
(1987) 08 MP CK 0019
In the Madhya Pradesh High Court

A.K. Harida

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-08-1987

Acts Referred:

Army Act, 1950 — Section 125, 153, 154, 158, 160
Constitution of India, 1950 — Article 14, 16, 19, 21, 226
Penal Code, 1860 (IPC) — Section 403

Citation : (1988) CriLJ 597 : (1988) MPLJ 184

Hon'ble Judges : S. Awasthy, J;C.P. Sen, J

Bench : Division Bench

Judgement

C.P. Sen, J.

By this Order, M.P. No. 2292 of 1987 A. K. Handa and Anr. v. Union of India and Ors. is also disposed of.

The petitioner is a commissioned officer in Indian Army, having been appointed on 9-2-1964 and he is at present holding substantive rank of Major. He was officiating as Lt. Colonel since 1-4-1984 and was posted as Commanding Officer, Depot Regiment (Corps of Signals) since 8-5-1984. For the year 1984-85, the GOC, MP B & O Area, headquarter Jabalpur, wrote an adverse confidential report dt. 16th May 1985 that while the petitioner's professional competence was very satisfactory and he appears to have had much potential, he would not vouchsafe for the officer's moral qualities, gets into shady financial deals with the money of his subordinates, and his integrity is questionable. Not likely to command respect. In view of this adverse confidential, he was reverted to his substantive rank of Major. The GOC also ordered Genral Court Martial (GCM) against him. The petitioner was charge-sheeted on 2-6-1986 in respect of the following three chargeh ; (i) He dishonestly misappropriated a sum of Rs. 12,900/- belonging to Ex-Signalman (Sigmni Kaj Naidu; (ii) he misappropriated a sum of Rs. 15063.90 p/- belonging to late Ex-Sigmnn Deepa Ram and thereby committed a civil offence, that is to say, dishonestly misappropriating property contrary to Section

403 IPC; and (iii) that he in a letter dt. 9th Jan. 1985 addressed to Smt. Narayana Devi, widow of late Ex-Sigmn Deepa Ram, confirmed that complete amount of Rs. 15063.90p/- had been remitted by money order while knowing the same to be false. The GCM was to commence from 2-7-1986 and in the meanwhile the present petition was filed on 28-6-1986 for stay of the proceedings of the GCM but this Court on 1-7-1986 declined to grant any stay. The GCM found the petitioner guilty on 18-7-1986 in respect of charges 1 & 2 and awarded following sentence subject to the confirmation by the confirming authority : (i) forfeiture of service for the purpose of promotion for 4 years, (ii) forfeiture of seniority by 2 years and (iii) severe reprimand. This petition was admitted on 22-8-1986. In the meanwhile, the confirming authority i.e. GOC Central Command, Lucknow, directed the GCM to reconsider the question regarding sentence which was too lenient, by exercising revisional powers u/s 160 of the Army Act, 1950, (hereinafter referred to as the Act). The petitioner was then given a notice by GCM on 18-9-1986 directing to appear on 25-9-1986 for reconsideration of the sentences. The petitioner then moved another application for stay of further proceedings before the GCM which was rejected by this Court on 24-9-1986. On 25-9-1986 on reconsideration of the sentence, the GCM awarded cashiering of the petitioner u/s 74 of the Act. The petitioner also moved an application for joining the members of the GCM as respondents and notices were issued to them. Another application for stay was moved by the petitioner which was rejected by this Court on 25-10-86. The petitioner then filed a petition u/s 164 of the Act to the GOC, Southern Command, against the order of the GCM on 18-7-1987. By subsequent order dt. 11-2-1987, this Court directed that pending disposal of the petition, the petitioner shall not be cashiered as a consequence of any, order passed during confirmation proceedings. This order was confirmed on 13-3-1987, but the application made by the wife at the petitioner for joining her as a petitioner in the case was rejected. On that day, as application for amendment of the petition was also moved challenging certain more provisions of the Act and the Army Rules & Regulations. On 3-8-1987 the petitioner filed 3 applications, one for annulment of GCM and for summoning of its record, another for payment of his pay & allowances from the month of Feb. 1987 onwards and the third for further amendment of the petition. Surprisingly, without any order from the Court the petitioner has incorporated the proposed amendments in the petition on 23-6-1987. The case was listed for hearing on 20-7-1987 and with the consent of the parties the case was listed for hearing on 3-8-1987. It was also directed that reply to the amendment application may be filed on or before that date. It does not appear that any reply has been filed to any of the aforesaid 3 applications. The petition was heard by the Constitutional Division Bench headed by the Hon"ble the Chief Justice on 3-8-1987 but on 4-8-1987 the case was released and was directed to be listed for hearing before this Bench on 5-8-1987, This Bench adjourned the case to 7-8-87 on the request of the counsel for the petitioner. The petitioner and his wife filed another petition M.P. No. 2292/87 on identical grounds incorporating subsequent event son 4-8-87. This petition was also heard on 7-8-87 and arguments concluded on

