

PETITIONER:
CHIEF OF ARMY STAFF AND ORS.

Vs.

RESPONDENT:
MAJOR S.P. CHADHA

DATE OF JUDGMENT 21/12/1990

BENCH:
KANIA, M.H.
BENCH:
KANIA, M.H.
MISRA, RANGNATH (CJ)

CITATION:
1991 AIR 460 1990 SCR Supl. (3) 691
1991 SCC (2) 288 JT 1991 (1) 54
1990 SCALE (2) 1312

ACT:

Army Act, 1950: Sections 3(ii), (vii), (viii) and (xvii), 117, 121, 126 and 127. Army Instruction No. 1/6/74 (As amended by Army Instruction No. 2/76) and No. 81 of 1986.

Criminal Courts and Court-Martial (Adjustment of jurisdiction) Rules, 1978: Rules 3 and 4. Army Officer--Civil offence--Disciplinary proceedings--Attachment--Reduction in Rank--Suspension--Trial-Choice between criminal court and Court-Martial--Prohibition of second trial--Accused put on trial before General Court-Martial-Dissolution of Court-Martial--Accused whether can be tried by an ordinary criminal court for the same offence--Validity of attachment, reduction in rank and suspension--Purpose of attachment---Explained.

'Offence'--'Civil Offence'--'Court-Martial'--'Criminal Court' Meaning of.

Code of Criminal Procedure, 1973: Sections 190(1) (a) and 475.

HEADNOTE:

The respondent, a Lt. Colonel, was alleged to have committed a civil offence. He was attached to another regiment for purposes of completing the disciplinary proceedings, made to relinquish his acting rank of Lt. Colonel, on the basis of Army Instruction No. 1/6/74 and suspended from service. The Army authorities opted for his trial by a General Court-Martial under the Army Act, 1950. He filed a writ petition in the Supreme Court challenging action of the Army Authorities. However, the Court-Martial was dissolved under Section 117 of the Army Act and the respondent was handed over to civil authorities for trial of the same offence by a regular criminal court. Consequently, the Supreme Court dismissed his writ petition.

Pursuant to the handing over of the respondent to the civil authorities, a complaint was filed against him before a Magistrate's court under Section 190(1) (a) of the Criminal Procedure Code, 1973. The respondent filed a writ petition in the Punjab and Haryana High Court praying for restoration of his acting rank and for revocation of

his suspension. A Single Judge of the High Court ordered restoration of his acting rank by holding that since the authorities opted for his trial under the Army Act he could not be handed back to civil authorities for trial by an ordinary Criminal Court on the ground that trial by a Court-Martial was not feasible; and in view of his attachment to other regiment suspension should not have been resorted to.

The Letters Patent Appeal preferred by the appellants against the decision of the Single Judge was summarily dismissed by a Division Bench of the High Court.

In appeal to this Court, against the decision of the Division Bench of the High Court, it was contended on behalf of the appellants that (i) since the Court-Martial could not be completed against the respondent there was no legal bar to his trial by an ordinary criminal court; (ii) Until the trial was completed, the respondent was neither entitled to get back his rank nor have his suspension revoked.

On behalf of the respondent it was inter alia contended that since he was sent to a regular criminal court for trial his attachment could no longer survive.

Allowing the appeal, this Court,

HELD: 1. Section 127 of the Army Act, 1950 deals with successive trials by a criminal court and Court-Martial and sub-section (1) of section 127 specifically provides that a person convicted or acquitted by a Court-Martial may, with the previous sanction of the Central Government, be tried again by a criminal court for the same offence or on the same facts. Under this section there is no general bar as such prohibiting successive trials by a Court-Martial and by a criminal court and perusal of the section shows that even where a person has been convicted or acquitted by a Court-Martial of the offence in question, he can be tried for the same offence by a criminal court, with the previous sanction of the Central Government. In the instant case the question of sanction of the Central Government never arose because the respondent was neither convicted nor acquitted by the Court-Martial or dealt with under sections 80, 83, 84 or 85. [698H, 699A-C]

2. Section 121 of the Army Act, deals with the prohibition of second trial. It has no application to the instant case as the respondent was neither acquitted nor convicted by the Court-martial or by a criminal court nor has he been dealt with under Sections 80, 83, 84 or 85 of the Act. [698G]

693

3. Army Instruction No. 31 of 1986, inter alia provides that an officer who ceases to carry out the duties of his appointment by being attached to another Unit for disciplinary purposes will vacate his appointment or relinquish any acting rank after 21 days. It further provides that if such an officer is subsequently acquitted or for any purpose not brought to trial or his character is vindicated to the satisfaction of the appropriate authorities at Army Headquarters vide such inquiry as is made under para 346 of the Regulations for the Army, such officer will be reappointed to the post vacated by him and the acting rank of the officer will be deemed to have been held by him continuously with effect from the date he relinquished it. The respondent vacated his appointment and his acting rank 21 days after his attachment to a different regiment for purposes of completing the proceedings against him. As he has not yet been acquitted nor has his character been vindicated to the satisfaction of the appropriate authorities at Army Headquarters and he is to be tried by the criminal court, till

the trial is completed or given up or till he is acquitted or his character vindicated to the satisfaction of the appropriate authorities, there is no case for revocation of the order of his suspension or restoration of his acting rank. [698C-D, 699G-H, 700A]

4. The only purpose of attachment of an army officer to a different unit is that the disciplinary proceedings against him could be speedily and satisfactorily completed without any interference by him. In view of the respondent being sent to the ordinary criminal court for trial, there was no question of his interfering thereafter with the disciplinary proceedings and in view of that, the order of attachment against him is set aside. Accordingly the orders of the High Court are set aside except to the extent that the attachment of the respondent to the other Unit will cease and he will be reverted to his original unit. [699E-F, 700B]

JUDGMENT: