

(1994) 10 KAR CK 0002
In the Karnataka High Court
Case No : Writ Petition No.29305 of 1993

Brigadier M.S. Oberoi

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 07-10-1994

Acts Referred:

Army Act, 1950 — Section 19
Constitution of India, 1950 — Article 226

Citation : (1994) ILR (Kar) 3313 : (1994) 5 KarLJ 49

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : B. Vedanta Iyengar, for the Appellant; Ranjanna Setty, Central Government Stdg. Counsel, for the Respondent

Judgement

Saldanha, J.—The petitioner in this case is a very Senior Officer of the Armed Forces and he has through the present Petition assailed the correctness of the order passed by the Central Government u/s 19 of the Army Act on 23-4-1991 compulsorily retiring him from service. The order proceeds on the footing that the petitioner is alleged to have been guilty of certain acts which in the opinion of the Army authorities and the Central Government constituted serious misconduct which justified a direction to him to resign from service. The petitioner at that point of time had more or less agreed to this proposal but had requested that he should be permitted to resign from a slightly later date. This was unacceptable whereupon the order in question came to be passed. The petitioner has through the present Petition challenged the validity of that order principally on the ground that it was unjustified. He relies on the fact that as far as his long career as an Officer of the Indian Army was concerned that it was not only unblemished but that it was on the other hand distinguished. It is his contention that certain allegations were made against him by a brother Officer and that at the relevant time, the marital relations between the petitioner and his wife were unfortunately strained. The petitioner's wife had also lodged a complaint to the Army Wives Welfare Association, the cumulative effect of this complaint was that in March

1990, the petitioner was administered a warning. In June of that year, he was served with a show cause notice wherein a series of instances have been related.

2. In sum and substance, the show cause notice proceeds on the footing that one Lt.Col. Sandhu had alleged that the petitioner is supposed to have got friendly with his wife. Thereafter, various instances have been cited all of which are to the effect that the petitioner is supposed to have been meeting the lady in question at various places and it is alleged that some sort of illicit affair had taken place between the two of them. There are also references to the petitioner's conduct vis-a-vis his own wife and the complaint lodged by her. The authorities have however concluded that the instances in question, since they concern senior Army Officers and their respective wives would result in a lot of embarrassment not only to them but to the Army itself, if a full fledged enquiry were to be conducted and having regard to the nature of the charges and the persons concerned, the petitioner was informed that the authorities were of the view that it was inexpedient to hold an enquiry. He was therefore asked to show cause as to why action against him for having committed serious misconduct should not be taken. The petitioner submitted a detailed reply to the charge-sheet if it can be called one and dealt with each of the instances in question. The reply indicates that the petitioner has admitted having known the Sandhus. This is nothing unusual because the petitioner had pointed out that as a brother Officer not only he but respective families, had occasion to inter-act quite a lot. The petitioner had denied the charges that he had in any manner misbehaved with the wife of a brother Officer or for that matter that he had indulged in any clandestine activities with her. He has also met the charges virtually item by item and I find from the reply submitted that none of the acts of alleged misconduct have been admitted by him.

3. After the submission of this reply, the petitioner was informed that on a consideration of the material, that the Army authorities and the Government of India were of the view that the allegations against him stood proved and that consequently, he was directed to resign from service. As indicated earlier, the petitioner asked that he be continued for some short period of time but this request was denied and the impugned order came to be passed. It is this order that has been challenged in the present Petition.

4. This is a Petition filed by a Senior Army Officer who is, by virtue of the order in question virtually thrown out of service in the year 1991. I am informed at the Bar that he thereafter filed an appeal to the President of India and that the order has not been set-aside. The petitioner has approached this Court in exercise of its powers of Judicial Review principally because, regardless of his having held a relatively high position in the Army, he does not cease to be a citizen of India and he is therefore entitled to redressal from a Court of Law if injustice is done to him. The respondents have been served but I do not find on record any reply to the Petition. On the last date of hearing, when this Petition was taken up for hearing, the learned Counsel representing the Central Government asked for a

week's time on the ground that some documents were required to be produced. Normally, I would not have granted any such time but only in order to be absolutely fair to the respondents, I granted a full week's time. This Court on 29-9-1994 passed a speaking order which is on record whereby the respondents were put on notice that this Petition be listed on 6-10-1994 and that no adjournment would be granted under any circumstances. The respondents have not filed any reply nor are they represented before me today. The Petition has been taken up in normal course and has been argued by the petitioner's learned Counsel. To my mind, the respondents have been given a more than adequate opportunity to defend this case if they so desired. As the record stands, the statements and averments contained in the Petition are all uncontroverted.

