

A UNION OF INDIA & ORS.

v.

LT COLONEL DHARAMVIR SINGH

(Civil Appeal No.1714 of 2019)

B FEBRUARY 15, 2019

**[DR. DHANANJAYA Y. CHANDRACHUD AND
HEMANT GUPTA, JJ.]**

- Army Act, 1959 – Order of attachment of respondent for initiating disciplinary action under Army Instructions 30/86 – Communications were intimated to the respondent to report to the unit of attachment – Writ petition before Manipur High Court by respondent challenging the legality of these orders – Jurisdiction of the Manipur High Court challenged on the ground that the respondent at the time of the initiation of the action of attachment was based at Nanded in Maharashtra and the orders were issued by the Headquarters at New Delhi – High Court proceeded to entertain the Writ Petition on the submission urged before it that the order of attachment had been issued for the purpose of holding an enquiry in respect of incidents which had taken place at Imphal when the respondent was posted there – The hearing was adjourned to consider the objection to the maintainability of the writ petition and until then the orders impugned were stayed – On 24.01.2019, High Court confirmed the earlier ad-interim order – On appeal, held: High Court was manifestly in error in entering upon an area which related to the exercise of the disciplinary jurisdiction of the Army under the Army Act, 1950 – The admitted position was that the respondent was posted at Nanded in Maharashtra – Manipur High Court had no reasonable basis to exercise jurisdiction – The challenge in the writ petition which was instituted by the respondent before the High Court related exclusively to the order of attachment which was followed by two communications requiring him to proceed to the place of attachment – An officer subject to the discipline of the Army Act, 1950 must abide by the regulations, if the disciplinary jurisdiction is sought to be invoked – It was manifestly inappropriate for the High Court to take upon itself the task of pre-empting the exercise of that jurisdiction and taking over the essential function*

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of determining whether or not recourse to the disciplinary jurisdiction was warranted – Service law – Armed Forces – Jurisdiction – Armed Forces Tribunal Act 2007 – s.3(o).

Allowing the appeal, the Court

HELD: 1. The High Court was manifestly in error in entering upon an area which relates to the exercise of the disciplinary jurisdiction of the Army under the Army Act 1950. The admitted position is that the respondent was posted at Nanded in Maharashtra. The Single Judge had no reasonable basis to exercise jurisdiction. [Para 13] [587-H; 588-A]

2.1 The challenge in the Writ Petition which was instituted by the respondent before the High Court related exclusively to the order of attachment dated 5 October 2018, which was followed by two communications dated 2 November 2018 requiring him to proceed to the place of attachment. An officer subject to the discipline of the Army Act 1950 must abide by the regulations, if the disciplinary jurisdiction is sought to be invoked. It was manifestly inappropriate for the High Court to take upon itself the task of pre-empting the exercise of that jurisdiction and taking over the essential function of determining whether or not recourse to the disciplinary jurisdiction was warranted. [Para 13] [588-B-C]

2.2 The assumption of jurisdiction by the High Court in a Writ Petition under Article 226 of the Constitution was misconceived. Also, having regard to the definition of the expression “service matters” in Section 3(o) of the Armed Forces Tribunal Act 2007 and the jurisdiction of the Armed Forces Tribunal under Section 14, such a Writ Petition ought not to have been entertained by the High Court. The course of action followed by the Single Judge has serious repercussions for the maintenance of discipline in the Army. Discipline is the essence of the organisation and structure of an Armed Force. [Para 15] [588-E-G]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1714 of 2019.

From the Judgment and Order dated 05.12.2018 and 24.01.2019 of the High Court of Manipur at Imphal in Writ Petition (Civil) No. 1031 of 2018.

A Aman Lekhi, ASG, R. Bala, Ms. Priyanka Das, Ms. Uttara Babbar, Arvind Kumar Sharma, Ms. Bhavana Duhoon, Advs. for the Appellants.

Colin Gonsalves, Sr. Adv., Shreeji Bhavsar, Satya Mitra, Advs. for the Respondent.

B The Judgment of the Court was delivered by

DR DHANANJAYA Y CHANDRACHUD, J.

1. Leave granted.

2. The respondent is a Lieutenant Colonel in the Indian Army. On 20 September 2016, as an officer of the Intelligence Corps, he was posted to 3 Corps Intelligence and Surveillance Unit¹. On 30 June 2018 he was posted from 3 CISU as an Officer Commanding 2 Detachment in Imphal to Nanded in Maharashtra. His successor, Lt Colonel RP Nanda addressed two letters on 30 June 2018 and 2 July 2018 to his Commanding Officer implicating breaches of discipline, violations of the Arms Act 1959, and security and administrative lapses by the respondent. According to the petitioners, on being directed to report to Unit Headquarters by his Commanding Officer at 3 CISU, the respondent moved to Dimapur. On 4 July 2018 a Habeas Corpus Petition² was instituted before the High Court of Manipur by his spouse. On 5 July 2018, the High Court directed the authorities to ensure the presence of the respondent. In compliance with the order of the High Court, the respondent appeared in Court, when an order was passed, recording that:

F “Prima facie as on today, Lt.Col.Dharamvir Singh is not in illegal custody or in the custody of any of the Officers of the respondent/department.”

