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UNION OF INDIA AND ORS.

v.

SH. IQBAL SINGH CHEEMA

OCTOBER 16, 1995

B

[G.N. RAY AND G.T. NANAVATI, JJ.]

*Service Law.*

*Border Security Force Act, 1968:*

C

*Court Martial—Commandant (Selection Grade)—Trial for corruption—Constitution of Board with a Commandant—Member junior to the Commandant tried—Held not violative of rules—On facts proceedings held not vitiated for not giving reasonable opportunity to accused to defend the proceedings—Conviction held justified—Alteration of punishment from dismissal to forfeiture of pension for seven years.*

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**Respondent, a Commandant (Selection Grade) in the Border Security Force, was found guilty of corruption charges, in Court Martial proceedings under the Border Security Force Act, 1968. Initially the Court Martial proposed punishment for forfeiture of seven years' service for the purpose of promotion and pensionary benefits but it was not accepted and instead dismissal order was passed. Respondent successfully challenged the dismissal order before the High Court on the ground that (i) he had been denied reasonable opportunity of being heard and contest the proceedings; (ii) constitution of the Court Martial was in violation of the Rules because one of the Commandant-Member was junior to him in seniority. Against the decision of the High Court, appeals were preferred before this Court both by the respondent as well as Union of India.**

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**Disposing the appeals and setting aside the order of the High Court, this Court**

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**HELD : 1. The Board had been constituted properly by taking a Commandant in it and it was necessary to have a Commandant (Selection Grade) in the Board only because the respondent was a Commandant (Selection Grade). On the facts of the case, it does not appear that Court Martial proceeding was vitiated for not giving reasonable opportunity to**

the respondent to defend himself in the Court Martial proceeding.

[408-G-H]

2. The finding by the Court Martial about the complicity of the respondent in the offence charged cannot be held as unjustified. The charge of corruption alleged against the officer is quite serious which requires that a deterrent punishment should be passed. However, in the peculiar facts of this case, the ends of justice will be met if the order of dismissal is replaced by the proposed punishment viz. forfeiture of promotion and pensionary benefits for seven years. [409-B]

*Union of India and Anr. v. S.S. Ranade*, [1995] 4 SCC 462, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9579 of 1995 etc.

From the Judgment and Order dated 26.2.92 of the Assam High Court in C.R. No. 208 of 1990.

K.T.S. Tulsi, Additional Solicitor General, A.S. Bhasme and P. Parmeshwaran for the Appellants.

P.K. Goswami, Rajiv Mehta, Ms. Vanita Sahni and K. Vasudev for the Respondent.

The following Order of the Court was delivered :

Leave granted in both the special Leave Petitions Nos. 8416 and 9235 of 1992.

Special Leave Petition No. 8416 of 1992 has been preferred by the Union of India and its officers against the judgment and order dated February 26, 1992 passed by the High Court of Gauhati in Civil Rule No. 208 of 1990 and the other Special Leave Petition No. 9235 of 1992 has been preferred by the appellant I. S. Cheema against the same order passed by Gauhati High Court. In a Court Martial proceeding initiated against I.S. Cheema under the Border Security Force Act, 1968 and the consequential punishment of dismissal, a writ petition was moved before the Gauhati High Court by I.S. Cheema who at the relevant time was holding the post of Commandant (Selection Grade) in the B.S.F. The Court Martial proceeding was initiated on a charge of corruption by directing subordinate

- A officers to arrange for weekly payments to the said Commandant by encouraging smuggling activities in the border. Before the High Court, the said I. S. Cheema contended that the Court Martial had not been properly conducted in view of the fact that he had been denied reasonable opportunity of being heard and contest the said proceedings. It was also contended that the Court Martial itself was not properly constituted because
- B one of the members was a Commandant in the Border Security Force but such member was junior to him in seniority. It appears that by the impugned order, the High Court has accepted both the contentions and accordingly interfered with the impugned order of dismissal from service.
- C The learned Additional Solicitor General appearing in support of the appeal preferred by the Union of India has contended that under the rules constitution of Court Martial was to be made with officials not below the rank of a Commandant for trial of a member of B.S.F. Holding the rank of Commandant. It is not necessary that such Commandant in the Court
- D Martial Board should also be senior to Sri Cheema who was also a Commandant in B.S.F. It was contended by Sri Cheema that since he was a Commandant (Selection Grade), he must be held senior to the Commandant not in the Selection Grade. The learned Additional Solicitor General has referred to a decision of this Court in *Union of India and Anr. v. S.S. Ranade*, [1995] 4 SCC 462. In the said decision, it has been held that the
- E Commandant (Selection Grade) and the Commandant not in the selection grade both are governed by the same rules and they belong to some rank and cadre. Therefore Commandant (Selection Grade) cannot claim superannuation at the age of 58 years when the age of superannuation of a Commandant is 55 years. Mr. Tulsi, learned Additional Solicitor General,
- F has submitted that as the Court Martial was constituted with a Commandant, the provision of the rules had been complied with and the High Court had gone wrong in holding that Cheema being Commandant (Selection Grade) was senior to Commandant not in the Selection Grade and such junior Commandant cannot be a member in the Board. In our view, such
- G contention of the learned Additional Solicitor General is justified. The Board in our view had been constituted properly by taking a Commandant in it and it was not necessary to have a Commandant (Selection Grade) in the Board because Shri Cheema was a Commandant (Selection Grade). In the facts of the case, it also does not appear that Court Martial proceeding was vitiated for not giving reasonable opportunity to Sri Cheema to
- H him in the Court Martial Proceeding.

It, however, appears to us that Sri Cheema has attained the age of superannuation in the year 1992. Even if it is held that proper opportunity of being heard was not made available to him, it will be impractical now to direct for Constitution of a Court Martial for holding a fresh trial. We have considered the materials on record and it appears to us that the finding by the Court Martial about the complicity of Sri Cheema in the offence charged cannot be held as unjustified. It, however, appears to us that initially the Court Martial proposed for forfeiture of seven years' service for the purpose of promotion and pensionary benefits against Sri Cheema, but such proposal was not accepted and the impugned order of dismissal was passed.

In the facts of the case, we feel that the ends of justice will be met if the order of dismissal is replaced by the proposed punishment viz. forfeiture of promotion and pensionary benefits for seven years. The impugned order of the High Court is set aside and punishment of Sri Cheema is altered to the aforesaid extent.

We only add that the charge of corruption alleged against the said officer is quite serious which requires that a deterrent punishment should be passed. However, in the peculiar facts of this case, we have awarded the aforesaid lesser punishment and we may indicate that this case should not be treated as a precedence for other cases of corruption.

Both the appeals are accordingly disposed of.

T.N.A.

Appeals disposed of.