

(1998) 10 DEL CK 0005
In the Delhi High Court
Case No : CW.No.3382 of 1991

Saroj Taneja

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 22-10-1998

Acts Referred:

Army Act, 1950 — Section 19
Army Rules, 1954 — Rule 14
Constitution of India, 1950 — Article 226

Citation : (1998) 6 AD 829 : (1999) 77 DLT 233

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Mr. Amit S.Chadha, for the Appellant; Mr. Rakesh Tikku, for the Respondent

Judgement

K. Ramamoorthy, J.—The matter lies in a very narrow compass and the facts of the case could be stated in very short terms.

2. The petitioner in the writ petition, Mr.K.K.Taneja, was presented before the General Court Martial and was dismissed from service. He filed the CW.1253/78 challenging the court martial proceedings. That writ petition was allowed on the 2nd of November, 1987, and ultimately, the judgment of this Court was upheld by the Supreme Court. Later on, a notice u/s 19 of the Army Act, 1950 read with Rule 14 of the Army Rules, 1954 was issued. On the 30th of October, 1991 this Court passed ad interim orders in the following terms:-

"CWP.3382/91

Rule.

CM.5645/91

Notice for 4th of December, 1991.

In the meanwhile, the respondents shall not act on the basis of the impugned

show-cause notice dated 29th of August, 1991.

Dasti, as prayed."

3. The ad interim order was modified in the following terms on the 10th of May, 1993:-

CM.5645/91 in CW.3382/91

The petitioner was court martial led for incidents which took place in the year 1976. The General Court Martial, subject to confirmation, announced the following sentence to be imposed on the petitioner:

A) To forfeit 5 years of service for the purpose of promotion and;

B) To be severally reprimanded.

The sentence was sent for confirmation to Major General Bhardwaj, General Officer Commanding 19 Infantry Division. The said Officer passed an order on 17th November, 1976 directing the General Court Martial to reassemble again for the purpose of reconsidering the sentence awarded by it in the light of the observations made in that order. On 18th November, 1976 revised sentence was passed and the petitioner was directed to be dismissed from service. The sentence was again sent for confirmation. Before the revised sentence was confirmed by the competent authority, the petitioner submitted a petition u/s 164 of the Army Act to the Chief of the Army Staff. The Chief of Army Staff confirmed the sentence passed on the petitioner. The post-confirmation petition of the petitioner was rejected by the Central Government. The court martial proceedings were challenged by the petitioner in CW.1253/78. The Writ Petition was allowed by a learned Single Judge of this Court on 2nd November, 1987, inter alia, holding that the order passed by the Major General Bhardwaj on 17th November, 1976 was without jurisdiction. Since the order was passed by an officer not competent to do so, the subsequent revision of the sentence by the court martial in pursuance of the directions given by Major General Bhardwaj was also held to be irregular and invalid. The Union of India unsuccessfully challenged the decision dated 2nd November, 1987 in Appeal and in SLP before the Supreme Court.

After the dismissal of the SLP a show cause notice dated 29th August, 1991 was issued by respondents in exercise of power u/s 19 of the Army Act read with Army Rule 14. The show cause notice, inter alia, states that the Chief of Army Staff is satisfied that the misconduct of the petitioner of using criminal force to a woman intending to outrage her modesty, contrary to Section 154 of Indian Penal Code renders further retention of petitioner in service undesirable. It also states that since the petitioner has already been tried by court martial, the proceedings of which were later quashed by the Delhi High Court, on technical grounds, and the misconduct of the petitioner having become time barred in terms of Section 122 of the Army Act, the further trial by another court martial is both inexpedient and impracticable under the Army Act. Under the Directions of

the Chief of Army Staff, the petitioner was called upon to show case as to why his service should not be terminated by the Central Government under the provisions of Section 19, Army Act read with Army Rule 14. The show cause notice has been challenged in the writ petition. As interim relief by this application, the petitioner seeks stay of the operation of the show cause notice.

By an ex parte order made on CM.5645/91 on 30th October, 1991, it has been directed that the respondents shall not act on the basis of the impugned show cause notice dated 29th August, 1991. This application has come up after notice to the respondents. I have heard learned counsel for the parties. Opposing the application, learned counsel for the respondents strongly relies on a decision of the Supreme Court in Chief of Army Staff and Others Vs. Major Dharam Pal Kukrety (1985) SC Cas Pag 412, holding, under some what similar circumstances, that the action of the Chief of Army Staff in issuing notice under Army Rule 14 was neither without jurisdiction nor unwarranted in law. The question for the present is should the validity of impugned notice be adjudicated at this stage or should the respondents be permitted to proceed further pursuant to the notice and the question of the validity of the notice be left open to be adjudicated upon at a later stage if it becomes necessary. In my opinion at this stage, it is not necessary to adjudicate upon the validity of the show cause notice as the possibility of the respondents accepting the version of the petitioner, on consideration of his reply to show cause, cannot be ruled out. The respondents have not been able to proceed further on the basis of the show cause notice in view of the ex-parte order of stay granted on 30th October, 1991, which is continuing since then. I am informed by counsel for the respondents that the petitioner would even retire within about four years. It may also be noticed that the Supreme Court in the aforesaid decision after noticing that the alleged incident, in respect of which the officer was tried, took place nearly 10 years ago, observed that the Chief of Army Staff should take into account the conduct and behavior of the officer during the intervening period and if they have been in conformity with good order and military discipline and the high traditions of the Indian Army, he may consider the desirability of proceedings further in the matter. Having regard to the aforesaid facts and circumstances, the appropriate course would be to permit the respondents to take a decision on the show cause notice.

