

(2008) 05 J&K CK 0015
In the Jammu And Kashmir High Court

Chain Lal	Vs	APPELLANT
State		RESPONDENT

Date of Decision : 23-05-2008

Acts Referred:

Army Act, 1950 — Section 20(3)
Army Rules, 1954 — Rule 17

Citation : (2009) 2 JKJ 92 : (2009) 5 SLR 577

Hon'ble Judges : Hakim Imtiyaz Hussain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hakim Imtiyaz Hussain, J.—Petitioner Chain Lal was working as Hawaldar clerk (No. 6367311) 221 COU ASC (Supply) Type G. By

means of Order No. 2041/936/A3 dated 22. 3. 1995, which is impugned in the present petition, he has been dismissed from service u/s 20(3) of

the Army Act read with Rule 17 of the Army Rules, 1954.

2. In the year 1989 when the petitioner was posted at Srinagar some pilferage of milk powder was deducted when some consignment of milk

powder were received by filed supply Depot at Leh. On this deduction the respondents ordered convening of a Court of Enquiry at Leh so as to

pin point the responsibility for the replacement of the milk powder with Atta. The Court of Enquiry was conducted and the opinion was also placed

before the respondents. It was found that the petitioner with intent to defraud, included 0.500 tonnes of Atta in place of milk powder (sweetened)

in a consignment of 5.060 Tonnes of such milk powder despatched to Filed Supply Depot, Leh. Later the Summary General Court Martial was

convened to try the petitioner but the same was dissolved on 18.6.1983 since it

had become inexpedient and impracticable to conclude it due to the non-availability of essential witnesses. Consequently, the Commander, 31 Sub Area, directed that administrative action in the form of termination of the service of the petitioner under Army Act Section 20(3) read with Army Rule 17 be taken against the petitioner for the following charges:

(a) In that you, at Srinagar, on 01 Jul 89, are performing the duties of the Non-Commissioned officer In-charge of Necessary Group of 231 Coy

ASC for Type 'G' with intent to defraud, included 1, 010 Tonnes of Atta in place of milk powder (whole) in consignment of 5, 100 Tonnes of such

milk powder despatched to Field Supply Depot, Leh, against Load Tally slip No. 3971 dated 01 July 89.

(b) In that you, at Srinagar, on 03 September by while performing the duties of the Non-Commissioned officer In-charge of Necessary Group of

221 Coy. (Sup) Type 'G' with intent to defraud, included 0.500 Tonnes of Atta in place of milk powder (Sweetened) in a consignment of 5.060

Tonnes of such milk powder despatched to Field Supply Depot, Leh, against Load Tally slip No. 4893 dated 03 September 1989.

3. Accordingly a show cause notice was issued to the petitioner in January 1994. Petitions (SWP No. 275/94 & SWP No. 2732/94) were filed

by the petitioner before this Court to challenge the said show cause notice which ultimately got disposed of. It was held in the later case that the

petition was pre-mature as the respondents had issued mere a show cause notice to the petitioner to explain the circumstances. The petitioner,

thereafter filed his reply to the show cause notice. This was followed by an order dated 22.3.1995 by means of which the petitioner has been

dismissed from service. It is this order which is impugned in the present petition.

4. The petitioner has taken various grounds to challenge the order impugned. It is stated by him that the provisions of Section 20 read with Rule 17

are subject to other provisions of the Army Act which indicate that provisions of Section 20 and Rule 17 are not independent but are controlled by

other provisions and it is only when the allegations levelled are proved before the respondents in the Court Martial that the provisions can be

invoked.

5. Respondents have in their detailed reply stated that the General Officer Commanding, 15 Corps in his wisdom found the petitioner liable for the

act, therefore, directed trial of the petitioner by Summary General Court Martial on completion of preliminary investigation by the Commanding

Officer of the petitioner. The respondents have further stated that the Summary Court Martial could not be convened as such respondents

proceeded against the petitioner in terms of Section 20 and Rule 17 of the Army Act and the Rules.

6. Heard. I have considered the matter.

7. Learned Counsel for the petitioner would refer to Rule 17 of the Army Rules, 1954 to show that no person can be dismissed or removed under

the Rule or u/s 20(3) unless he has been informed of the particulars of the cause of action against him and allowed reasonable time to state in

writing any reasons he may have to urge against his dismissal or removal from service. Learned Counsel would on the basis of this rule, submit that

the respondents were required to frame the article of charges and serve the same on the petitioner to enable him to make an effective

representation against the charges levelled against him. Learned Counsel would further submit that the order impugned would show that the

respondent-disciplinary authority has rejected the reply submitted by the petitioner without giving due reasons for the same.

