Before Rajan Gogoi & Rajan Gupta, JJ.

CAPTAIN SUDIP BISWAS,—*Petitioner*

versus

UNION OF INDIA AND OTHERS,—*Respondents*

L.P.A. No. 439 of 2003 in

C.W.P. No. 4193 of 1993

6th October, 2010

Constitution of India, 1950—Art. 226—Army Act, 1950—S.19—Army Rules, 1954—Rl. 14—Captain of Army contracting second marriage—Allegations by first wife against petitioner for demand of dowry, harassment and physical assault—Order compulsorily retiring petitioner passed while dispensing with Court Martial without recording any reason—Respondents failing to resort to procedure prescribed by Sub-Rule 14(2) of 1954 Rules—Appeal allowed, order of Single Judge dismissing writ petition set aside while grating liberty to respondents to proceed in matter in accordance with law within two months, failing which to reinstate the Captain.

Held, that the essence of the scheme contained in Rule 14 of the Rules would indicate that if the requirement of sub-rule 14(2) is not dispensed with, ordinarily a Court Martial is to be ordered, but in a situation where a Court Martial is considered to be inexpedient or impracticable, the officer is required to be given an opportunity to submit his explanation and his defence in writing on consideration of which further action can be taken. The later provisions of Rule 14(2) of the Army Rules pertain to the area of "civil action" or "departmental action" that can be resorted to for dismissal, removal or compulsory retirement of an officer. It must be emphasized that the provisions of Rule 14 (2) squarely indicate that it is only in the event where conduct of a Court Martial is considered to be inexpedient or impracticable and at the same time retention of the officer is felt to be undesirable that the later provisions of Rule 14(2) which contemplates civil or departmental action can be invoked.

(Para 7)

Further held, that the limited judicial satisfaction cannot be reached. On the contrary, it has to be held that in the absence of the reasons for dispensing with the Court Martial the conclusion that a Court Martial is not expedient case will stand vitiated. The exercise contemplated by the second part of Rule 14(2) comes into play only if a Court Martial has been dispensed with for the right and correct reasons. In a situation where the decision to dispense with the Court Martial has been held to the vitiated on account of the absence of any reasons in support of be same, the Court has to conclude that resort to the procedure prescribed by the later part of Rule 14(2) could not have been made by the respondents.

(Para 10)

Vijay Hansaria, Senior Advocate with H.S. Sidhu, Advocate and Ms. Sneha Kalita, Advocate, *for the appellant.*

Anil Rathee, Advocate, *for the respondents.*

RANJAN GOGOI, J. (ORAL)

(1) Heard.

(2) This appeal is directed against the order dated 5th August, 2003, passed by a learned Single Judge of this Court dismissing the writ petition filed by the appellant-writ petitioner. In the writ petition filed, the appellant-writ petitioner had challenged an order dated 1st September, 1992, by which he has been compulsorily retired from army service in exercise of powers under Section 19 of the Army Act, 1950 read with Rule 14 of the Army Rules, 1954.

(3) The brief facts that will be necessary to be noticed for an effective adjudication of the issues that have arisen, are as follows :

(4) In the year 1981, the appellant-writ petitioner was commissioned in the Indian Army. He was promoted to the rank of Captain in the year 1986. In the year 1988, the appellant-writ petitioner married one Ms. Ritu Ghosh. On 11th September, 1989, the appellant's wife made a written complaint to the Deputy Judge Advocate General, Western Command alleging demand of dowry, harassment and physical assault on her by the appellant-writ petitioner and his mother. It appears that a copy of the said

complaint was endorsed to the appellant-writ petitioner for his comments which were duly submitted on 9th January, 1990. What happened thereafter would not be very relevant for the purposes of this appeal except that on 10th September, 1990, the Chief of the Army Staff, through Deputy Director General, issued a notice under Section 19 of the Army Act read with Rule 14 of the Army Rule requiring the appellant to show cause as to why his service should not be terminated on account of conduct which was alleged to be unbecoming of an officer of the Indian Army. In the said communication it was also stated that the trial of the appellant by the Court Martial in respect of the alleged misconduct "is expedient due to exigencies of service". According to the appellant, he had submitted a reply dated 5th October, 1990 to the said show cause notice denying the allegations, which fact, however, is not admitted by the respondents who contend that in the said communication dated 5th October, 1990 the appellant had merely sought for time to file his reply. The aforesaid stand is disputed by the appellant who contends that it is virtually admitted in the affidavit filed by the respondents that the reply dated 5th October, 1990 did contain the defence of the appellant. Be that as it may, it appears that on 30th July, 1992 an order was passed asking the appellant to voluntarily retire from the service or face the consequence of being compulsory retired. Thereafter, on 1st September, 1992, the impugned order was passed compulsory retiring the appellant from service. The challenge to the said order having been negated by the learned Single Judge, the present appeal has been filed.

(5) As the impugned action of the respondents is based on the provisions contained in Section 19 of the Act and Rule 14 of the Army Rules, it would be appropriate to extract the aforesaid provisions of the Act and the Rules :—

> "**19.** *Termination of service by Central Government.*—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."