Consequently the petitioner is granted opportunity to file reply to show cause notice within a period of four weeks of the communication of this order by the respondents to him. The respondents shall, thereafter, decide the matter in accordance with law. In case, however, the decision which may be arrived at by the respondents is adverse to the petitioner, the same will not be implemented except after obtaining further orders from this court. Since the alleged incident in respect of which petitioner was court martial led took place in 1976 the Chief of the Army Staff should take into account factors noticed in Para 18 of the aforesaid decision of the Supreme Court. The order dated 30th October, 1991 is accordingly modified in the above terms. The application is disposed of. A copy of

the order may be given dusty to counsel for the parties."

4. As per the order passed by this Court on the 10th of May, 1993, the respondents filed the CM.7845/97 praying for the following relief?s:-

"In view of the above circumstances the respondents most humbly pray as follows:-

(a) that the Hon"ble Court may be pleased to modify the order dated 10.5.1993 allowing the respondents to implement their order dated 10.6.1994."

5. In the writ petition, the petitioner had challenged the jurisdiction of the Chief of the Army Staff to issue a show-cause notice. The show-cause notice reads as under:-

"Whereas, during May 1976, you were posted to 21 RAJPUT when the unit was moving from Gwalior to Bari Brahmna by a military special train and you were traveling in the same train along with other officers.

Whereas, Maj Hardial Singh, Second-in-Command of the same unit was also traveling by the same train along with his family.

Whereas, at about 2300 hrs on 07 May 76, while the train was at Tughlakabad Railway Station, you used criminal force to Mrs Yashpal Kaur wife of Maj Hardial Singh intending to outrage her modesty.

Whereas, you were tried by a GCM for an offence under Army Act Sec 69 for committing a civil offence, that is to say using criminal force to a woman intending to outrage her modesty, contrary to Section 354 of Indian Penal Code.

Whereas, you were found guilty of the charge by the GCM and sentenced to forfeit 5 years service for the purpose of promotion and to be severely reprimanded.

Whereas, the GOC 19 Inf Div ordered a revision on 18 Nov 76 and on revision the court sentenced you to be dismissed from service.

Whereas the above proceedings and sentence passed by the GCM on revision were confirmed by the then COAS on 28 Feb 77 and promulgated to you on 16 Mar 77.

Whereas, your post-confirmation petition addressed to the Central Government was also rejected on 21 Nov 77 by the competent authority.

Whereas, you filed a CWP No.1253/78 in the High Court of Delhi against the proceedings and sentence passed by the GCM on revision, which quashed the proceedings and sentence on 02 Nov 87 on technical grounds that GOC 19 Inf Div was not empowered to order revision of GCM as Government notification empowering him to perform the functions under AA Sec 154 could not be produced before the Hon"ble Court at that point of time.

Whereas, consequent to the above directions of the Hon"ble High Court of Delhi, you were reinstated in service w.e.f. 16 Mar 77.

Now, the Chief of Army Staff is satisfied that your above misconduct of using criminal force to a woman intending to outrage her modesty, contrary to Section 354 of Indian Penal Code renders your further retention in service undesirable. Since you have already been tried by a court martial the proceedings of which were later quashed by the Delhi High Court, on technical grounds, and your above misconduct having become time barred in terms of AA Sec 122, your further trial by another Court Martial is both inexpedient and impracticable under the Army Act.

Now, under the directions of the COAS and on his behalf you are hereby called upon to show cause as to why your service should not be terminated by the Central Government under the provisions of AA Sec 19 read with AR 14. You may submit your reply to this show cause notice direct to this HQ with copy to HQ Eastern Command failing which it will be presumed that you have nothing to urge against the contemplated action.

Since all relevant documents i.e. Summary of Evidence inchoate GCM Proceedings have already been made available to you during 1976 for preparing your defense, no further documents are now being made available to you.

This show cause notice is required to be acknowledged"

6. The matter is covered by the judgment of the Supreme Court in Major Radha Krishan Vs. Union of India and Others, , in which the Supreme Court held:

"The purport of the above Rule can be best understood by way of an illustration. The Chief of the Army Staff receives a report which reveals that an Army Officer has treacherously communicated intelligence to the enemy _ an offence punishable u/s 34 of the Act. He however finds that to successfully prosecute the officer it will be necessary to examine some witnesses, ensuring presence of whom will not be feasible and exhibit some documents, disclosure of which will not be advisable in the interest of the security of the State. In such an eventuality he may legitimately invoke the Rule to dispense with the trial on the grounds that it would be impracticable and/or inexpedient. But to dispense with a trial on a satisfaction dehors the misconduct like the bar of limitation in the present case _ will be wholly alien to Rule 14(2)."

7. In the light of the law laid down by the Supreme Court, the show cause notice issued by the respondent No.2, the Chief of the Army Staff, cannot be sustained. The same is hereby quashed.

8. In view of the quashing of show-cause notice, the order of dismissal passed by the respondents on the strength of the order passed by this Court on the 10th of May, 1993 becomes non est in law.

9. The petitioner, Major K.K.Taneja, expired on the 25th of February, 1997. The

widow of the petitioner has come on record as his legal representative. In view of the fact that the show-cause notice is quashed, there is no need to pass any order in CM.7845/95. The petitioner shall be entitled to all the consequential reliefs and the widow, who had come on record, shall be entitled to all the reliefs as per rules.

10. There shall be no order as to costs.