

Major Jagjit Singh Dhillon v. The Union of India and others (Tuli, J.)

If the objection had been raised before the Additional Director, the applicant under section 42 of the Act might have applied for condonation of delay, and if the applicant was able to show sufficient cause for not filing the application within time, the delay might have been condoned. In the alternative, the applicant might even have convinced the Additional Director that the application had been filed within time. In any event, we are bound by the earlier three Division Bench judgments referred to above, and following the same we must hold that the question of limitation not having been raised before the Additional Director, it was not open to the writ petitioners to raise the same for the first time in the writ petition. The impugned order under section 42 of the Act was quashed by the learned Single Judge solely on the ground of limitation, and as we have held that it is not open to this Court to allow the question of limitation being raised for the first time in *certiorari* proceedings, we have to accept this appeal and to set aside the order of the learned Single Judge.

(4) We accordingly allow this appeal, set aside the order of the learned Single Judge, and dismiss the writ petition of respondents 1 and 2, but leave the parties to bear their own costs.

MEHAR SINGH, C.J.,...I agree.

N. K. S.

CIVIL MISCELLANEOUS

Before B. R. Tuli, J.

MAJOR JAGJIT SINGH DHILLON,—Petitioner.

versus

THE UNION OF INDIA AND OTHERS,—Respondents.

Civil Writ No. 1339 of 1969

January 14, 1970.

Army Act (XLVI of 1950)—Sections 18 and 19—Constitution of India (1950)—Article 77—Powers of dismissal of Army Officers under sections 18 and 19—Whether distinct—Article 77—Whether applicable only to action under section 19—Power of the President under section 18—Whether can be delegated.

Held, that the powers of the President under section 18 of the Army Act, 1950, are quite distinct from the powers of the Central Government under section 19. The action under section 19 has to be taken by the Central Government though in the name of the President and it is to such cases that Article 77 of the Constitution applies. This article does not apply

to the pleasure of the President under section 18 of the Act. Such a power cannot be delegated by the President to a subordinate Officer and can be exercised by him only in the manner prescribed by the Constitution. The decision has to be taken by the President himself and not by any officer of the Central Government. The Officers of the Central Government can take action in accordance with the rules while acting under section 19 of the Act but they have no jurisdiction in the matter when the action has to be taken by the President at his pleasure under section 18 of the Act.

(Para 4)

Petition under Articles 226/227 of the Constitution of India, praying that an appropriate writ, order or direction be issued quashing the impugned notices dated 11th April, 1969, and 3rd May, 1969, of the Government of India and further praying that Respondents be directed to proceed according to law so as not to harass the petitioner and also further praying that pending the decision of the writ petition, further proceedings in pursuance of the impugned notices or any other action in the matter of removal of the petitioner from service be stayed.

H. S. GUJRAL, ADVOCATE, for the petitioner.

D. S. TEWATIA, ADVOCATE-GENERAL, HARYANA, WITH C. B. KAUSHIK, AND G. C. GARG, ADVOCATES, for the respondents.

JUDGMENT

TULLI, J.—The petitioner, Major Jagjit Singh Dhillon, joined as an Officer Cadet for temporary Commission in the Indian Army at Poona on November 5, 1949. He married Rattan Randhawa of village Jalal Usman in Amritsar district on May 24, 1957, and after two days of the marriage he went back to his duty leaving his wife in the village. He alleges that he did not meet his wife thereafter. On May 17, 1958, the petitioner alleges to have received a telegram from his brother Dharam Singh intimating the death of his wife Shrimati Rattan Randhawa. On the basis of that telegram the petitioner informed the authorities concerned of the casualty and the fact of her death was published under Part II Order No. 348, dated June 18, 1958 (Officers). The petitioner did not leave for village in spite of the news about his wife's death. In December, 1959, the petitioner was transferred from his Unit in Jammu and Kashmir to Southern Command, Signal Regiment, Jabalpur. While posted there, he married Shrimati Surjit Kaur at Ludhiana on March 31, 1960 after obtaining the permission of the authorities of his Department.

