

(2005) 01 AHC CK 0157
In the Allahabad High Court
Case No : C.M.W.P. No. 5642 of 1994

Ex-Naik Upendra Kumar Tomar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-01-2005

Acts Referred:

Army Act, 1950 — Section 26, 27
Army Rules, 1954 — Rule 13, 13(3)
Constitution of India, 1950 — Article 309
Defence Service Army Regulations, 1987 — Rule 30, 353

Citation : (2005) 1 ESC 797

Hon'ble Judges : Shishir Kumar, J

Bench : Single Bench

Advocate : Ashok Kumar, for the Appellant; N.C. Nishad, Addl. S.C., for the Respondent

Final Decision : Allowed

Judgement

Shishir Kumar, J.

By means of the present writ petition the petitioner has approached this Court for issuing a writ of certiorari quashing the impugned order of discharge, Annexure-1 to the writ petition and rejecting the statutory complaint of the petitioner, Annexure-9 to the writ petition and for issuing a writ of mandamus commanding the respondents to reinstate the petitioner with all consequential benefits.

2. The facts arising out of the present writ petition is that the petitioner was enrolled in Indian Army on 7.12.1999 and after completion of the training he was inducted as soldier. The petitioner had completed 12 years of service in the year 1991 and was discharged under Army Rule 13 (3) Item III (IV). It has been stated that the action of the respondents being not in accordance with law as there was no occasion to discharge the petitioner under the aforesaid rule without holding a Court martial or even summary disposal. It has been stated

that a show cause notice was given to the petitioner by an authority namely one Col. Thomas who was not competent mentioning therein regarding certain red entries which were awarded to the petitioner on 20.2.1987, 28.1.1990, 2.10.1990 and 21.2.1991. The said show cause notice was cancelled vide its order dated 8.3.1991. Subsequently, again by the same authority a show cause notice dated 16.7.1991 was given which is Annexure-4 to the writ petition. By the said show cause notice it has been directed to the petitioner as to why the petitioner should not be discharged from service under Rule 13 of the Army Rules and the petitioner was directed to submit a reply. The petitioner on 22.7.1991 gave a reply to the show cause notice. The petitioner submits that on the basis of the said reply an order of discharge under the aforesaid rule has been passed which has been filed as Annexure-1 to the writ petition. The petitioner submits that the aforesaid order of discharge by the Commanding Officer, respondent No. 4 has been violative of Rule 353 of the Defence Services Regulation (Regulation for the Army) 1987. It has also been stated that according to Rule 30, the respondent No. 4 was not competent to issue a show cause notice in view of the provisions contained in Army Rule 13 (3), Item III (V). The Rule 13 (3) III (V) is quoted below :

"Competent authority to authorize Manner of discharge Brigade/Sub Area Commander The Brigade or Sub-Area Commander before ordering the discharge shall if the circumstances of the case permit give to the person whose discharge is contemplated an opportunity to show cause against contemplated discharge." 3. The petitioner further submits that against the order of discharge the petitioner has submitted a statutory complaint, which has been filed as Annexure-11 to the writ petition. The said statutory complaint u/s 26 of the Act has been dismissed by the order of the Ministry of Defence dated 4.8.1993. The petitioner submits that in view of the well settled principles of law as no reason has been recorded and the authorities concerned while deciding the statutory complaint is duty bound to decide the same by a reasoned and speaking order. As no reasons have been recorded, therefore, the order passed by Central Government dated 4.8.1993 is liable to be quashed.

4. Notices were issued and a detailed counter-affidavit has been filed in which it has been stated that the petitioner was habitual offender and has failed to show any improvement and has earned four red entries and as such according to the instructions, a show cause notice was served on the petitioner on 27.2.1991. It has also been stated in the counter-affidavit that the matter was placed before the competent authority General Officer Commanding, 18 Infantry Division and the competent authority after applying his mind to the show cause notice submitted by the petitioner and after hearing him personally has sanctioned for termination of the services of the petitioner under the aforesaid rule. A specific averment has also been made in the counter-affidavit that the petitioner was discharged with the sanction of the competent authority that is General Officer Commanding, 18th Infantry Division. Respondent No. 4 had merely executed the directions of the competent authority. Therefore, it cannot be said that the officer

who has issued a show cause notice and has passed the order under the Act is not empowered and the order of discharge is, in any way, illegal and against the provisions of the Army Act and Rules. The further submission made on behalf of the respondents is that as the petitioner has been given four red entries and no improvement was shown by the petitioner in spite of the warning given to him, therefore, it was felt necessary by the competent authority to initiate administrative action as provided under Rule 13 of the Rules.

