

(2007) 02 AHC CK 0213
In the Allahabad High Court

Lachhiman Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-02-2007

Acts Referred:

Air Force Act, 1950 — Section 18, 19, 20, 26
Army Act, 1950 — Section 19, 45
Constitution of India, 1950 — Article 226

Citation : (2007) 4 ADJ 483 : (2007) 6 AWC 6587 : (2007) 3 UPLBEC 88

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Arun Tandon, J.—All these three writ petitions have been filed by one Lachhiman Singh, who claims to have put in more than 34 years of service in the employment of Indian Air Force. He was appointed as Master Warrant Officer in Central Air Command, IAF, Bamrauli, Allahabad for a period of three years w.e.f. 12th May, 2003, under the letter of the Air Head Quarter dated 22nd February, 1999.

2. On 26th April, 2005, petitioner was asked to submit his statement regarding his behaviour within his quarter, which inturn was based on the complaints submitted by the families of Block No. 250 and IAF (P). It is alleged that since the notice was not accompanied with the complaint referred therein, the petitioner made an application for supply of the copy of the complaint, so that he may submit his reply.

3. According to the petitioner, he was served with a show-cause notice dated 29th April, 2005, wherein various allegations were made against the petitioner. A Court of enquiry was ordered on 2nd May, 2005. The Court of enquiry recorded its finding on 1st June, 2005 and recommended action. Petitioner, on coming to know of the aforesaid action, made a representation dated 1st June, 2005, which was not considered by the authority concerned. He filed Civil Misc. Writ Petition

No. 56549 of 2005 before this Court for quashing of the finding recorded by the Court of Enquiry and the recommendation made vide Unit Routine Order No. 37/2005 dated 2nd May, 2005. Petitioner also prayed for quashing of the order dated 9th August, 2005, attaching the petitioner from Allahabad to Darbhanga (Bihar), which according to the petitioner by way of punishment effected during the pendency of the approval of findings and recommendations of the Court of enquiry.

4. The writ petition so filed by the petitioner was dismissed by this Court, vide order dated 22nd August, 2005, on the ground of statutory alternative remedy by way of appeal u/s 26 of the Air Force Act, 1950. Against the order of this Court dated 22nd August, 2005, petitioner filed Special Appeal No. 1113 of 2005. The Special Appeal was disposed of vide judgment and order dated 19th September, 2005, with modification of the order of learned Single Judge to the extent that the representation of the appellant may be disposed of by the authority concerned, by means of a reasoned speaking order.

5. The petitioner was served with an order dated 23rd September, 2005, whereby he was posted at 153 HU, AF, Udhampur. The said order has been challenged, by means of Civil Misc. Writ Petition No. 64637 of 2005. No interim order was granted in the said writ petition.

6. That along with Civil Misc. Writ Petition No. 64637 of 2005, petitioner (Lachhinman Singh) filed another Civil Misc. Writ Petition No. 64613 of 2005 and on 7th October, 2005 this Court stayed the operation of the movement order dated 23rd September, 2005. On the strength of the interim order so passed, petitioner claims to have joined his duties at Bamrauli, Allahabad.

7. Petitioner was served with a show-cause notice dated 30th September, 2005 calling upon him to show-cause as to why he may not be dismissed from service u/s 20(1) of the Air Force Act, 1950 read with Rule-18 of the Air Force Rules, 1969 on the findings of the Enquiry Committee. 14 days time was granted for filing of the reply, it was also mentioned that the proceedings of the enquiry committee were available at the Head Quarters for perusal of the petitioner, if he so desires.

8. Petitioner, by means of the Civil Misc. Writ Petition No. 67175 of 2005 challenged the aforesaid show-cause notice. The writ petition was filed on 19th October, 2005, and was taken up, as fresh matter, on 21st October, 2005, the same was directed to be heard on 25th October, 2005. The matter was adjourned on various dates. On 13th February, 2006, an amendment application was filed in the present writ petition, whereby the petitioner made a prayer for quashing the order of dismissal dated 31st December, 2005 and the order dated 17th January, 2006 passed by the Chief of the Air Staff, copies whereof are enclosed as Annexure Nos. 2 and 3 to the amendment application. The amendment application was allowed by this Court on 28th February, 2006. Necessary corrections have accordingly been made.

