REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2448 OF 2010

Sanjay Marutirao Patil **...Appellant**

Versus

Union of India and others **...Respondents**

J U D G M E N T

M.R. SHAH, J.

Feeling aggrieved and dissatisfied with the impugned judgment and order dated 31.01.2008 passed by the High Court of Judicature at Bombay in Writ Petition No. 423 of 2005, by which the High Court has dismissed the said writ petition preferred by the appellant herein and has refused to interfere with the order of dismissal passed by the respondent dated 29.04.2002, the original writ petitioner has preferred the present appeal.

2. The facts leading to the present appeal in nutshell are as under:

That the appellant herein – original writ petitioner (hereinafter referred to as the 'Appellant') joined the Indian Army as a Sepoy on 30.08.1990. In the year 1994-95, he was promoted as Naik. Thereafter, he became qualified for promotion to the post of Hawaldar. He was served with a charge sheet dated 3.8.1999 levelling three charges of misconduct. That the three charges were framed against the appellant under Section 63 of the Army Act, 1950 (hereinafter referred to as the 'Army Act'). With respect to the above charge sheet, the appellant was called upon to face a Summary Court Martial. The appellant pleaded guilty to each of the charges in writing. After considering his defence, the Summary Court Martial proceedings were completed/concluded and the appellant was awarded with the punishment of reduction in rank, vide order dated 7.8.1999. That thereafter the appellant was served with a show cause notice dated 24.3.2000, by which the appellant was called upon to show cause as to why he should not be discharged from Army service under the provisions of Section 20 of the Army Act, read

with Rule 17 of the Army Rules, 1954 (hereinafter referred to as the ' Army Rules'). That the appellant replied to the said show cause notice on 10.4.2000. He denied the allegations made therein. According to the department, though the appellant pleaded guilty to the three charges, he denied those charges in the reply to the show cause notice dated 24.3.2000 and therefore the same were fraudulent in nature. According to the department, upon such denial, a Court of Inquiry came to be held in January, 2001 to ascertain the facts revealed by the appellant in the notice. According to the department, thereafter again meeting of the Court of Inquiry was held. The appellant appeared as a witness. He was examined. The Court of Inquiry put to him such questions as it thought desirable for testing the truth or accuracy of the statement made by him in his reply and for eliciting the truth. According to the department, the report of the Court of Inquiry was submitted to the authority concerned. According to the department, the Court of Inquiry gave the finding that the appellant has given false and misleading reply in his say as well as in his evidence before the Court of Inquiry. According to the department, the appellant was, therefore, issued a show cause notice on 17.4.2001 to show cause as to why he

should not be discharged from the Army under Rule 13(3) item III(V) as his services were no longer required, being undesirable. That the appellant filed his reply to the said show cause notice on 14.6.2001. That thereafter the respondents terminated the appellant's services on 29.4.2002, in exercise of the powers under Section 20 of the Army Act, read with Rule 17 of the Army Rules.

2.1 Feeling aggrieved and dissatisfied with the order of termination dated 29.4.2002, the appellant preferred an appeal, which came to be rejected on 22.12.2003. That thereafter the appellant approached the High Court by way of present writ petition challenging the order of dismissal of the appellant as well as the order dismissing the appeal.

2.2 Before the High Court, it was the case on behalf of the appellant that once the appellant faced the Summary Court Martial and the appellant was awarded the punishment of reduction in rank, thereafter for the same charges, the appellant could not have been dismissed from service in exercise of powers under Section 20 of the Army Act, read with Rule 17 of the Army Rules. It was the case on behalf of the appellant that once the Summary Court Martial awarded the punishment, thereafter to

dismiss the appellant by passing an administrative order under Section 20 of the Army Act, read with Rule 17 of the Army Rules, would be double jeopardy, which is not permissible. However, the High Court did not agree with the same and dismissed the writ petition by observing that the administrative power under Section 20 of the Army Act, read with Rule 17 of the Army Rules, is an independent power and therefore the order of dismissal passed under Section 20 of the Army Act, read with Rule 17 of the Army Rules, is not required to be interfered with. Consequently, the High Court by the impugned judgment and order has dismissed the said writ petition and has refused to interfere with the administrative order dismissing the appellant from service, which was passed in exercise of the powers under Section 20 of the Army Act, read with Rule 17 of the Army Rules.

3. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, the appellant – original writ petitioner has preferred the present appeal.

4. Shri. Braj K. Mishra, learned Advocate appearing on behalf of the appellant – original writ petitioner has vehemently submitted that in the facts and circumstances of the case, the

High Court has committed a grave error in dismissing the writ petition and not interfering with the termination order passed by the respondent-authority dated 29.4.2002.

4.1 Shri. Braj K. Mishra, learned Advocate appearing on behalf of the appellant – original writ petitioner has vehemently submitted that the High Court has materially erred in not appreciating the fact that the order passed by respondent no.3 thereby dismissing the appellant from service was actually illegal and bad in law and would tantamount to double jeopardy.

4.2 It is submitted by the learned counsel appearing on behalf of the appellant that the High Court has not properly appreciated and considered the fact that the appellant for the one and the same offence was sought to be punished twice by the respondents. It is submitted that earlier the appellant was made to face Summary Court Martial in respect of charges of misconduct enumerated in the charge sheet dated 3.8.1999. The appellant was found guilty of the same misconduct and on 7.8.1999 the Court Martial imposed the punishment of reduction in rank under Section 71 of the Army Act. It is submitted that the said proceedings concluded after the order of punishment

was given to the appellant. It is submitted therefore, after passing the order of punishment passed by the Summary Court Martial and the same had attained finality, thereafter it was not open for respondent no.2 to re-open the matter and initiate any further proceedings against the appellant on the same set of charges.

4.3 It is submitted by the learned counsel appearing on behalf of the appellant that in the present case despite there being a sentence awarded by the Summary Court Martial, which was after the conclusion of the proceedings of the Summary Court Martial, the respondents issued a show cause notice dated 24.3.2000 alleging against the appellant that the particulars of charges disclosed that the offence was fraudulent in nature. It is submitted that therefore the show cause notice dated 24.3.2000 itself was illegal and bad in law.

4.4 It is vehemently submitted by the learned counsel appearing on behalf of the appellant that after the conclusion of the Summary Court Martial in which the appellant was given the punishment of reduction in rank, thereafter respondent no.3 had no jurisdiction to take any further action in respect of very same

misconduct of the appellant. It is submitted that if at all the offences were said to be fraudulent in nature, it was open for respondent no.3 to impose any punishment upon the appellant at the time of conducting the Summary Court Martial itself. It is submitted that, however, at the relevant time, respondent no.3 had taken a conscious decision to impose the punishment of reduction in rank of the appellant. It is submitted that in that view of the matter, thereafter respondent no.3 was not legally entitled to re-open the matter and initiate fresh proceedings on the same set of charges for which the appellant had already been awarded sentence by way of reduction in rank. In support of his above submissions, learned counsel appearing on behalf of the appellant has taken us to the relevant provisions of the Act, more particularly Sections 121, 161 and 162 of the Army Act.

4.5 It is further submitted by the learned counsel appearing on behalf of the appellant that even the manner in which the Court of Inquiry was subsequently conducted by the respondents is also illegal and *ab initio void*. It is submitted that the appellant had issued a show cause notice dated 24.3.2000 in which it was alleged that the particulars of the charges mentioned in the show

cause notice disclosed that the offence is fraudulent in nature. It is submitted that therefore it was necessary for respondent no.3 to conduct further investigation/enquiry if at all permissible in law only in respect of allegations which were called fraudulent in nature of charges mentioned in the show cause notice dated 3.8.1999. It is submitted that as such in view of the conclusion of the Summary Court martial, the same was not permissible. It is submitted that, however, according to respondent no.3, the Court of Inquiry was conducted from the fresh facts allegedly revealed in the reply on behalf of the appellant to the show cause notice. It is submitted that by the show cause notice dated 24.3.2000, the appellant was called upon to submit his reply in respect of alleged fraudulent nature of charges made against him in charge sheet dated 3.8.1999. It is submitted therefore that as a defence the appellant denied the charges by stating that the same are not fraudulent nature of charges. It is submitted that even otherwise, if at all respondent no. 3 was of the opinion that the appellant had made false statements or given any false information in his reply dated 10.4.2000 and for that purpose it was necessary to proceed against the appellant under the Act and the Rules made thereunder, then it was necessary for

