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RAM SUNDER RAM

v.

UNION OF INDIA & ORS.

JULY 11, 2007

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[TARUN CHATTERJEE AND LOKESHWAR SINGH PANTA, JJ.]

Army Act, 1950; Ss. 20, 22 and 63/Army Rules, 1954; Rr. 12, 13 and 177: Indiscipline—Prejudicial act to good order—Employee serving as Petrol, Oil and Lubricant Clerk allegedly received money from an outsider for selling of gas illegally—Complaint—Court of inquiry—Authority found him guilty of prejudicial act to good order and military discipline u/s. 63 of the act and discharged him from service—Challenge to—Dismissed by High Court—On appeal, Held: Before the Court of inquiry, the delinquent was given proper and adequate opportunity to cross examine the witnesses, which he did not chose to avail—Having found the cause shown by the delinquent unsatisfactory, the competent authority ordering his discharge from service in exercise of power conferred on it mentioning wrong provisions of law—In fact, order of discharge could be passed u/s. 22 of the Act and not u/s. 20 of the Act—Merely because a reference was made to a wrong provision of law, that by itself does not vitiate the exercise of power by the authority so long as power does exist and traceable to the source available in law—Order of discharge in question is an order of termination of service simplicitor without casting or attaching any stigma to the conduct of the employee, hence cannot be termed to be punitive in nature/prejudicial to the future employment.

C D E F

Appellant was working as Clerk in the Army establishment. While performing the duties of Petrol, Oil and Lubricants (POL) Clerk, anonymous complaints were received against him. The competent authority ordered convening of the court of inquiry. The appellant was detained for interrogation under custody. During interrogation, he had made confessional statement of receiving illegal money of Rs. 12,500/- from the owner of a Pansari Shop for selling 87 MT Gas illegally in connivance with a driver. Later, he deposited Rs. 5,200/- out of Rs. 12,500/- allegedly received by him as illegal money. The Court of Inquiry submitted its report to the competent authority. The appellant, having been found guilty of act prejudicial to good order and military

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discipline, charged him under Section 63 of the Army Act and a show cause notice was issued to him. The appellant showed cause which was found unsatisfactory. The competent authority discharged him from service. Aggrieved, the appellant challenged the order in the High Court. The Single Judge of the High Court set aside the order of discharge *interalia* on the ground of violation of the principles of natural justice and directed the respondents to reinstate the appellant with 25% of his arrear of salaries. In writ appeal filed by the Union of India, the order of the Single Judge was set aside by a Division Bench of the High Court. Hence the present appeal.

Appellant contended that the order of removing him from service was vitiated being contrary to Section 63 of the Army Act, which provides for imposing any kind of punishment only after conviction by court-martial; that the proceedings of the Court of Inquiry have been used as evidence against him contrary to Rule 12 of the Army Rules, 1954 as no discharge certificate was prepared and sent to the appellant; that the Court of Inquiry, acting under the Army Rules, collects evidence during fact finding proceedings and no one is charged of any offence in that proceedings; that the evidence collected during inquiry is not admissible against him in terms of Section 63 of the Act; that the appellant was discharged from service, as a result thereof his entire past service has been forfeited and he has been deprived of the benefit of pension as also future employment in any other civil service; and that he was administratively discharged from service contrary to the provisions of Section 63 and there is no provision to impose major penalty in the form of termination of service of the appellant by the Authority under the guise of discharge from service in exercise of power under Section 20 of the Act.

Respondent submitted that the authority has passed the order of discharge simplicitor under Section 22 of the Act and Section 20 of the Act appears to have been wrongly mentioned by the authority in the order of discharge.

Dismissing the appeal, the Court

HELD: 1.1. The order of discharge of the appellant from the Army service has been passed by the competent authority under Section 22 of the Army Act read with Rule 13 on the grounds covered under Column (2)(v) of the Table, after affording adequate opportunity to him of showing cause before the order of discharge came to be passed; that the court of inquiry was formed under Rule 177 of the Army Rules and the purpose of court of inquiry was to

A collect the evidence for the information to superior officers to make up their mind about the involvement of the appellant and the other army officials in the racket of clandestine sale of petrol. In the court of inquiry, the appellant was heard and was given proper and adequate opportunity to cross-examine the witnesses, which he did not choose to avail. [Para 19] [299-B-C]

B 1.2. The appellant had shown cause vide reply to the show cause notice issued to him by respondent No. 5. The competent authority considered the reply of the appellant in right perspective and found the same not satisfactory. Therefore, the competent authority passed the order of discharge of the appellant from the army service with immediate effect in exercise of the power C under Section 20 of the Army Act. It appears that the competent authority has wrongly quoted Section 20 in the order of discharge whereas, in fact. the order of discharge has to be read having been passed under Section 22 of the Army Act. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, D that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law. Thus, quoting of wrong provision of Section 20 of the Act in the order of discharge of the appellant by the competent authority does not take away the jurisdiction of the authority under Section 22 of the Army Act. Therefore, the order of discharge of the E appellant from the army service cannot be vitiated on this sole ground.

