

(2002) 11 DEL CK 0157

In the Delhi High Court

Case No : Letters Patent Appeal No. 170 of 1999

Union of India (UOI)

APPELLANT

Vs

Ex. Sgt. Avimanyu Panda

RESPONDENT

Date of Decision : 13-11-2002

Acts Referred:

Air Force Act, 1950 — Section 20(3), 20(7), 65, 71
Air Force Rules, 1969 — Rule 18, 18(1), 24, 24(4), 36
Army Act, 1950 — Section 19, 45
Army Rules, 1954 — Rule 14, 14(2), 14(3), 14(4)

Citation : (2002) 101 DLT 267 : (2003) 1 SLJ 171

Hon'ble Judges : R.S. Sodhi, J;A.D. Singh, J

Bench : Division Bench

Advocate : Sanjeev Sharma, for the Appellant; R.N. Sharma and D.K. Srivastava, for the Respondent

Judgement

Anil Dev Singh, J.—This letters patent appeal is directed against the order of the learned Single Judge dated January 4, 1999 in C.W.P. No. 984/1996 whereby the order of the Air Officer, Commanding in Chief, dated on August 21, 1995, dismissing the respondent from service and the order of the Appellate Authority dated January 11, 1996 maintaining the order of the Air Officer, Commanding in Chief, dated August 21, 1995 were set aside with consequential direction to reinstate the respondent. The facts leading to the appeal are as follows:

2. The respondent herein was enrolled as Combatant Member in the Air Force on October 29, 1979. In course of time he was prompted to the rank of Sergeant. On July 5, 1993 he was posted as Laboratory Assistant in 810 Signal Unit Force. On the morning of April 25, 1995, a patient, Ms. Suman Kumari Verma (hereinafter called "the complainant"), aged about 17 years, daughter of Junior Warrant Officer, Vijay Kumar Verma, came to the MI Room and was examined by the Medical Officer, Dr. Mrs. B. Mote. She advised Ms. Suman Kumari for blood hb% and urine routine examination. Accordingly, the complainant with the prescription slip of Dr. Mote approached the respondent as he was the Laboratory

Assistant. The respondent after drawing sample of blood from the complainant made the members of his staff, Ms. Ramoti Devi and Ms. Risalo Devi to leave the laboratory. After the staff left the laboratory, he handed over some cotton wool to the complainant and asked her to go to the toilet and clean her genitals. He also asked her to wait for him in the toilet as he would help her in collecting the urine sample. The respondent followed the complainant to the toilet with a test tube and made her sit on the toilet seat. Thereafter, he started rubbing the test tube against her genitals. The complainant protested and told the respondent to go away. Thereafter, the respondent left the toilet. The respondent having left the toilet, the complainant bolted the door from inside and started crying. She waited in the toilet till the arrival of other people in the laboratory. Coming out of the toilet, she left for her home. On reaching home she narrated the incident to her mother.

3. At about 10.15 a.m. the same day, viz. April 25, 1995, Mrs. Rano Devi, mother of the complainant, went to the MI Room and caught hold of the respondent by his collar. She shouted at him for having outraged the modesty of her daughter.

