

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI**

O.A NO. 108 OF 2010

JC-642498K SUB. VED PRAKASH
S/O. JAI SINGH YADAV, R/O 145/5 RZ PALAM COLONY PART II,
NEW DELHI – 110 045
SERVING AT 5003 ASC BATTALION
PRESENTLY ATTACHED WITH 48 AD REGIMENT.

THROUGH: MR. S.S PANDEY, ADVOCATE

.. APPLICANT

VS.

1. UNION OF INDIA THROUGH THE SECRETARY
MINISTRY OF DEFENCE, SOUTH BLOCK
DHQ P.O., NEW DELHI – 110 011.
2. CHIEF OF THE ARMY STAFF
THROUGH ADDITIONAL DIRECTOR GENERAL
DISCIPLINE AND VIGILANCE
INTEGRATED HQ OF MINISTRY OF DEFENCE (ARMY)
DHQ PO, NEW DELHI – 110 011.
3. STATION COMMANDER,
STATION HEADQUARTERS, JAMNAGAR

4. COL. RAVINDER GURUNG,
EX 10 MADRAS REGIMENT,
PRESIDING OFFICER OF COURT OF INQUIRY
5. LT. COL. DD MANIK
THE THEN OFFICER COMMANDING
382 COY ASC (SUPPLY) TYPE 'A', C/O. 56 APO.

THROUGH: LT. COL. NAVEEN SHARMA

.. RESPONDENTS

CORAM

HON'BLE MR. JUSTICE S.S KULSHRESHTHA, MEMBER
HON'BLE LT. GEN. S.S DHILLON, MEMBER

JUDGMENT
09.03.2010

1. This petition has been initiated by the petitioner for setting aside the Court of Inquiry on the basis of which he has been attached for disciplinary proceedings. This Court of Inquiry has supposedly not applied the mandatory provision of Army Rule 180 while carrying out such investigation and, therefore, he has been denied his statutory right to natural justice.

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2. The short and moot issue is the non-application of Army Rule 180 while conducting a Court of Inquiry in which the military reputation and character of an individual is affected. The backdrop of the entire case is that the petitioner wrote a letter to the Chief of Army Staff on 31.5.08 listing out some allegations of misappropriation against his Commanding Officer IC 46823Y Lt. Col. D.D Manik, OC 382 Company ASC (Supply) Type A. The authorities convened a Court of Inquiry on 8.7.08 to investigate into the various allegations made by the petitioner. However, this Court of Inquiry was more of a white-wash to exonerate Lt. Col. D.D Manik and implicate the petitioner. The entire Court of Inquiry has been conducted without any application of Rule 180 either against Lt. Col. D.D Manik or against the petitioner both of whose military character and reputation was affected. Therefore, on the basis of such biased, vitiated and improper inquiry, it is not understood as to how the petitioner can be attached for disciplinary proceedings.

3. We have perused the letter written by the petitioner on 31.5.08 addressed to the Chief of Army Staff, routed through proper channel i.e. through Station Commander, Jamnagar. In this complaint, the individual has made various allegations against his Commanding Officer as well as the various illegal practices which were prevalent in his unit. Based on this letter, a Court of Inquiry was assembled on 8th July 08 on the orders of the Station HQ, Jamnagar to **‘investigate into the various allegations made against IC-46823Y Lt Col DD Manik, OC,382 Coy ASC (Sup) Type A by JC-642498K Sub/Clk (GD) Ved Prakash’**. During the Court of Inquiry, a total number of 25 witnesses have been examined, including the petitioner and Lt. Col. D.D Manik ,against whom the complaint was made. It is evident that in the entire Court of Inquiry, Army Rule 180 has not been applied at all neither against Lt. Col. D.D Manik or the petitioner. The necessity of applying Army Rule 180 is evident since the character and military reputation of both these individuals are involved. Army Rule 180 is appended below:

“180. Procedure when character of a person subject to the Act is involved.—Save in the case of a prisoner of war who is still absent whenever any inquiry affects the character or

military reputation of a person subject to the Act, full opportunity must be afforded to such person of being present throughout the inquiry and of making any statement, and of giving any evidence he may wish to make or give, and of cross-examining any witness whose evidence in his opinion, affects his character or military reputation and producing any witnesses in defence of his character or military reputation. The presiding officer of the court shall take such steps as may be necessary to ensure that any such person so affected and not previously notified receives notice of and fully understands his rights, under this rule.”

4. In the absence of such mandatory safeguards as stipulated in the Army Rules, it would be improper for the authorities to initiate disciplinary action against the petitioner. Neither have the authorities given any justification/rationale as to why AR 180 has not been applied. In this case, it appears somewhat incongruous that a “complainant” becomes an “accused” based on the proceedings of a suspect Court of Inquiry, thereby lending credence to the allegation that such inquiry was a ‘whitewash’.

5. We, therefore, direct that the Court of Inquiry be set aside and a fresh Court of Inquiry be convened, wherein Army Rule 180 be applied against

any person whose character or military reputation is affected. Based on such fresh Court of Inquiry, the authorities are at liberty to take whatever action they deem appropriate.

(S.S DHILLON)
MEMBER

(S.S KULSHRESHTHA)
MEMBER