Supreme Court of India
Major General Inder Jit Kumar vs Union Of India & Ors on 20 March, 1997
Author: M S Manohar.
Bench: A.M. Ahmadi, Sujata V, Manohar

PETITIONER:
MAJOR GENERAL INDER JIT KUMAR

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 20/03/1997

BENCH:
A.M. AHMADI, SUJATA V, MANOHAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T Mrs. Sujata V. Manohar. J.

Leave granted.

The appellant, at all material times, held the rank of Acting Major General in the Indian Army. He filed a writ Petition in the High Court of Madhya Pradesh challenging the inquiry proceedings held against him and his trial by a general Court Martial under the Army Act, 1950. This writ Petition has been dismissed by the impugned judgment and order of the High court of Madhya Pradesh. Hence he has preferred the present appeal.

During the pendency of these proceedings and after the vacation of stay on holding of a General Court Martial, the trial of the appellant has proceeded to a conclusion and a sentence has been passed that the be cashiered from service which is subject to confirmation as per the provisions of the Army Act, 1950. The appellant has filed additional grounds of appeal before us challenging these findings. An earlier writ petition being Misc. Petition 717 of 1991 which was filed before the madhya Pradesh High Court in the same connection has already been dismissed on 8th of October, 1991. However, the present writ petition has been examined on merits by the High Court and dismissed. We, therefore, propose to examine the various grounds urged by the appellant in support of his case.

The appellant has argued his appeal in person at his insistence.

The appellant who held the substantive rank of Brigadier at the material time was posted was posted in Agra from February 1988 to April 1989 as Commandant, Parachute Regimental Training Centre. In April 1989 he was given the acting rank of major General and was posted as General Officer Commanding, Vth Mountain Division in the Eastern Command. In July 1989 the appellant was called to Agra as a witness in a Court Martial going on against on e Major Mahapatra. He was asked to stay on for a Court of Inquiry being held in connection with certain financial irregularities which has occured while the appellant had been posted at Agra. The proceedings of the Court of Inquiry commenced on 26.7.1989. On 13.10.1989, the appellant was attached to Military college of Telecommunication Engineering, Mhow, under Army Instruction 30/86 until finalisation of disciplinary proceedings against him. The appellant was directed to report for duty at Mhow. Thereafter the hearing on charges against the appellant commenced under Rule 22 of the Army Rules on 28th of October, 1989. After examination of witnesses and documents, the Court of Inquiry submitted its report as result of which, on 23rd of January, 1991, orders were issued by the G.O.C. - in-C Central Command fro assembly of a General Court Martial for trial of the appellant.

The appellant objected to the Presiding Officer of the Court n the ground that he was biased against the appellant. Therefore, the Presiding Officer retired from the Court and Lt. General Y.A. Mande was appointed as the Presiding Officer. Lt. General Mande was, however, withdrawn on the directions of the convening authority as he was not available due to another engagement. The next senior most officer was appointed as the Presiding Officer. After the court was constituted the trial began and has since concluded.

The appellant has alleged that the proceedings of the General Court Martial are vitiated because of bias on the part of the court against him. He was further challenged the entire proceedings of the court of Inquiry and of the General Court Martial on the ground that the principles of natural justice have been violated. he was not given an adequate opportunity of defending himself. He has alleged that he was denied the assistance of a suitable defending officer and/or a defending counsel of his choice. He has also alleged that he was not given the relevant documents or a copy of the report of the Court, of Inquiry in order to enable him to put up his defence. There are also various other technical objections raised by him. All these objections have been examined and found to be of no substance by the High Court.

Under Rule 177 of Army Rules, 1954, a Court of Inquiry can be set up to collect evidence and to report, if so required, with regard to any matter which may be referred to it. The Court of Inquiry is in the nature of a fact-finding inquiry committee. Army Rule 180 provides, inter alia, that whenever any inquiry affects the character of military reputation of a person subject to the Army Act, full opportunity must be afforded to such a person of being present throughout the inquiry and of making any statement, and of giving any evidence he may wish to make or give, and or cross-examining any witness whose evidence, in his opinion, affects his character of military reputation and producing any witnesses in defence of his character of military reputation. The presiding officer of the Court of Inquiry is required to take such steps as may be necessary to ensure that any such person so affected receives notice of and fully understands his rights under this rule.

The appellant was accordingly present before the Court of Inquiry. Witnesses were examined by the Court of Inquiry in the presence of the appellant. He, however, declined to cross-examine the witnesses. Instead, the appellant moved an application for an adjournment for preparing his defence. He also applied that the evidence adduced before the Court of Inquiry should be reduced to writing. The Court of Inquiry noticed that sufficient time had been granted to the appellant for preparation of his defence after receipt of the Court of Inquiry proceedings by him. Hence his application for adjournment was refused. The hearing on charges took place in the presence of the appellant. At the conclusion of the hearing on charges, an order was passed that evidence be reduced to writing and a recommendation was made to convene a General Court Martial for trial along with recommendations on charges to be framed. Thereafter the charges were finalised, charge-sheet was issued and a General Court Martial was convened.