4. Written statements of the complainant, Mrs. Rano Devi, Mrs. K. Jhulka, WD O.P. Sharma and the respondent were recorded on the same day. On April 27, 1995, charges were framed against the respondent. He was charged u/s 71 of the Air Force Act, 1950, for having used criminal force to a woman with the intention to outrage her modesty. The respondent was also charged u/s 65 of the Air Force Act, 1950, for having committed an act prejudicial to good order and discipline of the force. Thereafter, as per the direction of the Commanding Officer summary of evidence was recorded. During the course of recording of summary of evidence opportunity was granted to the respondent to cross examine the prosecution witnesses and to produce any witness in his defense. On May 9, 1995, the respondent was informed that his case had been referred to the Competent Authority for the purpose of convening a District Court Martial. On May 18, 1995, a copy of Summary of Evidence along with Exhibits, copy of formal charge sheet and list of witnesses was forwarded to the respondent by the Station Adjutant. Though no District Court Martial was convened, a show cause notice was instead issued on behalf of the AOC-in-C Western Air Command, to the respondent on July 14, 1995, which inter alias stated that the respondent while posted in 801 SU AF as Laboratory Assistant at MI room used criminal force against Ms. Suman Kumari Verma with the intention of outraging her modesty. The respondent in consonance with Rule 18(1) of the Air Force Rules, 1969, was asked to show cause why he should not be dismissed from service under Sub-section 3 of Section 20 of the Air Force Act, 1950 for committing the aforesaid offence. He was also asked to furnish his reply to the show cause notice within ten days of the receipt thereof. On July 4, 1995, the respondent submitted his Explanation. The Explanation of the respondent did not find favor with the AOC-in-C and consequently on 21st August, 1995 he was dismissed from service u/s 20(3) of the Air Force Act, 1950. Thereupon, on January 22, 1996, he

respondent filed an appeal against the order of his dismissal dated 21st August, 1995 to the Chief of the Air Staff but the same was also rejected. The respondent being aggrieved by the aforesaid order of dismissal and the order of the Appellate Authority rejecting his appeal, filed a writ petition, being CWP No. 984/1996.

5. The learned single Judge allowed the writ petition by its order dated January 4, 1999. The operative part of the order reads as follows:-

"xx xx xx Accordingly, the writ petition is allowed and the order of dismissal dated 21.8.1995 and the order passed by the appellate authority dated 12.1.1996 are set aside.

The petitioner shall be reinstated in service with all consequential benefits."

6. The Union of India, Chief of the Air Staff, Air Headquarters; AOC-in-C, Western Air Command and Commanding Officer, 810 Signal Unit, Air Force have filed this letters patent appeal against the order of the learned single Judge.

7. We have heard learned counsel for the parties at length. The basic question for determination in this appeal is whether the Competent Authority could exercise power u/s 20(3) of the Air Force Act read with Rule 18 of the Air Force Rules, 1969, to dismiss the respondent from service without holding a Court Martial. While the learned counsel for the appellants submitted that an action on account of misconduct against an employee of the Air Force, other than an officer, whose further retention in service is not considered desirable can be taken u/s 20(3) of the Air Force Act read with Rule 18 of the Air Force Rules without his trial by a Court Martial, the learned counsel for the respondent submitted that no action u/s 20(3) of the Air Force Act read with Rule 18 of the Air Force Rules can be taken against an employee charged with Sections 65 and 71 of the Air Force Act for committing an act prejudicial to good order and discipline of the force and for outraging the modesty of a woman, without his trial by a Court martial. According to the learned counsel for the respondent his client having been charged under Sections 65 and 71 of the Air Force Act was mandatorily required to be tried by a Court Martial and only on being convicted by the Court Martial punishment could be imposed on the respondent and not otherwise.

8. Our attention was drawn to Sections 65 and 71 of the Air Force Act, 1950. These Sections read as under:-

Section 65:

"65. Violation of good order and air force discipline.- Any person subject to this Act who is guilty of any act or omission which though not specified in this Act, is prejudicial to good order and air force discipline shall , on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned."

Section 71:

"71. Civil Offences.- Subject to the provisions of Section 72, any person subject to this Act who at any place in or beyond India commits any civil offence shall be deemed to be guilty of an offence against this Act and, if charged therewith under this section shall be liable to be tried by a court-martial and, on conviction, be punishable as follows, that is to say,--

(a) if the offence is one which would be punishable under any law in force in India with death or with transportation, he shall be liable to suffer any punishment, other than whipping, assigned for the offence by the aforesaid law and such less punishment as is in this Act mentioned; and

(b) in any other case, he shall be liable to suffer any punishment, other than whipping, assigned for the offence by any law in force in India, or imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned."