respondent no.3 to come up with a fresh charge sheet making specific allegations against the appellant with respect to specific contents of the appellant's reply to the show cause notice. It is submitted that it was also necessary for respondent no.3 to give an appropriate and reasonable opportunity to the appellant to meet with those specific allegations in relation to the alleged false statements made by the appellant in his reply to the show cause notice. It is submitted that, however, admittedly neither such fresh charge sheet was issued to the appellant nor any opportunity was given to the appellant by firstly explaining to him which of the statements and contents of his reply to the show cause notice were false, misleading etc. It is submitted that the appellant was also not called upon to submit his explanation to the same. It is submitted that respondent no.3 straightway proceeded to conduct the Court of Inquiry and came to the conclusion that the appellant has committed the misconduct while submitting his reply to the show cause notice and for such misconduct, he is not authorised to retain in service or that further retention of the appellant in service is considered undesirable. It is submitted that therefore the entire proceedings conducted by respondent no.3 are illegal, bad in law and without

jurisdiction and the same are also in breach of the Army Act and the Rules made thereunder and therefore the same ought to have been set aside by the High Court.

4.6 It is further submitted that the exercise of the administrative powers by respondent no.3 under Section 20 of the Army Act read with Rule 17 of the Army Rules after the conclusion of the Summary Court Martial and award of sentence under Section 71 of the Army Act for the very charge sheet/grounds for which the Summary Court Martial was conducted, is wholly illegal and without jurisdiction.

4.7 In support of his submissions, learned counsel appearing on behalf of the appellant has relied upon a decision of this Court in the case of *State of Madhya Pradesh v. Hazari Lal reported in (2008) 3 SCC 273.*

4.8 Making the above submissions and relying upon the above decision of this Court, it is prayed to allow the present appeal.

5. The present appeal is vehemently opposed by Ms. Sonia Mathur, learned Senior Advocate appearing on behalf of the respondents. Learned Senior Advocate appearing on behalf of

the respondents has vehemently submitted that the order of termination passed by respondent no.3, challenged before the High Court, was an administrative order passed in exercise of powers under Section 20 of the Army Act, read with Rule 17 of the Army Rules. It is submitted that powers under Section 20 of the Army Act, read with Rule 17 of the Army Rules are independent powers available to respondent no.3. It is submitted that therefore the contention on behalf of the appellant that a subsequent administrative order of termination passed under Section 20 of the Army Act read with Rule 17 of the Army Rules is double jeopardy has no substance.

5.1 It is further submitted by the learned Senior Advocate appearing on behalf of the respondents that proceedings under Section 20 of the Army Act, read with Rule 17 of the Army Rules are administrative in nature. It is submitted that the administrative proceedings are independent of the criminal proceedings and even both can run in parallel. It is submitted that assuming that the proceedings under Section 20 of the Army Act are criminal proceedings, still the offences tried for in the Court Martial were different from those under Section 20 of the

Army Act and therefore there cannot be a case of double jeopardy as the action taken under Section 20 of the Army Act cannot be considered to be a "prosecution" under Article 20(2) of the Constitution of India.

5.2 It is further submitted that in the present case the impugned order of termination in exercise of powers under Section 20 of the Army Act read with Rule 17 of the Army Rules was passed after following due procedure as required, by passing the order under Section 20 of the Army Act. It is submitted that Section 20 of the Army Act provides that the Chief of Army Staff or other officers may dismiss or remove from the service any person subject to the Army Act, other than an officer. It is submitted that the only procedure prescribed under the Army Rules for dismissal under Rule 17 of the Army Rules is that no person shall be dismissed or removed unless he has been informed about the cause of action against him and allowed reasonable time to state in writing any reasons he may have to urge against his dismissal or removal from service.