[Para 20] [299-E-H; 300-A]

N. Mani v. *Sangeetha Theatre & Ors.*, [2004] 12 SCC 278, relied on.

1.3. A plain reading of the order of discharge shows that it is an order F of termination of service simplicitor without casting or attaching any stigma to the conduct of the appellant, therefore the said order cannot be termed to be punitive in nature or prejudicial to the future employment of the appellant in getting employment in civil service. Thus, the contention of the appellant that the order of discharge is punitive in nature does not merit acceptance.

[Para 20] [300-A-B]

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Ex. Naik Sardar Singh v. *Union of India & Ors.*, AIR (1992) SC 417; *Major Suresh Chand Mehta* v. *The Defence Secretary (U.O.I) & Ors.*, AIR (1991) SC 483; *Lt. Col. Prithi Pal Singh Bedi* v. *Union of India & Ors.*, AIR (1982) SC 1413 and *S. N. Mukherjee* v. *Union of India*, [1990] 4 SCC 594, held inapplicable.

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4. There is ample evidence on record in support of the judgment and order of the Division Bench of the High Court and there is nothing that would justify this Court interferring with it. [Para 21] [300-F] A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2951 of 2007.

From the Judgment & Order dated 10.12.2004 of the High Court at Calcutta in M.A.T. No. 2856 of 1997. B

K.S. Bhati, Aishwarya Bhati. Sweta Rani and Rekha Rani for the Appellant.

Vikas Singh. ASG.. Indra Sawhney. Rajni Singh. R.C. Kathia. Prabhat Ranjan and Anil Katiyar for the Respondents. C

The Judgment of the Court was delivered by

LOKESHWAR SINGH PANTA, J. 1. Special leave granted.

2. This appeal. by special leave. has been preferred by Ram Sunder Ram (appellant herein) against the judgment and order dated 10.12.2004 of a Division Bench of the High Court of Calcutta by which M.A.T. No.2856 of 1997 filed by the Union of India and Others (respondents herein) was allowed and the judgment and order dated 07.08.1997 of a learned Single Judge, allowing the Writ Petition (C.O. No.12843 (W) No.1991) filed by the appellant, was set aside. D

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3. The appellant filed writ petition in the High Court of Calcutta for setting aside the order of discharge from the Army Service passed by the Commander, 33 Corps Artillery Brigade (respondent No.5 in the present appeal) who was competent authority under Rule 13 of the Army Rules 1954.

4. The learned Single Judge allowed the writ petition inter alia on the ground that the principles of natural justice have not been followed by the competent authority while passing the order of discharge. F

5. The respondents then preferred writ appeal before the Division Bench of the High Court, which allowed the same by the judgment and order impugned by the appellant in this appeal before us. G

6. On 26.09.1980, the appellant was appointed as Cleaner in Class-IV with the Indian Armed Forces. On 23.09.1983, he became LDC in the Army establishment. On 03.07.1988, the appellant was deputed to perform the duties

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A of Petrol, Oil and Lubricants (POL) Clerk. On 09.08.1988, the competent authority ordered convening of the court of inquiry based upon certain anonymous complaints, on the following issues:

> "A. Investigating the circumstances, under which quantity 70 KL of 70 MT Gas issued to 5033 ASC Battalion against IOC installation, New
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> B Jalpaiguri, has not been received by the Unit and pinpoints the responsibility for the loss.
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> B. To scrutinize the records for the last two years and also to examine the procedure being followed for receipt. demand. collection and accounting the issue of POL in the operation of Kerbside Pump.
>
> C C. To indicate loopholes and suggest remedy and measures.
>
> D. To indicate losses other than those mentioned in the order."

7. The court of inquiry deliberations was held by the authority between D the period commencing from 16.08.1988 and 12.12.1988. On 06.10.1988, the appellant was detained for interrogation under custody. During interrogation, the appellant made confessional statement of receiving illegal money of Rs. 12,500/- from one Shri Rajendra Singh, owner of Pansari Shop, for sale of 87 MT Gas through BPLs and Kerbside Pump, kept by Dvr. Gde 11 Ramakant Prasad of 'A' Coy 5033 ASC Bn (MT). The appellant later on deposited Rs. E 5,200/- out of Rs.12,500/-.

