

SUPREME COURT OF INDIA

Union of India

Vs.

V.N. Singh

C.A.Nos.32 of 2003

(Harjit Singh Bedi and J.M. Panchal, JJ.)

08.04.2010

JUDGEMENT

J.M.Panchal, J.

1. The instant appeal is directed against Judgment dated March 15, 2002 rendered by the High Court of Delhi in C.W.P. No.5451 of 1998 by which (1) the order dated October 30, 1996 invoking Section 123 of the Army Act and taking the respondent in close custody (2) the findings recorded by General Court Martial holding the respondent guilty of some of the charges and imposing punishment of forfeiture of 8 years past service of the respondent for the purposes of the pension vide order dated April 3, 1997 (3) the order dated June 14, 1997 passed by Mr. K.K. Verma, the then Major General, General Officer Commanding, 22 Infantry Division, directing the General Court Martial to re-assemble in open Court at Meerut on June 28, 1997 for reconsidering its findings on the first, second, third, fourth, sixth, seventh and eighth charges levelled against the respondent and the adequacy of the sentence of forfeiture of 8 years of past service for the purpose of pension awarded to him by the General Court Martial (4) the revised order dated July 2, 1997 passed by General Court Martial adhering to its earlier findings but revoking its earlier order of sentence and imposing sentence of forfeiture of 11 years past service for the purposes of pension and severe reprimand subject to he confirmation by Major General, General Officer Commanding and (5) the communication dated April 8, 2000 addressed by Col. Dy. CDR Mr. P.K.Sharma promulgating the order of the Confirming Authority by which sentence of forfeiture of 11 years past service of the respondent for the purposes of pension, was confirmed and (6) the communication dated May 15, 2000 by DDA and QMG Mr. G.Vinod for CDR mentioning that the promulgation order carried out on May 15, 2000 was handed over to the respondent and order dated April 17, 2000 promulgating punishment of forfeiture of 8 years past service of the respondent for the purposes of pension and severe reprimand was de-promulgated and cancelled, are set aside, on the ground that trial of the respondent by Court Martial was time barred in view of the provisions of Section 122 (1)(b) of the Army Act, 1950 .

2. The facts emerging from the record of the case are as under:- The respondent i.e. Mr. V.N.Singh who was Lt. Col. was posted as Officiating Commandant in 4 Reserved Petroleum Depot ('4 RPD' for short), Delhi Cantonment. During the inspection of 4RPD, certain irregularities were noticed with regard to local purchase of the Hygiene and Chemicals in the month of May 1993. Therefore, by a letter dated May 5, 1993, the then Lt. Col. P.Oomen, who was Additional Director, Supply and Transport, Delhi area was directed by the then Brigadier Mr. K.S.Bharucha, who was holding the post of Deputy Director, Supply and Transport, Headquarters Delhi area ('DDST' for short), to carry out preliminary investigation of local purchase of Hygiene and Chemicals as well as other fuel oils and lubricant items by 4 RPD, during the year 1992- 93. Accordingly, preliminary investigation was carried out by Lt. Col. P.Oomen. On May 17, 1993 he submitted his report to Brigadier K.S.Bharucha, DDST, who in turn forwarded the report on May 27, 1993 to Major General of Army Supply Corps ('ASC' for short) Headquarters Western Command, Chandimandir. In that report, the DDST recommended closure of the case.

“The Major General, ASC, Headquarters Western Command, did not consider the case appropriate for closure. He therefore, forwarded the papers to the Headquarters Western Command. The Headquarters suggested to the Major General by letter dated June 12, 1993 to seek explanation of the respondent. The Major General ASC therefore issued a show-cause notice dated June 18, 1993 to the respondent and sought his explanation on the point of procedural lapses in local purchase. The respondent in his reply dated July 6, 1993 admitted certain procedural lapses on the part of 4 RPD and regretted the same, since such lapses were due to practical problems.

