
(1978) 01 RAJ CK 0015
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1648 of 1972

Mohammed Safi	Vs	APPELLANT
Union of India (UOI)		RESPONDENT

Date of Decision : 02-01-1978

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (1978) WLN 134

Hon'ble Judges : D.P. Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.P. Gupta, J.—The petitioner, who was employed in the Indian Air Force, was discharged from service w.e.f. June 20, 1972 and his grievance is that the order of his discharge is illegal and deserves to be quashed. The petitioner was initially enrolled in the Indian Air Force as a Combatant Airman on November 18, 1963 and he subsequently worked there in various capacities, such as Air craftsman Class II, Aircraftsman Class I, leading Air craftsman and Corporal His original appointment was for a period of nine years as a regular Airman and thereafter for six years as a reserved personnel According to the petitioner, the regular period of his engagement was subsequently enlarged to 15 years. On April 8, 1972, a discharge order was passed authorizing the Station Commander Indian Air Force Station, Sambra, to discharge the petitioner from service after allowing him to avail of the full leave which might be due to him In pursuance of the aforesaid order, a discharge certificate was issued to the petitioner on April 21, 1972 and thereafter he was allowed two months leave w.e.f. April 21, 1972. Thus, the petitioner's discharge from the Indian Air Force became effective on June 20, 1972. The case of the petitioner is that in March 1971, he was told by a superior officer that the Criminal Intelligence Department Jodhpur had made a report against him that he was furnishing some information to the Pakistan Government was, thus acting against the interests of the country, but the

petitioner had denied having done anything of that sort. According to the petitioner, further enquiries were made by the Criminal Intelligence Department Officials from petitioner's father and other relations in their village and a police officer allegedly submitted some report, on the basis of an allegation that the petitioner was sending reports about defence matters to Pakistan. The petitioner stands that he was always a loyal and faithful employee of this country and the reports against him emanated on account of mutual rivalries in the town of Phalodi, of which the petitioner is a resident. Thus, according to the petitioner, his discharge from service was an act of victimisation and had no real basis. The contention of the petitioner is that the respondents were required under the relevant rules to assign some valid reason for the discharge of the petitioner & as no lawful reason has been assigned, the order of discharge of the petitioner is invalid.

2. The case of the respondents, on the other hand, is that they were entitled to discharge the petitioner from the service of the Indian Air Force without assigning any reason and that the order of discharge cannot be challenged on the ground that reasons which led to the discharge of the petitioner were not communicated to him.

3. The petitioner placed reliance in support of his submission on the provisions of Rule 15 of the Air Force Rules, 1969 and according to him, the order of discharge on the basis that his services were "no longer required" could have been passed only in two circumstances, namely, due to reduction in establishment or reorganization or on the ground that he was unsuitable for retention in the Indian Air Force. The respondents in their reply, however, contended that the Air Force Rules, 1959 relied upon by the petitioner came into force only on June 1, 1972 and the said Rules were not in force at the time when either the order of his discharge was passed on April 8, 1972 or even when the discharge certificate was issued to the petitioner on April 51, 1972. According to the respondents, Indian Air Force Rules 1932 (hereinafter referred to as "the 1932 Rules") were in force at the relevant time when the discharge certificate was issued to the petitioner in April, 1972 and then under Clause VIII of Rule 13 of the 1932 Rules, the authority passing the order of discharge of the petitioner from the service of the Indian Air Force. After the arguments in this writ petition had concluded on October 10, 1977, it was discovered that the provisions of Rule 13 of the 1932 Rules were amended by the Amendment Rules of 1963 vide S.R.O. No. 25 dated January 4, 1963 published in the Gazette of India dated January 25, 1964 & thereby Rule 13, as it existed in the 1932 Rules was substituted by an entirely new rule, the portion of which runs as under:

13. Authorities empowered to authorise discharge:

(1) Each of the authorities specified in column 3 of the table below shall be the authority competent in respect of persons subject to the act specified in column 1 thereof, for the cause specified in column 2 and in the manner specified in column 4, to discharge such persons from the service.

