Supreme Court of India
Major Kadha Krishan vs Union Of India & Ors on 25 March, 1996
Equivalent citations: 1996 SCC (3) 507, JT 1996 (3) 650
Author: M M.K.
Bench: Mukherjee M.K. (J)

PETITIONER:
MAJOR KADHA KRISHAN

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 25/03/1996

BENCH:
MUKHERJEE M.K. (J)
BENCH:
MUKHERJEE M.K. (J)
G.B. PATTANAIK (J)

CITATION:
1996 SCC (3) 507 JT 1996 (3) 650
1996 SCALE (3)241

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T M.K. MUKHERJEE, J.

Leave granted.

The appellant was a permanent Commissioned Officer of the Indian Army holding the substantive rank of Major. While he was posted at the Military Farm in Jullunder City he was served with a notice dated September 10, 1990 issued under the directions and on behalf of the Chief of the Army Staff calling upon him to show cause why his services should not be terminated under Section 19 of the Army Act, 1950 (`Act' for short) read with Rule 14 of the Army Rules, 1954 (`Rules' for short) for the misconducts he was found to have committed during his tenure as the Officer in-charge of the Military Farm, Jaipur. The misconducts are set out in paragraph 3 of the notice but as they are not germane for the purpose of this appeal, it is not necessary to detail them. The reasons which prompted the Chief of the Army Staff to take recourse to the above provisions of the Act and the

Rules are contained in paragraph 4 of the notice, which reads as under:

> "And whereas the Chief of the Army Staff is further satisfied that your trial for the above misconduct is impracticable having become time barred by the time the court of inquiry was finalized and he is of the opinion that your further retention in service is undesirable."

In due course the appellant showed cause against his proposed termination of services but it did not find favour with the authorities. Hence, on their recommendations, the Central Government issued an order on February 28, 1992 terminating the service of the appellant. Aggrieved thereby the appellant filed a writ position before a learned Judge of the Rajasthan High Court. In assailing the order of termination the principal ground that was raised by the appellant was that the provisions of Section 19 of the Act and Rule 14 of the Rules could not be inverted as the period of limitation prescribed under Section 122 of the Act for holding his trial by a Court Martial was long over. Besides, it was contended that the satisfaction of the authorities that it was impracticable to hold the trial was not obtained in accordance with Rule 14. The appellant also denied that he was guilty of the misconducts alleged in the notice and gave out his defence against the same.

The learned Judge allowed the writ petition, quashed the order under challenge and directed that the appellant be reinstated in service with all consequential benefits. In passing the above order the learned Judge firstly held that the appellant was made a scape goat for the lapses and delinquencies of others. As regards the applicability of Section 19 of the Act and Rule 1 of the Rules the learned Judge concurred with the submissions of the appellant relying principally upon the Division Bench judgment of the Delhi High Court in Lt. Col. (T.S.) H.C. Dhingra vs. Union of India & Anr. 1988 (2) Delhi lawyer 109.

In appeal preferred by the respondent - Union of India a Division Bench of the High Court set aside the above judgment of the learned Single Judge and dismissed the writ petition of the appellant. The Division Bench held that the view taken by the Delhi High Court in H.C. Dhingra's case (supra) was not correct and that proceedings under Section 19 of the Act read with Rule 14 of the Rules could be taken even after the expiry of the period of limitation prescribed under Section 122 of the Act. The findings of fact recorded by the learned Single Judge in favour of the appellant were also upset. The above order of the Division bench is under challenge in this appeal.

To appreciate the contentions raised by Mr. Ramachandran in support of the appeal it will be appropriate to first refer to the relevant provisions of the Act and the Rules. Section 19 of the Act reads as under:

> "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."

The other section of the Act which need reproduction is Section 122 which, at the material time, stood as under:

"(1) Except as provided by sub- section (2), no trial by court- martial of any person subject to this Act for any offence shall be commenced after the expiration of a period of three years from the date of such offence.

(2) The provisions of sub-section (1) shall not apply to a trial for an offence of desertion or fraudulent enrollment or for any of the offences mentioned in Section

37. (3) In the computation of the period of time mentioned in sub- section (1), any time spent by such person as a prisoner of war, or in enemy territory, on in evading arrest after the commission of the offence, shall be excluded. (4) No trial for an offence of desertion other than desertion on active service or of fraudulent enrollment shall be commenced if the person in question, not being an officer, has subsequently to the commission of the offence, served continuously in an exemplary manner for not less than three years with any portion of the regular Army."

Rule 14 of the Rules, so far as it is relevant for our present purposes, reads as follows:

"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) when the service is terminated on the ground of conduct which has led to his conviction by a criminal court; or

(b) where the Central Government is satisfied 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 his had he shall be called upon to submit, in writing, the explanation."

(emphasis supplied)
xxx xxx xxx
xxx xxx xxx

Mr. Ramachandran first contended that one of the requisites to invoke the summary procedure envisaged under Rule 14 (2) to terminate the services of an officer by the Central Government in exercise of its powers under Section 19 of the Act is to obtain a satisfaction that his trial by a Court Martial is inexpedient or impracticable. Such a satisfaction, according to Mr. Ramachandran, can be arrived only at a time when trial

> by a Court Martial is permissible or possible. As in the instant case, admittedly, such a trial was barred by limitation under Section 122 of the Act the above Rule could not be invoked. We find much substance in the above contention of Mr. Ramachandran.

