
(1992) 07 AHC CK 0020

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 7681 of 1991

Flight Lieutenant K.V.V. Babu

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-07-1992

Acts Referred:

Air Force Act, 1950 — Section 19
Air Force Rules, 1969 — Rule 16, 17

Citation : (1992) 4 AWC 444 Supp

Hon'ble Judges : R.B. Mehrotra, J

Bench : Single Bench

Advocate : G.D. Mukerji, for the Appellant; Vipin Sinha, for the Respondent

Final Decision : Dismissed

Judgement

R.B. Mehrotra, J.—The Petitioner was a Government Officer in Indian Air Force in the Medical Branch and was appointed as such on 17-8 -- 1983. On 21-8-87 the Petitioner was posted at XVIII Squadron Air Force attached to Head Quarters. Central Air Command, Air Force Station, Bamrauli, Allahabad. On the said date i.e. on 21-8-1987, at about 18.30 hours Squadron Leader, A.N. Rai, A.E. (M) reported to A.D.M R, K. Mehra SMSO of HQ Central Air Command, f AF Bamrauli that on the same day at about 12.00 hours while examining his daughter aged about 13 years, the Petitioner mis behaved with her by pressing her thighs all over and the Petitioner asked her to hold his private part and got her under garments taken out and genitals touched. In support of the aforesaid oral complaint, a written complaint was also sent by the Squadron Leader A.N. Rai stating the same facts again as were told by him to the Squadron Leader on the date of the incident i, e. 21-8-87 on 27-8-87, the victim girl, with whom the Petitioner misbehaved. In the manner disclosed above, also lodged a written complaint to A.O.C. Incharge, Bamrauli, Allahabad.

2. On the basis of the aforesaid complaint, the Director of Personnel Services for Chief of the Air Staff being satisfied with the genuineness of the complaint,

served a show cause notice on the Petitioner dated 23-9-87. In the aforesaid show cause notice it was stated that the Petitioner misbehaved with the daughter of Squadron Leader A.N. Rai on 21-8-87 in the manner indicated earlier in this judgment. It was further stated that in support of the aforesaid complaint Squadron Leader A N. Rai gave a written complaint on 24-8-87 and on 27-8-87 the victim girl also gave a written complaint to A.O.C. In-C Central Air Command I.A.F. complaining the incident on 21-8-87 and elaborating that after examining her at 12.00 hours in the presence of her father Squadron Leader A.N. Rai, she was advised to undergo some pathological test. Thereafter, while she was waiting to give blood and Urine sample for the test, advised by the Petitioner, the Petitioner again called her for re-examination and misbehaved with her by pulling down her undergarments, pressing her thighs, all over and asking her to press the Petitioner's private organ. The show cause notice further disclosed that on 26-8-87 at about 19.30 hours and 22.00 hours the Petitioner visited the house of f Squadron Leader A.N. Rai and begged pardon of Squadron Leader Rai and said that he had don? sin against his daughter against all medical ethics and for the same purpose the Petitioner again visited the Squadron Leader A N. Rai on 27-8-87. The copy of the complaint filed by the Squadron Leader A.N. Rai copy of the complaint filed by the girl, with whom the Petitioner misbehaved and copy of the statement of Squadron Leader A.N. Rai dated 28-8-87 giving the details of the visit of the Petitioner to Squadron Leader's house on 26-8-87 and 27-8-87 and begging pardon for the incident was enclosed with the show cause notice. The show cause notice also stated that the Chief of the Air Staff after considering the misconduct of the Petitioner, was of the opinion that since the trial by the Court Martial is inexpedient in the circumstances of the case, the retention of the Petitioner in service is un-desirable. The show cause notice was served on the Petitioner in accordance with Rule-16 of the Air Force Rules. The Petitioner replied the aforesaid show cause notice and denied the allegations.

3. By order and on behalf of President of India dated 14-2-91, the Petitioner's explanation and the points raised by the Petitioner were considered and were rejected. By the said order the Petitioner was compulsorily retired. While exercising powers conferred under Section-19 of the Air Force Act, read with Rule-16 of the Air Force Rules, the Petitioner has challenged the aforesaid order by means of the present writ petition.

Rule-16 of the Air Force Rules is reproduced below :

16. Dismissal or removal of officers for misconduct :

(1) An officer may be dismissed or removed from service for misconduct by the Central Government, but before doing so and subject to the provisions of sub-rule (2) he shall be given an opportunity to show cause against such action.

(2) Where the dismissal or removal of an officer is proposed on ground of misconduct which has led to his conviction by a criminal Court, or where the Central Government is satisfied that for reasons to be recorded in writing, it is

not expedient or reasonably practicable to do so, it shall not be necessary to give an opportunity to the officer of showing cause against his dismissal or removal.

(3) Where an officer has been convicted by a criminal Court and the Central Government, after examining the judgment of the criminal Court in his case and considering the recommendation about him of the Chief of the Air Staff, is of opinion that further retention of such officer in the service is undesirable, that Government may dismiss or remove such officer from the service.

(4) In any case not falling under sub-rule (3), when the Chief of the Air Staff, after considering the reports on an officer's misconduct, is of opinion that the trial of the officer by a Court martial is inexpedient or impracticable but the further retention of the officer in the service is undesirable, he shall so inform the officer, and subject to the provisions of sub-rule (5) furnish to the officer all reports adverse to him calling upon him to submit in writing within a reasonable period to be specified, his explanation in defence and any reasons which he may wish to put forward against his dismissal or removal.

(5) The Chief of the Air Staff may withhold from disclosure any report adverse to an officer or any portion thereof, if in his opinion its disclosure is not in the interests of the security of the State.