8. The court of inquiry was completed and on 24.08.1988 the enquiry report was submitted to the competent authority.

9. The appellant, having been found guilty of prejudicial act to good F order and military discipline, was charged under Section 63 of the Army Act, 1950 [for short the Army Act]. On 08.08.1989, Major H. S. Dhillon, Presiding Officer, Summary of Evidence, sent a letter to the appellant and LDC J.P. Singh directing them to be present on 9th August, 1989 at 1000 Hrs. for recording summary evidence. The evidence was collected by the court of inquiry against G the appellant and some other Army Officials. On 03.07.1991, the appellant was informed by respondent No. 5 that while working with 'A' Coy 5033 ASC Bn (MT), the appellant received Rs. 12.500/- as illegal money from Shri Rajendra Singh, owner of Pansari shop and converted the said amount to self use, well knowing it to be from sale of 87 MT Gas through BPLs and Kerbside Pump, kept by Dvr. Gde 11 Ramakant Prasad of 'A' Coy 5033 ASC Bn (MT). He was, H therefore, asked to show cause within 15 days of the receipt of the notice as

to why his services should not be terminated for the lapse committed by him. After the appellant showed cause on 13.08.1991 which was found unsatisfactory, the respondent No.5 discharged him from service on 09.09.1991.

10. The appellant challenged the order of discharge from service in the High Court of Calcutta. The learned Single Judge, as stated above, set aside the said order of discharge inter alia on the ground of violation of the principles of natural justice and directed the respondents to reinstate the appellant with 25% of his arrear salaries as per the last pay drawn. Further, it was observed that the Army Authority was not prevented from taking appropriate steps against the appellant in accordance with law, if they so advised and technicalities alone ought not to stand in the way in that regard. In writ appeal, the order of the learned Single Judge came to be set aside by a Division Bench of the High Court and the Writ Petition filed by the appellant was accordingly dismissed.

11. Hence, this appeal by the appellant.

12. Capt. K. S. Bhati, learned counsel appearing for the appellant, argued as a question of law that the order of removing the appellant from service was vitiated being contrary to Section 63 of the Army Act, which provides for imposing any kind of punishment only after conviction by court-martial. He contended that the proceedings of the court of inquiry have been used as evidence against the appellant contrary to Rule 12 of the Army Rules, 1954 [hereinafter referred to as the Army Rules] as no discharge certificate required to be furnished under the provisions of Section 23 of the Army Act was prepared and sent to the appellant.

13. It was argued for the appellant that the court of inquiry, acting under the Army Rules, collects evidence during fact finding proceedings and no one is accused or charged of any offence in that proceedings. It was argued that the evidence collected during court of inquiry is not admissible against the appellant in view of Section 63 of the Army Act under which the case should have been remanded for trial by court-martial as was done in the case of other army personnel, who were dealt with by court-martial and they were retained in service by imposing minor punishment upon them whereas the appellant was discharged from service, as a result thereof his entire past service has been forfeited and he has been deprived of the benefit of pension as also future employment in any other civil service. The learned counsel contended that the appellant was administratively discharged from service contrary to the provisions of Section 63 and there is no provision to impose major penalty in

A the form of termination of service of the appellant by the respondent No.5 under the guise of discharge from service in exercise of power under Section 20 of the Army Act.

14. Mr. Vikas Singh, learned ASG appearing for the respondents, on the other hand, made submissions to support the judgment of the Division Bench B of the High Court. He contended that the well reasoned judgment of the Division Bench does not suffer from any infirmity or perversity, warranting interference by this Court. He contended that the authority empowered under Rule 13 of the Army Rules has passed the order of discharge simpliciter under Section 22 of the Army Act and Section 20 appears to have been wrongly C mentioned by the authority in the order of discharge.

15. We have given our thoughtful and anxious consideration to the respective contentions of the parties and have perused the entire material on record.

D 16. It is an admitted case of the parties that the appellant is governed by the provisions of the Army Act and the Army Rules framed thereunder. The scheme of the Army Act is fairly clear. Chapter IV of the Act deals with Conditions of Service of persons subject to the Army Act.

17. Section 20 of the Act deals with dismissal, removal or reduction by E the Chief of the Army Staff and by other officers. Section 191 of the Act empowers the Central Government to make rules for the purpose of carrying into effect the provisions of the Army Act. In exercise of the said power, the Central Government has framed the rules called "The Army Rules, 1954". Chapter III of the Army Rules deals with dismissal, discharge, etc. Chapter V of the Army Rules deals with investigation of charges and trial by court-F martial. Rule 13 tabulates the category of the Army official, causes/grounds of discharge, the authorities competent to pass the order of discharge and the manner of discharge.

