

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Reserve : 10.1.2008
Date of Decision : 28.1.2008

+ **WP(C) No.8065/2002**

Ex. Nk. Yashpal Singh Petitioner

Versus

Union of India and Others. ... Respondents

Advocates who appeared in this case :

For the petitioner : Mr.S.M.Dalal, Advocate

For the respondents : Ms.Rachitta Priyanka with Major
S.S.Pandey, Advocate

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE J.M. MALIK

- | | |
|--|-----|
| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

J.M. MALIK, J.

*

1. The petitioner joined the Indian Army as Sepoy/Gunner. In the year 2000, he was posted at Artillery Centre, Hyderabad and was holding the rank of Naik. Some Army personnel came to the

house of the petitioner on 19th October, 2000, when the petitioner was on annual leave and searched his house in his absence. Subsequently, the petitioner was charged under three heads for offences under Sections 63 and 64(e) of the Army Act, 1950. The first charge pertained to attempt for gratification for himself as a motive for procuring the enrollment of persons in service. The indictment against the petitioner was that on 5th October, 2000, he agreed to accept a sum of Rs. 40,000/- per individual from three persons, namely, Kuldeep, Subhash and Sunil Grewal. Secondly, he had taken away the educational certificates of the said three persons reporting for recruitment at Artillery Centre, Hyderabad on 9th October, 2000 and after obtaining false stamps and signatures of the Recruiting Officer, returned the said certificates to the above-named individuals wrongly indicating that they had qualified in the preliminary screening, which they had not cleared since they did not take part in the one mile run. Lastly, that between 28th September, 2000 and 15th October, 2000 he ***improperly*** hired eight rooms in a lodge in Langar House, Hyderabad at a rent of Rs. 20,000/- for one month to accommodate 50 to 60 boys belonging to Haryana, who had come for recruitment at Artillery Centre, Hyderabad with effect

from 9th October, 2000 and paid Rs. 10,000/- as advance, that is, Rs. 2000/- to Shri K.V.Reddy, owner of the lodge, and Rs.8000/- to Shri A.Shekhar Reddy, the Manager of the lodge.

2. The Summary Court Martial was held against the petitioner from 30th October, 2000 to 6th November, 2000 and the petitioner was sentenced to be reduced to ranks and to suffer rigorous imprisonment for one year in civil prison and to be dismissed from service. The statutory appeal filed by the petitioner under Section 164(2) read with Section 179 of the Army Act was rejected by the Chief of the Army Staff on 5th July, 2001. Aggrieved by that order, the instant writ petition was filed on 1st December, 2002 for quashing the impugned appellate order dated 5th July, 2001, the conviction and sentence of the Summary Court Martial dated 6th November, 2000 and for reinstatement of the petitioner in service with all service benefits such as continuity in service, payment of back wages and promotion from the date when his juniors had been granted.

3. The respondents have contested the instant writ petition.

4. We have heard the counsel for the parties and marshalled the record and the brief synopsis submitted on behalf of the petitioner.

5. The principal argument urged by the learned counsel for the petitioner is that the trial is without jurisdiction. It was argued that Col. R.N.Kakar, Deputy Commandant of Artillery Centre, who constituted the Court and held the trial of the petitioner was not the Commanding Officer of the petitioner in terms of the Army Act. Our attention was drawn towards Section 116 read with Section 3 (VI) and Army Rule 187 (3)(e). It was argued that since the petitioner was posted to Artillery Centre, Hyderabad, the Commandant of the said Centre, who is a Brigadier is the proper Commanding Officer of the petitioner. Again, the statutory powers vested in Commandant by way of Section 3(VI) and Rule 187(3)(e) cannot be delegated by publishing an Army Order. It was urged that under these circumstances the entire Summary Court Martial stands vitiated.

6. We find no force in this argument. This is an indisputable fact that Lt. Col. J.H.Mayne was exercising the powers of a Special Unit Cadre and not the Commanding Officer of the accused. He was Deputy Commandant in whom the powers of the Commanding Officer were vested in view of the provisions of AO 251/72. The said order runs as follows :

“ AO 251/72 Discipline-Command over

personnel

1. By virtue of his appointment, the commander of a formation is also the Commanding Officer of all personnel of, and attached to, the formation headquarters. It is only when he does not wish to exercise personally his powers as Commanding Officer that the question of appointing a Staff Officer as Commanding Officer arises. Such appointments should invariably be made in writing by the formation commander and promulgated in Part I Orders.

2. In small formation headquarters, only one officer need be appointed as Commanding Officer of all formation headquarters personnel, including officers. In larger formation headquarters, however, it is obviously necessary to appoint two officers as Commanding Officers, one for officers and another for JCOs and OR.

3. In the absence of any of the officers appointed as per para 2 above, the officers who will officiate as Commanding Officers will require to be detailed in orders in writing.

4. Where a Staff Officer of the rank of Brigadier is the Commanding Officer for officers of a large formation headquarters, he cannot try such officers summarily under Army Act Sec 83. For this purpose, the officer in question must be tried by the local Sub Area or Brigade Commander, unless the commander of the formation concerned himself chooses to do so.

5. As regards establishments and organisations, other than formation headquarters, the Commandants or Commanders of which have been authorised by the Central Government under Army Act Sec 8 to exercise the powers which under that Act may be exercised by an officer commanding a division or a brigade, the next senior most officer on the strength of the

establishment or organisation may be appointed as Commanding Officer in the manner laid down in paras 1 to 3 above.