> "**14.** *Termination of service by the Central Government on account of misconduct.*—(1) When it is proposed to terminate the service of an officer under Section 19 on account of

misconduct, he shall be given an opportunity to show cause in the manner specified in sub-Rule (2) against such action--

Provided that this Sub-Rule shall not apply—

(a) where the service is terminated on the ground of misconduct which had led to his conviction by a criminal court; or

(b) where the Central Government is satified that for reasons, to be recorded in writing, it is not expedient or reasonably practicable to give to the officer an opportunity of showing cause.

(2) When after considering the reports on an officer's misconduct, the Central Government or the Chief of the Army Staff is satisfied that the trial of the officer by a Court Martial is inexpedient or impracticable, but is of the opinion that the further retention of the said officer in the service is undesirable, the Chief of the Army Staff shall so inform the officer together with all reports adverse to him and he shall be called upon to submit, in writing, his explanation and defence :

Provided that the Chief of the Army Staff may withhold from disclosure any such report or opinion thereof if, in his opinion, its disclosure is not in the interest of the security of the State.

In the event of the explanation of the officer being considered unsatisfactory by the Chief of the Army Staff, 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 Chief of the Army Staff as to the termination of the officer's service in the manner specified in sub-Rule (4).

(3) Where, upon the conviction of an officer by a criminal court, the Central Government or the Chief of the Army Staff considers that the conduct of the officer which has led to his conviction renders his further retention in service undesirable a certified copy of the judgment of the criminal court convicting him shall

be submitted to the Central Government with the recommendation of the Chief of the Army Staff as to the termination of the officer's service in the manner specified in sub-Rule (4).

(4) When submitting a case to the Central Government under the provisions of sub-Rule (2) or sub-Rule (3), the Chief of the Army Staff shall make his recommendation whether the officer's service should be terminated, and if so, whether the officer should be–

(a) dismissed from service; or

(b) removed from service; or

(c) compulsorily retired from the service.

(5) The Central Government after considering the reports and the officer's defence, if any, or the judgment of the criminal court, as the case may be, and the recommendation of the Chief of the Army Staff, may–

(a) dismiss or remove the officer with or without pension or gratuity; or

(b) compulsorily retire him from the service with pension and gratuity, if any, admissible to him."

(6) While Section 19 vests powers in the Central Government to dismiss or remove from service a person subject to the provisions of the Act in accordance with the Rules and regulations made thereunder, Rule 14 of the Army Rules lays down the procedure which has to be followed while exercising the power under Section 19. A reading of the provisions contained in Rule 14 would indicate that in a situation where it is proposed to terminate the service of an officer under Section 19 on account of misconduct, he is required to be given an opportunity in the manner specified in sub rule (2) of Rule 14. However, the provisions contained in sub rule (2) can be dispensed with in the situations contemplated by sub clauses (a) and (b) of Rule 14 (1). Rule 14 (2) contemplates that when the Central Government or the Chief of the Army Staff, as may be, on consideration of the report of an officer's misconduct is satisfied that the trial of the officer

by a Court Martial is inexpedient or impracticable, but at the same time is of the opinion that further retention of the said officer is not desirable, the Chief of the Army Staff is required to so inform the officer together with all reports adverse to him and he required to be given an opportunity to submit in writing his explanation and defence. Thereafter, the provisions of Rule 14(2) contemplate that the case shall be submitted to the Central Government along with the officer's defence and the recommendation of the Chief of the Army Staff, whereafter, the power of dismissal, removal or compulsorily retirement may be invoked.

(7) The essence of the scheme contained in Rule 14 of the Rules would indicate that if the requirement of sub rule 14 (2) is not dispensed with, ordinarily a Court Martial is to be ordered, but in a situation where a Court Martial is considered to be inexpedient or impracticable, the officer is required to be given an opportunity to submit his explanation and his defence in writing on consideration of which further action can be taken. The later provisions of Rule 14(2) of the Army Rules, as noticed above, pertain to the area of "Civil action" or "departmental action" that can be resorted to for dismissal, removal or compulsory retirement of an officer. It must be emphasized that the provisions of Rule 14(2) squarely indicate that it is only in the event where conduct of a Court Martial is considered to be inexpedient or impracticable and at the same time retention of the officer is felt to be undersirable that the later provisions of Rule 14(2) which contemplates civil or departmental action can be invoked.

(8) Adverting to the facts of the present case, it is clear from the letter of the Army Chief dated 10th September, 1990 that the Chief of the Army Staff had considered that in the present case it was inexpedient to conduct a Court Martial due to exigencies of service.

(9) What are the reasons that had prompted the Chief of the Army Staff to reach the said conclusion had not been indicated by the respondents. In fact, this court had desired that the records in original showing the reasons and the manner in which the aforesaid decision was reached be laid before it. Specifically, by order dated 29th September, 2010, the case was adjourned till today to enable the said record to be placed before the Court. Despite the above, the relevant records have not been made available. The consequence of the failure to produce the records, which are in the custody

of the respondents, is that the Court has been denied the benefit of the reasons that had led the Chief of the Army Staff to conclude that in the present case it was not expedient to hold the Court Martial.

