

M.A. (Security and Defence Laws)

Case Law Review

Union of India v. Ram Adhar Tiwari, 2002 SCC Online All 564

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CHAPTER I – INTRODUCTION

The armed forces have traditionally followed different laws, rules and regulations, for disposal of disciplinary cases and to address wrongdoings. The trial in military court is known as court martial. The armed forces have different courts, different procedures and different personnel to execute the court martial, outside the regular framework of the usual Indian judiciary. There is very limited scope of judicial review in matters arising out of court martial proceedings.

The case of *Union of India v. Ram Adhar Tiwari*, 2002 SCC Online All 564 bears significance in terms of establishing a precedence, outlining the fundamental conditions and scope for judicial review of court martial proceedings. The above case pertains to the summary court martial proceedings of the respondent, Ram Adhar Tiwari, who was responsible for looking after the Canteen Store Department (CSD) at the Station Workshop, Allahabad. At the time of handing over charge, shortage was found while checking the stock of the CSD, which led to the trial and sentencing of the respondent by summary court martial. The respondent filed writ petition with the Allahabad High Court, praying for quashing of the summary court martial proceedings. One of the key submissions of the respondent included that he was not provided an opportunity to appoint another friend, of his own choice, to assist him during the trial, in violation of the extant provisions of the Army Rules.

The learned Single Judge, vide judgment dated 19th August, 1997, allowed the writ petition filed by the respondent, setting aside the order imposing sentence in the summary court martial dated 30th July, 1997. Subsequently, the appellants approached the Division Bench, challenging the judgment of learned single Judge in writ petition. The Division Bench agreed with the findings of the learned Single Judge that the court martial proceedings were concluded with haste, which shows that fair opportunity was not given to the respondent.

While deliberating on the case, the Court acknowledged the limited scope of judicial review in respect of court martial proceedings and such judicial review, if any, needs to be conducted within well-defined parameters. The objective of the Court is not to interfere with the court martial proceedings by way of reappraising the evidence or by setting aside the findings. Rather, the role of the Court should be limited to taking a view on whether the relevant provisions of the Army Act, 1950 or the Army Rules, 1954 or other applicable military laws, rules or regulations, have been followed or not.

CHAPTER II - FACTS OF THE CASE

The case pertains to the summary court martial proceedings of the respondent, Ram Adhar Tiwari, who was working as Havaldar in Corps of Electrical and Mechanical Engineering (E.M.E.) and was posted at Station Workshop, Allahabad. The respondent was responsible for looking after the Canteen Store Department (CSD) run by E.M.E. Station Workshop. At the time of handing over charge, shortage was found while checking the stock of the CSD. A court of enquiry was held to ascertain the facts. After the court of enquiry, the charges were issued to the respondent by charge-sheet dated 6th June, 1997.

The Commanding Officer, Shri S. C. Verma, ordered for trial of the respondent by summary court martial. In the summary court martial proceedings, the respondent filed an application dated 14th June, 1997, praying that the summary court martial be dissolved and reference be made to the Commander, Headquarters, Sub-Area, Allahabad to convene a district court martial. However, the said application was rejected. The respondent filed Writ Petition No. 20405 of 1997 praying for quashing of the summary court martial proceedings. In the aforesaid writ petition, an interim order was granted on 24th June, 1997 staying proceedings of summary court martial for a period of one month.

On 29th July, 1997, the summary court martial proceedings were initiated. When the summary court martial proceedings began, the Commanding Officer was informed that the matter is fixed for 1st August, 1997 and adjournment was prayed for till 2nd August, 1997. The summary court martial proceedings were adjourned for the next date. On the next date, the counsel for the respondent could not appear and sent a medical certificate. On 30th July, 1997, the summary court martial proceedings proceeded and were completed. In any summary court-martial, an accused person may have a person to assist him during the trial, whether a legal adviser or any other person. In this context, Captain H.R. Chandel was appointed as friend of the accused. By order dated 30th July, 1997, the summary court martial sentenced the respondent for 90 days detention in military custody and reduced his rank from Havaldar to Craftsman.