(6) If so explanation is received from the officer within the specified period or if the explanation received is considered to be not satisfactory or, when so directed by the Central Government, the reports against the officer as well as his explanation, if any, shall be submitted to the Central Government by the Chief of the Air Staff together with his recommendation as to the dismissal or removal of the officer from the service.

(7) The Central Government may, after considering the reports against the officer and his defence, if any, and the recommendation of the Chief of the Air Staff, dismiss or remove the officer from service.

(8) In this rule and in Rule 17 the Chief of the Air Staff while submitting a case to the Central Government may recommend that instead of removing an officer from service, he may be compulsorily retired or that he should be called upon to resign his commission, and the Central Government in passing orders may instead of removing an officer from service, compulsorily retire him or give the officer an option to submit his resignation, and if he refuses to do so, remove him from the service.

4. The Petitioner has challenged the order compulsorily retiring him from service mainly on two grounds. The first contention of the Petitioner is that under Rule-16 of the Air Force Rules it was obligatory on the Respondent to first to have obtained a report on the basis of the complaint made by the Squadron Leader A.N. Rai and his daughter and only thereafter the holding of the inquiry could have been dispensed with and the Petitioner could have been proceeded under Rule-16 of the Air Force Rules. The Petitioner's contention is, however,

that in the present case no report was submitted by any officer. Merely on the basis of the complaint, made by Squadron Leader A.N. Rai, the Petitioner has been punished.

5. Secondly, it was contended that there was no justification for dispensing with the holding of Court of inquiry and if the Court of enquiry Would have been held, the Petitioner would have opportunity to cross examine Squadron Leader A.N. Rai and her daughter, on whose complaint the Petitioner has been punished. In support of his contention, Sri G.D. Mukherjee, the learned Counsel for the Petitioner has cited two decisions :

(1) Ashwani Kumar Katoch v. Union of India 1988 (4) SLR 208 Delhi High Court.

(2) Haibhajan Singh v. Ministry of Defence, Government of India, 1982 (2) SLR 782 Delhi High Court.

In Ashwani Kumar Katoch case the Court held that the Respondents have failed to show that the discretion to dispense with holding of trial as inexpedient was based on some objective ground and further held that since no explanation has been given for dispensing with the trial as an inexpedient, the denial of the trial in the facts and circumstances of the case has resulted in denial to the Petitioner of full opportunity to prove his innocence.

In Harbhajan Singh case it was held that discretion to dispense with the holding of on; Court martial is justiciable The Court also held that there should be an objective facts in existence to demonstrate that holding of the Court martial was as inexpedient and impracticable, only then the dispensing with of the holding of the Court martial can be sustained.

6. In the present case the aforesaid decisions have no bearing. The-impugned order itself considers the question of dispensing with the holding-of Court of inquiry and recorded a finding that Rule 16 of the Air Force Rules contemplates that before action to dismiss an officer from the service administratively is initiated, the Chief of the Air Staff should be satisfied that, while his trial Court martial is inexpedient or impracticable and further retention of the officer is undesirable, if he is so satisfied, the action to dismiss an officer can be initiated even in respect of misconduct, which may be a specific offence under the Act. In the present case, the Chief of the Air Staff satisfied himself that the trial by Court martial was inexpedient, as the parents of the girl were not willing that their young girl be subjected to cross examination before a trial, since it would cause irreparable psychological damage to her and for this reason the Chief of the Air Staff was of the opinion that the holding of the Court of inquiry or holding of the Court martial was not expedient in the present case, therefore, dispensed with the holding of the Court martial and proceeded under Rule 16 of the Air Force Rules. The reasons contained in the order are perfectly justifiable and on-objective considerations holding of the Court martial has been dispensed with. In the present case it was not expedient to hold the Court of inquiry and embarrass a teenage girl o face a cross examination in such a delicate issue. If such a trial

would have been permitted, it would certainly had a bad effect on the psychology of the girl. In any case, this Court cannot look into sufficiency of the ground. This Court has only to see, if there was any objective ground for dispensing with the holding of the Court of inquiry. In the facts and circumstances of the case the Chief of the Air Staff on a relevant consideration decided to dispense with the holding of the Court of inquiry.

7. The second submission of the petitioner that under Rule 16, the Court of inquiry could have been dispensed with only on obtaining a report, is also misconceived in law. The "report" word used in Rule 16 does not give a meaning of the "report" of any independent authority. The "report" word used in Rule 16 can also be equated with the complaint and on complaint coming to the knowledge of the Chief of the Air Staff,. The Chief of the Air Staff is satisfied with the genuineness of the complaint and further satisfied that holding of the Court martial is inexpedient or impracticable and retention of an officer in service is not desirable, the Chief of the Air Staff can proceed under Rule 16 of the Air Force Rules and take action in accordance with law. The second contention raised by the Petitioner also fails.

8. The counsel for the Union of India has argued that since the order was passed by the President of India by and on behalf of the President of India, the order was beyond challenge under Article 226 of the Constitution of India and in support of the aforesaid contention, the counsel cited *Hajara Singh v. Union of India* 1982 (1) SLR 623 (Delhi High Court).

9. The counsel for the Union of India also contended that for taking administrative action of dismissal of service, there is no provision which makes it obligatory that Court martial must be held and submitted that since holding of the Court martial is not mandatory in every case, the dismissal of an employee without holding of a Court martial is valid. In support of the aforesaid contention, the counsel cited a decision of *Philipose Samuel v. Union of India* 1981 LIC NOC 147.

10. Since both the contentions, raised by the Petitioner have failed, it is not necessary to "examine the aforesaid submissions made on behalf of Union of India, therefore, I do not express any opinion on the submissions so made.

11. In view of the fact that both the grounds, on which the Petitioner has challenged the impugned order, have failed, the writ petition also fails and is accordingly dismissed with costs.