Thereafter, the DDST accepted the explanation given by the respondent and again recommended the Headquarters Western Command (ST) Chandigarh to treat the case as closed if deemed fit by communication dated July 9, 1993. On September, 9, 1993, the Major General ASC, Headquarters Western Command, endorsed certain remarks in the pen picture of the respondent while writing his ACR. On January 8, 1994 a Technical Court of Inquiry was convened by Brigadier Narsimhan, who had replaced Brigadier K.S.Bharucha, as DDST. The Lt. Col. Ram Darshan of 226 Company ASC Supplies was asked to act as the Presiding Officer. The report along with the proceedings of Technical Court of Inquiry were forwarded to the DDST. The DDST recommended to the Major General ASC, Headquarters Western Command, vide communication dated March 3, 1994 to go for a thorough investigation by Staff Court of Inquiry. Therefore, on May 7, 1994 a Staff Court of Inquiry was convened pursuant to the orders of the General Officer Commanding-in-Chief, ('GOC-in-C' for short) Western Command. Before Staff Court of Inquiry, ('S.C.I.' for short) witnesses were examined and documents produced. The Staff Court of Inquiry concluded its proceedings and submitted its recommendations on August 31, 1994 blaming the respondent specifically along with few other personnel for irregularities, in the local purchase of Hygiene and Chemicals during the period 1992-93. After examining the recommendations of SCI, the GOC, Delhi area, Major General A.R.K. Reddy,

recommended on October 19, 1994, disciplinary action against the respondent. Thereafter, the GOCin-C Western Command, Lt. Gen. R.K. Gulati, directed to initiate disciplinary action against the respondent vide communication dated December 3, 1994. On August 23, 1995 the disciplinary action was commenced against the respondent by way of hearing of parties as required by Rule 22 of the Army Rules and a direction for recording of summary of evidence was ordered by the Commanding Officer i.e. Commander 35 Infantry Brigade under whom the respondent was working at the relevant time. The Commanding Officer, vide order dated October 30, 1996 invoked the provisions of Section 123 of the Army Act 1950, and took the respondent into close custody as superannuation of the respondent was due on October 31, 1996 and it was apprehended that the respondent would flee the course of justice.

The respondent filed Criminal Writ Petition 726 of 1996 before the Delhi High Court challenging the order dated October 30, 1996 on the ground that Section 123 of the Army Act was wrongly invoked and trial if any by GCM was barred by limitation under Section 122 of the Army Act. The respondent also prayed to direct the authority to pay compensation at the rate of Rs. 50,000/- for each day of illegal detention. By an order dated December 3, 1996, the High Court stayed the operation of order dated October 30, 1996 and directed the respondent to raise the points mentioned in his Writ Petition, before General Court Martial. On December 11, 1996, the General Officer Commanding, 22 Infantry Division issued an order convening General Court Martial ('GCM' for short). Accordingly, GCM was convened. By order dated April 3, 1997, the GCM found the respondent guilty of some charges and not guilty of some other charges. By the said order, the GCM imposed the punishment of forfeiture of 8 year's past service for the purpose of pension on the respondent subject to the confirmation of the same by the Major General, General Officer Commanding. This report of the GCM was sent to the Confirming Authority. The Confirming Authority vide order dated June 14, 1997, sent back the report to GCM, under the provisions of Section 160 of the Army Act to revise/reconsider the exoneration of the respondent from some of the charges and decide whether the punishment imposed on the respondent was lenient or not. Thereupon, the respondent filed Writ Petition No. 5451 of 1997 challenging aforementioned order dated June 14, 1997 as well as validity of Sections 153, 154 and 160 of the Army Act, 1950. Writ Petition No. 5451 of 1997 was filed by the respondent without prejudice to the contentions and averments made in Criminal Writ Petition No. 726 of 1996.

In view of the directions from the Confirming Authority, GCM was convened. The GCM submitted its report dated July 2, 1997. The report indicates that the GCM adhered to its earlier finding but passed a fresh order of sentence forfeiting 11 years of past service of the respondent for the purpose of pension as well as the punishment of severe reprimand. A copy of the order dated July 2, 1997 was also forwarded to the respondent. On receipt of the order dated July 2, 1997 the respondent brought to the notice of the Court hearing Criminal Writ Petition No. 726 of 1996, the subsequent developments which had taken place. The Court noticed that order dated June 14,