The respondent was allowed to amend the writ petition challenging the order dated 30th July, 1997. Supplementary counter affidavit and supplementary rejoinder affidavit were filed in the writ petition and the learned Single Judge vide its judgment dated 17th August, 1997 allowed the writ petition.

While allowing the writ petition, the learned Single Judge recorded the following reasons:

- i. While the shortage was detected in May 1996, the charge-sheet was submitted only on 6th June, 1997, which clearly showed a lack of urgency. On the contrary, the feeling of urgency suddenly arose, when the petitioner to the writ petition obtained an interim stay on 24th June, 1997. The Commanding Officer was Chairman of the Canteen Committee and had himself initiated the investigation, which was admitted by him in the court of enquiry. There was no substantial reason for immediate action to proceed with the trial without reference to officer empowered to convene a district court martial, summary court martial or general court martial.
- ii. There was no reason for refusing adjournment on the date of trial when the counsel for respondent was ill and had sought adjournment by producing medical certificate. The respondent was not provided an opportunity to appoint another friend to assist him during the trial of his own choice. The friend imposed on the respondent by the appellants had already affirmed an affidavit on behalf of the appellants in the writ proceeding. Hence, there was violation of Rule 129 of Army Rules.

The counsel for the appellants challenging the judgment of learned Single Judge made various submissions in support of their appeal:

- i. The learned Single Judge had misread the provisions of Section 120 of Army Act. Reference is only necessary if a person is tried under Sections 34, 37 and 69 of the Act.
- ii. Findings recorded by learned Single Judge regarding non-compliance of Rule 129 of Army Rules is based on no evidence.
- iii. Charges levelled against the respondent were fully proved and he had also admitted the charges and had deposited the amount.
- iv. This Court in exercise of jurisdiction under Article 226 of the Constitution will not quash the proceedings of summary court martial, which were based on evidence.
- v. There is very limited scope of judicial review of court martial proceedings.
- vi. The Court may clarify that the appellants are entitled to proceed against the respondent again as per observation of learned Single Judge in his judgment.

The counsel for respondent refuted the submissions of counsel for the appellants and supported the judgment of learned Single Judge.

The counsel for the respondent contended that Commanding Officer, Colonel S.C. Verma, having personal interest in the matter being Chairman of the management committee of Canteen was not competent to hold summary court martial, relying on Section 120 Note (d) of Army Act. The counsel for respondent further contended that there was clear violation of Rule 129 since respondent could not appoint a friend of his choice to assist him in the trial. The friend of accused thrust upon the respondent to assist him had already filed counter affidavit against the respondent in the writ petition and the respondent had objected his appointment as friend of accused.

The Division Bench of the Allahabad High Court upheld the judgment of learned single Judge in Writ Petition No. 20405 of 1997. Learned Single Judge vide judgment dated 19th August, 1997 has allowed the writ petition filed by the respondent setting aside the order imposing sentence in the summary court martial dated 30th July, 1997.

CHAPTER III – ISSUES

The following issues were considered by the Division Bench for deliberation:

1. First, whether the Commanding Officer was required to make reference for general court martial, before proceeding with the summary court martial, in accordance with Section 120 of the Army Act.
2. Second, whether there has been violation of Rule 129 of the Army Rules in the conduct of the summary court martial proceedings.
3. Third, whether the charges were fully proved, since the respondent himself had admitted his guilt and deposited the money, and that the Learned Single Judge had not considered the merits of charges nor recorded any finding on merits of the case, while allowing the writ petition.
4. Fourth, whether the Court had limited scope of review under Article 226 of the Constitution with respect to matters arising out of court martial proceedings.
5. Lastly, whether the appellants are entitled to proceed against the respondent in accordance with law as per liberty granted by Learned Single Judge.

