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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2459 OF 2017

UNION OF INDIA & ORS. .... APPELLANTS

VERSUS

LT. COL. RAHUL ARORA .... RESPONDENT

J U D G M E N T

PRASHANT KUMAR MISHRA, J.

This appeal is directed against the order dated 21.05.2014 passed by the High Court of Punjab & Haryana in CWP No. 20380 of 2012. Under the said order, the High Court has set-aside the order passed by the Armed Forces Tribunal, Chandigarh[1], which has dismissed the appeal of the respondent

1 'AFT'

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and upheld the findings and sentence awarded by the General Court Martial[2].

2. The respondent was first commissioned in the Army Medical Corps[3] as medical officer from 29.05.1978 to 31.07.1983. He was again commissioned as regular officer in AMC on 25.02.1987. In 1996, he was designated as Graded ENT Specialist and was then upgraded as classified Specialist ENT in the year 2001. In the month of February, 2002, the respondent was posted with Military Hospital, Secunderabad wherein he was required to examine new recruits being forwarded by various training centres.

3. In September, 2002 one Recruit/Soldier/GD K. Siddaiah alleged that the respondent paid money for reviewing its remarks "*unfit*" to "*review after 15 days*". The statement of the recruit was recorded by one Major Mrs. R.M.B. Mythilly who initiated AFMSF-7. The respondent was charge-sheeted, and three charges were framed against him, namely:

> (i)The respondent, an ENT Specialist at a Military Hospital, had, for extraneous consideration declared

2 'GCM'
3 'AMC'

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an Army recruit, K. Siddaiah, as 'fit' after previously declaring him 'unfit'. Consequently, the first charge against him was under Section 57(c) of the Army Act for knowingly and with intent to defraud altering a document/remarks in the AFMSF-7.

(ii) The second charge was under Section 39(a) of the Army Act for absenting himself without leave from 11.04.2004 to 19.04.2004.

(iii) The third charge was under Section 45 of the Army Act for conduct unbecoming of an officer and the character expected of his position.

4. Upon conclusion of trial by GCM and upon finding two out of three charges proven, the respondent was dismissed from service against which he preferred proceedings before AFT, which upheld the findings of guilt and the sentence of dismissal from service as awarded by the GCM. It is this order of the AFT which was assailed by the respondent before the High Court. The High Court allowed the writ petition preferred by the respondent solely on the ground that an officer junior to the respondent has acted as Judge Advocate in the GCM contrary to the law laid down by this Court in **Union of India & Anr. vs. Charanjit Singh Gill[4].**

4 2000 (5) SCC 742

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5. Assailing the impugned order of the High Court, Shri R. Bala, learned Senior Advocate for the appellant/Union of India has argued that there is no blanket prohibition on appointing an officer of lower rank than the charged officer to serve as Judge Advocate in a Court Martial. He would strenuously urge that in **Charanjit Singh Gill** (supra), this court has carved out an exception to the effect that *"a Judge Advocate appointed with the Court Martial should not be an officer of a rank lower than that of the officer facing the trial unless the officer of such rank is not (having due regard to the exigencies of public service) available and the opinion regarding non-availability is specifically recorded in the convening order".* According to learned senior counsel, the present case falls within the above exception inasmuch as non-availability of an officer of equivalent or higher rank was specifically recorded in the convening order. It is also argued, referring to Army Rule 103 that a Court Martial shall not be invalid merely by reason of any invalidity in the appointment of the Judge Advocate officiating thereat. Reference is made to **Union of India vs. S.P.S. Rajkumar and Ors**.[5]

5 2007 (6) SCC 407

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6. Per contra, Shri G.S. Ghuman, learned counsel appearing for the respondent would submit that one Major Rajiv Dutta was appointed as a Judge Advocate in the Court Martial, who was junior in rank to the respondent. This was informed to the respondent by forwarding certified copy of the convening order under the Army Rules 33 (7) and 34 and the same was also received by the respondent on 07.10.2014. Both the copies were filed with the written statement. In these orders, the prerequisites of bringing the appointment of an officer equivalent or junior to the rank of the respondent was not mentioned, therefore, the High Court has taken the correct view in the matter by referring to **Charanjit Singh Gill** (supra).

7. In the present appeal, we are only concerned with the legality of the appointment of Judge Advocate who was admittedly junior to the respondent, therefore, we are not dwelling on the facts of the case or merits of the charges.

8. Before the High Court, two different convening orders were produced. One by the appellant and the other one by the respondent. While the documents submitted by the appellant

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contained the reasons for appointing a junior as the Judge Advocate whereas in the convening order submitted by the respondent no such reason was mentioned. After comparing the documents, the High Court has recorded a finding that the convening order Annexure R-I (produced by the appellant before the High Court) has been altered after the same was dispatched and received by the Headquarters Artillery Centre, Hyderabad. The High Court noted that Annexure P-I is identically worded, but in the second page, the words "*in my opinion having due regard to the exigencies of public service an officer of equal or superior rank to the accused is not available to act as Judge Advocate*" are additional. The High Court specifically observed that once a document has been put in the course of transmission by the General Officer Commanding, Andhra Pradesh, Tamil Nadu, Karnataka and Kerala area, the same could not be changed/altered or modified except after recording that there was a mistake, which needs correction. Once dispatched by the officer signing the same, the communication of the document is complete and any alteration in the document is unauthorised.

