded borders on leniency.

16. Another contention that as the petitioner's rank is wrongly mentioned in the Summary Court martial proceedings, his rank was not considered,

while considering the question of sentence merits rejection. The petitioner's rank and his long service was apparently the reason that led to the

lenient punishment imposed. Even otherwise, no prejudice has been pleaded nor adverted to during the course of arguments. Another contention

raised by the counsel for the petitioner that the subsequent punishment, namely; confinement to lines for 10 days was imposed on account of the

mala fides of the Commanding Officer, does not merit acceptance. The punishment was imposed, as while filing a representation, now given the

title of a post-confirmation petition, the petitioner levelled false and scandalous allegations against his earlier Commanding Officer. As these

allegations were found to be false, the petitioner was rightly punished. No illegality or infirmity has been pointed out in the aforementioned order of punishment.

Counsel for the petitioner also contends that as a copy of the Court of Inquiry was not supplied to the petitioner, entire proceedings stand vitiated.

The Army Act does not contain any provision that requires the respondents to supply a copy of the proceedings, before a Court of Inquiry. The

petitioner, however, has a right to apply for a copy. He failed to exercise his right and, therefore, cannot raise a grievance that no copy was

supplied. The other contention of counsel for the petitioner is that copies of the orders were not supplied. It would be significant to notice here that

the first punishment was imposed as far back in the year 1998. The second punishment was imposed on 8.9.2000. Between 1998 and the year

2000, the petitioner did not raise any grievance that he was not supplied copies of the proceedings of the Summary Court Martial and the other

orders. It was only in the year 2000, that the petitioner filed CWP No. 13284 of 2000 before this Court, praying for the issuance of a direction to

the respondents to supply the aforementioned copies. It appears that an attempt was being made to cover the delay in approaching the Courts.

Even otherwise, as no prejudice has been pleaded or established, the aforementioned submissions do not merit acceptance.

In view of what has been discussed herein before, as the present petition lacks merit and as the impugned orders do not suffer from any illegality or

perversity, as would warrant exercise of jurisdiction under Article 226 of the Constitution of India, the present petition is dismissed.