5.3 It is submitted by the learned Senior Advocate appearing on behalf of the respondents that as per the scheme of the Army Act,

Chapter 4 deals with conditions of service. It is submitted that in the said Chapter, Section 18 provides the doctrine of pleasure of President. Sections 19 & 20 further provides power of Central Government to terminate the services of the officer on misconduct and the power of Chief of Army Staff and other officer to terminate the service of other ranks. It is submitted that in Chapter 3 of the Rules, Rules 14 and 17 deal with the procedure for the termination of service by the Central Government on account of misconduct in respect of the officer and dismissal or removal by Chief of Army Staff and by other officers in respect of other ranks respectively.

5.4 It is submitted by the learned Senior Advocate appearing on behalf of the respondents that in Rule 14 the phrase conviction by Court Martial is not mentioned which is given in Rule 17 in respect of other ranks. It is submitted that therefore the Parliament has included the said phrase in Rule 17 because only other ranks can be tried by Summary Court Martial which does not require confirmation in terms of Section 153 of the Army Act. It is submitted that in the absence of any power of confirmation which is available in case of General Court Martial, Summary

Court Martial and District Court Martial, the Summary Court Martial cannot be sent for revision once signed by the Commanding Officer after the trial. It is submitted that in other words the scheme of the Army Act and the Army Rules provide a mechanism to rectify any error committed by Court Martial by way of revision under Section 160 of the Army Act read with Rule 68 of the Army Rules, which is not available in the case of Summary Court Martial. It is submitted that in order to avoid miscarriage of justice, Parliament has empowered the competent authority to take the recourse of Section 20 of the Army Act read with Rule 17 of the Army Rules by providing power to dismiss the individual after being convicted by Court Martial.

5.5 It is further submitted by the learned Senior Advocate appearing on behalf of the respondents that in the present case the charges framed against the accused (appellant herein – original writ petitioner) were all under Section 63 of the Army Act which were very serious which warranted trial by either General Court Martial or District Court Martial. It is therefore submitted that it was imperative on the part of the Commanding Officer to refer the same for proper legal advice. It is further submitted

that there was no proper application of mind at the relevant time when the Summary Court Martial was held and conducted and the Commanding Officer dealt with the matter without any proper application of mind. It is submitted that the case of frauds needs to be dealt with appropriately and laxity of the nature shown in this case defeated the ends of justice and the wrong precedent was set for the prospective offenders. It is submitted that therefore in order to ensure that the accused does not escape from the natural consequences of his fraudulent acts, recourse was therefore taken to terminate his services under Section 20 of the Army Act read with Rule 17 of the Army Rules. It is submitted that therefore the action of termination under Section 20 of the Army Act read with Rule 17 is legally in order, as Rule 17 provides for dismissal of a person convicted by a Court Martial whose retention in service is not desirable.

5.6 Now so far as the submission on behalf of the appellant on exercise of the powers by the Chief of Army Staff under Section 163 of the Army Act is concerned, learned Senior Advocate appearing on behalf of the respondents has heavily relied upon the decision of this Court in the case of *Union of India and others*

v. Harjeet Singh Sandhu reported in (2001) 5 SCC 593. It is submitted that in the aforesaid decision, this Court considered in detail the entire scheme of the Army Act and the Rules with respect to Summary Court Martial etc. and the powers of the Commanding in Chief Staff under Section 20 of the Army Act read with Rule 17 of the Army Rules, and the case of an officer whose service is proposed to be terminated on the ground of misconduct which has led to his conviction by a criminal Court. It is submitted that in the aforesaid decision, this Court recognised the independent powers under Section 20 of the Army Act read with Rule 17 of the Army Rules. Relying upon the aforesaid decision, it is vehemently submitted by the learned Senior Advocate appearing on behalf of the respondents that the proceedings under Section 20 of the Army Act are administrative in nature and not on the same footing as that of a Court Martial proceedings. It is further submitted that there cannot be a case of double jeopardy as the action taken under Section 20 of the Army Act cannot be considered to be a "prosecution" under Article 20(2) of the Constitution of India.

