

(1970) 12 AHC CK 0012
In the Allahabad High Court
Case No : Second Appeal No. 1683 of 1969

Union of India (UOI)

APPELLANT

Vs

Ex. Kanor Ranbir Singh Sidhu

RESPONDENT

Date of Decision : 04-12-1970

Acts Referred:

Army Act, 1950 — Section 19, 45

Civil Procedure Code, 1908 (CPC) — Section 100, 101

Citation : AIR 1971 All 396

Hon'ble Judges : J.S. Trivedi, J

Bench : Single Bench

Advocate : J.N. Tiwari, for the Appellant; Gopi Nath Kunjru, for the Respondent

Final Decision : Allowed

Judgement

J.S. Trivedi, J.—The plaintiff-respondent was appointed a Second Lieutenant in the Regular Patiala Army on 28th February, 1933, During the Second World War he was mobilised for war services and was promoted to the substantive rank of Captain on 28-2-1942. He returned to Patiala on 15-7-1942 and was promoted to the rank of an Acting Major on 5-4-1943. He came under Indian State Force's Officer's Scheme with the rank of Acting Major under the Superimposed India Emergency Commission. This Scheme was to remain in force during the duration of War only. On 5th June, 1945 he was reverted to the Patiala Infantry Training Unit as second-in-command and the Indian Army Superimposed Emergency Commission was held in abeyance. He was again reverted to the Indian Army Establishment as the serving Indian State Force's Officer with effect from 29th June, 1947 for a period of three years with seniority as substantive Captain from 5th of July, 1943. On 17th June, 1948, he was appointed a Commandant Refugee Camp Jammu and continued to act as Commandant till March 1949 and on 17th March, 1949, he applied to the Military Secretary Army Headquarters for regularising the acting rank of Brigadier on his appointment as Commandant and for regularising his seniority of services for promotion and appropriate

appointment under the Post-war Policy. On 4th June, 1949, the Ministry of Defence granted regular commission to him in the Indian Army Force with effect from 12th April 1949 and with seniority as indicated against his name --"Ranbir Singh (S. S. 11421 Now I. C. 4313) Sikh Regiment with seniority as Second Lieutenant from 26th January 1945 and as Lieutenant from 26th July 1946".

According to him, the notification sought to adversely affect his seniority in emoluments and he, therefore, made a complaint u/s 117-A of the Indian Army Act on 29th of June, 1949 claiming Brigadier's pay and rank etc. Not only was his complaint rejected but repeated representations which he made subsequently to the various authorities were also rejected and finally by order dated 5-10-1951 he was informed to abstain from addressing any more appeals on points in respect of which orders of the Central Government have already been passed. It was also mentioned therein that failure to comply with this direction may lead to the compulsory removal of the officer. In spite of the above Specific order of the Central Government the plaintiff persisted in his representation. A show cause notice for the removal of the plaintiff from service was thereupon issued. The plaintiff was finally removed from service by the order of the Central Government which was to take effect from 15-2-1954.

The plaintiff unsuccessfully filed petitions and appeals against the order of removal and the suit out of which this appeal arises was then filed after notice u/s 80, Civil P. C. for the relief that order dated 6-2-1954 removing him from service is illegal, without jurisdiction, ultra vires and inoperative. The trial Court on an interpretation of the Indian Army Act, 1950 and relying on S.K. Rao's case reported in 1968 LIC 60(Delhi) held that the charge of insubordination being covered u/s 42(e) of the Army Act, the Central Government was not authorised to act u/s 19 ignoring Section 42, The suit was, therefore, decreed for the declaration sought for. The lower appellate Court confirmed the decree of the trial Court, hence this second civil appeal.

2. Learned counsel for the appellant has contended that the case relied upon by the Courts below is in appeal before their Lordships of the Supreme Court, He has placed his reliance on the judgment of the Hon"ble Supreme Court in *Rajendra Pal v. Union of India* (Writ Petn. No. 220 of 1960 decided on 12-1-1967 (SC)) and has contended that in the case of a similar or parallel legislation, the removal of an Air Force Officer was held valid even without any opportunity and charges. Article 310, Constitution of India provides that except as expressly provided by the Constitution, every member of a Defence service or of a Civil Service holds office during the pleasure of the President. Article 311 expressly provides that no person who is a member of Civil Service shall be removed or dismissed otherwise than by the authority and the method given therein. The express provision contained in Article 311 in respect of civil servants does not apply to Army personnel. Army Act regulates the law relating to the government of the Regular Army. Chapter IV deals with the condition of service. The authorities empowered to terminate and remove an Army personnel are given in

Sections 18, 19 and 20. Section 18 lays down that "every person subject to this Act shall hold office during the pleasure of the President." Section 19 is in the following words :

"Subject to the provisions of this Act and the Rules and Regulations made thereunder the Central Government may dismiss, or remove from the service, any person subject to this Act".

