

CASE NO.:
Appeal (civil) 4450 of 1997

PETITIONER:
U O I & ORS.

Vs.

RESPONDENT:
RAJBIR SINGH KHANNA & ANR.

DATE OF JUDGMENT: 24/08/2001

BENCH:
S. Rajendra Babu & R.C. Lahoti

JUDGMENT:

WITH
Civil Appeal No. 5665/2001 (@ S.L.P.(C) No. 15370/1997)

J U D G M E N T

R.C. Lahoti, J.

Leave granted in SLP(C) No. 15370/1997.

Rajbir Singh Khanna, respondent no.1 was commissioned in the Indian Army on 8.2.1964. In June 1989, when he was holding the rank of Colonel, he was posted as Deputy Commandant of 61 Infantry Brigade deployed in Sri Lanka. At that time Brigade Commander was Brigadier Jaspal Singh, respondent no.2. On 22.1.1990, 7.2.1990 and 9.2.1990 respectively three Courts of Inquiries were ordered to investigate certain financial irregularities in the sale of VCPs belonging to HQ 61 Infantry Brigade and movement of 5 other ranks of HQ 61 Infantry on temporary duties from operational area to Jammu, the home place of respondent no.1. The irregularities were noticed by Brigadier Jaspal Singh. On 6.2.1990 Brigadier Jaspal Singh also issued warning letter to respondent no.1 putting him on adverse report under paras 80 and 81 of Special Army Order 3/S/89. Though the respondent no.1 replied to the warning letter dated 6.2.1990, Brigadier Jaspal Singh was not convinced and directed staff Court of Inquiry to be held for ascertaining the facts. On 14.3.1990 Brigadier Jaspal Singh endorsed an adverse report on the respondent no.1 which stated inter alia - there have been aberrations in his mandatory character qualities of integrity and moral courage which make his utility to the service doubtful. He has been found wanting in discipline towards managing personal finances and was thus embarrassed in this context. I do not recommend this officer for further promotion and would advise upon his change of appointment. The respondent no.1 was due for promotion as Brigadier but the aforesaid adverse report was construed as drop in his performance and as his promotion was subject to continued satisfactory performance he was not physically promoted to the rank of Brigadier. On 23.2.1990 he was approved for promotion to the acting rank of Brigadier in the General Cadre.

A fourth Court of Inquiry was also ordered against the respondent no.1 to investigate into certain allegations, such as, (a) misuse of regimental fund, (b) misuse of regimental money, (c) issuing cheques which bounced, (d) over-drafting of Sri Lankan

currency where the respondent no.1 was deployed, (e) sending Jawans on temporary duty to his home station at Jammu, and (f) making false declaration in his record of service. Based on the findings of the fourth Court of Inquiry, on 11.7.1990 disciplinary action was directed to be initiated against respondent no.1 and he was attached with the office of the Chief Engineer, Calcutta Zone so that the disciplinary action could proceed against him as per the rules.

Early in 1991 respondent no.1 filed a writ petition in the High Court of Jammu and Kashmir seeking quashing of all proceedings initiated against him as also a direction to the army authorities to promote him to the rank of Brigadier with effect from 23.2.1990, the date on which he was intimated of his having been approved for the rank of acting Brigadier. On 17.12.1991 a learned Single Judge, while directing rule nisi to issue, also made an interim order restraining any further action against the respondent no.1 on the basis of proceedings already held and not to deprive the respondent no.1 of promotion to the rank of Brigadier in case he has been held to be entitled for it. This interim order was continued by the High Court vide order dated 9.3.1992 to remain in operation in spite of objections filed on behalf of the appellants and the High Court having been informed by the appellants that because of drop in performance the respondent no.1 could not be promoted. Thereafter again, on behalf of the appellants, an application was filed before the High Court seeking vacation of the interim order dated 17.12.1991 so that the army authorities could proceed with the court martial but the learned Single Judge declined to vacate the interim order on the ground that the prayer could not be entertained until the interim order dated 17.12.1991 was first implemented, that is, the respondent no.1 was promoted. The appellants unsuccessfully filed LPA against the order of learned Single Judge and then came up to this Court by filing a SLP putting in issue the interim orders of the learned Single Judge as also the order of Division Bench dismissing the LPA.

On 29.6.1992 and 28.9.1992 the High Court had directed its order dated 17.12.1991 to be implemented in letter and spirit without regard to alleged drop in performance of respondent no.1. The respondent no.1 had to be promoted by the appellants and given acting rank of Brigadier under threat of contempt proceedings. Such promotion had taken place after the filing of the SLP and before it could be listed for hearing. On 25.11.1992 this Court disposed off the SLP directing the disciplinary proceedings against the respondent no.1 to be proceeded ahead. This Court also noted that the respondent no.1 was already promoted. Liberty was allowed to the appellants to approach the High Court seeking its leave for the framing of the charges which were alleged to have become barred by time on account of court proceedings.

