
(1994) 01 RAJ CK 0028
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1360 of 1992

S.K. Chaterji

APPELLANT

Vs

The Union of India (UOI)

RESPONDENT

Date of Decision : 27-01-1994

Acts Referred:

Army Act, 1950 — Section 113, 117, 122, 19, 21
Constitution of India, 1950 — Article 14, 19, 226, 311, 33
Penal Code, 1860 (IPC) — Section 161
Prevention of Corruption Act, 1988 — Section 5

Citation : (1994) 2 WLC 54 : (1994) 1 WLN 100

Hon'ble Judges : Jasraj Chopra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Jasraj Chopra, J.—By this writ petition filed under Article 226 of the Constitution of India, the petitioner Major S.K. Chaterji has prayed for the following reliefs:

(a) that a writ in the nature of mandamus or directions or order may kindly be issued while asking the respondents not to proceed with the operation and execution of their order of dismissal from service in respect of the petitioner;

(b) that the respondents may kindly be directed to withdraw their show cause Notice No. B/03786/AG/DV-2(A) dated 5.9.1990;.

that the petitioner be allowed to avail of all consequential benefits as here-to-fore such as leave including furlough leave, pay and allowances, Govt. accommodation etc. as admissible under normal rules, without imposing any restrictions on account of the order of dismissal;

(c) that the petitioner be allowed to proceed on retirement on; superannuation with full pensionary benefits and Gratuity as applicable, as ordered vide Army Headquarter Military Secretary Branch Order No. 38183/Apr 92/Sigs/dt. 30.5.91, without causing any hinderance;

(e) that the petitioner be allowed to serve till 30.4.1992 i.e. till attaining the age of superannuation and derive all consequential benefits therefrom as applicable here-to-fore, this notwithstanding the relief that may later accrue from the petitioner's writ Petition No. 2031 of 1987, regarding restoration of rank of Lt. Col.; and

(f) that the petitioner may kindly be given any other relief which may be deemed just and proper and in the facts and circumstances of the present case.

2. The facts necessary to be noticed, for the disposal of this writ petition briefly stated are: that the petitioner was given a Commission in the Army as 2nd Lieutenant on 30.6.1963 and in due course, he was promoted to the ranks of Lieutenant, Captain, Major and Lieutenant Colonel. He was promoted as a selection grade acting Lt.Col. in October, 1980 and during his service, he has held two prized Instructional Appointments" and has also Commanded a Signal Regiment as Commanding Officer (Lt.Co..) successfully.

3. However, on 4.3.1985, he was attached for investigation of a charge of disobedience levelled by his previous superior Officer and adversary out of malice, in terms of Army Instructions 106 of 1960 and. consequently, he was ordered to relinquish the Acting Rank of Lt.Col. after expiry of 90 mandatory days of "Attachment" in terms of Army Instructions 1/S/74, despite the fact that the Court of Inquiry had absolved the petitioner of the said charge of disobedience.

4. It is alleged that the same superior Officer and adversary of the petitioner, in collusion with some others, got a case No. RC 2/85 registered u/s 161 IPC read with Section 5(2) and Section 5(1)(d) of the Prevention of Corruption Act with the C.B.I., Jaipur against the petitioner, out of pure malice. After thorough investigations, the CBI found no substance in the FIR lodged against the petitioner and absolved him in case No. RC 2/85 vide discharge Order Ex.P.1 dated 28.8.1986.

5. It is further alleged that having failed to penalise the petitioner by initiating enquiries on the false charges of disobedience and then of corruption as stated above, some of his erstwhile superiors out of pure malice, once again levelled 10 fabricated charges against him and got him "Attached" to 6 Field Ordnance Depot C/o 56 APO, in terms of Army Instruction 106 of 1960 for investigation and the petitioner reported on this 2nd Attachment on 3.1.1986. A Summary of evidence in terms of Rule 23 of the Army Rules was recorded on the above-referred 10 charges against the petitioner, between 13.2.1986 to 5.11.1986 and on conclusion of the same, it was found that SEVEN out of TEN charges were completely untenable and only THREE charges allegedly had some prima facie grounds. The petitioner was warned for a trial by a General Court Martial (GCM) to be convened on 28.9.1987 on three charges levelled earlier and two fresh charges subsequently added on which no preliminary investigation in terms of Rules 22 and 23 of the Army Rules was conducted, although it was essential. The

trial scheduled to commence on 28.9.1987 did not commence owing to issuance of a faulty charge sheet and a fresh chargesheet was given on 4.10.1987. However, the actual trial commenced on 9.10.1987 i.e. after more than two years from the date of alleged offence and almost one year after finalisation of the summary of evidence. This factor ultimately contributed a great deal towards a retrial becoming time barred after expiration of the period of 3 years from the date of offence, in terms of Section 122(1) of the Army Act.