10-8-87, intervening days being holidays. However, on 10-8-87 the petitioner filed two more applications, one for production of certain more documents and another for contempt of Court for appropriate action since the petitioner was not being permitted to appear and assist his counsel in the petition.

The petitioner's case as given in the petition before the amendment is that he has unblemished record of 22 years of service and he has achieved six medals. The facts leading to GCM would indicate that there are no ingredients of offence u/s 403 and there is no misappropriation. Ex-Sigmin Kaj Naidu was released from Army as a Psychiatric case. His brother Sigmni Mariadas was an orderly (Sahayak) with the petitioner for the last 9 years and his father Hawaldar Simachalan had served the petitioner from 1964 to 1967 in Gauhati. Pending finalisation of final settlements of accounts (FSA) and payment of Armed Forces Provident Fund (AFPF), he was sent home with an escort. The petitioner, therefore, helped him in procuring his payment and all his dues amounting to Rs. 17,489.20/- were paid to him on 8th May 1984 personally by Captain K. S. Parmar. Another Rs. 7000/- were sent to him through his brother Mariadas which was received by the Ex-Sigmni in Sept. 1984 and an acknowledgment obtained by Mariadas. Therefore, the charge No. 1 against him was baseless. Regarding charge No. 2, Ex-Sigmni Deepa Ram was a deserter from Army for 4 1/2 months and he was brought to Jabalpur in the Unit under the control of the petitioner. His was a case of acute Cerebral Degeneration. Since he had surrendered voluntarily and his condition was pitiable, he was boarded out of service. On 18-8-1984 he was allowed to go home along with his wife Naraina Devi and other relations and he expired on reaching home. The petitioner made efforts for early payment of FSA and AFPF. The payment was received on 5-9-84 by Captain K. S. Parmar and it was decided that money should be kept in the personal custody of the petitioner, to be handed over to Naraina Devi as she had disputes with her in-laws. As Naraina Devi had requested that the amount be sent by instalments, the petitioner had remitted the amount by instalments, otherwise her in-laws would grab all the money and throw her out of the house. Accordingly, the petitioner had despatched the amounts by instalments through Central Bank of India in the Malosar (Rajasthan) Branch of the Bank. However, on 21-1-1985 when the petitioner was on leave, a letter dt. 28-11-1984 was received from Naraina Devi that she has not received any amount. Taking advantage of the absence of the petitioner, Major C. K. Saini who was officiating as Commanding Officer and had grudge against the petitioner, sent a report to the GOC, MP, B & O Area, Jabalpur, on 29-1-1985. This is falsified by the subsequent letter of Naraina Devi dt. 8-3-1986 denying that she had sent any complaint. So there was no basis for the second charge also, yet the Court of Enquiry was ordered in May 1985 and enquiry was held by overlooking important pieces of evidence i.e. letters of Mariadas and Naraina Devi, summary of evidence of Cap. K. S. Parmar and Suhedar Major Rachhapal Singh, and GCM was ordered. Therefore, no offence u/s 403 IPC has been made out as the parties have received full amounts and the complaint is a fabricated document. The adverse confidential report given by

GOC, MP, B & O Area, Jabalpur, on 16-5-1985 before Court of Enquiry is complete, shows pre-conceived and pre-determined mind of all concerned authorities. Section 84 is discriminatory inasmuch as officers of the rank of Lt. Colonel and above have been kept outside the purview of this provision and there can be summary enquiry by the officer concerned for imposing punishments mentioned therein. Section 125 of the Act gives option to the convening authority either to order GCM or prosecute the officer in Criminal Court, but here there was no application of mind, before ordering GCM. The petitioner, therefore, prayed that Section 84 of the Act be declared unconstitutional, the petitioner should not be tried before GCM and to quash the adverse confidential report against the petitioner.