9. During this period, the representation made by the petitioner with reference to the Division Bench Judgment of this Court dated 19th September, 2005 passed in Special Appeal No. 1113 of 2005, was considered and decided by the Group Captain S P S O, Head Quarter CAC, IAF, Bamrauli, Allahabad-12, vide order dated 11th November, 2005. The authority concerned recorded that the Court of enquiry has been conducted in the prescribed manner, the proceedings did not reveal any bias. The procedure prescribed has been followed. Against this order of the Group Captain, petitioner filed Civil Misc. Writ Petition No. 72565 of 2005 with a further prayer that entire proceedings of court of enquiry be quashed.

10. From the facts, which have been noticed herein above, it is apparent that in view of the orders dated 31st December, 2005 and dated 17th January, 2006 dismissing the petitioner from service in exercise of power u/s 20(1) of the Air Force Act, 1950 read with Rule-18 of the Air Force Rules, 1969, all other reliefs prayed for by the petitioner in those connected writ petitions would be dependent upon the fate of the writ petition seeking quashing of the aforesaid orders of the Chief of the Air Staff.

11. Therefore, this Court deems fit to examine the legal contention raised on behalf of the petitioner qua order of the Chief of the Air Staff dated 31st December, 2005 and dated 17th January, 2006.

12. Comprehensive written statement has been filed on behalf of the petitioner in all the writ petitions through Sri Subash Chandra, Advocate.

13. Order passed by the Chief of the Army Staff dated 31st December, 2005 is being challenged on the ground that the Chief of the Air Staff has recorded absolutely no reasons for not agreeing with the advise of the advocate as well as other authorities, who had suggested other punishment instead of major punishment of dismissal from service. It is further submitted that an order u/s 20(1) of the Air Force Act, 1950 can be passed only when a person subject to the Air Force Act has been found guilty in a judicial proceedings, the order of dismissal can be a consequential action taken thereto. Order u/s 20(1) of the Air Force Act, 1950 cannot be passed by way of punishment based upon the findings of a departmental proceedings. It is emphasised that since the Court of enquiry was not conducted against the petitioner in accordance with the principles of natural justice and in accordance with law, the evidence collected therein could not form the basis for passing the impugned orders.

14. It is further submitted that no finding has been recorded in the impugned order to the effect that it was not possible to conduct departmental proceedings in the facts of the present case. Lastly it is submitted that punishment of dismissal from service is highly disproportionate to the alleged proved charge. It has also been highlighted that the entire proceedings are mala fide and an outcome of arbitrary attitude of the authorities who were annoyed for the reasons stated in this writ petition.

15. On behalf of Air Force, written submissions have been filed by Sri K.C. Sinha,

Advocate and it has been highlighted that the order of dismissal has been passed u/s 20(1) of the Air Force Act, 1950. In view of the order u/s 20(1) of the Air Force Act, 1950, all other proceedings taken have merged in the said orders.

16. The Hon'ble Supreme Court of India in the case of M.M. Malhotra v. Union of India and Ors. reported in (2006) 1 UPLBEC 536 has clarified that under the Scheme of the Act and Rules, an Air Force Employee involved in acts of moral turpitude and misconduct unbecoming of his position, or disgraceful conduct, can be proceeded with in two ways, (a) through disciplinary action i.e. summary disposal of charges of and Court Martial, and (b) administratively u/s 18 and 19 of the Indian Air Force Act.

17. In the facts of the present case having regard to the misconduct attributed to the petitioner, which was abnoxious in nature, the Chief of Air Staff has proceeded administratively u/s 19 and after notice and opportunity of hearing, has passed the impugned order, which cannot be faulted with. With regard to the evidence received during departmental enquiry being placed before the Chief of the Air Staff, it has been contended that proceedings have been conducted fairly, and all the materials collected during such enquiry was disclosed to the petitioner and could always be considered by the Chief of the Air Staff while proceeding u/s 19 of the Act. With regard to the allegations of malafide it has been pointed out that the same are too vague and general in nature. They do not merit consideration, even otherwise no mala fides have been attributed to the Chief of the Air Staff nor can it be said that Chief of Air Staff could be influenced by any Subordinate Officer, i.e. Wing Commander, Group Captain etc. Lastly it is submitted that in the facts of the present case, punishment imposed upon the petitioner having regard to the mis-conduct does not warrant any interference under Article 226 of the Constitution of India.

