

(1992) 02 DEL CK 0099

In the Delhi High Court

Case No : Letters Patent Appeal No. 55 of 1988

Union of India

APPELLANT

Vs

Ashwani Kumar Katoch

RESPONDENT

Date of Decision : 07-02-1992

Acts Referred:

Army Rules, 1954 — Rule 14

Citation : (1992) 47 DLT 342

Hon'ble Judges : S.B. Wad, J; Mohd. Shamim, J

Bench : Division Bench

Advocate : M.M. Sareen, Madan Lokur and B.V. Desai, for the Appellant;

Judgement

S.B. Wad, J.

(1) This Lpa is filed by the Union of India against the judgment of the learned Single Judge dated 7/07/1988. The learned Single Judge had quashed the show-cause notice dated 18.2.88 and the order of removal dated 15.11.78, passed by the Union of India against the respondent. The respondent was working as a Captain in the Army. He was served with a show-cause notice under Rule 14 of the Army Rules, calling upon him to explain as to why he should not be removed from service. The show-cause notice reads:- "Show-Cause" Notice Under Army Rule 14(1) It has come to notice that you addressed an application dated 13/08/1977 pertaining to service matters direct to Shri Shanti Bhushan, the Law Minister in violation of the provisions of para 557 "of Regulations for the Army, 1962. In doing so you have committed grave irregularity and misconduct unbecoming the position, conduct and code of discipline expected of an Army Officer. (2) It is further observed that this is not the first time you have committed a grave irregularity. In the past also you had indulged in acts of commission/commission which were against the norms of army discipline and unbecoming conduct of an army officer. Some of the instances are as follows:-

(A) In May 74, while you were attached to 14 Gtc, you sent an application No. 1C

20942/AK/P dated 15 Mar. 74 direct to Gen.T.N. Raina, the then GOC-in-C, Western Command in contravention of the provisions of para 552 of the Regulations for the Army and Ao 227/71.(b) A Court of Inquiry held on 19.4.73 and subsequent days under the orders of Lt Col. M.K.. Kotwal, Oc, Western Command Signal Regiment, to inquire into the matter regarding handing over the keys of Ambala Sub Area suite, to Mes Inspection Bungalow Simla by you to Capt. Dhan Raj, at the time of handing over the charge, of Sso to him, revealed that you committed the following grave irregularity :-(i) That during Apr. 72, one suite in Mes Inspection Bungalow Simla was reserved for allotment to the officers coming on duty to Simla from Hq Sub Area but the keys of the suite were to be kept with the Sso, Sta Hq Simla.(ii) That on your arrival at Simla on posting as Sso, you unauthorisedly occupied the sub-area suite in the month of Oct.72 and continued to stay there till 14 Apr. 73.(iii) That you were allotted married accommodation "BROCK-HURST 17" on 16 Dec. 72 vide Station Hq letter No. 201/BS/VIII dated 16th Dec. 72 and that you took possession of the same on 20 Jan. 73 and so, from 20 Jan. 73 till 14 Apr.73 you were in possession of two Government accommodations viz., Sub-Area suite and Brock hurst 17.(iv) That vide Station "Order No. 767 dated 11 Jan. 73 the SSO was to maintain an occupation/vacation register for the sub-area suites. According to this order the rules applicable to other suites of Mes Inspection Bungalow as regards the hiring charges were also made applicable to Sub-Area suite.Despite the publication of the above order neither you vacated the sub-area suite nor you maintained the occupation/vacation register, though you were the Sso of Station HQ Simla.(v) That you handed over the charge of the Sso to Capt. DhanRaj on 30 Jan. 73 but you did not hand over the keys ofthe sub-area suite to him. You handed over the keys of sub-area suite to Capt Dhan. Raj, Offg. Sso on 14 Apr. 72but you refused to sign the inventory of the items kept in sub-area suite.(3) Action against you for irregularities/misconduct highlighted in para2 above, was then not processed, hoping that you would correct yourself,keeping in mind the convictions and punishments awarded to you as a result of your disciplinary trial on other counts. (4) It is, however, clear that you have not applied the due corrective and that you keep involving yourself in acts which are highly derogatory from the point of view of Army discipline. Punishments awarded to you as a result of earlier disciplinary trial has also produced no salutary effect on you.Through your repeated acts of grave misconduct, it is evident that you are not amenable to the Code of Army discipline, of the conduct expected of Army Officers. (5) In addressing your application mentioned in para I above, you have committed serious misconduct, which is highly unbecoming of an Army Officer. The Code before whom the case was placed is thus of the opinion that repeated grave misconduct on your part as brought out in paras 1 and 2above renders your further retention in service undesirable. He is further ofthe opinion that your trial by Court , in addressing your application directly to the Law Minister in violation of para 557 of Regulations for theArmy, 1962, is inexpedient. He has, Therefore, directed in terms of ArmyRule"14 that you shall be so informed and be called upon to submit in writing your Explanation and defense.(6) You are hereby called