Section 20 empowers the Chief of the Army Staff to dismiss or remove from service any person other than an officer and reduce to a lower grade or rank any warrant officer or a non-commissioned officer. Section 20 also enumerates the power of various officers of dismissal and removal. Chapter VI deals with offences. Section 34 deals with Offences in relation to the enemy and punishable with death. The various offences are enumerated from Sections 34 to 70 for which an Army personnel can be convicted. Section 34 to 70 also provide the punishment by a court-martial of the offences mentioned therein. u/s 34, if a person commits any of the offences in relation to the enemy, he on conviction by a court-martial is liable to suffer death or such punishment that may be awarded to him by the court-martial. Section 42 which is relevant is in the following words:--

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

- a)
- b)
- c)
- d)
- e) neglects to obey any general, local or other order; or
- f).....
- g)

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend in the case of the offences specified in Clauses (d) and (e) to two years, and in the case of the offences specified in the other clauses to ten years, or such less punishment as is in this Act mentioned.

Section 45 deals with "unbecoming conduct" which is as under:

"Any officer, junior commissioned officer or warrant officer who behaves in a manner unbecoming his position and the character expected of him shall, on conviction by court-martial, if he is an officer, be liable to be cashiered or to suffer such less punishment as is in this Act mentioned; and, if he is a junior commissioned officer or a warrant officer, be liable to be dismissed or to suffer such less punishment as is in this Act mentioned".

Section 71 provides that:

"Punishments may be inflicted in respect of offences committed by persons subject to this Act and convicted by court-martial, according to the scale following, that is to say-

- (a) death;
- (b) transportation for life or for any period not less than seven years;
- (c) imprisonment, either rigorous or simple, for any period not exceeding fourteen years;
- (d) cashiering, in the case of officers;
- (e) dismissal from the service;
- (f)
- (g)
- (i)
- (j).....
- (k)
- (l)

Section 73 provides that:

"A sentence of a court-martial may award in addition to, or without any one other punishment the punishment specified in Clause (d) or Clause (e) or Section 71 and any one or more of the punishments specified in Clauses (f) to (1) of that section."

3. According to the learned counsel for the plaintiff respondent, the words "subject to the provisions of this Act and the rules" in Section 19, restrict the right of the Central Government to dismiss otherwise than on a recommendation of the court-martial and Section 19 does not give an independent power to the Central Government to dismiss or remove persons. I am not prepared to accept this interpretation of the Act. As mentioned above, conditions of service and the power of dismissal and termination of service, etc., given in Sections 18, 19 and 20 have no bearing or relation with the power of a court-martial to punish an Army personnel for the offences enumerated in the Act. Punishment for offences will not restrict the power of dismissal etc. expressly given in Sections 18, 19 and 20. Subject to the provision of this Act, Section 19 is only indicative of the fact that the power exercisable by the Central Government should be in accordance with the Act and rules. It is also significant to note that u/s 53 read with Section 54, no finding of a Court-Martial is valid unless the same is confirmed by the Central Government. If Section 19 is intended to cover the case of offences alone, Section 19 becomes redundant and the Central Government cannot

dismiss or remove any person from service even though the section expressly authorises it to dismiss or remove in accordance with the rules and regulations made therein. But if the words "subject to the provisions of this Act and the rules" mean in accordance with the Act and rules, then this power can be exercised in accordance with the rules that may be made or in accordance with any provision of the Act which may hereinafter be added in the Act restricting the power given in Section 19.

The court-martial contemplated under the Act is an independent body for punishing an officer who on conviction is found to have committed an offence. The power given to the President and the Central Government under Sections 18 and 19 are parallel powers to two distinct bodies. Section 18 is only a reiteration of the power given by the Constitution. Section 19 is an additional power given to a new authority, i.e., Central Government and has, therefore, been made subject to the provisions of Act and the rules. No section of the Act restricts the power of dismissal or removal conferred by Section 19. On the other hand, the power conferred of punishment by the court-martial is subject to the confirmation of the Central Government. Because some other authority has also been conferred power to punish for offences, that cannot mean and cannot imply that the Central Government is stripped of the power of dismissal or removal. In a democratic constitution where President is the figure head and acts under the advice of the Ministers, the powers conferred u/s 19 is to ensure the control of the Central Government also over the Defence personnel. It is not disputed that on the relevant date there were no rules or regulations framed under the Act and the Army Act was the solitary Act under which action had been taken. If no rules and regulations have been framed, the power cannot be said to be non-existent. The purpose of rules and regulations is to serve the purpose of the enactment. They cannot go against the provisions of the enactment and cannot make any change in the provision. The rule only could be framed laying down the procedure for the exercise of the power given in Section 19. With due respect to the observations of the Bench of the Delhi High Court made in S.K. Rao's case 1968 Lab IC 60 which is the subject-matter of appeal before the Supreme Court, I am not prepared to accept that Section 19 of the Act is not independent of Section 45 and does not give an independent power to the Central Government to dismiss or remove persons.

4. The Court below was, therefore, wrong in holding that the Central Government had no power to dismiss the plaintiff-respondent from the service. The order is not challenged on the ground of violation of any principles of natural justice. A cross-objection has also been filed by the plaintiff-respondent wherein it has been prayed that the plaintiff be declared to be continuing in service and that he should be granted a declaration to the effect that he is entitled to his emoluments. The cross-objection has no force. Firstly the plaintiff-respondent's dismissal has been held valid. Secondly, as will appear from the plaint, the prayer sought for in the cross-objection was specifically deleted by the plaintiff. It is, therefore, not open to him in second appeal to ask for a relief which was

specifically deleted.

5. The result, therefore, is that this appeal succeeds and the suit of the plaintiff shall stand dismissed and the cross-objection is dismissed. In the circumstances of the case costs throughout shall be on parties.