6. Even after the GCM was convened and some business transacted, the trial was once again suspended and the Court adjourned from 13.11.1987 to 17.12.1987 on various pleas. Thus a loss of time of 1 month and 4 days took place, even after the trial had commenced on most avoidable grounds and not everything possible was done by the authorities concerned to avoid this loss of time, which ultimately contributed towards a retrial become time-barred.

7. It was submitted that the GCM convened against the petitioner in terms of Headquarters 61(Indp.) Sub area C/o 56 APO letter No. 2008/ALW/2/A/dated 17.6.1987 as amended, and conducted at Jodhpur, did not take the precautionary step of detailing Members of the Court at least one more than the legal minimum of 5 Officers, so that during the trial even if one Member is incapacitated owing to some reason, the Court's strength did not fall below the legal minimum of 5, whereupon the Court's proceedings become void in terms of Section 113 of the Army Act. It is alleged that on 12.8.1988, one member of the GCM viz. Lt.Col. Vikram Deuskar expired and consequently, the said GCM had to be dissolved in terms of Sections 113 and 117(1) of the Army Act read with Note to Rule 38 of the Army Rules.

8. It was further submitted that after the dissolution of the GCM, over which the petitioner had no control, fresh GCM was not convened as provided by Section 117(4) of the Army Act, although 2 months and 18 days still remained in the expiry of three years. According to the petitioner, the third charge was dated 30.10.1985 whereas the first and second charges were alleged to have been committed on 14.8.1985 and 28.10.1985. The fourth and fifth charges were dated 24.8.1985 and 14.8.1985 respectively. It was submitted that Section 117(4) of the Army Act provides that where a Court Martial is dissolved under this section, the accused may be tried again. However, no retrial took place.

9. It was however, averred by the petitioner that on 4.10.1990, a show cause notice bearing letter No. B/03786/AG/DV- 2(A) dated 5.9.1990 was served upon him by the Army Headquarters, u/s 19 of the Army Act read with Rule 14 of the Army Rules calling upon him to show cause within 30 days of the receipt of that notice, as to why his services should not be terminated on account of alleged misconducts, referred therein.

10. In the show cause notice (Ex.P.2), two types of misconduct have been alleged against the petitioner. Firstly, it was alleged that he is chargeable for the offence u/s 161 IPC read with Section 5(2) and 5(1)(d) of the Prevention of

Corruption Act. The second misconduct alleged against the petitioner is with regard to two charges under Army Act, for which, he was arraigned by a General Court Martial.

11. The contention of the petitioner is that while issuing show cause notice, compliance of Rule 14(2) of the Army Rules has not been made. According to him, show cause notice should be served upon the officer together with all reports adverse to him. It was submitted that no such adverse material has been supplied to him despite repeated representations. Even the respondents have failed to get his 13 files released from the CBI which were seized from him. In these circumstances, he could not file any reply to the show cause notice. Thereafter, he was threatened with exparte decision. He has submitted that the later events show that without giving him a chance to make a proper reply, the order of dismissal from service has been passed against the petitioner. The petitioner has referred to certain representations made by him seeking copies of adverse material/reports against him and has further requested that 13 of his personal files seized by the CBI may kindly be got released. However, vide his representation Ex.P.10 dated 15.1.1991, the petitioner has pointed out that if any exparte decision would be taken against him, that would be highly unfair, illegal, discriminatory and against the process of law. It was, thereafter, that he was informed vide letter HQ 61(I) Sub Area letter No. 2012/2/AI dated 16.4.1991 that subject to certain conditions, CBI Jaipur had agreed to give the copies of documents etc. to him. However, the petitioner was unable to obtain the said documents or personal files from the CBI and accordingly represented the matter once again vide letter No. I5372/PC/20/SCN dt. 7.8.1991. No reply whatsoever was given to him. However, an exparte decision has been taken by the authorities to dismiss him from service as is apparent from paras 2 to 19 of infantry Divisional Singhal Regime letter (Ex.P.13) dated 22.2.1992.

12. It has been contended that the above dismissal has been ordered on the basis of same allegations/complaints, on which the CBI had found no substance after thorough and meticulous investigations and had accordingly issued discharge Order (ExP.1) dated 28.8.1986, where by the petitioner has been absolved from all the charges which were accepted by the Special Judge. CBI Court, Jaipur while taking cognizance of the offence against one Shri Bhanwari singh Shekhawat named by the CBI.