(10)Time and again the judicial verdict has emphasized the reasons are the live link between the basic facts and the conclusions reached. While the sufficiency of the reasons or the adequacy thereof will not be gone into by the court when the required decision is to be reached by the authority contemplated by the statute, the power of the court would extend to an examination of the relevance of the assigned or recorded reasons to the decision reached. Unfortunately, in the present case, the limited judicial satisfaction cannot be reached. On the contrary it has to be held that in the absence of reasons for dispensing with the Court Martial the conclusion that a Court Martial is not expedient case will stand vitiated. The exercise contemplated by the second part of Rule 14(2) comes into play only if a Court Martial has been dispensed with for the right and correct reasons. In a situation where the decision to dispense with the Court Martial has been held to be vitiated on account of the absence of any reasons in support of the same, the court has to conclude that resort to the procedure prescribed by the later part of Rule 14(2) could not have been made by the respondents.

(11) A supplementary argument has been made by the learned counsel for the appellant to contend that even while following the procedure enjoined by second part of Rule 14(2), the respondents have gone grossly wrong in taking the stand that no reply had been submitted by the appellant to the show cause notice dated 10th September, 1990 issued by the Chief of the Army Staff. It is further argued that in coming to its conclusion in the matter, the respondents have relied upon documents, access to which was not provided to the appellant-writ petitioner.

(12) To controvert the submissions advanced on behalf of the appellant with regard to the absence of the reasons for dispensing with the Court Martial, the learned Central Government counsel has relied upon the law laid down by the Apex Court in a case **Union of India** *versus* **Capt. S. K. Rao, (1).** A further decision of this Court rendered in LPA No. 251 of 2004 titled **"Union of India and others** *versus* **Sampuran Singh"** has also been relied upon.

(1) (1972) 1 S.C.C. 144

(13) We have read and considered the reply dated 5th October, 1990, submitted by the petitioner in response to the notice dated 10th September, 1990 issued by the Chief of Army Staff. Reading the said reply we are inclined to take the view that contents of the said document submitted by the appellant-writ petitioner could reflect the basic defence of the appellant. On the other hand, the decision relied by the learned Central Government counsel are of no avail. In Union of India *versus* Capt. S. K. Rao *(supra)*, the Apex Court was considering the issue as to whether resort to the civil/departmental action contemplated by the later part of Rule 14 (2) was ultra vires the provisions of Section 45 of the Army Act, inasmuch as, such civil/departmental action had the effect of dispensing with a Court Martial. The challenge made was dispelled by the Apex Court. What, however, would be the significant and, therefore, must be noticed is that in the aforesaid case the dispensation of the Court Martial, which was specifically made under Rule 14 (2) was not challenged as has been done in the present case. The decision of this Court in LPA No. 251 of 2004 *(supra)* also turns on its own facts and therefore, would not be relevant for the purposes of deciding the issue in controversy before us.

(14) The net result of the above discussion is that in the absence of any reasons to justify the dispensation of the Court Martial contemplated by the first part of Rule 14 (2); it has to be held that resort to the later part of Rule 14 (2) in the case of the appellant was not justified. As we have already held that the reply dated 5th October, 1990, submitted by the appellant-writ petitioner did contain his basic defence the stand taken by the respondents that no reply was submitted by the petitioner to the notice dated 10th September, 1990, issued by the Chief of the Army Staff, is also not correct.

(15) The next and the crucial question that has to be decided is to the relief to which the appellant-writ petitioner should be held entitled to on the findings that we have recorded above.

(16) The ground on which we have held the dispensation of the Court Martial to be not justified would require us to leave it open to the respondents to invoke the first part of Rule 14 (2) after complying with the inbuilt requirements that would be legally mandatory. Our finding that the respondents could not have proceeded with the civil/departmental action

by holding that the petitioner had not submitted any reply would be contingent on what would be the outcome of the *de novo* process that will have now to be initiated under the first part of Rule 14 (2). It is, therefore, premature, at this stage, to hold the appellant-writ petitioner to be free from all liabilities. In a situation where the liability of the appellant, if any, is yet to be finally decided, we are of the view that the relief of reinstatement cannot be granted. We, therefore, decline the same and close this appeal by leaving it open to the respondents to proceed in the matter in accordance with the present directions and as they may be advised. If, however, the respondents do not consider it expedient to reopen the matter within two months of the date of receipt of a copy of this order, they will be obliged to order for the reinstatement of the petitioner on such post for which the appellant-writ petitioner may be found fit with consequential benefits subject to condition that the appellant is medically fit for service in the Army.

(17) The writ-appeal is consequently allowed to the extent indicated above. The impugned order dated 5th August, 2003, passed by the learned Single Judge is set-aside. We also make it clear that in the event the respondents decided to proceed against the petitioner afresh, in view of the long efflux of time, the respondents should ensure the conclusion of any such proceeding with six months from the date of initiation thereof.

R.N.R.