

(2002) 04 RAJ CK 0069

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2368 of 1991

Ex. L/NK Rameshwar Lal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-04-2002

Acts Referred:

Army Act, 1950 — Section 20, 22
Army Rules, 1954 — Rule 13, 17

Citation : (2003) 1 RLW 216 : (2002) 3 WLN 653

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : S.K. Nanda, for the Appellant; S.K. Vyas, for the Respondent

Final Decision : Dismissed

Judgement

Garg, J.—This writ petition under Article 226 of the Constitution of India has been filed by the petitioner against the respondents on 8.5.1991 with a prayer that by an appropriate writ order or direction the discharge orders of the Public Prosecutor dated 20.2.91 Annex. P/11 at page 46 and Annex. P/12 at page 47 be quashed and the petitioner be reinstated in service with all consequential benefits etc. etc.

2. It arises in the following circumstances :

(i) The petitioner joined the Indian Army as a Combatant (Barber) on 28.4.1982 for a term of 20 years regular engagement with a reserve liability for 3 years.

(ii) The petitioner after completion of training at ASC Centre, Gaya was posted to 508 ASC BN.

(iii) The petitioner was promoted to the Rank of Lance Naik during January 1990 while serving under respondent No. 7.

(iv) That while serving under Respondent No. 7, the petitioner was found to be involved in some case and was a security suspect and therefore, he was called

upon by respondent No. 7 on 28.5.90 who handed him over to Hq. Southern Command liaison Unit for interrogation which was carried out on 28/29.5.90.

(v) After interrogation, the petitioner was placed under close arrest in Military custody vide letter No. 512/13889009/PC/ST1 dated 29.5.90 (Annex. P/1) at page 33.

(vi) While the petitioner was under Military custody, he was further taken to sub-area, Jaipur on 25.7.90 where he was subjected to further interrogation and investigation in the matter,

(vii) The petitioner was released from Military Custody on 27.8.1990.

(viii) Thereafter the petitioner was once again placed under close arrest under military Custody from 15.9.1990 to 21.12.90.

(ix) The petitioner was again placed under military custody on 8.1.91 without assigning any reason and further served with a show cause notice by respondent No. 4 signed by J.K. Ralli Brig Dy. GOC on 11.1.91 vide No. 3327/1/Gen/PC/AI dated 10.1.91 (Annex. P/3) at page 34. The petitioner was further asked by the show cause notice that the petitioner might communicate something in his defence if he so wished within a period of 30 days from the receipt of this notice failing which it would be presumed that there was nothing to say in this regard and an action would be taken in terms of Section 20 of the Army Act, 1950 read with Rule 13 of the Army Rules, 1954 (hereinafter referred to as the Rules of 1954).

(x) Though the petitioner was served with a show cause notice and 30 days" time was given to submit reply, but it is pertinent to mention here that he was neither given any assistance nor any facility to consult any one to prepare his defence and provided with the particulars of the cause of action or the documents on which the authorities had relied upon as required by Rule 17 of the Rules of 1954.

(xi) The further case of the petitioner is that he made a request through application dated 18.1.91 (Annex. P/4) at page 36 that he being under military custody could not go out and as such arrangements be made to escort him to consult an advocate.

(xii) In the meanwhile, the petitioner submitted reply to the show cause notice addressed to respondent No. 4 dated 1.2.91 and the same is Ex.P/6 at page 39,

(xiii) The respondent No. 7 vide letter No. 512/13889009/PC/ST-1 dated 8.2.91 (Annex.P/9) at page 43 informed the petitioner with regard to reply to the show cause notice dated 1.2.91 that there was no provision to provide him the documents as asked for and as such directed the petitioner to submit a reply to the show cause notice by due date without fail.

(xiv) On the fateful morning of 20.2.1991, the petitioner was once again asked to sign some blank papers which he declined and was then issued with a

movement order No. 512636/A/ST 12 signed by A.K. Mathur, Major adjt. for respondent No.7 stating that the petitioner was hereby discharged locally from Army Service on order of respondent No 4. The petitioner was also issued with a certificate of service stating the particulars of the petitioner and discharge order in consequence of Rule 13(iii) of the Army Rules, 1954. Copy of movement order dated 20.2.91 is Annex. P/11 at page 46 and copy of discharge certificate is Annex. P/12 at page 47. Hence this writ petition.