13. It has been further contended that the contention of the respondents that the trial of the petitioner on the charges relating to acceptance of illegal gratification became time barred by the time, the case was handed over by the CBI, seems to be ill founded and divorced from the facts since there could, in fact, be no occasion for a trial when the CBI had clearly stated that no charges could be made out against the petitioner from the evidence available with them. Thus, this ground is being deliberately created by the Army authorities so as to bring the case within the ambit of Section 19 of the Army Act and Rule 14 of the Army Rules.

14. According to the petitioner, as regards the other charges levelled against him regarding disobeying a lawful command and absenting himself without leave were at no stage investigated and the summary of evidence conducted for the purpose did not record any evidence pertaining to the 2nd and 3rd charge. The investigation was carried out only in respect of three charges i.e. 1st, 4th and 5th charge contained in the chargesheet dated 2.10.1987. Thus, the petitioner was neither given a chance to hear the evidence against him on charges No. 2 and 3 nor was procedure outlined in Rules 22 to 25 of the Army Rules the compliance of which is mandatory before any trial, ever followed. In these circumstances, the Central Govt. or the Chief of Army Staff had no occasion and no material to go through on these charges before deciding to issue the *ibid* show cause notice.

15. The petitioner has submitted that everything possible was not done by the authorities at various stages and, therefore the GCM was delayed and later on, it was dissolved and after its dissolution, it was not re-convened. In these circumstances, the petitioner has submitted that the dismissal order is illegal, arbitrary and it smacks of malice on the part of the authorities and hence, it is liable to be quashed. He has submitted that he has had an exemplary record of service, having held two special instructional appointments reserved for specially selected Officer, was selected by a Full Selection Board headed by a Major General to hold the Selection Grade rank of Lt.Col. and has commanded a Signal Regiment in the rank of Lt. Col., apart from other challenging appointments and came into shadow only because he dared to unearth a racket of leakage of question papers meant for recruitment tests in 1985 and lodged complaint of dishonesty against his powerful superiors, who refused to properly investigate such cases of leakage due to vested interest. He has further submitted that he has already been financially, mentally and socially penalized by making him relinquish the acting rank of Lt.Col. not because any charge has been proved against him but because he was attached for investigations, for more than 3 months. According to him, a deep malice is also borne against him as he has dared to challenge the relinquishment of rank in a separate writ petition before this Court. He has submitted that he has been penalised indirectly owing to relinquishment of rank of Lt. Col. because as Major he is attaining the age of superannuation (50 years) on 30.4.1992 two years earlier than that applicable to a Lt. Col. (52 years). In fact, the orders for his retirement have already been issued vide Army Head Quarters, Military Secretary Branch letter No. 38138/ Apr.92/Sigs dated 30.5.1991 and he is due to be retired on 30.4.1992. Thus, if the dismissal order Ex.P.13 is given effect to, the petitioner and his family will be extremely hard-hit by depriving them of the fruits of his 30 years of service in the Army by way of Pension and Gratuity etc. just because the respondents have taken an arbitrate, exparate decision to dismiss him barely 11/2 months before he is due to retire. In these circumstances, he has prayed that his dismissal order be quashed.

16. A return has been filed on behalf of the respondents, in which, it has been

contended that no particular Officer has been named by the petitioner, who has nurtured malice against the petitioner and no definite allegations of malafides have been levelled. According to the respondents, initially the tentative charges were framed. However, after recording of summary of evidence, the final charges were framed on the prima facie evidence brought on record. It was submitted that the provisions of the Army Act and the Army Rules have been properly complied with and the GCM was dissolved on account of the death of one of its members. It was further submitted that the delay was occasioned on account of the fact that the petitioner has set up 116 defence witnesses without showing any linkage. Besides this, he gave the names of very senior Officers as his defending Officer. Moreover, he filed a writ petition in which it was prayed that the Court-Martial be adjourned till the final decision of the writ petition and that prayer was accepted by this Court and the Court-Martial was accordingly adjourned sine- die in view of the stay order passed by this Court.

17. According to the respondents, Section 113 of the Army Act only provides that a General Court Martial would consist of not less than five Officers and accordingly, the General Court Martial was constituted with five members and so, the constitution of GCM was totally valid. It was further submitted that one of the Members of the Court Martial viz, Lt.Col. Vikaram Deuskar expired on 12.8.1988 and information about his death was received by the authorities for the first time on 27.3.1989 and by that time, all the charges had become time barred and a second GCM could not be convened. However, looking to the gravity of the charges, it was deemed proper that action should be taken against the petitioner u/s 19 of the Army Act read with Rule 14 of the Army Rules and accordingly, the show cause notice Ex.P.2 dated 5.9.1990 was issued.