5.7 Learned Senior Advocate appearing on behalf of the respondents has heavily relied upon the decision of this Court in the case of *Chief of Army Staff v. Major Dharam Pal Kukrety reported in (1985) 2 SCC 412* in support of her submission that in the present case the exercise of powers by the Chief of Army Staff under Section 20 of the Army Act does not suffer from any illegality.

5.8 It is further submitted by the learned Senior Advocate appearing on behalf of the respondents that even otherwise on merits also, the order of termination passed by respondent no.3 in exercise of powers under Section 20 of the Army Act read with rule 17 of the Army Rules is not required to be interfered with.

5.9 It is submitted that in the present case the initial show cause notice dated 24.3.2000 clearly set out that the conduct which led to reduction in rank by the Summary Court Martial was fraudulent in nature and therefore the appellant was called upon to show cause as to why action under Section 20 of the Army Act read with Rule 17 of the Army Rules be not taken. It is submitted that in reply thereto, the appellant categorically stated that he was not present in the unit till 29.2.1996. It is submitted

that the assertion of the appellant's reply regarding his absence was subject of a Court of Inquiry presided by a Colonel which found the said statement to be incorrect and recommended suitable disciplinary action. It is submitted that on the basis of the opinion of the Court of Inquiry, the Brigade Commander recommended disciplinary action for giving false and misleading reply to the show cause notice. It is submitted that it was in the above background a further independent show cause notice dated 17.4.2001 was issued to the appellant to show cause as to why he should not be discharged under Rule 13(3) item III(v) as his services are no longer required, being undesirable. It is submitted that power to discharge is under Section 22 of the Army Act. It is submitted that the appellant has duly understood the difference between the two show cause notices, namely, show cause notice dated 24.3.2000 and the subsequent show cause notice dated 17.4.2001 and replied accordingly on 14.6.2001. It is submitted that the first show cause notice dated 24.3.2000 was issued under Rule 17 which provides for dismissal or removal from service while the second show cause notice was for discharge under Section 22 read with Rule 13. It is submitted that both the show cause notices were issued in exercise of

distinct powers vested under the Army Act and the Army Rules. It is submitted that eventually the order dated 29.4.2002 for dismissal has been passed under Section 20 of the Army Act read with Rule 17 of the Army Rules. It is submitted that therefore the procedural requirements of Section 20 of the Army Act read with Rule 17 have been duly complied with. It is submitted that there is no contention regarding any non-compliance of any procedural requirement. It is submitted that the only issue raised was availability of the power to initiate administrative action after the proceedings of Court Martial have attained finality. It is submitted that thereafter having been satisfied that in the larger interest the appellant cannot be continued in service and therefore his services have rightly been terminated/he is rightly dismissed from service under Section 20 of the Army Act read with Rule 17 of the Army Rules.

5.10 Making the above submissions and relying upon the aforesaid decisions of this Court, it is prayed to dismiss the present appeal.

6. We have heard the learned counsel appearing for the respective parties at length.

6.1 At the outset, it is required to be noted that in the present case, the appellant has been dismissed from service by the Commander, respondent no.3 herein, while exercising powers under Section 20 of the Army Act read with Rule 17 of the Army Rules.

6.2 It is the case on behalf of the appellant that as earlier he was subjected to the Summary Court Martial for the very charges of misconduct for which the order of dismissal has been passed and earlier the Summary Court Martial passed an order of reduction in rank, the subsequent order of dismissal passed by respondent no.3 herein in exercise of powers under Section 20 of the Army Act is bad in law and would be violative of the principle of double jeopardy.

6.3 On the other hand, it is the case on behalf of the department that power of dismissal under Section 20 of the Army Act vested with the Chief of Army Staff and other officers is an independent power and the two Sections, Section 20 and 71 of the Army Act, are, therefore, mutually exclusive. While considering the submission on behalf of the department that power under Section 20 of the Army Act is an independent power

vested with the Chief of Army Staff and other officers, the decision of this Court in the case of *Harjeet Singh Sandhu (supra)* is required to be referred to and considered.