(underlying of the word "shall" supplied by us)

9. Learned counsel for the respondent contended that both Sections 65 and 71 of the Air Force Act use the underlined word "shall" which makes it clear that it is only on conviction by a Court Martial that a person can be punished.

10. We have considered the submissions of the learned counsel for the parties. The question, as already noted, is whether the appellants could resort to Section 20(3) of the Air Force Act, 1950 read with Rule 18(1) of the Air Force Rules, 1969, against the respondent when the offence was triable by a district Court Martial and the same was not convened. The question needs to be considered in the light of the decision of the Supreme Court in Union of India (UOI) Vs. Capt. S.K. Rao, , where the Supreme Court held that an officer who behaves in a manner unbecoming his position can be removed from service u/s 19 of the Army Act, 1950, read with Rule 14 of the Army Rules, 1954 without being tried by a Court Martial u/s 45 of the Army Act, which specifically deals with the subject of unbecoming conduct of an officer. Before we quote the observations of the Supreme Court made in the aforesaid decision with regard to scope of Section 19 of the Army Act and Rule 14 of the Army Rules, and Section 45 of the Army Act, we may notice these provisions:

Section 19 of the Army Act, 1950:

"19. Termination of service by Central Government.- Subject to the provisions of this Act and the rules and regulations made there under the Central Government may dismiss, or remove from the service, any person subject to this Act."

Rule 14 of the Army Rules, 1954:

"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 misconduct 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 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 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) or 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 the service; or

(b) removed from the service; or

(c) Compulsory retired from the service.

(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-

- (a) dismiss or remove the officer with or without pension or gratuity; or
- (b) compulsorily retire him from the service with pension and gratuity, if any, admissible to him."

Section 45 of the Army Act, 1950:

"45. Unbecoming conduct- Any officer, junior commissioned officer or warrant officer who behaves in a manner unbecoming his position and the character expected to 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."

11. Construing the aforesaid provisions, the Supreme Court in S.K. Rao's case (supra) observed as follows:-

"Section 19 itself suggests that there should be rules, and subject to the provisions of the Act and such rules, the Central Government may dismiss or remove from the service any person subject to the Army Act. Section 19(2)(a) specifically gives power to make a rule providing for the removal from the service of persons subject to the Act. It follows that there may be a valid rule whereunder, subject to the other provisions of the Act, the Central Government may remove a person from the service. Rule 14 is such a rule; it is, Therefore, not ultra vires."

xx xx xx Under the aforesaid Rule 14, action can be taken for misconduct against an officer whose further retention in service is not considered desirable, without the officer being tried by a court-material. Before removal he must, under the rule, be asked to submit is Explanation and defense. If the Explanation is found to be unsatisfactory, the Central Government has been given the power to dismiss or remove the officer.

xx xx xx "It was argued that the words "subject to the provisions of this Act" occurring in Section 19 makes Section 19 subject to Section 45, and the Central Government has thus no power to remove a person from the service in derogation of the provisions of Section 45. But the power u/s 19 is an independent power. Although Section 19 uses the words "subject to the provisions of this Act", it speaks of removal of a person from the service. Section 45 provides that on conviction by Court-martial an officer is liable to the cashiered or to suffer such less punishment as is in this Act mentioned. For removal from service u/s 19 of the Army Act read with Rule 14 of the Army Rules, 1954, a Court-martial is not necessary. The two Sections 19 and 45 of the Act are, Therefore, mutually exclusive."