CHAPTER IV – JUDGMENT

Section 108 of the Army Act, 1950 provides for four kinds of court martials, i.e. general court martial, district court martial, summary general court martial and summary court martial. Further, Section 120 of the Army Act provides for powers of summary court martial.

Section 120 (2) of the Army Act states the following:

When there is no grave reason for immediate action and reference can without detriment to discipline be made to the officer empowered to convene a district court- martial or on active service a summary general court- martial for the trial of the alleged offender, an officer holding a summary court- martial shall not try without such reference any offence punishable under any of the sections 34, 37 and 69, or any offence against the officer holding the court.

As per the records available for the present case, the court of enquiry was held and charges to the respondent were provided only on 6th June, 1997, although the detection of shortage in the stock was found in May 1996. The delay of more than one year clearly shows that there was no grave reason for immediate action, and hence, there was no reason for haste in initiating action for court martial.

However, the counsel for the appellants submitted that Section 120 (2) of the Army Act is attracted only with regard to offences punishable under any of the Sections 34, 37 and 60. In the present case, the respondent was charged with an offence under Sections 52 (b) and 63 of the Army Act, the said provisions are not attracted and summary court martial could have been held in the matter. The judges studied the various clauses of the Standard Operating Procedure with regard to operations of the CSD Canteen and concluded that the administration of the Canteen is entrusted to a Management Committee, not on an individual and any offence committed by a person while functioning as Canteen staff cannot be held to be an offence against officer holding the court.

In view of the above, the Division Bench accepted the submission of counsel for the appellants that provisions of Section 120 (2) were not attracted in the facts of the present case and summary court martial proceedings could have been proceeded in the present case.

The second submission of the counsel for the appellants was related to whether there was any violation of Rule 129 under the present case.

Rule 129 of the Army Rules, 1954 state the following:

Friend of the accused - In any summary court-martial, an accused person may have a person to assist him during the trial, whether a legal adviser or any other person. A person so assisting him may advise him on all points and suggest the questions to be put to witnesses, but shall not examine or cross-examine witnesses or address the court.

As per the records available for the present case, it was stated that Captain H.R. Chandel was directed by Commanding Officer to act as friend of the accused. The respondent had stated that he had asked for a legal advisor and also objected to appointment of Captain H.R. Chandel as his friend. It is relevant to note that Captain H.R. Chandel, who was appointed as friend of the accused, was the same officer who had filed a counter affidavit in the writ petition of the writ petitioner sworn on 21st July, 1997.

The right to be defended by a lawyer of one's choice is expressly provided for under Rule 129 and, therefore, the appellants were required to provide the respondent with a lawyer of his choice. The judges referred to the case of *Union of India v. Sepoy/Driver, Rameshwar Mehato* in this regard. The Division Bench opined that the proceedings were concluded without giving opportunity to respondent to avail the benefit of Rule 129, given that the summary court martial proceedings were concluded in great haste, within a day.

With respect to the submission on whether the Court had limited scope of review under Article 226 of the Constitution with respect to matters arising out of court martial proceedings, the judges referred to the cases of *Bhuwneshwar Singh v. Union of India* and *Union of India v. Himmat Singh Chahar*, and reiterated that the power of judicial review under Article 226 is for limited purpose and such power of judicial review cannot be a power of appellate authority permitting the Court to re-appreciate the evidence. Rather, the focus of the Court should be on the procedural aspects of the case in light of the applicable military laws.

The Court also deliberated on whether the appellants are entitled to proceed against the respondent in accordance with law as per liberty granted by Learned Single Judge in his

judgment. The counsel for the respondent contended that the appellants could not proceed now, since it will be second trial, which is prohibited under Section 121 of the Army Act. Counsel for the respondents further contended that Section 127 of the Army Act, which provided for successive trial, has been omitted by Army (Amendment) Act, 1992. Hence, the appellants are not entitled to proceed again.