It is not in dispute that at the time the impugned notice was sent, no trial of the appellant by Court Martial could be held for sub-section (1) of Section 122 (as it then stood) clearly envisaged that it should not be commenced after expiration of three years from the date of commission of the offence which in the instant case was about 7 years prior to the issuance of the notice, indeed, as seen earlier, in the notice itself it is stated that the trial had become time barred. When, the trial itself was legally impossible and impermissible the question of its being impracticable, in our view cannot or does not arise, `Impracticability' is a concept different from `impossibility' for while the latter is absolute, the former introduces at all events some degree of reason and involves some regard for practice. According to Webster's Third New International Dictionary `impracticable' means not practicable; incapable of being performed or accomplished by the means employed or at command. `Impracticable' presupposes that the action is `possible' but being to certain practical difficulties or other reasons it is incapable of being performed. The same principle will equally apply to satisfy the test of `inexpedient' as it means not expedient; disadvantageous in the circumstances, inadvisable, impolitic. It must therefore be held that so long as an Officer can be legally tried y a Court Martial the concerned authorities may, on the ground that such a trial is not impracticable for inexpedient, involve Rule 14 (2). In other words, once the period of limitation of such a trial is over the authorities cannot take action under Rule 14 (2). While passing the impugned order the Division Bench however did not at all consider, while interpreting Rule 14 (2), the import of the words `impracticable' or `inexpedient' as appearing therein and proceeded on the basis that since Section 127 of the Act (since repealed) permitted trial even after a conviction or acquittal by a Court Martial, it necessarily meant that the Rule could be pressed into service even after the period of limitation. It appears that in making the above observation the High Court did not notice that Section 127 relates to a trial by a `criminal court' and not `Court Martial' and speaks of a stage after the trial by the letter is over.

The matter can be viewed from another angle also. So far as period of limitation of trials by Court Martial is concerned Section 122 of the Act is a complete Code in itself for not only it provides in its sub-section (1) the period of limitation for such trials but specifies in sub- section (2) thereof the offences in respect of which the limitation clause would not apply. Since the term of the above section is absolute and no provision has been made under the Act for extension of time - like Section 473 Criminal Procedure Code - it is obvious that any trial commenced after the period of limitation will be patently illegal. Such a provision of limitation prescribed under the Act cannot be overridden or circumvented by an administrative act, done in exercise or powers conferred under a Rule. Mr. Ramachandran was, therefore, fully justified in urging that power under Rule 14 of the Army Rules could not be exercised in a manner which would get over the bar of limitation laid down in the Act and that if Rule 14 was to be interpreted to give such power it would clearly be ultra vires. We are therefore in complete agreement with the observations made by the Delhi High Court in H.C. Ohinura's case (supra) that in purported exercise of administrative power Under Rule 14, in respect of allegations of misconduct tribal by Court Martial, the authorities cannot override the statutory bar of subsection (1) of Section 122 of the Act for no Administrative act or fiat can discard, destroy or

annul a statutory provision.

The other contention of Mr. Ramachandran was that the satisfaction with regard to inexpediency or impracticability of a trial by Court Martial must be only on a consideration of the reports of misconduct. According to Mr. Ramachandran if on a perused of the reports the authorities found that the nature of misconduct or the context in which it had been committed were such that it was impracticable or inexpedient to hold the Court Martial, the procedure under rule 14 might be resorted to. In other words, Mr. Ramachandran submitted, the satisfaction regarding the inexpediency or impracticability to hold a Court Martial must flow from the nature and the context of the misconduct itself and not from any extraneous factor which in the instant case was that the Court Martial proceedings would be time barred. This contention of Mr. Ramchandran is also, in our view, indefensible.

As noticed earlier, Rule 14 (2) opens with the words "when after considering the reports on an officer's misconduct, the Central Government, or the Chief of the Army Staff is satisfied.....". It is evident, therefore, that the satisfaction about the inexpediency or impracticability of the trial has to be obtained on consideration of the reports on the officer's misconduct. That necessarily means, that the misconduct and other attending circumstances relating thereto have to be the gole basis for obtaining such a satisfaction.

The purport of the above Rule can be best understood by way of an illustration. The Chief of Army Staff receives a report which reveals that an Army Officer has treacherously communicated intelligence to the enemy - an Offence punishable under Section 34 of the Act. He however finds that to successfully prosecute the officer it will be necessary to examine some witnesses, ensuring presence of whom will not be feasible and exhibit in the interest of the security of the State. In such an eventuality he may legitimately invoke the Rule to dispense with the trial on the grounds that it would be impracticable and/or inexpedient. But to dispense with a trial on a satisfaction doctors the misconduct - like the bar of limitation in the present case - will be wholly alien to Rule 14 (2).

For the foregoing discussion we set aside the impugned order of the Division Bench of the High Court and restore that of the learned Single Judge. The appeal is thus allowed with costs which is assessed at Rs. 10,000/-.