

Court No. 2

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 239 (Appeal) of 2014

Friday, this the 26th day of Aug 2016

Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Air Marshal Anil Chopra, Member (A)

No. 5848910F Lance Naik Chet Bahadur Khadka, Son of Jay Bahadur Khadka Village: Khabara, Post: Beni, District: Myagdi Zone: Dhaulagiri NEPAL.

...Applicant

Ld. Counsel for the: **Shri Rohit Kumar, Advocate**
Applicant

Versus

1. Chief of Army Staff, DHQPO, New Delhi-110011.
2. Commandant cum Chief Records Officer 39, GTC Varanasi.
3. Union of India Through Secretary, Ministry of Defence, DHQPO, New Delhi.

.....Respondents

Ld. Counsel for the : **Shri Amit Sharma,**
Respondents **Central Govt Counsel, assisted by**
Col Kamal Singh, OIC Legal Cell.

ORDER (ORAL)

1. We have heard Ld. Counsel for the parties and perused the records.
2. In the present O. A. (Appeal) No 239 of 2014 a number of grounds have been raised by Ld. Counsel for the appellant. While assailing the impugned order of dismissal from service with effect from 24.11.2004 under Section 69 of the Army Act, one of the grounds raised by Ld. Counsel for the appellant is that minimum 96 hours time was not provided to the appellant in terms of Army Rule 34 (1).
3. It appears that the appellant, a Lance Naik of the Indian Army faced Summary Court Martial proceedings on account of outraging modesty of a girl, an offence punishable under Section 354 of Indian Penal Code.
4. According to Ld. Counsel for the appellant, the appellant was charge sheeted on 24.11.2004 and on the same day the trial commenced and was concluded. For convenience sake Section 34 (1) of the Army Rule is reproduced below :-

“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 the witnesses or whom he desire to call in his defence, reasonable steps will be taken for procuring their attendance, and those steps shall be taken accordingly.*

That interval between his being his 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”.

5. A plain reading of aforesaid provision shows that there should be minimum of 96 hours of interval between the period of supply of charge sheet and commencement of trial, and where the accused person is on active service, less than 24 hours. Ld. Counsel for the respondents submitted that the appellant was in active service. However, the fact remains, and is not disputed, that charge sheet was served on the appellant on 24.11.2004 and on the same day the trial commenced and came to an end. Thus, even 24 hours time was not granted. It has been settled by their Lordships of Hon'ble Apex court in (2009) 10 SCC 522, **Union of India (UOI) & ors vs. A.K. Pandey** that interval period provided under Army Rule 34 (1) has got statutory force and non observance of it would vitiate the punishment. Judgment of the Hon'ble Apex court, for convenience sake is reproduced below:-

12. Rule 34 of the Army Rules, 1954 with which we are concerned reads 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."

13. *The key words used in Rule 34 from which the intendment is to be found are "shall not be less than ninety-six hours". As the respondent was not in active service at the relevant time, we are not concerned with the later part of that rule which provides for interval of twenty-four hours for the accused in active service.*

24. *The judgment of this Court in State Bank of Patiala hardly helps the appellants. We have already held that the provision contained in Rule 34 regarding interval of ninety-six hours from the service of the charge/charges for which an accused is to be tried and his arraignment is mandatory. This situation would be covered by sub-para 4(b) of para 33 as aforequoted".*

6. Ld Counsel for the respondents submitted that the respondent tried to serve charge sheet upon the appellant, but the appellant avoid service of charge sheet. Even if it was so, the fact remains that the charge sheet was served on the appellant on 24.11.2004 and the trial commenced on the same day. In case the respondents have served charge sheet on the appellant on 24.11.2004 then they should have commenced the trial after lapse of period of interval provided under Army Rule 34 (1) (supra), which seems to not have been done.

6. In view of said proposition of law we are of the view that the trial having been held in utter violation of statutory mandate contained in Army Rule 34 (1), is not sustainable and stands vitiated.

7. No other ground requires to be considered.

8. Accordingly, OA (Appeal) No. 239 of 2014 deserves to be allowed; hence allowed. Impugned order of dismissal dated 24.11.2004 and order dated 12.05.2014 passed by the Chief of the Army Staff are hereby quashed. The appellant shall not be entitled to back wages. He shall be restored in service notionally for the purpose of post retiral dues. Decision shall be taken by the competent authority within four months from the date of presentation of a certified copy of this order with regard to post retiral duties.

9. O.A. is allowed accordingly.

No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

anb

(Justice D.P. Singh)
Member (J)