upon to submit in writing your Explanation and defense within 25 days of the receipt of this notice. If no Explanation is received within the stipulated period, it shall be presumed that you have no reasons to urge in favor of your retention in service and the case will be progressed under the said Army Rule.(7) A copy of each of your application dated 13 Aug. 77 as also letter dated 15 Mar. 74 and Court of Inquiry proceedings are enclosed to enable you to prepare your defense. These should be returned Along with your Explanation.(8) Please acknowledge receipt.sd/-(R. Gupta)ColDIPS(A)Kritey Adjutant General

(2) The respondent filed" his reply to the show-cause notice. In his reply he submitted that he had not written any letter to Shri Shanti Bhushan,the then Law Minister, on 13.8.77. As regards the direct application to Gen.T.N. Raina, Goc, Eastern Command, in violation of the Army Rules, the submission of the respondent was that no action, was taken for four years and,therefore, it could not be used as a ground after the lapse of four years. As regards the unauthorised occupation of a suit in Simla, he submitted that he was under a great mental distress at that time on account of the serious illness of his son and other troubles. The Court of Enquiry which had earlier investigated the matter did not take any action against him on this ground.He further submitted that keeping in view his commendable services in the two wars against Pakistan, his high academic qualifications and his low medical category as well as his family commitments) he should be given a chance to redeem himself.The Explanation of the respondent was found to be unsatisfactory.The GOC-in-C recommended the termination of service of the respondent under Rule 14. Before doing so a report was obtained by the GOC-in-C from the various Commanding Officers under whom the respondent had served from time of time. The conclusion was that "in spite of five earlier conviction the respondent was continuing in the acts of indiscipline and .has proved to be an incorrigible person. He was a great liability to the service and was a bad and unhealthy influence on the other officers and on the men he commanded".The Chief of the Army Staff agreed with the recommendation of the action under Rule 14. As required by the said Rule the matter was referred to the Government of India, which also agreed and the final order of removal w,aspassed under Rule 14.

(3) In the writ petition the respondent has tried to show that from1968 onwards he had been exposing various officers for their irregular/illegal acts in the army and the action of removal under Rule 14 is because of the bias of the superior officers. In order to justify his action he has asserted that he had also represented the matter to the Shah Commission, which was the investigating into the abuse of power and illegal actions during Emergency by the Government of Late Mrs. Indira. Gandhi He has also submitted in the petition that some of the grounds relied upon against him were stale and were the subject matter of the Court of Enquiry earlier. In (this) earlier Enquiries either the charges have not been proved and where they are proved he has undergone the punishment for them.

(4) The learned Single Judge held that in spite of the repeated opportunities the Union of India did not produce the concerned file so as to give the correct picture as to why action u/s 14 was taken. The learned Judge also found that the order of removal did not state as to why the trial by Court Martial was inexpedient. The rejection of respondent's Explanation by the Union of India is also faulted by the learned Single Judge as being based on suspicion. The learned Judge also held that Union of India has failed to prove that dispensation of the trial was inexpedient and was based on objective grounds:

(5) Rule 14 of the Army Rules reads:-

"14. Termination of service by the Central Government on account of misconduct- (1) When it is proposed to terminate the service of an officer u/s 19 on account of misconduct, he shall be given an opportunity to show-cause in the manner specified in sub-rule (2) against such action :- Provided that this sub-rule shall not apply :- (a) Where the service is terminated on the ground of conduct which has led to his conviction by a criminal Court; or (b) Where the Central government is satisfied that for reasons to be recorded in writing, it is not expedient or reasonably practicable to give to the officer an opportunity of showing cause. (2) When after considering the reports on an officer's misconduct, the Central Government or the Chief of 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 defense. Provided that the Chief of the Army Staff may withhold from disclosure any such report or portion thereof, if, in his opinion, its disclosure is not in the interest of the Security of the State. In the event of the Explanation of the officer being considered unsatisfactory by the Chief of the Army Staff, or when so directed by the Central Government, the case shall be submitted to the Central Government with the officer's defense and the recommendation of the chief of the Army Staff as to the termination of the officer's service in the manner specified in sub-rule (4). (3) Where, upon the conviction of an officer by a criminal Court, the Central Government or the Chief of the Army Staff considers that the conduct of the officer which has led to his conviction renders his further retention in service undesirable, a certified copy of the judgment of the criminal Court convicting him shall be submitted to the Central Government with the recommendation of the Chief of the Army Staff as to the termination of the officer's service in the manner specified in sub-rule (4). (4) When submitting a case to the Central Government under the provisions of sub-rule (2) of sub-rule (3), the Chief of the Army Staff shall make his recommendation whether the officer's service should be terminated, and if so, whether the officer should be: (a) dismissed from service; or (b) removed from the service; or (c) called upon to retire; or (d) called upon to resign. (5) The Central Government, after considering the reports and the officer's defense, if any, or the judgment of the criminal Court, as the case may be, and the recommendation of the Chief of

the Army Staff, may dismiss or remove the officer with or without pension or call upon him to retire or resign, and on his refusing to do so, the officer may be compulsorily retired or removed from the service on pension or gratuity, if any admissible to him."

(6) Rule 14(2) requires that the Officer be informed of all the reports adverse to him and be called upon to submit in writing his Explanation and defense where the Central Government and the Chief of Staff is satisfied that the trial of an Officer by Court Martial is inexpedient or impracticable. Rule 14(5) requires that the final decision be taken by the Central Government on the recommendation of the Chief of the Army Staff. The recommendation of the Chief of Army Staff was considered by the Central Government and the Central Government directed the removal of the respondent under Rule 14 as it was expedient in the interest of service to take such an action. The provisions of Rule 14(2) are similar to the provisions of Clause (b) and Clause (c) of the 11th Proviso to Sub-article (2) or Article 311 of the Constitution, with a slight difference. In Clause (b) of the 11th Proviso to Sub-article (2) of Article 311, the words used are "reasonably practicable" as against the use of the word practicable in Rule 14(2).

(7) But we are here concerned only with the requirement of satisfaction that it is inexpedient to hold the enquiry since the Central Government has exercised the power as they were satisfied that the Court Martial was not expedient. In *Union of India and Another Vs. Tulsiram Patel and Others*, the Constitution Bench of the Supreme Court has considered as to what is meant by the word "expedient" in Clause (c) of the 11th Proviso to Sub-article (2) of Article 311 of the Constitution. The Supreme Court has held that the satisfaction of the President or the Governor is subjective satisfaction. "Expediency involves matter of policy. - Satisfaction may be arrived at as a result of secret information received by the government about the brewing danger to the security of State and like matters. There may be other factors which may be required to be considered, weighed and balanced in order to reach the requisite satisfaction where holding an enquiry would be expedient or not..... The reasons for satisfaction reached by the President or Governor under clause (c) cannot be, Therefore, required to be recorded in the order of dismissal, removal or reduction in rank nor can they be made public. The Supreme Court has also referred to Article 33 of the Constitution which empowers Parliament by law to determine to what extent any of the rights conferred by Part III shall in their application inter alia to members of armed forces shall be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline amongst them. The Court has then commented. "Thus, the discharge of their duties by the members of these forces and the maintenance of discipline amongst them is considered of such vital importance to the country that in order to ensure this the Constitution has conferred power upon Parliament to restrict or abrogate any of the fundamental rights in their application to them."

(8) The above observations are applicable on all fours to the interpretation of

Rule 14(2) empowering the Army authorities to dispense with the Court Martial if they are satisfied that it is expedient to do so.

(9) In para 141 of the Judgment the Supreme Court has quoted the meaning of the word "expedient" from several dictionaries. Some of the meanings are quite useful for our present purpose. They are "disadvantageous or suitable to the circumstances of the case, inadvisable, impolitic, fit, proper, efficiency in achieving a particular end."

