
(1993) 08 KL CK 0001
In the High Court Of Kerala
Case No : O.P. No. 5283 of 1990-D

Thampan

APPELLANT

Vs

Adjutant General and Others

RESPONDENT

Date of Decision : 05-08-1993

Acts Referred:

Army Act, 1950 — Section 23
Army Rules, 1954 — Rule 13
Constitution of India, 1950 — Article 14, 16, 311(2)

Citation : (1994) 2 KLJ 783

Hon'ble Judges : B.M. Thulasidas, J

Bench : Single Bench

Advocate : M.P. Krishnan Nair, for the Appellant; Mathew J. Nedumpara, for the Respondent

Final Decision : Allowed

Judgement

B.M. Thulasidas, J.—Petitioner was selected to the Air Defence Wing on 29th July 1982 and completed his training on 22nd December, 1983 which was duly attested by the competent authority. There was no adverse remark, his performance during the training was found satisfactory, and he obtained life membership card of the Regiment. On 16th March 1984, however he got Ext. P-5 order of discharge, from the second Respondent stating that with effect from that date his service was no longer required. No reason was given for the order, which had the effect of a summary dismissal from service not warranted by the provisions of the Army Act or other relevant enactments. Against the order, he made Ext. P-6 representation, before the third Respondent, on 30th March 1984. He also filed O.P. No. 5391 of 1984, which was dismissed by Ext. P-7, "without prejudice to his right to approach the court in case the final order passed on Ext. P-6 went against him". Predicably, by Ext. P-8, Ext. P-5 was upheld "under item 4 of the table annexed to Army Rule 13". It is submitted that Exts. P-5 and P-8 are illegal, violative of Article 311(2) of the Constitution of India and Section 23 of the Army Act. There was flagrant breach of the principles of natural justice and

his constitutional rights under Articles 14 and 16 of the Constitution. In the circumstances, he has prayed to quash Exts. P-5 and P-8 and has prayed for a direction to the second Respondent to reinstate him in service "with full backwages and other benefits with effect from 16th March 1984".

2. In the counter affidavit filed by the third Respondent, the basic facts relating to the recruitment and training as alleged have been admitted. It is stated, that the Petitioner was discharged by the second Respondent viz., the Commandant, 23/Air Defence Wing, Artillery Centre, Nasik Road Camp since his service was no longer required under item IV of the table annexed to Rule 13 of the Army Rules. It is pointed out that the discharge was made on the basis of a special verification report, which indicated that he was unfit for retention in service. He was recruited and allowed to undergo training before receipt of the special verification report, about which he could not complain. The discharge was made having regard to his antecedents as revealed in the report and in the best interest of the Defence Service. He cannot put forward a right to his retention in service which would be against national interest. There was no question of infringement of Article 311(2) of the Constitution or of Section 23 of the Army Act, inasmuch as the discharge was made under Rule 13 of the Army Rules. No reasons need be given for the discharge, which was made under the relevant rules. None of his right has been violated and he is not entitled to the relief claimed.

3. Heard.

4. As stated already, the Petitioner was enrolled in the Indian Army with effect from 29th July 1982 and he successfully completed his training in various branches, which was duly attested. Exts. P-1, P-2, and P-4 will bear this out. There was no complaint against him during the training which was so to say uneventful. There was a course of intensive training in the Army Camp as well and he became eligible to be "attested" to the army cadre. A verification was also done by the "RR and DC Arty. Centre" Nasik Road Camp and He was found fit for retention in service. But then by Ext. P-5 he was discharged "under item IV of the table annexed to Rule 13 of the Army Rules". As stated already, his representation Ext. P-5 was rejected by Ext. P-8, where it was observed:

Your normal verification was sent by the RR and DC Arty. Centre, Nasik Road Camp which was received duly verified on 15th April 1983. During the training, no untoward incident took place and you had completed your training on 22nd November 1983. You were found fit for retention in service by Civil authorities through a normal verification report. You were inadvertently attested by 22 AD wing Arty. Centre, Nasik Road Camp on the authority of normal verification without awaiting special verification as required in respect of personnel hailing from Kerala State as per the existing orders.

5. Section 23 of the Army Act reads:

23. Certificate on termination of service.- Every junior commissioned officer,

warrant officer, or carolled person who is dismissed, removed, discharged, retired or released from the service shall be furnished by his commanding officer with a certificate, in the language which is the mother tongue of such person and also in the English language setting forth,-

- (a) the authority terminating his services;
- (b) the cause for such termination; and
- (c) the full period of his service in the regular Army.

But then, according to the Respondents, the above provision is inapplicable since the discharge was made under item IV of the table annexed to Rule 13 of the Army Rules, on the basis of the special verification report, which indicated that he is unlikely to become an efficient soldier.

6. It cannot be denied that service in the Army is Unlike regular Government or Semi-Government service and has its own unique features. It is not a service where all and sundry could hope to enter. The selection process is elaborate and only persons of grit, intelligence and integrity and who are also prepared to face exacting conditions in the defence of the land generally are fit for a career in the Army. Indeed Persons of doubtful antecedents and character or who have a record of involvement in spheres or areas which may not be conducive to discipline should have no place in the Army. Here we have an unfortunate case of an young man who after recruitment, had his training in different branches/trades, and was found fit for retention in service on the basis of the report which was received from the judicial authority, Cannanore district. But even then he was brusquely told thai "his service is no longer required" and he was formally discharged on the basis of a special verification report subsequently obtained. It was stated on behalf of the Respondents that an adverse report obtained on special verification is a sufficient ground for discharge and it is not open to judicial scrutiny. It appears that the Army Headquarters sought for and obtained such a report in his case since he hailed from Kerala. Its justification was not explained by the Respondents, who also failed to show that it has any legal sanction. It transpired that such reports are insisted upon in the case of candidates who belong to this State. That is indeed unwarranted apart from being indefensible. In the matter of public employment, no distinction should be made between candidates hailing from one State and Anr. so as to violate Articles 14 and 16 of the Constitution, which ensure equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State and a right not to be discriminated on the ground of place of birth among other guarantees. There cannot be one set of rules for persons who hail from this state and Anr. set of rules for persons of other States. Since the special verification report has no statutory sanction and is opposed to the Constitutional guarantees relating to public employment the impugned decision rested on such report must be held to be invalid even inspite of the ancillary support sought to be drawn from item IV of the table annexed to Rule 13 of the Army Rules.

7. To retain a person in the service of the Army or not is for the concerned authority to decide. But it is not correct to say that the exercise of the power in that respect is beyond judicial scrutiny. If it could be shown that the power was exercised in an arbitrary manner or for a collateral purpose or where the decision was rendered on considerations which are extraneous or irrelevant or as in the case where an abnormal and obnoxious practice was resorted to, it would not escape challenge as to its tenability. The court would be justified to examine and pronounce upon the legality of the decision. It is right to remember that considerations which were relevant decades ago have ceased to be so now in the context of the great changes that have come over in our political and administrative systems. Indeed it was not suggested that the Petitioner has a criminal background. How his antecedents stood in the way of his selection was not explained. The relevant aspects were not placed before this Court for no apparent reason. The order of discharge, in my view, was not justified.

8. There is no doubt, he must have had a traumatic experience by his premature discharge by the impugned order, which he did not deserve and was wholly unwarranted and unjustified. He is entitled to be considered for reinstatement in service. In the circumstances I direct the Respondents to dispose of Ext. P-6 afresh and pass an order in the light of the above observations, within three months of receipt of a copy of this judgment.