

(1992) 07 AHC CK 0071

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 33687 of 1990

Shiv Kumar Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 29-07-1992

Acts Referred:

Army Act, 1950 — Section 22
Army Rules, 1954 — Rule 13(3), 169
Constitution of India, 1950 — Article 14, 226, 33
Penal Code, 1860 (IPC) — Section 147, 323, 324, 325

Citation : (1992) 4 AWC 429 Supp

Hon'ble Judges : R.B. Mehrotra, J

Bench : Single Bench

Advocate : Indra Raj Singh, for the Appellant;

Final Decision : Dismissed

Judgement

R.B. Mehrotra, J.—Petitioner was enrolled in the Indian Army through B.R.O. Varanasi on 2-3 -- 1988 and thereafter the Petitioner completed six months basic training and subsequently also completed trade training success-fully. By an order, dated 28-6-1990. the Petitioner was discharged from service. The exact order of discharge as passed against the Petitioner is given below :

Discharge Certificate in accordance with the EME records office Instructions no. 4/49 in Respect of No. 14610655 N RECT/VM (MV) Shivkumar Singh.

Discharged in consequence of "Service no longer required" under IV of the table below Army Rule 13 of 1954, after having served for 2 years and 116 days with the colours and NIL years NIL days in reserve.

Sd. Jagdish Singh Col. Co 607 EME Eg. 28 June, 1990

2. The Petitioner has challenged the aforesaid order by means of the present writ petition under Article 226 of the constitution of India, mainly contending that the said order has been passed without giving any opportunity of hearing or show

cause to the Petitioner. The order is in violation of the principles of natural justice and order does not conform with the requirement of rule 169(e) of the Army Rules.

3. A counter affidavit has been filed on behalf of the Respondents wherein it has been stated that the Petitioner has given a false information regarding his civil life. There was Criminal case no. 130-A of 1984, u/s 147, 323, 324 and 325 IPC pending against the Petitioner in the Court of the Addl. District Magistrate, Mohammedabad. This fact was concealed by the Petitioner at the time of his enrolment. The fact has come to the light only when the police verification was officially received in the Centre. The police verification states that the aforesaid case is still pending in the Court. It is further stated in the counter affidavit that the Petitioner has given a false answer to a question (J) in the prescribed form of verification. The question was in the following form :

Is any case pending against you in any Court of law at the time of filling up this verification roll ?

The Petitioner answered "NO" to the said question, thereby the Petitioner gave a false statement for his enrolment as a soldier and on the aforesaid basis, the Petitioner has been discharged in accordance with the Rules.

4. It is not disputed that the Petitioner has been discharged under rule 13(3) IV of the Army Rules which is reproduced below for convenient reference :

Category

Grounds of Discharge.

Competent authority to authorise discharge.

Manner of discharge

Persons enrolled under the Act but no attested.

IV All Classes of discharge.

Commanding Officer or an Officer commanding a Recruit Reception Camp or a Recruiting Technical Recruiting Deputy Recruiting or Deputy Technical Recruiting Officer.

In the case of persons requesting to discharge before fulfilling the conditions of their enrolment, the commanding officer, will exercise this power only where he is satisfied as to the desirability of sanctioning the application and that the strength of the unit will not thereby be unduly reduced. Recruits who are considered unlikely to become efficient soldiers will be dealt with under this item.

Rule 169(e) of the Army Rules provides --

(e) In cases where an individual -is discharged under items III (V) and IV of the table annexed to Army Rule 13 the particular cause of discharge e.g. irregular

enrolment OP unlikely to become an efficient soldier, will be clearly stated in the discharge certificate.

5. In support of his contention, the Petitioner has mainly relied upon a Division Bench decision of this Court in Civil Misc. Writ petition no. 11551 of 1989. Sri Chaukas Ram v. Sub Area Commander Allahabad and others, decided on 24-5-1990, wherein the Division Bench of this Court has considered the Army rule 13(3) III (v) in respect of Army personnel enrolled under the Act who have been attested. The said rule clearly provided that the personnel whose discharge is contemplated shall be given an opportunity to show cause against the contemplated discharge if the circumstances of the case so permit. There the Division Bench took the view that it is the requirement of the rule itself that an opportunity to show cause should be given. However, the Division Bench also took the view in the said case that rules of natural justice also require that an opportunity should be given against the proposed action and person concerned must know from the notice of the action to be taken against him. The counsel for the Petitioner has contended that in the present case, the Petitioner has been discharged without affording any opportunity to show cause, as such the order has been passed in violation of the principles of natural justice also besides being not in conformity with the requirement of rule 169(e) of the Army rules.

6. Section 22 of the Army Act provides that "any person subject to this Act may be retired, released or discharged from the service by such authority and in such manner as may be prescribed." Rule 13(3) (iv) applicable to the Petitioner being an unattested Army recruit, does not require giving of any opportunity of hearing or show cause before the order or discharge is passed whereas in the case where recruit's enrolment has been attested, the Rule requires such an opportunity to be given. The aforesaid two provisions clearly make out that while framing Army rules, the opportunity of hearing or show cause has been specifically denied in the case of discharge of an unattested recruit. Article 33 of the constitution of India provides that Parliament may by law determine to what extent any of the rights conferred by this part shall, in their application to the members of the Armed Forces be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them. The said Article clearly gives power to the parliament to abrogate any of the fundamental rights in respect of the members of the Armed Forces. Principles of natural justice has been held to be facet of Article 14 of the Constitution of India and on the aforesaid basis it has been held that any order passed in violation of natural justice is an order passed in violation of Article 14 of the Constitution of India. Article 33 confers powers on the Parliament to make law in respect of Armed forces to abrogate any of the Articles contemplated by chapter of fundamental rights.

7. In the present case, the Parliament was competent to abrogate Article 14 of the constitution of India in respect of members of Armed forces by providing it by law. The Army rules are part of the law made by the Parliament. The relevant

rule 13(3) IV in respect of unattested recruits abrogated the right of opportunity from discharging a personnel from service. In this view of the matter, the action of the Respondents cannot be held to be illegal on the ground that the said action was in violation of the principles of natural justice.

8. So far as the order having been passed being not in conformity with rule 169(e) of the Army Rules, mere not mentioning of the words that the Petitioner's appointment has been found to be irregular is not fatal as in the counter affidavit detailed reasons have been given for reaching to the conclusion that the Petitioner has furnished false information for his enrolment. I am of the view that non-compliance of the requirement of rule 169(e) is not fatal for discharge of a personnel if sufficient explanation for the same has been furnished in the counter affidavit. In the present case, the counter affidavit furnishes sufficient details on the basis of which the Petitioner has been discharged. In the rejoinder affidavit, the Petitioner admits that the said criminal case is pending against the Petitioner but only says that the case is false one and the Petitioner has been exempted from personal appearance in the said case. In the rejoinder affidavit the Petitioner also says that he has signed the form wherein the required question was put to him but he has not filled the form. It is clear from the facts of the case that the Petitioner has wilfully furnished a false information for his enrolment in the Army and on coming to know of the said false information, the Petitioner has been discharged from service. No case for interference has been made out by the Petitioner in exercise of jurisdiction under Article 226 of the Constitution of India.

9. The writ petition accordingly fails and is dismissed. Parties will bear their own costs.