1997 passed by the Competent Authority, was subject matter of challenge, in Writ Petition No. 5451 of 1997 which was pending. On subsequent events being brought to the notice of the Court, the Court was of the opinion that keeping Criminal Writ Petition No. 726 of 1996 pending was of no use and ends of justice would be met if liberty is reserved to amend memorandum of Writ Petition No. 5451 of 1997 and to raise all questions in the said pending Writ Petition. After reserving necessary liberty to the respondent, the Court disposed Criminal Writ Petition No. 726 of 1996 by an order dated August 19, 1998. The order dated July 2, 1997 passed by GCM was considered by the Confirming Authority. The Confirming Authority approved the finding of GCM and imposition of sentence of forfeiture of 11 years past service of the respondent for the purpose of pension. However, the Confirming Authority did not approve/confirm the punishment of severe reprimand imposed by the GCM on the respondent. By communication dated April 8, 2000 the order of the Confirming Authority was promulgated.

Thereafter, vide communication dated May 15, 2000 promulgation of order was handed over to the respondent. Thereafter, the respondent moved an application for amendment of Writ Petition No.5451 of 1997 which was allowed. By way of amendment the respondent challenged validity of orders dated April 3, 1997, July 2, 1997, October 30, 1996, April 8, 2000 and May 15, 2000 over and above claiming compensation. The High Court by Judgment dated March 15, 2002 has allowed the Writ Petition and quashed GCM proceedings as well as the sentence imposed upon the respondent after holding that GCM proceedings were initiated after expiry of the period of limitation prescribed by Section 122(1) (b) of the Army Act, 1950, which has given rise to the instant appeal.”

3. This Court has heard Ms. Indira Jaisingh, the Learned Additional Solicitor General for the appellants and Mr. Yatish Mohan, the learned advocate for the respondent at great length and in detail. This Court has also considered the documents forming part of the instant appeal.

4. Ms. Indira Jaisingh, Learned ASG argued that in terms of Section 122(1)(b) of the Army Act, the then Brigadier K.S.Bharucha was not the person aggrieved by the offence and neither the then Brigadier K.S.Bharucha nor Major General BS Suhag were competent to initiate action against the respondent but G.O.C. Delhi area was Disciplinary Authority of the respondent who learnt about the offence having been committed by the respondent for the first time on receipt of the report of Staff Court of Inquiry submitted on December 3, 1994 and as the G.C.M. commenced the trial on December 17, 1996 the same could not have been treated as time barred under Section 122 (1)(b) of the Army Act. It was asserted that the Technical Court of Inquiry could not come to a definite conclusion about the correct details of purchase of Hygiene and Chemicals nor any definite conclusion could be reached about the persons responsible for the irregularities but the involvement of the respondent came to the light only in August 1994 when the Staff Court of Inquiry submitted its report and therefore the High Court was not justified in quashing the proceedings of G.C.M. on the ground that they were time barred. What was highlighted by the Learned A.S.G. was that in

the letter dated May 27, 1993 addressed by Brigadier K.S.Bharucha to MG ASC Headquarter Western Command, there was no mention whatsoever about the respondent being the person who had committed the irregularities except a reference to the fact that certain procedural lapses had taken place on the part of 4RPD and as the said letter was apparently addressed with a view to closing the case in total disregard of the facts and circumstances of the case, the said letter could not have been taken into consideration for the purpose of coming to the conclusion that the proceedings of G.C.M. were time barred. After referring to the A.C.R. of the respondent written by Major General BS Suhag it was argued that what becomes apparent therefrom is that the respondent had failed to monitor the local purchase of Hygiene and Chemicals but there was no mention that the respondent was himself involved in it and therefore the date on which the A.C.R. was written also could not have been taken into consideration for the purpose of determining whether the proceedings of G.C.M. were time barred. The Learned ASG stressed that the period of limitation for the purpose of trial of the respondent commenced on December 3, 1994, when the then GOC-in-Chief Western Command who is competent authority came to know about the commission of offence by the respondent and directed to take disciplinary action against the respondent and as period of limitation of three years in terms of Section 122(1)(b) expired on December 2, 1997 the same could not have been treated as time barred. The Learned Counsel asserted that the Judgment of the High Court questioned in the appeal is not only erroneous on the facts brought on the record of the case but also misinterprets the provisions of the Army Act and therefore the same should be set aside.