On 31.12.1993 a learned Single Judge of the High Court allowed the writ petition filed by the respondent no.1. Proceedings of all the four Courts of Inquiry were adjudged to be illegal. The respondent no.1 was directed to consider the respondent no.1 for promotion to the rank of Brigadier along with the consequential benefits attaching with such promotion. The court martial proceedings were directed to be quashed as being barred by time under Section 122 of the Army Act overruling the plea of the appellants that the delay in court martial proceedings was attributable to the interim orders passed by the High Court. In the opinion of the High Court even if the delay was attributable to the interim orders of the High Court that did not make any difference to the applicability of Section 122 of the Army Act.

The appellants filed Letters Patent Appeal. By an interim order dated 3.3.1994 the Division Bench gave liberty to the appellants to proceed with the court martial but directed no final order to be passed therein. On 21.4.1994 general court martial proceedings commenced

and were concluded on 10.8.1994. The GCM found the respondent no.1 guilty of 9 charges framed against him. The respondent no.1 was sentenced to rigorous imprisonment for one year, to be cashiered from service and 15 years past service to be forfeited for the purpose of pension. The findings recorded by the GCM and the sentence passed on respondent no.1 could not be confirmed in view of the order of the Division Bench dated 3.3.1994. Under Section 153 of the Army Act the finding and sentence of the court martial are not valid unless confirmed. After hearing both the parties, vide the judgment dated 25.3.1997 the Division bench dismissed the LPA with a slight modification. Briefly stated the Division bench held that the first and the second Court of Inquiry were conducted behind the back of the respondent and therefore stood vitiated in view of Rule 180 of the Army Rules. It was also held that the first three Courts of Inquiry were presided over by an officer of the rank of Lieutenant Colonel and Major and the respondent no.1 could not be made to appear before an officer lower in rank in view of Regulation 518 of the Defence Services Regulations. However, the fourth Court of Inquiry was held to be valid. Nevertheless, the adverse report recording drop in performance of the respondent no.1 which was based on the first three courts of Inquiry was also held liable to be set aside. The Division Bench agreed with the learned Single Judge in holding that the court martial proceedings were barred by time under Section 122 of the Army Act and it was immaterial if the court martial proceedings were interdicted by a judicial order.

The Union of India has come up in appeal by special leave. We have heard the learned counsel for the parties at length. The position of law insofar as the interpretation of Section 122 of the Army Act, 1950 is concerned stands resolved and settled by a three-Judge Bench decision of this Court in *Union of India & Ors. Vs. Harjeet Singh Sandhu* - 2001 (5) SCC 593 wherein it has been held that the delinquent officer having himself created a situation withholding commencement of trial he would be estopped from pleading the bar of limitation and the trial commenced on vacating of the judicial order of restraint on court martial shall be a valid trial, relying on the principle that no man can take advantage of his own wrong. It has also been held that in spite of court martial proceedings having gone barred by time a disciplinary action based on the same set of facts and the same misconduct which formed subject-matter of charge before the court martial is not excluded. The Division Bench and the learned Single Judge of the High Court were therefore not right in taking the view which they did for the purpose of quashing the court martial proceedings.

It is also brought to our notice that certain contempt of court proceedings were initiated at the instance of the respondent no.1 complaining of the appellants having violated the interim orders of the Court.

This case has a chequered history. For the third time this matter has travelled upto this Court. Admittedly, the respondent no.1 has retired with effect from 31.8.1996. Upto the time when in the year 1989 the respondent no.1 came to be posted in Sri Lanka he had a brilliant service record. We have carefully looked into the allegations levelled against the respondent no.1 forming subject-matter of several Courts of Inquiry proceedings out of which 3 have been held to be invalid while one has been held to be valid. The allegation levelled against the respondent no.1 were not only denied but also defended by alleging malafides on the part of Brigadier Jaspal Singh, who according to respondent no.1 was guilty of financial irregularities himself and was interesting in blocking the respondent no.1, lest the respondent no.1, on being promoted, should initiate proceedings against him. Keeping in view the totality of the circumstances of the case, the nature of allegations and counter-allegations, the chequered

history of multiple litigation and the fact that the respondent no.1 has stood retired from the service we do not deem it proper to revive several legal proceedings pending against each other and in our opinion it will meet the ends of justice if this multi-pronged legal battle and the court proceedings are given a quietus so that the respondent no.1 can also live a peaceful life as a civilian while the appellants may feel happy with their relationship with the respondent no.1 having been severed with effect from 31.8.1996 whatever might have been the appellants earlier view of the respondents conduct. While hearing the learned counsel for the parties additionally in the light of the law settled by this Court in the case of Harjeet Singh Sandhu (supra) we put across the suggestion to the learned counsel for both the parties and heard them thereon. In our opinion the following directions would, in the facts and circumstances of this case, meet the ends of justice :-

- 1) The general court martial proceedings initiated against the respondent no.1 shall stand dropped at the stage at which they are;
- 2) The respondent no.1 shall be deemed to have retired from the appellants service with effect from 31.8.1996 in the rank of acting Brigadier. His retiral benefits shall be settled and released, if not already done;
- 3) All other proceedings initiated by the appellants against the respondent no.1 or by the respondent no.1 against the appellants or any of their officers, including the contempt of court proceedings shall also stand terminated at the stage at which they may be.

The appeals stand disposed of accordingly. No order as to the costs.

.J.
(S. Rajendra Babu)

.J.
(R.C. Lahoti)

August 24, 2001.