

(2013) 07 JH CK 0157
In the Jharkhand High Court
Case No : Civil Review No. 26 of 2010

Arjun Kumar Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 01-07-2013

Acts Referred:

Citation : (2013) 07 JH CK 0157

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Manoj Tandon and Prabhash Kumar, for the Appellant;

Judgement

Aparesh Kumar Singh, J.—Heard counsel for the parties. The instant review application is directed against the judgment dated 25.2.2010 passed in W.P.(S) No. 1769 of 2004 by which the said writ petition was dismissed.

2. Learned counsel for the petitioner has sought to advance his submissions that the judgment for which, the review is being sought, suffers from errors apparent from the face of the record. In order to support his submission, it is submitted that the order of discharge had been passed by Major General, Ground Officer Commanding, (GOC), 23 Infantry Division while he was not the competent authority as per Rule 13(3)(III)(v) of the Army Rules, 1954. As per the said Army Rules, it is the Brigade or the Sub-Area Commander who is the competent authority to discharge a person like the petitioner who was a Signal Man/Sipoyee in the Indian Army. The second ground urged on behalf of the petitioner is that the show-cause notice issued upon him before passing order of discharge, which is Annexure-2 to the review petition, is in the nature of a charge of misconduct in respect of which, proper disciplinary inquiry ought to have been held. The order of discharge, therefore, is not a discharge simplicitor but a dismissal order. Therefore, Rule 14 which provides for termination of service by the Central Government on account of misconduct is applicable to the petitioner's case, which has not been followed and the learned single Judge has committed errors on the face of the record. Lastly it is also contended on behalf of the petitioner

that despite contrary submission made in the supplementary counter affidavit of the respondent in the writ petition, the learned single Judge has held that the petitioner would be entitled to payment of gratuity as per the army rules and his apprehension that he would be illegally deprived of his retrial benefits, is misconceived.

3. Learned counsel for the respondent-Union of India on the other hand takes this Court to the specific grounds urged on behalf of the petitioner in the writ petition, which are referred to in para-8 of the judgment sought to be reviewed. It is submitted that on these grounds, the writ petition was heard and decided and there are no apparent errors in the impugned judgment which warrants review of the judgment in question. Moreover, it is submitted that the petitioner did not challenge the order of discharge but only the movement order issued in consequence thereto. The petitioner also accepted that he was issued a show cause before passing the order of discharge. He also preferred an appeal before the appellate authority, which was rejected by order communicated to him under the signature of Commanding Officer, GOC, 23 Infantry Division. It is further submitted on behalf of the respondents that the reference made to Rule 14 is in-applicable to the petitioner's case as he is not an Officer in respect of whom, the said procedure for termination of service on account of misconduct is provided. The petitioner has rightly been discharged from service by the competent authority and the impugned judgment does not suffers from any apparent errors on the face of the record.

4. The respondent-Union of India has, however, preferred a Civil Miscellaneous Petition being C.M.P. No. 134 of 2010 whereunder they have made a prayer for correction in the findings recorded at Para-18 of the judgment dated 25.2.2010. According to the petitioners in the said C.M.P. and respondents in the writ petition as well as the civil review, the learned single Judge has committed an error by holding that the petitioner-employee would be entitled to the payment of gratuity as per the Army Rules.

5. I have heard learned counsel for the parties at length and gone through the impugned judgment as also the other materials referred to on behalf of the parties as well as Army Rules in question. At the outset, it needs to be stated that the grounds, on which the writ petition was heard and decided, have been elaborately referred to in para-8 of the judgment dated 25.2.2010. The learned single Judge has held that the petitioner-employee, Sipoyee had rightly been discharged under the provisions of Army Rule 13(3)(III)(v) by the competent authority. The learned single Judge has also held after discussing the rival submissions of the parties that the petitioner has not been imposed any punishment on account of any misconduct. However, as per the requirement of the relevant Rule 13, admittedly he was served with a show-cause notice, which he failed to respond to. He has also taken into account the submission of the respondent that the petitioner though was served with discharge order but he was refused to sign on the discharge certificate.

6. In such situation, the learned single Judge has held that the order of discharge based on service records and the opinion formed by the competent authority about his performance in service, which was not satisfactory found that it was not desirous to continue him as a soldier in the Army. He was not served with memo of charge nor any disciplinary proceeding were initiated against him as it was irrelevant under the relevant rules, where the only requirement was that before passing discharge order, the employee/Officer should be served with show-cause notice. Laborious arguments have been advanced by the review petitioner in order to point out the errors in the impugned judgment. However, it is well settled that the errors, which are subject to correction in a review, are the apparent errors on the face of the record and not latent errors for which, laborious arguments are required to be advanced in order to make out a case. It appears that order of discharge was never challenged by the writ petitioner. The order of discharge has been brought on record in the writ petition by way of a counter affidavit filed by the respondents and annexed as Annexure-F to their counter affidavit. A perusal of the same shows that it has been passed by the Lt. Colonel, who was officiating Commanding Officer of the writ petitioner-employee. The argument advanced by the review petitioner that the order of discharge was passed by the Major General GOC, 23 Infantry Division is, therefore, without any substance. The Major General, General Officer Command, 23, Infantry division had rejected the appeal preferred by the petitioner. Rule 13(3)(III)(v) provides for discharge of all other classes/category of employee and designation of the competent authority, who is authorized to discharge and the manner of discharge is also indicated therein. As per the manner of discharge prescribed therein, a show-cause notice is required to be issued in respect of contemplated discharge to the person/officer concerned by the competent authority i.e. sub area commander before passing order of discharge.

7. In the instant case the review petitioner has been served with a show-cause notice, which apparently he failed to respond and thereafter order of discharge was issued. The provisions of Rule 14, provides termination of service of an officer on account of misconduct. However, the petitioner apparently was Signal Man/Sipoyee.

8. Reference to all these submissions, therefore, indicates that these grounds do not come within the purview of errors on the face of the record so as to warrant of the review of the impugned judgment. The petitioner may be affected by the impugned judgment on other substantive grounds or any other errors, which may be subject matter of appeal. However, no grounds for review of the impugned judgment is made out.

9. In that view of the matter, the impugned judgment does not suffer from any such errors apparent on the face of record, which is required to be reviewed. Accordingly, the review petition is dismissed. However, the respondents in review petition and the petitioner in C.M.P. No. 134 of 2010 have sought correction in the finding recorded in Para-18 of the judgment dated 25.2.2010 whereunder it

has been held that the petitioner would be entitled to the payment of gratuity as per the Army Rules. According to Union of India, in the Civil Miscellaneous Petition, this error is an error of fact which is apparent on the face of the record. However, for correction of such error, the proper remedy is to seek review. Civil Miscellaneous Petitions are only directed for correction of typographical errors which may have been inadvertently crept in the judgment in question. Therefore, the prayer sought in the present C.M.P. is also not worthy to be granted and therefore, the same is, accordingly, dismissed.