18. I have heard learned Counsel for the parties and have gone through the records of the present writ petition.

19. From the facts which have been noticed herein above, the issue up for consideration is ,as to whether the order passed by the Chief of the Air Staff dated 31st December, 2005 in exercise of power u/s 20(1) of the Air Force Act, 1950 read with Rule-18 of the Air Force Rules, 1969 is in conformity with law or not.

20. For our purposes it would be relevant to reproduce the exact nature of the charges/misconduct attributed to the petitioner as noticed in the order of the Chief of the Air Staff, which is being quoted herein below:

3. AND WHEREAS, during the said period on various occasions, MWO L. Singh had indecently exhibited his private parts and made obscene gestures to the wives of airmen residing in his neighbourhood;

6. AND WHEREAS, in their statements recorded on oath in the said Court of Inquiry, Mrs. Alpana Kar (Witness No. 4), Mrs. Madhavi (Witness No. 5), Mrs.

Pratima Gupta (Witness No. 6) and Mrs. Sunita Singh (Witness No. 7) have interalia brought out that on seeing them, MWO L Singh would take off his clothes, exhibit his male organ as well as make vulgar gestures to them from his house through the window.

21. The Chief of the Air Staff has further recorded that after receipt of the material from the Court of Inquiry a show-cause notice dated 30th September, 2005 was served upon the petitioner on 10th October, 2005, calling upon him to show-cause as to why he should not be dismissed from the service in exercise of power u/s Section 20(1) of the Air Force Act, 1950 read with Rule-18 of the Air Force Rules, 1969 for the misconduct. He was provided an opportunity to submit his reply within 14 days. Petitioner made an application on 10th October, 2005 requesting for a copy of the Court of Enquiry and Inquiry Report dated 18 April, 2005. Copies of the same were dully supplied and the time for reply was extended upto 14th November, 2005. On 7th November, 2005 petitioner made a further request for better photocopies of the Court of Inquiry Proceedings and Inquiry Report, and raised certain queries. The documents were provided to the petitioner, the queries so made were also explained vide letter dated 8th November, 2005. On 11th November, 2005 petitioner made another application seeking further extension of time for submitting his reply to the SCN on the ground that order on his representation dated 1st June, 2005, was provided to him on 11th November, 2005 and that the copies of proceedings of Court Of Inquiry (for short COI) forwarded to him were incomplete. Vide letter dated 16th November, 2005 petitioner was informed that the decision on the representation dated 1st June, is totally out of contest and that allegations of incomplete proceedings being supplied were vague and unsubstantiated. Time for reply was extended upto 21st November, 2005. On 21st November, 2005 the petitioner again made an application alleging therein that incomplete copies of the proceedings of Court of Enquiry and copies of the Guard Room occurrence report have been supplied.

22. In this background of the proceedings, Air Chief Marshal formed a firm opinion that the petitioner was not interested in submitting his reply and therefore, proceeded to pass the order dated 31st December, 2005, wherein he has recorded as follows:

15. AND WHEREAS, after considering the entire facts of the case, I am of the opinion that the act of obnoxious and indecent behaviour by MWOL Singh is highly unbecoming of an MWO of the IAF, detrimental to the community living and amounts to serious misconduct. Therefore, further retention of MWO L Singh in IAF is considered undesirable;

16. NOW THEREFORE, in exercise of powers vested in me u/s 20(1) of the Air Force Act, 1950 read with Rule 18 of the AF Rules, 1969, I order the dismissal of 641114 MWO L Singh, Flight Gunner from the service.

23. It appears that after the order was passed, a representation dated 4th

January, 2006 along with reply dated 3rd January, 2006 was submitted by the petitioner which was received by the Air Chief Marshal.