The respondents by their preliminary objection submitted that the petitioner is required to prefer an appeal u/s 154 of the Act and the decision of the appellate Court is final and against the order of the appellate authority no writ petition is maintainable in view of the decision of the Supreme Court in Lt.-Col. Prithi Pal Singh Bedi and Others Vs. Union of India (UOI) and Others, . However, subsequently return has been filed on behalf of the respondents again reiterating that there is alternative remedy of appeal u/s 164 and further appeal u/s 179 of the Act. The petition is, therefore, liable to be dismissed as there is an alternative remedy which has not been exhausted. It is denied that the petitioner has got a meritorious service record, the six medals achieved by him were long service medals only and for the service rendered in certain specified field areas. The petitioner has not given proper facts regarding charges 1 & 2, Not only there was a prima facie case for these two charges but the GCM on assessment of the evidence on record found both the charges regarding misappropriation u/s 69 of the Act read with Section 403 IPC have been proved by overwhelming incriminating evidence as record, both oral and documentary, and the third charge preferred u/s 63 of the Act was an act prejudicial to the good and military discipline, has been held not proved. After receipt of the complaint from Ex-Sigmn Naidu, the petitioner had sent his Sahayak Mariadas along with the petitioner's wife to the village of Naidu to make the payment of the balance amount and actually the amount was paid at Raipur railway station where they met Naidu. Regarding Ex-Sigmn Deepa Ram, although the amount for payment was withdrawn on 5-9-84, but actual payments were made subsequently between 1.2-11 -84 to 22-1-85 after complaint was received from his widow Naraina Devi. Section 84 empowers the disciplinary authorities to take summary action against officers up to the rank of Major and it does not violate Article 14 of the Constitution simply because higher officers are kept out of the purview of this provision as they have to be dealt with by a forum superior to that of an individual authority. Moreover, summary disposal proceedings cannot be termed a judicial proceeding unlike a Court Martial. It is denied that without application of mind, GCM was ordered instead of prosecuting the petitioner in a criminal Court.

Under Article 33 of the Constitution, Parliament may by law determine to what

extent any of the rights conferred by this Part relating to fundamental rights shall, in their application to the members of the Armed Forces, be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them. Therefore, the Parliament has enacted Army Act of 1950. Validity of a law made under this Article such as Army Act cannot be challenged on the ground of contravention of any of the fundamental rights i.e. Article 14 or 16 or 19. Besides, instead of imposing restrictions in law itself, Parliament can empower the Central Government to impose restrictions, subject to such limitations as may be laid down, which are necessary for ensuring proper discharge of duties by armed forces and of discipline amongst them. Under Article 310 members of defence services hold office during the pleasure of the President but they are not entitled to the protection offered by Article 311 as they do not hold civil posts. Mandamus may, however, lie for violation of the provisions of Army Act or Rules having statutory basis. u/s 3(ii) "civil offence" means an offence which is triable by a criminal Court. Chapter III of the Act deals with commission, appointment and enrolment, while Chap. IV lays down conditions of service and Chapt. V gives service privileges. Offences under Army Act are given in Chap. VI including Section 52 relating to offences in respect of property, that is, theft, dishonest misappropriation, criminal breach of trust, dishonest receipt and retention of property, wilful damage to Government property and fraud. u/s 69 any person who commits any civil offence shall be deemed to be guilty of an offence against this Act and shall be liable to be tried by court-martial and punished in accordance with the punishment for those offences. Chapter VII provides for punishments. Section 71 provides the punishments awardable by court-martial including cashiering, dismissal, reduction in rank, forfeiture of seniority, forfeiture of service, severe reprimand etc. u/s 72 alternative punishments can be awarded which are provided for specific offences. u/s 74 an officer shall be sentenced to be cashiered before he is awarded any of the punishment in Clauses (a) to (c) of Section 71 including imprisonment, rigorous or simple. Section 79 provides that punishments otherwise than by court-martial can be inflicted in respect of offences mentioned in Sections 80 and 83 to 85. u/s 84 an officer below the rank of Lt. Colonel can be punished with the punishments of forfeiture of seniority, forfeiture of service and severe reprimand. Section 87 empowers the superior military authority to review the punishment imposed. Chapter X deals with court-martials. u/s 125 it will be in the discretion of the officer commanding to decide whether general court martial should be instituted or the accused be prosecuted in a criminal Court. Chapter XI deals with the procedure of court-martial. Chapter XII deals with confirmation and revision of sentence. Section 153 provides that finding or sentence of GCM shall require confirmation. Section 154 provides that finding and sentence of general court martial may be confirmed by the Central Government or by any officer empowered in this behalf. Section 158 gives power to the confirming authority to mitigate, remit or commute sentences. There is a power of revision in the confirming authority u/s 160 and it may direct the GCM to reconsider punishment. u/s 163 the Central Government can alter the finding

