

Ramesh Chander Vs. Union of India and Others

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Court : Armed forces Tribunal AFT Principal Bench New Delhi

Decided On : May-02-2011

Judge : S.S Kulshrestha, Member & the Honourable Lt. Gen. S.S Dhillon, Member

Appeal No. : T.A NO. 80 of 2009 (Writ Petition (Civil) No.1682 of 1992)

Appellant : Ramesh Chander

Respondent : Union of India and Others

Judgement :

1. The appellant has filed W.P (C) No. 1682 of 1992 before the Delhi High Court challenging the Summary Court Martial (SCM) proceedings of 20.3.1986, wherein he was held guilty for an offence under Army Act Section 40(a) and sentenced to undergo rigorous imprisonment for three months and dismissal from service. The writ petition was transferred to this Tribunal after its formation and is being disposed of by this judgment, treating it as an appeal under Section 15 of the Armed Forces Tribunal Act 2007.

2. The appellant joined the Indian Army in 1978 and was posted to the ASC as an MT Driver. At the time of the incident, he was posted with 533 ASC Bn at Hissar. While posted with this unit, an SCM was held on 20.3.1986, which convicted the appellant for an offence of grappling with Nb Sub Raghunath of the same unit on 5.12.1985.

3. The first and foremost grievance of the appellant is that he was not provided any documents till such time that he specifically asked for them after he was shifted to the Civil Jail. On his specific request, while a copy of the SCM proceedings was sent to him, he was not in possession of the summary of evidence. In the absence of the original records, it would be injudicious to reject the appeal of the appellant. The appellant also contended that the plea of guilty, as recorded in the SCM, has not been signed by him. In actual fact, the consistent plea of the appellant all along i.e. during the initial hearing under Army Rule 22, at the summary of evidence and subsequently during his trial by SCM, was that he was not guilty. Therefore, for the court to just enter a plea of guilty and proceed with the trial was malicious and unsustainable. In fact, the question of the appellant pleading guilty before the court martial did not arise since there was nothing on record to prove anything against him. Even the mandatory certificate under Army Rule 115(2) has not been signed by the appellant. His supposed plea of guilty is grossly inconsistent with the statement of the appellant given at the time of summary of evidence, wherein he had pleaded his innocence. Therefore, for the CO to short circuit the entire proceedings by entering a false plea of guilty is uncalled for and the SCM needs to be set aside only on this ground.

4. It was also contested that bare facts indicate that there was a scuffle between Nb Sub Raghunath and the appellant, which is borne out by the CO himself in his report of 31.1.1986, wherein the CO has categorically stated that the JCO had also used abusive language against the appellant and that both of them had hit each other. It was also argued that while both the appellant and Nb Sub Raghunath were sent for a medical check up, the written report of the Army doctor specifies that the JCO had only sustained superficial injuries while the Medical Officer categorically recorded that the appellant had lacerated wound, injury (RT) eye-brow. It was, therefore, apparent that it was the appellant who was the victim of this scuffle and not vice versa. It was also argued by the appellant that the SCM was violative of Army Rule 34, inasmuch as he did not get the mandatory 96 hours warning period before his court martial. He was informed about the court martial on 17.3.1986, whereas the court martial took place on 20.3.1986 at 1200h. This period, which was less than 72 hours, is well below the mandatory 96 hours that is required to be given to the appellant under Army Rule 34(1). The other legal

infirmities, which were indicated, were that the charge sheet was defective and violated Army Rule 30.

5. It was also argued by the appellant that when he had made a petition to respondents 1 and 2 under Army Act Section 164(2), the authorities, while rejecting his appeal, had converted the punishment of dismissal into discharge only on humanitarian grounds. This order of discharge was illegal and unjustified as the order of discharge was innocuous in form, but punitive in character and did not, in any manner, provide him any relief. In any case, the section under which the order of dismissal has been converted into discharge has not been indicated to him and neither was any prescribed procedure followed while changing the punishment of dismissal to discharge. Lastly, it was argued by the appellant that the punishment imposed on him was not commensurate with the gravity of the allegation of misconduct. If it was a scuffle in which two parties are involved and the scuffle was of a minor nature, and this was his first offence; the sentence of rigorous imprisonment for three months was more than enough to meet the ends of justice. Combining this rigorous imprisonment with dismissal was shockingly disproportionate and has deprived him of his livelihood for the past 25 years.

