

PETITIONER:
UNION OF INDIA

Vs.

RESPONDENT:
S. K. RAO

DATE OF JUDGMENT 22/11/1971

BENCH:
SIKRI, S.M. (CJ)
BENCH:
SIKRI, S.M. (CJ)
SHELAT, J.M.
DUA, I.D.
MITTER, G.K.

CITATION:
1972 AIR 1137 1972 SCR (2) 447
1972 SCC (1) 144

ACT:
Army Act, 1950, ss. 19, 45 and 191 (2) (a), and Army Rules.
1954, r. 14-Whether r. 14, ultra vires.

HEADNOTE:

The respondent, a commissioned officer in the Indian Army, was found to have committed acts of gross misconduct by a Court of Inquiry. The Chief of the Army Staff was of the opinion that his trial by a General Court Martial was inexpedient, and the respondent was removed from service after following the procedure under r. 14 of the Army Rules, 1954.

On the question whether r. 14, which gives power to the Central Government to remove an officer without being tried and convicted by Court Martial was in derogation of s. 45, Army Act, 1950, which specifically provides for conviction by court martial and punishment for unbecoming conduct, HELD : The rule is not ultra vires. [451 D]

(1) Section 19 of the Act provides that subject to the provisions of the Act and the rules made thereunder the Central Government may remove from service, any person subject to the Act. Therefore, the section itself suggests that there should be rules regarding removal from service, and s. 191 (2) (a) of the Act specifically gives power to make a rule providing for the removal from the service of persons subject to the Act.

[450 H; 451 A-B]

(2) Although s. 19 uses the words "subject to the provisions of this Act", the section is not subject to s. 45. The power under s. 19 is independent of the power under s. 45, because, while s. 19 speaks of removal of a person, s. 45 provides that on conviction by Court Martial an officer is liable to be cashiered or to suffer such less punishment as is in the Act mentioned. [451 B-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1653 of 1967.
Appeal from the judgment and order dated February 23, 1967

Of the Delhi High Court in C.W. No. 403-D of 1959.

B. Sen, P. L. Juneja, R. N. Sachthey and S. P. Nayer, for the appellant.

Sardar Bahadur and Yougindra Khushalani, for the respondent. The Judgment of the Court was delivered by Sikri, C.J. 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.

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

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

Rao was a commissioned officer in the Indian Army and was attached to the Army Ordnance Corps Training Centre, Secundrabad. 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 t

o visit

his house where he took her in his scooter to the unit lines of 51 1 1 Gurkha Rifles where he arranged her meeting with a sepoy of the unit."

"He (i.e. Rao) acquiesced in the girl being met by the 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 a hotel 'Saidya Lodge' in Hyderabad and got a room to themselves by impersonating and giving a false identity as 'Mr. & Mrs. Prakash'."

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 r. 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.

Capt. Rao thereupon filed a petition under Art. 226 of the Constitution for quashing the order of removal from service on the

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ground, inter alia, that r. 14 of the Army Rules, 1954, was ultra vires the Army Act, 1950, and that the action taken thereunder was without any authority.

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 parents' house.

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

The Army Rules, 1954, including r. 14, were framed in exercise of the powers conferred by s. 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 the 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, if any admissible to him."

Under the aforesaid r. 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.

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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.

Rules are framed under S. 191 of the Army Act. Sub-section (1) of S. 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 to this Act."

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

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

s. 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." Offenses under the Army Act have been dealt with in ss. 34 to 70 in Ch. VI, of which S. 45 is as follows :-

S. 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,"

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

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

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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 where under, 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.

It was argued that the words "subject to the provisions of this Act" occurring in s. 19 makes s. 19 subject to s. 45, and the Central Government has thus no power to remove a person from the service in derogation of the provisions of s. 45. But the power under s. 19 is an independent power. Although s. 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 s. 19 of the Army Act read with r. 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.

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

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.

V.P.S.

Appeal allowed.

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