

(2011) 06 DEL CK 0024

In the Delhi High Court

Case No : LPA 136 of 2003

Pratap Singh

APPELLANT

Vs

Chief of Army Staff and Others

RESPONDENT

Date of Decision : 03-06-2011

Acts Referred:

Army Act, 1950 — Section 8
Army Rules, 1954 — Rule 13, 13(3)

Citation : (2011) 5 ILR Delhi 339

Hon'ble Judges : Suresh Kait, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : S.M. Dalal, for the Appellant; Jyoti Singh and Dinesh Yadav, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Having been awarded 5 red ink entries between the years 1986 till 2000 and after issuing a notice to show cause and enabling the Petitioner to submit his response to the proposed action of his being discharged from service, the competent authority passed an order that retention of Petitioner in service was not warranted, resulting in the Petitioner being discharged from service with pension benefits.

2. Petitioner questions his name being struck off from the strength of the Indian Army with effect from 7.8.2000. Challenge was by and under W.P. (C) No. 5346/2000 which has been dismissed vide order dated 8.4.2002. Said order is under challenge in the instant appeal.

3. It may be noted that in August 1997 a show cause notice was issued to the Petitioner requiring him to respond to the proposed action of his being discharged from service under Army Rule 13(3) Item III (4). The action was proposed on the fact that till 1997, 4 red ink entries pertaining to 4 misdemeanours for which Petitioner was severely reprimanded were inflicted upon him in the month of May 1986, May 1987 as also in the month of June

1996 and April 1997.

4. Petitioner submitted a response on 5.9.1997 and considering the same, action proposed was dropped. While dropping the action it was noted that keeping in view the gravity of the offences committed by the Petitioner for which punishment was awarded, it did not warrant the proposed action.

5. In June 2000 another penalty of severe reprimand was inflicted upon the Petitioner and taking into account the same and the fact that with the levy of said penalty a 5th red ink entry was made in the record of the Petitioner, on 5.7.2000, a show cause notice was issued calling upon the Petitioner to respond as to why he be not discharged from service under Army Rule 13(3) Item III (4).

6. Petitioner filed a reply highlighting that on 8.7.1997, pertaining to 4 red ink entries earned, it was proposed to discharge him from service and considering his reply as also forming an opinion that the misdemeanours committed by the Petitioner were not of a very serious nature, action was dropped. Thus, Petitioner highlighted that past misconduct was considered and that for a wrong committed for which he was severely reprimanded on 6.6.2000, his discharge from service was not warranted.

7. Rejecting the defence the order was passed directing Petitioner to be discharged from service.

8. Questioning the action taken against him, 4 contentions were urged. It was firstly urged that the Commandant of the Central Ordnance Depot who had passed the order was not competent to do so. Second contention urged was that no reasons were given by him while passing the impugned order. The third contention was that by dropping proposed action pursuant to the show cause notice dated 8.8.1997 the Respondents waived, for all times, a right to predicate further action on the 4 red ink entries awarded to the Petitioner in the months of May 1986 and 1987, as also the month of June 1996 and April 1997. Lastly it was urged that in view of the law laid down by a Division Bench of this Court in the decision reported as Surinder Singh Sihag Vs. Union of India (UOI) and Others, , without conducting an inquiry the services of the Petitioner could not be discharged.

9. Pertaining to the first contention urged, we find that notwithstanding the same being pleaded in the writ petition it not being dealt with by the learned Single Judge in the order impugned. It is possible that the plea was given up. But, we need not rest our opinion on the technicalities of the law inasmuch as we note that vide SRO No. 161 dated 11.6.1979, in exercise of the power conferred by Section 8 of the Army Act 1950 the Central Government prescribed the officers listed in the SRO with the powers under the Army Act with respect to persons under their command. The Commandant Central Ordnance Depot Delhi finds a mention in the notification in question.

10. The order directing Petitioner's discharge from service has been passed by

the Commandant of the Central Ordnance Depot Delhi.

11. With respect to the second plea we note that the Commandant has accorded approval to a note dated 7.8.2000 penned by Major Ravinder Singh and which note gives reasons as to why Petitioner should be discharged from service. Suffice would it be to state that where a proposal contains the reasons and the same is approved by the Competent Authority, the reasons in the proposal have to be treated as the reasons of the authority concerned. Thus, it cannot be said that the Commandant of the Unit has not given adequate reasons in support of the decision.

12. Pertaining to the third submission suffice would it be to state that it is settled law that while taking any action against a person pertaining to a subsequent wrong, past conduct can be considered, and that when a wrong or wrongs are overlooked at a given point of time, their negative effect revives when a further wrong is committed.

13. The last plea urged is premised on the law laid down by a Division Bench of this Court in *Surender Singh Sihag*'s case.

14. The decision deals with the right of the competent authority to discharge a force personnel who has earned 5 red ink entries, a power under Rule 13 of the Army Rules. The Division Bench noted that the army authorities had issued an administrative instruction by way of a letter circular dated 28.12.1988 which contemplated an inquiry before discharging or dismissing a person concerned.

15. The Division Bench took the view that no action could be taken under Rule 13 without an inquiry and since no inquiry was held against *Surender Singh Sihag* when his services were dispensed with by way of discharge pursuant to a show cause notice alleging against him that he had earned 5 red ink entries, the order was quashed.

16. But we find that the Supreme Court, in the decision reported as *Union of India (UOI) and Others Vs. Dipak Kumar Santra*, has taken a view contrary to the one taken by the Division Bench of this Court.

17. Pertaining to a discharge of an Army Officer exercising power under Rule 13 of the Army Rules, the Supreme Court held that once statutory Rules occupy the field, there is no place for a policy guideline and as long as the procedure prescribed by the statutory Rule is followed, it hardly matters whether a policy guideline is not followed.

18. Relevant would it be to state that where a Rule deals with subject matter and the procedure to be followed with respect to the subject matter is also prescribed by the Rule, there is no scope to issue a policy guideline with respect to the procedure to be followed.

19. The procedure under Rule 13 of the Army Rule simply contemplates a prior notice to the person concerned before exercising power under the Rule.

20. That apart, it escaped the notice of the Division Bench of this Court as to what was the scope of the inquiry to be conducted if the power to discharge a force personnel was being exercised with respect to the service profile which shows that the person concerned had earned 5 red ink entries and the requirement of the rule was to consider whether such a person is required to be discharged from service.

21. Inquiries have to be held if facts are in dispute or blameworthiness of a delinquent employee has to be ascertained.

22. We see no scope for any inquiry to be conducted where a person is being discharged from service with reference to his past service record.

23. We note that under Rule 13(3) Item III (4) the Commanding Officer has to exercise the power upon being satisfied that the desirability to retain the person concerned on the strength of the Unit is not longer there. The objective material obviously has to be the service record. It is a power akin to the power exercised in civil service under Rule 56(j) of the fundamental rules.

24. Noting in the instant case that before taking the action a show cause notice was served upon the Petitioner and after considering the reply filed by him the action was taken, meaning thereby procedures of the law were followed we dismiss the appeal but refrain from imposing any costs.