12. The legal position adumbrated in S.K. Rao's case (supra) has been reiterated in Union of India and Others Vs. Harjeet Singh Sandhu etc., In this regard, the Supreme Court observed as follows:-

"The learned counsel for the respondents submitted that a Court Martial convened under the Act is a high-powered Special Tribunal vested with very wide jurisdiction. It cannot appropriately be called either a criminal court merely or a service Tribunal simply. It is a combination of the two and much more than that. A perusal of the provisions of Section 71 clearly indicates that the Court Martial is empowered to inflict such punishments which are otherwise inflicted by a competent criminal court while there are punishments such as those provided by Clauses (d) to (i) thereof which belong to the realm of service jurisprudence and can ordinarily be inflicted by way of penalty for a misconduct which a person in service may be found to have committed. The learned counsel went on to submit that the scheme of the Act and the Rules thus shows that a person subject to the Act having committed a misconduct amounting to an offence within the meaning of Chapter VI should ordinarily be subjected to trial by a Court Martial. And if that has been done, then the power to act u/s 19 is taken away. So also if the period of limitation for trial by a Court Martial is over, then also by necessary implication resort cannot be had to Section 19. We find it difficult to agree with the submission so made.

In *Union of India v. Capt. S.K. Rao* the gross misconduct alleged against the delinquent officer was of having actively abetted in the attempt of a brother officer's daughter eloping with a sepoy. An enquiry into the grave misconduct was made by a Court of Enquiry. The Chief of the Army Staff considered the conduct of the officer unbecoming of an officer. He also formed an opinion that trial of the officer by a General Court Martial was inexpedient and, Therefore, he offered administrative action to be taken under Rule 14 by removing the officer from service. The order of removal was put in issue on the ground that the Army Act contained specific provision, viz., Section 45, for punishment for unbecoming conduct and as Section 19 itself suggests that power being "subject to the provisions of this Act", Section 19 would be subject to Section 45 and Therefore the Central Government would have no power to remove a person from the service in derogation of the provision of Section 45. The plea was repelled by this Court holding that the power u/s 19 is an independent power. Though Section 45 provides that on conviction by Court Martial an officer is liable to be cashiered or to suffer such less punishment as mentioned in the Act, for removal from service u/s 19 read with Rule 14, a Court Martial is not necessary. The Court specifically held that the power u/s 19 is an independent power and "the two Sections 19 and 45 of the Act are, Therefore, mutually exclusive".

It is true that some of the punishments provided by Section 71 as awardable by Court Martial are not necessarily punishments, in the sense of the term as ordinarily known to criminal jurisprudence, but are penalties as known to service jurisprudence. The fact remains that such penalties have been treated as punishments awardable by Court Martial u/s 71 of the Army Act, 1950. The power conferred by Section 19 on the Central Government and the power conferred on the Court Martial by Section 71 are clearly distinguishable from each other. They are not alternatives to each other in the sense that the exercise

of one necessarily excludes the exercise of the other.... "

xx xx xxThe delinquent officer cannot be allowed to escape the consequences of his misconduct solely because court-martial proceedings have been adjudged illegal or unjust for the second time. The power u/s 19 read with Rule 14 shall be available to be exercised in such a case though in an individual case the exercise of power may be vitiated as an abuse of power. The option to have a delinquent officer being tried by a Court Martial having been so exercised and finding as to guilt and sentence having been returned for or against the delinquent officer by the Court Martial for the second time, on just and legal trial, ordinarily such finding and sentence should be acceptable as to be confirmed. Power to annul the proceedings cannot be exercised repeatedly on the sole ground that the finding or the sentence does not meet the expectation of the confirming authority. Refusal to confirm is a power to be exercised, like all other powers to take administrative decision, reasonably and fairly and not by whim, caprice or obstinacy. Exercising power u/s 19 read with Rule 14 consequent upon court-martial proceedings being annulled for the second time because of having been found to be illegal or unjust, the exercise would not suffer from lack of jurisdiction though it may be vitiated on the ground of "inexpediency" within the meaning of Rule 14(2) or on the ground of abuse of power or colourable exercise of power in a given case.

xx xx Xx

13. Thus, going by the above decisions, the services of an officer subject to the Army Act accused of having committed misconduct amounting to a civil offence can be terminated without being tried by a Court Martial under the administrative power comprised in Section 19 of the Army Act read with Rule 14 of the Army Rules.

