

rights and obligations between them which are essential for keeping industrial peace. It is thus open to an Industrial Tribunal in appropriate cases to impose new obligations on the parties before it or modify contracts or give awards which may have the effect of extending existing agreements or making new ones, in the interest of social justice and with the object of securing peace and harmony between the employer and workmen. The rights of an employer to hire labour, to dismiss the employees, to fix wages, dearness allowance and bonus and gratuity, to grant leave facilities, housing accommodation and other amenities are controlled and regulated by industrial adjudication by well recognised limits placed upon the contractual rights of the parties. The judgments relied upon by Mr. Gupta, do not in any way support his contention and the observations made in some of those decisions were read out of context as those were not made in the context of industrial adjudication.

(7) In the result, there is no merit in the writ petition and the same stands dismissed with costs which are assessed at Rs. 1,000.

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*J.S.T.*

*Before Hon'ble Ashok Bhan & N. K. Sodhi, JJ.*

**SEPOY/LANS NAIK RAJBIR SINGH,—Petitioner.**

*versus*

**THE STATE OF HARYANA & OTHERS,—Respondents.**

C.W.P. No. 11235 of 1994

13th December, 1995

*Constitution of India, 1950—Art. 226—Army Act, 1950—Ss. 69 & 70—Jurisdiction—Military person accused of raping—Whether to be tried by Civil Court having criminal jurisdiction or by Court martial—Held that case to be tried by Civil Court of Criminal jurisdiction as petitioner was not on active service at the time of occurrence.*

*Held that, under Section 70 of the Army Act, an offence of murder against a person not subject to military, naval or air force law, or of culpable homicide not amounting to murder or of rape in relation to such a person is exclusively triable by a criminal Court but if the person is on active service at the time of commission of*

the aforesaid offence then both the criminal Court Martial will have concurrent jurisdiction to try the accused in respect of the offence. Under Section 125, the discretion is left with the Officer Commanding in which the accused person is serving or such other officer as may be prescribed to decide before which Court the proceedings shall be instituted.

(Para 8)

*Further held*, that since the petitioner was not on active military service, he could only be tried by a civil court having criminal jurisdiction and the military authorities have rightly sent his case to the civil Court of criminal jurisdiction for trial.

(Para 14)

D. S. Bali, Sr. Advocate with D. V. Gupta, Advocate, for the Petitioner.

J. S. Rathee, Senior Standing Counsel, for Union of India.

J. S. Duhan, AAG, Haryana, Rajbir Sehrawat, Advocates for the Respondent.

#### JUDGMENT

*Ashok Bhan, J.*

(1) Whether a military personnel accused of raping is to be tried by a civil court having criminal jurisdiction or exclusively by a Court Martial set up by military authorities is the question of law posed for decision in this petition.

(2) One Smt. Saroj Bala, wife of Bhola Ram resident of village Rajawas-Ki-Dhani, Police Station Satnali, Tehsil Narnaul, District Mohindergarh lodged F.I.R. No. 100, dated 7th May, 1992 in which petitioner alongwith his two brothers namely Mahavir and Om Parkash were alleged to have committed rape on the said Saroj Bala. First Information Report was registered under Sections 342/366/376/323 read with Section 34 I.P.C. at Police Station Satnali. Case of the petitioner is that he is employed as a Sepoy in the Indian Army and was posted in C. Company of 5171 ASC Battalion C/O 56 APO under the control of respondent No. 4 in the first/2nd Week of May 1992 ; that on the date of occurrence, petitioner was not present in the village although he had come on casual leave and was falsely implicated in the case with the motive to get him terminated from service ; that petitioner being in active service could only be tried by

Sepoy/Lans Naik Rajbir Singh v. The State of Haryana and 15  
others (Ashok Bhan, J.)

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the Court Martial under the control and supervision of the military authorities ; that Additional Sessions Judge, Narnaul, after the commitment of the case sent a letter No. 1134 dated 19th October, 1992 to the Commanding Officer, 5171 ASC Battalion, C. Company, C/O 56 APO ; that the petitioner was an accused in case titled as State v. Mahavir etc. in F.I.R. No. 100 dated 7th May, 1992 and it was asked whether the military authorities would like to try the above named individual or otherwise. Upon receipt of the above said letter Brigadier Commander 71, Sub Area,—vide its order No. 2042/1/A3 accorded the sanction for transfer of the trial of the petitioner's case from the civil Authorities i.e. Additional Sessions Judge, Narnaul, to the Military Court. Case of the petitioner was separated from the other two accused and the Additional Sessions Judge, Narnaul, sent the case of the petitioner to the Military Authorities to be dealt with in accordance with law. Statements of certain witnesses were recorded by the Court Martial.

