Supreme Court of India
P. Chandramouly vs Union Of India And Anr on 22 July, 1994
Bench: M.M. Punchhi, Kj. Reddy

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                CASE NO.:
Appeal (crl.)  623-24 of 1987

PETITIONER:
P. CHANDRAMOULY

RESPONDENT:
UNION OF INDIA AND ANR.

DATE OF JUDGMENT: 22/07/1994

BENCH:
M.M. PUNCHHI & KJ. REDDY

JUDGMENT:
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JUDGMENT WITH Criminal Appeal Nos. 620-22 of 1987 and Criminal Appeal No. 625 of 1987.

1994 SUPPL. (2) SCR 43 The following Order of the Court was delivered ;

Criminal Appeal Nos. 620 to 622 of 1987 on behalf of three members of the General Reserve Engineers Force, Criminal Appeals Nos. 623-624 by one more such member and Criminal Appeal No. 625 of 1987 by the Union of India are against the common judgment and order dated 31.3.1987 passed by a Division Bench Of the Gauhati High Court in Writ Appeals Nos. 1,2 and 3 of 1980.

The four appellants, members of the General Reserve Engineers Force (hereinafter referred to as the Force) were accused of having com-mitted offences punishable under Section 63 of the Army Act under four counts, as also under Section 39(a) and 41 of the said Act under one count each. For the six charges framed they were tried by a Court Martial and convicted under all the six counts and awarded sentences of imprisonment, They invoked the jurisdiction of the Central Government under Sections 164 and 165 of the Army Act, 1950 but with no success. They filed two separate writ petitions before the Gauhati High Court challenging their convictions and sentences. The writ petitions to the officers were accepted partially to the extent that offence under Section 63 in relation to one count was quashed. The learned Single Judge also took the view that orders of the Competent Authority under Sections 164 and 165 of the Army Act required a speaking order. The learned Single Judge in relation to the other charges suggested to the Competent Authority whether it would be worthwhile to keep operating the sentence s imposed under other charges due to the quash-ing- of one of the charges under Section 63 of the Act. Against the partial acceptance of their writ petitions, the four officers filed their respective letters patent appeals before the Division Bench of that Court as did the Union of India, aggrieved as it was against the quashing of charge under one count under Section 63 of the Act. The Division Bench on reappraisal of the entire matter came to the conclusion that all the six charges against the officers stood established and that there was no occasion for the learned Single Judge to have quashed one charge. While doing so it agreed with the learned Single Judge that the Authority exercising jurisdiction under Sections 164 and 165 of the

Army Act was required to pass a speaking order. All the same, the convictions and sentences were maintained despite the re-quirement of the Authority passing a speaking order. Recommendation, however, as made to the Union of India that it was a case where sentences of the officers deserve commuting. We are told that the Union of India accept-ing the suggestion committed accordingly the sentences of imprisonment of the four members and they are at large.

It is the conceded case of the officer-appellants that the provisions of the Army Act, subject to some exceptions are applicable to the Force with effect from 23.9.1960. The offences herein were committed in the year 1971. The plea of the appellants is that the Court-Martial set up under a warrant of the Chief of the Army Staff, authorising the Chief Engineer to conduct it, was not legally constituted under the Army Act since there was no parallel officer of an Army rank posted in the Force. It is stated that this objection to jurisdiction was taken before the Court Martial but not ignored. The appellants' learned counsel was unable to support his contention. We do not find any material in support thereof because the proceedings of the Court Martial have not been placed before us as part of the record. The judgment under appeal is also not reflective of the question of jurisdiction having been raised in such manner. Even otherwise it is not available to the appellants because of the settled position in law that the General Reserve Engineers Force is part and parcel of the Armed Forces to which the Army Act is applicable. In this connection R. Viswan & Ors. v. The Union of India & Ors, [1983] 3 S.C. R. 60 and Devi Prasad Mishra v: Union of India and Ors., S L P. (Crl.) No. 1020 of 1978 may with advantage be seen. Such argument is not open to the appellants. The ancillary question raised that those judgments applied prospective and did not cover the state of law as existing prior thereto and the instant being a case which arose priority is to be noted and rejected. That Court, in those cases, not only declared the state of law as existing but interpreted it to have always existed from the date of the notification applying the Army Act to the Force.

Undeniably, when the Army Act is applicable, the Chief of the Army Staff is the person, besides the Central Government, to issue a warrant for convening a Court-Martial. He can, therefore, authorise not only anyone from the personnel directly governed under the Army Act but also from the personnel to which the Army Act stands extended. Here the Chief Engineer could be issued a warrant for the purpose being on the roll of the Force to which the Army Act had been extended. The argument thus being of no substance is rejected.

