

(2007) 10 DEL CK 0112
In the Delhi High Court
Case No : LPA No. 282 of 2002

Ram Charan Gupta

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 29-10-2007

Acts Referred:

Air Force Rules, 1969 — Rule 15(2), 18
Army Rules, 1954 — Rule 13
Constitution of India, 1950 — Article 20(2), 311, 311(2)

Citation : (2007) 8 ILR Delhi 222

Hon'ble Judges : Dr. M.K. Sharma, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : M.G. Kapoor, for the Appellant; Jyoti Singh, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, C.J.—This appeal arises out of the order passed by the learned Single Judge dismissing the writ petition filed by the appellant challenging his order of discharge from service issued by the Army Authorities by invoking the provisions of Army Rule 13(iii)(v).

2. The appellant herein was enrolled as a Signaller in the Corps of Signals of the Indian Army on 20th January, 1984. The appellant was issued a show cause notice on 19th May, 1993. The appellant was informed by issuing the aforesaid show cause notice that he had been given five punishments during the course of nine years of service. It was also stated in the said notice that he was not considered fit for further retention in the Army. It was also intimated, in the said show cause notice to show cause, why he should not be discharged from service as undesirable under Army Rule 13(iii)(v).

3. The appellant submitted his reply on 24th May, 1993 to the aforesaid show cause notice and by order dated 4th June, 1993 the appellant was discharged from service. An appeal filed against said order was dismissed on 6th April, 1994. Subsequently a writ petition was filed, which stands dismissed, consequent

upon which the present appeal is filed. In the appeal the order of discharge is challenged on the ground that the same is punitive and stigmatic. It is also submitted that since the aforesaid order of discharge is punitive, the same is required to be quashed also on the ground of causing double jeopardy in the case of the appellant inasmuch as the appellant has already been punished in respect of the offences/misconduct which are cited as instances in the show cause notice and, Therefore, punishment of termination/discharge of the appellant amounts to double jeopardy and was issued in violation of the provisions of Article 20(2) of the Constitution of India.

4. Counsel appearing for the appellant, in support of his contention, relied upon the decision of the Supreme Court in Jagdish Mitter Vs. The Union of India (UOI), . He also relied upon the decision of the Supreme Court in Kamal Kishore Lakshman Vs. Management of Pan American World Airways Inc. and Others, .

5. The aforesaid submissions of the counsel for the appellant were refuted by the counsel for the respondent contending, inter alia, that the aforesaid provisions of the Army Rules are pari materia with the Air Force Rule 15(2)(g)(ii). Relying on the said provision, the counsel submitted that similar order of discharge passed in respect of the Air Force employees under the provisions of Rule 15(2)(g)(ii) has been upheld by the Division Bench of this Court. Sum and substance of the dispute, Therefore, revolves around whether or not the order of discharge passed against the appellant was stigmatic and punitive.

6. Contention raised by the counsel for the appellant is that because the word "undesirable" has been used in the impugned order of discharge, Therefore, the same amounts to a punishment and the order becomes punitive and stigmatic. A bare perusal of the two judgments relied upon by the counsel for the appellant would indicate that the decision in the case of Jagdish Mitter (supra) was concerned with Article 311(2) of the Constitution of India and in that context observations have been made. Whereas the decision in Kamal Kishore Lakshman case (supra) was relating to Industrial Disputes Act, where it was held that the expression "loss of confidence" used in the order of termination was stigmatic and punitive as a stigma was sought to be attached. At this stage, we may also refer to the decision of the Supreme Court in Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr, . In the said decision, the Supreme Court held thus:

29. ...Generally speaking when a probationer's appointment is terminated it means that the probationer is unfit for the job, whether by reason of misconduct or ineptitude, whatever the language used in the termination order may be. Although strictly speaking, the stigma is implicit in the termination, a simple termination is not stigmatic. A termination order which explicitly states what is implicit in every order of termination of a probationer's appointment, is also not stigmatic....

31. ...The language used in the order of termination is that the appellant's "work

and conduct has not been found to be satisfactory". These words are almost exactly those which have been quoted in *Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others*, as clearly falling within the class of non-stigmatic orders of termination....

7. That being the position of law laid down by the authoritative pronouncement of the Supreme Court, we may now proceed to decide the contentions raised before us.

8. There is no denial of the fact that the appellant has already undergone punishment on five occasions to the following effect:

(i) In 1985 the appellant overstayed his leave and was punished with 7 days Rigorous Imprisonment in Military Custody.

(ii) Again in 1986 the appellant overstayed his leave without intimation and was awarded 7 days rigorous imprisonment.

(iii) In 1990 the appellant was detailed to undergo upgrading training course at Goa after which he went on leave and overstayed for which he was punished with 7 days imprisonment in Military Custody.

(iv) In 1991 the appellant was awarded 14 days imprisonment for the same offence. and

(v) In 1993, 28 days imprisonment and 14 days pay fine was awarded to the appellant.

