

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Reserve : 21.1.2008
Date of Decision : 08.02.2008

+ WP(C) No.17349/2006

Ex. Sepoy Anand Pal Petitioner

Versus

1. Union of India
2. Chief of Army Staff
3. GOC Delhi Area, ... Respondents

Advocates who appeared in this case :

For the petitioner : Major K. Ramesh, Advocate.

For the respondents : Ms. Maneesha Dhir with Mr. Sumit Attri
and Major S.S. Pandey, Advocate

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE J.M. MALIK

1. Whether the Reporters of local papers may be allowed to see the judgment?	No
2. To be referred to Reporter or not?	Yes
3. Whether the judgment should be reported in the Digest?	Yes

J.M. MALIK, J.

1. The indisputable facts of this case are these. Ex. Sepoy

Anand Pal, the petitioner who is posted as Havildar / Clerk was indicted for accepting an illegal gratification of Rs.20,000/-. He was tried by a Summary Court Martial. The petitioner pleaded 'guilty' and he was sentenced, "To be reduced to ranks". The petitioner does not pick up a dispute with these facts.

2. The GOC Delhi area while exercising administrative power awarded another punishment of "dismissal from service" under Section 20(3) of the Army Act, 1950 (hereinafter to be referred as Army Act) read with Rule 17 of Army Rules for the same charge. Aggrieved by that order the present petition was filed with the prayer that punishment awarded by the GOC Delhi, dated 06.06.2006 be quashed and the petitioner be granted pensionary benefits and other fiscal retrial benefits with immediate effect.

3. We have heard the counsel for the parties and considered the written synopsis filed by the counsel for the petitioner. The only question raised by the petitioner is whether the second punishment by way of dismissal from service after a full fledged operative and executed sentence by a Summary Court Martial would amount to a double jeopardy in terms of Article 20(2) of Indian Constitution. In this regard the counsel for the petitioner has made four submissions which are reproduced below :-

"A. The same GOC was well within his plenary powers to convene even a General Court Martial for the purpose but when once ordered for a Summary Court Martial by way of promissory estoppel he cannot take a volte face stand just because he is 'unhappy' with the punishment.

B. The Summary Court Martial has the powers to award a sentence of Dismissal from service with even 1 year RI but having considered his past record of exemplary service of 20 years without any red ink entry(page 14) he was awarded 'To be reduced to ranks' which is legally correct and cannot be tinkered with. Moreover any finding/sentence of a Summary Court Martial does not require confirmation. Here it has been even promulgated by tearing off his stripes in front of the unit as per the Promulgation Parade. So the individual has already suffered the trauma.

C. Inter alia as a Havildar he had 6 more years of service upto 26 years of service but with the reduction to ranks as a Sepoy he can serve only upto 20 years of service. The petitioner was enrolled on 22nd August 1986 and therefore his service has to end by 31st August 2006, based on the consequence of the punishment. Appreciating this fact the Records rightly directed the petitioner for discharge on 31st August 2006 but then this impugned order of the GOC dated 6th June 2006 has come in the way and today he is not getting his pension which is the only surviving grievance of the petitioner.

D. The two judgments quoted by counsel for respondents are though correct but are out of context. While referring the judgment

in Re UOI vs. HS Sandhu (2001) 5 SCC 593 the kind attention is drawn in “page 601” which is important and reproduced in Ground A (ii) in page 4 of CWP. Thus the *ibid* ratio decidendi is squarely applicable here. Prayed for in utmost humility.”

4. Ground A (ii) in page 4 of CWP is reproduced as follows :

“A(ii) The Hon'ble Supreme Court in Re Union of India Vs. Harjeet Singh Sandhu in (2001) 5 SCC 593 by a Larger Bench has held in Para G in Page 601 that, 'Once finding and sentence are confirmed exercise of power under Section 19 read with Army Rule 14 is impermissible.' The Apex Court in its elaboration of the judgment had held that 'To permit such a course would be violative of the principle of Double Jeopardy and would be subversive of the efficacy of the Court Martial proceedings, finding and sentence.'

It is well known that for officers Section 19 read with Army Rule 14 is applicable and for jawans Army Act Section 20 read with Army Rule 17 is applicable.”

