

A MAJOR SURESH CHAND MEHRA  
v.  
DEFENCE SECRETARY (U.O.I.) AND OTHERS

NOVEMBER 13, 1990

B [RANGANATH MISRA, CJ. AND M.H. KANIA, JJ.]

*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.*

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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

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]

ORIGINAL JURISDICTION: Writ Petition (Criminal) No. 625 of 1989.

(Under Article 32 of the Constitution of India).

**A** Capt. Virendra Kumar and A.L. Trehan for the Petitioner.

V.C. Mahajan, Mahinder Singh and Ms. A. Subhashini for the Respondents.

**B** The Judgment of the Court was delivered by

**C** **KANIA, J.** This is a petition under Article 32 of the Constitution of India praying for an order quashing the sentence of "Severe Reprimand" imposed on the petitioner by respondent No. 3, Major General B.S. Malik, and for setting aside his attachment with 54th Field Regiment (hereinafter referred to as "Fd. Regiment"). Respondent No. 1 is the Defence Secretary of the Union of India. Respondent No. 2 is Captain P.R. Dutta and respondent No. 2 is Major General B.S. Malik of Headquarters 12 Corps.

**D** The petitioner was commissioned in the Indian Army on January 12, 1969, and was promoted to the substantive rank of Major on March 11, 1983. In January 1986, the petitioner joined 63rd Fd. Regiment as second in command. The 24th Rising Day of the Unit to which the petitioner was attached fell on September 1, 1986. Several guests were invited for the celebration of the occasion. At about 10.30 p.m. on August 29, 1986, the petitioner visited the single officers' quarters of the Unit to persuade respondent No. 2, Capt. P.R. Dutta Regimental Medical Officer of the Unit, to loan his steel almirah, taken by him from the Army Stores, for two or three days for use in the guest room of the Unit. Respondent No. 2 refused to loan the said almirah and it appears that there was a hot exchange of words and an altercation between the petitioner and respondent No. 2 in the latter's quarters at about 11.00 p.m. On the complaint of respondent No. 2, made on telephone, that he had been beaten up by the petitioner on the head and several other parts of the body and at his request that the commanding officer should visit the quarters and see the injuries sustained by him, the commanding officer visited the single officers' quarters at about 15 minutes past midnight of 29/30th August, 1986. He met the petitioner and respondent No. 2 as well as several other officers of the Unit. It appears that he made some sort of inquiries at that time and made a noting that the accusation made by respondent No. 2 against the petitioner appeared to be unsubstantiated.

**H** A perusal of the documents recording the aforesaid incident pre-

pared by the commanding officer, Col. Satbir Singh, shows that the so-called investigation made by him were some time prior to 1.30 a.m. in the night of 29th August. At that time respondent No. 2 who had suffered head injuries was hardly in a position to participate in the investigation. Thereafter, respondent No. 2 had to be hospitalised for a few days and his medical report shows that he suffered a couple of fairly severe head injuries, that it was suspected that he might be suffering from concussion of the brain and had injuries on several other parts of his body. Respondent No. 2 was hospitalised and had to be transferred from a small hospital to a big hospital and was on the list of 'Seriously ill' persons for a few days. Thereafter, 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 on 29/30th August, 1986. From the counter-affidavit it appears that the proceedings of the court of inquiry were reviewed by the Commanders in chain upto General Officer and Commanding 4 Corps who came to the conclusion that although there were no eye-witnesses to the alleged assault on respondent No. 2, there was sufficient circumstantial evidence, corroborated by the independent evidence of the head injuries suffered by respondent No. 2, showing that the petitioner was responsible for the same. The report made by the Commanders in chain also fairly shows that according to them, although there was sufficient evidence of provocation by respondent No. 2, the petitioner acted in an immature and tackless manner by laying his hands on respondent No. 2. In these circumstances, the commanding officers *inter alia* directed that disciplinary action be taken against the petitioner for acting immaturity in causing injuries to respondent No. 2 and that the case should be dealt with summarily by GOC (General Officer Commanding), 2 Mountain Division.

Certain actions were recommended against respondent No. 2 and Col. Satbir Singh with which we are not concerned.

Pursuant to this direction, disciplinary proceedings were initiated and a summary of evidence against the petitioner was recorded. After recording the summary of evidence, the commanding officer remanded the petitioner to the General Officer Commanding, 2 Mountain Division, for summary trial under section 84 of the Army Act, 1950.

On April 15, 1987, the petitioner was attached to 54 Fd. Regiment for purposes of completing the disciplinary action against him.