(2) One Rattan Kaur, resident of village and Post Office Jalal Usman, sent an application dated January 24, 1961, to the Commander in-Chief (General Thimaya), Army Headquarters, New Delhi, stating that she was married to the petitioner on May 24, 1957, and that during her life-time the petitioner had married Surjit Kaur, belonging to Ludhiana where she was working as a Professor of English in the Government College for Women. She thus complained that the petitioner had ruined her life and made a request for an enquiry into the matter. The petitioner was sent a copy of the complaint of Shrimati Rattan Kaur and asked to submit his explanation which he did on February 13, 1961. Thereafter he filed a complaint under section 500, Indian Penal Code, in the Court of Magistrate 1st Class, Jabalpur, against the said Rattan Kaur, wherein a compromise was arrived at on August 21, 1961. The compromise was recorded in the form of a deed wherein Rattan Kaur admitted that she had falsely and maliciously made deliberate oral and written allegations against the petitioner alleging that she had been married to him on May 24, 1957, at village Jalal Usman, tehsil and district Amritsar, and she had been deceitfully deserted by the petitioner. On the basis of this deed of compromise Shrimati Rattan Kaur was acquitted under section 345(6) of the Code of Criminal Procedure as the petitioner did not want to pursue his complaint. She swore another affidavit, dated August 31, 1961, which was attested by Shri Brijmohan Lal, Oath Commissioner, Batala, in which she stated that she was never married or had any relations whatsoever with the petitioner and that the allegations made by her in the application submitted to the military authorities against the petitioner were false and fabricated and that she made those allegations at the instigation of some enemies of the petitioner. Copies of the deed of compromise and the affidavit were sent to the military authorities but on May 23, 1961, the Officer Commanding, Poona, requested the District Magistrate, Amritsar, to investigate into the allegations made by Shrimati Rattan Kaur. The District Magistrate directed the Naib Tehsildar to make necessary enquiries into the allegations made by Shrimati Rattan Kaur. The Naib Tehsildar submitted his report to the District Magistrate stating that the allegations made by Shrimati Rattan Kaur were correct and on the basis of that report the District Magistrate, Amritsar, forwarded his report to the Army authorities to the effect that the said Rattan Kaur was the wife of the petitioner and the petitioner by contracting marriage with Shrimati Surjit Kaur appeared to be guilty of plural marriages. A similar report was

sent by the Punjab Government to the military authorities but it is admitted in the return that the enquiries made by the Naib Tehsildar were at the back of the petitioner who was not informed nor was associated. The District Magistrate did not make any enquiry independently nor did the Punjab Government. Thus the report about plural marriages of the petitioner was made without complying with the principles of natural justice. However, suspecting that Shrimati Rattan Kaur had been coerced into making statements on oath that she was not married to the petitioner and that she had made false allegations at the instance of some enemies of the petitioner, the Army authorities issued a Show Cause Notice under Army Rule 14 to the petitioner on November 7, 1963, on the allegation that he had married Shrimati Surjit Kaur during the life-time of Shrimati Rattan Kaur and he had falsely alleged that Shrimati Rattan Kaur had died in May, 1958. This notice was issued in pursuance of the order of the Chief of the Army Staff as it was mentioned in the notice "the above case was placed before the Chief of the Army Staff who considers that your further retention in the service is not desirable and has directed me to initiate administrative action under Army Rule 14 for the termination of your services". The petitioner filed Civil Writ No. 279 of 1964, in this Court challenging the Show Cause Notice, dated November 7, 1963. The main contention raised was that Rule 14 of the Indian Army Rules was *ultra vires* the Army Act and, therefore, the notice issued under that Rule was bad in law. A Division Bench of this Court, Mahajan and Narula, JJ., held Rule 14 of the Indian Army Rules to be *ultra vires* agreeing with the decision of a Division Bench of the Delhi High Court in *Capt. S. K. Rao v. Union of India* (1). On that view of the matter the petition was accepted and the Show Cause Notice was quashed by order, dated March 24, 1967. It may be stated here that the Show Cause Notice, dated November 7, 1963, was withdrawn by the Union of India and another notice, dated April 9, 1964 was issued before the decision of C.W. 279 of 1964. The Union of India has gone up in appeal to the Supreme Court against that judgment of the Division Bench and that appeal has not yet been decided.

