

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

10.

T. A. No. 184 of 2010

Writ Petition (Civil) No. 5292 of 1998

Sep Rambir Singh

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. Prakash Gautam, Advocate.

For respondents: Sh. Ajai Bhalla, Advocate

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER

13.10.2011

Justice Mathur, Chairperson:

1. This writ petition filed by the petitioner before the Delhi High Court has been transferred to this Tribunal for disposal after its formation.
2. The brief facts which are necessary for the disposal of this petition are that the petitioner was enrolled as Sepoy/Cook in the Army on 27.12.1986 and was serving 10 Sikh Regiment at Pathankot when the alleged incident took place. The allegation against the petitioner was that on the intervening night of 20/21.11.1994, he went out of his unit lines without leave and entered into the house of one Prem Chand, a civilian, where he was caught by the civilians and

handed over to the civil police – Chowki, Dhangupir (H.P). The arrest of the petitioner by the civil police was informed to the unit of the petitioner, which sent Sub Darbara Singh and others to the police station at about 1830h on 21.11.1994 to take over the custody of the petitioner. The petitioner was tried by the impugned Summary Court Martial proceedings on 22.5.1995 under Army Act Section 69 read with Section 456 of the Indian Penal Code. He was sentenced to suffer rigorous imprisonment for five months and to be dismissed from service. The petitioner has already undergone the period of sentence and was dismissed from service. He then put up a statutory and non-statutory complaint, but without any result and ultimately filed the present writ petition before the Delhi High Court seeking quashing of the SCM proceedings.

3. The main grievance of the petitioner is that Army Act Section 120(2) was not complied with and likewise, under Army Rule 34, he was not given sufficient time to defend himself.

4. Reply has been filed by the respondents. The respondents have pointed out that all the mandatory documents were given to the petitioner on 16.5.1994 and they have produced before us the original receipt to show that the petitioner received all the papers on 16.5.1994, which included the summary of evidence, charge sheet and other relevant documents. Learned counsel for the respondents invited our attention to the old records to show

that in fact the papers were sent by the Commanding Officer much earlier and were approved by the DJAG and GOC and Commander 90 Brigade and sent back to the authorities to take appropriate action in the matter.

5. We have heard learned counsel for the parties and perused the records.

6. So far as the compliance of Army Rule 34 is concerned, suffice it to say that a bare perusal of the records, which have been placed before us, show that on 16.5.1995 all the documents pertaining to the trial were sent to the petitioner and they bear the signature of the petitioner. The original could not be produced and photostat copy of the document has been produced for our perusal. We are satisfied that the document bears the signature of the petitioner, which made it clear that the petitioner had received the documents. Accordingly Army Rule 34, which requires that the petitioner should be given at least 96 hours notice, had been complied with in this case. In this regard, learned counsel invited our attention to the decision reported in **Union of India and others v. A.K Pandey** (2009(10) SCC 552) and submitted that in that case, the court martial was to begin on 2<sup>nd</sup> November 1995 at 1800h, but it was convened only on 6<sup>th</sup> November 1995 at 1130h. The petitioner in that case was informed that he would be tried by the GCM on 6<sup>th</sup> November 1995 at 1130h. It showed that the trial commenced at 1010h,



wherein the respondent pleaded guilty and was awarded punishments. It was observed therein that merely because the respondent pleaded guilty is immaterial. The decision cited supra does not help the petitioner in the present case. Therefore, the first question urged by learned counsel for the petitioner has no merit and the same is rejected.

7. The next question is with regard to AA Sec. 120(2), which shows that the charges will have to be approved by the Commanding Officer. In this connection, learned counsel has submitted that a summary of evidence was recorded on 31.12.1994 and all the papers were sent to the DJAG, who in turn placed the matter before the GOC and after getting his approval, the same were sent to the concerned authorities on 13.5.1995. The petitioner was tried by the SCM on 22.5.1995 and he was punished as aforesaid. The charge sheet, under the signature of Col Rakesh Sharma, Commanding Officer, 10<sup>th</sup> Bn Sikh Regt, bears the endorsement "to be tried by Summary Court Martial", which was signed on 22.5.1995 by Brig KRS Panwar, Commander, 90 Infantry Brig. Therefore, learned counsel has submitted that in fact the charges had been approved only on 22.5.1995 and that the inquiry had been completed on 22.5.1995 itself. The grievance of the petitioner is that in fact the charges were approved on 22.5.1995 itself and not prior to that. In order to satisfy us, the respondents invited our attention to the documents which showed that the

papers were sent to the CO on 13.5.1995 with the opinion of DJAG and the charge has been mentioned in Exhibit B2. The letter also gives a direction to follow the relevant provisions of the Army Act and the Rules made thereunder for conduct of the SCM. It shows that the competent authority had approved the charge, for which the petitioner was tried. It may be true that the papers might have been sent subsequently. However, we are satisfied that it had the approval of the competent authority as the same were placed by DJAG for perusal and after his approval, he had issued the order on 13.5.1995 for the trial of the petitioner. Therefore, this contention of the learned counsel also does not survive.

8. In the result, we do not find any merit in this application. It is dismissed, with no order as to costs.

**A.K. MATHUR**  
(Chairperson)

**S.S. DHILLON**  
(Member)

New Delhi  
October 13, 2011  
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