

Reserved
Court No.1

FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

T. A. No. 528 of 2010

Tuesday, this the 29th day of August, 2017

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

EX-Hav (Now Sep Dvr) Laxmi Prasad S/o Hari Nath Pandey
C/o Kanhaiya Lal Flat No. 70, Jal Nigam, Alopi Bagh,
Allahabad.....**Petitioner**

Ld. Counsel for the Petitioner: **Shri Vikas Kumar Agrawal,**
Advocate

Versus

1. Chief of the Army Staff, New Delhi.
2. Commandant-cum-CRO Arty Centre & Records Nasik Road Camp, Maharashtra.
3. Col Abhay Gupta Commanding Officer 307 Medium Regiment C/o 56 APO.
4. P.C.D.A. (pensions), Draupadi Ghat, Allahabad.
5. Union of India, Through Secretary, Ministry of Defence, New Delhi.

...Respondents

Ld. Counsel for the : **Shri Md. Zafar Khan,**
Respondents. Central Govt Standing Counsel.

Assisted by : Maj Salen Xaxa, OIC Legal Cell.

ORDER**"Per Hon'ble Air Marshal Anil Chopra, Member (A)"**

1. Petitioner being aggrieved by the order of the order of punishment dated 15.01.2001 whereby he was reduced in rank attended with prayer to set aside the summary court martial proceeding, has come up to this Tribunal. Initially the petitioner had preferred a Writ Petition No.24148 of 2004 in the High Court of Judicature at Allahabad which has been transferred to this Tribunal in pursuance to powers conferred by Section 34 of the Armed Forces Tribunal Act, 2007 and has been re-numbered as T.A. No. 528 of 2010.

2. We heard Ld. Counsel for the parties and perused the records.

3. The facts of the case in nutshell are that the petitioner was enrolled in the Indian Army on 14.06.1979 and was discharged on 01.07.2001 as a sequel to summary court martial proceeding. The charge against the petitioner leading to summary court martial proceeding was that on 31.12.2000, the petitioner was assigned the duty of cleaning the weapon by BHM Vinod Kumar and when BHM Vinod Kumar asked him to clean the weapon properly, the petitioner caught hold of him by collar and gestured to hit him and also shouted in challenging language and abused the superior officer. Consequent upon it, a charge sheet was

issued on 09.01.2001 and thereafter summary court martial was embarked upon and completed on 15.01.2001.

4. Learned counsel for the petitioner began his argument with the submission that there was no compliance with Rule 28 inasmuch as charge-sheet has been issued in violation of Rule 28 of the Army Rules and that investigation has not been conducted in terms of Army Rule 22 (1) of the Army rules 1954 attended with submission that opportunity of hearing on charges in terms of Rule 22 has not been afforded. The main brunt of argument made across the bar is that the entire summary court martial proceeding was conducted in post-haste manner inasmuch as the same were completed within a span of 30 minutes.

5. On the other hand, learned counsel for the respondents repudiated the above submissions and contended that action has been taken against the petitioner strictly in terms of the Army Act and the Rules. He also contended that by his action of attacking his superior officer, the petitioner had set an egregious bad precedent for others and keeping in view his past chequered history, in which he was reprimanded on several occasions for his acts of indiscipline set out in the counter affidavit, the punishment was awarded commensurate to the offences. It is also contended that the petitioner was explained in detail the implication of pleading guilty in terms of Army Rules 52

and 54 and notwithstanding the warning, the petitioner pleaded guilty in the presence of the witnesses. He also contended that in terms of Army Rule 129 the petitioner was called upon to give choice for a person to assist him during the trial. In terms of his choice, Capt P.N.M.Raju was provided to assist him. He also contended that Summary Court Martial proceeding has been duly signed by the petitioner and as such, there is no scope for any manipulation as alleged. He further contended that the provisions of Army Rule 115 (2) or Army Rule 52 (2) have been fully observed in compliance which would be eloquent from a perusal of the Summary Court Martial proceedings.

6. In the instant case, despite all the fiercely argued submissions, the main brunt of submission that is distilled from the above submission is that the Summary Court martial proceeding has been conducted in haste inasmuch as the same commenced at 1255 hours on 15.01.2001 and ended at 1325 hours on the same day i.e. 30 minutes. We have gone through the original record produced before us for perusal. A close scrutiny of the record reinforces the submission of the learned counsel for the petitioner.

7. It is well settled proposition in law that in case the authorities want to do certain thing, it should be done in accordance with the statutory provision and not otherwise, with the compliance of principles of natural justice. It is

strenuously argued by learned counsel for the petitioner that entire proceeding was concluded within a period of 30 minutes. This fact has not been repudiated by the respondents. The submission of the learned counsel for the respondents that since Commanding Officer was well versed in conducting the court martial proceedings, it should not spring a surprise if proceeding is taken to finality within 30 minutes.

8. We now come to the contention of the learned counsel for the petitioner that the trial was over in record time of 30 minutes which is an impossibility and that the procedural safeguards in the trial regarding translation of the charge in the language which the accused understands and the explanation to the accused about the implications of the plea of guilty in the trial and translation to the petitioner of the summary of evidence was not followed. It is true that no time limit is provided for the concluding a trial but what has to be seen is that procedural requirements is to be complied with in letter and spirit or not. Mere 'lip service' is not sufficient. From the counter affidavit it appears that the respondent's case is that contents of the charge sheet were explained to the petitioner in Hindi, the language he understands. The summary of evidence consists of 9 manuscript pages. From the proceedings on the plea of guilty recorded in the trial, it appears that the summary of

evidence is said to have been read (translated and explained) and marked as Ext. signed by the court. Such reading and translation it is submitted by the petitioner's counsel would take considerable time. The certificate as provided under Rule 115 (2A) is as follows: "CERTIFICATE Before recording the plea of guilty offered by the accused, the court explains to the accused the meaning of the charge (s) to which he had pleaded guilty and ascertains that the accused understands the nature of the charge (s) to which he has pleaded guilty. The court also informs the accused the general effect of that plea and the difference in procedure which will be followed consequent to the said plea. The Court having satisfied itself that the accused understands the charges and the effect of his plea of guilty accepts and records the same. The provisions Army Rule 115 (2) are complied with.