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9. In the above circumstances, it is quite apparent that the reason for culling out exception as held permissible by this Court in **Charanjit Singh Gill** (supra), was not mentioned in the document while the same was dispatched by the issuing authority and supplied to the respondent. Subsequent mentioning of the reason in the other document, after putting signatures by the issuing authority, was unauthorised and impermissible, the High Court has correctly held that the convening order suffers from incurable defect as held by this Court in **Charanjit Singh Gill** (supra) in the following words:

> **"16**. It is true that a Judge Advocate theoretically performs no function as a Judge but it is equally true that he is an effective officer of the Court conducting the case against the accused under the Act. It is his duty to inform the Court of any defect or irregularity in the charge and in the constitution of the Court or in the proceedings. The quality of the advice tendered by the Judge Advocate is very crucial in a trial conducted under the Act. With the role assigned to him a Judge Advocate is in a position to sway the minds of the Members of the Court Martial as his advice or verdict cannot be taken lightly by the persons composing the Court who are admittedly not law-knowing persons. It is to be remembered that the Courts Martial are not part of the judicial system in the country and are not permanent courts.
>
> **18**. In view of what has been noticed hereinabove, it is apparent that if a "fit person" is not appointed as a Judge Advocate, the proceedings of the Court Martial cannot be held to be valid and its finding legally arrived at. Such an invalidity in appointing an "unfit" person as a Judge Advocate is not curable under Rule 103 of the Rules. If a fit person possessing requisite qualifications and otherwise eligible to form part of the General Court Martial is appointed as a Judge Advocate and ultimately some invalidity is found in his appointment, the proceedings of the Court Martial cannot be declared invalid. A "fit person"

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> mentioned in Rule 103 is referable to Rules 39 and 40. It is contended by Shri Raval, learned Additional Solicitor General that a person fit to be appointed as Judge Advocate is such officer who does not suffer from any ineligibility or disqualification in terms of Rule 39 alone. It is further contended that Rule 40 does not refer to disqualifications. We cannot agree with this general proposition made on behalf of the appellant inasmuch as sub-rule (2) of Rule 40 specifically provides that Members of a Court Martial for trial of an officer should be of a rank not lower than that of the officer facing the trial unless such officer is not available regarding which specific opinion is required to be recorded in the convening order. Rule 102 unambiguously provides that "an officer who is disqualified for sitting on a Court Martial, shall be disqualified for acting as a Judge Advocate at that Court Martial". A combined reading of Rules 39, 40 and 102 suggests that an officer, who is disqualified to be a part of a Court Martial, is also disqualified from acting and sitting as a Judge Advocate at the Court Martial. It follows, therefore, that if an officer lower in rank than the officer facing the trial cannot become a part of the Court Martial, the officer of such rank would be disqualified for acting as a Judge Advocate at the trial before a GCM. Accepting a plea to the contrary would be invalidating the legal bar imposed upon the composition of the Court in sub-rule (2) of Rule 40.
>
> **20.** The purpose and object of prescribing the conditions of eligibility and qualification along with desirability of having Members of the Court Martial of the rank not lower than the officer facing the trial is obvious. The law-makers and the rule-framers appear to have in mind the respect and dignity of the officer facing the trial till guilt is proved against him by not exposing him to the humiliation of being subjected to trial by officers of lower rank. The importance of the Judge Advocate as noticed earlier being of a paramount nature requires that he should be such person who inspires confidence and does not subject the officer facing the trial to humiliation because the accused is also entitled to the opinion and services of the Judge Advocate. Availing of the services or seeking advice from a person junior in rank may apparently be not possible ultimately resulting in failure of justice."

10. The legal position is thus well settled in **Charanjit Singh Gill** (supra) that non recording of reasons of appointment of an officer junior in rank as a Judge Advocate in the convening

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order invalidates the Court Martial proceedings. The High Court has not committed any error of law in holding so in the facts and circumstances of the case.

11. The next argument raised by the appellant taking shelter of Army Rule 103 is referred only to be rejected for the reason that the protection under this rule is available only where a fit person has been appointed as a Judge Advocate. If the person so appointed is not fit to act and perform the duties of the Judge Advocate as held in **Charanjit Singh Gill** (supra), Rule 103 would not come to the rescue of the appellant. Moreover, such argument has already been rejected by this Court in paragraph 18 of the report in Charanjit **Singh Gill** (supra).

12. In view of the forgoing discussion, we find no substance in this Civil Appeal which deserves to be and is hereby dismissed.

.....J.
(PRASHANT KUMAR MISHRA)

.....J.
(PRASANNA BHALACHANDRA VARALE)

NEW DELHI;
September 09, 2024.