The appellant has also contended that copy of the report of the Court of Inquiry was not given not to him and this has vitiated the entire Court Martial. The appellant has relied upon Rule 184 of the Army Rules, 1954 i n this connection. Rule 184, however, provides that the person who is tried by a Court Martial shall be entitled to copes of such statements and documents contained in the proceedings of a court of Inquiry as are relevant to his prosecution or defence at his trial. There is no provision for suppling the accused with the copy of the report of the court of Inquiry. The procedure relating to a Court of inquiry and the framing of a charges was examined by this Court in the case of Major G.S. Sodhi v. Union of India [1991 (2) SCC 382]. This Court said that the Court of Inquiry and participation in the Court of Inquiry is at a stage prior to the trial by Court martial. It is the order of the Court Martial which results in deprivation of liberty and not nay order directing that a charge be heard or that a summary of evidence be recorded or that a Court martial be convented. Principles of natural justice are not attracted to such a preliminary inquiry. Army Rule 180, however, which is set out earlier gives adequate protection to the person affected even at the stage of the Court of Inquiry. In the present case, the appellant was given that protection. He was present at the Court of Inquiry and evidence was recorded in his presence. He was given an opportunity to cross-examine witnesses, make a statement or examine defence witnesses. The order of the Court of Inquiry directing that a Court Martial be convened and framing of charges, therefore, cannot be faulted on this ground since it was conducted in accordance with the relevant Rules.

The appellant has contended that charges framed against him are in violation of Army Rules. Hence the entire Court martial is vitiated. Tentative charges were initially framed against him in the alternative. The tentative charges which were framed on or about 28.10.1989 were twelve in number. Each charge was under Section 52 of the Army Act and in the alternative, under Section 63 of the Army Act. Section 52(b) refers to the offence of dishonestly misappropriating or converting to one's own use of any property belonging, inter alia, to the Government, or to any military, naval or air force mess, band or institution. section 52(f) refers to doing, any other thing with intent to defraud, or to cause wrongful gain to one person or wrongful loss to another person. Section 63 refers to any act or omission prejudicial to good order and military discipline. Investigation of these tentative charges was carried out by the Commanding Officer under Army Rule 22 read with Rule 25. The appellant was given the opportunity to cross-examine witnesses and produce his witnesses. While recording a summary of evidence under Army Rule 23, he was given again given this opportunity.

After preliminary investigation the commanding officer referred the matter to the superior authority. According to the appellant, to Commanding Officer had recommended framing of charges only under Section 63. The superior authority took advice of the Deputy Judge Advocate General of the Command who prepared a draft charge sheet and advised trial of the appellant by a General Court martial. The final charge sheet dated 18.1.1991 as signed by Commanding Officer along with the order of trial by General Court martial which is counter-signed by the General Officer Commanding-in- Chief, Central Command contains nine charges under Section 52 and three charges under Section 63.

The appellant contends that once charges under Section 52 were dropped, they could not have been included in the charge-sheet. Hence the charge-sheet is bad in law. The respondent have set out in their affidavit in reply that the Commanding Officer had merely submitted his recommendations to the superior authority regarding charges to be framed along with his investigation report. After obtaining advice of the Deputy Judge Advocate General of the Command on the material so submitted, the final charge-sheet was issued. We fail to see any irregularity or illegality here.

The appellant's contention that the Commanding Officer, Central Command had no jurisdiction in this regard must also be rejected since he was attached to the Central Command for the purpose of the disciplinary inquiry which related to his conduct during the period when he was posted at Agra.

The appellant next contends that the convening of the General Court Martial in his case is not valid because under Section 109 of the Army Act a General Court Martial can be convened only by any officer who has been appointed by a specific warrant in that connection by the Chief of the Army Staff. According to him a specific warrant must be issued in each case. Under Section 109 of the Army Act, a General Court Martial may be convened by the Central Government or the Chief of the Army Staff or by any officer empowered in this behalf by warrant of the Chief of the Army Staff. There is nothing in Section 109 which required the Chief of the Army Staff to issue a warrant for each specific case. A general warrant issued by the chief of the Army Staff as in the present case is competent under Section 109. The appellant has also contended that since he did not belong to the Central Command, General Officer, Commanding-in-Chief, Central Command, could not convene a General Court Martial in his case even on the basis of the general warrant. This submission is also without merit. The appellant, under Army Instruction 30/86 dated 13.10.1989 was attached to the Central Command until the finalisation of the disciplinary case. This would give jurisdiction to G.O.C. - in-C Central Command to convene a General Court Martial.