5. The Learned Counsel for the respondent argued that after scrutinising the entire documentary evidence the High Court has rightly reached to the conclusion that the trial of the respondent by GCM was time barred and rightly allowed the Writ Petition filed by him. It was maintained that during the inspection of 4RPD, certain irregularities were noticed with regard to the local purchase of Hygiene and Chemicals by 4RPD Delhi in the month of May 1993 and the respondent who was Officiating Commandant of said 4 RPD was immediately removed from the said post and was placed as Officiating Commandant of 5033 Army Service Corps battalion functioning directly under Headquarters 33 Corps, which indicates that in May 1993 the so-called involvement of the respondent in the irregularities noticed with regard to the local purchase of the Hygiene and Chemicals, had become evident and therefore the proceedings initiated against him should be treated as time barred. The Learned Counsel for the respondent drew the attention of the Court to the communication dated May 5, 1993 addressed by DDST Brigadier K.S.Bharucha on behalf of the Headquarter Delhi Area to Lt. Col. P. Oomen, ADST asking him to conduct the inquiry into the lapses found in local purchase by 4 RPD, pursuant to which report was submitted to Headquarter Delhi Area, wherein it was concluded that irregularities were committed in purchase of Hygiene and Chemicals and therefore the period of limitation would start running from May 27, 1993 when the said report was submitted by Mr. K.S.Bharucha, DDST to Major General, Army Service Corps at Headquarter Western Command. According to the Learned Counsel for the respondent, the DDST issued a notice dated June 18, 1993 calling upon the respondent to explain procedural lapses in local purchase of Hygiene and Chemicals by 4RPD wherein there is reference to instructions of Headquarter Western Command dated June 12, 1993 and

therefore the relevant period for the purpose of deciding the question whether the proceedings were time barred or not should be taken to be June 12, 1993. What was asserted was that while writing the ACR of the respondent on September 6, 1993 the Headquarter Western Command, Chandigarh in the column of brief comments had mentioned that the respondent needed to exercise more discretion and caution while dealing with funds and therefore the said date would also be relevant for the purpose of determining the question whether the proceedings were time barred. It was argued that the order dated October 30, 1996, taking the respondent into close custody under Section 123 of the Army Act, 1950, was passed because the respondent was charged for the offence of procedural lapses in local purchase of Hygiene and Chemicals during his tenure as Officiating Commandant of 4RPD Delhi Area Cantonment and therefore the date on which the respondent was taken into close custody would also be relevant for the purpose of determining the question whether the proceedings initiated against the respondent were time barred. What was asserted was that the respondent was identified as the offender firstly in May 1993 after the report of Lt. Col. P. Oomen and secondly on May 27, 1993 when DDST Headquarter Delhi Area on behalf of GOC had submitted the report of inquiry to Headquarters ASC Western Command at Chandigarh concluding that, there was certainly procedural lapses in local purchase of Hygiene and Chemicals on the part of 4RPD which was under the control of the respondent and therefore the proceedings have been rightly treated as time barred by the High Court. According to the Learned Counsel for the respondent the competent authority of the respondent was his Commanding Officer i.e. Brigadier K.S.Bharucha, DDST and as the competent authority had initiated action on October 30, 1996 by detaining the respondent, the proceedings in question should be treated as time barred.

“The Learned Counsel argued that the person aggrieved within the meaning of Section 122 of the Act, means the person should be answerable to the superiors in chain of command for the act, commission or omission done by his subordinate and as DDST was aggrieved person under whom the respondent was discharging duties, the period of limitation would start running from the date of report of the Court of Inquiry, when identity of the offence and offender was ascertained and therefore the well reasoned judgment of the High Court should be upheld by this Court.”

6. Section 122 of the Army Act, 1950 prescribes period of limitation for trial by Court Martial of any person subject to the provisions of the Act for any offence committed by him. The said Section reads as under:-

“Section 122. Period of limitation for trial (1) Except as provided by sub- section (2), no trial by court-marital of any person subject to this Act for any offence shall be commenced after the expiration of a period of three years and such period shall commence- (a) on the date of the offence; or (b) where the commission of the offence was not known to the person aggrieved by the offence or to the authority competent to initiate action, the first day on which such offence comes to the knowledge of such person or authority, whichever is earlier; or (c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to

the person aggrieved by the offence or to the authority competent to initiate action, whichever is earlier.