9. Therefore, during the period of nine years, the appellant has undergone five punishment orders. The appellant also did not deny the fact that he was punished on five earlier occasions. He had given Explanation in respect of only one of the said instances, whereas so far as the other punishments are concerned, the appellant has contended in the rejoinder that as a disciplined soldier, he accepted the punishments. It is also admitted that Rule 13(iii)(v) entitles and empowers the competent authority to issue an order of discharge, when continuation of service is considered to be undesirable.

10. In the present case, action is being taken against the appellant by discharging him from service not because of the aforesaid offences where he had already been punished, but because he has been punished more than five times, which gives rise to a case empowering and entitling the competent authority to take action for discharging an army personnel by invoking the provisions of Army Rule 13(iii)(v).

11. In our considered opinion, the provisions of Article 20(2) of the Constitution of India are not applicable at all as the proceedings are not criminal proceedings. See : *Maqbool Hussain Vs. The State of Bombay*, as also referred in *Director of Enforcement Vs. M/s. MCTM. Corporation Pvt. Ltd. and others*, . On going through the records, we also find that the Rule 13(iii)(v) empowers the competent authority to discharge an army personnel who is unsuitable to be

retained because of his conduct in committing successive offences and thereby rendering himself an undesirable person to be retained in service. There were recurring instances when the appellant overstayed after expiry of leave period and Therefore, authorities have passed an order under Rule 13(iii)(v) that it is undesirable that the appellant should be retained in service in a disciplined force. In Union of India and others Vs. Corporal A.K. Bakshi and another, and also in WP(C) 6577/2002 titled Ex. Constable Akhilesh Kumar v. The Director General BSF and Ors. decided on 21st March, 2006, a similar provision as in the present one came to be interpreted. In Corporal A.K. Bakshi's case (supra), Rule 15(2)(g) (ii), which is similar to Rule 13(iii)(v) was interpreted by the Supreme Court. In the said decision, while considering Rule 15(2)(g)(ii) relating to habitual absence without leave and Rule 18, which provides for removal by way of punishment, it was held that the policy for discharge envisaged in case of a habitual offender having incurred six punishments is different from an action by way of punishment for misconduct. In paragraph 10 of the said decision, the Supreme Court has held thus:

10. ...The punishments referred to in the Policy for Discharge are punishments that have been imposed for misconduct under the relevant provisions of the Act and the Rules. The Policy for Discharge envisages that in cases where an airman has been awarded such punishments six times, he is to be treated as a habitual offender and action for his discharge from service should be taken against him under Rule 15(2)(g)(ii) of the Rules. This action for discharge is not by way of punishment for the misconducts for which he has already been punished. The basic idea underlying the Policy for Discharge is that recurring nature of punishments for misconduct imposed on an airman renders him unsuitable for further retention in the Air Force. Suitability for retention in the Air Force has to be determined on the basis of record of service. The punishments that have been imposed earlier being part of the record of service have to be taken into consideration for the purpose of deciding whether such person is suitable for retention in the Air Force. The discharge in such circumstances is, Therefore, discharge falling under Rule 15(2)(g)(ii) and it cannot be held to be termination of service by way of punishment for misconduct falling under Rule 18 of the Rules. We are, Therefore, unable to agree with the High Court that termination of services on the basis of the Policy for Discharge does not constitute discharge under Rule 15(2)(g)(ii) but amounts to removal for misconduct under Rule 18 of the Rules.

12. The learned Single Judge has considered at length similar submissions, which were made by the learned Counsel for the appellant as was done before us and on consideration thereof it was held that the impugned order passed by the competent authority does not call for any interference.

13. We find no reason to take a different view than what was taken by the learned Single Judge. We are also of the considered opinion that the decision in Corporal A.K. Bakshi's case (supra), which was passed under Rule 15(2)(g)(ii) of

Air Force Rules, is clearly applicable to the facts and circumstances of the present case. The appellant had overstayed after leave, time and again for which he was punished and, Therefore, in that context it was held that the appellant is not a fit person to be retained in Army Service and, Therefore, undesirable person to be retained. The same under no circumstances can be said to be punishment or stigmatic. Power is vested in the competent authority to weed out unsuitable and undesirable persons from service. The said case cannot be equated with the case of a Government servant in respect of which the decision in Jagdish Mitter (supra) was rendered. In the said case there was an order of discharge in the case of a Government servant and it was held that provisions of Article 311(2) of the Constitution of India would be attracted. There could be no dispute that the aforesaid provision of Article 311 of the Constitution of India is not applicable to Army personnel. They are governed by their own set of Act, rules and regulations. What was meant by mentioning in the order that the appellant was undesirable and unsuitable to be retained in Army Service was that because of constant absence from duties and failure to report in time after sanctioned leave period had expired, he was not found to be a fit person for being retained in service.

14. We are also of the opinion that the recent decision of the Supreme Court in that regard in State of West Bengal and Others Vs. Tapas Roy, is also applicable to the facts of the present case.

15. We find no merit in this appeal, which is dismissed.