orders like an injunction, etc., or orders relating to execution, satisfaction and discharge in execution of decrees under the Act. Those orders will be orders passed under the provisions of the Civil Procedure Code and it appears *prima facie* that they will be subject to right of appeal granted under that very Code which is made applicable to the proceedings under the Act."

The above observations make it plain that the appealability of the orders made under the Code of Civil Procedure would have to be determined with reference to the provisions of the Code itself. As admittedly no right of appeal is provided in the Code of Civil Procedure against an order made on an application under section 10 of the Code, it would follow that no appeal is competent against such an order.

Some authorities have also been cited before us to show that an order on an application under section 10 of the Code of Civil Procedure amounts to a judgment for the purpose of a Letters Patent Appeal, but we need not go into those authorities as the question before us is not of a right of appeal under the Letters Patent, but under section 28 of the Hindu Marriage Act.

I would, therefore, answer the question referred to the Division Bench in the negative. The case shall now be sent back to the learned Single Judge for disposal. As regards costs, I direct that they shall abide the event.

S. B. CAPOOR, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before S. K. Kapur, J.

OM PARKASH BHARDWAJ,—*Petitioner*

versus

THE UNION OF INDIA,—*Respondent.*

Civil Writ No. 28-D of 1963

July 25, 1966

Air Force Act (XLV of 1950)—Ss. 18 and 19—Air Force Officer—Whether can be dismissed without a trial by a Court Martial or enquiry after complying

with the rules of natural justice—Non-compliance of rules of natural justice in the matter of dismissal or removal from service of persons subject to the Act—Whether justiciable.

Held, that the punishments awarded by the Courts-Martial take effect *proprio vigore* subject of course to certain confirmations provided by the statute. It is not correct to suggest that even though the sentence awarded by a Court Martial is confirmed under Chapter XII, yet if the punishment be dismissal, it has to be given effect to by the Central Government under section 19. Chapter XIII dealing with execution of sentences merely deals with the procedure and the method in which the sentence is to be executed and does not provide that some external authority has to give effect to the punishment awarded by the Court-Martial. The power conferred on the Central Government to terminate service is independent and not dependent on any punishment awarded by a Court Martial.

Held, that section 18 of the Air Force Act, 1950, provides the tenure of service to be during the pleasure of the President. Section 19 gives an absolute power to the Central Government to dismiss or remove from service "any person subject to this Act." It is abundantly recognised that persons who enter the military service and take the state's pay, and who are content to act under the President's commission, although they do not cease to be citizens in respect of responsibility, yet they do, by a compact which is intelligible, and which requires only the statement of it to recommend it to the consideration of any one of common sense become subject to military rule and military discipline. In case of civil servants certain special safeguards have been provided by Article 311 of the Constitution. Those safeguards admittedly do not extend to the army personnel. Admittedly, no rules have been framed in this behalf and there is, therefore, no question of any violation thereof. If any rules had been framed and violated, possibly different considerations may have arisen. As the law, however, stands at present it seems to recognise that employment in Army is not a right but only a privilege revocable by the sovereign at will and efficient management demands that power to appoint should necessarily include the power to dismiss. In Army matters the legislature has conferred on the Government the same proprietary rights as provided to employers to hire and fire without restrictions. Any alleged violations of natural justice in the matter of dismissal or removal from service does not confer a justiciable right on the persons subject to the Air Force Act, 1950.

Petition under Article 226 of the Constitution of India, praying that this Hon'ble Court may be pleased:—

(a) *to issue a writ in the nature of* Certiorari *or any other appropriate Writ or order quashing the order of dismissal against the petitioner, dated*

1st September, 1958, and directing that he is still in service of the respondent and entitled to full back emoluments and other benefits;

(b) *ordering the respondent to pay to the petitioner his pay from the date of order of dismissal up to the date of decision of the petition at the rate of Rs 1,250 per month, i.e., from 1st September, 1958 till the date of reinstatement and an additional sum of Rs. 50 per mensem after every 2 years as normal increment and other benefits on account of revision of pay-scale, etc.*

(c) *to order such relief to the petitioner as may be deemed fit and proper, for which act of kindness, your petitioner shall duty bound, every pray.*

C. B. AGGARWALA, SENIOR ADVOCATE, WITH R. L. TANDON, HARISH CHANDRA AND K. K. KHANNA ADVOCATES, for the Petitioner.

S. N. SHANKAR, ADVOCATE, for the Respondent.

ORDER

KAPUR, J.—The petitioner, a citizen of India, joined the Indian Air Force in 1939 and held the rank of a Wing Commander at the time of his impugned dismissal from service. The petitioner alleges that he made a complaint to the Central Government under section 27 of the Air Force Act against a superior office which resulted in a counter-complaint against him whereupon he was subjected to certain investigations by the Special Police Establishment regarding some bribery and corruption. It is claimed by the petitioner that the Special Police Establishment informed him that there was no truth in any of the allegations made against him. Ultimately, a charge-sheet was framed against the petitioner on 12th March, 1958, which contained allegations that :—

1. (a) the petitioner mortgaged a car with the President of India as security for a loan of Rs. 10,000 though the car did not belong to him;
   (b) the petitioner furnished a false sale receipt for the said car;
   (c) the petitioner made some false statements in his application to the Chief Controller of Imports for the purpose of getting an import licence; and
2. The petitioner obtained a free ticket from one S. Sundra, Managing Director of Messrs Electronics Limited, New Delhi, and this was done in consideration of his agreement to render certain services to S. Sundra.