(3) Suddenly without any reason Commanding Officer wrote a letter Annexure P3 transferring the case from military authorities to the criminal Court of Additional Sessions Judge, Narnaul. It was stated in the letter Annexure P3 that in view of the provisions of Section 70 of the Army Act, petitioner could not be tried by a Military Court as he was involved in a rape case. Reminder Annexure P4 was sent by the authorities to the Additional Sessions Judge, Narnaul, as no reply was sent by the Additional Sessions Judge to the letter Annexure P3. Vide letter Annexure P5 Additional Sessions Judge intimated the higher authorities that the case has been taken up in his list and the summons were delivered to the police for service upon the petitioner through the Commanding Officer 5171 ASC Bn(MT).

(4) Petitioner has filed the present writ petition with a prayer that the orders Annexures P3, P4 and P5 be quashed as the petitioner could not be tried in any ordinary Criminal Court at Narnaul as the petitioner was in active service of military at the time of commission of the offence and he could only be tried by the military authorities by constituting a Court Martial.

(5) Respondents in their written statement have admitted that petitioner was employed as a Sepoy at the time of commission of the offence. Stand taken by the respondents is that the petitioner was on annual leave from 4th May, 1992 to 2nd July, 1992 ; further stand

taken by the respondents is that the petitioner was not on active army service at the time of commission of offence and, therefore, could only be tried by an Ordinary Court of Criminal Jurisdiction and not by the military authorities.

(6) Counsel for the parties have been heard.

(7) Sections 69, 3(ii), 70, 125 and 126 of the Army Act which are relevant for the purpose of deciding this petition read as under :—

“69. Subject to the provisions of Section 70, any person subject to this Act who at any place in or beyond India commits any civil offence shall be deemed to be guilty of an offence against this Act and, if charged therewith under this section, shall be liable to be tried by a court-martial and, on conviction, be punishable as follows, that is to say,—

(a) If the offence is one which would be punishable under any law in force in India with death or with transportation he shall be liable to suffer any punishment, other than whipping, assigned for the offence, by the aforesaid law and such less punishment as is in this Act mentioned ; and

(b) in any other case, he shall be liable to suffer any punishment, other than whipping, assigned for the offence by the law in force in India, or imprisonment for a term which may extend to seven years, or such less punishment as is in this Act mentioned.”

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“3. In this Act, unless the context otherwise requires,—

xxx

xxx

xxx

(ii) ‘civil offence’ means an offence which is triable by a criminal court ;

70. A person subject to this Act who commits an offence of murder against a person not subject to military, naval, air force law, or of culpable homicide not amounting to murder against such a person or of rape in relation to such a person, shall not be deemed to be guilty of an offence against this Act and shall not be tried by a court-martial, unless he commits any of the said offences—

(a) while on active service or

(b) at any place outside India, or

(c) at a frontier post specified by the Central Government by notification in this behalf.

xxx

xxx

125. When a criminal court and a court-martial have each jurisdiction in respect of an offence, it shall be in the discretion of the officer commanding the army, army corps, division or independent brigade in which the accused person is serving or such other officer as may be prescribed to decide before which court the proceedings shall be instituted, and, if that officer decides that they should be instituted before a court-martial, to direct that the accused person shall be detained in military custody.

126. (1) When a criminal court having jurisdiction is of opinion that proceedings shall be instituted before itself in respect of any alleged offence, it may, by written notice, require the officer referred to in Section 125 at his option, either to deliver over the offender to the nearest magistrate to be proceeded against according to law, or to postpone proceedings pending a reference to the Central Government.

(2) In every such case the said officer shall either deliver over the offender in compliance with the requisition, or shall forthwith refer the question as to the court before which the proceedings are to be instituted for the determination of the Central Government, whose order upon such reference shall be final."

