

## EX-ARMY PERSONNEL'S LITIGATION BILL

Dr. N. B. Khare (Gwalior): I beg to move:

"That the Bill to provide remedy and to regulate the ex-army personnel's litigation with respect to their pay, allowances, pension, gratuity and all other emoluments payable under army regulations and usage of the army and punishments inflicted on them without jurisdiction, or in excess of jurisdiction, or in excess of the quantum prescribed by the army laws, be taken into consideration".

This subject of army pension is included in item 71 of the Union List. That means this House has got the exclusive right to take this matter into consideration under article 246 of the Constitution which reads:

"Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the 'Union List')".

It is a fact that we have not or this House has not enacted any laws governing these pensions and the situation now is that these pensions are governed by the rules which were in vogue during the British time, before the British parted with power. Hence my attempt to move this Bill.

The object of this Bill is not to burden the Union with extraordinary legal liabilities nor is it the object to impose upon the Union obligations not created by the Constitution and the existing law. The object is that there must be efficient and expeditious remedy at law so that the obligations imposed upon the Union by the grant of fundamental rights should not stand denied to those ex-officers and soldiers, who, during World War II and up to the date of commencement of the Constitution, formed part of

the Forces called His Majesty's Indian Forces. Nor should the remedy be denied to the ex-officers and soldiers and Airmen of the 'Regular Army'. The fundamental rights to the members of His Majesty's Indian Forces stood recognised by the Imperial Army Act, which being an annual Act, formed the last word of the Legislature and which Act applied to His Majesty's Indian Forces—vide section 180(2) of the Army Act read with the Active Service Ordinance X of 1941.

The Army Act being an Imperial Act, and being in *pari materis* with the Indian Army Act, applied to His Majesty's Indian Forces unless specifically excluded. On this point, section 180(2) read with its clauses (a) and (b) constitutes the authority. This view is lent support to by observations in 8 Madras 365 and 10 Madras 108. Section 180(2) and the clauses (a) and (b) of the Army Act read as under:

"180(2) In the application of this Act to His Majesty's Indian Forces, the following modifications shall be made:

(a) Nothing in this Act shall prejudice or affect the Indian Military Law respecting officers or soldiers or followers in His Majesty's Indian Forces, being natives of India and on the trial of all offences committed by such native officers, soldiers or followers, reference shall be had to the Indian military law for such native officers, soldiers or followers, and to the established usage of the service, but courts-martial for such trials may be convened in pursuance of this Act.

(b) Part Two of the Act shall not apply to His Majesty's Indian Forces....."

By the aforesaid provision in the Army Act itself, it follows that apart from Part II of the Army Act, the

[Dr. N. B. Khare]

entire Act applied to His Majesty's Indian Forces. It is obvious that courts-martial may be convened in pursuance of that Act. It is thus clear that cases for which the Indian Army Act did not expressly provide and the Army Act did, the latter applied first and the Indian Army Rules and other domestic rules stood suspended. It is thus clear that where the Indian Army Act was silent as to the manner of subjecting officers, soldiers or other persons to punishment, the manner of subjecting them to punishment could not be the manner which was at variance with the provisions of that Act. This view is made clear by section 69 of the Army Act, which runs as under:

"69. It shall be lawful for His Majesty to make Articles of war for the better Government of officers and soldiers and such articles shall be judicially taken notice of by all judges and in all courts whatsoever:

Provided that no person shall, by such Articles of War, be subject to any punishment extending to life or limb, or to be kept in penal servitude, except for crimes which are by this Act expressly made liable to such punishment as aforesaid, or be subject with reference to any crimes, made punishable by this Act, to be punished in any manner which does not accord with the provisions of this Act."

The Imperial Army Act thus laid down the manner or procedure for subjecting persons to punishment. Notwithstanding the specific provisions as to the manner of subjecting persons to punishment laid down by section 69 of the Army Act, the officers and soldiers of His Majesty's Indian Forces have been subjected to punishment of the nature of 'forfeiture and stoppages' without taking recourse to judicial proceedings. No chargesheet, no trial, no evidence on oath and yet the victim is subjected to 'forfeitures and stoppages'. This

is a manner which, as per observations of His Lordship Mr. Justice Khosla in *Govind Singh vs. the Union* decided on 15th February, 1956, highly irregular. Even for disallowing death and disablement compensations, the provisions of the Army Act were not referred to. In other words, evidence is not taken on oath and judicial notice is taken of inadmissible evidence.

Reference to clause 11 of section 44 of the Army Act will show that judicial proceedings are necessary to subject an offender to forfeiture of service towards pension. This section reads:

"44-(11) In addition to or without any other punishment in respect of any offence, an offender convicted by Court Martial may be subject to forfeiture of any deferred pay, service towards pension, Naval, Military or Air Force decorations or Naval, Military or Air Force rewards, in such manner as may for the time being be provided by Royal Warrant."