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

TABLE	Person	enrolled	under	the	Act	who	have	been	attested.
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Competent	Special	authority	Instructi-	to	author-	ons	rise	discharge	
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						Officers	All	causes	The A
notification of the of discharge Central in the Official Indian Government Gazette of the Air Force retirement of an officer, the relinquishment of his commission etc. shall be deemed to be a discharge with in the meaning of Sub-section (2) Section 2 of the Act 1 2 3 4 XXX XXX XXX XXX XXX XXX XXX XXX									
VII	His services no Director of longer required :- (a) Due to reduction Personnel in establishment or (Airmen) to reorganisation. (b) Unsuitable for Air Officer retention in the I/c Air Force (on Administration disciplinary grounds)								
VIII	All other classes Air Officer of discharge I/c Administr- ation XXXX XXXX XXX XXX XXX XXX XXXX								

4. Now, the parties are at agreement that the discharge of the petitioner from service has taken place in a cordance with the provisions of the 1932 Rules, as amended by the aforesaid amendment Rules of 1932. substituting Rule 13 by the provisions reproduced above The argument advanced by the learned Counsel or the petitioner is flat the discharge of an Airman on the ground that his services were "no longer required" could be effected only under Clause VII of Rule 13, on the fulfilment of one to the two conditions specified therein, & as in the case of the petitioner none of the aforesaid two conditions was satisfied, the discharge of the petitioner was invalid. Mr Lodha, learned Counsel appearing for respondents, however contended that the discharge order of the petitioner was not passed under Clause VII of Rule 11 but it was passed under Clause VIII of the aforesaid Rule and that reference has been made to the said provision in the discharge order.

5. The fact that the discharge order of the petitioner was brought about under Clause VIII of Rule 13 of the 1932 Rules as amended by the amendment Ruels of 1963 cannot be refuted, as the discharge order specifically authorised the discharge of the petitioner from the service of the Air Force under Clause VIII of Rule 13 on the ground "services no lunge required." According to Mr. Bhoot, in case the services of the petitioner were no longer required, Clause VII alone could have been applicable and not Clause VIII. But from a reading of the entire provisions of Rule 13, as substituted by the amendment rules of 1963, it appears that specified contingencies have been enumerated in Clauses I to VII, on the happening of which the authorities specified in column 3 of the table, referred to above, could pass an order of discharge in respect of Airmen who have been attested and Clause VIII, which relates to "all Other Classes of Discharge" is in the nature of a residuary clause, which includes within its old all other classes of discharge, which could not come within the preview of the contingences enumerated in Clauses I to VII If the services of the petitioner would not have

been required on the grounds specified in Sub-clauses (a) or (b) of Clause VII of Rule 13, then his discharge from the service of the Air Force would have been made under the relevant provision thereof. But if the services of the petitioner were no longer required for any other reason which did not squarely fall within Sub-clauses (a) or (b) of Clause VII or for that matter under any of the Clauses I to VII of Rule 13, then in that case, the competent authority was justified in discharging the petitioner under Clause VIII. In cases relating to personnel employed in defence services of the country, there might be certain sensitive matters which may not be in the interest of national security or public interest to disclose and in such case the Defence Personnel can be discharged without assignment of any reason to him. Clause VIII of Rule 13 empowers the competent authority to pass an order of discharge in the case of Airmen who have been attested. A similar provision has been made in Clause XI of the said Rule in respect of the Airmen who have not been attested. The provisions contained in Clauses VIII and XI, which are respectively applicable to attested and unattested personnel of the Indian Air Force, are applicable to circumstances which are not covered by the specific entries made in other clauses of Rule 13. As the order of discharge passed in the case of the petitioner specifically mentions that it was passed under Clause VIII of Rule 13, as substituted by the amendment Rules of 1963, it is not possible to construe the order of discharge of the petitioner as one having been passed under Clause VII, merely for the reason that the words "services no longer required" have also been mentioned therein. If the services of an Airman are no longer required on account of reduction in establishment or on account of the reorganisation of the Air Force, then such an order of discharge would be covered under sub Clause (a) of Clause VII. Similarly, if the services of an Airman are not required any longer on his being found unsuitable for retention in the Air force on disciplinary grounds, then the discharge of such person would be brought about under Sub-clause (b) of Clause VII of Rule 13. But if the service of an Airman, who has been attested, is no longer required for any other reason, not covered within the provisions of Sub-clauses (a) or (b) of Clause VII or other clauses of Rule 13, then the order of discharge in such a case would fall under Clause VIII of Rule 13. In such cases, the person concerned cannot insist that the reasons which led to the passing of the order of discharge should be disclosed to him. In the present case, the order of discharge has not been passed by way of penalty or on account of reduction or reorganisation and I do not find that any duty has been cast upon the competent authority, while passing the order of discharge under Clause VIII of Rule 13 of the 1932 Rules to communicate to the person concerned the grounds on which the said order was passed.

6. It has not been argued by the learned Counsel for the petitioner before me and in my view rightly, that in the case of the discharge of defence personnel like the petitioner, the provisions of Article 311 of the Constitution could be invoked. As the order of discharge of the petitioner is in accordance with the relevant rules applicable to him, the said order cannot be interfered with by this Court.

7. In the result, the writ petition is dismissed. The parties are left to bear their own costs in the circumstances of the case.