

ARMED FORCES TRIBUNAL CHANDIGARH REGIONAL BENCH
AT CHANDIMANDIR

TA No 35 of 2010 (Appeal)
(Arising out of CS of 47 of 2007)

Raj Kumar ... Petitioner
Versus
Union of India and others ... Respondents.

ORDER
14.09.2010

Coram: Justice Ghanshyam Prasad, Judicial Member
Lt.Gen.N. S. Brar (Retd.), Administrative Member

For the Petitioner : Brig.Rajinder Kumar,Advocate
For the respondents : Mr.Brijeshwar Singh, CGC

Lt. Gen. N. S. Brar (Retd.)

This suit was received on transfer from the Court of Civil Judge (Senior Division) Ambala and on the petition dated 03.03.2010 filed by the applicant under Section 15 of the Armed Forces Tribunal Act 2007, it was converted into an appeal vide order dated 03.03.2010. It is accordingly taken up under Section 15 of the Armed Forces Tribunal Act 2007.

The applicant was tried by Summary Court Martial (SCM) under Army Act Section 40(a) for 'Using Criminal Force to his Superior Officer' and sentenced to be dismissed from service and suffer rigorous imprisonment for three months. The applicant seeks quashing of the SCM proceedings and the sentence with consequent reinstatement in service.

Learned counsel for the petitioner claimed the SCM to be illegal and invalid as no charge sheet was given to the petitioner. It was thereafter stated that the court was composed of the Commanding Officer (CO) and two other officers, namely the Second in Command Lt Col BS Ahluwalia, and Subedar Major NK Chavan of the same Regiment. As such they being part of the unit and being involved parties could not be part of the trial of the petitioner from the same Regiment.

Learned counsel for the petitioner thereafter stated that the petitioner, Havildar Raj Kumar, was performing the duties of Mess Havildar in Feb 2007. On 16.02.2007 Lieutenant Ragul P being a habitual drinker had consumed liquor and ordered fish to be procured and prepared in the Officers Mess. While having his dinner he found the quantity to be less than what he had ordered. He thereupon called the mess cook and admonished him in the presence of the Mess Havildar, the petitioner. This resulted into a scuffle between Lt Ragul and the petitioner whereupon the petitioner is said to have slapped the officer a number of times. The incident was claimed to have been seen by a number of witnesses and the matter was reported to the unit Second in Command Lt Col BS Ahluwalia and Subedar Major NK Chavan. Thereafter with the connivance of all the officers of the unit and the Subedar Major the petitioner was tried and punished.

It was further averred that Army Rule 22 was not complied with and the petitioner's signatures were obtained in the office. The recording of Summary of Evidence (S of E) was carried out but the same did not reveal any offence. The SCM was illegally constituted

as stated earlier. The procedure on the plea of guilty was not followed as per Army Rule 116(2) and the plea should have rightly been recorded as 'Not Guilty' and proceeded with thereafter. The evidence at the S of E showed that the plea of 'Guilty' at the SCM should have been entered as 'Not Guilty' in accordance with Army Rule 115(2).

It was thereafter contended that at the Court of Inquiry (C of I) the petitioner had nowhere stated that he had used criminal force against the officer, however, at the S of E his statement to the effect that 'he had already given statement at the C of I and there is no change' should not have been accepted.

It was finally argued that the sentence was harsh and resulted from vindictiveness on the part of the officer holding the court.

Learned counsel for the respondents produced the original proceedings of the SCM and produced the original charge sheet along with signatures of the petitioner as having received the same. It was highlighted that the composition of the SCM is governed by Army Act Section 116 which reads as under:-

116(1) A summary court martial may be held by the commanding officer of any corps, department or detachment of the regular Army, and he shall alone constitute the court.

(2) The proceedings shall be attended throughout by two other persons who shall be officers or junior commissioned officers or one of either, and who shall not as such, be sworn or affirmed.

From the above it is clear that the SCM was held by the CO who constituted the court. The other two being merely in attendance, had no say in the proceedings of the court. Even otherwise they were

never part of any formal investigation into the incident. No bias could be attributed to them.

Drawing attention to the C of I and the S of E he stated that the officer, Lt Ragul P, had reached the officers mess at about 1945 hours and after having two drinks had asked for dinner to be served. On finding fault with the preparation of the fish he had summoned the cook whereupon the mess havildar, the petitioner, had also come along and started to explain. The officer had asked him to leave as he had not been called. He did not do so. He was thereafter told by the officer that the mess was not functioning properly. He then left the mess and came back after some time and started shouting at the officer. Upon the officer standing up he caught the officer's collar and started slapping him. He was thereafter restrained by the other members of the mess staff.

Learned counsel for the respondents thereafter stated that the incident was investigated by a C of I. On conclusion of the statement of Lt Ragul P the petitioner had declined to cross examine him or produce any witness or proof against his statement. The C of I prima facie found the petitioner blameworthy of using criminal force against the officer. The CO thereafter heard the charge under Army Rule 22 on 26.02.2007 and ordered the S of E to be recorded. The original record of proceedings under Army Rule 22 duly signed by the petitioner was produced. The S of E was recorded wherein the petitioner was accorded full opportunity to cross examine the witnesses which he did and signed as such. Original copy of the S of E was also produced. On being asked if he wished to make any statement he stated " *I No 14372141A Havildar (OPR) Raj Kumar*

have already given the statement and there is no change in the statement given by me. I had given my statement in the Court of Inquiry.” this was in connection with his deposition at the C of I where he had appeared as a witness. This was not related to his plea of guilty or otherwise.

At the SCM the petitioner had pleaded guilty to the charge and before recording the plea of guilty the provisions of Army Rule 115(2) were complied with. Again the original proceedings of the SCM were produced with the recording of compliance of Army Rule 115(2) and signed as such by the petitioner. In compliance with the provisions of Army rule 116(2) the petitioner stated *“Notwithstanding the statement made by me at the Court of Inquiry and at the Summary of Evidence, I realise my mistake and I unequivocally plead guilty to the charge”*. The plea of guilty was thereafter accepted.

Considered the submissions of the learned counsels for the parties. Copies of the C of I, S of E and the SCM are on record. The original proceedings have also been produced and perused.

From the evidence on record, the factum of the petitioner having used criminal force against his superior officer is well established. There appears to be no grave or immediate provocation for the petitioner to assault and use force against the officer. On the contrary the offensive intent of the petitioner is quite evident. There is no mitigating circumstance to consider the sentence as harsh.

The composition and conduct of the SCM does not indicate any infirmity or illegality and is valid.

The petitioner had unequivocally pleaded guilty of the charge at the SCM. This was accepted after having complied with the relevant rules.

Having considered all aspects of the case we do not find any technical infirmity or illegality to interfere with the investigations prior to the SCM and the procedure, conduct, finding and sentence of the SCM. The petition is accordingly dismissed.

There shall be no order as to costs.

[Justice Ghanshyam Prasad]

[Lt. Gen. N. S. Brar (Retd.)]

September 14, 2010
RS