It is obvious that for subjecting one to any forfeiture of service towards pension or forfeiture of a Naval, Military or Air Force reward, the essential conditions laid down by the Imperial Army Act are: (i) Conviction by Court Martial and (ii) Royal Warrant laying down the manner to forfeit any service towards pension or any Naval, Military or Air Force reward. In the absence of any of these conditions, no forfeiture of service towards pension could be lawfully effected. The minimum pension payable for the rank has to be admitted and paid without delay. Subjecting of any officer or soldiers on active service to punishments in a manner other than the one enacted by the Imperial Army Act was specifically excluded by section 69 of the Army Act, 1881; excluded by sections 20/43 of the Indian Army Act, 1911 and now excluded by section 71(h)/80 of the Army Act, 1950. Thirdly, in the Indian Army Act, 1911, there

was no remedy against the "near of a manner to disallow death and disablement compensation or to forfeit service for the purpose of pension' Disallowance and forfeitures are judicial acts and as such they should be performed in accordance with the rules of judicial proceedings. The late Army and War Departments of the Government of India did never give effect to the last words 'but Courts Martial may be convened in pursuance of this act', occurring in clause (a) of sub-section (2) of section 180 of the Army Act, 1881 cited before.

The late Army and War Departments of the Government of India evolved a domestic procedure to punish soldiers and officers summarily and thus they bade good bye to the mandates of sections 46(6) and 46(8) in the case of persons and sections 47(3) and 47(4) of the Army Act, 1881 in case of officers. The principle laid down by these sections is that the offender shall be asked if he desires to be dealt with summarily or by a court martial. Even if the accused elects to be dealt with summarily, he has the right to demand that evidence against him should be taken on oath and the same oath or solemn declaration as that required to be taken by witnesses before court martial is required to be administered to each witness in such a case. They have made rules or regulations whereby the statutory manner to punish stands abrogated.

No power for making rules inconsistent with or contrary to the provisions of the Army Act, 1881, was conferred on any authority. A reference to section 70(1) of the Army Act, 1881, will make the matter clear. This section runs:

"71(1) Subject to the provisions of this Act, His Majesty may, by rules to be signed under the hand of a Secretary of State, from time to time make and when made, repeal, or alter or add to provisions in respect of the following matters:....

72(2). Provided always that no such rule shall contain anything contrary to or inconsistent with the provisions of this Act."

They have evolved the view that the restrictions on the rule-making power imposed vide above provisions of section 70 AA have no application in relation to members of His Majesty's Indian Forces irrespective of the fact whether they were subject to Army Act as officers or soldiers on active service or whether they were serving in peace conditions. This view is *ipse dixit*. The Indian Army Act, 1911, was made by reference to power conferred on the Indian Legislature by section 73 of the Government of India Act, 1933. In the Government of India Act, (1915), power of the Indian Legislature to make laws for officers, soldiers and followers was qualified by the following words occurring in clause (d) of section 65, which ran as follows:

"65(1). The Indian Legislature has power to make laws:.....

(d) for the government officers, soldiers (airmen) and followers in His Majesty's Indian Forces in so far as they are not subject to the Army Act (or the Air Force Act)".

Shri A. K. Gopalan (Cannanore): I wish to draw your attention to a matter of importance and urgency now.

Mr. Deputy-Speaker: As the motion is now being made by the hon. Member, Dr. Khare, I cannot interrupt him. Let him conclude first his motion and then I shall take up your point.

The Deputy Minister of Defence (Sardar Majithia): I heard the hon. Member talking about the Army Act, 1911. May I suggest that he refers to the Army Act, 1950, by which we are governed now?

Dr. N. B. Khare: I have also referred to the Act of 1950 twice or more. Perhaps the hon. Minister has not caught me.

**Mr. Deputy-Speaker:** Perhaps the hon. Member is not aware that half an hour is the maximum period that can be allowed for moving a motion so far as a Private Member is concerned.

**Dr. N. B. Khare:** I am at your pleasure, stop me at any time you like.

**Mr. Deputy-Speaker:** It is only 15 minutes since he has started.

**Dr. N. B. Khare:** I hope to take about six minutes more.

It will thus be seen that as early as the year 1915, the Imperial Parliament visualised the condition wherein the Indian Forces became subject to the Army Act. It is obvious that when the personnel of His Majesty's Indian Forces were so subject, they were governable by the Imperial Army Act and not by the Indian Army Act rules or other domestic rules. This condition was when the Indian Forces were declared to be on active service, that is to say, when they were engaged in a war. Needless to say that war was the province of the Imperial Government and not of the Government of India. It follows that pay, allowances and pension including death and disablement pensions became governable by the Imperial laws. The Indian Legislature had no power to affect the expenditure incurred on war one way or the other.