18. It was further submitted that the petitioner was given adequate opportunity to cross-examine the witnesses during investigation by the CBI and he had excess to all the documents and was given adequate chances before levelling any charge and therefore, his request to supply all documents was untenable. It was also submitted that the discretion of providing any material or report seized by the CBI and held by them lies with the CBI. The Army authorities have no jurisdiction over the CBI and thus, they could not be held responsible for procuring any documents or any information which was available with the CBI. The responsibility of getting the personal files released from the CBI solely rested with the Officer from whom the files were directly taken by the CBI without intervention of the Army authorities.

19. The contention of the respondents is that sufficient time was given to the petitioner to furnish a reply to the show cause notice but he failed to do so. Rather, he avoided to file any reply and, therefore, decision to terminate his services was taken much later in January 1992. The petitioner has been given a copy of summary of evidence which contained all the evidence, the statements of the witnesses who deposed against him alongwith the cross-examination, if done by the petitioner. The complete recorded evidence was handed over to him.

20. It was further contended that the services of the petitioner were terminated due to two separate sets of offences: firstly his involvement in the CBI case and secondly for the offences for which he was tried by the GCM, which, was subsequently dissolved. As regards the first offence, i.e. the CBI case, it was submitted that there is one other case bearing number RC 36/85, which is pending with the CBI against the petitioner for having accumulated assets disproportionate to his income. It is wrong to say that the petitioner has been exonerated by the CBI. The CBI vide its letter No. I037/3/2/85/JPR/SK IV dated 6.3.1989 has informed the Army authorities that there was sufficient evidence for taking administrative action against the petitioner, although he is not being chargesheeted for the offence u/s 161 IPC read with Section 5(2) and 5(1-D) of the Prevention of Corruption Act before the CBI Court.

21. The respondents have reiterated that the petitioner was in possession of all the necessary documents and therefore, he could have filed his reply to show cause notice but he has failed to do so and, therefore, the Army authorities were perfectly justified in passing the aforesaid order of dismissal from service.

22. A rejoinder to the reply to the writ petition has been filed on behalf of the petitioner, in which, almost the submissions made in the writ petition have been reiterated. However, some additional submissions have been made as regards the futility of the charges. According to the petitioners about two charges, which do not pertain to CBI enquiry i.e. disobeying lawful command u/s 41(2) and absenting without leave user Section 39(a) of the Army Act, respondents have completely ignored the fact that the petitioner should have been given right of reply at four distinct stages before his dismissal i.e. at the preliminary hearing stage by the Commanding Officer as per Rule 22 of the Army Rules; at the summary of evidence stage as per Rule 23 of the Army Rules, at the trial stage by the GCM as per Rule 49 of the Army Rules; and finally in reply to the show cause notice as per Rule 14 of the Army Rules and, therefore, these charges should not be sustained. It has been claimed that it is the duty of the Chief of the Army Staff to supply all the relevant material and documents against him to the petitioner and when they have failed to do so, the order terminating the services of the petitioner cannot be sustained.

23. It may be stated here that during the pendency of the writ petition, the petitioner's dismissal order (ExP.16) has been passed and, therefore, the petitioner moved an application for amendment of the writ petition and has also sought an interim order restraining the respondents from executing this order. Amended writ petition has also been filed and it has been claimed that the petitioner be allowed to serve the respondents till 30.4.1992, when he attains the age of superannuation.

24. A reply to the rejoinder to the reply to the writ petition has also been filed on behalf of the respondents alongwith copy of the letter dated 27.4.1992 written by the Superintendent of Police, CBI, Jaipur to the Major, Incharge Legal Cell, Army Sub-area, Jaipur. In that letter, it was averred that chargesheet could not be filed

against Shri S.K. Chatterjee alongwith Shri Bhanwar Singh Shekhawat because there was lack of evidence against him but there was sufficient evidence to take administrative action against him. The respondents have also filed copy of the letter Annexure RR/2 dated 27.1.1992, whereby the Superintendent of Police, CBI, Jaipur has informed Col. K.S. Bedi that the petitioner did not attend his Office for inspection of documents to prepare his defense. The Copy of the letter Annexure RR/3 dated 10.4.1991 has also been filed whereby the Superintendent of Police, CBI, Jaipur informed Col. K.S. Bedi to ask the petitioner to attend his office on any working day for selection of the documents of which copies are required by him for preparing his defence. He was further directed to bring with him copies of the seizure memos vide which 13 personal files were seized from him. Thereafter, vide letter Annexure RR/4 dated 6.3.1989, the DIG, CBI, Jaipur has informed the Director (Vigilance), Ministry of Defense, New Delhi whereby the DIG, CBI, Jaipur has suggested for taking administrative actions against the petitioner.