On 11th April, 1958, another charge-sheet was framed against the petitioner alleging that he permitted certain deviations in the design of military boxes to be supplied to the Army by two firms thereby causing a considerable loss to the State. This charge-sheet is alleged to have been framed against the petitioner on the basis of certain facts emerging out of an enquiry by Wing Commander Bhaskaran. It is alleged that in that enquiry Wing Commander Bhaskaran had examined certain persons and recorded their statements at the back of the petitioner and without his knowledge. In the second charge-sheet, it was *inter alia* recited—

> "In the event of your having no satisfactory explanation or defence, I propose to recommend to the Central Government to dismiss you from service."

The petitioner submitted replies to the charge-sheets on 18th April, 1958 and 30th April, 1958, denying the charges. By his letter, dated 18th April, 1958 (copy Annexure 'C' to the petition), the petitioner asked for an opportunity to cross-examine certain witnesses and examine certain files and documents. In reply to this request of the petitioner he was informed by a letter, dated 19th April, 1958, as follows :—

> "It is correct that the misconduct attributed to you in the 'show-cause' notice, dated 11th April, 1958, has been based on information which came to the notice of this Headquarters during another investigation. If the officer conducting the investigation had blamed you without allowing you to be present or cross-examine the witnesses, it would have been held to be legally incorrect. But in serving a 'show-cause' notice for the termination/dismissal from service on the grounds of misconduct, it is not material from which source the information concerning the misconduct was received by this Headquarters, and as long as all evidence relevant to the misconduct attributed to you is furnished, you cannot justifiably claim that you have been prejudiced in submitting your defence."

The petitioner alleges that though he submitted this reply, dated 30th April, 1958, to the second charge-sheet, he could not give an adequate explanation since the necessary facilities had been denied to him. It is alleged that after the petitioner had submitted his replies he was

not informed whether they were found to be satisfactory or not, that there was no trial by a Court Martial, that no witnesses were examined in support of the charges alleged, and that he was not even given an opportunity to cross-examine the witnesses whose statements had been earlier recorded at his back or to adduce any oral or documentary evidence in support of his defence. The petitioner on 1st September, 1958, received a communication from the Commanding Officer, Air Force Station, dismissing him from service under section 19 of the Indian Air Force Act on the ground of "moral turpitude". The dismissal was to take effect from 1st September, 1958. The petitioner on 12th September, 1958, addressed another letter asking for an opportunity to explain the case personally and, if necessary, to produce witnesses. By the said letter he also made an enquiry as to which of the two charges mentioned in the two charge-sheets had been found proved against him. The petitioner received a reply, dated 27th October, 1958, saying *inter alia* that his dismissal was validly and properly ordered and that he had been dismissed on account of his misconduct referred to in the second show-cause notice, dated 11th April, 1958. In paragraphs 22 to 24 of the petition an effort has been made by the petitioner to explain the delay in filing the writ petition, which was filed in January, 1963. It is alleged that the petitioner had been making various representations seeking redress of his grievances. Two representations are alleged to have been made to the Prime Minister of India on 24th November, 1958 and 5th February, 1959, and one representation to the President of India on 6th October, 1961. Reply to the representation made to the President of India is stated to have been received by him on 12th December, 1961. The allegations in the petitioner proceed to say that when the petitioner was making all these representations, prosecution was launched against him in Court with respect to the first charge-sheet, being trial No. 34 of 1960 in December, 1960, but he was acquitted on 2nd November, 1962, and an appeal against his acquittal was also dismissed. Mr. C. B. Aggarwala, the learned counsel for the petitioner, pointed out that the prosecution in fact started in August, 1959 and it was in view of these circumstances that the petitioner could not file his petition before January, 1963. I must confess that I am not at all satisfied with the explanation about delay. It is admitted on behalf of the petitioner that the statute does not give any right of making representations and I do not think that the time spent in making representations to the Prime Minister and the President of India by way of mercy appeals can be pleaded in justification of delay. It is then said that his prosecution started in

August, 1959, which completely occupied petitioner's attention. Here again, I would say that the mere fact of commencement of prosecution could not stand in the way of the petitioner seeking redress in this Court against the order of his dismissal. Apart from that, the dismissal order was made in September, 1958, and still for about one year thereafter no writ petition was filed. Having regard to all these circumstances, I would say that the petitioner has failed to explain the delay and the petition should be dismissed on that ground.