(8) Under Section 70 of the Army Act, an offence of murder against a person not subject to military, naval or air force law, or of culpable homicide not amounting to murder or of rape in relation to such a person is exclusively triable by a criminal Court but if the person is on active service at the time of commission of the aforesaid offence then both the criminal court and Court Martial will have concurrent jurisdiction to try the accused in respect of the offence. Under Section 125, the discretion is left with the Officer Commanding in which the accused person is serving or such other officer as may be prescribed to decide before which Court the proceedings shall be instituted.

(9) The only question to be decided is whether the petitioner was on active service at the time of commission of offence.

(10) 'Active Service' has been defined in Section 3 (Clause I) of the Army Act which reads as under :--

"3(i) 'active service', as applied to a person subject to this Act, means the time during which such person—

- (a) is attached to, or forms part of a force which is engaged in operations against an enemy, or
- (b) is engaged in military operations in, or is on the line of march to, a country or place wholly or partly occupied by an enemy, or
- (c) is attached to or forms part of a force which is in military occupations of a foreign country

(11) Petitioner was neither attached or formed part of a force which was engaged in operations against an enemy, or was not engaged in military operations in or was on the line of march to a country or place wholly or partly occupied by an enemy and was not attached to or formed part of a force which was in military occupations of a foreign country. Petitioner under the circumstances, could not be deemed to be on active service. His case was, therefore, exclusively triable by a Civil Court having criminal jurisdiction under Section 70 of the Army Act.

(12) Council for the petitioner contended that the Central Government in exercise of its powers conferred under Section 9 of

the Army Act issued a notification No. SRO 6-E dated 28th November, 1962 extending the scope of active service declaring that all persons subject to the Army Act shall wherever they may be serving would be deemed to be on active service within the meaning of the Army Act.

(13) As against this, counsel for the respondents contended that the notification dated 28th November, 1962, referred to above, has been superseded by a subsequent Notification No. S.R.O. 17 E dated September 5, 1977, which is to the following effect :—

“S.R.O. 17(E)—In exercise of the powers conferred by section 9 of the Army Act, 1950 (46 of 1950) and in supersession of the notification of the Government of India in the Ministry of Defence No. SRO 6-E, dated the 28th November, 1962, the Central Government hereby declares that all persons subject to that Act who are not on active service under clause (i) of section 3 thereof shall, while serving in the areas specified below, be deemed to be on active service within the meaning of that Act for the purpose of the said Act or any other law for the time being in force :—

(1) The States of—

- (a) Jammu and Kashmir
- (b) Manipur
- (c) Nagaland
- (d) Tripura
- (e) Sikkim ;

(2) The Union Territories of—

- (a) The Andaman and Nicobar Islands
- (b) Arunachal Pradesh
- (c) Mizoram ;

(3) The District of—

(a) Uttarkashi, Chamoli and Pithoragarh in the State of Uttar Pradesh ;

(b) Lahaul and Spiti, Kinnaur and Kulu in the State of Himachal Pradesh.”

(14) Since the Notification dated 28th November, 1962 stands superseded, reliance placed by the counsel for the petitioner on the said notification is totally misplaced. Petitioner would not be deemed to be on active service as per definition of section 3(i) of the Army Act read with the subsequent notification dated 5th September, 1977, as he was not serving in either of the capacities mentioned in section 3(i) of the Army Act, or States, Union Territories or districts referred to in the subsequent notification dated 5th September, 1977. Since the petitioner was not on active military service, he could only be tried by a civil court having criminal jurisdiction and the military authorities have rightly sent his case to the civil Court of criminal jurisdiction for trial.

(15) For the reasons recorded above, We find no force in this petition which is ordered to be dismissed with no order as to costs.

J.S.T.

*Before Hon'ble R. P. Sethi & K. S. Kumaran, JJ.*

*ANITA,—Petitioner.*

*versus*

*HARYANA PUBLIC SERVICE COMMISSION & ANOTHER,  
—Respondents.*

*C.W.P. No. 12437 of 1995*

*5th June, 1995*

*Constitution of India, 1950—Arts. 14 & 226—Vacancies—Haryana Civil Services (Judicial Branch)—Vacancies in services—Thereafter rules amended changing eligibility Claim of petitioner is that such vacancies are to be filled in accordance with old eligibility criteria—Held that there is no law which provides for carry forward of vacancies—Employers have right to fill vacancies at any time—Open to commission to readvertise posts in accordance with amended rules,*