5. I have heard learned Counsel for the petitioner and the Standing Counsel on behalf of the respondents. The petitioner has placed reliance on the judgment of this Court in the case of *Chaukas Ram v. Sub Area Commander, Allahabad and Ors.* 1990 ACJ 597, and has also placed reliance on the judgment in Writ Petition No. 28318 of 1996, *Muneshwar Mishra v. Union of India*, decided on 11.5.2004. The judgment in Writ Petition No. 17089 of 1994, *C.B. Khatri v. Union of India*, decided on 6.10.2004 and the Division Bench decision of this Court in *Ramesh Singh Rathore v. Union of India* 1996 (3) ESC 493 and has also placed reliance upon the Constitution Bench judgment of the Apex Court in the case of *S.N. Mukherjee Vs. Union of India*, . The Court has considered the rival submissions made on behalf of the parties. There is no dispute to this effect that the petitioner was awarded four red entries and the order, which has been passed that, is in accordance with rules. But the question remains whether the statutory complaint which has been filed by the petitioner has been decided according to law giving any reasons in view of the principles laid down in *S.K. Mukherjee's* case (supra). The Court has also perused the order rejecting the statutory complaint dated 4.8.1993, Annexure-9 to the writ petition and it is clear that no reasons have been recorded. It appears that it is only a communication to the petitioner regarding dismissal of his statutory complaint. The similar controversy has arisen before this Court in the case of *Ramesh Singh Rathore* and in the aforesaid case the Division Bench has considered the submissions made on behalf of the parties taking into consideration the judgment of the Apex Court in *S.N. Mukherjee Vs. Union of India*, . On the other hand the respondents have placed reliance upon the judgment of the Supreme Court in the case of *Union of India and others Vs. E.G. Nambudiri*, . In the case of *S.K. Mukherjee* (supra) the Supreme Court has examined the entire law relating to requirement of disclosing reasons in the orders passed by an administrative authority exercising quasi judicial functions and rules as follows :

"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 statutory purpose, namely it excludes chances of arbitrariness and ensures a degree of fairness in the process of decisions making. The said purpose would apply equally to all decisions 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 given 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 reasons 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 the 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."

6. Thus it is clear that the concerned authority was obliged to give reasons in support of the impugned order. For the purpose of testing the arguments it is necessary to notice the relevant text of the impugned order dated 4.8.1993, which is as follows:

PCB/44469/COURT/SIGS 4(B)/1948-A/D (GS IV)

Government of India, Ministry of Defence, New Delhi. Dated the 4th August, 1993

Sub : Statutory Complaint u/s 26 Army Act against Arbitrary discharge from Army 14232034/Ex Nk Upendra Kumar Tomar.

I am directed to refer to Statutory Complaint made by you on 10.7.1992 received through letter dated 13th May, 1993 from Lt. Col. Ashok Kumar (Retd.) Advocate, High Court, Allahabad and to say that since you were no longer on the rolls of the Army as on 10.7.1992, you were not eligible to make Statutory Complaint. However, the contents of the petition dated 10.7.1992 (Statutory Complaint) made by you have been examined carefully by the competent authority in the Army Hqrs. as well as in the Ministry of Defence and it has been decided to reject the appeal made therein as it lacks substance.

Sd/- (Narendra Singh) Desk Officer

Ex Nk Upendra Kumar Tomar

No. 14232034

Vill. and P.O. Madhahabipur,

District Aligarh.

7. The only reason, if at all the reason contemplated by law, given in the impugned order for rejecting statutory complaint of the petitioner is "no justice has been done to him in this regard". In the opinion of the Court, the expression "no injustice has been done to him in this regard" is not "reason". It is rather

"conclusion".

8. The Court has scrutinised the impugned order very carefully but has not been able to trace the "reasons" for the "conclusion" that "no injustice has been done" to the petitioner. In the absence of reasons, it is not possible for the Court to know the ground and motive which influenced the authorities in rejecting the complaint of the petitioner and whether the authority concerned has applied his mind to the points raised in the complaint of the petitioner. In the case of Union of India and Ors. v. E.G. Nambudiri (supra) relied upon by the counsel for the respondents, the Hon"ble Supreme Court has dealt with the matter arising out of the rejection of non-statutory representation of the Central Government employee against the adverse entry. It was conceded by the learned Counsel for the parties that there was no statutory rules framed under Article 309 of the Constitution regulating the award of entries in the character roll of Central Government employees or providing for filing of representation against the adverse entries or its disposal. In the aforesaid background the Hon"ble Supreme Court has held that in the absence of any statutory or administrative provisions requiring the competent authority to record reasons or to communicate reasons, no exception could be taken to the order rejecting representation merely on the ground of reasons :

"It is apposite to note that above dictum was qualified by Hon"ble Supreme Court below :

However, it does not mean that the administrative authority is at liberty to pass orders without there being any reasons for the same. In governmental functioning before any order is issued the matter is generally considered at various levels and the reasons and opinions are contained in the notices on the file. The reasons contained in the file enable the competent authority to formulate its opinion. If the order as communicated to the Government servant rejecting the representation does not contain any reasons, the order cannot be held to be bad in law. If such an order is challenged in a Court of law it is always open to the competent authority to place the reasons before the Court which may have led to the rejection of the representation. It is always open to an administrative authority to produce evidence aliunde before the Court to justify its action."

9. The decision of Hon"ble Supreme Court in the aforesaid case in the opinion of the Court does not hold the respondents obviously for reasons that in this case the controversy pertains to disposal of a representation not contemplated by way of statute, but the case in hand the Court is concerned that the disposal of the statutory complaint provided u/s 27 of the Act. Even otherwise in S.K. Mukherjee's case, it has been pointed out that the administrative authority is not at liberty to pass orders without there being any reasons for the same.

10. In view of the aforesaid fact the petition succeeds and is allowed. The impugned order dated 4.8.1993 Annexure-9 to the writ petition is hereby

quashed. The matter stands remitted to the Central Government for disposal of the statutory complaint of the petitioner which will be deemed to be pending as a consequence of quashing the order dated 4.8.1993. The same will be disposed of by a reasoned order. No order as to costs.