

Mohammed Zubair Corporal No.781467-G vs Union Of India & Ors on 15 December, 2016

Equivalent citations: AIR 2017 SUPREME COURT 107, 2017 (2) SCC 115, (2017) 1 RECCIVR 433, (2017) 1 SERVLJ 233, (2017) 1 KCCR 58, (2017) 1 ESC 16, (2016) 8 MAD LJ 737, (2016) 12 SCALE 845, (2017) 152 FACLR 417, (2017) 3 MAH LJ 490, (2017) 2 ADJ 14 (SC), (2017) 2 MPLJ 658, (2017) 2 SERVLR 133, (2017) 1 SCT 216, (2017) 2 MAD LW 685, (2017) 3 PUN LR 262

Author: D Y Chandrachud

Bench: L. Nageswara Rao, D Y Chandrachud, T S Thakur

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 8643 OF 2009

MOHAMMED ZUBAIR CORPORAL NO.
781467-G

.....APPELLANT

Versus

UNION
.....RESPONDENTS

OF

INDIA

&

ORS.

With

CIVIL APPEAL No. 8644 OF 2009

J U D G M E N T

Dr D Y CHANDRACHUD, J CIVIL APPEAL No. 8644 OF 2009 The Appellant was enrolled as an Airman in the Indian Air Force on 19 December 2001. After enrolment he was sent for training and was assigned the trade of Workshop Fitter (B). On 1 September 2004 he was posted to 3 Base Repair Depot at Chandigarh. On 10 January 2005, the Appellant submitted an application seeking permission to keep a beard on religious grounds, since he is a Muslim. The Air Officer Commanding

rejected the application on 1 February 2005 and the Appellant was informed on 9 February 2005 of the rejection, which was on the ground of the Air Headquarters' Policy dated 24 February 2003. On 22 March 2005 the Appellant submitted another application to the Air Officer Commanding seeking reconsideration of the earlier decision. He was granted an interview with him on 10 June 2005, when he was informed of the necessity to maintain uniformity amongst Air Force personnel because of which his request had been rejected. The Air Officer Commanding, however, addressed a communication dated 23 June 2005 to the Headquarters Maintenance Command seeking a clarification on the legal issues raised by the Appellant. In the meantime on 20 June 2005 the Appellant proceeded on annual leave. When he returned on 1 August 2005, he was found to sport a beard. On 1 August 2005 he was informed by Wing Commander that contrary to Air Force Regulations, he was found to have a beard while in service uniform. The Appellant was instructed to shave off his beard and to report at 0700 hrs on 2 August 2005, failing which it was stated that "severe disciplinary action" would be initiated against him. The Appellant declined to shave off his beard. Since in the meantime a clarification had been sought from HQ -MC, he was permitted to grow a beard on a provisional basis until his earlier application was finalised. By a communication dated 26 August 2005 HQ-MC Nagpur, informed 3 BRD, AF that under the current policy of the Air Force (Area HQ/C 23406/24/PS) dated 24 February 2003 and 9 July 2003 an Airman was not permitted to have a beard on religious grounds. On receipt of this letter, the Appellant was directed to shave off his beard and informed that the provisional permission granted to him on 3 August 2005 was withdrawn.

2 On 17 September 2005 the Appellant filed a writ petition before the Punjab & Haryana High Court in which by an interim order dated 20 September 2005 a Single Judge stayed the operation of the Air Force order dated 5 September 2005. The Air force authorities moved the High Court for vacating the interim stay but the application was dismissed on 9 February 2006. A Special Leave Petition was filed before this Court which was disposed of on 28 September 2007 with a request to the High Court to dispose of the petition expeditiously. By an order of the High Court dated 14 July 2008 the writ petition was dismissed. A Letters Patent Appeal was dismissed by the High Court on 31 July 2008. In the meantime, a notice to show cause was issued to the Appellant calling upon him to explain as to why he should not be discharged from service. In reply to the notice, the Appellant asserted his right to retain a beard. The Appellant was eventually discharged from service under Rule 15(2)(g)(ii) of the Air Force Rules 1969 on 1 September 1997.