8. On the first count I do not find any force in the submissions of Learned Counsel for the petitioner.

9. The rule requires that before taking an action against a delinquent army official under Rule 17 he should be informed of the particulars of cause

of action against him and allowed reasonable time to give his explanation. There is no need to frame a formal article of charges, as contended by

the Learned Counsel for the petitioners and requirement of the rule would be met if a show cause notice as in the present case, is served on the

official.

10. In Naik Ram Singh v. Union of India 1986 Lab. I.C. 935 Delhi High Court while dealing with a similar situation observed that the requirement

of Army Rule 17 is that the information should be given to the official of the particulars of cause of action against him and he should be allowed

reasonable time to state in writing any reasons he may have to urge against his dismissal or removal from service. The Court found that when the

petitioner was informed by the show cause notice as to why a disciplinary action

should not be taken, the petitioner was given an opportunity to urge against his dismissal or removal from service. The Court further found that the Army Rule does not require that the proposed punishment of dismissal or removal from service should be communicated in the show cause notice.

11. I, however, find due force in the submissions of Mr. Qayoom regarding the Summary dismissal of the reply by the disciplinary authority without assigning reasons for the same.

The order impugned reads as under:

Dismissal order in respect of No. 636731 IK Havildar Clerk (Store) Chain Lal of 221 Company Army Service Corps Type 'G' by Brigadier NK

Gupta, SM, Commander 31 Sub Area under Army Act Section 20(3) read with Army Rule 17.

1. I have perused your reply to the show cause notice issued vide this Headquarters letter No. 2041/14/A3 dated 26th September, 1994 and I am not satisfied with the same. I find that in view of your grave misconduct as mentioned hereunder, your further retention in service in the Army is not desirable:

(a) At Srinagar, on 01 July, 1989, you while performing the duties of the Non-Commissioned-Officer Incharge of Necessary Group of your unit, with intent to defraud, included 1.010 tonnes of Atta in place of milk power (whole) in a consignment of 5.100 tonnes of such milk power despatched to Field Supply Depot, Leh against Load Tally Slip No. 3971 dated 01 July, 1989.

(b) At Srinagar, on 03 September, 1989, you while performing the duties of the Non-Commissioned Officer Incharge of Necessary Group of your unit with intent of defraud, included 0.500 tonnes of Atta in place of milk power (sweetened) in consignment of 5.000 tonnes of such milk power despatched to Field Supply Depot, Leh against Load Tally Slip No 4893 dated 03 September, 1989.

2.1, therefore, in exercise of the powers vested in me under Army Act Section 20(3) read with Army Rule 17, dismiss you from the service with effect from fourth day of April 1995.

12. The order impugned would show that the disciplinary authority has perused the reply to the show cause notice submitted by the petitioner but

has observed that he was not satisfied with the same. The authority has, however, not given any reasons for the same. A cryptic order which does

not disclose the reasons why the officer was not satisfied with the reply has been passed. Reference in this behalf may be made to S.N. Mukherjee

Vs. Union of India, , Principles of natural justice require that even the administrative authorities while passing a judicial or quasi judicial orders must

record reasons, for the orders made particularly when these amount to imposing a major penalty/punishment on an employee. Non recording of

reasons renders an order bad in law, as it give unbridled powers to the concerned authority and the chances are that the authority may act in an

arbitrary manner where the Supreme Court observed that recording of reasons serves a salutary purpose namely it excludes chances of

arbitrariness and ensure a degree of fairness in the process of decision making. The Court in para 35 of the judgment observed as under:

Reasons when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions, would no doubt facilitate

the exercise of its jurisdiction by the appellate or supervisory authority. But the other considerations, referred to above, which have also weighed

with this Court in holding that an administrative authority must record reasons for its decision are of no less significance. These considerations

show that the recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and ensure

a degree of fairness in the process of decisions-making. The said purpose would apply equally to all decision and its application cannot be confined

to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should

govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to

appeal, revision or judicial review. It may however, be added that it is not required that the reasons should be as elaborate as in the decision of a

Court of law. The extent and nature of the reason would depend on particular facts and circumstances. What is necessary is that the reasons are

clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is

greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give

separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.

13. Since no reasons muchless sufficient reasons have been recorded by the disciplinary authority in rejecting the reply of the petitioner to the show

cause notice issued vide Headquarter letter No. 2041/14/A3 dated 26.9.19941 find the order impugned cannot stand.

14. This petition is, therefore, allowed and the order impugned is set aside. Order accordingly.