SUPREME COURT OF INDIA

J.S. Sekhon

Vs.

Union of India

C.A.No.6274 of 2003

(Dr.Mukundakam Sharma J.)

10.08.2010

JUDGEMENT

Dr.Mukundakam Sharma, J.

1. This Civil Appeal is directed against the judgment of the High Court of Jammu & Kashmir dated 2.4.2002. By the aforesaid order, the Division Bench of the High Court upheld the order of the learned Single Judge of the High Court of Jammu & Kashmir, dismissing the Writ Petition and upholding the order of conviction of the appellant by the General Court Martial (GCM) for defrauding the Army and sentence of one year of rigorous imprisonment and also of cashiering him from service.

2. The appellant was a Commissioned Officer in the Indian Army working at the relevant time at Leh. He was working as a Garrison Engineer, 865 EWS, where he invited offers from private parties to supply the garrison with Diesel Generator (DG) sets and to make other repairs and replacement.

3. On 29.11.1994 he entered into an agreement with M/s Surjit Singh Sokhi to repair two DG Sets at FRL Powerhouse at Leh for Rs. 2.29 lakh and to repair LT cables at Nimmuy area Leh for Rs. 2.49 lakhs. On 30.11.1994 he entered into an agreement with M/s Mohd Sultan and Bros. to replace LT cables and providing an ACR conductor and to replace parts of two DG Sets for Rs. 2.48 lakhs. Authorities noticed irregularities in these purchases and on 6.12.1994 investigated the contract agreements. A vigilance check was performed by the Commander Works Engineers (CWE) on 9.12.1994. CWE then asked the appellant for his comments on the report which were submitted on 6.2.1995. Discrepancies detected in comparing the report and the comments of the appellant prompted the Technical Board of Officers to issue a report on 9.4.1995, which led a court of enquiry being convened on 20.9.1995 and then to a GCM being convened on 9.3.1998. The appellant was then served a charge sheet on 9.3.1998 that was then withdrawn due to errors and thereafter he was re-served with a fresh charge sheet on 11.3.1998.

4. Seven charges were framed against the appellant two of which could not be proved. All the charges revolved around the allegation of his defrauding the Army for purchasing services to replace and repair items at exorbitant rates which are much higher than what is permissible under the standard scheduled rates.

5. On 14.3.1998 the GCM commenced its proceedings and provided the appellant the right to raise objections of being tried by any officer sitting on the court in accordance with Section 130 of the Army Act, 1950 read with Rule-44 of the Army Rules, 1954. He raised no objection at the time. However, at a subsequent stage of the trial he objected to being tried by the Presiding Officer of the Court. The objection was then considered and rejected. The court convicted the appellant and sentenced him to one year rigorous imprisonment besides cashiering.

6. The appellant then challenged this conviction and sentence based on several issues. The Single Judge of the High Court of Jammu & Kashmir at Srinagar dismissed the Writ Petition holding the same to be without merit. The Division Bench of the High Court in the writ appeal filed before it similarly held that there was no "procedural irregularity or illegality in the GCM proceedings." That appeal was also dismissed.

7. Being aggrieved by both the orders passed by the learned Single Judge and the Division Bench of the High Court, a Special Leave Petition was filed by the appellant. After leave was granted, the appeal was placed for final hearing in which we heard the learned counsel appearing for the parties.

8. The learned counsel appearing for the appellant mainly raised two issues before us during the course of hearing. The first submission of the learned counsel appearing for the appellant was that the convening of the General Court Martial on 14.3.1998 was barred under the provisions of Section 122 of the Army Act. The second submission of the learned counsel for the appellant was that the convening Officer of the General Court Martial in the case of the appellant being the Commanding Officer of the appellant, there is violation of the provision of paragraph 449(b) of the Army Regulation.

9. The learned counsel appearing for the respondent, however, refuted the aforesaid submissions while contending inter alia that neither the convening of the General Court Martial was barred by time nor that the convening officer of the Court Martial was the commanding officer of the appellant. According to him therefore not only there was no violation of Section 122 of the Army Act, but there was also no contravention of paragraph 449(b) of the Army Regulation.

10. In the light of the aforesaid submissions of the counsel appearing for the parties, we have perused the relevant provisions of the Army Act, 1950 (for short "the Act") and the Army Regulations as also various documents and the decisions relied upon and on being fully acquainted thereof, we propose to dispose of the present appeal by giving our reasons

thereof. But before doing that it would be appropriate to extract the relevant provisions of Section 122 of the Army Act, and Paragraph 449(b) of the Army Regulations.

> “122. Period of limitation for trial.-(1) Except as provided by sub- section (2), no trial by court-martial 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.]"
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> 449. Action by Superior Officer **** **** **** **** **** **** **** **** (b) When the superior office has been the CO of the accused at any time between the date on which cognizance of offence was taken against the accused and the date on which the case is taken up for disposal, or an officer who has investigated the case, he cannot exercise the powers detailed in sub-para (a) (ii) to (v) inclusive”

11. Section 122 of the Army Act provides the period of limitation for trial. In the said section, it is provided that no trial by court martial of any person shall be commenced after the expiration of a period of three years (a) from 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 by the authority competent to initiate action, whichever is earlier.

12. On going through the records, we find that it is an admitted position between the parties, that what is attracted in the present case is clause (b) of sub-Section (1) of Section 122. The date of limitation for holding a trial by court martial is a period of three years from any of the three dates as stated above.

13. Clause (b) is attracted and in that case the limitation of three years period would commence from the date of the knowledge of the commission of such offence by the person aggrieved by the offence or by the authority competent to initiate action.

