

SUPREME COURT OF INDIA

Union of India

Vs.

Major S.P. Sharma

(2013) 10 SCC 0150

(B.S. Chauhan Member-Puisne J. V.Gopala Gowda JJ.)

30.07.2013

JUDGEMENT

V.Gopala Gowda,J.

1. THESE appeals are filed by the appellants against the common judgment and order dated 21.12.2000 passed by Delhi High Court in L.P.A. Nos. 4, 43, 139, 148 of 1987, 21 of 1988, 77 of 1993 and 86 of 1994 wherein the High Court quashed not only the termination orders but also the Court Martial proceedings held against Captain Ashok Kumar Rana and Captain R.S. Rathaur, framing certain questions of law that would arise according to them for consideration of this Court and urging grounds in support of the same, praying for setting aside the impugned judgment and order by allowing these appeals and dismissing the writ petitions filed by the respondents herein.

2. RELEVANT brief facts of the case are stated hereunder for the purpose of appreciating the rival legal contentions to answer the points that are formulated in these appeals. All the respondents, except respondents Captain Ashok Kumar Rana and Captain R.S. Rathaur, challenged the termination order passed by the appellants which was affirmed by the High Court and this Court. During 1975 -1980, on the basis of intelligence reports and on apprehension of some person, a large number of officers/JCOs/other rank officers were suspected to be involved in espionage activities with Pakistan and were considered a security threat to the Nation. Considering the nature and extent of involvement in such activities some of the officers were tried by Court Martial and against other officers, administrative action was taken under Section 18 of the Army Act 1950. Consequently, their services were terminated. According to the appellants, a total of 42 Army personnel (19 officers, 4 JCOs and 19 other rank officers) were found suspected to be involved in the espionage activities. All the respondents in these appeals were permanent Commissioned Officers of the Indian Army. Vide order dated 11.1.1980 read with order dated 3.3.1980 their services were terminated under Section 18 of the Army Act. Aggrieved by the termination order, the respondents, except Major R.K. Midha and Major N.R. Ajwani, filed writ petitions being C.W.P. Nos. 418, 419, 421, 424 and 425 of 1980 before the High Court of Delhi urging

various grounds including the ground of malafide. The High Court vide order dated 21.4.1980 dismissed the writ petitions. The respondents aggrieved by the said order challenged the same by filing SLP(C) Nos. 7225 -7233 of 1980 urging the ground that the termination order was vitiated by malafide. This Court vide its common order dated 1.9.1980 dismissed the special leave petitions.

3. IT is also pertinent to point out that the Delhi High Court in the aforesaid writ petitions did not go into the merits of the case and upheld the order of termination. The appellants herein filed special leave petitions against the order dated 21.4.1980 which were also dismissed. The aforesaid persons have also filed second round of writ petitions before the Delhi High Court being W.P.Nos. 804, 1643 to 1647/82, 1666/82 and 1777/82, 970, 1022 of 1980 questioning the order of termination and also order dated 3.3.1980 by which the appellants converted dismissal order into order of termination and served the order on all the aforesaid respondent -officers by end of July, 1980 and the show cause notice dated 10.5.1982 proposed to impose a 5% cut on the gratuity as their services were considered unsatisfactory which is punitive. Also, the foundation of the order of termination was unsatisfactory service for undisclosed reasons. The aforesaid order of termination and the show cause notice dated 10.5.1982 were challenged by the respondent -officers on the ground of malafide as the said order was not preceded by an inquiry into the allegation of serious misconduct against them and no opportunity was given to them to defend themselves and that the earlier writ petitions were dismissed in limine and also that they were never tried by a Court Martial on the ground of alleged misconduct of espionage. In the said writ petitions, in the counter affidavit filed by Union of India, a specific plea was taken that the orders of termination were passed against the respondent -officers because they were allegedly involved in espionage. The learned single judge dismissed the writ petitions on 22.3.1985. Aggrieved by the said order the respondent -officers filed L.P.As. before the Delhi High Court. In the said proceedings, question of law was framed by the Division Bench and referred to the Full Bench on 15.5.1991. ;