G On 5 October 2018 an order was issued attaching the respondent to Hq 56 Artillery Brigade Unit for initiating disciplinary action under Army Instructions 30/86. He instituted a Writ Petition before the High Court of Manipur under Article 226 of the Constitution, seeking to challenge the validity of the attachment order dated 5 October 2018 issued by the Additional Directorate General, Discipline and Vigilance, Adjutant General’s Branch, Integrated HQ of the Ministry of Defence (Army), New Delhi. The order of attachment reads thus :

H ¹ [“3 CISU”]

² Habeas Corpus Petition No 11 of 2018

“Attachment Order :

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1. Ref. HQ Eastern Comd Letter No.201940/157/A1(Dv-2) dated 29 Sep 2018 (copy enclosed for ready reference).

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2. IC 57196X Lt. Col. Dharamvir Singh ex OC No.2 FID, 3 CISU presently posted to 52 Maharashtra NCC Bn, Nanded, Maharashtra is hereby attached to 56 Arty Bde/56 Inf Div/3 Corps under the provisions of AI 30/86.

3. The offr be directed to report to 56 Arty Bde/56 Inf Div/3 Corps forthwith and compliance report to this effect may please be fwd to this HQ.”

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3. The order of attachment was followed by a communication dated 2 November 2018 of HQ DG NCC, Ministry of Defence and a similar communication of the NCC Directorate, Maharashtra requiring the respondent to report to 56 Arty Bde/56 Inf Div/3 Corps.

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4. The Writ Petition which was instituted before the High Court of Manipur on 5 November 2018, specifically called into question the legality of these orders. The prayers in the petition are extracted below:

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“ii. Issue a Writ in the nature of Certiorari for quashing (i) the letter dated 5.10.2018 issued by the Additional Directorate General, Discipline and Vigilance, Adjutant General’s Branch, Integrated HQ of MOD (Army), New Delhi 110011, (ii) letter dated 2.11.2018 issued by the HQ DGNCC, Ministry of Defence, West Block-IV, RK Puram, New Delhi – 110066 and (iii) letter dated 2.11.2018 issued by NCC Directorate, Maharashtra AFI Building, Bombay Hospital Lane, Dhobi Talao, Mumbai – 400020.”

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5. A learned Single Judge of the High Court entertained the Writ Petition on 5 November 2018. A submission was made before the High Court that an order of attachment, as prescribed under Army Instruction No.30 of 1986, can be ordered only when a disciplinary action has been contemplated and when the order of attachment was issued on 5 October 2018, a tentative charge-sheet had not been furnished to the officer.

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6. An objection was raised to the jurisdiction of the High Court to entertain the Writ Petition, since the respondent at the time of the initiation of the action of attachment was based at Nanded in Maharashtra and

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- A the orders were issued by the Headquarters at New Delhi. Yet the High Court proceeded to entertain the Writ Petition on the submission which was urged before it that the order of attachment had been issued for the purpose of holding an enquiry in respect of incidents which had taken place at Imphal when the respondent was posted there. The hearing was adjourned to 23 November 2018 to consider the objection to the maintainability of the Writ Petition. Until then the orders impugned were stayed.

- 7. On 24 January 2019, the High Court confirmed the earlier ad-interim order. While doing so, the High Court adverted to a file which
 - C was placed in a sealed cover before it. The High Court noted that the order of attachment was ordered pursuant to a communication dated 29 September 2018 of the Lieutenant General and General Officer Commanding (GOC) enclosing a report dated 2 July 2018 of Lt Col R P Nanda, who was transferred in place of the respondent. It is at that stage that the High Court also noted that the order of attachment appeared
 - D to have been issued after the respondent had filed an affidavit on 20 July 2018 in Writ Petition (Crl.) No. 11 of 2018. The High Court observed that the subject of the said Criminal Writ Petition pertained to an allegation against certain members of the 3 Corps Intelligence Unit going back to 18 August 2011. The High Court took note of the fact that an SIT has
 - E been constituted by the Guwahati High Court in Writ Petition (C) 2481 of 2014. On the basis that nothing appears to have been done by any authority in respect of the alleged incidents which took place on 18 August 2011, the High Court proceeded to confirm its interim order dated 5 November 2018.

- F 8. Notice was issued by this Court in the present proceedings on 8 February 2019. In the meantime, further proceedings before the High Court and the impugned orders dated 5 November 2018 and 24 January 2019 were stayed.