14. Reverting to the case in hand, we proceed to examine the relevant provisions of the Air Force Act and the Air Force Rules, namely, Sub-sections (3) and (7) of Section 20 of the Air Force Act and Sub-rule (1) of Rule 18 of the Air Force Rules since action against the respondent was taken under these provisions. They read as under:-

Sub-sections (3) and (7) of Section 20 of the Air Force Act, 1950:

20. Dismissed, removal or reduction by Chief of the Air Staff and other officer. -

"xx xx xx (3) An officer having power not less than an air officer in charge of a command or equivalent commander or any prescribed officer may dismiss or remove from the service any person serving under his command other than an officer or a warrant officer.

xx xx xx (7) The exercise of any powers under this section shall be subject to the other provisions contained in this Act and the rules and regulations made there under."

Sub-rule (1) of Rule 18 of the Air Force Rules, 1969.

18. Dismissal or removal of a person subject to the Act other than an officer:-

(1) Save in a case where a person subject to the Act other than an officer is dismissed or removed from the service on the ground of conduct which had led to his conviction by a criminal court or a court-martial, no such 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.

xx xx xx"

15. A comparison of Section 20(3) of the Air Force Act, 1950 and Rule 18(1) of the Air Force Rules, 1969, with Section 19 of the Army Act, 1950 and Rule 14 of the Army Rules, 1954, leaves no manner of doubt that the object and purport of two set of provisions is the same and the decision of the Supreme Court in *Union of India v. S.K. Rao* (supra) applies to the instant case. Thus, the same action which can be taken against an Army Officer u/s 19 of the Army Act read with Rule 14 of the Army Rules can be taken against the personnel of the Air Force, below the rank of an officer, u/s 20(3) of the Air Force Act, 1950 read with Rule 18(1) of the Air Force Rules, 1969. Since decision in *Rao's* case (supra) covers the field, we need say no more except that the power comprised in Section 20(3) of the Air force Act and Rule 18(1) of the Air Force Rules is an independent and different power other than the power comprised in the provisions of the Air Force Act dealing with Court Martials and the two set of provisions, namely, Section 20(3) of the Air Force Act and Rule 18(1) of the Air Force Rules on the one hand and Section 71 of the Air Force Act dealing with civil offences and Section 65 thereof dealing with violation of good order and discipline of the air force on the other hand are mutually exclusive.

16. Learned counsel for the respondent submitted that the words "subject to the provisions of this Act" occurring in Section 20(7) of the Air Force Act make Section 20(3) subject to Sections 65 and 71 of the Air Force Act and the appellants had no power to remove the respondent from service without trial and conviction by a Court Martial under Sections 65 and 71 of the Air Force Act. The submission of the learned counsel flies in the face of the aforesaid judgment of the Supreme Court in *S.K. Rao* (supra). The Supreme Court clearly held that the power contained in Section 19 of the Army Act to dismiss or remove a person subject to the Army Act is an independent power although Section 19 uses the words "subject to the provisions of this Act". The Supreme Court pointed out that Section 19 of the Army Act speaks of removal or dismissal of a person from service, while Section 45 of the said Act provides that on conviction by a Court Martial, an officer is liable to be cashiered or to suffer such less punishment as mentioned in that Act. Similar distinction applies for differentiating the purport of Section 20(3) of the Air Force Act and Rule 18 of the Air Force Rules on the one

hand and Sections 65 and 71 of the Air Force Act on the other hand. In order to allay the misgivings of the respondent with regard to the scope of Section 20(3) read with Rule 18(1) of the Air force Rules and Sections 65 and 71 of the Air Force Act, we consider it necessary to again quote the following observations of the Supreme Court in S.K. Rao's case (supra) which were made in the context of Section 19 of the Army Act read with Rule 14 of the Army Rules and Section 45 of the Army Act as the aforesaid words "subject to the provisions of this Act" are common in two set of provisions:

"It was argued that the words "subject to the provisions of this Act" occurring in Section 19 makes Section 19 subject to Section 45, and the Central Government has thus no power to remove a person from the service in derogation of the provisions of Section 45. But the power u/s 19 is an independent power. Although Section 19 uses the words "subject to the provisions of this Act", it speaks of removal of a person from the service. Section 45 provides that on conviction by court-martial an officer is liable to be cashiered or to suffer such less punishment as is in this Act mentioned. For removal from service u/s 19 of the Army Act read with Rule 14 of the Army Rules, 1954, a Court-martial is not necessary. The two Sections 19 and 45 of the Act are, Therefore, mutually exclusive ."

