

(1998) 10 J&K CK 0006
In the Jammu And Kashmir High Court

O.P.Sharma

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 22-10-1998

Acts Referred:

Army Rules, 1954 — Rule 17
Constitution of India, 1950 — Article 311

Citation : (2003) 1 SriLJ 149

Hon'ble Judges : O.P.Sharma, J

Bench : Single Bench

Advocate : K.L.Sharma, A.H.Qazi, Advocates appearing for the Parties

Judgement

1. The petitioner was terminated from services by the Chief of the Army Staff with cited from 08081986 in exercise of power under section 20 (i)

of the Army Act read in conjunction with the Rule 17 of the Army Rules because of his involvement in espionage activities. The order of

termination has been challenged by the petitioner on the ground that neither any show cause notice has been given nor any enquiry held in the

absence of which, the order impugned is bad because the principles of natural justice have been violated.

2. Mr. Qazi appearing for the petitioner urged that although the petitioner was arrested and detained, but later on he came to be released and was

not prosecuted for the charges, he was arrested. According to Mr. Qazi, the petitioner was arrested for interrogation but later on released without

holding any trial. Since no case of espionage was made out against him, it is argued, his termination without holding enquiry was bad.

3. Mr. K.L. Shanna appearing for the respondents, however' argued that petitioner was found involved in espionage activities. He retracted

confession, therefore, the order impugned was passed.

4. The question involved is, whether in the circumstances of the case, the order impugned could be justified. The order impugned reads as under:

8023956/JS/125/A 08 Aug. 86.

Termination of service by COAS

1. COAS has considered termination of your service under AA Sec. 20 (i) to be read in conjunction with AR 17. In his opinion, keeping in view

the circumstances of the case, serving of show cause notice to you considered inexpedient. Vide above order of COAS your service is terminated

w.e.f. 08 Aug. 1986 (AN).

2. Signed on this eighth day of August, 1986 at field.

5. The background of the case on the basis of which recommendation for his termination was made is that he was found involved in espionage

activities during the course of interrogation of one Ex. Gnr. Aya Singh. The petitioner, it is further stated also confessed having revealed military

information to Pak Intelligence on the consideration of Rs. 1000/. He however, retracted his confession during recording of summary evidence. It

was. Therefore decided that his retention in army was not in national interest, as he was a security risk. Accordingly, General Officer Commanding

10 Infantry Division, General Officer Commanding 16 Corps and GOCinC, Northern Command recommended his termination in the interest in

national security. Their recommendation was examined by the Chief of the Army Staff, before he approved the proposal on 02061986. Such an

elaborate procedure for termination of service ensures objectively and excludes the chance of arbitrary action on the basis of subjective

satisfaction. When such is the evidence and the decision is based on the recommendation of three Generals of the Army, there could be hardly any

scope for interference in exercise of powers of judicial review except in case of noncompliance of the provisions of Army Act and Army Rules.

The contention of Mr. Qazi is that the order impugned does not give reasons for dispensing with the requirement of Rule 17 of the Army Rules.

This, accordingly to Mr. Qazi, is sufficient to invalidate the order of dismissal because it suffers from lack of application of mind. In support of this,

he placed reliance on the decision of the apex court in Jaswant Singh Vs. State of Punjab. AIR 1991 SC385.

6. However, Jaswant Singh's case has been decided with reference to clause (b) of the 2nd proviso to Article 311 (2) of the Constitution of India,

whereas the order impugned has been passed under section 20 (i) of the Army Act read with Rule 17 of the Army Rules. There is nothing common

in the two provisions so as to apply the law enunciated in Union of India Vs. Tulai Ram Patel. AIR 1985 SC 1416 or in Jaswant Singh's case.

7. We may now consider the difference in the two provisions. Clause (b) of Article 311 (2) reads as under:

Where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that

authority in writing, it is not reasonably practicable to hold such inquiry.

