

UNION OF INDIA
v
S.P.S. RAJKUMAR AND ORS.

APRIL 24, 2007

[DR. ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

Service Law:

Air Force Act, 1950; S.161 (2)/Air Force Rules, 1969; Rules 40 and 46:

Dismissal from service—Group Captain—Allegations of financial impropriety—General Court Martial—Dismissal from service—Finding and sentence confirmed by Chief of Air Staff—Filing of writ petition by respondent before the High Court u/s 16(2) of 1950 Act—Central Government dismissed the petition—Quashing the decision of General Court Martial, High Court observed that since the Judge Advocate was junior in rank, GCM proceedings were vitiated—On appeal, Held: No plea raised by the Union of India in appeals before Supreme Court as regards the findings of High Court that GCM not validly constituted—High Court was not justified in interfering with the conclusion of GCM holding that it was not validly constituted—Since the question of appropriateness of sentence was raised before the High Court, the same was not examined by it in view of its conclusion that composition of GCM was illegal, the High Court is directed to re—consider the writ petition only on the question of sentence.

Appellant—Union of India alleged that the respondent, while serving as Group Captain in the Indian Air Force committed large scale financial impropriety in the matter of purchases. A charge sheet listing 9 charges relating to financial impropriety committed by him was issued. The General Court Martial proceedings concluded with the finding that the respondent was guilty of four charges. Accordingly, he was sentenced to forfeiture of two years seniority and severe reprimand. By order dated 13.4.2000, the convening Authority of GCM, on review, ordered for re-assembly of GCM for revision of the sentence. The GCM re-assembled and passed a fresh sentence of dismissal and revoked the earlier sentence. The Chief of Air Staff confirmed the findings and sentence. The respondent filed post confirmation petition under Section 161 (2) of the Air Force Act, 1950 and the same was rejected by the

A Central Government. In the meantime, respondent challenged the decision of GCM. The Division Bench of the High Court vide its judgment dated 5.8.2002 quashed the decision of the GCM proceedings on the ground that the Judge Advocate was junior in rank and, therefore, the GCM proceedings were vitiated. However, liberty was granted to proceed afresh with GCM. The modification application filed by Union of India was dismissed by the High Court. Hence the present appeals.

B Appellant-Union of India contended that the vires of certain provisions though raised were not pressed into service before the High Court; that in terms of R.40 of the Air Force Rules, 1969, member of GCM should not be junior, but it permits the juniors to be taken as members in certain circumstances; that the provisions in the Army Act and under the Army Rules are entirely different from Air Force Act and Air Force Rules; that any Rule similar to Rule 103/104 of the Army Rules did not exist in the Air Force Rules; that up to the date of judgment there was no plea relating to the lack of seniority of the Judge Advocate, besides, order of the GCM clearly indicated that there was no officer available who was senior; and that the High Court had erred in holding that the relevant date was the date of filing of the writ petition. It should be the date of the judgment of the GCM.

C Respondent submitted that the judgment of the Supreme Court in *Union of India and Anr. v. Charanjit S. Gill and Ors.*, JT [2000] 5 SCC 135 has full application under the Air Force Rules and the Army Rules; that provisions relating to composition of GCM are the same, and that the convening order does not speak of any non-availability.

D Dismissing the appeal, the Court

F HELD: 1.1. There was no challenge to the finding that there was no senior army officer available. Rule 46 of the Air Force Rules, which relates to the eligibility of the member does not speak of seniority. It speaks of the same rank or superior rank. There was no objection at any point of time about the lack of seniority. In fact the High Court has fallen into error in holding that the relevant date is the date of filing of the writ petition.

G [Para 13] [525-H; 526-A]

H 1.2. There is also no plea raised in these appeals as regards the finding that nobody who was senior was available. Therefore, the High Court was not justified in interfering with the conclusions of the GCM holding the same to be not validly constituted. The appeals of the Union of India stand allowed to

that extent. Appeal filed by the respondent sans merit. [Para 14]

[525-H; 526-A]

1.3. The question of appropriateness of the sentence was raised before the High Court. The High Court did not examine that aspect in view of the conclusions that the composition of the GCM was not legal. The High Court shall only consider that aspect. Though certain pleas of *mala fide* appear to have been raised in the writ petition, the High Court has specifically noted that, that plea was not pressed into service. Therefore, the High Court shall consider the writ petition only on the question of sentence and no other issue.

[Para 15] [526-C-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 127 of 2003.

From the Judgment and Order dated 05.08.2002 of the High Court of Delhi at New Delhi in Civil Writ Petition No. 4884 of 2001.

WITH

C.A. Nos. 128 & 606 of 2003.

Vikas Singh, ASG., Ashok Bhan, Sadhna Sandhu, R.C. Kathia, Rajni Singh, Sushma Suri and B.V. Balaram Das for the Appellant.

Narendra Kaushik and Ashok Kumar Sharma for the Respondents.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. These three appeals relate to the order passed by a Division Bench of the Delhi High Court allowing the writ petition filed by S.P.S. Rajkumar, the appellant in C.A.No.128 of 2003. The other two appeals have been filed by the Union of India, i.e. Civil Appeal No.127 of 2003 against the main judgment and Civil Appeal No. 606 of 2003 against the modification order.

