

(2000) 04 DEL CK 0037
In the Delhi High Court
Case No : CWP. No. 2423 of 1998

Sh. Karan Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 20-04-2000

Acts Referred:

Army Act, 1950 — Section 20(3)
Army Rules, 1954 — Rule 17
Penal Code, 1860 (IPC) — Section 323, 376

Citation : (2000) 4 AD 831 : (2000) 86 DLT 199 : (2000) 54 DRJ 719

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Ms. Anupama Chandna, for the Appellant; Mr. Sachin Datta
Advocate, for the Respondent

Judgement

A.K. Sikri, J.—Rule.

Petitioner was working with Army. On 24.8.1994 he was arrested for allegedly committing offence u/s 376 of IPC and handed over to civil police by the unit authorities where he was posted, for investigation and trial. Case under sections 376/323 of IPC was registered against him and challan was filed before ADJ, Delhi. After the trial, petitioner was held guilty of the offence and by judgment and sentence order dated 19.11.1996, he was sentenced for 5 years rigorous imprisonment and also fined Rs.10,000/-. Petitioner filed appeal against the aforesaid conviction before this Court and the appeal was admitted and sentence was suspended by order dated 25.3.1997. Petitioner was released on bail.

2. Based on the conviction by the criminal Court, petitioner was dismissed from service by order dated 15.4.1997 under the provisions of para 423 of Regulation for Army and section 20(3) of the Army Act read with Rule 17 of the Army Rules. Petitioner has filed this writ petition in which following reliefs are claimed :

"(1) Quash the order dated 15.1.1998 dismissing the petitioner from the force and directing him to collect his discharge certificate.

(2) Direct the respondents to pay subsistence allowance of 50% from 24.8.1994 and 75% from 24.11.1994 till the disposal of the appeal.

(3) Direct reinstatement in service with all consequential benefits i.e. full pay and allowances etc.

(4) Any other relief which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

3. Dismissal order is challenged on the ground that the appeal of the petitioner against order of conviction have not been heard and petitioner have not been released on bail after suspending the sentence, no order of dismissal should have been passed on the basis of such conviction. This argument has no force and the matter is squarely covered by the judgment of Supreme Court in the case of Deputy Director of Collegiate Education (Administration), Madras Vs. S. Nagoor Meera, . Following portion of the judgment may usefully be referred to :

"We are, Therefore, of the opinion that taking proceedings for and passing orders of dismissal, removal or reduction in rank of a government servant who has been convicted by a criminal court is not barred merely because the sentence or order is suspended by the appellate court or on the ground that the said government servant-accused has been released on bail pending the appeal.

What is really relevant thus is the conduct of the government servant which has led to his conviction on a criminal charge. Now, in this case, the respondent has been found guilty of corruption by a criminal court. Until the said conviction is set aside by the appellate or other higher court, it may not be advisable to retain such person in service. As stated, above, if he succeeds in appeal or other proceedings, the matter can always be reviewed in such a manner that he suffers no prejudice."

4. Moreover provisions of para 423 of the Army Regulations, Section 20(3) of Army Act and Rule 17 of Army Rules are also clear to this effect. As per these provisions, the concerned official can be dismissed or removed from service without even show cause notice if such dismissal is on the ground of misconduct for which the person has already been convicted by Criminal Court or Court Martial. Extract of note 1 to Army Rules, 1954 reads as under:

"A show cause notice is required to be given under this rule to the individual whose dismissal or removal from service is contemplated, except when the authority competent to order such dismissal or removal consider it expedient or impracticable to give such notice as stipulated in the proviso to the rule.

Show cause notice will not be necessary when the dismissal or removal is sought on the grounds of misconduct for which the person has already been convicted by a criminal court of court-martial."

5. Further provisions contained in para 423 of Regulations for the Army (Revised Edition), the disciplinary authority may, if it comes to the conclusion that an

order with a view to imposing a penalty on a Government servant on the ground of conduct which had led to his conviction on a criminal charge should be issued, issue such an order without waiting for the period of filing an appeal or, if an appeal has been filed without waiting for the decision in the first court of appeal. Therefore respondents were within their right to take action and pass impugned order without waiting for decision in the appeal filed by the petitioner.

6. The impugned order dated 15.1.1998 is Therefore valid and proper and the petitioner cannot be granted relief of reinstatement.

7. As far as relief claiming payment of subsistence allowances of 50 per cent from 24.8.1994 and 75 per cent from 29.11.1994 till the disposal of appeal is concerned, the same is also without any merit. Petitioner was not suspended from service pending criminal trial and Therefore the question of payment of subsistence allowances at the rate of 50 per cent from 24.8.1994 i.e. when he was arrested does not arise. In fact how this period is to be treated is stipulated in Section 90 of the Army Act as per which no pay and allowances are to be paid to the official who is under arrest. This relief, Therefore, also cannot be granted to the petitioner.

8. It was lastly submitted by counsel for the petitioner that subsistence allowances at the rate of Rs.200/- should be paid to the family/dependent parents as per the provisions of Rule 203 of Pay and Allowances Regulations of the Army. This Rule reads as under:

"203: A subsistence allowance of Rs. 200/- will be paid to the family/dependent parents of every married or unmarried OR/NCs(E) and recruit, respectively, when he is undergoing imprisonment (including detention involving forfeiture/stoppage of pay and allowances in military custody or military prison without sentence of dismissal. In the case of unmarried personnel, the payment will be subject to furnishing proof by the individual concerned to the effect that he had been maintaining his parents either through family allotment or by making remittance through money order/bank draft."

9. The aforesaid Rule has no application in the case of the petitioner. This Rule would not apply in those cases where the army official is imprisoned but there is no sentence of dismissal. Therefore it would apply in those cases where as a result of some criminal case or court martial, the concerned official is convicted and is undergoing imprisonment without sentence of dismissal having been imposed. In the instant case, on the basis of conviction by the criminal court, petitioner has been dismissed from service.

This writ petition accordingly fails and is Therefore dismissed. Rule stands discharged.

10. No order as to costs.