

COURT NO. 1, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

PART-HEARD (IN CHAMBER)

52.

OA 1605/2022

In the matter of :

Lt Col Sandeep Mishra

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Rajiv Manglik and Shri I.S. Singh,
Advocates

For Respondents : Shri Anil Gautam, Sr. CGSC

WITH

53.

OA 1702/2022

In the matter of :

Lt Col Sumit Acharya

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Rajiv Manglik and Shri I.S. Singh,
Advocates

For Respondents : Shri Anil Gautam, Sr. CGSC

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

O R D E R

17.10.2022

Challenge in both these applications filed under Section
14 of the Armed Forces Tribunal Act, 2007, are to orders

passed by the Competent Authority termed as a Censure order on the applicant.

2. The matters have been argued at length and one of the grounds raised by the applicants is with regard to the effect of the impugned order on the career of the applicants. According to them, even though as per the policy applicable in the respondent establishment for imposing such punishment, the punishment is treated as a 'minor punishment' and it is imposed by taking administrative action by simply issuing a Show Cause Notice and calling for a reply without conducting any summary or other type of Court Martial in the matter.

3. It was argued before us that the effect of the punishment is that the officers are not considered for grant of promotion for a period of 10 years. They are not even considered for undertaking any career courses or foreign assignments; for example, it is pointed out that in the case of one of the applicant, namely, Lt Col Sandeep Mishra [O.A. No. 1605 of 2022], he had been found eligible for the foreign posting with his unit, but on account of the punishment

imposed upon him of Censure, his name has been taken out from the list in question.

4. That apart, in case of the applicant in O.A. No. 1702 of 2022, namely, Lt Col Sumit Acharya, the officer has been empanelled for promotion on the post of Colonel and posting order issued, but now he is not being promoted or posted as directed on the ground that the imposition of punishment of Censure amounts to drop in performance and he cannot be granted promotion. It was argued before us that in the garb of only minor administrative action taken, such severe action amounts to major punishment and the same cannot be done by following a procedure laid down only for taking administrative action. Parity was claimed by referring to the provisions of minor punishment and major punishment as contained in CCS Rules, namely, Rules 9 and 10 thereof and the procedure laid down in Rules 11 and 14 and the judgments of the Hon'ble Supreme Court on this issue, wherein it has been clearly laid down that even if classified as a minor punishment, if the effect of punishment has serious repercussions on the career prospects or service conditions of the employee, the same would amount to major

punishment and has to be imposed only after following the procedure laid down for major punishment.

5. These being the issues, we are required to address these issues while answering these issues raised before us and faced with these situations when questions were posed by us, Shri Anil Gautam, counsel for the respondents, prays for time to seek instructions and explain the stand of the respondents. We grant him three weeks' time to do so. If advised, the respondents may file an additional affidavit within three weeks justifying the aforesaid act on their part.

6. That apart, while going through the policy for imposition of Censure issued in the year 2017 i.e. vide Annexure A-6 dated 11.08.2017 (O.A. No. 1605 of 2022), we find that in Para 8 of policy, the punishment of 'Severe Displeasure' in certain cases are permanently recorded in the dossiers and in certain cases, it is operative for a period of 10 years from the date of award. However, in the previous policy that was applicable till 2017, the period for which the effect of 'Severe Displeasure' was only 03 years. We would like to know as to why the period was increased from 03

years to 10 years; the rationale behind it and the reasons for the change.

7. The applicant should be present on the next date along with the records of the Court of Inquiry. We are constrained to pass such an order because the Court of Inquiry is with the applicants and they have directions not to part with the same and, therefore, to go through the same, the applicants should be present when the matters are being heard.

8. List the matters on **18th November, 2022 at 12:30 P.M.**

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

**[LT GEN P.M. HARIZ]
MEMBER (A)**

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