

(1987) 03 AHC CK 0011

In the Allahabad High Court

Case No : Civil Miscellaneous Application No. nil of 1986 in F.A.F.O. No. 809 of 1980

Uma Shanker

APPELLANT

Vs

Smt. Angoori Devi and Others

RESPONDENT

Date of Decision : 31-03-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (1987) 03 AHC CK 0011

Hon'ble Judges : R.R. Misra, J

Bench : Single Bench

Advocate : V.K. Upadhyay, for the Appellant; H.S. Nigam, for the Respondent

Judgement

Sudhir Narain, J.—This writ petition is directed against the order of dismissal dated 20.4.1981 passed by the General Officer. Commanding-in-Chief, Central Command. Pune--respondent No. 2.

2. The disciplinary proceedings were initiated against the petitioner. The allegation against him is that he was present in the Unit lines at about 18.00 hours on 8.10.1979 when Subedar Bhim Bahadur Rana brandishing a naked Khukri in the Unit Lines delivered certain inflammatory speeches and instigated the Unit personnel to mutiny and consequent to the above inflammatory speech by him, the Unit personnel mutinied at about 22.00 hours on that day and indulged in wanton destruction of the Officers mess and Officers property. The petitioner was present at that time.

3. The General Officer Commanding in 11th infantry Division. C/o 56-APO-respondent No. 3 issued a show-cause notice indicating the charges against the petitioner. The basic charge against the petitioner was that he was present when Subedar Bhim Bahadur Rana with a naked Khukri delivered the inflammatory speech inciting the Unit personnel" to mutiny and the petitioner was also present when the Unit personnel actually committed mutiny at 22.00 hours on the same day. The petitioner, inspite of being physically present, failed to either report to

his superior officers in the Unit or at Bde HQ that the men were being incited by Subedar Bhim Bahadur Rana to mutiny, or take action to suppress the mutiny.

4. The petitioner submitted a reply to the show-cause notice. He admitted that he was present when Subedar Bhim Bahadur Rana" delivered inflammatory speeches. His defence was that he did not inform regarding the incident of 8.10.1979 to any of his superiors because at that time all his superiors were present at the place of incident. The explanation given by him was considered by respondent No. 2 who felt that the failure on the part of the petitioner to report the matter to his superior officers, shows that he was privy to the mutiny and directed his dismissal under the provisions of Section 20(3) of the Army Act.

5. The petitioner along with others filed Suit No. 460 of 1981, in the Court of Munsif, Haveli, Varanasi, praying for a decree for declaration that the order of dismissal of the petitioner was illegal and inoperative. The suit was dismissed by the trial court on 23.9.1983. The petitioner filed an appeal against the said judgment before the appellate court. During the pendency of the appeal, he filed an application to withdraw the appeal and the suit with liberty to file a fresh suit. The appellate, court allowed the application and permitted the petitioner to withdraw the appeal with a liberty to file a fresh suit. The petitioner, thereafter, instead of filing the suit, has filed this writ petition challenging the order of dismissal dated 20.4.1981.

6. Sri G.D. Mukerji, learned counsel for the petitioner submitted that the order of dismissal could be passed only after the petitioner was tried by the Court Marshal. He could not be dismissed by respondent No. 2 in the disciplinary proceedings initiated by respondent No. 3 under Rule 17 of the Army Rules read with Section 20(1) and (7) of the Army Act.

7. It is further submitted that if the petitioner was guilty of the offence u/s 37(d) of the Army Act, such offence was only to be tried by a Court Marshal. It is necessary to refer Section 20(1) and (7) of the Act which reads as under :

"20, Dismissal, removed or reduction by the Chief of the Army Staff and by other Officers.--(The Chief of the Army Staff) may dismiss or remove from the service any person subject to this Act other than an officer.

(7) The exercise of any power under this section shall be subject to the said provisions contained in this Act and the rules and regulations made thereunder."