(10) The learned Single Judge came to the conclusion that objective grounds for coming to a conclusion that it was not expedient to hold the Court Martial was not borne out by the record. It is true that the learned Single Judge was seriously handicapped because in spite of the opportunities the Union of India did not produce the original file. It is difficult to understand how the government agencies do not realise the importance of the production of the record before the Court. In many cases the production of the record clarifies the confusion and dispels suspicion. Production of record, thus, helps the government. We deprecate this negligent attitude of the appellant. However, the extracts of the original file are now made available to us and we have the benefit of seeing them. The record shows that the GOC, Western Command has in July 1976 recommended action under Army Rule 14 to Army Headquarters. Various instances of indiscipline by the respondent were considered and it was opined, "While individually these cases may not have been serious, but cumulatively they unmistakably throw light into the basic traits of the officer and lead us to conclude that his further retention in the service is undesirable. It is, therefore, recommended that the officer's services be terminated under Ar 14." But no action was taken perhaps for giving further opportunity to the respondent to improve himself. In January 1977 the question was reviewed but again no action was taken as one disciplinary action in another matter was already in progress. It appears that in spite of availing of the indulgence shown to him and to improve his behavior the respondent continued with the same. In August, 1977 he wrote a letter to Shri Shanti Bhushan, the then Law Minister, under the heading "Abusive use of power and atrocities committed due to misinterpretation of defense Services Regulations (AAI)". The allegations in the petition to the Law Minister were that Gen. T.N. Raina, Chief of Army Staff was abusing and misusing the power in the manner of Mrs. Indira Gandhi. The question as to whether the respondent was fit enough to be maintained in the army and whether the action under rule 14 should be taken was again considered in depth. Apart from the said letter addressed to the Law Minister Shri Shanti Bhushan, the entire record of his past convictions and acts of indiscipline were considered, both by the Chief of the Army Staff and then by the Central Government. The Government came to the conclusion that he was not a fit person to be retained in service as he was not making any improvement in matters of discipline. They also thought that it would be disadvantageous to discipline of the army to allow his bad effect on them. Thus, the authorities had clear and objective material before them and after considering the material at different times they ultimately came to the conclusion

that it was inexpedient to try the respondent again through Court Martial as the earlier five convictions had not brought about any desired improvement in the respondent. As held in *Tulsi Ram Patel*, expediency, involves matters of policy and the Courts will not lightly interfere with the policy matter, especially where it concerns with proper discharge of duties and maintenance of discipline by the armed forces. The show-cause notice has expressly referred to the punishments awarded to the respondent as a result of various disciplinary trials on other counts. The respondent was fully aware of those acts of indiscipline for which punishments were imposed on him. It was also made clear to him that those punishments have not produced any salutary effect. The acts indulged in by him were highly derogatory to army discipline and he was not amenable to the code of army discipline and the conduct expected of the army officers. This was made clear to the respondent in the show-cause notice itself after stating some incidents. We have already noted above the reply given by the respondent to the allegations in the show-cause notice. They look like lame excuses, but all the same the facts are not denied. As regards the letter to the Law Minister Shri Shanti Bhushan, the respondent stated that he had not written the said letter. He had submitted that one Col. Pandey was responsible for writing that letter. The letter reads:-