- G 9. On service of notice, on the request of Mr Colin Gonsalves, learned Senior Counsel appearing on behalf of the respondent, the Special Leave Petition was directed to be listed on 15 February 2019 since it was apprehended that in view of the interim order of this Court the disciplinary jurisdiction would be invoked.

10. We have accordingly heard Mr Aman Lekhi, learned Additional Solicitor General of India (ASG) with Mr R Balasubramanian, learned Counsel and Mr Colin Gonsalves, learned Senior Counsel with Mr Shreeji Bhavsar, learned Counsel.

11. The submission which has been urged on behalf of the appellants by Mr Aman Lekhi, learned ASG is that in entertaining the Writ Petition, the High Court has encroached upon an area which falls within the discipline of the Army. The respondent, it has been submitted, is an officer governed by the Army Act 1950. The provisions of the Armed Forces Tribunal Act 2007 govern all matters relating to the conditions of service including discipline and other issues. In the circumstances, it was urged that there was no justification for the Manipur High Court to entertain the Writ Petition. At the relevant time, before the order of attachment was issued, the respondent had been posted to Nanded in Maharashtra. The ASG submitted that the exercise of the jurisdiction by the High Court virtually pre-empts the disciplinary jurisdiction of the competent authority in respect of an officer governed by the Army Act 1950.

12. Mr Colin Gonsalves, learned Senior Counsel submitted that the respondent had addressed a communication on 9 September 2016 to the GOC-in-C, Eastern Command making allegations in regard to certain incidents which took place in 2011. Learned Counsel urged that the respondent was pressurized by the then CO, 3 CISU to withdraw his letter dated 9 September 2016 which he did on 20 September 2017. A complaint, he submits, was addressed to the Chief of the Army Staff on 1 July 2018. Mr Gonsalves submitted that the learned Single Judge of the High Court was justified in entertaining the Writ Petition since the respondent, in an affidavit filed in Writ Petition No. 11 of 2018, has made serious allegations in regard to the conduct of the members of 3 Corps Intelligence and Surveillance Unit in regard to the death of three individuals from Manipur in 2010-2011. In the alternative, Mr Gonsalves, submitted that attachment of the respondent may be altered to another unit so as to ensure fair dealing.

13. In our view, the High Court was manifestly in error in entering upon an area which relates to the exercise of the disciplinary jurisdiction of the Army under the Army Act 1950. The admitted position is that the

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- A respondent was posted at Nanded in Maharashtra. The learned Single Judge had no reasonable basis to exercise jurisdiction. Mr Gonsalves has adverted to the fact that the spouse of the respondent initiated a petition for *habeas corpus* initially before the High Court of Manipur. Significantly, the challenge in the Writ Petition which was instituted by the respondent before the High Court related exclusively to the order of attachment dated 5 October 2018, which was followed by two communications dated 2 November 2018 requiring him to proceed to the place of attachment. An officer subject to the discipline of the Army Act 1950 must abide by the regulations, if the disciplinary jurisdiction is sought to be invoked. It was manifestly inappropriate for the High Court to take upon itself the task of pre-empting the exercise of that jurisdiction and taking over the essential function of determining whether or not recourse to the disciplinary jurisdiction was warranted.

14. Mr Colin Gonsalves has placed reliance on a communication which was issued by the respondent to Lt Gen Praveen Bakshi, GOC-in-C, Eastern Command on 9 September 2016. There was no material before the High Court to link the initiation of the disciplinary enquiry to the grievance which was made by the respondent as far back as on 20 September 2016.

15. The assumption of jurisdiction by the High Court in a Writ Petition under Article 226 of the Constitution was misconceived. We are also of the view that having regard to the definition of the expression "service matters" in Section 3(o) of the Armed Forces Tribunal Act 2007 and the jurisdiction of the Armed Forces Tribunal under Section 14, such a Writ Petition ought not to have been entertained by the High Court. The learned Single Judge should have exercised caution and ought to have been circumspect before he proceeded to stay an order of attachment. Such pre-emptive judicial strikes are unwarranted. The course of action followed by the Single Judge has serious repercussions for the maintenance of discipline in the Army. Discipline is the essence of the organisation and structure of an Armed Force. Before concluding, we make it clear that we have expressed no opinion on the merits of the allegations, in the exercise of the disciplinary jurisdiction which shall be dealt with in accordance with law. There is no merit in the alternate submission. This Court cannot take over the function of determining which unit the respondent should be assigned, pending the disciplinary proceedings.
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16. We allow the appeal and set aside the impugned orders of the High Court dated 5 November 2018 and 24 January 2019. In consequence, Writ Petition (Civil) 1031 of 2018 filed by the respondent before the High Court of Manipur shall stand dismissed. There shall be no order as to costs. Pending applications are accordingly disposed of.

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Devika Gujral

Appeal allowed.