

Rakesh Kumar vs Union Of India Thru. Secy. Govt. Of India ... on 2 January, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

Neutral Citation No. - 2025:AHC-LK0:137-DB

Court No. - 1

Case :- WRIT - A No. - 12446 of 2024

Petitioner :- Rakesh Kumar

Respondent :- Union Of India Thru. Secy. Govt. Of India Ministry Of Defence And 3 Others

Counsel for Petitioner :- Ashok Singh

Counsel for Respondent :- A.S.G.I.

Hon'ble Attau Rahman Masoodi J.

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Ashok Singh, the learned counsel for the petitioner and Sri S. B. Pandey learned Deputy Solicitor General of India assisted by Sri Varun Pandey, the learned counsel for the opposite parties.

2. By means of the instant writ petition filed under Article 226 of the Constitution of India, the petitioner has challenged validity of the judgment and order dated 07.07.2022 passed by the Armed Forces Tribunal, Regional Bench, Lucknow in Original Application No. 369 of 2018. The aforesaid Original Application had been filed by the petitioner challenging an order dated 27.04.2012 passed in Summary Court Martial (SCM), whereby the petitioner was dismissed from service. He had filed an appeal against the dismissal order, which has been dismissed by means of an order dated 27.01.2017 passed by the Chief of the Army Staff. The petitioner has challenged the validity of the punishment order and the appellate order also.

3. Briefly stated, the facts of the case are that on 27.03.2009, the petitioner was dispatched by Artillery Centre, Nasik Road, Camp to 133 Medium Regiment but he did not report for duty to unit till 11.02.2011. A Court of Inquiry was held on 25.10.2011 in which the following tentative charge was framed against the petitioner: -

"TENTATIVE CHARGE SHEET The accused No. 15165704Y Gunner (General Duty) Rakesh Kumar Ramnagina of 333/133 Medium Regiment is charged with: -

DESERTING THE SERVICE ARMY ACT SECTION 38(1) In that he, at Nasik, on 27 March 2009, when despatched by Artillery Centre, Nasik Road Camp to 133 Medium Regiment did not report for duty to the unit (133 Medium Regiment) but absented himself without leave till he voluntarily reported to the unit on 18 February 2011 at 1430h."

4. The charge against the petitioner was readout and explained to him. Three prosecution witnesses were examined on support of the charges. On 20.04.2012, a notice was issued to the petitioner stating that based on the summary of evidence recorded in his case, it had been decided to hold Summary Court Martial. The petitioner was directed to give the name of a person of his choice who would act as friend of the accused (petitioner). A charge-sheet containing the following two charges was prepared on the same day: -

CHARGE SHEET The accused No. 15165704Y Gunner (General Duty) Rakesh Kumar Ramnagina of 133 Medium Regiment is charged with: -

First Charge DESERTING THE SERVICE ARMY ACT SECTION 38(1) In that he at Nasik, on 27 March 2009, when despatched by Artillery Centre, Nasik Road Camp to 133 Medium Regiment did not report for duty to the unit (133 Medium Regiment) but absented himself without leave till he voluntarily reported to the unit on 18 February 2011 at 1430h. Second Charge ABSENTING HIMSELF WITHOUT LEAVE ARMY ACT SECTION 39(a) In that he at Nasik, on 11 February 2011, when despatched by Artillery Centre to report to 133 Medium Regiment, absented himself without leave until he voluntarily reported to the unit on 18 February 2011 at 1430 hours."

5. On 20.04.2012 itself, the petitioner named Captain K. Surrender to act as his friend in the Summary Court Martial in his case. On 21.04.2012, a notice was issued regarding proceedings of Summary Court Martial to be held on 27.04.2012. The petitioner was medically examined and was found medically fit to undergo Summary Court Martial on 27.04.2012. A copy of the charge-sheet dated 20.04.2012 was provided to the petitioner on 23.04.2012. During the court martial proceedings held on 27.04.2012, the petitioner was accompanied by his friend Captain K. Surrender. The summary court martial was held by Colonel Sanjay Ahuja who also acted as interpreter for the petitioner. The charge-sheet was read, translated and explained to the petitioner by Colonel Sanjay Ahuja. The petitioner pleaded guilty of both the charges. The interpreter Colonel Sanjay Ahuja as well as the petitioner himself certified that before recording the plea of guilty, the court explained to

the petitioner the charges leveled against him to which he had pleaded guilty and ascertained that the petitioner understood the nature of the charges to which he had pleaded guilty. The court also informed the petitioner the general effect of the plea of guilt and the difference in procedure which will be followed consequent to the said plea. The court had satisfied itself that the petitioner understood the charges and the effect of his pleading guilty. Thus the provisions of Army Rule 115(2) were complied with. The summary of evidence was also read (translated) and explained to the petitioner. The petitioner stated that he had committed a mistake and he wanted to serve in the Army. He stated that he did not want to call any witness.

6. Taking all the aforesaid matters into consideration, the court martial sentenced the petitioner to be dismissed from service by means of an order passed on 27.04.2012 itself.

7. The petitioner filed an appeal against the order of dismissal on the following grounds :-

(a) That no Court of Inquiry (C of I) was held in accordance with the provisions of Army Act Section 106, immediately after thirty days.

