

(1994) 08 SC CK 0082

In the Supreme Court Of India

Case No : Civil Appeal No. 3830 Of 1993

Ex-Capt. Ashwani Kumar Katoch

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-08-1994

Acts Referred:

Army Rules, 1954 — Rule 14(2)

Citation : (1995) 4 SCC 697 Supp

Hon'ble Judges : B. L. Hansaria, J; A. M. Ahmadii, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The appellant was confirmed as a Captain in the Indian Army in 1970. It appears that thereafter, he faced a court of enquiry for alleged misconduct which revealed that between April 1972 and March 1974, he had committed irregularities on as many as five occasions but was let off hoping that he will correct himself. Thereafter on 13/8/1977 he addressed a letter to the then Law Minister wherein he made allegations against his superiors. Regulation 557 of the Regulations framed under the Army Act, 1950 provides as under :

"557. Correspondence with High Officials.- In no circumstances will officers, JCOs, WOs, OR or NCs (E) address the President, the Head of a State, a Minister, the Chief of the Army Staff, or any Army Commander, or any Principal Staff Officer at Army Headquarters or Head of the Services, or any other superior formation commander on any official or service matter except through the authorised channels."

The authorised channel for official correspondence has been indicated in Regulation 553. The appellant had, therefore, violated the requirement of Regulation 557 when he addressed a letter directly to the Minister of Law, Government of India on 13-8-1977. For this violation action was proposed to be taken against him under Rule 14 of the Army Rules, 1954. That Rule insofar as

relevant for our purpose reads as under :

"14. (1 When it is proposed to terminate the service of an officer under Section 19 on account of misconduct, he shall be given an opportunity to show cause in the manner specified in sub-rule (2 against such action : Provided that this sub-rule shall not apply- (a) where the service is terminated on the ground of conduct which has led to his conviction by a criminal court; or (b) where the central government is satisfied that for reasons, to be recorded in writing, it is not expedient or reasonably practicable to give to the officer an opportunity of showing cause. (2 When after considering the reports on an officer's misconduct, the Central government or the Chief of the Army Staff is satisfied that the trial of the officer by a court-martial is inexpedient or impracticable, but is of the opinion, that the further retention of the said officer in the service is undesirable, the Chief of the Army Staff shall so inform the officer together with all reports adverse to him and he shall be called upon to submit, in writing, his explanation and defence : Provided that the Chief of the Army Staff may withhold from disclosure any such report or portion thereof if, in his opinion, its disclosure is not in the interest of the security of the State."

2. On a plain reading of Rule 14 it is obvious that ordinarily when the officer's services are proposed to be terminated he must be given an opportunity to show cause in the manner specified by sub-rule (2. This sub-rule envisages trial of the officer by court-martial unless it is found to be inexpedient or impracticable. However, if the government or the Chief of Army Staff is of the opinion that further retention of the officer in service is undesirable, the officer must be so informed and his explanation be called. Further, if even the giving of show-cause notice is to be waived on the central government being satisfied, that is inexpedient or impracticable, it is imperative to record the reasons in writing.

3. Since it was thought that it is not desirable to retain the officer in service, he was served with a show-cause notice dated 18/2/1978. By the said show- cause notice it was alleged that he had been guilty of violation of Regulation 557 and had thereby committed grave irregularity and misconduct unbecoming of an Army Officer. It was further stated in the show-cause notice that this was not the first occasion when he had indulged in such grave irregularity, similar five lapses on his part in the past were set out in the show-cause notice and it was stated that action against him for the said irregularities/misconduct had not been processed hoping that he would correct himself keeping in mind the punishments awarded to him on the culmination of disciplinary trial on other counts. The purpose of indicating the same was to impress upon him the fact that despite leniency shown in the past he had not corrected himself and had instead indulged in similar conduct by writing the letter dated 13/8/1977. He was, therefore, called upon to show cause in writing within 25 days from the receipt of the notice. Pursuant to the same the appellant sent his explanation which did not impress the authorities. We find from the note put up in this behalf that the authorities came to the conclusion that having regard to the earlier conduct

which was the subject-matter of the disciplinary action the officer's sense of discipline was far from satisfactory. It was stated that while individually the earlier cases may not be viewed seriously, cumulatively, they unmistakably throw light into the basic trait of the officer and lead to the inevitable conclusion that his retention in service is undesirable. It was on these allegations that he was visited with a notice to show cause why his services should not be terminated under Rule 14 extracted hereinbefore.