The appellant has next challenged the composition of the Court. Under Army Rule 44 the order convening the Court Martial and the names of the Presiding Officer and the members of the court shall be read over to the accused and he shall be asked, as required by Section 130, whether he has any objection to being tried by any officer sitting on the court. Any such objection shall be disposed of in accordance with the provisions of the aforesaid section. Sub-rule (e) of Rule 44 of the Army Rules provides that where an officer so retires or is not available to serve owing to any cause, which the court may deem to be sufficient, and there are any officers in waiting detailed as such, the Presiding Officer shall appoint one of such officers to fill the vacancy. If there is no officer in waiting available, the court shall proceed as required by Rule 38. Rule 38 deals with adjournment for

insufficient number of officer and it provides that where the full number of officers detailed are not available to serve, for reasons which are set out there, the court shall ordinarily adjourn for the purpose of fresh members being appointed. We are not concerned with the rest of the provisions. In the present case prior to his arraignment, the appellant challenged Lt. General Vijay Madan, VSM, the Presiding Officer of the court on the ground of strained relations between him and the Presiding Officer. The appellant's plea was accepted and Lt. General Y.A. Mande, AVSM, a waiting member, took over as the Presiding Officer. However, Lt. General Y.A. Mande was withdrawn on the direction of the convening authority before swearing in. Thereafter, Major General B.S. Malik being the next senior person became presiding officer. To fill up the quorum of seven members Major General Surjit Singh, a waiting member was appointed as a member. The Court Martial was, therefore, convened in accordance with the Army Act and the Army Rules. According to the appellant, the Court Martial should have been dissolved under Section 117. Section 117 provides that if a Court Martial after the commencement to trial is reduced below the minimum number of officers required by this Act, it shall be dissolved, It also provides for other contingencies in which a Court Martial, after commencement, can be dissolved. This section has no application to the present case. The submission of the appellant, therefore, regarding the composition of the Court has not merit.

The grievance of the appellant relating to bias against him also has no merit. The first Presiding Officer against whom the appellant has alleged bias was removed and a new Presiding Officer appointed. The appellant contends that the entire Court Martial was vitiated because he was not given a proper opportunity to defend his case. He was not given a defending officer of his choice and/or a defence counsel of his choice to defend him. A major part of his arguments before us related to this proceedings of the General Court Martial from this point of view. Before the commencement of the General Court Martial on 31st of January, 1991 the appellant was asked to submit names officers by whom he would like to be defended at the Court Martial. The appellant has given names of four officer. When the Court Martial convened on 31st of January, 1991 the defending officer Major M.M. Khanna for the appellant and the appellant himself were present. Major Khanna was duly qualified as an officer who could defend the appellant. The appellant accepted him but he also reserved his right to conduct his defence in person. After a few days the Court Martial was adjourned for nine days to enable the appellant to engage a defence counsel or give details of some other defending officers. The appellant thereafter requested for Lt. Colonel Hari Mittar as the defending officer. Accordingly Lt. Colonel Hari Mittar was made available. It seems that the appellant accepted him as his defending officer. But once again he did not give him the right of audience. The appellant was asked to engage a defence counsel of his choice. From 3rd April, 1991 to 10th of April, 1991 no witness could be examined. Then on 11th of April, 1991 the appellant requested the court to adjourn for seven days to enable him to engage a defence counsel. The court adjourned for ten days on this request. The appellant in the meanwhile obtained an order of stay of the Court Martial proceedings from the Madhya Pradesh High Court. As a result, the Court Martial was adjourned sine die.

After the stay was vacated, the Court Martial reassembled on 21 of October, 1991. It was adjourned several time as the defending officer was not present. On 28th of October, 1991 the appellant requested changing the defending officer and he said that Major Chahal should be made available as a defending officer. As a result Lt. Colonel Hari Mittar was allowed to withdraw. Witnesses were

examined thereafter from 29th of October, 1991 onwards. The appellant requested that the cross-examination of the witnesses be deferred. The request was granted. We find from the record that sufficient time was give to the appellant either to engage a defence counsel of his choice or to have a defending officer. But the appellant kept on changing defending officers or asked for adjournments for the purpose of engaging defence counsel. He did not cross-examine witness when they were offered for cross-examination. He was given sufficient indulgence in this behalf by the court.

It seems that Major Chahal who was requested by the appellant as defending officer was present in the Court on 5th of December, 1991 and 6th of December, 1991 but thereafter when the witnesses were offered for cross- examination he was not present and the appellant did not avail of the opportunity of cross-examining the witnesses offered for cross-examination. On 23 of December, 1991 after the evidence was over, the case was adjourned to enable the defence counsel to prepare the case of the appellant. Even thereafter, in January 1992 cross-examination of some of the witnesses was offered but was not availed of. Ultimately on 17th of January, 1992 addresses by the prosecution and defence concluded. On 18th of January, 1992 the trial concluded with the summing up by the Judge Advocate. A sentence of being cashiered from service has been awarded which is subject to confirmation.

Thus, the appellant repeatedly sought adjournments on one pretext or the other and was not satisfied with the various defence officers who were made available to him as per his request. The appellant who has argued this appeal before us is well, versed with the Army Law and Army Rule and was quite capable of arguing his own case. He was throughout present at the court Martial and could have cross-examined the witnesses had he so desired. He has been given sufficient indulgence by court and we do not see how any principles of natural justice have been violated in this case. The Court Martial, therefore, cannot be faulted on the ground of non-compliance with the principle of natural justice. We are not sitting in appeal over the findings of the General Court Martial. Therefore, we have refrained from examining the merits of the case.

In our view, the High Court was right in coming to the conclusion that there is no merit in the contentions taken by the appellant. The appeal is, therefore, dismissed. There will, however, be no order as to costs.