25. I have heard Mr. N.N. Mathur, Sr. Advocate assisted by Mr. Sanjay Mathur for the petitioner and M/s P.P. Choudhary and S.S. Lal for the respondents and have carefully gone through the record of the case.

26. It is an admitted case of the parties that initially three charges were levelled against the petitioner but on completion of enquiry, five charges were levelled against the petitioner and a GCM was ordered to be convened and the petitioner was asked to face that GCM, which was convened in time. Five members were nominated to that GCM as required by Section 113 of the Army Act. However, the trial scheduled to commence on 28.9.1987 did not commence owing to issuance of a faulty chargesheet and a fresh chargesheet was issued on 4.10.1987. The actual trial commenced on 9.10.1987 i.e. after more than two years from the date of alleged offence and almost one year after finalisation of the summary of evidence. It is alleged that the General Court Martial did proceed and some evidence was recorded by it. It has been claimed that the department closed its evidence but the petitioner filed a writ petition before this Court for the stay of the proceedings of the court martial and the proceedings of the General Court martial were ordered to be stayed till the decision of that writ petition. However, in the month of August 1988, one of the members of the GCM i.e. Lt.Col. Vikaram Deuskar expired and hence, the retrial could not be ordered.

27. The contention of the petitioner is that still 2 months and 18 days remained for re-convening the GCM for retrial. That contention cannot be sustained in view of the contents of para 14 of the writ petition, which clearly shows that for the first and fifth charges, only 2 days remained. It was a case of composite GCM and therefore, reconvening of the GCM was not possible and when the reconvening of the GCM was not possible on account of the death of one of its member viz. Lt.Col. Vikram Deuskar, which was brought to the notice of the Army authorities on 27.3.1989 and which had resulted in the dissolution of the GCM as per the provisions of Section 117 of the Army Act, the Army authorities

were left with no option but to proceed against the petitioner u/s 19 of the Army Act read with Rule 14 of the Army Rules.

28. It is true that if a GCM is convened against an Officer to enquire into certain charges levelled against him, that Officer will have an opportunity to cross-examine the witnesses and to produce his defence but in case, a GCM is not reconvened and a show cause notice is issued u/s 19 of the Army Act read with Rule 14 of the Army Rules, that Officer has only a right to submit his reply, and that reply along can be considered and he has no right of hearing available to him. He cannot cross-examine the witnesses and, therefore, normally, the procedure which is less advantageous to the petitioner should not be adopted but in this case, the provisions of Section 122 of the Army Act clearly provide that no trial by court-martial of any person subject to this Act for any offence shall be commenced after the expiration of a period of three years and such period shall commence on the date of the offence. Further, a General Court Martial was convened in time but that stood dissolved on account of the death of one of its members viz., Lt.Col. Vikram Deuskar as per the provisions of Section 117 of the Army Act and reconvening of that Court Martial was not possible because for trial of those charges, sufficient period was not available with the Army Authorities to get those charges inquired into from a General Court Martial within the stipulated period of limitation as provided by Section 117 of the Army Act. This happened firstly because they came to know about the death of Lt.Col. Deuskar for the first time on 27.3.1989 and secondly, the proceedings of the Court-martial were stayed by this Court by issuing a stay order at the behest of the petitioner. It was not the result of intentional inaction or on account of adoption of any avoidable delaying tactics as alleged by the petitioner. The respondents under no law were obliged to name more than five Officers to form the GCM. They could do so but they were not. duly bound. In these circumstances, the Chief of the Army Staff came to the conclusion that holding trial of the petitioner by convening a General Court Martial is impracticable or inexpedient. He was further of the opinion that further retention of the petitioner in service is undesirable and so, a show cause notice was issued to the petitioner u/s 19 of the Army Act read with Rule 14(2) of the Army Rules calling upon him as to why his services should not be terminated and why he should not be dismissed from service.

29. The validity of Section 19 of the Army Act read Rule 14(2) of the Army Rules has been upheld by their lordships of the Supreme Court in Union of India V.S.K. Rao AIR SC-1137 AND IT HAS BEEN OBSERVED THAT Sections 19 AND 45 of the Army Act being mutually exclusive, the removal from service u/s 19 read with Rule 14 without a court-martial cannot be said to be in derogation of Section 45 of the Army Act.

