

Union of India

Vs

Capt. S. K. Rao

Civil Appeal No. 1653 of 1967

(CJI S.M. Sikri, J.M. Shelat, G.K. Mitter, I.D. Dua, JJ)

22.11.1971

JUDGMENT

Sikri, C.J. -

1. The judgment, reproduced below, was drafted by the late Mr. Justice Roy and we all had subscribed to it. We heard the matter formally again on November 19, 1971. We adopt the judgment as our own.

2. This is an appeal by the Union of India by way of special leave.

3. On April 9, 1959, the Central Government directed removal from service of Capt. S. K. Rao under Rule 14 of the Army Rules, 1954. The facts leading to his removal are as follows :

4. Rao was a commissioned officer in the Indian Army and was attached to the Army Ordinance Corps Training Centre, Secunderabad. It was alleged that on April 4, 1958, he committed acts of gross misconduct. The allegations were as follows :

"Knowing Kumari Prakash as the daughter of a brother officer, Rao assisted her in going away from her parents protection and planning to run away with a sepoy."

"Rao, by threatening to cause harm to Kumari Prakash's parents, intimidated her to visit his house where he took her in his scooter to the unit lines of 5/11 Gurkha Rifles where he arranged her meeting with a sepoy of the unit."

"He (i.e. Rao) acquiesced in the girl being met by sepoy later at a tea shop nearby where she received a present of a sari and blouse from the sepoy in his presence."

"Rao thus actively abetted in the attempt of brother officer's daughter elope with a sepoy."

"Rao then took Kumari Prakash to hotel 'Saidya Lodge' in Hyderabad and got a room to themselves by impersonating and giving a false identify as "Mr. and Mrs. Prakash."

5. An inquiry into the matter was made by Court of Inquiry. The Chief of the Army Staff, after going through the proceedings of the Court of Inquiry, considered that the conduct of Capt. Rao was most unbecoming of an officer. As he was of opinion that trial of the officer by a General Court Martial was inexpedient, he ordered administrative action to be taken under Rule 14 of the Army

Rules, 1954. By memorandum, dated September 4, 1958, Rao was called upon to submit his explanation by way of defence regarding the allegations against him. The explanation of Rao was placed before the Central Government. The Central Government found it to be unsatisfactory, and on April 9, 1959, an order was passed removing the respondent from service.

6. Capt. Rao thereupon filed a petition under Article 226 of the Constitution for quashing the order of removal from service on the ground, inter alia, that Rule 14 of the Army Rules, 1954, was ultra vires the Army Act, 1950, and that the action taken thereunder was without any authority.

7. In the petition Rao gave a somewhat different version of what had happened. According to him he did not assist Kumari Prakash to go away from her parent's house.

8. At the hearing of the petition the only point which was urged was the validity of Rule 14 of the Army Rules, 1954. If this rule was intra vires the Army Act, Rao has no case.

9. The Army Rules, 1954, including Rule 14, were framed in exercise of the powers conferred by Section 191 of the Army Act, 1950. Rule 14 of the Army Rules, 1954, is as follows :

"(1) When after considering the reports on an officer's misconduct, the Central Government is satisfied or the C-in-C is of the opinion, that the trial of the officer by a court-martial is inexpedient or impracticable but considers the further retention of the said officer in the service as undesirable, the C-in-C shall communicate the view of the Central Government or his views, as the case may be, to the officer together with all reports adverse to him and he shall be called upon to submit his explanation and defence.

(2) In the event of the explanation of the officer being considered unsatisfactory by the C-in-C, or when so directed by the Central Government, the case shall be submitted to the Central Government with the officer's defence and recommendation of the C-in-C as to whether the officer should be, -

(a) dismissed from the service; or

(b) removed from the service; or

(c) called upon to retire; or

(d) called upon to resign.

(3) The Central Government, after due consideration of the reports, the officer's defence, if any, and the recommendation of the C-in-C, 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 retired from or gazetted out of the service on pension or gratuity, of any admissible to him."

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-martial. Before removal he must, under the rule, be asked to submit his explanation and defence. If the explanation is found to be unsatisfactory, the Central Government has been given the power to dismiss or remove the officer.

10. Rules are framed under Section 191 of the Army Act. Sub-section (1) of Section 191 gives power to the Central Government to make rules for the purpose of carrying into effect the provisions of the Act. Sub-section 2(a) provides :

"Without prejudice to the generality of the power conferred by sub-section (1), the rules made thereunder may provide for -

(a) the removal, retirement, release or discharge from the service of persons subject of this Act."

11. Sections 18 and 19 which appear in Chapter IV of the Army Act dealing with "Conditions of Service" provide as follows :

"Section 18 - Every person subject to this Act shall hold office during the pleasure of the President.

Section 19 - 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."

12. Offences under the Army Act have been dealt with in Sections 34 to 70 in Chapter VI, of which Sections 45 is as follows :

"Section 45 - 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."

13. It was argued by counsel for the respondent Rao that the Army Act contained specific provisions for punishment for unbecoming conduct, viz., Section 45. To give power to the Central Government to remove an officer without being tried and convicted by court-martial was in derogation of Section 45 of the Army Act. Rule 14, therefore, was ultra vires the Army Act. This argument is not correct.

14. 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 191(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.

15. 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 under Section 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 under Section 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.

16. The result is that Rule 14 of the Army Rules, 1954, is not ultra vires the Army Act.

17. The appeal is, therefore, allowed, but in the circumstances of the case without any order as to costs. The case will now go back to the High Court for disposal on merits on the other questions raised by the respondent herein in the High Court.

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