or sentence which is invalid and which cannot be supported by evidence under its power u/s 179. Section 164 gives a right to a person who has been punished by GCM to present a petition to the officer empowered in this behalf against the finding and sentence. Section 179 in Chap. XIV gives power to grant pardon and remission to the Central Government and Chief of the Army Staff or the GOC.

The Supreme Court in *Ram Sarup Vs. The Union of India (UOI) and Another*, has held that each and every provision of the Act is a law made by Parliament and that if any such provision tends to affect the fundamental right under Part 111 of the Constitution, that provision does not, on that account, become void, as it must be taken that Parliament has thereby, in the exercise of its power under Article 33 of the Constitution, made the requisite modification to affect the respective fundamental right. In that case, it has been held that Section 125 does not infringe Article 14 of the Constitution, The Supreme Court in *Capt. Harish Uppal Vs. Union of India (UOI) and Others*, held that under the provisions of Section 158 the confirming authority can himself mitigate or remit the punishment awarded by the court-martial or commute that punishment for any lower punishment and. therefore, when a sentence is directed to be revised by the confirming authority it necessarily means that the confirming authority considers that the punishment awarded by the court-martial is not commensurate with the offence and it should, therefore, be revised upwards. To object to this is to object to the provisions of Section 158 itself. It has further been held "we must point out that this Court cannot go into the evidence in support of the charge against the petitioner. Indeed the court-martial itself could not have set out the evidence against the petitioner; it should have only given the finding and the sentence." In that case validity of Section 160 has been upheld. The Supreme Court in *Lt.-Col. Prithi Pal Singh Bedi and Others Vs. Union of India (UOI) and Others*, held as under:

Section 21 of the Army Act merely confers an additional power to modify rights conferred by Article 19(1)(a) and (c) by Rules and such rules may set out the limits of restriction. But the specific provision does not derogate from the generality of power conferred by Article 33. Therefore, the law prescribing procedure for trial of offences by court-martial need not satisfy the requirement of Article 21 because to the extent the procedure is prescribed by law and if it stands in derogation of Article 21, to that extent Article 21 in its application to the Armed Forces is modified by enactment of the procedure in the Army Act itself. Reluctance of the apex court more concerned with civil law to interfere with the internal affairs of the Army is likely to create a distorted picture in the minds of the military personnel that persons subject to Army Act are not citizens of India. It is one of the cardinal features of our Constitution that a person by enlisting in or entering Armed Forces does not cease to be a citizen so as to wholly deprive him of his rights under the Constitution. In the larger interest of national security and military discipline Parliament in its wisdom may restrict or abrogate such rights in their application to the Armed Forces but this process should not be carried so far as to create a class of citizens not entitled to the

benefits of the liberal spirit of the Constitution. Persons subject to Army Act are citizens of this ancient land having a feeling of belonging to the civilised community governed by the liberty oriented constitution. Personal liberty makes for the worth of human being and is a cherished and prized right. Deprivation thereof must be preceded by an inquiry ensuring fair, just and reasonable procedure and trial by a Judge of unquestioned integrity and wholly unbiased. A marked difference in the procedure for trial of an offence by the Criminal Court and the court-martial is apt to generate dissatisfaction arising out of this differential treatment.

In that case, the Supreme Court did not interfere in the matter though it found certain provisions in the Army Act and Rules are not in keeping with the liberal spirit of the Constitution and, therefore, it was hoped and believed that the Parliament under the changed value system consider the glaring anomaly that court-martial do not even write a brief reasoned order in support of their conclusion even in cases in which they impose the death sentence and there is no appeal. This must be remedied in order to ensure that a disciplined and dedicated Indian Army may not nurse a grievance that the substance of justice and fair play is denied to it.

