

CASE NO.:
Appeal (civil) 127 of 2003

PETITIONER:
Union of India

RESPONDENT:
S.P.S. Rajkumar and Ors

DATE OF JUDGMENT: 24/04/2007

BENCH:
Dr. ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T
(With Civil Appeal Nos. 128/2003 and 606/2003)

Dr. ARIJIT PASAYAT, J.

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.

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 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.

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 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.

The respondent-Rajkumar submitted two pre-confirmation petitions on 25th May, 2000 and 30th June, 2000.

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 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.

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 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.

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.

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.

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.

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.

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.

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.

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 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.

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.

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.

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