(2) The provisions of sub-section (1) shall not apply to a trial for an offence of desertion or fraudulent enrolment or for any of the offences mentioned in section 37.

(3) In the computation of the period of time mentioned in sub-section (1), any time spent by such person as a prisoner of war, or in enemy territory;

or in evading arrest after the commission of the offence, shall be excluded.

(4) No trial for an offence of desertion other than desertion on active service or of fraudulent enrolment shall be commenced if the person in question, not being an officer, has subsequently to the commission of the offence, served continuously in an exemplary manner for not less than three years with any portion of the regular Army."

A fair reading of the abovementioned Section makes it clear that after the expiry of the period of limitation, the Court Martial will ordinarily have no jurisdiction to try the case. The purpose of Section 122 is that in a civilised society a person should not live, for the rest of his natural life, under a Sword of Damocles and the prosecution be allowed to rake up any skeleton from any cupboard at any time when the accused may have no further materials, oral or documentary, to prove that the skeleton is not from his cupboard. If the device is left open to the prosecution to convene a Court Martial at its leisure and convenience, Section 122 will lose all significance. Section 122 is a complete Code in itself so far as the period of limitation is concerned for not only it provides in Sub-section (1) the period of limitation for such trials but specifies in Sub-section (2) thereof, the offences in respect of which the limitation clause would not apply. Since the Section is in absolute terms and no provision has been made under the Act for extension of time, it is obvious that any trial commenced after the period of limitation will be patently illegal.

The question of limitation to be determined under Section 122 of the Act is not purely a question of law. It is a mixed question of fact and law and therefore in exercise of Writ Jurisdiction under Article 226 of the Constitution, ordinarily the High Court will not interfere with the findings of court Martial on question of limitation decided under Section 122 of the Army Act."

7. Section 122 of the Army Act in substance prescribes that no trial by Court Martial of any person subject to the provisions of the Act for any offence shall be commenced after the expiration of a period of three years. It further explains as to when period of three years shall commence. It provides that the period of three years shall commence on the date of the offence or where the commission of the offence was not known to the person aggrieved by the offence or to the authority competent to initiate action, the first day on which such offence comes to the knowledge of such person or authority whichever is earlier. In view of

the provisions of Section 122(1)(b) a question arises as to who is the person aggrieved within the meaning of the said Section. According to the respondent Brigadier K.S.Bharucha was the person aggrieved and the period of three years shall commence from the date when commission of offence by the respondent came to his knowledge on May 17, 1993 when Lt. Col. P. Oomen submitted his report to Mr. Bharucha. The contention of the Union of India is that in terms of Army Act, Mr. K.S.Bharucha was neither the person aggrieved nor authority competent to initiate action and therefore the date on which the Lt. Col. P.Oomen submitted report would not be relevant for the purpose of determining the question whether the trial commenced against the respondent was time barred. The term "the person aggrieved by the offence" would be attracted to natural persons i.e. human beings who are victims of an offence complained of, such as offences relating to a person or property and not to juristic persons like an organisation as in the present case. The plain and dictionary meaning of the term "aggrieved" means hurt, angry, upset, wronged, maltreated, persecuted, victimised etc. It is only the natural persons who can be hurt, angry, upset or wronged or maltreated etc. If a Government organisation is treated to be an aggrieved person then the second part of Section 122(1)(b) i.e. "when it comes to the knowledge of the competent authority to initiate action" will never come into play as the commission of offence will always be in the knowledge of the authority who is part of the organisation and who may not be the authority competent to initiate the action. A meaningful reading of the provisions of Section 122(1)(b) makes it absolutely clear that in the case of Government organisation, it will be the date of knowledge of the authority competent to initiate the action, which will determine the question of limitation.