5. The charge under which the appellant was tried is as given below:

Army Act Sec. 40(a)

ASSAULTING HIS SUPERIOR OFFICER

in that he,

at field on 05 Dec 85 at about 2010h grappled with NYA-6607201-K Nb/Sub (MT) RAghu Nath of the same unit.

6. Counsel for the respondents stated that the case is a very old one of 1986 and the appellant had gone to the Delhi High Court in 1992. In the interim, the records have been destroyed as per the Rules, i.e. after three years. Accordingly, the respondents are not possessed of the records or a copy of the records and despite all efforts have been unable to procure the same. This was responded to by counsel for the appellant by stating that after his dismissal on 20.3.1986, he was

released from Civil Jail in July and immediately thereafter, he set about filing an appeal in the Civil Court. He filed an appeal in the Court of Senior Sub Judge, Delhi on 12.7.1987 and withdrew it on 22.1.1992 with permission to file afresh since in the interim, the historic judgment in S.N Mukherjee v. Union of India (1991(1) SLJ 1) was pronounced by the apex Court, which strengthened his case. Soon thereafter, he filed afresh on 15.5.1992 before the Delhi High Court. It was, therefore, incorrect to state that after his court martial in 1986 he had an filed appeal only in 1992 because the first case filed by him was on 12.7.1987. Therefore, if the authorities have destroyed the records, the onus of such action rests squarely on them and not on the appellant.

7. With regard to the signing of the plea of guilty under Army Rule 115(29), counsel for the respondents urged that the appellant had made an unequivocal plea of guilty, however, he conceded from the photo copy of the records, as filed by the appellant, that the signatures of the appellant do not appear below the plea of guilty and neither below the certificate under Army Rule 115(2). The respondents, while accepting that only 72 hours notice had been given for the trial against 96 hours, as mandated under Army Rule 34(1), urged that this had not prejudiced the appellant in any manner. Furthermore, it was the prerogative of the COAS to convert the sentence of dismissal to discharge and it was advantageous to the appellant. Lastly, considering the necessity of upholding the requirement of discipline in the Armed Forces, the sentence given by the SCM was not shockingly disproportionate. The respondents also clarified that action had also been taken against the JCO, Nb Sub Raghu Nath, who was involved in the scuffle with the appellant.

8. We have perused the copy of the SCM. It is evident that the plea of guilt has not been signed by the appellant. Further, the appellant was not informed about the general effect of the plea of guilt or about the difference in procedure which is involved in the plea of guilt. Therefore, the finding based on the alleged plea of guilt would have no meaning at all. This view finds force from the decision of the Delhi High Court in LNK Gurdev Singh v. Union of India (W.P (C) No. 776 of 1995 dated 1.2.2008), which was followed by this Tribunal in Ex. Nk. Subhash Chand v. Union of India and others (T.A No. 723 of 2009 dated 27.4.2010). The

observations made by Delhi High Court in LNK Gurdev Singhs case (supra) are extracted below:

Though the petitioner has allegedly admitted the charge by pleading guilty, his signatures nowhere appear on the purported plea of guilt. When an accused person pleads guilty, it would be necessary to obtain his signatures to lend authenticity to such proceedings. This basic requirement was not even adhered to, the absence whereof lends credence to the allegation of the petitioner that he was not even present at the time of recording of the summary court martial proceedings and he never pleaded guilty.

In our recent judgment pronounced on 17.01.2008 in LPA no.254/2001 entitled The Chief of Army Staff and Ors. Vs. Ex.14257273 K.Sigmn Trilochan Behera, we have concluded that such court martial proceedings would be of no consequence and would not stand the judicial scrutiny. In forming this opinion, we had referred to the judgment of the Jammu and Kashmir High court in the case of Prithpal Singh Vs. Union of India and Ors., 1984 (3) SLR 675 (JandK). We had also take note of the instructions issued by the respondents themselves in the year 1984, based on the aforesaid judgment of the Jammu and Kashmir High Court, mandating that signatures of the accused pleading guilty of charge be obtained and if there is an infraction of this procedural requirement, it would violate the mandatory procedural safeguard provided in Rule 115(2) of the Army Rules and would also be violative of Article 14 of the Constitution of India.

