

CASE NO.:
Appeal (civil) 1883 of 2004

PETITIONER:
Union of India & Ors.

RESPONDENT:
Gurnam Singh

DATE OF JUDGMENT: 23/03/2004

BENCH:
K.G. Balakrishnan & B.N. Srikrishna.

JUDGMENT:
J U D G M E N T

O R D E R

[Arising out of S.L.P. (C) No. 21291 of 2003]

Leave granted.

The respondent herein was commissioned in the Parachute Regiment of the Indian Army on 2.3.1968. He was subjected to court-martial proceedings on two charges framed against him. The first charge was to the effect that he failed to return two official files in spite of directions; and the second charge was for using criminal force against late Major A.S. Randhawa by throwing a chair at him and causing bruises on his face. The respondent was tried by a court-martial and the court found him guilty of both the charges. In view of the verdict of the court-martial, the respondent was dismissed from service. The respondent challenged the court-martial proceedings and also the punishment imposed on him before the Punjab & Haryana High Court. The High Court of Punjab & Haryana was of the view that it had no jurisdiction and the writ petition should be filed before the Delhi High Court. Thus, the writ petition was dismissed with liberty to the respondent to file it before the Delhi High Court. The respondent later filed a writ petition in the Delhi High Court and by the impugned judgment the punishment imposed on the respondent was set aside and the appellants herein have been directed to pay a compensation of Rs. 5 lacs for the harassment and indignity meted out to the respondent. The judgment of the Delhi High Court is challenged by the Union of India.

We heard the counsel for the Union of India and also the respondent who appeared in person.

The High Court set aside the order passed by the appellant-authorities mainly on the ground that there was violation of Rule 37 of the Army Rules, 1954. The respondent had alleged in the writ petition that under Rule 37, the officer who is convening the general court-martial shall satisfy himself that the charges to be tried by the court are offences within the meaning of the Army Act, and that the evidence justifies a trial on those charges. The respondent contended that the officer convening the general court-martial did not pass any order to the effect that he was prima facie satisfied that the evidence justified a court-martial. According to the respondent, the officer who convened the court-martial was Brig. Raj Kumar Singh, who was the then officiating General Officer Commanding, and there is nothing on record to show that he had satisfied himself that the evidence justified a trial on those charges. The respondent had also contended that the

certificate of Major General G.L. Bakshi, who was the General Officer Commanding in March, 1987, that the allegations against the respondent were fit for trial by general court-martial was irrelevant and it did not satisfy the requirements of Rule 37 of the Army Rules, 1954. In the writ petition, it was contended by the respondent that the officer who was competent to convene the general court-martial was Brig. Raj Kumar Singh, but the order convening the court-martial was signed by Lt. Colonel R.N. Singh. It was also alleged that the convening order was not personally signed by the General Officer Commanding and that it was a case of clear non-application of mind. Hence there was violation of Rule 37(1) and (3) of the Army Rules, 1954.

In order to appreciate the contentions raised by the parties on either side, Rule 37 of the Army Rules, 1954 is to be extracted and it is to the following effect:

"37. Convening of General and District Court-martial. \026

(1) An officer before convening a general or district court-martial shall first satisfy himself that the charges to be tried by the court are for offences within the meaning of the Act, and that the evidence justifies a trial on those charges, and if not so satisfied, shall order the release of the accused, or refer the case to superior authority.

(2) He shall also satisfy himself that the case is a proper one to be tried by the kind of court-martial which he proposes to convene.

(3) The officer convening a court-martial shall appoint or detail the officers to form the court and, may also appoint, or detail such waiting officers as he thinks expedient. He may also, where he considers the services of an interpreter to be necessary, appoint or detail an interpreter to the court.

(4) The officer convening a court-martial shall furnish to the senior member of the court with the original charge-sheet on which the accused is to be tried and, where no judge-advocate has been appointed, also with a copy of the summary of evidence and the order for the assembly of the court-martial. He shall also send, to all the other members, copies of the charge-sheet and to the judge-advocate when one has been appointed, a copy of the charge-sheet and a copy of the summary of evidence."

