

# **HIGH COURT OF JAMMU AND KASHMIR AT JAMMU**

## **SWP No. 2902/2001**

**Date of decision:** 17.04.2009

**Gurmukh Singh** Vs. **Union of India & Ors.**

*Coram:*

## MR. JUSTICE J. P. SINGH, JUDGE.

### *Appearing Counsel:*

For Petitioner(s) : Mrs. S. Kour, Advocate.

For Respondent(s) : Mr. P. S. Chandel, Advocate.

i) Whether approved for reporting in Press/Journal/Media : Yes

ii) Whether to be reported in Digest/Journal : Yes

Gurmukh Singh, petitioner, was dismissed from Army Service pursuant to the findings and verdict recorded by a Summary Court Martial, held by the Commanding Officer 20 Bn. Sikh Regiment, on May 10, 1996.

The Charge on which the petitioner was tried reads thus:

“Army Act  
Section 44

MAKING AT THE TIME OF ENROLMENT  
A WILLFULLY FALSE ANSWER TO A  
QUESTION SET FORTH IN THE  
PRESCRIBED FORM OF ENROLMENT  
WHICH WAS PUT TO HIM BY THE  
ENROLLING OFFICER BEFORE WHOM  
HE APPEARED FOR THE PURPOSE OF  
BEING ENROLLED

*In that he,*

*At RAMGARH CANTT on 01 Nov 94 when appeared before IC-30015X Lt Col Pradeep Sinha, an enrolling officer for the purpose of being enrolled for service in The Sikh Regiment to question put to him "What is your date of birth?" answered 19 Apr 76 (As per Bogus Matriculation Certificate obtained by him) whereas his actual date of birth was 19 Apr 1972, the fact he well knew."*

The petitioner pleaded guilty to the charge and was accordingly dismissed from service.

The proceedings, findings and the conviction recorded by the Summary Court Martial have been questioned in this petition by the petitioner saying that his trial, and the findings of the Summary Court Martial recorded thereafter, were unwarranted, in that, neither had the petitioner been heard by the Commandant before the framing of charge nor were the proceedings conducted in his presence.

Referring to the violation of the Army rules by the respondents in conducting his trial, the petitioner says that no person was provided to him to assist during the trial in terms of Army Rule 129. Framing of charge after a period of two years of his enrollment too has been projected to be in violation of the rules.

In their response to the writ petition, the respondents have controverted the case set up by the petitioner regarding violation of the Army rules asserting that the provisions of the Army Act and rules framed thereunder had been complied with in letter and spirit in hearing the petitioner, conducting trial and providing him, his friend

in terms of rule 129 of the Army rules. All those safeguards which are available to an accused in terms of Army Act and Rules framed thereunder had been provided to the petitioner thereby complying with the requirements of the law.

The documents placed on records by the respondents in support of the case set up in their response to the writ petition, indicate that rule 23 of the Army rules had been complied with while recording the Summary of Evidence by IC-42388 X Major G. Vinod on the orders of IC-31695P Colonel Abhay Ranjan, Commanding Officer, 20 SIKH. The petitioner had declined to cross-examine the witnesses who had been examined while recording of Summary of Evidence. Petitioner's presence is shown to have been recorded in the records of the respondents. A receipt signed by the petitioner evidencing receipt of the documents by him prior to his trial by the Summary Court Martial too forms part of the records. Petitioner has signed his plea of guilty and the certificate issued by the Commandant in this respect reveals that the court had explained the petitioner the meaning of the charge to which he had pleaded guilty after ascertaining that the petitioner had understood the charge to which he had pleaded guilty. The certificate issued by the Commandant indicates that the petitioner had been informed of the general effect of the plea and the difference in procedure which will be followed consequent to the said plea. It is only after certifying himself that the accused had admitted the charge and understood the effect of his pleading guilty that the court had

recorded the compliance of Army rule 115 (2). Another document placed on records by the respondents reveals that the Commanding Officer had accepted the petitioner's request and provided him the services of IC-52091K-Captain Sushim Bishwas as his Friend during the trial. This friend of the accused is shown to have attended the trial too.

Petitioner has not placed any material on records to suggest that the proceedings conducted by the respondents were not in order. Plea of violation of the rules alleged by the petitioner, in his writ petition, in view of the documents placed on records by the respondents, which have not been controverted by the petitioner either by filing rejoinder to the writ petition or any other material on records is thus found to be unsustainable.

Respondents have indicated in their reply to the writ petition that the petitioner had secured entry into Army service indicating his date of birth as 19<sup>th</sup> April, 1976 producing a fake certificate in support thereof. The Jammu and Kashmir State Board of School Education, on being asked by the Army Authorities about the authenticity of the certificate produced by the petitioner had informed that the certificate was fake and the actual date of birth of the petitioner was 19<sup>th</sup> April 1972. The petitioner had thus, relying upon the fake certificate, secured his entry into Army service to which he was otherwise ineligible because of having completed maximum prescribed age of 20 years.

In view of the documents placed on records by the respondents, it stands established that the plea of violation of the provisions of the Army Act and Army rules set up by the petitioner in his writ petition is factually incorrect. The documents placed on records by the respondents demonstrate that the respondents had complied with the provisions of Army Act and the rules framed thereunder in holding petitioner's trial, recording his plea of guilty, and resultantly finding him guilty. Plea of the petitioner that his trial after two years of his enrolment was impermissible, too is not supported either by the provisions of Army Act or by the Army rules framed thereunder.

That apart, petitioner having secured his entry into Army service, though ineligible because of having completed maximum age of 20 years prescribed therefor, and that too on the basis of a certificate which has been certified by the Jammu and Kashmir State Board of School Education as fake, has been rightly awarded punishment by the Summary Court Martial.

For all what has been said above, I do not find any merit in this petition justifying interference in the findings and verdict recorded by the Summary Court Martial.

This petition is, accordingly, dismissed.

(J. P. Singh)  
Judge

**Jammu**  
**17.04.2008**  
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