(underlining supplied by us)

17. In view of the aforesaid discussion, we hold that the competent authority was empowered to dismiss the respondent from service u/s 20(3) of the Air Force Act, 1950 read with Rule 18(1) of the Air Force Rules, 1969 without even convening a Court Martial.

18. Learned counsel for the respondent urged that AOC-in-C to whom the case was referred for convening a District Court Martial by the Commanding Officer, had only three options available to him, namely, (a) To authorise in writing the Commanding Officer or other officer exercising the powers of a Commanding Officer to dispose of the case summarily or (b) to refer the case to a superior authority or (c) to order to convening of a District Court Martial for the trial of the accused person. Learned counsel submitted that AOC-in-C, by not availing of any one of the three options, could not have dismissed the respondent from service u/s 20(3) of the Air Force Act read with Rule 18(1) of the Air Force Rules. The submission of the learned counsel is untenable in view of the judgment of the Supreme Court in UOI v. S.K. Rao, (supra). As already pointed out, power u/s 20(3) of the Air Force Act read with Rule 18 of the Air Force Rules is independent of the other provisions of the Air Force Act and the Air Force Rules and the same could be utilised by the competent authority for taking action against the respondent for his misconduct.

19. The learned counsel for the respondent in support of his submission that the AOC-in-C was not entitled to take action against the respondent u/s 20(3) of the Air Force Act read with Rule 18(1) of the Air Force Rules since no punishment

could be imposed without conviction by a Court Martial, referred to certain decisions. It is not necessary to notice those decisions as they are contrary to the view of the Supreme Court expressed in the aforesaid judgments.

20. The learned counsel for the respondent also submitted that the show cause notice issued in exercise of the power u/s 20(3) of the Air Force Act read with Rule 18(1) of the Air Force Rules did not specify any reason as to why the AOC-in-C had decided to resort to administrative action instead of taking recourse to the provisions of Sections 65 and 71 of the Air Force Act for holding a Court Martial.

21. We have considered the submission of the learned counsel for the respondent. It was not necessary for the Competent Authority to assign any reason in the show cause notice for not convening the Court Martial and resorting to action u/s 20(3) of the Air Force Act read with Rule 18(1) of the Air Force Rules. In fact the reason for not convening the Court Martial and resorting to administrative action against the respondent was contemporaneously recorded in a note of the AOC-in-C dated August 17, 1995. Therefore, we do not find any flaw in the show cause notice issued at the instance of the AOC-in-C or the order of termination passed against the respondent. Learned counsel for the respondent however, canvassed that as per Army Rule 14, the Competent Authority while taking administrative action against an officer for misconduct which amounts to an offence has to satisfy itself as to why holding of a Court Martial is inexpedient or impractical and such satisfaction, in the form of a reason, must be recorded and communicated to the officer in writing. He submitted that as Rule 18 of the Air Force Rules is akin to Rule 14 of the Army Rules, the aforesaid requirement of recording of reason, as embodied in Rule 14 of the Army Rules, must be read into Rule 18 of the Air Force Rules. It is no doubt true that power embodied in Rule 14 of the Army Rules is similar to the power comprised in Rule 18(1) of the Air Force Rules, but in Rule 18(1) there is no requirement on the part of the Competent Authority to state that holding of Court Martial is inexpedient or impracticable. Army Rule 14 and Air Force Rule 16, which require the competent authority to specify the reason for not holding the Court Martial in the order itself, apply to officers whereas Air Force Rule 18(1) applies to persons other than officers. It seems to us that the framers of the Air Force Rules drew a distinction between officers and other ranks. They framed a slightly different rule for personnel other than officers of the Air Force. In this view of the matter, we reject the submission of the learned counsel for the respondent and hold that in Rule 18(1) there is no requirement that the Competent Authority should record its satisfaction in the order itself to the effect that trial of the person by a Court Martial is inexpedient or impracticable.