6.4 While considering the similar power of termination of service by the Central Government under Section 19 of the Army Act, it is observed and held by this Court that power under Section 19 (vested with the Central Government) is an independent power. It is further observed and held by this Court in the aforesaid decision that the Central Government or the Chief of the Army Staff may arrive at a satisfaction that it is inexpedient or impracticable to have the officer tried by a Court Martial, then the Court Martial may not be convened and additionally, subject to formation of the opinion as to undesirability of the officer for further retention in the service, the power under Section 19 read with Rule 14 may be exercised. It is further observed and held that such a decision under Section 19 read with Rule 14 may be taken either before convening the Court Martial or even after it has been convened and commenced, subject to satisfaction as to the trial by a Court Martial becoming inexpedient or impracticable at which stage the Central Government or the Chief

of the Army Staff may revert back to Section 19 read with Rule 14. At the same time, it is further observed and held that there shall be finality to the finding and sentence of Court Martial subject to their being confirmed and not annulled. It is further observed that questions of correctness, legality and propriety of the order passed by any Court Martial and the regularity of any proceedings to which the order of Court Martial relates can be raised by way of petition under Section 164. It is further observed that once the finding and the sentence, if any, have been confirmed, the Court Martial being a Special Tribunal dispensing military justice, it would not be permissible to exercise additionally the power conferred by Section 19 read with Rule 14 and to inflict a penalty thereunder if the Court Martial has not chosen to inflict the same by way of punishment under Section 71. It is further observed that to permit such a course would be violative of the principle of double jeopardy and would also be subversive of the efficacy of the Court Martial proceedings, finding and sentence. It is further observed and held that so long as a final verdict of guilty or not guilty, pronounced by a Court Martial and confirmed by the competent authority so as to be effective is not available, the power to

proceed under Section 19 read with Rule 14(2) exists and remains available to be exercised.

6.5 In light of the aforesaid observations and the law laid down by this Court, the order of dismissal dismissing the appellant from service which was passed by respondent no.3 herein in exercise of power under Section 20 of the Army Act and its legality is required to be considered.

7. From the facts emerging from the record, it appears that earlier the appellant was subjected to Summary Court Martial on the following lapses:

> "(a) Not correctly preparing certified Receipt convoy note against receipt convoy note 599 date 27 Feb. 1996.
>
> (b) Not dispatching the consignments pertaining to OTG and receipt Convoy Note on 29th Feb. 1996 and 02 March, 1996 and instead dispatching consignments pertaining to receipt convoy Notes of others.
>
> (c) Furnishing false information to the court that buckets steel Qty 3700 were not received in OTG contrary to the fact that Qty 268 packages of buckets steel were unloaded in OTG on 27 Feb. 1996."

However, it is required to be noted that at the relevant time, the aforesaid lapses/charges were not considered to be fraudulent in nature and the appellant was tried by Summary Court Martial for the said lapses/charges under Section 63 of the

Army Act. Thereafter, the appellant was inflicted with the penalty of reduction in rank. Nothing is on record that the order passed by the Summary Court Martial by which the appellant was reduced in rank was even confirmed by the Chief of the Army Staff in exercise of powers under Section 164 of the Army Act. Therefore, it cannot be said that the order passed by the Summary Court Martial by which the appellant was inflicted with the penalty of reduction in rank attained finality on being confirmed by the competent authority (in the present case the Chief of the Army Staff). Therefore, considering the observations made by this Court in paragraphs 24 to 27(more particularly, paragraph 27) in the case of *Harjeet Singh Sandhu (supra)*, it was open for the competent authority to exercise powers under Section 20 of the Army Act read with Rule 17 of the Army Rules. The power vested with the Chief of the Army Staff and conferred under Section 20 of the Army Act is an independent power available and for which the procedure under Rule 17 of the Army Rules is required to be followed, however, subject to the restrictions as observed by this Court in paragraph 27 in the case of *Harjeet Singh Sandhu (supra)*. Meaning thereby that only in a case where the final verdict of guilty or not guilty pronounced by

