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JASWANT SINGH

v.

UNION OF INDIA & ANR.

(Civil Appeal No. 6886 of 2014)

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DECEMBER 10, 2018

[DR. DHANANJAYA Y CHANDRACHUD AND

M. R. SHAH, JJ.]

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Army Rules, 1954 – r.129 – Benefit of legal advise under – Entitlement to – Appellant, Sepoy in the Indian Army was dismissed from service by Summary Court Martial – Challenged before Armed Forces Tribunal (AFT) – Dismissed – Plea of appellant that he was entitled to the benefit of legal advise u/r.129 of the 1954 Rules which he was denied on the ground that legal assistance could be admissible only where the offence was punishable with death – Held: Rule 129 indicates that in Summary Court Martial, the accused may have a person to assist him during the trial, whether a legal adviser or any other person – Expression ‘may’ must be read to mean that the person who is proceeded against has the option on whether or not to engage a legal advisor or any other person – It represents an entitlement to be represented – In view of the specific provisions of r.129, the Commanding Officer was evidently in error in declining the assistance of a lawyer to the appellant – There was a clear violation of the principles of natural justice – Prejudice too is evident – Appellant was dismissed from service and sentenced to six months’ imprisonment – Both his livelihood and liberty were taken away – Judgment of AFT set aside – Armed Forces – Service Law – Army Regulations – Regulation 479 – Doctrines/Principles – Principles of Natural Justice .

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Allowing the appeal, the Court

HELD: 1.1 Rule 129, Army Rules, 1954 clearly indicates that in a Summary Court Martial, the accused may have a person to assist him during the trial whether legal adviser or any other person. The expression ‘may’ must be read to mean that the

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person who is proceeded against has the option on whether or not to engage a legal advisor or any other person. It represents an entitlement to be represented. [Para 7][1315-A-B] A

1.2 Regulation 479 of the Army Regulations deals with a situation where a person who is subject to the Army Act is to be tried for a court martial for an offence punishable with death. On the contrary, Army Rule 129 specifically deals with representation in a Summary Court Martial. In view of the specific provisions of Rule 129, the commanding officer was evidently in error in declining the assistance of a lawyer on the ground that legal assistance could be admissible only where the offence was punishable with death. [Paras 10, 11][1315-D-E] B C

1.3 In the present case, the appellant had rendered seven years service. He was pitted against his commanding officer. In the face of the Army Rule 129, there was no reason to deny him the benefit of legal representation which he desired at his own expense. For these reasons, there was a clear violation of the principles of natural justice. The prejudice too is evident. The appellant was dismissed from service and sentenced to six months' imprisonment. Both his livelihood and liberty were taken away. The judgment of the Armed Forces Tribunal is set aside. [Paras 15-17][1317-E-G] D E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6886 of 2014.

From the Judgment and Order dated 18.12.2012 of the Armed Forces Tribunal, Regional Bench, Lucknow in OANo. 48 of 2010/order dated 05.03.2013 in MA No. 62 of 2013 F

Major K. Ramesh, Ms. Archana Ramesh, Vibhuti S. Gupta, Surgavir, Ram Naresh Yadav, Advs. for the Appellant.

Ms. Pinky Anand, ASG, Ms. Kiran Suri, Sr. Adv., R. Balasubramanian, Ms. Sunita Sharma, Shailendra Saini, Arvind Kumar Sharma, Ms. Kirti Dua, Mukesh Kumar Maroria, Advs. for the Respondents. G

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A The Judgment of the Court was delivered by

DR. DHANANJAYA Y CHANDRACHUD, J.

B 1. The appellant has challenged the decision of the Armed Forces Tribunal, Regional Bench at Lucknow dated 18 December, 2012 in O.A. No. 48/2010, by which his challenge to the punishment of dismissal and six months' rigorous imprisonment imposed by a Summary Court Martial has been rejected. The punishment of imprisonment has already been undergone.

C 2. The appellant was enrolled as a Sepoy on 1 January, 2003 in the Indian Army. A Summary Court Martial was convened on two charges; the first being of an assault on a superior officer while the second was the use of abusive language against a Subedar who had found the appellant to be not properly dressed for the parade.

D 3. The Summary Court Martial acquitted the appellant of the second charge, but he was found guilty of the first charge of misconduct. He was awarded a punishment of dismissal from service and six months rigorous imprisonment in civil jail.

4. Aggrieved by the punishment, the appellant moved the Armed Forces Tribunal, which dismissed the Original Application.

E 5. The submission which has been urged on behalf of the appellant is that there was a violation of the principles of natural justice in conducting the Summary Court Martial. The submission is based on the provisions of Rule 129 of the Army Rules, 1954. The appellant sought the assistance of a civil advocate which was denied.

F 6. The appellant submits that in a Summary Court Martial, the Sepoy was pitted against the Commanding Officer. He should have been given the benefit of legal advice which was denied to him on the erroneous basis that it was only for an offence involving a possible sentence of death that such assistance could be allowed.