22. The learned counsel for the appellants pointed out that on August 17, 1995 before the issuance of the order dismissing the respondent from service u/s 20(3) of the Air Force Act read with Rule 18(i) of the Air Force Rules, the AOC-in-C even recorded the reason for not convening a Court Martial. He submitted that the learned Single Judge was not right in rejecting the reasons spelt out in the

note of the AOC-in-C dated August 17, 1995 for not holding the Court Martial and exercising power u/s 20(3) of the Air Force Act and Rule 18(1) of the Air Force Rules. In order to appreciate the submission of the learned counsel for the appellants, we consider it appropriate to notice the relevant part of the note dated August 17, 1995 recorded by the AOC-in-C. The note to the extent is relevant reads as under:-

"xx xx xx 4. Holding of a Court Martial will require the victim, Miss Suman Kumari Verma, to say things in court which will be traumatising for her. Therefore, I accept the recommendation that 655831F Sgt. Panda A Med Asst be dismissed from service u/s 20(3) of AF Act, 1950. Sgt. Panda to be dismissed from service."

23. At this stage we may also refer to the observations of the learned single Judge in regard to the aforesaid note of the AOC-in-C:-

"51.....The view of the AOC-in-C that the holding of a court martial will require the complainant to say things in Court which will be traumatic for her, is wholly irrelevant. It is not professed that any national security is involved."

24. We do not find the observation of the learned single Judge to be in conformity with law. The reason for not holding the Court Martial cannot be faulted as the same is not irrelevant. The trial of the respondent by a Court Martial would have meant opening the wounds of the complainant caused by the incident and would have exposed her to possible embarrassing cross-examination by the respondent. The victim, Suman, needed protection from further harassment. In *Hira Nath Mishra and Others Vs. The Principal, Rajendra Medical College, Ranchi and Another*, where some male students paraded without clothes before the girls hostel and were rusticated by the college authorities without giving them an opportunity to cross examine the girl students who had made statements against them to save them from further harassment, the Supreme Court did not find fault with the procedure adopted by the University authorities in taking action against the students. It may be pointed out that in the instant case the respondent was provided full opportunity to cross-examine the witnesses during the recording of summary of evidence under Rule 24 of the Air Force Rules. He was also given an opportunity to produce defense evidence at that stage. Therefore, it was not a case where the respondent was deprived of an opportunity to cross examine the complainant. It seems to us that the AOC-in-C took a sagacious decision in not convening the District Court Martial as that would have revived the memories of her ordeal and indignity which she suffered at the hands of the respondent in the MI room. She could not be made to relive the traumatic experience.

25. We Therefore do not agree with the view of the learned single Judge that the reason for not convening the Court Martial was irrelevant.

26. Learned counsel for the respondent submitted that Rule 24(4) and Rule 36 of the Air Force Rules have been violated. According to him the witnesses produced

during summary of evidence were not produced before the Commanding Officer during preliminary enquiry which requirement is mandatory in nature. We are not impressed by the argument of the learned counsel for the respondent. There is no flaw in the proceedings. In any case the respondent has not been able to show any prejudice to him because of the alleged non-compliance with the aforesaid Rules since action has been taken against the respondent u/s 20(3) of the Air Force Act read with Rule 18(1) of the Air Force Rules and not under any other provision of the Air Force Act or the Air Force Rules.

27. In view of the aforesaid discussion, we set aside the order of the learned single Judge and restore the order of dismissal of the respondent from service dated August 21, 1995 and the order of the Appellate Authority dated January 12, 1996.