3 In the writ proceedings before the High Court, which were instituted on 17 September 2005 the Appellant sought the following reliefs :

“a writ of Certiorari or any other appropriate writ, order or direction for quashing of Annexure P-5 vide which the petitioner, a Muslim has been directed to shave his beard by 20.09.2005, the same (Annexure P-5) being illegal, without any sanction of law and in contravention of Regulation 425(b) of the Regulations of the Indian Air Force and policy letters dated 08.05.1980 and 10.08.1982 (Annexures P-1 and P-2);

With a further prayer that the operation of the impugned order (Annexure P-5) may kindly be stayed till the disposal of this writ petition since Air Force Regulations and policies explicitly confer

upon Muslims a right to sport beard and provide for no discretion to the respondents to take away this right under any circumstance”.

The challenge was to the direction issued to the Appellant to shave off his beard on 20 September 2005 on the ground that it was contrary to Regulation 425(b) of the Regulations governing the Indian Air Force and to the policy letters of 8 May 1980 and 10 August 1982. Even prior to the institution of the writ petition, the Appellant had been discharged from service. Strictly speaking a mere challenge to the direction by which he was called upon to shave off his beard would not subserve the cause of the Appellant once he stood discharged from service. Be that as it may, the Division Bench of the High Court by its judgment and order dated 31 July 2008 came to the conclusion that the purpose of Regulation 425(b) is to ensure that the identity of a person is not altered during the course of service so as to render recognition possible. The Division Bench affirmed the judgment of the learned Single Judge to the effect that maintaining a beard was not an integral part of the religion professed by the Appellant. In the view of the High Court, the matter pertained to the Armed Forces where a certain degree of discipline had to be maintained and the rules and regulations broadly accommodate "the basic interest of various religions in a secular manner".

4 The policy governing the growth of hair, including facial hair, in the Air Force has been enunciated in paragraph 425 of the Armed Force Regulations, 1964. Regulation 425 provides as follows :

“425. Growth of Hair etc. by Air Force Personnel.

Except as in sub para (b), the hair of the head will be kept neatly cut and trimmed. The hair of airman under detention/sentence will be cut no shorter than is customary/ throughout the service except on medical advice and except where on an application made by the airman he has been permitted to keep long hair. Face will be clean shaven. Whiskers and moustaches, if worn will be moderate length.

Personnel whose religion prohibits the cutting of the hair or shaving of the face of its members will be permitted to grow hair or retain beard. However, such hair and/ or beards will be kept clean, properly dressed and will not be removed except on medical grounds or on application duly approved”.

Clause (a) of Regulation 425 mandates firstly, that Air Force personnel must keep their hair neatly cut and trimmed. Secondly, facial hair has to be shaved and every airman must have a clean shaven face. Thirdly, whiskers and moustaches though permitted have to be of a moderate length. The rest of the clause deals with Airmen under detention or sentence with which the present case is not concerned. Clause (b) of Regulation 425, however, stipulates that an airman will be permitted to grow hair or to retain a beard where the religion professed by him prohibits the cutting of hair or shaving of facial hair. In that case, the hair and/or beard must be kept clean and properly dressed and cannot be removed except on medical grounds or on an application which is duly approved. The touchstone for being allowed to grow one's

hair or to retain a beard is where there is a religious command which prohibits either the hair being cut or a beard being shaved.

5 The Air Force is a combat force, raised and maintained to secure the nation against hostile forces. The primary aim of maintaining an Air Force is to defend the nation from air operations of nations hostile to India and to advance air operations, should the security needs of the country so require. The Indian Air Force has over eleven thousand officers and one lakh and twenty thousand personnel below officers rank. For the effective and thorough functioning of a large combat force, the members of the Force must bond together by a sense of Espirit-de-corps, without distinctions of caste, creed, colour or religion. There can be no gainsaying the fact that maintaining the unity of the Force is an important facet of instilling a sense of commitment, and dedication amongst the members of the Force. Every member of the Air Force while on duty is required to wear the uniform and not display any sign or object which distinguishes one from another. Uniformity of personal appearance is quintessential to a cohesive, disciplined and coordinated functioning of an Armed Force. Every Armed Force raised in a civilised nation has its own 'Dress and Deportment' Policy.