Section 37 of the Act reads as under :

"37. Mutiny.--Any person subject to this Act who commits any of the following offences, that is to say,--

begins, incites, causes or conspires with any other persons to cause any mutiny in the military, naval or air forces of India or any forces co-operative therewith ;
or

joins in any such mutiny ; or

(c) being present at any such mutiny, does not use his utmost endeavours to suppress the same ; or

(d) knowing or having reason to believe in the existence of any such mutiny, or of any intention to mutiny or of any such conspiracy, does not, without delay, give information thereof to his commanding or other superior officer ; or

(e) endeavours to seduce any person in the" military, naval or air forces of India from his duty or allegiance to the Union ;

shall, on conviction by court-martial, be liable to suffer death or such less punishment as is in this Act mentioned."

Rule 17 of the Army Rules reads as under :

"17."Dismissal or removal by Chief of the Army Staff and by other Officers.--Save in the case where a person is dismissed or removed from service on the ground of conduct which has led to his conviction by a criminal court or a court martial no person shall be dismissed or removed under sub-section (1) or sub-section (3) of Section 20, unless he has been informed of the particulars of the cause of action against him and allowed reasonable time to state in writing any reasons he may have to urge against his dismissal or removal from the service."

8. Section 37 provides for the various offences and one of the offences in clause (d) is that if any person subject to the Act knowing or having reason to believe in the existence of any such mutiny, or of any intention to mutiny or of any such conspiracy, does not, without delay, give information thereof to his commanding or other superior officer ; shall, on conviction by court-martial, be liable to suffer death or such less punishment as is in this Act mentioned. The conviction and sentence can be imposed by the Court Marshal for any offence mentioned u/s 37 of the Act but it does not prohibit the disciplinary authority to dismiss the delinquent Army personnel on the charges which are mentioned u/s 37 of the Act.

9. In *V.Y. Thomas v. Commandant, A.D.C. Centre, Secunderabad and another* 1982 Lab 1C 632 (AP), it was held that the action under Rule 17 can be taken without assembling a Court of Enquiry, and on the basis of mere report or information received. There is no such connection between the Court of Enquiry and the disciplinary proceedings under Rule 17 as to indicate that any irregularity committed by the Court of Enquiry during its enquiry, would affect the disciplinary proceedings.

10. In *Naik Ram Singh v. Union of India and another* 1986 Lab IC 935 , it was held that Rule 17 prescribes the procedure for taking disciplinary proceeding against the Army personnel. The Court observed :

The requirement of Army Rule 17 is of the information being given to the petitioner of the particulars of the cause of action against him and allowing him reasonable time to state in writing any reasons he may have to urge against his dismissal or removal from the service. When the petitioner was informed by the

show-cause notice as to why disciplinary action should not be taken, the petitioner was given an opportunity to urge against his dismissal or removal from service. The Army Rule does not require that the proposed punishment of dismissal or removal from service should be communicated in the show-cause notice."

11. Learned counsel for the petitioner relied upon a decision of the Supreme Court rendered in Ex-Havildar Ratan Singh Vs. Union of India (UOI) and Others, , wherein it was held that the charge against the appellant (therein) was that while on duty, on being attacked by militants, left his place without orders from superiors. It was held that it was an offence of serious nature covered by Section 34 and he should have been tried by court-martial and not by summary court-martial.

12. The disciplinary proceedings can be taken by an officer empowered u/s 20 of the Act for any of the charges. Such charge may be an offence also which could be tried by court-martial. It is, however, not necessary in every case that the disciplinary proceedings cannot be initiated unless the personnel is convicted by a court-martial. If the court-martial convicts a person u/s 37, the person can be dismissed from service on conviction by the disciplinary authority. Sub-section (7) of Section 20 of the Act provides that the exercise of any power under this section shall be subject to the said provisions contained in the Act and the rules and regulations framed thereunder, Section 37 of the Act does not limit the power of the officer concerned u/s 20 of the Act to take disciplinary proceeding against the person unless he is convicted of an offence by a court martial as provided u/s 37 of the Act.

13. The petitioner had admitted that he was present at the time of mutiny and he did not give information of such mutiny to his superior officers. His only explanation was that his superior officers were also present at the time when inflammatory speeches were given by Subedar Bhim Bahadur Rana. This explanation was considered by respondent No. 2 and such explanation was not accepted.

14. The impugned order does not suffer from any manifest, illegality. The writ petition is, accordingly, dismissed.