30. Mr. P.P. Choudhary, the learned Counsel appearing for the respondents has submitted that a procedure which is less advantageous to the petitioner can also be sustained in view of the decision of their lordships of the Supreme Court in R. Viswan and Others Vs. Union of India (UOI) and Others, wherein it has been held

as under

The power conferred on the central Govt. to impose restrictions on three categories of rights specified in Section 21, which are part of the fundamental rights under Clauses (a)(b) and (c) of the Article 19(1) of the Constitution is a broad uncanalised and unrestricted power permitting violation of the constitutional limitations. But even so, Section 21 cannot be condemned as invalid on this ground, as it is saved by Article 33 which permits the enactment of such a provision. Article 33 carves out an exception in so far as the applicability of Fundamental Rights to members of the Armed Forces and the Forces charged with the maintenance of public order is concerned.

It is elementary that a highly disciplined and efficient armed force is absolutely essential for the defence of the country. Defence preparedness is in fact the only sure guarantee against aggression. Morale and discipline are indeed the very soul of an army and no other consideration, howsoever, important can outweigh the need to strengthen the morale of the armed forces and to maintain discipline amongst them. The Constitution makers therefore, placed the need for discipline above the fundamental rights so far as members of the Armed forces and the forces charged with the maintenance of public order are concerned and provided in Article 33 that Parliament may by law determine the extent to which any of the fundamental rights in their application to members of the Armed Forces and the Forces charged with the maintenance of public order, may be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them. Article 33 on a plain grammatical Construction of its language does not require that Parliament itself must by law restrict or abrogate any of the Fundamental Rights in order to attract the applicability of that Article. What it says is only this and no more, namely that Parliament may by law determine the permissible extent to which any of the Fundamental Rights may be restricted or abrogated in their application to the members of the Armed Forces and the Forces charged with the maintenance of public order.

31. Thus, it is clear that merely because the procedure that has been adopted by the Chief of the Army Staff or the Central Govt. is less advantageous to the petitioner, it cannot be said that it is violative of Article 14 of the Constitution.

32. It is true that defence service bears an apparent distinction from civil services of the Union and so, this distinction takes the defence service out of the ambit of Article 311 of the Constitution. Reference in this connection may be made to *Bhagatram v. Union of India* 1981 (3) SLR 686 and *Union of India and others Vs. Mohd. Ramzan Khan*,

33. No doubt, it is true that the CBI has not challaned the accused for the offence u/s 161 IPC read with Section 5(2) and 5(1)(d) of the Prevention of Corruption Act but at the same time, it wrote a letter to the Army authorities that

action should be taken against the petitioners administratively and there is sufficient material on record to take departmental action against him.

34. The show cause notice (ExP.2) shows that on a complaint from a prospective candidate for enrollment in the Army, a case No. 2/85 was registered against the petitioner by the Superintendent of Police, CBI, Jaipur to the effect that a person named Shri Bhanwar Singh Shekhawat acted as his tout and was caught red-handed while demanding and accepting illegal gratification of Rs. 6000/- as part payment on his behalf for enrollment of Shri Radhey Gopal Paliwal. During personal search of Shri Bhanwar Singh Shekhawat, a few lists containing names of some candidates were recovered and one list out of the above, containing the names of 12 candidates was in petitioner's handwriting. Out of 12 candidates mentioned in the said list, 5 were got recruited by Shri Bhanwar Singh Shekhawat through the petitioner. In addition, Sarva Shri Sarwanmal, Girver Singh and Jagdish Prasad were also enrolled in the Army by the petitioner through agents on receipt of illegal gratification between Rs. 3,000/- to Rs. 5,000/- per candidate as his share. It is alleged that the statements of various witnesses at the said CBI enquiry alongwith the documents substantiated the above complaints that the petitioner while working a BRO, Alwar abused his official position and committed criminal misconduct by deploying agents for recruitment of candidates in the Army for illegal gratification. He also misused his official position by arranging unauthorised Selection Boards for the candidates for whom he had vested interest. It is further alleged that the petitioner in league with Maj. S.D. Singh, Recruiting Medical Officer, selected some candidates as recruits who were medically unfit but declared fit without referring them to Military Hospital for check-up as laid down in Army HQ Letter No. 05703/DMS-5A dated 28.10.1983. The petitioner's trial on the charges of accepting illegal gratification became time barred by the time the case was handed over by CBI authorities and as the petitioner was arraigned by a GCM on two charges u/s 41(2) of the Army Act for disobeying lawful command given by his superior officer and u/s 39(a) of the Army Act for absenting himself without leave; and two charges u/s 63 of the Army Act for an act prejudicial to good order and military discipline and having examined the prosecution witnesses, the trial could not, however, proceed further due to death of one of the members viz, Lt. Col. Vikram Deuskar and was dissolved. Fresh trial by GCM on the said charges could not take place due to the offences having become time-barred for the reasons stated above, which were beyond control. The Petitioner's trial by GCM thus being impracticable and his further retention having been considered undesirable by the Chief of Army Staff due to his involvement in criminal misconduct by the Chief of Army Staff. The petitioner was, therefore, called upon to submit in writing his explanation and defence, if any, showing cause within 30 days of receipt of this notice as to why his services be not terminated u/s 19 of the Army Act read with Rule 14 of the Army Rules and in case, no reply is received within stipulated period, it shall be presumed that he has nothing in defence against the contemplated action.