(3) On April 11, 1969 the Deputy Secretary to the Government of India, for and on behalf of the President, directed the issue of Show Cause to the petitioner on the same allegations as were made in the Show Cause Notice dated November 7, 1963, and April 9,

(1) C.W. 403-D of 1959 decided on 23rd February, 1967.

1964, asking him to show cause why his services should not be terminated under section 18 of the Army Act. The Show Cause Notice was served on the petitioner by the Officiating Officer Commanding on May 3, 1969. To this notice the petitioner submitted an interim explanation on May 3, 1969, and thereafter filed the present writ petition in this Court challenging the issue of the Show Cause Notice to him on May 3, 1969, which was admitted on July 14, 1969, and was directed to be heard within two months. The return to the petition has been filed by Capt. Jasbir Singh, Staff Capt. Station Headquarters, Chandigarh.

(4) The learned counsel for the petitioner has pointed out that under section 18 of the Army Act the President in his individual judgment can pass an order terminating the services of the petitioner or to issue Show Cause Notice before making such order. No other officer of the Government can pass such an order or issue Show Cause Notice. The petitioner has alleged in sub-paragraphs (iv) and (v) of paragraph 21 of his petition as under :—

(iv) "That the Central Government has no powers vested in it under section 18 of the Indian Army Act to remove the petitioner from service. The said section only relates to the President's pleasure which is his own individual privilege as distinguished from the powers of Central Government given under section 19 of the Act."

(v) "That neither it is alleged or shown that the petitioner's case was ever considered by the President in his individual discretion and he has given any authority to respondent No. 2 to take any action or issue any notice on his behalf. Further the said jurisdiction of the President under section 18 of the Act could not be delegated to any other person."

In reply the return states as under :—

(iv) and (v) "The Show Cause Notice given to the Officer is not by or on behalf of the Central Government but for and on behalf of the President. Article 77 of the Constitution enables the President to make rules for the exercise of his functions and a Deputy Secretary is authorised by the said rules to sign for and on behalf of the President."

From this averment it is quite clear that it is admitted that the papers were never sent to the President to enable him to exercise his individual judgment in the matter nor did he direct the issue of the Show Cause Notice. Sections 18 and 19 of the Army Act, 1950, are as under :—

“18. Tenure of service under the Act—Every person subject to this Act shall hold office during the pleasure of the President.”

“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.”

From the perusal of these two Sections it is quite clear that the powers under Section 18 are quite distinct from the powers of the Central Government under Section 19. The action under Section 19 has to be taken by the Central Government though in the name of the President and it is to such cases that Article 77 of the Constitution applies. Article 77 of the Constitution does not apply to the pleasure of the President under Section 18 of the Army Act. It has been held by their Lordships of the Supreme Court in *State of Uttar Pradesh and others v. Babu Ram Upadhyaya* (2), that the power of the Governor to dismiss a public servant at pleasure is outside the scope of Article 154 of the Constitution and, therefore, cannot be delegated by the Governor to a subordinate officer, and can be exercised by him only in the manner prescribed by the Constitution. On the same reasoning it has to be held that the power of the President to dismiss a public servant at pleasure is outside the scope of Article 77 of the Constitution and, therefore, cannot be delegated by the President to a subordinate Officer and can be exercised by him only in the manner prescribed by the Constitution. In the Constitution nowhere it is provided that the power of the President to dismiss a public servant at pleasure can be exercised by any officer in his name or on his behalf. The decision has to be taken by the President himself and not by any officer of the Central Government. The Officers of the Central Government can take action in accordance with the rules while acting under section 19 of the Army Act and they have no jurisdiction in the matter when the action has to be taken by the President at his pleasure under section 18 of the said Act.

(2) A.I.R. 1961 S.C. 751.