4. After the appellant showed cause on receipt of the show-cause notice, the matter was considered in detail by the authorities and it was ultimately concluded as under:

"Retention of this officer with five adverse entries in his record of service when other ranks with four red ink entries are being discharged is tantamount to discriminating against the latter. This officer is utterly unsuitable for further retention in the Army. I too, therefore, recommend that he be removed from service under Army Rule 14 with terminal benefits that may be admissible to him under the Rules."

This note dated 14/8/1978 was ultimately approved by the Chief of Army Staff. Consequently the appellant was removed from service.

5. The appellant thereupon filed the writ petition in the Delhi High court. A learned Single Judge of the High court allowed the writ petition against which the authorities preferred a Letters Patent Appeal. A division bench of the High Court allowed the appeal reversing the order of the learned Single Judge and upheld the order of removal by which the services of the appellant came to be terminated. It is against that order that the present appeal by special leave is preferred under Article 136 of the Constitution.

6. The appellant argued his appeal in person and took us through the relevant material placed on record. It would appear from the decision of the High court that the point mainly canvassed was that the order did not disclose the basis on which the Chief of Army Staff thought it inexpedient and impracticable to hold the court-martial against him. The decision of the Chief of Army Staff referred to in the second half of Rule 14(2) may by necessary implication convey that he was satisfied that the trial of the officer by court-martial was inexpedient or impracticable. That view has found favour with the Division bench of the High court. However, the only allegation against the appellant was that he had written a letter dated 13/8/1977 to the then Law Minister in violation of Regulation 557 quoted earlier and had thereby committed a grave irregularity and was, therefore, guilty of misconduct unbecoming of an Army Officer. The appellant denied having written any such letter but the division bench of the High court found intrinsic evidence in the letter betraying the appellant as the author thereof. It is, therefore, not possible to uphold his contention that he had not written the letter. That was the only ground on which further action was proposed to be taken. Having regard to the track record of the appellant it would

be unnecessary for us, even if we uphold the contention of the appellant that the Chief of the Army Staff did not arrive at the required satisfaction, to remit the matter to the authorities for holding a court-martial because the issue involved would be whether or not the appellant had written the letter in question. That would only prolong the appellant's agony. After the division bench of the High court came to the conclusion that there was intrinsic evidence in the letter indicating that it was the appellant who wrote it, and we think this conclusion is not assailable, the only question which survives is whether writing of such a letter in contravention of Regulation 557 invites the penalty under Rule 14 of the Rules. It was not disputed before us nor was it disputed before the High court that such an infraction would attract Rule 14(2) of the Army Rules. That being so the infraction must be taken as established and having regard to his past defaults in regard to some of which he was let off leniently in the hope that he will correct himself, it is difficult to hold, keeping the requirement of army discipline in mind, that the authorities had erred in terminating his services. We, therefore, do not think that this is a fit case in which we should exercise our extraordinary jurisdiction under Article 136 of the Constitution.

7. However, as pointed out earlier the decision of the authorities was to terminate his employment permitting him terminal benefits. The quantum of punishment of removal from service was determined on this consideration that he would be given terminal benefits. However, later it transpired that since he had not completed the minimum service of 20 years he was not entitled to terminal benefits. The penalty was proposed on the premise that he would receive terminal benefits, but as he had not completed the qualifying service, he was denied that benefit also. In the circumstances we think that the ends of justice would be met if we, while upholding the appellant's termination, award him a reasonable amount by way of compensation in lieu of terminal benefits proposed to be given. In determining the reasonable amount we enquired of learned counsel for the respondent as to what he would have received if terminal benefits were admissible to him. After going through the file the learned counsel for the respondent indicated what he would have received by way of gratuity, pension etc. Taking those facts into consideration and having regard to the passage of time we think that it would be reasonable to award him a sum of Rs. 30,000.00 by way of compensation. We, therefore, direct that this amount be paid to him within two months from today. The appeal will stand dismissed with the modification that he will be paid Rs. 30,000.00 by way of compensation. There will be no order as to costs,