

Supreme Court of India

Ex. Lieut. Jagdish Pal Singh vs Union Of India (Uoi) And Ors. on 7 May, 1997

Equivalent citations: AIR 1999 SC 1578, JT 1998 (4) SC 485, (1998) 4 SCC 254

Bench: G Ray, G Nanavati

ORDER

1. This appeal is directed against the order dated 27-2-1990 passed by the Delhi High Court in a Writ Petition No. 79 of 1990. The appellant was a Lieutenant in the Indian Army and he faced the trial before a Court-Martial constituted by the Military authorities on the accusation of taking away a large number of bottles of rum worth about Rs 5616 from the Military canteen. It appears from the original record produced before us that at the hearing, the witnesses were examined in the Court-Martial and the appellant was given opportunity to cross-examine such prosecution witnesses. The Court-Martial initially was of the view that the charge against the appellant had not been proved. As the order of the Court-Martial required confirmation under the Army Act, 1950 the same was sent before the confirming authority. Such confirming authority remitted the matter to the Court-Martial by indicating various aspects of the case which had not been considered properly. It was made clear by the confirming authority at the outset that the observations made by the confirming authority were not made to in any way interfere with the discretion of the members of Court-Martial in basing its finding on reconsideration of the matter. On reconsideration, the Court-Martial came to the finding that the appellant was guilty of the offence for which he was tried and passed the consequential order of dismissal from service. Such order was later on confirmed by the confirming authority. Assailing such order, a writ petition was moved before the Delhi High Court and by the impugned order the Delhi High Court dismissed the same.

2. The learned counsel for the appellant has contended that under the Army Act, the revisional authority is empowered to direct for additional evidence. In the instant case, no such direction has been given. On the contrary, the confirming authority has made observation on merits of the case and by such observation the confirming authority had out stepped the limit of his jurisdiction. The learned counsel for the appellant also submitted that the reasonable opportunity of cross-examining the witnesses for the prosecution had not been given to the appellant because no such noting appeared. We have already indicated that the original records have been produced before us and it appears that such opportunity had been given to the appellant. In the facts of the case, it appears to us that revisional authority had not made any finding but only indicated certain broad features of the case which required to be considered by the members constituting the Court-Martial because according to the confirming authority the Court-Martial had not taken them into consideration for which the said authority was not inclined to accord confirmation. On such consideration, the Court-Martial found the appellant guilty and such Finding has been upheld. No revision was preferred by the appellant. As no injustice was meted out by the appellant the Delhi High Court was not inclined to interfere and the writ petition was dismissed. We have considered the facts and circumstances of the case and it appears to us that the confirming authority had not made any finding which was likely to cause prejudice against the appellant and at the very outset it was made very clear that the Court-Martial was free to decide by adverting to the certain basic features indicated by the confirming authority. After giving opportunity of being heard to the appellant, a reasoned order has been passed. In the aforesaid circumstances, we do not think that any

interference by this Court is called for. This appeal therefore fails and is dismissed.