18. It is not in dispute that the appellant has been discharged under G Rule 13 column 2 (v) of the Table below sub-rule (3) on the grounds of "all other classes of discharge" by Brigade/Sub-Area Commander who, admittedly, was competent authority to authorize discharge of the appellant. Column 4 of the Table provides manner of discharge, which reads as under:

> "The Brigade or Sub-Area Commander before ordering the discharge H shall, if the circumstances of the case permit give to the person whose

discharge is contemplated an opportunity to show cause against the contemplated discharge".

19. The order of discharge of the appellant from the Army service has been passed by the competent authority under Section 22 of the Army Act read with Rule 13 on the grounds covered under column (2)(v) of the Table, after affording adequate opportunity to him of showing cause before the said order of discharge came to be passed. We are, however, satisfied on the material placed before us that the court of inquiry was formed under Rule 177 of the Army Rules and the purpose of court of inquiry was to collect the evidence for the information of superior officers to make up their mind about the involvement of the appellant and the other army officials in the racket of clandestine sale of petrol. In the court of inquiry, the appellant was heard and was given proper and adequate opportunity to cross-examine the witnesses, which he did not choose to avail. The respondents, in Para 20 of the counter affidavit filed in opposition to the writ petition before the High Court, have made categorical statement that in the court of inquiry the appellant was given full opportunity to defend his case and to cross-examine the witnesses who appeared and deposed before the Recording Officer, but the appellant was just sitting throughout the proceedings and did not avail the opportunity of cross-examining the witnesses. The appellant has not denied this assertion of the respondents in the rejoinder affidavit.

20. As noticed above, the appellant had shown cause vide reply dated 13.08.1991 (Annexure P6) to the show cause notice dated 03.07.1991 (Annexure P5) issued to him by respondent No.5. The competent authority considered the reply of the appellant in right perspective and found the same not satisfactory. Therefore, on 09.09.1991, the competent authority passed the order of discharge (Annexure P7) of the appellant from the army service with immediate effect in exercise of the power under Section 20 of the Army Act. It appears that the competent authority has wrongly quoted Section 20 in the order of discharge whereas, in fact, the order of discharge has to be read having been passed under Section 22 of the Army Act. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law [see *N. Mani* v. *Sangeetha Theatre & Ors.*, [2004] 12 SCC 278]. Thus, quoting of wrong provision of Section 20 in the order of discharge of the appellant by the competent authority does not take away the jurisdiction of the authority

A under Section 22 of the Army Act. Therefore, the order of discharge of the appellant from the army service cannot be vitiated on this sole ground as contended by the learned counsel for the appellant. A plain reading of the order of discharge shows that it is an order of termination of service simpliciter without casting or attaching any stigma to the conduct of the appellant, therefore the said order cannot be termed to be punitive in nature or prejudicial B to the future employment of the appellant in getting employment in civil service. Thus, the contention of the learned counsel for the appellant that the order of discharge is punitive in nature does not merit acceptance.

21. The Division Bench of the High Court has noticed the decisions of C this Court relied upon by the appellant in the cases of *Ex. Naik Sardar Singh* v. *Union of India & Ors.*, AIR (1992) SC 417, *Major Suresh Chand Mehta* v. *The Defence Secretary (U.O.I.) & Ors.*, AIR (1991) SC 483, *Lt. Col. Prithi Pal Singh Bedi* v. *Union of India & Ors.*, AIR (1982) SC 1413 and *S. N. Mukherjee* v. *Union of India.* [1990] 4 SCC 594. In the said decisions, this Court has dealt with the matter of imposition of punishment on Army officials who were D subjected to court-martial proceedings. In *S. N. Mukherjee's* case (supra), this Court was dealing with the requirement of recording of reasons by an authority exercising quasi-judicial function, besides challenge to the court-martial proceedings. Reliance was placed on Paragraph 13 of the judgment of this Court in the case of *Major Suresh Chand Mehta* (supra). In that case, this E Court held that the court of inquiry, as provided under Rule 177 of the Army Rules, is merely held for the purpose of collecting evidence and if so required, to report in regard to any matter which may be referred to the officers and such an inquiry is for the purpose of a preliminary investigation and cannot be equated with a trial or court-martial. All the above cited decisions are of no assistance to the appellant in the peculiar facts of the case on hand. We F are satisfied that there is ample evidence on record in support of the judgment and order of the Division Bench of the High Court and there is nothing that would justify this Court interfering with it. Therefore, the above arguments of the appellant are unacceptable to us.

22. For the reasons discussed above, the appeal is devoid of merit and G it is, accordingly, dismissed. The judgment and order of the Division Bench is affirmed. The parties, however, are left to bear their own costs.

S.K.S. Appeal dismissed.