3. Reply to the writ petition was filed by the respondents on 23.10.91 stating that provisions of Rule 22 of the Army Rules have been fully complied with and it is incorrect to say that any of provisions have been ignored and has not been complied with. It was further submitted that Southern command liaison Unit is an agency in the Army for interrogation of espionage suspects. Since it was a matter of espionage activities and as such, immediate interrogation by the Southern command liaison Unit was necessary. The summary of evidence was not supplied to the petitioner because the petitioner was not being tried by the Court Martial and summary of evidence is relevant only when there is a trial by the Court Martial. It was further submitted that the petitioner has referred to Rule 17 of the Army Rules, but it does not anywhere stipulate that the assistance for reply to show cause notice be provided to the person on whom the show cause notice is served. The document asked for by the petitioner were of confidential nature and as such they were not supplied to the petitioner and at the cost of repetition, it was further submitted by the respondents that Rule 17 of the Rules of 1954 are not applicable in the present case at this stage. For the purpose of clarification, it was submitted that the petitioner was discharged and was not dismissed or removed from the service as has been stipulated in Rule 17 of the Army Rules. It was further submitted by the respondents that the petitioner has been discharged under Rule 13(iii) (v) of the Army Rules as undesirable character being a security suspect. Hence, the writ petition be dismissed.

4. In this writ petition, the petitioner has challenged the order of discharge dated 20.2.91 (Annex. P/11) on various grounds and the learned counsel for the petitioner has raised three main grounds :

- (i) That in this case, there is violation of statutory provisions.
- (ii) That non-supply of necessary documents and copies had caused prejudice to the petitioner and thus, the whole proceedings should be termed as illegal and without jurisdiction.
- (iii) That in this case there is breach of principles of natural justice.

5. Before proceeding further it may be stated here that it is a case of discharge and not a case of removal or dismissal from service.

6. The learned counsel for the petitioner has placed reliance on Section 20 of the Army Act, 1950. Sub-clause (1) of Section 20 states that the Chief of the Army

Staff may dismiss or remove from the service any person subject to this Act other than an officer.

7. The learned counsel for the petitioner has further placed reliance on Rule 17 of the Army Rules, 1954. Rule 17 of the Army Rules, 1954 is reproduced hereunder :

"17. Dismissal or removal by Chief of the Army Staff and by other officers :- Save in the case where a person is dismissed or removed from service on the ground of conduct which has led to his conviction by a criminal Court or a court-martial, no person shall be dismissed or removed under Sub-section (1) or Sub-section (3) of Section 30, 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 the service;

Provided that if in the opinion of the officer competent to order the dismissal or removal, it is not expedient or reasonably practicable with the provisions of this rule, he may after certifying to that effect, order the dismissal or removal without complying with the procedure set out in this rule. All cases of dismissal or removal under this rule where the prescribed procedure has not been complied with shall be reported to the Central Government."

8. A bare perusal of Section 20 of the Army Act, 1950 and Rule 17 of the Army Rules, 1954 would reveal that Section 20 of the Army Act is confined in the case of dismissal or removal or reduction and Rule 17 of the Army Rules, 1954 provides the procedure for such Act and thus Section 20 of the Army Act, 1950 and Rule 17 of the Rules of 1954 have no application in the matter of discharge. For discharge Section 22 of the Army Act, 1950 is reproduced hereunder :

"22. Retirement, release or discharge: Any person subject to this Act may be retired, released, or discharged from the service by such authority and in such manner as may be prescribed."

9. For convenience Section 23 of the Army Act, 1950 is also reproduced hereunder :

23. Certificate on termination of service :- Every junior commissioned officer, warrant officer, or enrolled person who is dismissed, removed, discharged, retired or released from the service shall be furnished by his commanding officer with a certificate in the language which is the mother tongue of such person and also in the English language setting forth :-

- (a) the authority terminating his service.
- (b) the cause for such termination; and
- (c) the full period of his service in the regular Army."

10. Thus, Section 22 deals with the order of Discharge and not Section 20 as submitted by the learned counsel for the petitioner.

