

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

LPASW No. 386/2001
CMA No.420/2001

Date of decision: 25.07.2012

Union of India

V. Sohan Singh

Coram:

Hon'ble Mr. Justice J.P.Singh, Judge.

Hon'ble Mr. Justice Hasnain Massodi, Judge.

Appearing Counsel:

For Appellant(s) : Mr. Tashi Rabstan, CGSC.
For Respondent(s) : Mr. B.S. Salathia, Sr. Advocate with
Mr. Monish Chopra, Advocate.
Mrs. S. Kour, Sr. Advocate with
Mr. Rajiv Gorka, Advocate.

i) Whether approved for reporting in Press/Media : Yes/No.
ii) Whether to be reported in Digest/Journal : Yes/No.

J.P. Singh-J :

Sohan Singh-respondent, a Sepoy in 10 Sikh Regiment, was sentenced to *Three Months Rigorous Imprisonment in Civil Jail* and *Dismissal from service*, pursuant to his conviction under Section 39(a) of the Army Act, for absenting without leave from September 4 to September 16, 1998 and under Section 40(a) of the Army Act for using criminal force against his Superior Officer on September 26, 1998 besides under Section 39(a) for absenting without leave from September 26 to November 8, 1998 by the Summary Court Martial. He questioned his

conviction and sentence by Writ Petition SWP No. 2071/99.

A learned Single Judge of this Court, set aside the respondent's conviction under Section 40(a) of the Army Act, while upholding his conviction and sentence under Sections 39(a) of the Act, vide judgment and order dated 21-08-2001.

Aggrieved by the judgment, Union of India has filed this Appeal seeking setting aside of the Judgment and order of the learned Single Judge.

We have heard learned counsel for the parties, considered their submissions and perused the material on records.

Perusal of the impugned judgment reveals that respondent's conviction under Section 40(a) was set aside by the learned Single Judge on re-appreciation of the evidence of Subedar Surjit Singh, the respondent's superior, who was stated to have been hit by the respondent causing him lacerated injury, and CHM Hav. Kuljit Singh, who had seen Subedar Surjit Singh in injured condition and the respondent running away from the place of occurrence, in

the light of the Medical Certificate of Surjit Singh (Exhibit-‘A’), which certified him to have been admitted in Hospital on 27-09-1998 and discharged on 5-10-1998 with lacerated wound on right palm.

The short question that arises for consideration in the Appeal is as to whether re-appreciation of evidence on the basis whereof the Summary Court Martial had held the respondent guilty and punished him accordingly, was permissible in exercise of the power of Judicial Review.

The matter being no longer *res integra* and in view of the umpteen judgments on the issue, we do not find any merit in the respondent’s learned Senior Counsel’s submission that in exercise of jurisdiction under Article 226 of the Constitution of India, the learned Single Judge could arrive at his own finding on the evidence available on records to do substantial justice.

We are fortified in taking the above view by what was held by their Lordships of Hon’ble Supreme Court of India in ***Union of India and others vs. Himmat Singh Chahar*** reported as **(1999) 4 Supreme Court Cases 521** where

dealing with the jurisdiction of the High Courts and the power of Judicial Review, their Lordships held as follows:

“Since the entire procedure is provided in the Act itself and the Act also provides for a further consideration by the Chief of the Naval Staff and then by the Union Government then ordinarily there should be a finality to the findings arrived at by the competent authority in the court martial proceedings. It is of course true that notwithstanding the finality attached to the orders of the competent authority in the court martial proceedings, the High Court is entitled to exercise its power of judicial review by invoking jurisdiction under Article 226 but that would be for a limited purpose of finding out whether there has been infraction of any mandatory provisions of the Act prescribing the procedure which has caused gross miscarriage of justice or for finding out that whether there has been violation of the principles of natural justice which vitiates the entire proceedings or that the authority exercising the jurisdiction had not been vested with jurisdiction under the Act. The said power of judicial review cannot be a power of an appellate authority permitted the High Court to reappreciate the evidence and in coming to a conclusion that the evidence is insufficient for the conclusion arrived at by the competent authorities in court martial proceedings. At any rate it cannot be higher than the jurisdiction of the High Court exercised under Article 227 against an order of an inferior tribunal. This being the parameter for exercise of power of judicial review against the findings of a competent authority in court martial proceedings and applying the same to the impugned judgment of the High Court we have no hesitation to come to the conclusion that the High Court overstepped its jurisdiction in trying to reappreciate the evidence of Mrs. Nirmala Sharma and in coming to the conclusion that her evidence is not credible enough to give a finding of guilt against the respondent of a charge under Section 354.”

The learned Single Judge is, therefore, found to have overstepped jurisdiction and power of Judicial Review in entering into the arena of re-appreciation of evidence which was found enough by the Summary Court Martial to

warrant respondent's conviction particularly when the respondent had not questioned in the Writ Petition the appreciation of evidence by the Summary Court Martial.

We have gone through the statements of the witnesses and the Medical Certificate of Subedar Surjit Singh and are of the view that in the facts and circumstances of the case, the findings returned and the sentence pronounced by the Summary Court Martial did not warrant interference.

We further find that the learned Single Judge had proceeded on a wrong premise that the punishment for dismissal from service was pursuant to respondent's conviction under Section 40(a) alone of the Army Act because the records, on the other hand, demonstrate that the punishment of dismissal from service was not a separate punishment under Section 40(a). It on the other hand was a cumulative punishment pursuant to respondent's conviction for three Charges.

We, therefore, find merit in the appellants' learned counsel's submission that the learned Single Judge had erred in exercising power of Judicial Review in upsetting

the respondent's conviction and sentence on re-appreciation of evidence which course was impermissible.

This Appeal, accordingly succeeds and is, therefore, allowed, setting aside the judgment and order of the learned Single Judge dated 21.08.2001 in respondent's Writ Petition SWP No. 2071/1999 whereby respondent's conviction and sentence under Section 40 (a) including the sentence of dismissal from service was quashed. The respondent's Writ Petition shall stand accordingly dismissed.

(Hasnain Massodi)
Judge

JAMMU
25.07.2012
Naresh/Pvt. Secy.

(J.P. Singh)
Judge