

## COURT MARTIALS AND RIGHT TO FAIR TRIAL

IN A significant decision in *Ranjit Thakur v. Union of India*,<sup>1</sup> the Supreme Court reaffirmed that a just balance between military discipline and individual personal liberty must be maintained and that door must not be shut against principles of natural justice even in respect of army tribunals.

Appellant, a signaman in the army, was sentenced to 28 days' rigorous imprisonment by his commanding officer (respondent 4) for complaining of ill-treatment at the latter's hands, directly to higher army authorities. While serving out the sentence, he refused to eat food given to him in the cell as a gesture of protest and consequently he was charged with an offence under section 41(2) of the Army Act 1950 for disobeying a lawful command given by his superior officers. He was subsequently tried by a summary court martial. The judges were his commanding officer and two others. The appellant pleaded guilty and was awarded the punishment of dismissal from service, declared unfit for future civil employment and a sentence of one year's rigorous imprisonment. His representation to the confirming authority under section 164 of the Act was rejected. Consequently the court martial proceedings were challenged by a writ petition in the Patna High Court which dismissed it *in limine*. Hence the special leave appeal to the Supreme Court.

The appellant challenged the orders of the court martial on several grounds. Those, *inter alia*, were :

- (i) Non-compliance with the the mandate of section 130(1) of the Act in that the summary court martial did not provide an opportunity to the appellant to challenge its constitution.
- (ii) Bias on the part of respondent 4 who participated in the proceedings.
- (iii) Disproportionality of punishment to the offence amounting to evidence of bias and vindictiveness.

The Supreme Court, speaking through Justice Venkatachaliah, held that the court martial, in not complying with the mandatory requirements of section 130 which require the court to ask the accused whether he objects to being tried by any officer sitting on the court, committed grave illegality, thereby vitiating its proceedings.<sup>2</sup> The court relied on its earlier ruling in *Prithvi Pal Singh v. Union of India*<sup>3</sup> wherein Justice Desai held :

The provision conferring a right on the accused to object to a member of the court martial sitting as a member and participating in the

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1. J.T. 1987 (4) S.C. 93.

2. *Id.* at 96.

3. A.I.R. 1982 S.C. 1413.

trial ensures that a charge of bias can be made and investigated against individual members composing the Court Martial. This is pre-eminently a rational provision which goes a long way to ensure a fair trial.<sup>4</sup>

On the second ground of bias the Supreme Court was unequivocal. Applying the test of real likelihood<sup>5</sup> which requires that the judge should not look at his own mind and ask himself, however honestly, "Am I biased?," but should look at the party before him, it held that the court martial was biased in its decision. The combination of the functions of prosecutor and judge in the form of respondent 4 (appellant's commanding officer) in the composition of the court martial reflected bias and want of impartiality rendering the trial *coram non-judice*.<sup>6</sup>

While acknowledging that "high and rigorous discipline" is to be maintained in the defence forces and that the choice and quantum of punishment is within the jurisdiction and discretion of the court martial, the court stated that there should be proportionality between the offence and the punishment.<sup>7</sup> It added that "[i]t should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias."<sup>8</sup> The vindictiveness and harshness of the punishment clearly revealed bias in the court martial proceedings which justified judicial correction.<sup>9</sup>

The court quashed the court martial proceedings and reinstated the appellant in service with all "monetary and service benefits."

The judgment reiterated the principle that military justice has to be tempered with principles of fairplay and military tribunals should comply with statutory procedures and arrive at decisions free from the blemish of bias.

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4. *Supra* note 1 at 97, quoting *id.* at 1431.

5. In this connection reference was made to *Vassiliades v. Vassiliades*, A.I.R. 1945 P.C. 38; *Allinson v. General Council of Medical Education and Registration*, [1894], 1. Q.B. 750; *Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon*, [1969] 1 Q.B. 577; *Public Utilities Commission of the District of Columbia v. Pollak*, 343 U.S. 451 (1951); *Regina v. Liverpool City Justices, Ex parte Topping*, [1983] (1) W.L.R. 119; *supra* note 1 at 97-98.

6. *Id.* at 97.

7. *Id.* at 98.

8. *Id.* at 99.

9. *Ibid.*

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