Therefore, in view of Article 33 and the provisions of the Army Act, the procedure for trial of offences by court-martial need not satisfy the provisions of Article 21 and the fundamental rights of the members of the Armed Forces are restricted or abrogated to the extent provided therein. The decision of the Supreme Court in *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and *Another*, holding that although there are no positive words in the statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature. The principle of *audi alteram partem* which mandates that no one shall be condemned unheard, is part of the rules of natural justice. This decision may not be fully applicable in case of members of the Armed Forces, Several decisions cited by the learned Counsel about the principles to be borne in mind for punishment and for enhancement of punishment by the criminal Courts are also not very relevant. It is true that after finding was recorded and punishment imposed by the GCM, the confirming authority i.e. GOC, Central Command, Lucknow, directed for reconsideration of the punishment which was not in keeping with the offences charged, by invoking power of revision u/s 160, Thereafter the GCM has imposed the punishment of cashiering also. The contention of the learned Counsel for the petitioner is that under Army Regulation 472 officers can be cashiered in the parade and not so the persons of lower rank and this is a very humiliating and barbaric system. It has been pointed out by the learned Counsel for the respondents that the Regulation has since been amended and there is a uniform rule of cashiering in the parade even in case of members of the Army of the lower rank. A statement was also made at the conclusion of the arguments by the learned Counsel that so far as the petitioner is concerned, he will be cashiered in the chamber of the GOC, M.P. B & O. and not in the parade. In the return, it has been mentioned that separate

provision has been made in Section 84 for imposing summary punishment by the disciplinary authority in respect of officers longer in rank than Lt. Colonel because it was thought that the officer holding rank of Lt. Colonel and above should be dealt with by a forum superior to the individual authority. It has further been submitted that in case there is a disciplinary proceeding pending against such officer, there is no hard and fast rule that he should invariably be dealt with by court-martial only. There are other modes of dealing with such cases depending on the criminality involved and the gravity of the offence. The Supreme Court in AIR India Vs. Nergesh Meerza and Others, has held "Article 14 forbids hostile discrimination but not reasonable classification. Thus, where persons belonging to a particular class in view of their special attributes, qualities, mode of recruitment and the like, are differently treated in public interest to advance and boost members belonging to backward classes, such a classification would not amount to discrimination having a close nexus with the object sought to be achieved so that in such cases Article 14 will be completely out of the way."

Regarding the findings recorded by the GCM, the petitioner has a remedy of filing a petition u/s 164 of the Act and such a petition is, in fact, pending with the GOC, Central Command, Lucknow. The findings and sentences have not yet been confirmed as required u/s 154 and the punishments imposed have not yet been promulgated. Besides, the petitioner can further make a petition u/s 179 for pardon or remission. According to the learned Counsel for the petitioner, the petitioner has decided to seek voluntary retirement from service. This is for the Army authorities to consider and decide. So the present petition in any case is premature. This apart, the findings recorded by the GCM are not open to review by this Court under Articles 226 and 227 of the Constitution. The Supreme Court in State of A.P. v. Sree Rama Rao AIR 1963 SC 1711 has held "In considering whether a public officer is guilty of the misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court, does not apply. The High Court is not constituted in a proceeding under Article 226 of the Constitution a Court of Appeal over the decision of the authorities holding a departmental enquiry against a public servant; it is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed and whether the rules of natural justice are not violated Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence." Again the Supreme Court in State of Orissa Vs. Bidyabhusan Mohapatra, held as under:

The reasons which induce the punishing authority, if there has been an enquiry consistent with the prescribed rules, are not justiciable : nor is the penalty open

to review by the Court. If the order of dismissal may be supported on any finding as to substantial misdemeanour for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court has no jurisdiction if the findings of the enquiry Officer or the Tribunal *prima facie* make out a case of misdemeanour, to direct the authority to reconsider that order because in respect of some of the findings but not all, it appears that there had been violation of the rules of natural justice.