a Court Martial has been confirmed by the competent authority and has attained finality, the power to proceed under Section 19 read with Rule 14 or Section 20 read with Rule 17 shall not be available to be exercised. In other words, so long as a final verdict of guilty or not guilty pronounced by a Court Martial and confirmed by the competent authority as to be effective is not available, the power to proceed under Section 19 read with Rule 14 or Section 20 read with Rule 17, as the case may be, exists and remains available to be exercised. Therefore, in the facts and circumstances of the case and in the absence of any confirmation of the order passed by the Summary Court Martial by which he appellant was reduced to rank, the respondent no.3 herein was justified in exercising the power under Section 20 read with Rule 17. At this stage, it is required to be noted that while exercising the power under Section 20 of the Army Act, the only procedure which is required to be followed would be under rule 17 of the Army Rules, namely, a person who is sought to be dismissed or removed from service has been informed of the particulars of the cause of action against him and allowed reasonable time to state in writing any reasons he may have to urge against his dismissal or removal from the service. In the present case, such an

opportunity has been given to the appellant and therefore the proper procedure has been followed before dismissing the appellant from service, in exercise of powers under Section 20 of the Army Act.

8. Now so far as the submission on behalf of the appellant that the order of dismissal passed under Section 20 of the Army Act would be violative of the principle of double jeopardy is concerned, for the reasons stated above, the same cannot be accepted. There is one another reason also why the order of dismissal under Section 20 of the Army Act cannot be said to be violative of the principle of double jeopardy. It is required to be noted that when earlier the appellant was treated by the Summary Court Martial, he was tried for the offences under Section 63 of the Army Act only. However, subsequently the Chief of the Army Staff was of the opinion that the particulars of charges for which earlier the appellant was tried by the Summary Court Martial and which were tried under Section 63 of the Army Act disclose that the offences were fraudulent in nature. Therefore, while treating and considering the offences as fraudulent in nature and thereafter after giving an opportunity to

the appellant as required under Rule 17 and thereafter having been satisfied that the appellant cannot be continued in service, the order of dismissal has been passed by respondent no.3 herein in exercise of powers under Section 20 of the Army Act read with Rule 17 of the Army Rules and the said order of dismissal has been confirmed by the Chief of the Army Staff while exercising the powers under Section 164 of the Army Act on a petition filed by the appellant. Therefore, in the facts and circumstances of the case, the order of dismissal passed under Section 20 of the Army Act and confirmed by the Chief of the Army Staff cannot be said to be violative of the principle of double jeopardy.

9. Now so far as the submission on behalf of the department that subsequently the appellant was served with the show cause notice dated 17.04.2001 by which the appellant was called upon to show cause as to why he should not be discharged under Rule 13(3) item III(v) which was on the allegation that in reply dated 10.04.2000 to the show cause notice dated 24.03.2000, the appellant made a false and misleading reply and thereafter the Court of Enquiry was conducted and thereafter having found that the services of the appellant is no longer required being

undesirable and therefore the order of discharge has been passed after following due procedure is concerned, it is required to be noted that the order of dismissal which is the subject matter of the present appeal has not been passed under Rule 13(3) item III(v). The order of dismissal in the present case is specifically passed under Section 20 of the Army Act read with Rule 17 of the Army Rules. Therefore, the justification of the order of dismissal which is the subject matter of the present appeal on the aforesaid ground is not sustainable. However, at the same time, and for the reasons stated above, order of dismissal dated 29.04.2002 which was the subject matter before the High Court and even before this Court which has been passed under Section 20 of the Army Act read with Rule 17 of the Army Rules is just, proper, legal and valid and the same is rightly not interfered by the High Court. We are in complete agreement with the ultimate conclusion arrived at by the High Court in the impugned judgment and order.

10. In view of the above and for the reasons stated above, the present appeal fails and is liable to be dismissed and is

accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

……………………………….J.
[L. NAGESWARA RAO]

NEW DELHI;
JANUARY 24, 2020.

……………………………….J.
[M.R. SHAH]