8. While interpreting this clause, in Jaswant Singh's case (supra), their lordships held as under: ^

.... In so far as Clause (b) is concerned, this court pointed out that two conditions must be satisfied to sustain any action taken thereunder. These

are (i) there must exist a situation which renders holding of any inquiry ""not reasonably practicable""; and (ii) the disciplinary authority must record in

writing its reasons in support of its satisfaction, Of course the question of practicability would depend on the existing fact situation and other

surrounding circumstances, that is to say, that the question of reasonable practicability must be judged in the light of the circumstances prevailing at

the date of the passing of the order. Although Clause (3) of that Article makes the decision of the disciplinary authority in this behalf final such

finality can certainly be tested in a court of law and interfered with if the action is found to be arbitrary or mala fide or motivated by extraneous

considerations or merely a ruse to dispense with the inquiry.....

9. Since holding of enquiry before taking any disciplinary action against a public servant is mandatory, it can be dispensed with only on the twin

grounds stated above. But no such requirement is prescribed under Rule 17 of the Army Rules, while Section 20 (i) of the Army Act empowers

the Chief of the Army Staff to dismiss or remove from the service any person, subject to the Army Act other than an officer. Rule 17 lays down the

procedure to be followed. It reads as under:

DISMISSAL OR REMOVAL BY CHIEF OF ARMY STAFF AND BY OTHER OFFICERS.

Save in the case where a person is dismissed or removed from service on the

ground of conduct which has led to his conviction by a criminal court

or a court martial, no person shall be dismissed or removed under subsection (1) or subsection (3) of Section 20, unless he has been informed of

the particulars of the cause of action against him and allowed, reasonable time to state in writing any reasons he may have to urge against his

dismissal or removal from the service:

Provided that if in the office of the officer competent to order the dismissal or removal, it is expedient or reasonably practicable to comply with the

provisions of this rule, he may, after certifying to that effect, order the dismissal or removal without complying with the procedure set out in this

rule. All cases of dismissal or removal under this rule where the prescribed procedure has not been complied with shall be reported to the Central

Government.

10. Under the rule, a person subject to the Army Act cannot be dismissed unless, he has been informed of the particulars of the cause of action

against him and allowed reasonable time to state in writing any reasons he may have to urge against his dismissal or removal from the service.

11. However, this right of hearing can be denied by resorting to the proviso if the Chief of the Army Staff is of the opinion that it is not expedient or

reasonably practicable to comply with the aforesaid requirement.

12. The respondents have dispensed with the requirement of the Rule on the ground that ""keeping in view the circumstances of the case, issue of

show cause notice under the Army Act *ibid* to the individual is considered inexpedient and as such be dispensed with."" This order was passed on

the recommendations of GOCinG Northern Command which was based upon the result of investigation on the charge of espionage. The opinion

of the Chief of the Army Staff thus cannot be said to be vitiated by extraneous or irrelevant considerations.

13. Moreover, while Clause (b) of Article 311 (2) uses the expression. "" is satisfied"" in Rule 17. the expression used is ""in the opinion"". The two

expressions are not synonymous because the word ""satisfy"", according to Oxford Dictionary, means, ""furnish with adequate proof, convince"", but

opinion is defined as ""judgment or belief based on grounds short of proof"" The distinction is thus clear and therefore, the scope of judicial review in

case of order of dismissal under Rule 17 is limited as compared to any order

passed under Clause (b) and (c) of Article 311 (2) of the Constitution where the court can interfere if the satisfaction is found to be based on wholly extraneous or irrelevant considerations. Since in the opinion of the Chief of the Army Staff it was inexpedient to issue show cause notice to the petitioner, the opinion formed by him even if founded on no proof, cannot be challenged unlike in case of dismissal under Clause (b) of Article 311 (2) as noticed above. Assuming that the basis of the opinion can be examined, this court is not to sit in judgment over the decision like a court of first appeal as observed by the apex court in *Kuldip Singh Vs. State of Punjab* (1996) 10 SCC 659.

14. In view of the above, there is no ground to interfere in the order impugned and as such, the petition is dismissed without any order as to costs.