5. With regard to the jurisdiction of this Court to interfere in a matter of the present type, the petitioner's learned Counsel has relied on a Decision of the Supreme Court in the case of Lt.-Col. Prithi Pal Singh Bedi and Others Vs. Union of India (UOI) and Others, The position that has emerged in law in the course of the last few years is now well crystallized. Whereas it is true that normally, even the High Court while exercising powers under Article 226 of the Constitution would be extremely slow with regard to the interference in cases relating to the working of the Armed Forces and for that matter particularly with regard to the disciplinary proceedings, the position still remains that if a member of the Armed Forces after having exhausted whatever avenues are available to him is left with no other option for redressal, in the face of injustice, the Courts will not shut out such an Officer because even a decision taken by the Highest Authorities of the Armed Forces or the Government is necessarily subject to Judicial Review. It is true that Courts will not normally or loosely interfere but if the injustice is manifest, it is the duty of the Courts to grant redressal. The point of jurisdiction therefore to my mind is of little consequence.

6. The basic challenge as far as the present order is concerned is within a extremely narrow compass. The petitioner's learned Counsel submitted that his client was unduly handicapped in the present case because of the unilateral decision on the part of the authorities that no enquiry should be held in the present case. I have gone through the charges that were levelled against the petitioner and I do not find anything earth shaking in those charges. I do not find anything that would affect the working of the Army or the security of the Nation. At the very highest, whatever was alleged against the present petitioner is that he is supposed to have had some sort of affair with the wife of a brother Officer. Even as far as the nature of the allegations both from the complainant Lt.Col. Sandhu and the petitioner's wife are concerned, in totality they are not of such a nature as could have justifiably precluded the Army authorities from holding an enquiry. It may be that having regard to the fact that the concerned Senior Officer and their wives were involved, and that the facts were somewhat embarrassing in nature, but this would not have in the least precluded the Army authorities from holding an enquiry which could have been done in camera. There was no need to unduly publicise the incident and the enquiry could and in

my opinion, ought to have been held because the authorities were dealing with the career of a man who had spent his entire life in the Army and a person who had virtually an unblemished record. The consequences on the Officer were extremely grave and in these circumstances, to my mind, the grounds on which the holding of the enquiry was dispensed with are wholly untenable and unsustainable. In the absence of holding of such an enquiry, the authorities had at the very highest a set of allegations and a set of denial from the petitioner. I do not see how on the basis of this material they could come to the conclusion that the charges of serious misconduct stood proved and that the gravity of misconduct was serious enough to remove a senior Army Officer from service. To my mind, the conclusions were also completely unjustified insofar as the accusations even if taken as proved would at the highest amount of impropriety of behaviour but to my mind would not warrant the ultimate punishment of removal from service. It is incumbent upon the Senior Officers concerned and the authorities of the Government of India to bear in mind the consequences of such reckless action and to act cautiously in cases of this type and with a sense of responsibility.

7. The petitioner's learned Counsel has effectively assailed the order on the ground that it constitutes breach of the Rules and Natural Justice. In the view that I have taken, this submission stands fully justified. Insofar as the petitioner was unjustifiably denied an opportunity of defending himself, to my mind, the order passed against him is unsustainable and is liable to be quashed.

8. The Petition accordingly succeeds. The Rule is made absolute. The order dated 7-3-1991 passed against the petitioner stands quashed. As a necessary consequence the action taken by the respondents pursuant thereto are also quashed. It would be essential that the status quo ante be restored. The respondents shall therefore reinstate the petitioner to his original position, forthwith. As far as the various amounts that might have been paid to the petitioner are concerned if the same forms part of his terminal benefits, then these amounts shall be refunded by the petitioner to the authorities concerned within a reasonable time. In the alternative, it shall be open to him to request that these be adjusted against the amounts payable to him. As a necessary consequence of this order, the petitioner shall be entitled to be reinstated to his original position with effect from 7-3-1991 and shall be entitled to receive his salary and allowances and all consequential payments and promotions that he could have been entitled to in normal course. In the circumstances of the case, there shall be no order as to costs.