6 India is a secular nation in which every religion must be treated with equality. In the context of the Armed Forces, which comprise of men and women following a multitude of faiths the needs of secular India are accommodated by recognising right of worship and by respecting religious beliefs. Yet in a constitutional sense it cannot be overlooked that the overarching necessity of a Force which has been raised to protect the nation is to maintain discipline. That is why the Constitution in the provisions of Article 33 stipulates that Parliament may by law determine to what extent the fundamental rights conferred by Part III shall stand restricted or abrogated in relation inter alia to the members of the Armed Forces so as to ensure the proper discharge of their duties and the maintenance of discipline among them. Article 33 provides as follows :

“33. Power of Parliament to modify the rights conferred by this Part in their application to Forces, etc.- Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to-

(a) the members of the Armed Forces; or

(b) the members of the Forces charged with the maintenance of public order;

or

(c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence; or

(d) persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to (c), be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.” 7 In the Indian Air Force, the norms governing the growth of hair and retention of facial hair is governed by Regulation 425. Policy documents have also been issued from time to time.

On 28 April 1980, the Air Head Quarters issued a letter responding to queries made in respect of Armed Force personnel professing Islam. The letter opined that personnel professing Islam are covered by the exception under paragraph 425(b) of the Regulations and that the beard should be "of such length when covered by a fist no hair shall be visible outside". Subsequently, on 10 August 1982 it was stipulated by a policy letter that no permission was required by Muslim Air Force personnel to keep a beard so long as the airman sported a beard at the time of joining service. However, if an airman who is a Muslim desired to sport a beard after joining service, he would be permitted to submit a formal application informing his commanding officer of this fact and to sport a beard from that date. The airman would not be allowed to remove the beard except on medical grounds or on an application approved by the Commanding Officer. On 6 October 1999 a comprehensive policy was formulated in supersession of the Headquarters' letter dated 10 August 1982. The policy document laid down that service personnel professing Islam were not required to obtain formal permission if they already sported a beard at the time of joining service. However, if a person desired to grow a beard after joining service, he was required to submit a formal application to the Commanding Officer who would ascertain the reason and ensure that the beard was maintained in a neat, trim and tidy manner. The beard would not be allowed to be shaved off without specific permission. The provisions in relation to the length of the beard for Muslim airmen contained in the earlier policy were reiterated.

8 In February 2003 the policy was re-examined so as to implement a common code of conduct applicable to air force personnel. On 24 February 2003 a revised policy was issued with the concurrence of the Union government in the Ministry of Defence in supersession of the earlier policy dated 6 October 1999. Para 2(a) of the policy governs personnel who profess Sikhism. Para 2(a) provides thus :

“Sikh personnel who wear turban and keep beard at the time of commission/enrolment would continue to do so. These personnel must maintain the beard neatly dressed/tied and rolled and not kept flowing. They are to wear the turban while in uniform/civil dress whether inside or outside the camp except during PT/Games and activities related to operations where wearing of turban is not feasible. At all such occasions, Sikh personnel are to wear turban/patka or handkerchief over the knot of hair as appropriate. Sikh personnel keeping short hair and beard are to wear turban as applicable to those maintaining long hair”.

Paragraph 2(b) of the policy states thus :

“b) Only those Muslim personnel who had kept beard along with moustache at the time of commissioning/enrolment prior to 01 Jan 2002, would be allowed to keep beard and moustache. Such personnel are to maintain it in a manner that it is neat, trimmed and tidy and not more than the length which could be covered by one fist. Muslims who have grown beard after joining service should shave off the beard. Under no circumstances, a Muslim person who had beard at the time of joining service before 01 Jan 2002 shall be allowed to maintain beard without moustache. Moustache would be a part of the beard”.

Para 2(c) allows non-sikh personnel to sport a beard for a short period towards fulfilment of specified religious rights and ceremonies for a period not exceeding thirty days. Para 2(c) stipulates that while in uniform, the personal appearance of an individual should not give any religious bias. Hence Tilak/Vibhuti on the forehead, a thread on the wrist or arm of the airman and a trinket in the ear (etc.) are not to be worn.

9 On 9 June 2003 a letter was issued by the Air Headquarters containing a clarification in the following terms :

“4. In an effort to allay the fears or misconception of the Non-Sikh personnel, it is clarified that all those personnel whose religion/religious practices demand sporting of beard and moustaches; they could continue to wear the beard as long as such a permission has been granted to them prior to issuance of this letter or they had beard and moustaches, as part of their religious practices, at the time of joining the Air Force. In pursuance of this directive, Commanders are to ensure that necessary endorsements are made in the personal documents of such individuals and photographs depicting such changes in the facial appearances are affixed to them. The Identity Cards also need to be changed accordingly”.