The first part of Rule 37 says that before convening a general court-martial, the officer competent to convene the court-martial shall satisfy himself that the charges levelled against the delinquent officer are offences coming within the meaning of the Army Act, and that the evidence justifies a trial on those charges, and if he is not satisfied, he shall release the accused and shall refer the matter to the superior authority. It is clear that before proceeding further, the officer must understand the nature of the offences alleged and satisfy himself whether a prima facie case is proved warranting a trial by court-martial.. The Army Act and the Rules show that subjecting an officer to the court-martial is a serious step and under Section 109 of the Army Act, such a power conferred on the Central Govt. can to be exercised by the Chief of Army Staff or any officer empowered in this behalf by warrant of Chief of Army Staff. A personal satisfaction is required to be done by the officer who proposes to convene the court-martial proceedings.

The second part of Rule 37 says that the officer convening the court-martial shall appoint or detail the officers to form the court and may also appoint or detail such waiting officers as he thinks expedient.

He may also appoint or detail an interpreter to the court, if he so thinks fit.

The respondent in this case alleged violation of Rule 37 (1) and Rule 37(3) of the Army Rules. In the writ petition filed by the respondent before the Delhi High Court, the respondent alleged that Rule 37 of the Army Rules provides that an officer before convening a court-martial shall first satisfy himself that the charge amounted to an offence within the meaning of the Army Act and sub-rule (3) of Rule 37 provides that the officer convening the court-martial shall appoint or detail the officer to constitute a court-martial. The respondent alleged that there was total non-compliance with these provisions. It was alleged that the convening authority neither applied its mind to the charges or the evidence available therein nor he exercised the personal power in appointing/detailing the members of the court-martial. He contended that the convening order was required to be personally signed by the officer himself and there was infraction of Rule 37.

The High Court in the impugned judgment held that there was no compliance of Rule 37 of the Army Rules. It was held that the letter of Major General Bakshi, dated 9.3.1987, was irrelevant as he was not the convening officer. According to the High Court, Brig. Raj Kumar Singh was the convening officer, but the order convening the court-martial was signed by Lt. Col. R.N. Singh and that there was nothing on record to show that Brig. Raj Kumar Singh had applied his mind and satisfied himself that the charges to be tried were offences within the meaning of the Army Act and that the evidence justified a trial of those charges. The contention urged by the appellants herein that Major General G.L. Bakshi was the officer who satisfied himself about the charges to be tried by court-martial, was rejected and his letter dated 9.3.1987 was held to be not in accordance with Rule 37 of the Army Rules. On that ground, the findings of the court-martial were set aside and the reliance was placed by the High Court on the decision of this Court in Union of India & Ors. vs. Harish Chandra Goswami (1999) 4 SCC 575.

At the outset, we must say that Rule 37 does not contemplate that the officer who actually convenes the court-martial need satisfy himself that the charges framed against the delinquent officer are within the purview of the Army Act and that the evidence justifies a trial by court-martial of such charges. The above satisfaction can be entered by an officer empowered under Section 109 of the Army Act before the actual convening of the court-martial. In other words, the officer who finds that the charges are coming within the meaning of the Act and the evidence justifies a trial by court-martial need not necessarily convene the court-martial. His successor who is very well competent to do so can convene the court-martial. The officer who records the satisfaction under sub-rule (1) and the officer who actually convenes the court-martial under sub-rule (3) of Rule 37 can be two different officers, but both must be competent under Section 109 of the Army Act.

In the instant case, the facts are not disputed by the respondent. The documents produced by the respondent himself show that on 9.3.1987, the then General Officer Commanding, Major General G.L. Bakshi passed the order under sub-rule (1) of Rule 37, wherein it is specifically stated :

"I consider this as a fit case for trial by general court-martial as a prima-facie case exists against the above named officer."

These proceedings show that Major General Bakshi was furnished with all material particulars for such a decision. Brig. Raj Kumar Singh, who actually convened the court-martial was the successor in office of Major General Bakshi and on 7.5.1987 when he really convened the court-

martial he was the officiating General Officer Commanding. These facts are not disputed by the respondent. It is also pertinent to note that Brig. Raj Kumar Singh sought to file an affidavit before the High Court, but the same was not received on file. The same is received on file and we find that in the affidavit sworn to by him on 12.2.1994, the following facts are stated :

"1. In the GCM of IC-28082K Major Gurnam Singh of 48 GL Section Type 'B' attached to the Jat Regimental Centre, Bareilly, I had applied my mind in the summary of Evidence and satisfied myself that there is a prime-facie case against the accused on both the charges under Army Act Section 63 and 47 respectively.

