

(1991) 12 AHC CK 0044

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 12882 of 1983

Havildar Bali Ram Rai

APPELLANT

Vs

Lt. Col. V.S. Pradhan, Officer Commanding 504A S.C.
Battation and Others

RESPONDENT

Date of Decision : 15-12-1991

Acts Referred:

Army Act, 1950 — Section 123, 123(1), 23, 63
Army Rules, 1954 — Rule 18
Penal Code, 1860 (IPC) — Section 304A

Citation : (1991) 2 AWC 481

Hon'ble Judges : R.A. Sharma, J

Bench : Single Bench

Advocate : C.D. Mukerjee, for the Appellant;

Final Decision : Dismissed

Judgement

R.A. Sharma, J.—The Petitioner was a Havildar driver in the Indian Army. On 14th May, 1982 while returning from Mathura after exercise the Petitioner's vehicle met with an accident resulting in the death of one civilian. The Petitioner was accordingly charged by the court of enquiry and stood trial by the District Court Martial u/s 63 of the Army Act read with Section 304-A IPC for causing the death of the civilian. Pending trial, by letter dated 5-10-1982 a list of non-commissioned officers, including the Petitioner whose name was placed at serial No. 38, was communicated for promotion to the rank of Naib Subedar, subject to the condition that those non-commissioned officers including the Petitioner, are not involved in any disciplinary cases and have not been awarded any punishment, entailing red ink entry during the last one year and were in medical category AYE, and BEE. As the Petitioner was involved in a disciplinary case, by virtue of charges framed against him by the District Court Martial u/s 63 of the Army Act read with Section 304-A of the Indian Penal Code, he could not be promoted and the authority concerned was informed about it by letter dated 21-of 1982 The order of promotion was accordingly cancelled by letter dated

24-1-1983 and the Petitioner was also informed. As the Petitioner was to retire on 1-6-1983 and the disciplinary proceedings were not finalised, the provisions of Section 123 of the Army Act were invoked for the trial of the Petitioner for offences u/s 63 of the Army Act read with Section 304-A IPC. The Petitioner was however, acquitted by the District Court Martial and was thereafter discharged with effect from 1-6-1983 by order dated 23-8-1983. It is against this order of discharge that this writ petition has been filed for quashing it. Further prayers for Petitioner's reinstatement and for payment of the salary have also been made.

2. The Government has filed counter-affidavit and the Petitioner has filed rejoinder-affidavit in reply thereto. I have heard Sri G.D. Mukherjee, learned Counsel for the Petitioner and Sri S. Harkauli learned Counsel for the Respondents. The submission of the learned counsel for the Petitioner is that by virtue of action u/s 23 of the Army Act the Petitioner's services stand extended with effect from 1-6-1983 and in view of the provisions of Rule 18 of the Army Rules, the order of discharge dated 23-8-1983 could not have been passed with retrospective effect.

3. Sub-section (1) of Section 123 of the Army Act, being relevant, is reproduced below:

Where an offence under this Act had been committed by any person while subject to this Act, and he is ceased to be so "subject, he may be taken into and kept in military custody, and tried and punished for such offence as if he continued to be so subject.

Sub-section (1) of Section 123 neither deals with nor provides for the extension of service of an army personnel. What this sub section lays down is taking in military custody of the army personnel who is accused of an offence and has retired from service so as to conclude the trial even after his retirement. The object of this provision is not to extend the service, but to continue the trial for the offence for which the army personnel was charged even after his retirement and punish him, if found guilty as if he is still subject to the Army Act. The detention of the Petitioner in military custody after his retirement does not have the effect of extending his service beyond the date of superannuation. As the Petitioner was to retire on 1-6-1983 and he was kept in military custody, even after his retirement for concluding the trial, he was discharged with effect from 1-6-1983 (date of retirement), after he was found not guilty. For the reasons given above no exception can be taken to such an order.

4. The writ petition is accordingly dismissed. In view of the facts and circumstances of the case there shall be no order as to costs.