6. AO 779/64 is HEREBY CANCELLED.”

In view of this order, we are of the view that the Deputy Commandant was authorised to deal with this case.

7. The second submission made by learned counsel for the petitioner was that the charges framed against the accused are not clear and they do not reveal the culpability. In the chargesheet it was explained that the petitioner had attempted to obtain for himself a gratification, whereas in the particulars of the charge, it is averred that he agreed to accept a sum of Rs.40,000/-. He argued that the heading and the particulars mentioned in the charge are at variance. It was stressed that the attempt to obtain or agreeing to obtain are two different offences. Again, the second charge is innocently worded. This is an offence of forgery under the Indian Penal Code. It is, therefore, a civil offence chargeable under Section 69 of Army Act. The offence under Section 69 is not ordinarily triable by Summary Court Martial in view of the restriction imposed under Section 120(2), unless a reference had been made to an officer empowered to convene a District Court Martial. It is a prohibitory provision and if

violated renders the trial without jurisdiction. Turning to the instant case the learned counsel for the respondent vehemently argued that no sanction had been obtained from the authority aforesaid and thus, the trial stands vitiated. Lastly, adverting to third charge, he argued with vehemence that the hiring of 8 rooms in a lodge in Hyderabad does not reveal any culpability.

8. All these arguments are without merit. The entire record had to be read as a composite document and not in piecemeals to the benefit of one and to the detriment of the other. The heading of the charge just gives the gist/title of the offence with which the offender is charged. The requirement of law is that the charge must give the full particulars. Charge No.1 gives the full particulars of the offence with which the petitioner was charged. Consequently, the argument in this context must be left out of consideration. Moreover, in view of Rule 32 of Army Act, the petitioner has failed to show that prejudice was caused to him due to the framing of the above-said charge. Rule 32 of Army Rule lays down,

“Validity of charge-sheet.”-(1) A charge-sheet shall not be invalid merely by reason of the fact that it contains any mistake in the name or description of the person charged, provided that he does not object to the charge-sheet during the

trial, and that no substantial injustice has been done to the person charged.

(2) In the construction of a charge-sheet or charge, there shall be presumed in favour of supporting the same every proposition which may reasonably be presumed to be impliedly included though not expressed therein."

9. Section 63 of the Army Act, 1950 in the manual of Military Law, Volume II, issued by the Ministry of Defence, Government of India, runs as follows:-

"63. Violation of good order and discipline.-

Any person subject to this Act who is guilty of any act or omission which, though not specified in this Act, is prejudicial to good order and military discipline shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as in this Act mentioned.

NOTES

1, 2 and 3 (a) xxx xxx xxx

3(b) *Negligently*.-Negligence has been defined by judicial pronouncements as "the omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do and as "doing some act which a person of ordinary care and skill would not do under the circumstances.

4. The following are a few instances of offences not uncommonly charged under this section:-

xxx xxx xxx

Stating a falsehood to a superior officer.

xxx xxx xxx”

10. The last argument in this context is also devoid of force. The learned counsel for the petitioner did not pick up a conflict with the contention raised by the counsel for the respondent that the petitioner had rented the rooms in the civilian area contrary to the existing orders of obtaining permission from authority to do so. Consequently, the petitioner had violated military orders and discipline. The use of word improperly in the charge gives an inkling that the petitioner had committed an act which was contrary to military orders. In the result the argument urged by the learned counsel for the petitioner must be left out of consideration.

11. The next submission made by the learned counsel for the petitioner was that it is a case wherein the punishment was awarded without any evidence. He strenuously argued that the respondents have failed to produce cogent, convincing and plausible evidence against the petitioner to prove its case beyond reasonable doubt.

13. It must be borne in mind that the scope of judicial review is limited. This court is not required to reassess the

evidence produced before the trial court. However, there is nothing on record which may go to reveal that the accused / petitioner was prejudiced by any action of the Summary Court Martial.

14. The last submission made by the learned counsel for the petitioner was that the petitioner was greatly prejudiced because he was not given the opportunity to engage a qualified lawyer. The so-called friend of petitioner viz. Major Ravi Kumar was not legally qualified person and being from the unit of Commanding Officer had to toe his line and did not help the petitioner in defending his case. The learned counsel for the petitioner has referred to a judgment of this court in CWP No. 2937/1995 titled as Ranjit Singh, Ex. Sepoy Vs. Union of India and Ors., decided on 18th May, 2002.

15. All these arguments carry no conviction. The facts of the above said case are altogether different. In that case, the petitioner did not know the language of the court. He was unable to communicate with his counsel, who also did not know his language. Consequently, the above said authority provides no assistance to the petitioner. Again Rule 129 runs as follows :

“129. Friend of accused – In any

summary court-martial, an accused person may have a person to assist him during the trial, whether a legal adviser or any other person. A person so assisting him may advise him on all points and suggest the questions to be put to witnesses, but shall not examine or cross-examine witnesses or address the court.”

16. There is nothing on the record which may go to show that the petitioner had prayed that he should be assisted by a legal adviser or such request made by him was declined by the court concerned. We have perused the record and the cross-examination of the witnesses. It appears that the person, who was engaged in cross-examination of the witnesses had the legal knowledge. For all these reasons, we are unable to locate substance in this argument as well.

17. Again, the petition is lame of strength and the same is therefore dismissed but there shall be no order as to costs.

J.M. MALIK, J.

A.K. SIKRI, J.

January 28, 2008
dc