5. For the following reasons, we are unable to clap any significance to these arguments. It must be borne in mind that “page 601” pertains to the head note of the judgment, extracted from Para 27 at page 617. Para 27 of Re UOI Vs. H.S. Sandhu(*supra*) for rare clarity is reproduced as follows :

“27. Section 127 was to be found in the Army Act as originally enacted which provided that a person convicted or

acquitted by a Court Martial could be tried again by a criminal court for the same offence or on the same facts subject to previous sanction of the Central Government. The provision was deleted by Act 37 of 1992. This deletion is suggestive of the legislative intent to confer finality to the finding and sentence of Court Martial subject to their being confirmed and not annulled. Power to confirm finding and sentence of Court Martial and the power to annul the proceedings on the ground of being illegal or unjust, both provisions read together indicate that the finding and sentence of Court Martial if legal and just have to be ordinarily confirmed but they may be annulled on the ground of illegality or unjustness. An obligation is cast on the confirming authority to examine the legality and justness of the proceedings before confirming them. Questions of correctness, legality and propriety of the order passed by any Court Martial and the regularity of any proceedings to which the order of Court Martial relates can be raised by way of petition under Section 164. Once the finding and the sentence, if any, have been confirmed, the Court Martial being a Special Tribunal dispensing military justice, it would not be permissible to exercise additionally the power conferred by Section 19 read with Rule 14 and to inflict a penalty thereunder if the Court Martial has not chosen to inflict the same by way of punishment under Section 71. To permit such a course would be violative of the principle of double jeopardy and would also be subversive of the efficacy of the court-martial proceedings, finding and sentence. So long as a final verdict of guilty or not guilty, pronounced by a Court Martial and

confirmed by the competent authority so as to be effective is not available, the power to proceed under Section 19 read with Rule 14(2) exists and remains available to be exercised.”

6. It must be borne in mind that Section 20 and Rule 17 or Section 19 and Rule 14 of Army Act were not struck down by the Apex Court. The Apex Court came to the conclusion that the question of double jeopardy will come into play only on certain situation clarified in above quoted para. The position was further made clear in the subsequent paras. Para 42 reads :-

“42. Exercise of power under Section 19 read will Rule 14 is open to judicial review on well-settled parameters of administrative law governing judicial review of administrative action such as when the exercise of power is shown to have been vitiated by mala fides or is found to be based wholly on extraneous and / or irrelevant grounds or is found to be a clear case of colourable exercise of / or abuse of power or what is sometimes called fraud on power i.e. where the power is exercised for achieving an oblique end. The truth or correctness or the adequacy of the material available before the authority exercising the power cannot be revalued or weighed by the court while exercising power of judicial review. Even if some of the material, on which the action is taken is found to be irrelevant, the court would still not interfere so long as there is some relevant material available on which the action can be sustained. **The court would**

presume the validity of the exercise of power but shall not hesitate to interfere if the invalidity or unconstitutionality is clearly demonstrated. If two views are possible, the court shall not interfere by substituting its own satisfaction or opinion for the satisfaction or opinion of the authority exercising the power."

7. Now let us turn to the relevant provisions of Army Act.

Section 20(3) of the Army Act runs as follows :

“(1) The Chief of the Army Staff may dismiss or remove from the service any person subject to this Act, other than an officer.

(2) X X X X

(3) An officer having power not less than a brigade 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 junior commissioned officer.

(4), (5), (6) & (7)	X	X	X	X
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Rule 17 of the Army Act runs as follows :

“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:

Provided that if in the opinion of the officer competent to order the dismissal or removal, it is not expedient or reasonably practicable to comply with the provisions of this rule, he may after certifying to that effect, order the dismissal or removal without complying with the procedure set out in this rule. All cases of dismissal or removal under this rule where the prescribed procedure has not been complied with shall be reported to the Central Government."

It must be borne in mind that in the instant case no petition under Section 164 of the Army Act was moved. It will not be advisable at this late stage to direct the petitioner to move the petition under Section 164 of the Army Act. We have, therefore, taken on ourselves to decide the case on merits.

8. A Division Bench of this court in case Lt. Col. V.N. Singh Vs. Union of India and others, 2002(64) DRJ 379 (consisting of S.B. Sinha, Chief Justice, as he then was and one of us viz. A.K. Sikri, J) upheld the validity of Sections 153, 154 and 160 of the Army Act.

The last section deals with revision of finding or sentence, relied upon three cases one pertaining to the Apex Court reported in Captain Harish Uppal Vs. Union of India and others, 1973 (2) S.C.R 1025 and two pertaining to this court reported in Gian Chand Vs. Union of India and others, 1983 CrL.J 1059 D.B and Havaladar D.K. Srivastava Vs. Union of India, CWP No. 6999 of 2001 decided on 06.02.2002 and made the following observations :

“7. Principle of double jeopardy, as enumerated under Clause (2) of Article 20 of the Constitution, in our considered view, is not attracted in the instant case. The power of the revisional authority to revise an order of punishment is in continuation of the same proceedings. Only because the delinquent officer has in the meantime undergone punishment, the same, in our opinion, does not bring about a situation in terms whereof enhancement of punishment in an appeal or revision would be impermissible. What is provided in Clause (2) of Article 20, is prosecution and punishment for the same offence more than once. The same does not prohibit enhancement of punishment in the same proceedings. Even under the Criminal Procedure Code, the High Court, either in exercise of its appellate or revisional jurisdiction may enhance the punishment, subject of course to compliance of the principles of natural justice. The revisional power of the High Court includes initiation of suo moto proceedings.”