2. In pursuance of Army Rule 41, I had approved and empowered my Staff Officer Lieutenant Colonel Ram Nagina Singh, the then Deputy Assistant Adjutant General (Legal), Headquarters Uttar Pradesh Area, Bareilly, to sign the Convening Order dated 07 May 1987 on my behalf."

Even if it is assumed that Brig. Raj Kumar Singh who really convened the court-martial should also be personally satisfied that the charges are coming within the purview of the Army Act and that the evidence justifies a trial by court-martial, these conditions are fulfilled in this case as evidenced by the affidavit filed by Brig. Raj Kumar Singh. Therefore, we do not see any violation of sub-rule (1) of Rule 37. The next allegation pertains to infraction of sub-rule (3) of Rule 37. It is alleged that the General Officer Commanding, Brig. Raj Kumar Singh was the officer competent to convene the court-martial, but the proceedings were signed by Lt. Col. Ram Nagina Singh and hence the rule was violated. We have perused the various documents produced in court. From the documents produced by the respondent, it is clear that Lt. Col. R.N. Singh on 1.4.1987 submitted a proposal by way of office note as to the manner in which the general court-martial order is to be issued. In the office note, he indicated the composition of the court. It was mentioned that there shall be one Colonel as Presiding Officer, two Lt. Colonels and two Majors as Members of the court-martial. One Colonel, one Lt. Colonel and one Major were proposed as Waiting Members, apart from one legally qualified officer as prosecutor, one defending officer and one civil lawyer as prosecution counsel of defence counsel. This proposal was approved by the then General Officer Commanding on 2.4.1987 and thereafter on 7.5.1987, proceedings were issued and that order was signed by Lt. Col. R.N. Singh, the then officiating General Officer Commanding. In the order, the names of all the members of the court-martial and waiting members are given with their designations. The grievance of the respondent is that this order was not signed by the officiating General Officer Commanding, but by Lt. Col. R.N. Singh, who was not competent to issue the order convening the general court-martial.

This plea is devoid of any merit as the entire proposal for constitution of court martial was approved by officiating General Officer Commanding. Apart from these official records, Brig. Raj Kumar Singh in his affidavit specifically stated that he had approved and empowered his Staff Officer, Lt. Col. R.N. Singh to sign the convening order dated 7.5.1987 on his behalf.

Therefore, it is clear that the contention of the respondent that the proceedings dated 7.5.1987 was not approved by the competent officer, namely Brig. Raj Kumar Singh, is only to be rejected. The respondent placed reliance on the decision of this Court in Union of India & Ors. vs. Harish Chandra Goswami (1999) 4 SCC 575. That is a case wherein violation of sub-rule (3) of Rule 37 was alleged. The competent officer to convene the court-martial was one Lt. Gen. R.N. Mahajan. Union of India contended that though the order convening the court-

martial was signed by the Colonel, he was authorised by the Lt. General to sign his order and thus the requirement of Rule 37 was complied with. It was also urged on behalf of the Union of India that convening of court-martial was only procedural in nature. Both these pleas were rejected and the facts in that case showed that there was nothing on record to show that Lt. General had authorized the Colonel to sign the order. It was held in paragraph 8 on page 578 as under :

"Admittedly there is no record whatever in the file to show that the personnel of the court-martial were appointed by or nominated by the Lt. General. The order for the assembly of a General Court-Martial did not contain either the signature or the initial of the Lt. General. It was signed only by the Colonel and none else. In the circumstances the said order cannot be considered to be an order evidencing the appointment of personnel of the court-martial by the Lt. General. There is no dispute before us that under Rule 37, the Commanding Officer has to apply his mind to satisfy himself that the charges to be tried by the Court are for offences within the meaning of the Act and that the evidence justifies the trial of those charges. It is also admitted that the Commanding Officer has also to satisfy himself that the case is a proper one to be tried by the kind of court-martial which he proposes to convene. However, learned counsel for the appellants contended that sub-rule (3) of Rule 37 is only procedural in nature and there is no need for application of mind by the Commanding Officer in the matter of appointment of the personnel of the court-martial. That contention loses its relevance in the present case in view of the categorical stand taken by the appellant that there was an order by the Commanding Officer appointing or detailing the officers to form the court-martial. According to the learned counsel as stated earlier, the form of assembly of a court-martial is the only relevant form and when it is signed by an officer on behalf of the Lt. General, that is sufficient proof of the appointment of the personnel of the court-martial by the Lt. General. We are unable to accept this contention in view of the fact that the said form does not contain either the signature or the initials of the Lt. General. Even assuming that the Lt. General passed an oral order, there is no record of any kind whatever to prove it. The form for assembly of a court-martial was not contemporaneous to such oral order, if any. In the absence of any record whatever to show that the appointment of the personnel of the court-martial was by the Lt. General, we are not persuaded to accept the contention of the appellants that the requirements of Rule 37 were fully satisfied. It is unnecessary for us to consider whether sub-rule (3) of Rule 37 requires an order in writing or not in view of the specific stand taken by the learned counsel for the appellants in this case that there was an order in writing and the said order was nothing else but the form for assembly of the court-martial."

In the instant case, the officiating General Officer Commanding, Major General Raj Kumar Singh approved the constitution of the court-martial and the officers were detailed for the said purpose. The proceedings dated 7.5.1987 are signed by Col. R.N. Singh and it is stated that it is by the order of the Officer Commanding. Therefore, we find there was no violation of sub-rule (3) of Rule 37. It is pertinent to note that the respondent did not raise any plea either under Rule 44 or under Rule 51 alleging that the court-martial was not properly constituted. In order to ensure proper constitution of court-martial, detailed procedure is laid down under the Army Rules. Rule 41 says how the court-martial proceedings have to be commenced. It is stated that on the court assembling, the order convening the court shall be laid before it together with the charge sheet and the summary of evidence and also the ranks, names and corps of the officers appointed to serve on the court and the

court shall satisfy itself that it is legally constituted. Rule 44 says that the order convening the court and the names of the presiding officers shall be read over to the accused and he shall be asked whether he has any objection to being tried by any officer sitting on the court. If the accused raises any objection, such objection shall be considered and disposed of in accordance with the provisions of that section. The accused is given opportunity to adduce evidence in support of his objection and if his objection is sustained in respect of any member, such member shall forthwith retire and the presiding officer shall appoint any officer in waiting. Rule 51 says that the accused before pleading to a charge, may offer a special plea to the general jurisdiction of the court, and if the court finds that anything stated in such plea shows that the court has no jurisdiction, it shall not proceed with the trial and adjourn, but report it to the convening authority. The above rules have been indicated to show that the delinquent officer would get ample opportunity to point out that the order convening the court-martial was defective.

Admittedly, the respondent did not raise any such objection, much less the violation of Rule 37. The respondent submitted that at the commencement of the court-martial he was not aware of the alleged violation of Rule 37 and that these facts came to his notice only later.

It is satisfactorily proved that sub-rules (1) and (3) of Rule 37 have been fully complied with and the High Court erred in finding that there was violation of Rule 37. Such finding is without any factual foundation. We reverse that finding on the question of non-compliance of Rule 37.

In the impugned judgment, the High Court has made certain passing references regarding the merits of the case, though such matters were not dealt with in detail. It was also observed that the punishment imposed on the respondent was totally disproportionate. We do not express any opinion on other contentions raised by the respondent in this case. We feel that the matter requires to be re-considered by the High Court.

In the result, we set aside the judgment of the High Court and remit the matter to be considered on all the points urged by the respondent, except his plea regarding the infraction of Rule 37 of Army Rules, 1954. We notice that the respondent had filed the writ petition in the High Court of Punjab & Haryana in the year 1990 and later he had filed the same before the Delhi High Court and that was disposed of in May, 2003. The respondent has been litigating over this matter for quite a long period. Therefore, we request the High Court to consider this case on priority basis and dispose of the same in accordance with law.

The appeal is disposed of accordingly. There will be no order as to costs.