14. Learned Counsel appearing for the appellant submitted before us that of the two expressions i.e. "person aggrieved by the offence" or "the authority competent to initiate action", what is attracted in the present case is not the knowledge of the authority competent to initiate action but the other expression appearing in the section namely the date of knowledge of the person aggrieved of the commission of the offence.

15. The facts disclosed before us reveal that on 6.12.1994, the higher authority noticed some irregularity committed by the appellant and accordingly made some observations on the contract agreement whereupon on 9.12.1994, Commander Works Engineer directed a Vigilance Check in terms of which a Vigilance Check was conducted and a report to that effect was submitted on 19.12.1994.

16. It appears that on receipt of the aforesaid Vigilance Check Report, Commanding Works Engineer forwarded the report to the appellant and asked for his comments which were submitted by the appellant on 6.2.1995. As there were some variations in the vigilance report and the comments furnished by the appellant, a Technical Board of Officers was constituted on 29.3.1995 and the said technical board of officers submitted its report on 9.4.1995. Thereafter on 20.4.1995, on examination of the report, a letter was written by the Commanding Works Engineer to HQ 3 Infantry Division for constituting a court of enquiry.

> "On 24.4.1995, a court of enquiry was convened and thereafter the court of enquiry submitted its report on 11.10.1996."

17. According to the counsel appearing for the appellant, when the vigilance check report was submitted, Commander Works Engineer who is the person aggrieved came to know that there was a commission of an offence and therefore period of limitation as envisaged under Section 122 of the Act would commence from that date and when limitation is computed from the said date, convening of the general court martial on 9.3.1998 was barred by time, as it was beyond the period of three years as contemplated under Section 122 of the Army Act.

18. The aforesaid factual position as stated above would indicate that although a vigilance check report was submitted on 19.12.1994, the Commanding Works Engineer sought for comments from the appellant and on receipt of the comments of the appellant some variations were found while comparing the vigilance report and the comments of the appellant and therefore, a Technical Board of Officers was required to be constituted which was accordingly constituted on 29.3.1995. When the technical board of officers so constituted submitted its report on 9.4.1995, it could be said that the fact of commission of offence by the appellant came to be finally recorded, but even thereafter a Court of Enquiry was convened so as to make an enquiry with regard to the allegation against the appellant. The Report of the court of enquiry finally proved and established that the appellant has committed an offence alleged against him and therefore the knowledge, if any, regarding the commission of the offence by the authority competent to convene the general court martial could be said to be on 11.10.1996, when the aforesaid Court of Enquiry Report was submitted or at the most it could be said that such knowledge was derived by the authority competent to initiate action of convening the general court martial on submission of the report by the technical board of officers which was dated 9.4.1995. If the period of limitation is computed either from 9.4.1995 or 11.10.1996, the convening of the trial by general court martial on 9.3.1998 must be held to be within the period of limitation as prescribed under Section 122 of the Act.

19. In our considered opinion, the expression `person aggrieved by the offence' is irrelevant in the facts and circumstances of the present case and what is relevant is the `knowledge of the authority competent to initiate action'. The aforesaid acts were committed against the Government and not a natural person. In the facts of the present case no single person can be said to be aggrieved person individually due to the act of defrauding the Army. What is applicable to the facts of the case is the expression when it comes to the knowledge of the competent authority to initiate action. In coming to the aforesaid conclusion, we are fortified by a recent decision of this Court in Union of India and Others 32....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 a 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 a government organisation, it will be the date of knowledge of the authority competent to initiate the action, which will determine the question of limitation....

20. The action contemplated by Section 122 must be the action it seeks to limit - namely a trial. The power of investigation and trial or the power to convene a court of inquiry is vested in officers in the chain of command and not with staff officers. It is therefore clear from Section 122(1)(b) that the expression "person aggrieved" necessarily means a natural person and what would be relevant is the knowledge of the competent authority to convene a general court martial against the appellant who in the present case is the general officer commanding. His date of knowledge of the commission of offence becomes material as he is the competent authority to convene a general court martial against the appellant.

21. Since, the authority competent to initiate action has derived his knowledge about the commission of the offence on submission of the report of the Court of Enquiry 11.10.1996 or at the most on submission of the report by the technical board of officers on 9.4.1995 and the date of the convening of the trial by general court martial is 9.3.1998, the trial is not barred by limitation as sought to be submitted by the counsel appearing for the appellant, and therefore, the submission of the counsel appearing for the appellant fails and is rejected.

22. Having held thus so far as the first issue is concerned, let us now turn to the second issue, which was urged before us. We have very carefully analysed the scope and applicability of paragraph 449(b) of the Army Regulation.

23. On consideration of the records placed before us, we find that in the present case, the General Court Martial, which was held against the appellant was convened by the general officer commanding who was of the rank of a Major General. The appellant was a lieutenant Col., whereas the commanding officer was Col. R.K. Rana. The General officer commanding in the case of the appellant was a Major General who is much higher in rank than the

commanding officer and therefore, there is no violation of paragraph 449(b) of the Army Regulation.

24. Learned counsel appearing for the appellant submitted before us that here the convening officer of the General Court Martial was his commanding officer and therefore there was violation of regulation 449(b). The said allegation is found to be factually incorrect. Even otherwise, the appellant was attached to 603 ASC Battalion, for the purpose of investigation and progress of the disciplinary case, and therefore, commanding officer on 603 ASC Battalion became his commanding officer. It could not be disputed by the counsel appearing for the appellant that the said commanding officer is the one who has filed the charge sheet against the appellant and the appellant has not objected that the commanding officer 603 ASC Battalion was the commanding officer. That being the position, there is no violation at all of Paragraph 449(b) of the Army Regulation.

25. Therefore, all the issues urged by the appellant are found to be without any merit. Consequently, the appeal has no merit, and is dismissed, but we leave the parties to bear their own costs.