(1997) 09 P&H CK 0025

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 5593 of 1992

O.C. Rajput (Died)		APPELLANT
	Vs	
Union of India (UOI) and Others		RESPONDENT

Date of Decision: Sept. 8, 1997

Acts Referred:

- Army Act, 1950 - Section 122
- Army Rules, 1954 - Rule 14(2)

Citation: (1998) 119 PLR 432

Hon'ble Judges: K.S. Kumaran, J; H.S. Bedi, J

Bench: Division Bench

Advocate: R.S. Randhawa and G.S. Chahal, for the Appellant; S.K. Pipat and Sanjiv Pandit, for the Respondent

Final Decision: Allowed

Judgement

H.S. Bedi, J.

The petitioner was commissioned into the Regular Army on 24th April, 1966, as a Short Service Commission Officer in the Army Service Corpn. On account of satisfactory service, the petitioner was selected for a permanent commission and was given the date of seniority as 28th June, 1967. After traversing the ranks of Lieutenant, Captain and Major, the petitioner was promoted to the rank of Lt. Colonel by selection w.e.f. 1.6.1987 and was posted to 5033 ASC Battalion as Second-in-Command. This Battalion had a sub unit called the Kerb side pump located at some distance from the main headquarter and was being operated by "A" Copy of the unit under the command of one Major S.M. Ali. The primary purpose of this sub-unit was to receive bulk supplies of petroleum products from the Indian Oil Corporation and, therefore, to disburse them to the various units. In the month of March, 1988, the petitioner was informed by an officer at Corps Headquarter about an anonymous letter, that had been received alleging serious irregularities with

respect to the kerb side pump. The petitioner who was then officiating as the Officer Commanding of the Battalion, ordered a stock taking by a Board of Officers and after a thorough check, closed the matter. It has also been averred that, Senior Officer from 33 Corps Headquarters (Col.''T'') had also checked the record and had also found no irregularities in its functioning. In July, 1988, another anonymous letter was received alleging the illegal sale of petrol by ''A'' Coy and the author gave more specific details with regard to the irregularities. The petitioner, accordingly, detailed another Board of Officers to make a check of the kerb side pump and on enquiry, it transpired that serious irregularities had, in fact, been committed in its functioning. The finding recorded by the Board of Officers was reported by the petitioner to the Corps. Headquarters on 1.8.1988 with a further suggestion that the matter required a yet more detailed examination. A Court of Inquiry was, accordingly, convened on 9.8.1988 which commenced its proceedings w.e.f. 16.8.1988 and finally submitted its report in March/April, 1989. In the meantime, as the petitioner had completed his tenure in 5053 ASC Battalion, his successor reported for joining duty in his place. The petitioner, accordingly, handed over charge but as he had received no posting order, he was attached with Headquarter 33 Corps under paragraph 92 of the Regulations of the Army, 1962 which postulates an attachment where no disciplinary proceedings were going on. The petitioner''s attachment was subsequently ordered under Army In Sections 30/86 which provided for attachment for the purpose of disciplinary action and he was, accordingly, made to relinquish his acting rank of Lt. Colonel and to revert to the rank of Major on 19.4.1990 as per these instructions. The petitioner was also made to face a trial by a General Court Martial and a charge sheet dated 12.3.1991 Annexure P-1 to the petition was also issued. The trial commenced on 18.3.1991 and on the petitioner''s request, was adjourned to 25.3.1991 so as to enable him to get the services of a counsel. The Court was, therefore, adjourned to 16.4.1991 on the request by the prosecutor but was adjourned sine-die vide communication dated 12.4.1991, Annexure P-2 to the petition. The petitioner, however, continued to remain on attachment despite making representations and no further proceedings were, thereafter, taken. The petitioner was, however, through letter dated 5.12.1991 Annexure P-3 to the petition informed that the Court Martial that had been assembled, stood dissolved vide Order dated 23.10.1991. The petitioner was finally posted to 4621 ASC Battalion vide Order dated 9.2.1992 and he duly reported for duty on this location. The petitioner, thereafter, sought the restoration of his rank of Lt. Colonel vide paragraph 7 (B) of the Army Instruction 31 of the 1986 which required that in case, a person was not brought to trial for any reason whatsoever, the rank of the officer should be restored, but as he received no redressal, he filed C.W.P. No. 3353 of 1992 in this Court. The respondents were served for 1.5.1992 and immediately, thereafter, the petitioner received a notice calling upon him to show cause as to why his services should not be terminated in terms of Section 19 of the Army Act, 1950 (hereinafter called ''the Act'') and Rule 14 of the Army Rules, 1954 (hereinafter called ''the rules''). A copy of the show cause notice dated 8.4.1994 has

been annexed as Annexure P-4 to the petition. This notice has been impugned in the present petition.

2. The case of the petitioner represented by Mr. R.S. Randhawa, Advocate, is that as the Court Martial proceedings had been terminated, the show cause notice Annexure P-4 which had, after the filing of this petition, culminated in the dismissal of the petitioner from service, could not be sustained and the respondents authorities could not take recourse to Section 19 of the Act read with Rule 14, once the period of limitation provided by Section 122 of the Act for holding Court Martial had expired. The petitioner has relied the the assertion on Major Radha Krishan Vs. Union of India and Others,

3. Mr. Pipat, the learned senior counsel appearing for the respondents has argued that the broad proposition of law that had been canvassed by Mr. Randhawa is, undoubtedly, borne out by the judgment, he has cited but has urged that there were three judgment of the Hon''ble Supreme Court itself which were contrary to the judgment cited by Mr. Randhawa. He has, then referred to Union of India v. Capt. S.K. Rao 1972 S.L.R. 82, Chief of Army Staff and Others Vs. Major Dharam Pal Kukrety, and Gouranga Chakraborty Vs. State of Tripura and Another,

4. We have heard the learned counsel for the parties and have gone through the judgments cited. In Major Radha Krishan''s case (supra), it was observed that once the period of limitation for trial by a court Martial had expired, the authorities could not take action under Rule 14(2) and the statutory Bar created by Section 122 of the Act, could not be circumvented or nullified by recourse to administrative action under Rule 14(2).

5. The judgments cited by Mr. Pipat, do up to the point support his case, but Mr. Randhawa has drawn a clear distinction with regard to their applicability and has pointed out that these judgments were not dealing with the question of limitation whatsoever and all that they had said was that though an officer had been exonerated in a trial by a Court Martial, the Army Authorities could still take action under Rule 14(2) of the Act to dismiss him from service. We, therefore, feel that the matter in issue before us is fully covered by Major Radha Krishan''s case (supra).

6. This petition, is accordingly, allowed and the show cause notice Annexure P-4 is quashed, ipso facto C.W.P. No. 3353 of 1992 is also allowed and the petitioner''s rank as Lt. Colonel is directed to be restored from the date of his reversion. As the petitioner has since died, his legal heirs who have been impleaded as petitioners in his place shall be entitled to all the benefits that would have accrued to the petitioner. It is further clarified that the respondents shall make the payments of all dues to the LRs within a period of four months from the date, that a copy of this judgment is supplied to them, failing which the respondents shall pay interest @ 18% p.a. from the date of this judgment to the date of actual payment.