A At the trial the petitioner pleaded not guilty; but finally, when the petitioner was asked by the General Officer Commanding 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, rather than to face the trial, the petitioner opted to accept the award of the General Officer Commanding. The  
 B petitioner was thereupon awarded the punishment of severe reprimand. It is alleged by the petitioner that because of this order of severe reprimand, his case for promotion has not been considered at all although he was due for promotion on several occasions.

C It was contended by Capt. Virendra Kumar who appeared on behalf of the petitioner that as the allegations made by respondent No. 2 against the petitioner were not believed at the inquiry held by the Commanding Officer, Col. Satbir Singh on the night of 29/30th August, 1985, as set out earlier, this would amount to an acquittal of the petitioner in respect of the charges made against him and he could not be tried again in view of the provisions of Rule 22(2) read with  
 D Rule 53(1)(a) of the Army Rules, 1954.

We find no substance in this contention. Clause (a) of sub-rule (1) of Rule 53 of the Army Rules provides as follows:

“53. *Plea in bar.*—

E (1) The accused, at the time of his general plea of “Guilty” or “Non Guilty” to a charge for an offence, may offer a plea in bar of trial on the ground that—

F (a) he has been previously convicted or acquitted of the offence by a competent criminal court or by a court-martial, or has been dealt with summarily under sections 80, 83, 84 and 86, as the case may be, for the offence, or that a charge in respect of the offence has been dismissed as provided in sub-rule (2) of rule 22; or”.

G Sub-rule (2) of Rule 22 of the Army Rules, 1954 provides as follows:

H “(2) The commanding officer shall dismiss a charge brought before him if, in his opinion, the evidence does not show that an offence under the Act has been committed, and may do so if, in his discretion, he is satisfied that the

charge ought not to be proceeded with.”

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The submission of Capt. Virendra Kumar was that in view of this sub-rule the inquiry made by the commanding officer, Col. Satbir Singh, amounted to a dismissal of the charge made against the petitioner as contemplated in Rule 22(2) and the petitioner could not be tried again for the same.

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A perusal of sub-rule (1) of Rule 22 shows that the said rule deals with the charges against a person subject to the Army Act other than officers. Admittedly, the petitioner 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. Admittedly, the said inquiry by Col. Satbir Singh was not a trial by criminal court or a court martial nor was the case dealt with summarily under sections 80, 83, 84 or 85 of the Army Act, 1950, and hence, clause (a) of sub-rule (1) of rule 53 of the Army Rules did not come into play at all.

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It was next submitted by Capt. Virendra Kumar that, alternatively, the inquiry held by the staff court of inquiry in September 1986 as aforesaid it must be regarded as a trial of the petitioner and, in view of the findings of that court of inquiry which we have referred to earlier, the petitioner could not be tried again. We find that there is no substance in this contention. The said inquiry was by a court of inquiry provided for in Rule 77 of the Army Rules. The provisions of sub-rule (1) of the said Rule show that the said 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.

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It was next contended by Capt. Virendra Kumar that at the aforesaid trial of the petitioner no evidence was recorded and after a hearing which lasted for a few minutes the sentence of severe reprimand was imposed by the GOC on the petitioner. It was submitted by him that the principles of natural justice had been violated at this trial. We are unable to accept this submission. At the said trial, the General Officer Commanding specifically asked the petitioner as to whether he would elect to face the trial by the General Court Martial or would

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A accept the award passed by the General Officer Commanding, 2nd Mountain Division. The petitioner voluntarily opted to accept the award and it does not lie in his mouth to complain that no summary trial as provided for in the Army Rules was held nor could such a complaint by him be entertained in a writ petition like this.

B It was finally urged by Capt. Virendra Kumar that the entire proceedings held to award the punishment of severe reprimand, were bad in law because of *mala fides*. We find that this contention is totally baseless. In the petition the only allegation made is that it was the political clout of respondent No. 2 that lead to the trial of the petitioner and the award of punishment to him. The petitioner, however, has failed to set out the nature of the political clout. The facts on the basis of which one could conclude is that there was such a political clout, are to nowhere to be found in the petition nor is there any allegation as to who were the persons connected with the inquiry on whom the said political clout operated. The allegation of *mala fide* appears to be totally without foundation and vague. As often observed, as allegation of *mala fides* can be easily made but it is difficult to prove. In our opinion, no investigation is called into the allegation of *mala fides* made by the petitioner.

E In the petition it is alleged by petitioner that his chances of promotion have been rendered nugatory by reason of the punishment of severe reprimand awarded to him. No argument was, however, advanced before us in this connection. 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. Nothing has been shown to us which precludes the army authorities from giving him promotion.

In the result, the petition fails and is dismissed. Rule discharged.

There will be no order as to costs.

Y. Lal

Petition dismissed.