

PETITIONER:
MAJOR SURESH CHAND MEHRA

Vs.

RESPONDENT:
DEFENCE SECRETARY (U.O.I.) AND OTHERS

DATE OF JUDGMENT 13/11/1990

BENCH:
MISRA, RANGNATH (CJ)
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KANIA, M.H.

CITATION:
1991 AIR 483 1990 SCR Supl. (3) 48
1991 SCC (2) 198 JT 1990 (4) 590
1990 SCALE (2) 1102

ACT:

Army Act, 1950/Army Rules, 1954 Sections 80, 83, 84, 85/Rules 22, 25, 53, 177---Commanding Officer directing disciplinary action against a Major---Proceedings initiated and summary trial ordered-Major opting to accept the award of Court Martial reprimand recommended---Affecting promotion---Validity of proceedings.

HEADNOTE:

The petitioner was commissioned in the Indian Army in January 1959 and was promoted to the substantive rank of Major on March 11, 1983. In January 1986, the petitioner joined 63rd Fd. Regiment. The 24th Rising Day of the Unit fell on September 1, 1986. In connection with the celebrations of the said Day, the petitioner went to respondent No. 2, Regimental Medical officer of the Unit, at about 10.30 p.m. on 29.8.86 to persuade him loan his steel almirah, for two or three days. Respondent No. 2 refused to loan the Almirah to the Petitioner which led to hot exchange of words between them at about 11.00 p.m. Thereupon Respondent No. 2 lodged a complaint with the Commanding Officer that he had been beaten by the petitioner. The Commanding Officer visited the quarters of the Respondent No. 2 at about 15 minutes past midnight of 29/30th August 1986. He made some sort of inquiries at that time and made a noting that the accusation made by respondent No. 2 against the petitioner was unsubstantiated. It appears Respondent No. 2 at that point of time was not able to participate in the investigation due to head injuries received by him. However the documents reveal that respondent No. 2 had to be hospitalised as a result of injuries received by him at the hands of the petitioner. In or about September 1986, a staff court of inquiry was held which opined that due to contradictions and lack of evidence, it was not possible to pin-point the blame for injuries sustained by respondent No. 2. The proceedings of the court of inquiry were later reviewed by the Commanders in chain upto General Officer Commanding 4 Corps who came to the conclusion that there was sufficient circumstantial evidence, corroborated by independent evidence of the head injuries suffered by respondent No. 2 showing that the petitioner was responsible for the same. The Commanding

officers, therefore, inter alia directed that disciplinary action be taken against the petitioner for causing injuries to respondent No. 2

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and further the case be dealt with summarily by GOC, 2 Mountain Division. Accordingly Disciplinary proceedings were initiated and a summary of evidence against the petitioner was recorded. After recording the evidence, the Commanding Officer remanded the petitioner to the GOC, 2 Mountain Division, for summary trial under section 84 of the Army Act, 1950. The petitioner was attached to 54 Fd Regiment for purposes of completing the disciplinary action against him. At the trial, the petitioner pleaded not guilty, but when asked by the GOC as to whether he would elect to face the trial by the General Court Martial or would accept the award passed by the General Officer Commanding, 2 Mountain Division, the petitioner opted to accept the award of the GOC. The petitioner was thereupon awarded the punishment of severe reprimand. By the instant petition under Article 32 the petitioner seeks the quashing of the sentence of 'severe reprimand', as according to him his promotion is held up on that account.

Dismissing the petition, this Court,

HELD: A perusal of sub-rule (i) of Rule 22 shows that the rule deals with the charges against a person subject to the Army Act other than officers. Admittedly, the petitioner in the instant case was an officer and hence, the provisions of Rule 22 had no application to it. It is Rule 25 which lays down the procedure in respect of the charges against the officers and it contains no provisions analogous to sub-rule (2) of Rule 22 of the Army Rules. In view of this, Rule 22 does not come into play at all. [53B-D]

The provisions of sub-rule (i) of the Rule 177 show that the inquiry must be by an assembly of officers of the ranks described in sub-rule (1) and the purpose of this inquiry is merely to collect evidence and if so required, to report with regard to any matter which may be referred to the said officers. This is merely in the nature of a preliminary investigation and cannot be equated with a trial. [53F]

From his record it appears that, apart from his impetuousness exhibited by the incident in question, the petitioner is considered by his superiors to be a good officer and after a reasonable time, the army authorities could consider him for promotion if permissible under the law, the rules and the practice followed in the army. [54F]

JUDGMENT: