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C.A.No. 7251 OF 1997
ITEM No.107

Court No.9

SECTION XI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No.7251 of 1997.

UNION OF INDIA & ANR.Appellant (s)

VERSUS

GOVERDHAN SINGH Respondent (s)

[With office report]

Date : 18/03/2004 This petition was called on for hearing today.

CORAM :

HON'BLE MR.JUSTICE K.G. BALAKRISHNAN
HON'BLE MR.JUSTICE B.N. SRIKRISHNA

For Appellant (s)Mr.NN Goswami,Sr.Adv.
M/s Hemant Sharma,Sushma Suri,Anil Katiyar,Advs.

For Respondent (s)M/s. DS Choudhary,
Pratibha Jain,Advs.

UPON hearing counsel the Court made the following
O R D E R

Mr.NN Goswami, learned senior counsel for the appellants commenced his arguments at 2.00 p.m. and concluded at 2.20 p.m. followed by a short reply of Mr.DS Choudhary, learned counsel for the respondent.
The appeal is allowed in terms of the signed order.

[Naresh Kumar]
AR-cum-PS

[Veera Verma]
Court Master

[Signed order is placed on the file.]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7251 OF 1997

UNION OF INDIA & ANR.

...
APPELLANT (S)

VERSUS

GOVERDHAN SINGH

...
RESPONDENT (S)

O R D E R

Union of India is the appellant before us challenging the judgment passed by the Division Bench of Allahabad High Court. The respondent was enrolled in Army on 8.10.1976 and in 1982 he took sixty days leave and proceeded to his native village. During the leave period it is alleged that he committed a murder on 17.6.1982 and thereafter rejoined his duty on 19.6.1982, a few days earlier to the expiry of his leave period. He was tried for the commission of the offence of murder and was found guilty by the Sessions Judge for the offence under Sections 302 and 307, IPC and for offence under Section 302 he was sentenced to undergo imprisonment for life. Against his conviction and sentence he filed an appeal before the High Court of Allahabad and we are told that the same is still pending before the High Court. On 12.11.1986 the respondent was given a show-cause notice as to why he shall not be discharged under para 423 of Regulations for the Army (Revised Editions) 1962 read with Army Rule 13 (3) III (iv) and thereafter he was discharged from Army on 18.11.1986. The respondent filed a writ petition before the High Court of Allahabad contending that the discharge was illegal and sought for a Writ of Mandamus directing the respondents therein to treat the respondent as in service. A learned single judge by his judgment dated 13.9.1996 held that the discharge of the respondent from Army was bad for want of proper notice as contemplated in Army Rule 13. The discharge order was set aside. Aggrieved by the order passed by the learned single judge, Union of India went in appeal. The Division Bench without considering the pleas raised by Union of India rejected the appeal which is challenged before us.

We have heard Mr.NN Goswami, learned senior counsel for Union of India and Mr.DS Choudhary, learned counsel for the respondent.

Learned counsel for the appellant drew our attention to the show-cause notice issued to the respondent. In the notice issued to the respondent it is stated that the respondent had been involved in a civil murder case under IPC Sections 302 and 307/34 and had been awarded life imprisonment on 25th July, 1986 by court of the III Addl.Sessions Judge, Mathura and as to why he should not be discharged from the service under the provisions of para 423 of Regulations for the Army (Revised Editions) 1962 and Army Rule 13(3)III (iv).

It is clear that the respondent was served with a notice by the Army authorities. It is also pertinent to note that the respondent had no case at all that he was not served with a notice prior to his discharge. In paragraph 11 of the writ petition filed before the High Court he has averred as follows:

"11. This in October, 1986, the petitioner was asked to sign a discharge notice and on his refusal, he was served with a show-cause notice to which he replied."

In the writ petition itself he admitted having received a notice to show-cause as to why he shall not be discharged from service. The learned counsel for the respondent now contended that the notice issued to the respondent was not a proper notice as contemplated under law. According to the respondent the notice should have been issued by the Brigadier or Sub-area Commander as contemplated under the Army Rules and it is submitted that the notice in question was issued by Col.Commanding Officer. The respondent had never raised such a question either before the single judge or before the Division Bench. The Rules do not say that the notice should be issued by the authority who is competent to pass the discharge order. The findings of the learned single judge as well as the Division Bench that discharge order is bad for want of previous notice is erroneous and unsustainable in law. The discharge order issued against the respondent does not call for any interference. Hence appeal is allowed and the judgments of the Division Bench and that of the learned single judge are set aside.

.....J.
(K.G. BALAKRISHNAN)

.....J.
(B.N. SRIKRISHNA)
New Delhi,
March 18, 2004.