G Rule 129 of the Army Rules, 1954 provides thus;

“Friend of accused – In any summary court- martial, an accused person may have a person to assist him during the trial, whether a legal advisor or any other person. A person so assisting him may advise him on all points and suggest the

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questions to be put to witnesses, but shall not examine or cross-examine witnesses or address the court.” A

7. The above Rule clearly indicates that in a Summary Court Martial, the accused may have a person to assist him during the trial, whether a legal adviser or any other person. The expression ‘may’ must be read to mean that the person who is proceeded against has the option on whether or not to engage a legal advisor or any other person. It represents an entitlement to be represented. B

8. By his letter dated 7.7.2009, the appellant requested the Commanding Officer to permit him to hire a civil advocate. C

9. On 8th July, 2009, this request was turned down on the ground that under Regulation 479 of the Army Regulations, a civil advocate is permissible to only those persons who are subject to trial for an offence which may result in the imposition of the death penalty. C

10. Regulation 479 deals with a situation where a person who is subject to the Army Act is to be tried for a court martial for an offence punishable with death. On the contrary, Rule 129 of the Army Rules which has been extracted above specifically deals with representation in a Summary Court Martial. D

11. In view of the specific provision of Rule 129, the Commanding Officer was evidently in error in declining the assistance of a lawyer on the ground that legal assistance could be admissible only where the offence was punishable with death. E

12. Ms. Pinky Anand, learned ASG appearing for the Union of India submits that no prejudice was caused to the appellant and hence, the Court may not entertain the appeal. In this connection, reliance was placed on the decision of this Court in *Major G.S. Sodhi vs. Union of India*¹. F

13. The judgment in Major Sodhi’s case (supra) dealt with a case of a General Court Martial. The circumstances of the case have been adverted to in paragraph 20 of the judgment. This Court noted that in the letter of the accused, there was a reference to Rule 95 which dealt only with a ‘defending officer’ and ‘friend of the accused’ to be provided for on request. G

¹(1991) 2 SCC 382

- A 14. It was in this background that this Court observed as follows:-
- “20. The next submission is that the proper defence as requested by the petitioner has not been provided for. In this regard it is submitted that on December 8, 1988 the petitioner made a request for a defence counsel and on December 18, 1988 he gave consent to dispense with the defending officer. However on May 8, 1989 Lt. Col.S.K. Maini asked the petitioner for three names of defending officers in order of preference. On May 9, 1989 he gave the list of three names but according to the petitioner on May 17, 1989 Lt. Col. S.K. Maini detailed Lt. Col. R.S. Bhatt who is of his own choice. It is also pointed out that on May 18, 1989 the petitioner during the court-martial requested for adjournment of the court for 10 days in order to engage a defence counsel. This request was turned down on the wrong advice of the Judge-Advocate. The further submission is that the petitioner on May 19, 1989 wrote a communication to the convening officer and apprised them with the prejudice caused to his defence. Considerable reliance is placed on this letter. We have perused the same. In that there is a reference to Rule 95 which deals only with the ‘defending officer’ and ‘friend of the accused’ to be provided for on request. The complaint made in the letter is about not providing the defending officer of his choice at the trial. There are some of the circumstances which according to the learned Counsel should be taken into account in appreciating the prejudice caused to the petitioner’s defence. Rules 95 to 101 deal with the appointment of defending officers and providing defence to the accused. Rule 95 lays down that at any general or district court-martial the accused person should be represented by any person who shall be called the defending officer. It is the duty of the convening officer to ascertain whether an accused person desires to have a defending officer assigned to represent him at his trial and if he does so desire, the convening officer shall use his best endeavours to ensure that the accused shall be so represented by a suitable officer. This rule also provides that accused person should be assisted by any person whose services he may be able to procure and who shall be called “friend of the accused” to give
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advice to the accused on all points and suggest the questions to be put to the witnesses. Under Rule 96 in certain general and district court- martials the counsel is allowed if the convening officer declares that it is expedient to allow the appearance of the counsel. Rule 97 prescribes the requirements for appearance of counsel. From a combined reading of these rules it appears that generally it is the defending officer selected by the convening officer who defends the accused and the accused is allowed in special cases if the convening officer declares that it is expedient to allow the appearance of the counsel which is exceptional. However, in this case we need not make a roving investigation on this aspect because we do not find any illegality or irregularity that vitiate the trial nor we find any prejudice having been caused to the accused. As noted above under the rules the defending officer so selected is authorised to represent the accused and examine and cross-examine the witnesses. All that has been done duly in this case. Therefore we are unable to agree that prejudice has been caused to the petitioner's defence."

(emphasis supplied)

The above factual basis on which it was held that no prejudice had been caused to the defence of the appellant was evidently the foundation of the ultimate decision of this Court.

15. In the present cae, the appellant had rendered seven years of service. He was pitted against his Commanding Officer. In the face of Army Rule 129, there was no reason to deny him the benefit of legal representation which he desired at his own expense.

16. For these reasons, we are of the view that there was a clear violation of the principles of natural justice. The prejudice too is evident. The appellant was dismissed from service and sentenced to six months' imprisonment. Both his livelihood and liberty were taken away.

17. In the circumstances, we allow the appeal and set aside the judgment of the Armed Forces Tribunal and the decision which has been taken on the basis of the Summary Court Martial.

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A 18. It is clarified that we have interfered with the order only on the ground of a violation of the principles of natural justice. It would be open to the Respondents to take further steps as may be permissible in accordance with law.

B 19. The appeal is, accordingly, allowed. There shall be no order as to costs.

Divya Pandey

Appeal allowed.