UNION OF INDIA AND ORS. A

v.

NAIK SUBEDAR CLK(S) BALESHWAR RAM AND ORS.

OCTOBER 27, 1989

B

[RANGANATH MISRA. P.B. SAWANT AND K. RAMASWAMY, JJ.]

Army Act, 1950: Sections 52, 63.

Army Rules 1954: Rule 22.

Dismissal pursuant to General Court Martial—Validity of. C

Non-compliance with Rule—Effect of.

The respondents faced trial for the charge of theft. After a General Court Martial, they were found guilty, convicted and sentenced. All the three respondents were dismissed from service.

D

The respondents filed a writ petition in the High Court challenging the decision of the Court martial, and the order of the dismissal. The High Court set aside the order of conviction and punishment of imprisonment as also the order of dismissal from service by holding that the trial before the Court Martial General was in contravention of Rule 22 of the Army Rules, 1954. Hence this appeal by the Union of India.

E

Allowing the appeal in part, this Court,

HELD: 1. It is a fact that the allegation at the stage of inquiry under Rule 22 was described as prejudicial to good order and military discipline but the basic facts said to constitute that allegation were nothing else than removal of the foodstuff which constituted the charge of theft. It is, therefore, clear that no prejudice has been caused to respondent 1 and the enquiry under Rule 22 and the trial before General Court Martial were over the self same facts. [21H; 22A] F

2. It is a fact that as against respondents 2 and 3 there was no inquiry under Rule 22. It is not disputed that the Commanding Officer of the Unit had stated before the General Court Martial that he did not find any case against respondents 2 and 3. The conclusion reached by the Commanding Officer was reasonable. Therefore there is no justification to set aside the order of the High Court so far as respondents 2 and 3 are concerned. [21D-E] G

H

A *Lt. Col. Prithi Pal Singh Bedi* v. *Union of India & Ors.*, [1982] 3 **SCC 140, referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 778 of 1988.

B From the Judgment and Order dated 5.8.1987 of the Assam High Court in Civil Rule No. 372 of 1982.

Anil Dev Singh and P. Parmeshwaran for the Appellants.

A.K. Ganguli, I.A. Ansari and Ms. Mridula Ray for the Respondents.
C

The Judgment of the Court was delivered by

RANGANATH MISRA, J. This appeal is by special leave and is directed against the judgment of the Division Bench of the High Court
D of Guwahati setting aside the order of conviction and the punishment of imprisonment as also the order of dismissal from service inflicted on the three respondents following a finding of guilt by the General Court Martial.

Naik Subedar Baleshwar Ram was a Junior Commissioned
E Officer of Amaribari Supply Point in the far eastern sector and was in overall charge of the said supply point. Around 5.30 p.m. on June 19, 1980, he directed Driver Rattan Singh to park an army vehicle near the ration store for loading dry ration. Respondent Ramji with the help of one labour from civilian side loaded the dry ration in the vehicle, whereafter Baleshwar Ram directed the truck to be taken towards
F Balipura. Respondent No. 1 sat in the front seat in civil dress while respondents 2 and 3 sat behind the body of the truck. By the time the vehicle reached Balipura, it had become dark and respondent No. 1 ordered the driver to take the vehicle towards Tezpur. When the vehicle reached the outskirts of village Eatavari, respondent No. 1 directed the driver to slow down and turn the vehicle towards the right and take
G it off on a narrow kutcha track not leading to Tezpur. The driver of the vehicle was not prepared to take the vehicle on the kutcha road but upon respondent No. 1's insistence the vehicle was so taken and on the kutcha track the vehicle bogged down mid-way and could not be taken further. In the meantime, some civilian persons gathered there. The respondents 2 and 3 got down and started unloading some ration until
H they were prevented by the civilians present there. Respondent No. 2

slipped away from the place. The civilians being suspicious informed the civil police, who in turn handed over the matter to military police for investigation and necessary action. After due inquiry a disciplinary action was initiated and inquiry under Rule 22 of the Army Rules was undertaken. A General Court Martial followed where definite charges were given and ultimately on the basis of summary evidence available all the three persons were found guilty, convicted and sentenced. Order of dismissal from service followed.

The decision of the Court Martial and the order of dismissal were challenged before the Guwahati High Court in a writ petition. The High Court found that as against respondents 2 and 3 there was no inquiry under Rule 22. The High Court relied upon the decision of this Court in *Lt. Col. Prithi Pal Singh Bedi* v. *Union of India & Ors.*, [1982] 3 SCC 140 and held that the proceeding before the General Court Martial was in violation of the mandatory provisions of the Army Rules. On that finding the High Court set aside the order of conviction and punishment of imprisonment as also the order of dismissal from service.

It is a fact that as against respondents 2 and 3 there was no inquiry under Rule 22. It is not disputed that the Commanding Officer of the Unit had stated before the General Court Martial that he did not find any case against respondents 2 and 3. The summary of evidence recorded in the General Court Martial has been made available to us and we have read the same. The conclusion reached by the Commanding Officer seems to us to be a reasonable one. We do not think there is any justification to set aside the order of the High Court so far as respondents 2 and 3 are concerned.

So far as the case against respondent No. 1 goes there was an inquiry under Rule 22. The point raised on behalf of respondent No. 1 in the High Court was different from the case made out by respondents 2 and 3. It had been pleaded that the inquiry under Rule 22 as against respondent No. 1 related to an offence which came under section 63 of the Army Act, namely, conduct prejudicial to good order and military discipline; while the charge he was called upon to face in the General Court Martial was one of theft punishable under section 52(a) of the Army Act. We have seen the evidence recorded in the inquiry under Rule 22. It is a fact that the allegation at the stage of inquiry under Rule 22 was described as prejudicial to good order and military discipline but the basic facts said to constitute that allegation were nothing else than removal of the foodstuff which constituted that charge of

A theft. It is, therefore, clear that no prejudice has been caused to respondent 1 and the inquiry under rule 22 and the trial before General Court Martial were over the self same facts.

In these circumstances, we are inclined to sustain the judgment of the High Court in regard to respondents 2 and 3 but we would
B reverse the judgment in regard to respondent 1 and restore the order of the General Court Martial. Respondent No. 1 has already been dismissed from service. He has undergone more than 9 months of the punishment out of one year of imprisonment. There has been a gap of several years since he has been released from jail initially on bail and later on the basis of the judgment of the High Court. In these circum-
C stances he need not be taken into custody for suffering the balance period of the sentence. The appeal is partly allowed. There shall be no order for costs.

T.N.A. Appeal allowed.