9. Considering the various steps that are said to have been undergone in the Summary Court Martial proceedings including translating/explaining the summary of evidence which is of 9 manuscript pages to the petitioner, translating the charge, explaining the implication of the plea of guilty and getting the certificate under 115 (2A), types hearing and petitioner on mitigation of sentence and filling in the other columns of the form it is doubtful that the trial could have been completed within 30 minutes if all that procedure

said to have been followed was in fact followed in letter and spirit.

10. The Departmental Representative and counsel had presented his case with great ability raised an attractive argument. He submitted that the summary of evidence has been recorded in the presence of the accused and that at the trial it is not necessary that the entire evidence be translated and it is sufficient if the evidence pertaining to the duty of the court under Rule 116 (4) has been read out.

Rule 116 (4) is as follows:-

"116 (1)..... (2)..... (3)..... (4) If from the statement of the accused, or from the summary of evidence, or otherwise, it appears to the court that the accused did not understand the effect of his plea of "Guilty", the court shall alter the record and enter a plea or "Not Guilty", and proceed with the trial accordingly".

11. The contention of the Departmental Representative is that it is the court to which if it appears from statement of the accused or the summary of evidence that the accused did not understand the effect of his plea of guilty that a duty is enjoined to alter the plea to 'Not Guilty' and therefore only such evidence needs to be translated which is relevant for the Court to determine whether the accused understood the plea of guilty. Elaborating his submission, the Departmental Representative contends that the Court is well conversant with the evidence recorded in the summary of

evidence and, therefore, it would not take it much time to translate that portion which is relevant under Rule 116 (4).

12. The language of the printed form which is used in the summary Court Martial proceedings itself provides for the translation of the summary of evidence when it is recorded in a language which the accused does not understand. In our view the accused can understand the effect of his appeal of guilty only if he is aware of the evidence against him and of any weakness in the prosecution evidence and the merits of his plea in the voluntary statement, if any, made by him. The evidence has therefore either to be recorded in the language he understands or translated and explained to him. For proper exercise of the power under sub rule (4) of Rule 116, the evidence if it has been recorded in a language the accused does not understand has to be translated to him so that the Commanding Officer can interact with him to determine whether the accused has understood the effect of the plea or not, it is for that reason that the printed form envisages that the evidence has been read, translated and explained. Summary of evidence had been recorded in English.

13. In such circumstances, as the petitioner in his statement had set up a counter version, the Commanding Officer would have done better to exercise his power under Rule 115 (2) to advise the petitioner to withdraw the plea of

guilty assuming he had so pleaded or under Rule 116 (4) to alter the plea which he did not do, a lapse which goes to the root. It appears to us that the proceedings were conducted in great haste without providing reasonable opportunity, without serving copy of court of inquiry proceeding. It is to be noted that in SCM proceedings the accused is not permitted to be represented by a lawyer and for this reason the duty of the Court is far greater to ensure that the trial is fair. In our opinion, the trial of the petitioner was done in haste which has caused prejudice. The conviction and sentence of the petitioner is, therefore not sustainable.

14. The above case is well covered by judgment of this Tribunal decided on 15.02.2016 in **O.A.No 317 of 2013 Mukesh Purwanshi Vs Chief of Army Staff and others.**

Para 31 of the said judgment being relevant is quoted below.

“31. We now come to the contention of the learned counsel for the applicant that the trial was over in record time of 20 minutes which is an impossibility and that the procedural safeguards in the trial regarding translation of the charge in the language which the accused understands and the explanation to the accused about the implications of the plea of guilty in the trial and translation to the applicant of the summary of evidence was not followed. It is true that no time limit is provided for the

concluding a trial but what has to be seen is that procedural requirements is to be complied with in letter and spirit or not. Mere 'lip service' is not sufficient. From the counter affidavit it appears that the respondent's case is that contents of the charge sheet were explained to the applicant in Hindi, the language he understands. The summary of evidence consists of 9 manuscript pages. From the proceedings on the plea of guilty recorded in the trial, it appears that the summary of evidence is said to have been read (translated and explained) and marked as Ext. signed by the court and attached to the 19 OA 317 of 2013 Mukesh Purwanshi proceedings. Such reading and translation it is submitted by the applicant's counsel would take considerable time."

15. As a result of the foregoing discussions, the T.A deserves to be allowed and is allowed and the Summary Court Martial proceeding held on 15.01.2001 is set aside with all consequential benefits including the benefit that the petitioner shall be deemed to be in the rank of Havildar at the time of discharge. However, the arrears of salary will be confined only to 25%.

16. The Petitioner shall be deemed to be in service for the purpose of other service benefits till end of his tenure in the rank he was holding at the time of discharge which is held

to be in the rank of Havildar. The pensionary benefits will flow from the changed circumstances as part of consequential benefits.

17. Let the consequential benefits be provided to the petitioner expeditiously within a period not exceeding four months from the date of production of a certified copy of this order. The petitioner will be entitled to an interest of 9% for delay in payment, if any, after the above period.

No order as to cost.

(Air Marshal Anil Chopra)
Member (A)

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

Dated: August , , 2017
MH/-