(5) Shri D. S. Tewatia, the learned Advocate-General for the State of Haryana, who appears for the respondents, has argued that the Deputy Secretary to the Government of India has power to issue notice on behalf of the President of India and for this purpose he relies upon the judgment of their Lordships of the Supreme Court in *Moti Ram v. General Manager, North East Frontier Railway* (3), where it was observed in paragraph 13 of the report—"the pleasure of the President or the Governor mentioned in Article 310(1) can thus be exercised by such person as the President or the Governor may respectively direct in that behalf, and the pleasure thus exercised has to be exercised in accordance with the rules made in that behalf. These rules, and indeed, the exercise of the powers conferred on the delegate must be subject to Article 210 and so, Article 309 cannot impair or affect the pleasure of the President or the Governor therein specified. There is thus no doubt that Article 309 has to be read subject to Articles 310 and 311". In paragraph (57) of the report their Lordships referred to their judgment in *State of Uttar Pradesh v. Babu Ram Upadhyaya* (2), *supra* and observed—"we ought to point out that the learned Judge has misconstrued the effect of the observations on which he relies. What the said judgment has held is that while Article 310 provides for a tenure at pleasure of the President or the Governor, Article 309 enables the legislature or the executive, as the case may be, to make any law or rule in regard, *inter alia*, to conditions of service without impinging upon the overriding power recognised under Article 310. In other words, in exercising the power conferred by Article 309, the extent of the pleasure recognised by Article 310 cannot be affected, or impaired. In fact, while stating the conclusions in the form of propositions, the said judgment has observed that the Parliament or the Legislature can make a law regulating the conditions of service without affecting the powers of the President or the Governor under Article 310 read with Article 311. It has also been stated at the same place that the power to dismiss a public servant at pleasure is outside the scope of Article 154 and, therefore, cannot be delegated by the Governor to a subordinate Officer and can be exercised by him only in the manner prescribed by the Constitution. In the context, it would be clear that this latter observation is not intended to lay down that a law cannot be made under Article 309 or a Rule cannot be framed under the proviso to the said Article prescribing the procedure by which, and the authority by whom, the said pleasure can be exercised". These observations of their

Lordships do not help the learned counsel's argument since it has not been pleaded that any rules have been framed by the Legislature providing the procedure for the exercise of pleasure by the President under Article 310 of the Constitution or Section 18 of the Army Act. No rules have been brought to my notice whereby power to issue Show Cause Notice on behalf of the President under Section 18 of the Army Act has been delegated to any subordinate officer. In the absence of any such rules it has to be held that the power under section 18 of the Army Act has to be exercised by the President himself and not by any Officers subordinate to him.

(6) For the reasons given above, I hold that the Show Cause Notice issued to the petitioner on May 3, 1969, in pursuance of the direction of the Deputy Secretary to the Government of India; dated April 11, 1969, is without jurisdiction and has to be quashed.

(7) Accordingly, this writ petition is accepted with costs and the impugned Show Cause Notice, dated May 3, 1969, and the direction of the Deputy Secretary to Government of India, dated April 11, 1969, are quashed. Counsel's fee Rs. 100.

R. N. M.

APPELLATE CIVIL

Before Mehar Singh, C.J. and R. S. Narula, J.

NAGIN CHAND,—Appellant.

versus

SHADI LAL AND OTHERS,—Respondents.

Letters Patent Appeal No. 273 of 1964

January 19, 1970.

Woollen Yarn (Procurement and Distribution) Control Order (1960)—Object of—Partnership Act (IX of 1932)—Section 55—Partnership firm doing hosiery business—Such firm dissolved passing the goodwill to one partner—After dissolution quota allotted in the name of the firm on the basis of three years consumption just before the date of dissolution—Right to procure the quota—Whether part of the goodwill and passes only to partner getting goodwill—Other partners—Whether entitled to the share thereof.

Held, that the sole object of Woollen Yarn (Procurement and Distribution) Control Order, 1960, is to ensure fair distribution, among manufacturers of woollen products, by giving them ratably raw material as wool