24. The Air Chief Marshal therefore, passed another order on 17th January, 2006 dealing with the objections raised in the reply so submitted by the petitioner and recorded that he had been given ample opportunity to cross-examine the witnesses, which was not availed of by him. The Air Chief Marshal therefore, maintained the order of dismissal passed by him on 31st December, 2005.

25. From the facts as borne out from the orders of the Air Chief Marshal, this Court is satisfied that the procedure prescribed under Rule-18 of the Air Force Rules, 1969 has been followed, petitioner has been afforded ample opportunity to have his say in the matter. The material collected during the departmental enquiry has been considered by the Air Chief Marshal after affording opportunity of hearing to the petitioner having regard to the misconduct found proved, he has rightly taken a decision to dismiss the petitioner from service. The misconduct as attributed to the petitioner is in itself sufficient to establish that the petitioner was involved in acts not expected of an Air Force employee and that he was mentally sick. Such person should not be permitted to remain in the employment of Air Force and Air Chief Marshal has therefore, taken a right decision in passing the orders complained of.

26. At this stage reference may be had to paragraphs-11 and 12 of the judgment of the Hon'ble Supreme Court of India in the case of M.M. Malhotra v. Union of India and Ors. (Supra), which read as follows:

11. Under the Scheme of the Act, and the Rules any act of misconduct of an officer involving moral turpitude and/or amounting to offence can be dealt with in two ways. It can be by way of disciplinary action i.e. summary disposal of charges and Court-Martial or administratively under Sections 18 and 19 of the Act. While dealing with the matter u/s 19 of the Act, the procedure contained in the Rule 16 of the Rules has to be followed. This Rule incorporates principles of natural justice i.e. issuance of show-cause notice, consideration of reply, Para 667(b) of the Regulations for Air Force, 1964 on which the appellant relies no doubt stipulates initiation of action on the part of the Commanding Officer to bring the offender to trial by the Court-martial. In a given case, however, considering the nature of the accusations and the type of evidence a decision can be taken to deal with the case administratively in terms in Rule 16 (4) of the Rules. In the instant case it was concluded that it would neither be expedient nor practicable to have trial by Court-martial and, therefore, the action was taken by departmental proceedings. This Court had occasion to consider an identical provision in the Army Act, 1950 (in short "Army Act") and Army Rules, 1954 (in short "Army Rules"). Constitutional validity of Rule 14 of the Army Rules which is on the same line as Rule 16 (4) of the Rules was questioned in Union of India (UOI) Vs. Capt. S.K. Rao, The challenge was found unsustainable. It was, *inter alia*, observed as follows:

14. Section 19 itself suggests that there should be rules, and subject to the provisions of the Act and such rules, the Central Government may dismiss or remove from the service any person subject to the Army Act. Section 19(2)(a) specifically gives power to make a Rule providing for the removal from the service of persons subject to the Act. It follows that there may be a valid Rule where-under, subject to the other provisions of the Act the Central Government may remove a person from the service. Rule 14 is such a Rule; it is, therefore, not ultra vires.

15. It was argued that the words "subject to the provisions of this Act" occurring in Section 19. makes Section 19 subject to Section 45, and the Central Government has thus no power to remove a person from the service in derogation of the provisions of Section 45. But the power u/s 19 is an independent power. Although Section 19 uses the words "subject to the provisions of this Act", it speaks of removal of a person from the service. Section 45 provides that on conviction by Court-martial an officer is liable to be cashiered or to suffer such less punishment as is in this Act mentioned. For removal from service u/s 19 of the Army Act with Rule 14 of the Army Rules, 1954, a Court-martial is not necessary. The two Sections 19 and 45 of the Act are, therefore, mutually exclusive.

12. Above being the position, the appellant's stand that the departmental proceedings was invalid has to be rejected.

27. In view of the aforesaid, no illegality can be attributed to the order passed by the Air Chief Marshal. The relief prayed for in that regard cannot be granted. Since this Court has come to the conclusion that the orders passed by the Air Chief Marshal dismissing the petitioner from service are legal and valid, no other reliefs prayed for in the connected writ petitions survive for consideration, all the three writ petitions are, therefore, dismissed.