

CASE NO.:
Special Leave Petition (civil) 5802 of 1998

PETITIONER:
U.O.I. & ORS.

Vs.

RESPONDENT:
K.SUBRAMANIAM EX. J.C.

DATE OF JUDGMENT: 11/04/2001

BENCH:
CJI, R.C. Lahoti & Brijesh Kumar

JUDGMENT:

R.C. Lahoti, J.
L...I...T.....T.....T.....T.....T.....T.....T...J

Respondent, K. Subramanian was havildar in the rank of non-commissioned officers. During 1985, a court of inquiry was held for enquiring into certain irregularities relating to distribution of ration and accounting during the period 1981-1984. The name of the respondent also figured in the inquiry. Mainly it was the lack of supervision that was attributed to the respondent. However, those who were found guilty were proceeded against by holding court martial. No such action was initiated against the respondent. Other persons were punished in accordance with the finding and sentence pronounced by the court martial and confirmed by the competent authority. On 26th July, 1988 the respondent was served with a notice under Section 20(1) of the Army Act read with Rule 17 of the Army Rules requiring him to show cause why his services should not be terminated. The respondent gave a reply. On 4.4.1989 he was ordered to be dismissed from service.

Putting in issue the order of dismissal, the respondent filed a writ petition before the High Court of Karnataka which was heard by a learned single Judge who vide order dated 5.12.1989 directed the order of dismissal to be quashed mainly on the ground of non-compliance with principles of natural justice. In between on 13th November, 1987 the respondent had been directed to be promoted as subedar which order was, however, not given effect to. The Union of India preferred a writ appeal against the order of learned single Judge. The writ appeal was partly allowed on 5.12.1989 permitting a further enquiry being held. In its judgment dated 5.12.1989 the Division Bench observed inter alia that though the disciplinary authority was not precluded from holding a further enquiry but it seemed to the court that regard being had to the facts of this case indicating that the petitioner had not much to do with the disappearance of the stock of food from the government stores in relation to which an investigation had been conducted by the Court of Inquiry the authority may well consider whether it is just and proper at all to proceed

with a further inquiry.

However, a further inquiry was held. The members of the previous Court of Inquiry were not available and hence a fresh Court of Inquiry was constituted. The respondent was once again issued a notice to show cause against termination and vide order dated 29.10.1991 he was once again directed to be dismissed from service. The respondent filed a writ petition which was allowed by learned single Judge of the high court who has directed the impugned order of dismissal from service to be quashed. A writ appeal preferred by Union of India has been dismissed by a Division Bench of the high court on 18.6.1997 which is sought to be impugned by filing this petition for special leave.

We have heard learned Additional Solicitor General. Looking to the nature of the allegations made against the respondent, who belonged to junior echelon of service (was not an officer), the successive Courts of Inquiry, the fact that in respect of the same incident some persons were subjected to court martial proceedings while the respondent has been proceeded against under Section 20(1) of the Army Act read with Rule 17 of the Army Rules, the long lapse of time in between and the fact that the respondent was also in the meanwhile ordered to be promoted, we are of the opinion, keeping in view the totality of the facts and circumstances of the case, that the present one is not a fit case for the exercise of our discretionary jurisdiction under Article 136 of the Constitution of India so as to interfere with the impugned order of the High Court.

Leave to appeal is refused. The special leave petition is dismissed.