35. Thus, the allegations levelled in the show cause notice relate to the acceptance of illegal gratification by the petitioner through his agent Shri Bhanwarsingh Shekhawat for recruitment of 8 persons, out of the list of 12 persons, which was found in possession of Shri Bhanwarsingh Shekhawat and that list was in the handwriting of the petitioner. It is further alleged that various witnesses have substantiated this complaint that the petitioner while working as BRO, Alwar abused his official position and committed criminal misconduct by deploying agents for recruitment of candidates in the Army for illegal gratification. Neither that list which formed the basis of this selection and was found in possession of Shri Bhanwarsingh Shekhawat nor the statements of those witnesses who have stated against the petitioner have been supplied. It has also not been disclosed that which particular selection Board was unauthorisedly arranged by the petitioner and who were its members and which selected candidates were illegally declared to be medically fit by Dr. S.D. Singh, Recruiting Medical Officer. All these documents should have been supplied to the petitioner alongwith the show cause notice because Rule 14(2) of the Army Rules categorically provides that when after considering the reports of an Officer's misconduct, the Central Govt. or the Chief of the Army Staff is satisfied that the trial of the Officer by a court-martial is inexpedient or impracticable, but is of the opinion that the further retention of the said Officer in the service is undesirable, the Chief of the Army Staff shall so inform the Officer together with all reports adverse to him and he shall be called upon to submit in writing, his explanation and defence. Thus, it is mandatory for the Chief of the Army Staff to supply all material adverse to the particular person alongwith show cause notice. The respondents cannot ask the petitioner to obtain such record from the CBI. Of course, it is true that if any personal files have been seized from the possession of the petitioner by the CBI then it is his responsibility to get those files released from CBI and the Army authorities have no concern whatsoever about the release of those personal files from the CBI, which have been seized from the petitioner but when the CBI has chosen not to Challan the case against the petitioner but it has suggested the Army authorities to initiate departmental proceedings against the petitioner and the Chief of the Army Staff Came to the conclusion that the trial against the petitioner through a court-martial is inexpedient or impracticable and further retention of the petitioner in service is undesirable then while issuing show cause notice, in which, it has been alleged that illegal gratification has been paid to the petitioner by the persons who were recruited through his agents or Shri Bhanwarsingh Shekhawat, copies of those statements in which it has been alleged that illegal gratification has been paid to the petitioner through Bhanwarsingh Shekhawat should have been supplied to the petitioner. Even a photo copy of that list which was found in possession of Shri Bhanwarsingh Shekhawat containing the names of 12 persons, out of whom, 8 have been selected should have also been supplied to the petitioner. Moreover, it must have been disclosed to the petitioner that which particular selection Board was unauthorised, which has been arranged by the petitioner and which of the candidates who were selected, though they were medically unfit, have been

declared to be medically fit in complicity with Dr. S.D. Singh. All these material must have been supplied to the petitioner by the Chief of the Army Staff alongwith the show cause notice but they have failed to do so. This is a procedural safe-guard, which has been provided by Rule 14(2) of the Army Rules so that the petitioner may make his effective representation in defence and if he is denied such a right, then the show cause notice issued against the petitioner cannot be sustained.

36. A some what similar view has been expressed by a learned single Judge of the Jammu & Kashmir High Court in *Prithpalsingh v. UOI* 1984 (3) SLR 675, wherein it has been held that if the dismissal of the petitioner is in violation of the procedural safeguards, it amounts to violation of Article 14 of the Constitution and, therefore, such a notice issued in violation of procedural safeguards cannot be sustained.

37. The contention of the respondents that the CBI documents are confidential in nature and, therefore, they cannot be supplied to the petitioner, cannot be sustained because a challan has been filed against Shri Bhanwarsingh Shekhawat in this matter and, therefore, those documents which have been filed by the CBI in Court have become public documents. As stated above when the Chief of the Army Staff has come to the conclusion that further retention of the petitioner in service is undesirable and he has issued a show cause notice to the petitioner, then it was the mandatory duty of the Chief of the Army Staff to have supplied all such adverse material to the petitioner, on the basis of which he has come to this conclusion that further retention of the petitioner is undesirable, as per the provisions of Rule 14(2) of the Army Rules. The petitioner could not have been directed to obtain those documents from the CBI. It was the duty of the Army authorities to supply all these documents to the petitioner and when they have failed to do so, it is a clear violation of Rule 14(2) of the Army Rules and, therefore, a dismissal based on such a show cause notice, which is not supported by the supply of material adverse to the petitioner cannot be sustained.