11. For convenience it may be stated that only JCOs, WOs, and OR are discharged and officers are not discharged. They are either retired or released from the service. For procedure as to how a person is discharged, Rule 13 of the Army Rules has to be seen. Rule 13 of the Army Rules is reproduced hereunder :

"13. Authorities empowered to authorise discharge :-

(1) Each of the authorities specified in column 3 of the Table below, shall be the competent authority to discharge from service person subject to the Act specified in column 1 thereof on the grounds specified in column 2.

(2) Any power conferred by this rule on any of the aforesaid authorities shall also be exercisable by any other authority superior to it.

(2-A) Where the Central Government or the Chief of the Army Staff decides that any person or class or persons subject to the Act should be discharged from service, either unconditionally or on the fulfillment of certain specified conditions, then notwithstanding anything contained in this rule, the Commanding Officer shall also be the competent authority to discharge from service such person or any person belonging to such class in accordance with the said decision.

(3) In this table "commanding officer" means the officer commanding the corps or department to which the person to be discharged belongs except that in the case of junior commissioned officers and warrant officers of the Special Medical Section of the Army Medical Corps, the "Commanding officer" means the Director of the Medical services, Army, and in the case of Junior commissioned officer and warrant officers of Remounts, Veterinary and Farms. Corps the "Commanding Officer" means the Director Remounts, Veterinary and Farms.

12. In all the cases of discharge, under items I(iii), II(iii) or III (v) competent authority sanctioning the same must, if the circumstances of the case permit, give the person concerned an opportunity to show cause against the order of discharge.

13. The next question which arises for consideration is whether compliance of Section 22 of the Army Act, 1950 and Rule 13 of the Army Rules, 1954 have been made in this case or not since it is a case of discharge?

14. Show cause notice dated 10.1.91 (Annex. P/3) at page 35 reveals that the petitioner was found involved in espionage net of Pakistan agents and for that notice was given for termination of services of the petitioner u/s 20 of the Army Act read with Rule 13 of the Army Rules. The petitioner's services were not terminated, but he was discharged through impugned order dated 20.2.91 (Annex.P/11) at page 46. For convenient the same is reproduced hereunder :

"1. No. 13889009-H L/NK (Barber) Rameshwar Lal of this unit is hereby discharged locally from Army services on order of Dy. GOC 12 In Div being security suspect.

2. He will be SOS/SORS wef 20 Feb. 91.

3. He has been issued with single journey railway warrant (IAFT-1752) for his journey from Jodhpur in to his home station, which will be exchanged into CST before commencement of his journey."

15. No doubt show cause notice was given u/s 20 of the Army Act and for that convenient Rule is Rule 17 of the Army Rules, 1954 and even going through Rule 17 of the Army Rules, 1954, it appears that the concerned authority has to inform the particulars of the cause of action and has to give reasonable time to state in writing any reasons he may have to urge against his dismissal or removal from the service. Thus, in this case even compliance of Rule 17 of the Army Rules, 1954 has been made as in show cause notice dated 10.1.91 (Annex. P/3) particulars of the cause of action have been mentioned and sufficient lime has been given to the petitioner to file reply and even Rule 17 of the Army Rules, 1954 does not contemplate that copy of any document was to be supplied to the petitioner. Thus even Rule 17 of the Army Rules, 1954 does not help the petitioner.

16. The order of Discharge Annex. P/11 dated 20.2.91 contains cause of such discharge being security suspect and thus it also fulfills all the necessary conditions. From this point of view, the order of discharge cannot be said to be illegal. As stated above, in the case of discharge, the only liability of the authority concerned is that show cause notice should have been given to the petitioner and in this case through Annex. P/3 dated 10.1.91 show cause notice was given and thereafter reply was filed b the petitioner.

17. The learned counsel for the petitioner has placed reliance on the case of Rameshwari Devi Vs. State of Rajasthan and Others, The case of Rameshwari Devi has no application in the present case as that case pertains to the provisions of Rajasthan Municipalities Act, while the present case pertains to the Army Act, 1950 and Army Rules, 1954.

18. In these circumstances, it can easily be concluded that there is no case of violation of statutory provisions and there is no case of non-supply of necessary documents and there is no violation of principles of natural justice also. Hence all the arguments, raised by the petitioner are not tenable and are rejected accordingly.

19. When this being the position, no interference is called for and this writ petition is liable to be dismissed.

20. For the reasons mentioned above, the present writ petition fails and is hereby dismissed.

Cost made easy.