The power of the Indian Legislature was further negatively restricted by sub-section 2 of section 65 of the Government of India Act, 1915, which runs as under:

"65(2). Provided that the Indian Legislature has not, unless expressly so authorised by Act of Parliament, power to make any law repealing or affecting (1) any Act of Parliament passed after the year one thousand eight hundred and sixty and extending to India, including the Army Act (the Air Force Act) and any Act amending the same."

In section 84 of the Government of India Act, 1915, the following words were inserted vide section 2(2) of the Government of India (Amendment) 1916:

"A law made by any authority in British India and repugnant to any provision of this or any other Act of Parliament shall, to the extent of that repugnancy and not otherwise, be void."

Notwithstanding the power conferred by section 65(d) of the Government of India Act, 1915, the matter concerning the soldiers' pay, allowance, ordinary pension, death and disablement pension remained the province of the Secretary of State for India, in Council vide section 235 of the Government of India Act, 1935, according to which the proposal of the Governor-General in Council for the appropriation of revenue or money relating to the head of the expenditure classified by the Governor-General in Council as "Defence" and "Political". It follows that the government of the subject of pay and pensions etc., was no concern of the Indian Legislature. This section 67A stands retained by Schedule IX of the Government of India Act, 1935. In the Army Act, the pay of an officer or soldier of His Majesty's regular forces stood protected in the following words:

"136. The pay of an officer or soldier of His Majesty's regular forces shall be paid without any deduction other than the deductions authorised by this or any other Act or any Royal Warrant for the time being or by any law passed by the Governor-General of India in Council."

The mandate of section 136, Army Act, was suffered to stand unaccomplished with inasmuch as the late War Department sought to make rules governing pay, allowances, pension and disablement pension payable to His Majesty's Indian Forces. No

power to make such rules was conferred on the late War Department. The subject was a matter of substantive law and not of statutory rules, much less of domestic rules. This transfer of power made by the late War Department to itself was contrary to section 313(1), section 235, section 300(2) of the Government of India Act, 1935. Such a usurpation of power by a subordinate of the Imperial Parliament constituted contempt of Parliament. The Regulations in dispute are but misnomer of the expressions "regulation" or "rule" defined by clauses 50 and 51 of section 3 of the General Clauses Act, 1897, which applied for the interpretation of all Central Acts and Regulations.

The Constitution *vide* article 13(1) lays down:

"All laws in force in the territory of India immediately before the commencement of the Constitution, in so far as they are inconsistent with any provision of this Part, shall, to the extent of such inconsistency be void."

This command of the Constitution is suffered to stand disobeyed when the ex-soldiers' emoluments are governed by domestic rules—domestic rules not published in the Official Gazette. About this there was a case in the Supreme Court in 1951—the famous Jaipur appeal in opium case—in which it was decided that any punishment given to a person under rules, which were not published in the Official Gazette in the proper way, is abhorrent to all legal conscience. They are consequently inoperative as per observations of their Lordships of the Supreme Court in *Harla versus the State of Rajasthan* published in AIR 1951 467. Section 170(1) of the Army Act says as follows:

"Any action, prosecution or proceedings against any person for any act done in pursuance, execution or intended execution of this Act or in respect of any neglect or default in the execution of this Act shall not lie or be instituted

unless it is commenced within six months next after the act, neglect or default complained of, or in case of a continuance of injury or damage, within six months next after the ceasing thereof".

So, my contention is that the British Act is more liberal than our Army Act. The provisions of section 170(1) which I have read just now and 170(3) are not applied here. This Parliament has got the right to go into the grievances of army personnel. After all, the army has got a vital part to play in the Indian Republic, and we should not disturb the rights of the army personnel and we should regulate, on the other hand, the litigation work of army personnel. This is all that I have got to say.

Mr. Deputy-Speaker: Motion moved:

"That the Bill to provide remedy and to regulate the ex-army personnel's litigation with respect to their pay, allowances, pension, gratuity and all other emoluments payable under army regulations and usage of the army and punishments inflicted on them without jurisdiction, or in excess of jurisdiction, or in excess of the quantum prescribed by the army laws, be taken into consideration."

#### DEMONSTRATION NEAR PARLIAMENT HOUSE

Shri A. K. Gopalan (Cannanore). I wish to bring to your notice a matter of urgent public importance. Hundreds of persons are being arrested now. They have already been arrested and taken round the Parliament House, in the precincts of the Parliament House. Hundreds of policemen and police vans are also here. It is difficult for Members to go out and to come in. Also, it is learnt that all these persons from all over Bombay and Maharashtra have come here to represent certain grievances to Parliament. My request is that, as the custodian of the Parlia-