38. If holding of a court-martial becomes inexpedient or impracticable on account of the expiry of the period of limitation then recourse can be had to Section 19 of the Army Act read with Rule 14 of the Army Rules as per the decision of their lordships of the Supreme Court in *Chief of Army Staff and Others Vs. Major Dharam Pal Kukrety*,

39. The contention of the petitioner that Rule 14 of the Army Rules, in such circumstances, cannot be pressed into service on the basis of a decision rendered by a learned single Judge of the Delhi High Court in *Harbhajan Singh v. Ministry of Defence* 1982 (2) SLR 782 and a Division Bench decision of the Delhi High Court in *Lt. Col. H.C. Dhingra v. UOI* do not have any relevance. As stated above, in this case the Court martial was properly constituted and certain amount of evidence was recorded by it but in the meanwhile, one of its Member Dt. Col. Vikram Deuskar expired and therefore, the Court Martial had to be dissolved and it could not be reconvened on account of the period of limitation as provided by

Section 122 of the Army Act.

40. A Division Bench of the Delhi High Court in *Union of India v. Ashwani Kumar Katoch* 1992 (3) SLR 428 has observed that the issuance of a notice under Rule 14 of the Army Rules without holding a Court-Martial depends upon the subjective satisfaction of the authorities concerned and, therefore, that satisfaction should not be ordinarily interfered with. Reference in this connection may be made to the observations made by Delhi High Court in paras 6 and 7 of the judgment in *Union of India's* case (1992 (3) SLR 428).

41. Now, we come to the second part of the charge mentioned in the show cause notice. In para 4 of the show cause notice, it has been averred that the petitioner was arraigned by a General Court Martial on two charges u/s 41(2) of the Army Act for disobeying lawful command given by his superior officer and another charge u/s 39(a) of the Army Act for absenting himself without leave and two charges u/s 63 of the Army Act for an act prejudicial to good order and military discipline. It has been further alleged that having examined the prosecution witnesses, the trial could not proceed further due to death of one of the members Lt.Col. Vikram Deuskar and the GCM was dissolved and a fresh trial by GCM on the said charges could not take place due to the offences having become time barred for the reasons stated above, which were beyond control and thus, his trial by GCM, being impracticable, his further retention has been considered undesirable by the Chief of the Army Staff due to his involvement in criminal misconduct stand above and, therefore, he was called upon to submit in writing his explanation and defence, if any showing cause within 30 days of receipt of this notice as to why his services be not terminated u/s 19 of the Army Act and Rule 14 of the Army Rules.

42. Thus, it is clear that the show cause notice only mentions the charges but the relevant material on the basis of which these charges have been levelled had not been supplied to the petitioner. It has been contended by Mr.P.P. Choudhary, the learned Counsel appearing for the respondents that the petitioner has participated in the proceedings of the Court of enquiry and the Court-martial and the entire evidence has been recorded in his presence and all copies of statements recorded during court-enquiry have been supplied to him and, therefore, it cannot be said that he has not been supplied with all relevant material. This submission of Mr. Choudhary cannot be accepted. Rule 14(2) of the Army Rules categorically provides that if such a notice is issued, entire material adverse to the Officer should be supplied to him alongwith the show cause notice. Whether such an Officer is in possession of any material or not is beside the point. What is relevant is that while issuing a show cause notice to an Officer as to why his services be not terminated or he may not be dismissed from service, the entire material which is adverse to him should have been supplied to him. As stated above, in this case, no such compliance as required by Rule 14(2) of the Army Rules has been made and, therefore, the petitioner's dismissal from service without making compliance to the provisions of Rule 14(2) of the Army

Rules cannot be sustained.

43. Accordingly, this writ petition is allowed. The petitioner's dismissal order Ex.P.16 dated 29.1.1992 is quashed and the respondents are directed to treat the petitioner to have superannuated from service with effect from 30.4.1992 from the post of Major and he be paid all the retiral benefits including benefits of pension and gratuity in pursuance of order of Army Headquarters No. 38138/Apr 92/Ssgs/dt. 30-5-1991 coupled with benefits of leave including furlough leave, pay and allowances, Govt. accommodation etc. is admissible to the petitioner under Army Rules and Instructions accordingly within six months from today.

44. In the facts and circumstances of this case, the parties are left to bear their own costs of this writ petition.