“Therefore, the finding of the High Court that Brigadier K.S.Bharucha was an aggrieved person is legally and factually incorrect and unsustainable. Further, neither Brigadier Mr. K.S.Bharucha, nor Major General BS Suhag were competent to initiate action against the respondent because the term "competent to initiate action" refers to the competency of the authority to initiate or direct disciplinary action against any person subject to the provisions of the Army Act. When an offence or misconduct is alleged to have been committed by a person subject to the Army Act, then the Officer in chain of command is required to take action for investigation of the charges and trial by court martial as per Section 1 Chapter V of the Army Rules or order Court of Inquiry and subsequently finalise the Court of Inquiry under Section 2 Chapter VI of the Army Rules. These powers are vested in the officers in chain of command. Those powers are not vested with staff Officers. Since the respondent was commanding 4 RPD, his next officer in command was GOC, Delhi Area and the power to take disciplinary action was vested with him in terms of para 16(a)(i) of the Defence Service Regulations, read with the Command and Control instructions dated January 1, 1991 issued by the Headquarter Western Command. Therefore, Brigadier K.S.Bharucha had only technical control of 4RPD and had therefore recommended to his higher authority to close down the case but himself had not taken a decision to close down the case or to continue the case against the respondent. The power to initiate action in terms of Section 122(1)(b) of the Army Act was only with GOC Delhi Area who is next superior authority in chain of command. The record shows

that even the power to convene a Court of Inquiry was available only with GOC Delhi Area and GOC-in-C Western Command since they are the authorities in command of body of troops and the power to convene a Court of Inquiry in terms of Army Rule 177 is vested only with an Officer in command of body of troops. The facts of the present case establish that the Technical Court of Inquiry was convened by DDST Headquarter Delhi Area on January 8, 1994 which recommended examination of certain essential witnesses for bringing into light the correct details and the persons responsible for the irregularities by a Staff Court of Inquiry and accordingly the Staff Court of Inquiry was ordered on May 7, 1994 by GOC-in-C Western Command which concluded in its report dated August 31, 1994, mentioning for the first time the involvement of the respondent in the offence. The GOC Delhi Area i.e. the next Authority in chain of command to the respondent recommended on October 19, 1994 initiation of disciplinary action against the respondent whereas the GOC-in-C Western Command gave directions on December 3, 1994, to initiate disciplinary action against the respondent.

Therefore, the date of commencement of the period of limitation for the purpose of GCM of the respondent, commenced on December 3, 1994 when direction was given by GOC-in-C Western Command to initiate disciplinary action against the respondent. The plea that the date of submission of the report by Technical Court of Inquiry should be treated as the date from which period of limitation shall commence has no substance. It is relevant to notice that no definite conclusion about the correct details and the persons responsible for the irregularities were mentioned in the report of Technical Court of Inquiry. On the facts and in the circumstances of the case, this Court is of the view that the High Court wrongly concluded that the period of limitation expired on March 4, 1996. It is relevant to notice that the contents of the letter dated May 27, 1993 written by Brigadier K.S.Bharucha to Major General ASC Headquarter Western Command do not mention at all, the respondent as the person who had committed the irregularities except for a reference that there had been certain procedural lapses on the part of 4RPD.

The said letter was addressed by Brigadier K.S.Bharucha apparently with a view to closing the case in total disregard to the facts and the circumstances emerging from the case. This fact has been observed by the GOC-in-C Western Command who while giving direction to initiate administrative action against Major General K.S.Bharucha ordered initiation of departmental inquiry against the respondent. Even the reference to ACR of the respondent written by Major General Suhag only mentions that the respondent had failed to monitor the local purchase of Hygiene and Chemicals but there is no mention therein that the respondent was himself responsible for the irregularities found to have been committed in the purchase of Hygiene and Chemicals. It was only after the detailed investigation by Staff Court of Inquiry that the irregularities committed by the respondent and his role in the purchase of Hygiene and Chemicals came to light. On the facts and in the circumstances of the case this Court finds that the period of limitation for the purpose of trial of the respondent

commenced on December 3, 1994 when the GOC-in-C Western Command being the competent authority directed disciplinary action against the respondent in terms of Section 122(1)(b) of the Army Act. The period of three years from the direction dated December 3, 1994 would expire on December 2, 1997, whereas the GCM commenced the trial against the respondent on December 17, 1996 which was well within the period of limitation of three years. Therefore the impugned Judgment is legally unsustainable and will have to be set aside.”

8. For the foregoing reasons it is held that the GCM commenced trial, against the respondent within the period of limitation as prescribed by Section 122(1)(b) of the Army Act. The impugned Judgment is set aside. Appeal accordingly stands allowed. There shall be no orders as to cost.