The judges examined the provisions of both Section 121 and Section 127 of the Army Act. The judges concluded that Section 121 will not be applicable, when the conviction or acquittal has been quashed by the Court and the Court itself permits the authorities to again proceed in accordance with law. Further, Section 127 covered a contingency regarding successive trial by court martial or criminal courts. In view of the above, the Court opined that neither Section 121 nor Section 127 restricts the rights of the appellants to proceed against the respondent again.

CHAPTER V - REASONING or ANALYSIS

The fundamental aspect of the case of *Union of India v. Ram Adhar Tiwari*, 2002 SCC Online All 564 relates to the scope and applicability of judicial review in matters arising out of court martial proceedings. The Division Bench restricted itself to only analysing the procedural aspects of the military laws in context of the facts of the case, and refrained from commenting on the merits of the case. In conclusion, the Division Bench agreed with the findings of the Learned Single Judge and dismissed the special appeal.

The judges examined the various provisions of the Army Act, 1950 and the Army Rules, 1954, and opined that the court martial proceedings were concluded in haste and due opportunity was not provided to the respondent for seeking natural justice, as permitted under Rule 129 of the Army Rules. Wherever applicable, the judges referred to previous judicial precedence and applied the observations and conclusions of such precedence in deciding the case.

In arriving at the judgment, the Division Bench examined the definitions and provisions of the military laws, and restricted the analysis solely to the perimeters of the military laws. This approach offers clarity on handling such differences between parties in future, and holds the sanctity of the military laws, along with the limited scope of judicial review. The Bench also opined that the summary court martial proceedings could have proceeded without reference to district court martial or summary general court martial. The Division Bench further opined that the appellants could proceed against the respondent as per the provisions of the military laws.

In summary, the judgment was well thought through, supported by strong arguments and analysis, and followed the discipline of setting the boundary conditions of judicial review in matters arising out of court martial proceedings.

CHAPTER VI - CONTRIBUTION OF THE CASE TO THE GROWTH OF DEFENCE/SECURITY LAW

The case of *Union of India v. Ram Adhar Tiwari*, 2002 SCC Online All 564 bears significance in the realm of the Indian Defence/Security law for establishing a judicial precedence, outlining the fundamental conditions and scope for judicial review of court martial proceedings. As per extant legal framework, the armed forces have different courts, different procedures and different personnel to execute trials in military court, commonly referred to as court martial, which is outside the regular framework of the usual Indian judiciary. There is very limited scope of judicial review in matters arising out of court martial proceedings.

Through its deliberations relating to the case, the Court acknowledged the limited scope of judicial review in respect of court martial proceedings and opined that such judicial review, if any, needs to be conducted within well-defined parameters. The Division Bench concluded that the objective of the Court should not be to interfere with the court martial proceedings by way of reappraising the evidence or by setting aside the findings.

Rather, the role of the Court should be limited to taking a view on whether the relevant provisions of the Army Act, 1950 or the Army Rules, 1954 or other applicable military laws, rules or regulations, have been followed or not. Hence, the Court clarified that the emphasis of such judicial review should be primarily focused on the procedural aspects of the applicable military laws, and should not dwell upon the merits of the judgment.

CHAPTER VII - CONCLUSION

The case of *Union of India v. Ram Adhar Tiwari*, 2002 SCC Online All 564 addressed the scope and applicability of judicial review in matters arising out of court martial proceedings. The Division Bench restricted itself to only analysing the procedural aspects of the military laws in context of the facts of the case, and refrained from commenting on the merits or reassessing the evidence presented for the case. In doing so, the Division Bench retained the core sanctity of the military laws and demonstrated the discipline and maturity, while dealing with matters related to court martial proceedings.

In conclusion, the Division Bench concluded that the summary court martial proceedings were concluded in haste without any pressing emergency, and the respondent was denied the opportunity of natural justice, as permitted under the military laws. The summary court martial proceedings were conducted in a manner, which vitiated the due procedures outlined under the Army Act, and hence, was in violation of the relevant military laws. The Division Bench, thus, agreed with the findings of the Learned Single Judge and dismissed the special appeal.

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