(b) That the provisions of Army Rules 22 and 23 were not complied with. The Commanding Officer (CO) though heard the charges in his presence, he was not given liberty to cross-examine any witness against him and to call such witness and to make such statement as was necessary for his defence. The CO did not record any statement given by the petitioner and the witnesses.

(c) That when the petitioner surrendered voluntarily on 18 Feb 2011, the CO gave him charge-sheet under Army Act Section 38(1). Since the petitioner had surrendered voluntarily, the absence between 27 March 2009 to 18 February 2011 should have been treated as 'Absent without Leave' under Army Act Section 39(a), as held by AFT (PB), Delhi in the case of Pradeep Kumar Singh.

(d) That the petitioner was not given charge-sheet and Summary of Evidence (S of E). His signatures were forcibly obtained on blank papers and thereafter the contents of certificates and SCM proceedings were drafted on same. He was not informed why he was made to sign on blank papers. Provisions of Army Rules 33(7) and 34 were not complied with.

(e) That the provision of Army Rule 129 was not complied with as he was not provided with services of 'Friend of the Accused' of his choice. The Captain K. Surrender given by the CO as his friend of accused to defend his case, did not help him.

(f) That the provisions of Army Rule 115(2) were not complied with.

(g) That the petitioner was forced to give a confessional statement under duress. Therefore, the same was not admissible.

8. The appellate authority i.e. Chief of the Army Staff dealt with each of the grounds raised by the petitioner in his appeal and dismissed the appeal by means of an order dated 27.01.2017. The petitioner challenged the punishment order and the appellate order by filing an Original Application before Armed Forces Tribunal which too has been dismissed. All the aforesaid orders are under challenge before this Court.

9. Assailing validity of the aforesaid orders, the learned counsel for the petitioner has submitted that a copy of the charge-sheet was not provided to the petitioner and the petitioner was made to put his signatures on blank papers in acknowledgment of the charge-sheet. This contention made on behalf of the petitioner appears to be based on a blatant lie, as the proceedings of the summary court martial are recorded on a number of pages and the petitioner has signed on all the pages at the appropriate designated places. His signatures in acknowledgment of receipt of a copy of the charge-sheet and the summary of evidence, are also made at the appropriate designated place. The signatures do not appear to have been obtained on a blank paper.

10. Section 114 of the Evidence Act provides that "the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural event, human conduct and public and private business, in their relation to the facts and particular case'. Illustration (e) appended to Section 114 of the Evidence Act specifically provides that the court may presume that the judicial and official Acts have been regularly performed. Therefore, there is a legal presumption in favour of the correctness of the acknowledgment of the receipt of charge-sheet and summary of evidence made by the petitioner. The petitioner cannot be allowed to assail correctness of the acknowledgment of the receipt made by himself.

11. Even otherwise, while exercising the power of judicial review, this Court cannot entertain the factual disputes raised by the petitioner which cannot be decided on the basis of material available on record. Therefore, the aforesaid submission of the learned counsel for the petitioner lacks merit and the same is turned down.

12. The learned counsel for the petitioner next submitted that the order of punishment was passed in violation of the mandatory provision contained in Rule 34(1) of the Army Rules, 1954. In support of this contention, learned counsel for the petitioner has relied upon a decision of the Hon'ble Supreme Court in the case of Union of India and others versus A.K. Pandey: 2009 (10) SCC 552.

13. Rule 34(1) of the Army Rules, 1954 provides as follows :-

"34. Warning of accused for trial.--(1) The accused before he is arraigned shall be informed by an officer of every charge for which he is to be tried and also that, on his giving the names of witnesses or whom he desired to call in his defence, reasonable steps will be taken for procuring their attendance, and those steps shall be taken accordingly.

The interval between his being so informed and his arraignment shall not be less than ninety-six hours or where the accused person is on active service less than

twenty-four hours.

(2) The officer at the time of so informing the accused shall give him a copy of the charge-sheet and shall if necessary, read and explain to him the charges brought against him. If the accused desires to have it in a language which he understands, a translation thereof shall also be given to him.

(3) The officer shall also deliver to the accused a list of the names, rank and corps (if any), of the officers who are to form the court, and where officers in waiting are named, also of those officers in courts-martial other than summary courts-martial.

(4) If it appears to the court that the accused is liable to be prejudiced at his trial by any non-compliance with this rule, the court shall take steps and, if necessary, adjourn to avoid the accused being so prejudiced."

14. As per the material placed on record by the petitioner himself, a copy of the charge-sheet was supplied to him on 23.04.2012. He was given opportunity to produce the witnesses but he declined to produce any witness. He pleaded guilty of both the charges leveled against him and he was arraigned on 27.04.2012. Therefore, the punishment order was passed not earlier than 96 hours since a copy of the charge-sheet was supplied to the petitioner. There is no violation of the provisions of Rule 34(1) in the present case and the law laid down by the Hon'ble Supreme court in A.K. Pandey (Supra) has been followed while passing the punishment order.

15. No other point was pressed by learned counsel for the petitioner.

16. In view of the foregoing discussion, we are of the considered opinion that the punishment order, the appellate order and the order passed by the Armed Forces Tribunal affirming those orders, do not suffer from any illegality warranting interference by this Court.

17. The writ petition lacks merit and the same is dismissed.

(Subhash Vidyarthi, J.) (Attai Rahman Masoodi, J.) Order Date: 02.01.2025 kanhaiya