Maryland Law Review

Volume 7 | Issue 2 Article 7

Time when Draftee First Becomes Subject to Military Law - Ex Parte Billings

TIME WHEN DRAFTEE FIRST BECOMES SUBJECT TO MILITARY LAW

Ex Parte Billings[1]

Petitioner claimed exemption from military service as a conscientious objector.[2] Both the Local Draft Board and the Appeal Board denied this claim, and petitioner was ordered to report to the reception center. Petitioner reported there and passed the physical examinations, but then refused to take the oath of induction. After having been sent to the guardhouse, petitioner applied for a writ of habeas corpus. The writ was denied.

The sole function of the writ of habeas corpus is to "determine whether the person seeking the benefit of it is illegally restrained in his liberty."[3] Here the immediate problem was whether the Army had jurisdiction over the petitioner. The importance of this question was shown by the fact that had the Court decided that petitioner was entitled to a civil trial rather than a court martial, it was probable that petitioner would have walked away scotfree. As he had fully complied with the requirements of the Selective Training and Service Act, it was doubtful whether

---

[1] 46 F. Supp. 663 (D. C. Kan., 1943).

[2] 50 U. S. C. A. 305(g): "Nothing contained in this Act shall be construed to require any person to be subject to combatant training and service in the land or naval forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form . . ."

[3] HART, AN INTRODUCTION TO ADMINISTRATIVE LAW (1940) 480.

he had committed an act for which he could be prosecuted in the civil courts.[4]

The decision turned upon the interpretation of the Selective Training and Service Act which provides that ". . . No person shall be tried by any military or naval court martial in any case arising under this act unless such person has been actually inducted for the training and service prescribed under this Act or unless he is subject to trial by court martial under laws in force prior to the enactment of this Act . . ."[5] The effect of this provision is illustrated by the case of *U. S. v. Rappeport.*[6] Defendants were indicted for failure to register for the draft. In the course of its opinion, the Court pointed out that a party who registered under the Act would not, by that act, be subject to military jurisdiction, since no person is to be tried by court martial until he has been actually inducted for training.[7] The provision above referred to harmonizes with the decisions under that part of the Articles of War which stipulates that those subject to military law include "all other persons lawfully called, drafted, or ordered into, or to duty or for training in, the said service, from the dates they are required by the terms of the call, draft or order to obey the same."[8]

Among the many cases holding that persons inducted into military service thereby become subject to military jurisdiction are *Ex Parte Tinkoff*[9] and *U. S. v. Bullard,*[10] decided under the Selective Draft Act of 1917. In the *Tinkoff* case, petitioner's claim for exemption because of his wife's dependency was denied by the draft tribunals, and he was inducted into the Army. Subsequently, he absented himself without leave and was held by the Army authorities on that charge. The Court denied his application for a writ of habeas corpus, saying that although petitioner's claim for exemption was improperly denied, yet as he had been inducted into the Army, he was subject to punishment for violation of Army discipline.

In the *Bullard* case,[11] petitioner was given permission to leave the country on a business trip. During his ab-

---

[4] Ex parte Billings, 46 F. Supp. 663, 666 (D. C. Kan., 1942).
[5] 50 U. S. C. A. appendix 311.
[6] 36 F. Supp. 915 (D. C. N. Y., 1941) aff'd 120 F. (2d) 236 (C. C. A. 2d, 1941).
[7] *Ibid,* 36 F. Supp. 917-918.
[8] 10 U. S. C. A. 1473.
[9] 254 Fed. 912 (D. C. Mass., 1919).
[10] 290 Fed. 704 (C. C. A. 2d, 1923), cert. den. 262 U. S. 760 (1923).
[11] *Ibid.*

sence, petitioner's questionnaire was mailed to his last-known address. As the questionnaire was not returned, petitioner was placed in Class 1 and was reported to the Adjutant General as a delinquent. Notice to report for instructions was sent to petitioner and this inducted him into service. Petitioner questioned the power of the Army to try him by a court-marial. The Court held that since petitioner had been inducted into the service in accordance with the Selective Service Law, the Army had jurisdiction over his person.

In the principal case, the sole question before the Court was whether or not the petitioner had been inducted into the Army. This was made to depend on whether taking the oath was a necessary part of induction. Upon the answer to this question rested the authority of the Army to try petitioner for the offense of disobeying his superior officer.

The Court carefully considered the rules and regulations relating to induction which were promulgated by the President.[12] A pertinent provision was Regulation 429 which stipulated that "after examination at the induction station, the selected men found acceptable will be inducted into the land and naval forces. An officer of the Army, Navy, or Marine Corps will administer a prescribed oath to each of the men. He will then inform them that they are members of the land and naval forces and will explain their obligations and privileges." It seems that under this wording, it might be contended that induction is not complete until the oath has been taken. However, the provision was subsequently amended so as to read: "At the induction station, the men found acceptable will be inducted into the land or naval forces."[13] This language is susceptible of but one meaning; the failure to take the oath cannot operate as a bar to a person's being inducted into the service. Induction takes place when the individual is found acceptable, and the taking of the oath is a mere formality. As the Court expressed it: "Induction is completed upon acceptance by the government and irrespective of the desires, acts and mental attitudes of the party affected. Upon acceptance by the government, induction occurs by operation of law. It is something over which the party affected . . . has no control. It is not the ac-

[12] 50 U. S. C. A. appendix 310 (a): "The President is authorized (1) to prescribe the necessary rules and regulations to carry out the provisions of this Act . . ."

[13] Sec. 633.9.

ceptance by him of the oath, but the acceptance by the government of him as a soldier."[14]

This ruling does not seem to go beyond what had already been indicated by the *Bullard* case,[15] and is probably a correct holding from the standpoint of effective administration of the Selective Training and Service Act. One should not be able to interpose a judicial delay of the Army's treatment of him by declining to take the oath, if he has foregone (or exhausted) the judicial remedies open to him under the Selective Training and Service Act at the date of his classification.[16]

---

[14] Ex parte Billings, 46 F. Supp. 663, 667-668 (D. C. Kan., 1942).

[15] *Supra*, n. 9.

[16] See Note, *Judicial Review of Classification by Selective Service System* (1943) 7 Md. L. Rev. 165, *supra*, this number.