Faced with this, an innovative justification was sought to be given by the respondents, namely, the said guidelines were issued by Northern Command whereas the petitioner was tried by the unit in Eastern Command. We feel that the law of the land has uniform application across the country and there cannot be one law for a particular command and different law for another command under the Army. We may note that even this Court has taken similar view in Lachhman (Ex Rect) vs. Union of India and Ors., 2003 II AD (Delhi) 103 wherein it was held as under:-

The record of the proceedings shows that the plea of guilty has not been entered into by the accused nor has it been recorded as per Rule 115 in as much neither it

has been recorded as finding of court nor was the accused informed about the general effect of plea of guilt nor about the difference in procedure which is involved in plea of guilt nor did he advise the petitioner to withdraw the plea if it appeared from the summary of evidence that the accused ought to plead not guilty nor is the factum of compliance of sub-rule (2) has been recorded by the Commanding Officer in the manner prescribed in sub rule 2(A). Thus the stand of the respondents that the petitioner had entered into the plea of guilt stands on highly feeble foundation.

Same view was taken by the Allahabad High Court in Uma Shanker Pathak Vs. Union of India and Ors., 1989 (3) SLR 405. The Jammu and Kashmir High Court has reiterated its opinion in a recent judgment in Sukanta Mitra vs. Union of India and Ors. 2007 (2) 197 (JandK), wherein the Court held as follows:

This apart the fact remains that the appellant has been convicted and sentenced on the basis of his plea of guilt. The plea of guilt recorded by the Court does not bear the signatures of the appellant. The question arising for consideration, therefore, is whether obtaining of signatures was necessary. In a case Union of India and Ors. Vs. Ex-Havildar Clerk Prithpal Singh and Ors. KLJ 1991 page 513, a Division Bench of this Court has observed:

The other point which has been made basis for quashing the sentence awarded to respondent-accused relates to clause (2) of rule 115. Under this mandatory provision the court is required to ascertain, before it records plea of guilt of the accused, as to whether the accused undertakes the nature of the charge to which he has pleaded guilty and shall inform him of the general effect of that plea and in particular of the meaning of charge to which he has pleaded guilty. The Court is further required under this provision of law to advise the accused to withdraw that plea if it appears from summary of evidence or otherwise that the accused ought to plead not guilty. How to follow this procedure is the main crux of the question involved in this case. Rule 125 provides that the court shall date and sign the sentence and such signatures shall authenticate of the same. We may take it that the signature of the accused are not required even after recording plea of guilt but as a matter of caution same should have been taken.

9. The legal position remains that the plea of guilt is necessarily required to be signed by the appellant to give authenticity to it. In this case, the signatures of the appellant do not appear on the plea of guilt. It would only have been appropriate that the SCM be conducted as if the appellant had pleaded Not Guilty. It is, therefore, to be presumed that the appellant did not plead guilty and the SCM proceedings should have been conducted on such premise.

10. Adequate opportunity was given to the respondents between 22.10.2009 and April 2011 to produce the records or to reconstruct the records from whatever documents were held by both the parties. However, since neither party has any record or copy of the summary of evidence and only a photo copy of the court martial proceedings was held by the appellant; they were unable to take any plea with regard to the facts of the case or what specific evidence was produced to convict the appellant.

11. In the absence of any records or evidence of the court martial and also considering that the plea of guilty was not signed by the appellant, we have no hesitation in setting aside the SCM proceedings, including the sentence of dismissal (subsequently converted to discharge). The appellant shall be deemed to be in service till he completes the minimum pensionable service. He will be entitled to backwages from the date of his dismissal, i.e. 20.3.1986, till the date he completes minimum pensionable service, after which he will be entitled to pension in the rank of Sepoy in accordance with the Rules. The appeal is accordingly allowed.

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