Lastly, it has been contended on behalf of the appellants that while these appeals were pending in this Court they have been served Show Cause Notices under the Central Civil Services (Classification, Control and Appeal) Rules so as to take disciplinary action against them on the basis of their convictions. It has been urged that offence of violation of good Order and discipline punishable under Section 63 of the Army Act had come to be committed because the appellants genuinely believed that they were not members of the Armed Forces and thus not bound by the strict standards of good order and discipline as expected from the Armed Forces. Now while proceeding with this judgment our attention has been drawn to the limited leave granted in these matters, only on two questions. One of the questions is to examine the effect of substitution of the word 'discipline' in place of the expression 'military discipline' in Section 63 of the Act by order of the Central Government dated September 23, 1960 issued in exercise of the powers conferred under Section 4(1) of the Act, as applicable to the members belonging the General Reserve Engineers Force

and questions incidental thereto. It was also made clear that such grant of leave would not entitle the parties to re-open the questions decided by the Constitution Bench in R. Viswan & Ors. v. Union of India & Ors., yet the learned counsel for the appellants went on raising the question of applicability of the Army Act to the members of the General Reserve Engineers Force and transgressed the limits of special leave. Keeping that apart. Section 63 of the Act nevertheless is applicable to the members of the Force and they can be tried for any act or omission which, though not specified in the Act, is prejudicial to good order and discipline and can be convicted by a Court-Martial and be held liable to suffer imprisonment for a term which may extend to seven years or less, As we view it, the dropping of the word 'military' from the text of Section 63 rather enlarges its scops in a sense for it obligates maintenance of discipline in a wider sense. It may be true, as has been contended by the learned counsel for the appellants, that the discipline envisaged for the Engineers Force cannot be of such strict standards as is regimental or military discipline but it is, however, forgotten when so canvassing that even ordi-nary discipline, which is expected to be observed by the members of the Engineers Force, when violated, would attract the jurisdiction of the Court-Martial which is empowered to impose sentences of imprisonment. Such imprisonment is extendable upto seven years and can be either rigorous or simple as is plain from the language of Section 71(c) of the Army Act. Other punishments enumerated in clauses (d), (e), (f), (g) and (h) of Section 71, though forming part of the Army Act, are excepted from application to the Engineers Force. Those are cashiering, dismissal from service, reduction in rank, forfeiture of seniority of rank or forfeiture of service. These cannot be imposes by the Court Martial when trying offences against the members of the Engineers Force. Since these punishments do hot fall within the domain of the Court- Martial insofar as members of the Engineers Force are concerned, then obviously the Central Civil Services (C.CA) Rules come in to fill the vacuum. The members of the Engineers Force are not due for a better treatment than ordinary Government servants who have to suffer disciplinary action under the said Rules on the basis of criminal convictions. Therefore, we are of the considered view that the expression 'military discipline' when substituted as 'discipline, for the purpose of the Engineers Force serves the purpose above-mentioned. It goes without saying that the behaviour of the members of the Engineers Force subjected to good order and discipline cannot work to its prejudice. Anyone violating that good order and discipline would thus have to suffer. We hold accordingly.

The second question on which the limited leave was granted was to discover the duty of the Confirming Authority to pass a reasoned order under Sections 150, 154 and 164 of the Act. The understanding of Sections 154, 164 of the Act would govern the role assigned under Section 165 of the Act. These provisions do not specifically require any speaking order to be passed. The learned Single Judge as also the Division Bench of the High Court opined that passing of a speaking order would be: necessary. The High Court has taken this view against the Constitution Bench of this Court in Som Datta v. Union of India & Ors., [1969] 2 S.C.R. 177 wherein it has been authoritatively held that there is no express obligation imposed by Section 164 or Section 165 of the Army Act on the Conforming Authority or upon the Central Government to give reasons in support of its decision to confirm the proceedings of the Court-Martial. Before the Constitution Bench, as here, no provision of the Act or any Rule made thereunder has been shown from which implication can be drawn that such a duty was cast upon the Government and the Confirming Authority. This Bench is bound by the view express by the Constitution Bench. Additionally, we do not see that absence of a

speaking order, in these circumstances, b any way thwarts judicial review - should the court undertake the exercise - since the parent order is always available to build argument? upon. This part of the view of the High Court relating to the passing of the speaking order, we cannot approve and thus we set it aside retrieving it from the judgment under appeal.

Before we part With the judgment, we need to observe that much of our time was employed by learned Counsel without bringing to our notice the limitations within which the debate could go on terms of the special leave. Therefore, We are constrained to award costs. Criminal Appeals Nos. 620 to 624 are, therefore, dismissed with costs which we quantify at Rs. 5,000.

Criminal Appeal No. 625 of 1987 filed on behalf of the Union. of India is allowed in the above terms. In this appeal there shall be no costs.