Since considerable arguments have been addressed to me regarding the construction of the statute and violation thereof, I would briefly deal with the same out of deference to the arguments at the bar. The first contention on behalf of the petitioner is that no order against the petitioner could have been made under section 19, as has been done, dismissing him except after trial by a Court-Martial. The argument proceeds that power to dismiss under section 19 is merely a power of execution of an order passed by a Court-Martial. Chapter VI of the Air Force Act, 1950, prescribes the various offences and section 73 the punishments awardable by Court-Martial. Clause (f) of section 73 provides dismissal from service as one of the punishments. The contention of Mr. Aggarwala, the learned counsel for the petitioner, is that since the allegations made against him fell within Chapter VI, the only alternative available to the respondent was to put the petitioner on trial and if the Court-Martial awarded him the punishment of dismissal from service, dismiss him in exercise of powers under section 19. According to Mr. Aggarwala, the punishment awarded by a Court-Martial under section 73 does not take effect *proprio vigore* but has to be given effect to by the Central Government under section 19. He has drawn my attention also to Chapter XIII, providing for execution of sentences. There appears to be no force in the contention of Mr. Aggarwala and, in my opinion, the punishments awarded by the Court Martial take effect *proprio vigore* subject of course to certain confirmations provided by the statute. It is not, in my opinion, correct to suggest that even though the sentence awarded by a Court-Martial is confirmed under Chapter XII, yet if the punishment be dismissal, it has to be given effect to by the Central Government under section 19. Chapter XIII, dealing with execution of sentences merely deals with the procedure and the method in which the sentence is to be executed and does not, as is sought to be contended at the bar on behalf of the petitioner, provide that some external authority has to give effect to the punishment awarded by the Court-Martial. Moreover, if Mr. Aggarwala's argument is accepted, there

would be no method provided in the Act for executing some of the punishments mentioned in section 73. One of such punishments, which I may quote by way of illustration, would be the punishment of reprimand. After attending to all the provisions of the Act and the circumstances my conclusion is that the power conferred on the Central Government to terminate service is independent and not dependent on any punishment awarded by a Court-Martial.

There then remains to consider the other argument of Mr. Aggarwala that if the Central Government exercised powers to dismiss, it must do so after due enquiry and due compliance with the demands of natural justice, particularly when dismissal is by way of punishment. The argument is that a stigma has been attached to the petitioner in the dismissal order which has been passed without due enquiry in disregard of rules of natural justice and, therefore, is not a valid order. On behalf of the respondent, on the other hand, it has been contended that dismissal under section 19 does not confer a justiciable right and, in any case, the show cause notice having been issued to the petitioner and his replies considered, the requirements of natural justice had been met. Having heard the learned counsel thus far I reserved orders to consider whether it is open to me at all to go into the question of violation of natural justice. Having considered the arguments at the bar, in my opinion, there is no merit in the contention of the petitioner. Section 18 of the said Act provides the tenure of service to be during the pleasure of the President. Section 19 gives an absolute power to the Central Government to dismiss or remove from service "any person subject to this Act". It is abundantly recognised that persons who enter the military service and take the state's pay, and who are content to act under the President's commission, although they do not cease to be citizens in respect of responsibility, yet they do, by a compact which is intelligible, and which requires only the statement of it to recommend it to the consideration of any one of common sense become subject to military rule and military discipline. In case of civil servants certain special safeguards have been provided by Article 311 of the Constitution. Those safeguards admittedly do not extend to the army personnel. Admittedly, no rules have been framed in this behalf and there is, therefore, no question of any violation thereof. If any rules had been framed and violated, possibly different considerations may have arisen. As the law, however, stands at present it seems to recognise that employment in Army is not a right but only a privilege revocable by the sovereign

at will and efficient management demands that power to appoint should necessarily include the power to dismiss. In Army matters the legislature has conferred on the Government the same proprietary rights as provided to employers to hire and fire without restrictions. Reliance has been placed by Mr. Aggarwala on certain decisions under the Industrial Disputes Act holding that even in a case where under the standing orders it is permissible to terminate the services with one month's notice or payment in lieu thereof without assigning any reason, it is not open to the employer to exercise that power in an arbitrary or capricious manner and the *bona fides* as well as the justifiability of the employer's act can be enquired into by the Tribunals constituted under the Industrial Disputes Act. I do not think that that principle can be extended to matters of army discipline. In my opinion, any alleged violation of natural justice in the matter of dismissal or removal from service does not confer a justiciable right on the persons subject to the Air Force Act, 1950.

In the result, this petition must fail and is dismsised with no order as to costs.

B.R.T.

CIVIL MISCELLANEOUS

Before Mehar Singh, C.J. and Daya Krishan Mahajan, J.

RAMJI DASS,—***Petitioner***

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 140 of 1963

July 26, 1966

Capital of Punjab (Development and Regulation) Act (XVII of 1952)—Ss. 8 and 9—Whether ultra vires being violative of Art. 14 of the Constitution—Chandigarh (Sale of Sites) Rules (1952)—Rules 8 and 11—Estate Officer or Chief Administrator—Whether can fix time for the execution of sale-deed by purchaser.

Held, that sections 8 and 9 of the Capital of Punjab (Development and Regulation) Act, 1952 are not hit by Article 14 of the Constitution and are not ***ultra vires.*** In exercise of the powers under section 22(2)(g) of the Act the State Government has framed rules called the Chandigarh (Sale of Sites) Rules, 1952,