The above letter states that personnel whose religion requires sporting a beard and moustache would be allowed to grow a beard provided (i) permission was granted prior to the issuance of the letter; and (ii) a beard and moustache was grown at the time of joining the Air Force.

In pursuance of this directive, commanders have been required to make endorsements in the personal documents depicting in the photographs affixed such changes in the facial appearance. Identity cards have to be changed accordingly. The policy document now specifically provides that if permission had been granted to non-Sikh personnel prior to 9 June 2003, they could continue to sport a beard or if they had as a part of religious practice done so at the time of joining the Air Force.

10 During the course of the hearing, we had inquired of Shri Salman Khurshid, learned senior counsel appearing on behalf of the Appellants whether there is a specific mandate in Islam which "prohibits the cutting of hair or shaving of facial hair". Learned senior counsel, in response to the query of the Court, indicated that on this aspect, there are varying interpretations, one of which is that it is desirable to maintain a beard. No material has been produced before this Court to indicate that the Appellant professes a religious belief that would bring him within the ambit of Regulation 425(b) which applies to "personnel whose religion prohibits the cutting off the hair or shaving off the face of its members". The policy letters which have been issued by the Air Headquarters from time to time do not override the provisions of Regulation 425(b) which have a statutory character. The policy circulars are only clarificatory or supplementary in nature. The policy letter of 8 May 1980 did initially permit an airman professing Islam to sport a beard of a prescribed length. This was revisited by the Air Headquarters on 10 August 1982 and a distinction was made between the

cases of Muslim personnel who had already sported a beard at the time of joining service (in whose case no permission was required) and cases where personnel desire to sport a beard after joining service (in which case a formal application informing the Commanding Officer was required to be submitted). On 6 October 1999 the Air Headquarters while reiterating this distinction made it clear that if an airman seeks to grow a beard after joining service he would require the approval of the Commanding Officer who would ascertain the reasons for his decision, advise the individual to maintain the beard in a neat, trim and tidy manner and that once permitted he would not be allowed to shave off his beard. Evidently, these provisions have been introduced having due regard to the security concerns inherent in maintaining identity in the Armed Forces. Maintenance of identity is a crucial element in the safety and security of the Forces, particularly in the context of the threat of infiltration. The policy was again revisited on 24 February 2003. This time a limited protection was granted for those who had a beard prior to 1 January 2002 at the time of enrolment but the policy also stated that no person would after joining service be allowed to maintain a beard. This position was clarified on 9 June 2003 by stating that personnel whose religion demands sporting a beard, would be allowed to do so provided they were granted permission prior to the date of the letter or had grown a beard at the time of joining Air Force. So long as the provisions of Regulation 425 (which have a statutory effect) are not breached, a mere policy can be revisited and modulated in the interest of the Force. The policy documents are only clarificatory in nature. Policies can be duly modified to subserve the best interest of the Force, which is inextricably intertwined with the need to protect the nation against grave threats of destabilisation and disorder. The discipline of this Force is paramount.

11 We see no reason to take a view of the matter at variance with the judgment under appeal. The Appellant has been unable to establish that his case falls within the ambit of Regulation 425(b). In the circumstances, the Commanding Officer was acting within his jurisdiction in the interest of maintaining discipline of the Air Force. The Appellant having been enrolled as a member of the Air Force was necessarily required to abide by the discipline of the Force. Regulations and policies in regard to personal appearance are not intended to discriminate against religious beliefs nor do they have the effect of doing so. Their object and purpose is to ensure uniformity, cohesiveness, discipline and order which are indispensable to the Air Force, as indeed to every armed force of the Union.

12 For these reasons, we see no merit in the Civil Appeal No. 8644 of 2009. The Civil Appeal shall stand dismissed. However, with no orders as to costs.

13 In the view of the above, Civil Appeal No. 8643 of 2009 is dismissed accordingly.

.....CJI [T S THAKUR]J [Dr D Y
CHANDRACHUD]J [L. NAGESWARA RAO] New Delhi December
15, 2016