In view of the aforesaid decisions, even in case of civil servants the powers of the High Court under Articles 226 and 227 are very restricted, unless there is manifest illegality in the procedure followed or the finding given there can be no interference, much less in the case of army personnel. The learned Counsel for the petitioner had sought permission to produce certain documents to show that Naraina Devi had disclaimed the complaint, there are receipts showing payment to Kaj Naidu and this is fortified by the statements of Captain K. S. Parmar and Subedar Major Rachhpal Singh in the Court of enquiry. This may be so, but there may be other evidence also incriminating the petitioner as has been asserted in the return that there is overwhelming evidence to hold the petitioner guilty of the first two charges of misappropriation. It has also been pointed out that admittedly the amounts were not disbursed to the respective Ex-Sigmn immediately after the amounts were received and the amounts have been paid by instalments. Some payments were made after the complaints were received. There is a letter of the petitioner to Ex-Sigmn Naidu that Rs. 10,000/- has been remitted but the balance amount will be paid shortly. He should treat it as a loan to him and this amount was, in fact, paid to the Ex-Sigmn at the Raipur railway station by the petitioner's wife accompanied by Sabayak Mariadas. Similarly, in the case of Ex-Sigmn Deepa Ram although the amounts were withdrawn on 5-9-1984, the payments were made by instalments between the period 12-11-84 to 22-1-85. Some of the payments were made after widow Naraina Devi made a complaint.

Now remains the interlocutory applications to be decided. There are two applications for amendments of the main petition. As referred to earlier, without the amendment being allowed, the petitioner has incorporated the amendments in the petition unauthorisedly. Whatever that be, we find no merit in the contentions sought to be raised by way of amendments, thereby challenging some more provisions of the Army Act and the Army Rules. Validity of Sections 158 and 160 of the Act has been upheld by the Supreme Court in *Harish Uppal v. Union of India* 1973 Cri LJ 274 (supra). There is no invalidity in Section 158 in giving the confirming authority the power to mitigate, remit or commute the sentence, such a power usually vests in superior authority. u/s 160 the confirming authority can ask the GCM to reconsider the sentence awarded as the same is not commensurate with the offence and be revised upwards. Thereupon, the GCM has to assemble again and hear the delinquent before modifying the sentence. Under Rule 68 the confirming authority itself does not enhance the

sentence, which has to be by the GCM after hearing the delinquent. So there is no violation of the principles of natural justice inasmuch as the confirming authority has merely to form its opinion regarding adequacy of the sentence and nothing more before remitting the case to the GCM. The sentence has to be enhanced only by the GCM after hearing the delinquent officer. The delinquent officer has a right to petition u/s 164 against the finding and sentence to the confirming authority. Rule 147 is challenged because the delinquent has to be given the copies of proceedings only after the findings and sentence are confirmed, in order to enable him to file petition u/s 164. Objection is being taken to the proposed cashiering of the petitioner in the parade which is very humiliating. Assurance has been given by the respondents that the cashiering will be in the chamber of the Commander and not in the parade. There is no invalidity in Section 153 which provides that finding and sentence are not valid till confirmed. This is in fact a safeguard against any arbitrary or unreasonable acts of the GCM. So also Section 164 gives the delinquent right to petition to the confirming authority against the finding and sentence of the GCM, if he is so aggrieved and then there is further right u/s 179 to apply for pardon or remission in sentence. These provisions are in the interest of the delinquent officer. u/s 74, the sentence of cashiering has to be imposed first before he is awarded any of the punishments under Clauses (a) to (c) of Section 71. Rule 168 therefore provides that the cashiering or dismissal awarded by the court-martial shall take effect from the date of promulgation of the sentence. Cashiering seems to be age-old practice in the Army that while dismissing an officer from service, he is stripped of his badges and decorations, either in the chamber or in the parade. There can be no doubt that cashiering in the parade is mere humiliating and it is for the authorities to decide which form should be adopted in a given case looking to the propensities of the offence. Here the cashiering of the petitioner, subject to confirmation, will be in the chamber. Such a punishment cannot be equated with public hanging. Therefore, the applications for amendments have to be rejected. The respondents have also assured that pay and allowances of the petitioner if not paid since Feb. 1987 will be paid immediately. It does appear that the petitioner was not allowed to attend the hearing of the petition in this Court on the pretext that he may disappear. But this fact was brought to our notice at the end of the hearing. If the learned Counsel at the outset expressed that he wanted his assistance, direction could have been given. We fail to understand as to why a second petition M.P. No. 2292/87 was filed on identical grounds at the stage of arguments, may be to obviate the rejection of the applications for amendments.

With the result, this petition fails and it is dismissed. Under the circumstances, there shall be no order as to costs. The outstanding security amount be refunded to the petitioner. M.P. No. 2292/87 is dismissed summarily.