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

8.

OA 2517/2025

Nk (MT) Shyamveer Shrivas ..... Applicant
Versus
Union of India & Ors. ..... Respondents

For Applicant : Mr. Rajiv Manglik , Advocate for
Mr. Vivek Bhai Patel, Advocate.
For Respondents : Mr. K. K. Tyagi, Advocate.

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

O R D E R
14.08.2025

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act 2007, the applicant seeks quashing of a show cause notice issued to him under Section 20 of the Army Act, 1950 read with Rule 17 of the Army Rules. The action is taken for administrative termination of service in respect of the applicant. The action taken against the applicant is based on a complaint dated 09.08.2021 received from a lady, Mrs. X, wife of a Sepoy serving in the Army. The allegation against the applicant is that he sexually harassed the lady and committed acts unbecoming of an officer in uniform, which includes taking nude photographs, videos, etc. and misusing them. On the basis of the complaint a Court of Inquiry (CoI) was conducted and based on the report submitted in the CoI the proposal was to initiate disciplinary action against the applicant for having an extra-marital/inappropriate relationship with a lady and for breaching orders regarding staying in outliving accommodation. The show

cause notice has been issued for initiation of disciplinary action of administrative nature.

2. The applicant challenges the show cause notice on various grounds, the primary ground being that in view of the provisions of Section 122 of the Army Act, the action is barred by limitation and therefore cannot be undertaken. It is further stated that for effectively defending the applicant against the show cause notice he has not been provided the complete record of the CoI and in the absence of the proceedings of the CoI he is unable to defend himself. It is also contended that the delay in initiating the action vitiates the entire proceedings and therefore the show cause notice is liable to be dismissed in this proceeding itself as it is untenable in law.

3. With regard to his contention the learned counsel for the applicant relies upon a judgment rendered by the Hon'ble Supreme Court in the case of ***Union of India and others v. Harjeet Singh Sandhu*** decided on 11.04.2001 in Civil Appeal Nos. 2721–2722/2001. The question involved before the Hon'ble Supreme Court in the said case was primarily whether once the period of limitation for trial as prescribed under Section 122 of the Army Act is over the authorities can resort to administrative action for termination under the provisions of the Army Act.

4. Shri Rajiv Manglik, learned counsel for the applicant, relied upon the observations made by the Hon'ble Supreme Court in the said judgment, which read as under:

" In illustration (i) the expiry of the period of limitation prescribed by Section 122 renders the trial by court-martial impracticable on the wider meaning of the term. There is yet another reason to take this view. Section 122 prescribes a period of limitation for the commencement of court-martial proceedings but the Parliament has chosen not to provide any bar of limitation on exercise of power conferred by Section 19. We cannot, by an interpretative process, read the bar of limitation provided by Section 122 into Section 19 of the Act in spite of a clear and deliberate legislative abstention. However, we have to caution that in such a case, though power under Section 19 read with Rule 14 may be exercised but the question may still be __ who has been responsible for the delay? The period prescribed by Section 122 may itself be taken laying down a guideline for determining the culpability of delay. In spite of power under Section 19 read Rule 14 having become available to be exercised on account of a trial by a court-martial having been rendered impracticable on account of bar of limitation created by Section 122, other considerations would assume relevance, such as __ whether the facts or set of facts constituting misconduct being three years or more old have ceased to be relevant for exercising the power under Section 19 read with Rule 14? If there was inaction on the part of the authorities resulting into delay and attracting bar of limitation under Section 122 can it be said that the http://JUDIS.NIC.IN SUPREME COURT OF INDIA Page 20 of 23 authorities are taking advantage of their own inaction or default? If the answer be yes, such belated decision to invoke Section 19 may stand vitiated, not for any lack of jurisdiction but for colourable or malafide exercise of power.The respondents object to the same and argue that at this stage when only a show cause notice is issued invoking the jurisdiction of this Tribunal is not proper and the applicant should respond to the notice issued and raise all objections which would be considered by the competent authority."

5. Having heard the learned counsel for the parties, we are of the considered view that taking note of the serious allegations levelled against the applicant merely on the ground that instead of invoking court martial and in view of the limitation for the

same being over initiation of disciplinary action by administrative process is not sustainable. We are not inclined to interfere in the matter. When a show cause notice is issued the applicant should respond to it raising all grounds available to him and at the first instance it would be for the competent authority to evaluate those grounds and consider them. It is not for this Tribunal exercising its limited power of judicial review to step into the shoes of the competent administrative authority, evaluate the objections of the applicant and decide the show cause notice at this stage. Dismissal of a show cause notice and interference by a Court or Tribunal is permissible only if issuance of the notice is shown to be *per se* unsustainable in law having been issued by an incompetent person or in violation of a constitutional or statutory provision.

6. The issue as to whether when the limitation for conducting a trial under the Army Act as prescribed under Section 122 is over an administrative process can be initiated instead has already been considered by the Hon'ble Supreme Court in the case relied upon. A reading of the judgment and particularly the paragraph reproduced hereinabove shows that the Hon'ble Supreme Court has observed that the Court cannot by interpretive process read the bar of limitation provided by Section 122 into Section 19 of the Act in spite of a clear and deliberate legislative omission. Certain guidelines have been laid down in the said judgment itself in such cases and the judgment is not a proposition to hold that in all cases where the trial is barred

under Section 122 no administrative action can be taken. A detailed analysis of the said judgment if undertaken shows that there are various aspects to be considered while deciding an administrative matter. The issue of taking administrative action even after the period of limitation prescribed under Section 122 is elaborately dealt with and based on the facts of each case the issue has to be decided. The judgment cannot be applied blindly to say that in every case where the trial is barred under Section 122 administrative action cannot be taken. This is not the proposition of law laid down in the case of *Harjeet Singh Sandhu* (supra).

7. Be that as it may as only a show cause notice has been issued to the applicant he has the right to raise all objections as he has raised before us today before the competent authority and at the very first instance it would be for the competent authority to deal with the issue and thereafter proceed in accordance with law.

8. Accordingly, for the present, we are not inclined to interfere in the matter. However as the proceedings of the CoI form the basis for issuance of the show cause notice, supply of the entire proceedings of the CoI or the permissible part of the CoI which can be provided to the applicant should be ensured. If any part of the CoI proceedings cannot be supplied to the applicant on account of the confidential nature of the document the respondents should permit inspection of such documents by the

applicant. Accordingly, we dispose of this OA with the following directions:

(i) The respondents shall provide to the applicant the proceedings of the CoI and in case there are any documents or material in the CoI which are confidential in nature or may cause any adverse effect to the reputation and character of the lady in question the respondents may not supply those documents to the applicant but would be duty bound to grant inspection of the same to the applicant in the presence of an officer and permit him to take notes of the document.

(ii) The applicant shall thereafter submit his reply to the show cause notice and the competent authority shall proceed in the matter in accordance with law.

Needless to emphasize that if aggrieved by the final decision taken in the CoI the applicant shall have liberty to challenge it in accordance with law.

9. No order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT. GEN. C. P. MOHANTY]
MEMBER (A)

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