
(1994) 02 DEL CK 0072

In the Delhi High Court

Case No : Criminal Writ Appeal No. 944 of 1993

E. Padmanabhan

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 21-02-1994

Acts Referred:

Army Act, 1950 — Section 9
Army Rules, 1954 — Rule 27

Citation : (1994) 1 AD 797 : (1994) 53 DLT 823 : (1994) 28 DRJ 571

Hon'ble Judges : Y.K. Sabharwal, J; R.L. Gupta, J

Bench : Division Bench

Advocate : Prasanthi Prasad and V.K. Shall, for the Appellant;

Judgement

Y.K. Sabharwal, J.

(1) The petitioner, an officer of the Indian Army in the rank of Colonel who was due to retire with effect from 30th September, 1993 on attaining the age of superannuation, was placed under close arrest with immediate effect by an order dated 30th September, 1993 passed by Respondent No.3 in exercise of power u/s 101 of the Army Act (for short the "Act"). By a separate order passed on the same date u/s 123 of the Act it was directed that in view of disciplinary proceedings pending against him and his retirement from service with effect from 30th September, 1993 the petitioner shall continue to remain subject to the Act. A tentative charge sheet was served on the petitioner on the same day, inter-alia, alleging that the petitioner has committed grave acts of misappropriation of government stores while in service. During the relevant period the petitioner was posted as the Commanding Officer of 32EMEBn. Miss amari, Assam. The challenge in this writ petition is to the order dated 30th September, 1993 placing the petitioner under close arrest and his continued detention.

(2) In support of the petition the three grounds urged are:- 1. The continued detention of the petitioner for more than two months without the sanction of the Chief of the Army Staff and for more than three months without the approval of

the Central Government is contrary to the Army Rule 27. 2. The Presiding Officer of the court of enquiry should be an officer one rank above the person alleged to have committed the offence and in this case the Presiding Officer was Lt. Colonel (Time Scale) while the petitioner is a Colonel and thus the Presiding Officer was one rank lower than the petitioner. 3. The Court of Enquiry proceedings were held in violation of Army Rule 180 inasmuch as certain witnesses were not allowed to be cross examined by the petitioner.

(3) In support of the first contention, learned counsel for the petitioner contends that the petitioner was not in active service and under the Army Rule 27(3) it was incumbent on the respondent to obtain the sanction of the Chief of Army Staff for detention of the petitioner in military custody beyond two months and to obtain the approval of the Central Government for continued detention for a period beyond three months and the same having not been obtained the continued detention of the petitioner is illegal. Army Rule 27(3) reads as under:-

27(3)(i) Detention in military custody beyond two months of a person subject to the Act, who is not on active service and in whose case a court martial for trial has not been ordered to assemble, shall require the sanction of the Chief of Army Staff, or any officer authorised by him in this behalf with the approval of the Central Government, who may sanction further detention for a specific period, which he may extend from time to time, subject to a total period of detention of three months. (ii) Any such detention beyond a period of three months shall require the approval of the Central Government."

(4) The aforesaid Rule will be applicable in case the petition is not on "active service". The term "active service" has been defined in Section 3 of the Act which reads as under:-

"3(I)"active service"" as applied to a person subject to this Act, means the time during-which such person - (a) is attached to, or forms part of. a force which is engaged in operations against an enemy, or (b) is engaged in military operations, or is on the line of march to, a country or place wholly or partly occupied by an enemy, or (c) is attached to or forms part of a force which is in military occupation of a foreign country."

(5) The Central Government has the power to declare that any person or class of persons subject to the Act would be deemed to be on active service within the meaning of the Act. Section 9 provides that notwithstanding anything contained in Clause (i) of Section 3, the Central Government may, by notification, declare that any person or class of persons subject to the Act shall, with reference to any area in which they may be serving or with reference to any provision of the Act or of any other law for the time being in force, be deemed to be on active service within the meaning of the Act.

(6) The respondents have placed on record a copy of the Notification dated 19th September, 1991 issued in exercise of powers conferred by Section 9 of the Act which shows that the Central Government has declared that all persons subject

to the Act, who are not on active service under clause (i) of Section 3, shall while serving with the Army formations and units deployed on operation Rhino be deemed to be on active service within the meaning of the Act. In the counter affidavit it has been explained that the unit/ formation to which the petitioner belonged before retirement and the one to which he is attached presently for discipline, both are in active service by virtue of "Operation RHINO" as per the notification dated 19th September, 1991. In this view of the matter, it is not possible to accept the contention of the learned counsel that the petitioner is not on active service. As noticed above, the order u/s 123 of the Act was passed on 30th September, 1993 by virtue of which the petitioner continues to remain subject to the Act and in view of the aforesaid the petitioner continues to be on active service and thus, in our opinion, the Army Rule 27 would have no applicability.

(7) In regard to the second contention the respondents have explained that the court of enquiry, at the first instance, was not ordered against any impropriety of the petitioner as such. According to respondents the involvement of the petitioner came to light much later. In this, view the Lt. Colonel having been appointed as Presiding Officer of the Court of Enquiry would not make the detention of the petitioner illegal. Further it has to be borne in mind that holding of a court of enquiry is not a mandatory pre-requisite for initiating disciplinary action in all the cases.

(8) Regarding the third contention, the petitioner has not stated in the petition as to which witnesses were not allowed to be cross examined during the court of enquiry proceedings. Assuming any irregularity was committed in the court of enquiry proceedings that by itself would not vitiate the detention of the petitioner and he would have full opportunity to cross examine the witnesses in the court martial proceedings.

(9) We do not find any substance in any of the contentions. The petition is, accordingly, dismissed.