9. In Union of India and others Vs. K. Murugesan, (Kant) D.B, 2004 (6) KarLJ 120, the Karnataka High Court speaking through T.S. Thakur, J. held :

“11-A. A plain reading of the above would show that the same does not envisage the conduct of any enquiry into the facts constituting the cause of action against him before an order of dismissal or removal from service can be made. All that is required is that the official concerned is informed of the particulars of the cause of action and allowed reasonable time to state in writing the reasons he may have to urge against his dismissal or removal. Proviso to Section 17 in fact makes it clear that even the requirement of informing the official concerned of the particulars of the cause of action against him may be dispensed with provided the officer competent to order the dismissal records a certificate to the effect that it is not expedient or reasonably practicable to comply with the same. The argument that Rule 17 envisaged the conduct of an enquiry before an order of dismissal could be passed must therefore be rejected. The provision satisfies bare minimal requirements of natural justice before an order of dismissal is passed against the officials concerned. The decisions of the Supreme Court in Lekh Raj Khurana v. Union of India, AIR 1971 SC 2111 and Union of India and Anr. v. K.S. Subramanian, AIR 1976 SC 2433 have authoritatively held that in the absence of protection conferred under Article 311 of the Constitution, the principles of natural justice cannot be invoked to widen the scope of enquiry or the opportunity

available to an affected person over and above that prescribed by the relevant rules. To the same effect is the decision of High Court of Andhra Pradesh in V.Y. Thomas v. Commandant, A.D.C. Centre, Secunderabad and Anr., 1982 Lab.I.C 632 A.P. It follows that an order of dismissal passed under Section 20 of the Army Act read with Rule 17 of the Rules framed thereunder may be validly passed upon satisfying the requirements of a notice to the person affected and informing him about the cause of action on the basis whereof the proposed order of dismissal is sought to be made and after allowing him time to state in writing reasons that he may have to urge against his dismissal or removal from service. That requirement having been satisfied in the instant case, there was no illegality in the order to justify interference with the order of dismissal impugned in the writ petition. In as much as the learned Single Judge read into Rule 17, the requirement of an enquiry, he in our opinion, committed an error that needs to be corrected in appeal."

10. This High Court in a case reported in Karan Singh Vs. UOI and others, 2000 IV A.D (Delhi) 831 decided by one of us (Hon'ble Justice A.K. Sikri) upheld the dismissal order from service under Section 20(3) of the Army Act read with Rule 17 of Army Rules. The petitioner in that case was sentenced to undergo five years imprisonment and fine for offence under Sections 376/323 Indian Penal Code by the Additional Sessions Judge.

11. It must be noticed that framers of the Army Act were well

aware of the concept of double jeopardy. That is why Section 121 of the Army Act specifically ingrained this concept, which is reproduced as follows :

“121. Prohibition of second trial – When any person subject to this Act has been acquitted or convicted of an offence by a court-martial or by a criminal court, or has been dealt with under any of the sections 80, 83, 84 and 85, he shall not be liable to be tried again for the same offence by a court-martial or dealt with under the said sections.”

12. In V.N. Singh Vs. Union of India (supra) it was further held:

“As by reason of the provisions of the Army Act which is a complete code by itself a detailed procedure as regards holding of different categories of proceedings have been laid down in terms whereof principles of natural justice are complied with and trials can be held in a fair manner, the requirements of Article 21 of the Constitution cannot be said to be violated. It is, thus, idle to contend that the aforementioned provisions of the Act are ultra vires. Furthermore, by reason of Section 164 of the Act, an additional protection has been afforded to a delinquent officer and thus, it cannot be said that thereby executive would have a say over the authorities discharging the judicial function.”

13. It thus boils down to the conclusion that above said proceedings are without any flaw. The corruption is a very serious offence. The authorities have to take punitive steps in

order to curb this type of crime. Corrupt influence is itself the perennial spring of all prodigality, and of all disorder, it loads us more than millions of debt, takes away vigor from our arms, wisdom from our councils, and every shadow of authority and credit from the most venerable parts of our Constitution. Again, the accomplice to the crime of corruption is frequently our own indifference. The writ is meritless and therefore dismissed.

J.M. MALIK, J.

A.K. SIKRI, J.

February 08, 2008
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