"FROM: Capt. A.K. Katoch, 58/Z, Young Road, Dehradun Cantt. To : Shri Shanti Bhushan, Law Minister, Ministry of Law, NEW DELHI. Abusive Use of Power and Atrocities Committed due to Misinterpretation of defense Services Regulations (RAI) I Sir, Most honourably it is submitted that Army Authorities - have behaved against me in "INDIRA GANDHI" manner in which power has been abused and misused by incompetent persons by misinterpreting the defense Services Regulation. Needless to say that the DSR/RAI has been amended numbers of times after 1947. I was Court Martial led for fabricated charges and the proceeding have exonerated me of 4 charges out of 5. Enough evidence exists in the proceedings of the Court Martial to prove following officers as liars and/or fabricators. (a) Lt. Col. P.C. Pandey. (b) Maj A.S. Negi. (c) Capt. Y.S. Tiagi. (d) Capt. A.D. Jayal. (e) Capt. S.P. Ale. 2. You Honour, I am enclosing an application addressed to General Officer Commanding 14 Inf. Div. and a reply received from Lt. Col. Harshpati, which evidently proves the "INDIRA GANDHI" attitude followed in the Army. The application is self explanatory and so is the reply. Does the reply leave any doubts to prove my point ? If nothing else should have at least been granted an interview to redress my grievances. 3. Your Honour, as on today the proceedings of the Court have been forwarded for confirmation to higher auth. I am not in possession of any copy otherwise I would have forwarded it for your perusal. A highlight of the proceedings is that a "TOO CAUTIOUS" Commanding Officer now Brig. J.S. Rawat, during 1971 operations captured some enemy property. A portion of this property was later sold to Maj. B.S. Malik from the Officer Mess at a princely sum of Rs. 250/-. Of course it does not include a revolver which the "TOO CAUTIOUS" Commanding Officer presented to Maj. B.S. Malik. What is surprising how a "TOO CAUTIOUS"

Commanding Officer so branded by a study team from Army Hq was upgraded to become a brigadier in the "INDIRA ARMY".⁴ There was no charge, against me involving my integrity or moral character, yet the Chief of Army Staff has ordered with holding of my pay. The author very well know that I am a married officer with liabilities and responsibilities yet a cut has been ordered in my pay. Why so? Is it to prove that Gen. T.N.Raina also formed part of "INDIRA CAUCUS".⁵ Your honour, most humbly it is requested that suitable action betaken to check the truthfulness of every actions taken by me and correctness of the actions taken by Army Authorities. I will be grateful if my impounded pay is refunded to me immediately* because I am facing financial crisis. To ease out my financial problem a loan of Rs. 25,000.00 also be granted to me from any source possible, preferably at no interest. I am writing this privately for your honour's sympathetic consideration and suitable actions. Yours faithfully, sd/-A.K. Katoch Capt. Date. 13 Aug. 77"

(11) There is enough internal evidence in the letter as well as the other petitions to show that the letter has been written by the respondent. The respondent has himself admitted in his writ petition that he had complained of the high handed attitude of the army superiors to the Shah Commission. The Shah Commission was appointed during the Janata Government to look into the allegations of abuse of power and illegalities allegedly committed by Mrs. Indira Gandhi. If the respondent had made complaints to the Shah Commission, the purpose of the complaints would be same as is stated in the letter to Shri Shanti Bhushan, the then Law Minister during the Janata Government. The purport of the letter is that the Army Officers, including Gen. T.N. Raina, Chief of the Army Staff, were abusing and misusing the powers like Mrs. Indira Gandhi. In paragraph 2 of the said letter to the Law Minister he has referred to a reply received by him from Lt. Col. Harshpati to his application. How can a third person like Col. Pandey get a copy of the reply written by Lt. Col. Harshpati to the respondent? There is one curious reference Brig Rawat, who is referred to as a "Too cautious" Commanding Officer. The Study Team from Army Headquarters had probably described Brig. Rawat as a "too cautious" Commanding Officer after the 1971 war with Pakistan. The respondent had made a grievance against the said Brig. J.S. Rawat in para 10 of the writ petition that he was unjustifiably a warden reprimand by Brig J.S. Rawat. The allegation is that the respondent refused to oblige Brig. Rawat by not getting tree "ballis" from the Wood Contractor. On 4.2. 1981 the respondent wrote a memorandum in reply to the letter informing him about his disentitlement to pension and gratuity. In that memorandum he had referred to Brig. J.S. Rawat as "Too Cautious Officer". This is in the context of the further allegation against Brig. Rawat that he extorted cash and gold from Bangladeshis after the 1971 war. Considering this internal evidence, we have no hesitation in agreeing with the conclusion of the Central Government that the letter to Shri Shanti Bhushan, the then Law Minister, was written by the respondent and by no other person.

(12) Having considered the material on record, we are satisfied that the action of

the Union of India to terminate the services of the respondent under Army Rule 14 was legal and proper and no interference was called for from the Court. We, Therefore, set aside the judgment and order of the learned Single Judge and uphold the impugned show-cause notice and the termination order. The Lpa is allowed. There shall be no order as to costs.