2. Background facts in a nutshell are as follows:

Respondent-Rajkumar joined Air Force as a Commissioned Officer in the Logistics Branch. He rose to the rank of Group Captain in 1998. According to the appellant-Union of India, respondent-Rajkumar committed large scale impropriety in the matter of purchases while he was functioning in the rank of Group Captain. On 12.1.2000, the charge sheet was accordingly issued listing out 9 charges relating to financial impropriety committed by him. The

- A conveying order for the Assembly of the General Court Martial (in short the 'GCM') was issued and Judge Advocate was appointed. On 24.1.2000, the GCM proceedings assembled on a charge sheet containing nine charges, all of which pertained to improper purchase procedure and financial impropriety. On 13.3.2000, GCM proceedings concluded with the finding that the respondent was guilty of four charges. Accordingly, it sentenced the respondent to forfeiture of two years seniority and severe reprimand. By order dated 13.4.2000, the Convening Authority of GCM i.e. AOC- Incharge, Maintenance Command Head Quarters, Nagpur, on review, ordered for re-assembly of the GCM for revision of the sentence.
- B
- C 3. On 24.4.2000, this Court in *Union of India and Anr. v. Charanjit S. Gill and Ors.*, JT [2000] 5 SCC 135 interpreted certain provisions of the Army Act, 1950 (in short the 'Act') and the Army Rules, 1954 (in short the 'Army Rules') holding that the Judge Advocate should be equal or superior to the rank of the accused officer just like the Rules provided for the members of GCM. However, this Court gave prospective effect to the judgment declaring
- D that the same shall not be applied to proceedings which have attained finality and also will not be applied to pending cases in courts where such a plea has not been raised. On 13.5.2000, pursuant to the order of 14.3.2000, the GCM re-assembled and passed a fresh sentence of dismissal and revoked the earlier sentence.
- E 4. The respondent-Rajkumar submitted two pre-confirmation petitions on 25th May, 2000 and 30th June, 2000.
5. The Chief of Air Staff on 7.9.2000 confirmed the findings and sentence. He also dealt with the aspect of the seniority of the Judge Advocate. The
- F Chief of Air Staff cited two reasons on the aspect of Judge Advocate, (a) question of seniority of Judge Advocate was not raised before the GCM; and (b) in fact Judge Advocate of sufficient seniority was not available and by doctrine of necessity the concerned Judge Advocate was the only available officer.
- G 6. The respondent-Rajkumar filed post confirmation petition under Section 161 (2) of the Air Force Act, 1950 (in short the 'Air Force Act') on 30.1.2000 and the same was rejected by the Central Government on 24.9.2001. By judgment dated 5.8.2002, the Division Bench of the High Court quashed the decision of the GCM proceedings of dismissal of service on the ground that
- H the Judge Advocate was junior in rank and, therefore, the GCM proceedings were vitiated. However, liberty was granted to proceed afresh with GCM. The

modification application filed by Union of India was also dismissed by the High Court. A

7. In support of the appeal, learned counsel for the Union of India submitted that the vires of certain provisions though raised were not pressed into service before the High Court. The only ground pressed into service was that the Judge Advocate was junior in rank. Therefore, the proceedings were illegal. B

8. With reference to Rule 40 of the Air Force Rules, 1969 (in short the 'Air Force Rules'), it is submitted that member of GCM should not be junior, but it permits the juniors to be taken as members in certain circumstances. The Judge Advocate is not a member of GCM. C

9. It is not a case where at the first instance respondent- Rajkumar had raised any objection about the alleged lack of seniority of the Judge Advocate. It is submitted that the provisions in the Army Act and under the Army Rules are entirely different from Air Force Act and Air Force Rules. It is pointed out that any Rule similar to Rules 103/104 of the Army Rules did not exist in the Air Force Rules. D

10. The GCM proceedings were over. Only the sentence part remained to be finalized. There was no objection raised during the GCM proceedings and even no amendment was sought for to pending proceedings. Upto the date of judgment there was no plea relating to the lack of seniority of the Judge Advocate. The order of the GCM clearly indicated that there was no officer available who was senior. E

11. It is submitted that the High Court had erred in holding that the relevant date was the date of filing of the writ petition. It should be the date of the judgment of the GCM. F

12. In reply, learned counsel for the respondent-Rajkumar submitted that the *Gill's* judgment (supra) has full application under the Air Force Rules and the Army Rules. Similar provisions relating to composition of GCM are the same. The convening order does not speak of any non-availability. G

13. It is to be noted that there was no challenge to the finding that there was no senior army officer available. Rule 46 which relates to the eligibility of the member does not speak of seniority. It speaks of the same rank or superior rank. There was no objection at any point of time about the lack of H

A seniority. In fact the High Court has fallen into error in holding that the relevant date is the date of filing of the writ petition.

B 14. There is also no plea raised in these appeals as regards the finding that nobody who was senior was available. Therefore, the High Court was not justified in interfering with the conclusions of the GCM holding the same to be not validly constituted. The order is set aside. The appeals of the Union of India stand allowed to that extent. Raj Kumar's appeal is sans merit.

C 15. At this juncture, it is to be noted that the question of appropriateness of the sentence was raised before the High Court. The High Court did not examine that aspect in view of the conclusions that the composition of the GCM was not legal. The High Court shall only consider that aspect. Though certain pleas of mala fide appear to have been raised in the writ petition, the High Court has specifically noted that, that plea was not pressed into service. Therefore, the High Court shall consider the writ petition only on the question of sentence and no other issue.

D 16. The appeals are accordingly disposed of. There will be no order as to costs.

S.K.S.

Appeals disposed of.