

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision: 7th July 2011.

+ W.P.(C) 7018/2010

GUNNER STOREHAND (GD) BANARASI LAL Petitioner
Through: Mr.Dipak Bhattacharya and
Mr.C.L. Kalia, Advocates

versus

UOI AND ANR Respondents
Through: Mr.A.S.Chandhiok, ASG with
Mr.Sandeep Bajaj, Ms.Neha
Rastogi and Ms.Ria Kaul,
Advocates

+ W.P.(C) 7039/2010

GUNNER MILKHI RAM Petitioner
Through: Mr.Dipak Bhattacharya and
Mr.C.L. Kalia, Advocates

versus

UOI AND ANR Respondents
Through: Mr.A.S.Chandhiok, ASG with
Mr.Sandeep Bajaj, Ms.Neha
Rastogi and Ms.Ria Kaul,
Advocates

+ W.P.(C) 7040/2010

EX. CAPTAIN SEWA RAM NAGIAL Petitioner
Through: Mr.Dipak Bhattacharya and
Mr.C.L. Kalia, Advocates

versus

UOI AND ANR Respondents
Through: Mr.A.S.Chandhiok, ASG with
Mr.Sandeep Bajaj, Ms.Neha
Rastogi and Ms.Ria Kaul,
Advocates

+ W.P.(C) 7041/2010

GUNNER SAT PAL Petitioner
Through: Mr.Dipak Bhattacharya and
Mr.C.L. Kalia, Advocates

versus

UOI AND ANR Respondents
Through: Mr.A.S.Chandhiok, ASG with
Mr.Sandeep Bajaj, Ms.Neha
Rastogi and Ms.Ria Kaul,
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+ W.P.(C) 7042/2010

GUNNER HARI SINGH Petitioner
Through: Mr.Dipak Bhattacharya and
Mr.C.L. Kalia, Advocates

versus

UOI AND ANR Respondents
Through: Mr.A.S.Chandhiok, ASG with
Mr.Sandeep Bajaj, Ms.Neha
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CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SUNIL GAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J (Oral)

1. These 5 writ petitioners and many other officers of the Indian Army were charged by the Military Intelligence for

espionage. It was alleged that they gave secret information to the Pakistan Military pertaining to the Indian Army, which was a threat to the security of the Nation.

2. At a Court Martial held in the year 1976, the petitioners and others were charged and convicted for offence under Section 69 of the Army Act read with Section 3 of the Official Secrets Act. All were cashiered from service and were sentenced to undergo imprisonment for various periods.

3. The petitioners filed writ petitions before the High Court at Jammu and Kashmir challenging the verdict of guilt pronounced by the General Court Martial. These writ petitions were filed in the year 1978 and were dismissed on 7.4.1983. The judgment attained finality inasmuch as no appeal was filed against the judgment and order dated 7.4.1983.

4. Two officers – Mr. Ranbir Singh Rathaur and Mr. A.K. Rana, who were held guilty by the General Court Martial filed writ petitions in the Delhi High Court, which were dismissed on 23.3.1982 and 4.6.1991 respectively. The 2 officers challenged the decision of the learned Single Judge by filing Letter Patent Appeals.

5. Some officers of the Indian Army, who were not subjected to a General Court Martial, were dismissed from service in exercise of power vested in the competent authority under Section 18 of the Army Act. We may call this power as the administrative power to dismiss a person without a trial or an inquiry.

6. Several of them filed writ petitions in this Court challenging

the administrative dismissals, which writ petitions were tagged with the Letter Patent Appeals filed by Mr. Ranbir Singh Rathaur and Mr. A.K. Rana.

7. In the year 1994, one co-accused Sarwan Dass filed an affidavit stating that Mr. Ranbir Singh Rathaur and Mr. A.K. Rana were wrongly accused. In the said year the Full Bench of this Court gave an opinion pertaining to the scope of judicial review with respect to the scope of judicial intervention against orders of administrative dismissal under Section 18 of the Army Act.

8. On the basis of twin development i.e. Sarwan Dass a co-accused filing an affidavit in the year 1984 exonerated Mr. Ranbir Singh Rathaur and Mr. A.K. Rana, and the decision of the Full Bench, the two filed fresh writ petitions being W.P.(C) No. 4082/1994 and W.P.(C) No. 3063/1995, in which they re-agitated their conviction by the General Court Martial. The said two writ petitions were tagged along with Letter Patent Appeals filed by them against the judgment and order dated 23.3.1982 and 4.6.1981 dismissing the writ petitions filed by them in which they have challenged the verdict of guilt pronounced against them by the General Court Martial.

9. The writ petitions filed by the persons against whom administrative dismissal was effected as also the Letter Patent Appeals filed by Mr. Ranbir Singh Rathaur and Mr. A.K. Rana as also the two subsequent writ petitions filed by them were allowed on 21.12.2000 and the proceedings at the General Court Martial were set aside.

10. Union of India challenged the judgment and order of 21.12.2000, by seeking leave to appeal before the Supreme

Court. Leave was granted. Civil Appeal No.2949-57/2001 are pending before the Supreme Court. Operation of the judgment and order dated 21.12.2000 has been stayed.

11. The petitioners thereafter filed writ petitions in this Court in the year 2001 praying that they were entitled to the same relief as was granted to Mr.Ranbir Singh Rathaur and Mr.A.K. Rana. These writ petitions were adjourned sine die and upon the constitution of the Armed Forces Tribunal were transferred to the Tribunal for adjudication.

12. On 22.3.2006, the Supreme Court de-linked such appeals which pertained to writ petitions filed by those who had suffered an administrative dismissal and as regard the judgment allowing W.P.(C) No.4082/95 and W.P.(C) No.3063/1995, for the reason Mr.Ranbir Singh Rathaur and Mr.A.K. Rana had earlier litigated and lost the battle, the Supreme Court remanded the matter to this Court to decide whether the subsequent writ petitions were maintainable or were barred by res-judicata.

13. On remand, this High Court dismissed the 2 writ petitions vide judgment and order dated 20.12.2007 holding the said writ petitions to be barred by res-judicata and hence not maintainable.

14. The 2 have preferred petition for seeking leave to appeal against the judgment and order of 20.12.2007 and the petitions for special leave to appeal are still pending and stated to be listed before the Supreme Court on 1.8.2011.

15. The reasoning of the Armed Forces Tribunal to dismiss the second round of litigation initiated by the writ petitioners is the

same as the reasoning of the Division Bench of this Court as per order dated 20.12.2007. It has been held that the bar of res-judicata makes not maintainable the writ petitions.

16. Suffice would it be to state that the view taken by the Tribunal is in conformity with the view taken by the Division Bench as per its judgment and order dated 20.12.2007. We are respectfully bound by the view on the law of precedent.

17. Accordingly, we find no infirmity in the view taken by the Tribunal and thus, we dismiss the writ petitions. Needless to say that our dismissal would be the passport for the petitioners to approach the Supreme Court and as the ultimate fate would be decided by the Supreme Court when the petition for special leave to appeal pending before the Supreme Court against the judgment and order dated 20.12.2007 passed by the Division Bench of this Court holding that the bar of res-judicata renders not maintainable subsequent petitions on the same cause are decided.

18. No costs.

PRADEEP NANDRAJOG, J

SUNIL GAUR, J

JULY 07, 2011
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For orders see W.P.(C) No. 7018/2010.

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WP (C) No. 7018/2010, W.P.(C) No. 7039/2010, W.P.(C) No. 7040/2010
W.P.(C) No. 7041/2010 & W.P.(C) No. 7042/2010

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