IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A NO. 161 OF 2010

IC 34650A BRIG. (RETD) R.R SINHA
S/O SHRI S.D SINHA
P-264, SECTOR 21, NOIDA, UP.

THROUGH : MR. S.S PANDEY, ADVOCATE

...PETITIONER

VERSUS

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 (DV),
INTEGRATED HQ OF MINISTRY OF DEFENCE (ARMY),
DHQ P.O., NEW DELHI-110 011.

3. GENERAL OFFICER COMMANDING IN CHIEF,
HQ WESTERN COMMAND,
CHANDIMANDIR.

THROUGH : MR. ANKUR CHIBBER, ADVOCATE
WITH LT COL NAVEEN SHARMA

...RESPONDENTS

CORAM :

HON'BLE SH. S.S.KULSHRESTHA, MEMBER
HON'BLE SH. S.S.DHILLON, MEMBER

JUDGMENT
23.04.2010

1. The challenge in this petition centres round the order dated 9.2.2010 passed by the Chief of Army Staff wherein he has not confirmed the decision given by the General Court Martial (GCM) on 12.9.2009 wherein they held the trial of the petitioner to be barred by limitation.

2. Counsel for the petitioner submitted that in the capacity of Commanding Officer, the petitioner initiated Annual Confidential Report (ACR) of Maj. Rajan Batta for the year 1987-88. The said ACR was sent to Maj. Batta for obtaining his signatures at the place of attachment. Maj. Batta is alleged to have retained photocopy of the said ACR and returned the original duly signed by him through courier. In September 1999, based on records, including the ACR mentioned above, Maj. Batta was empanelled for promotion to the rank of Lieutenant Colonel and was promoted to the rank of Lieutenant Colonel. Subsequently in 2001, he was not empanelled for the rank of Colonel. Lt. Col. Batta preferred a non-

statutory complaint challenging the assessments made in four ACRs on the ground of inconsistency and subjectivity. Out of the four ACRs, two pertaining to 1996-97 and 1997-98 were initiated by the petitioner. The other two ACRs for 1993-94 and 1994-95 were initiated by some other officer. In the year 2002-03, Maj. Batta got partial relief in his non-statutory complaint for the year 1994-95, but no relief was granted for the ACRs of 1996-97 and 1997-98 which were initiated by the petitioner. These ACRs were agreeing with the overall profile of Maj. Batta. On 15.3.2004, Lt. Col. Batta made a complaint to the MS Branch along with a photocopy of the ACR sent to him for his signature by the petitioner. The copy of the ACR sent by Lt. Col. Batta was compared by the MS Branch with that of the ACR on record. They found material discrepancies between the two ACRs. A request was then made by Lt. Col. Batta vide letter dated 2.6.2004 to refer the matter for investigation. Pursuant thereto, an inquiry into the alleged tampering of the ACRs of Maj. Batta was conducted on 2.6.2004 itself. In the complaint, Lt. Col. Batta made certain accusations against the petitioner. Accordingly, a Court of Inquiry was held pertaining to the ACR for the year 1996-97, in which the following finding was made by CBI CFSL:

"(l) ……..:--

(i) Photocopy held in possession of R-4(D3).
That it was found conclusively by the CBI CFSL that the photocopy held in possession of Maj Rajan Batta was created by the technique of multiplicity of photocopying and was fraudulent in nature. Thus the report was conclusive giving no scope of any doubt that said photocopy used by Maj Rajan Batta to discredit the actual report was a fraudulent document and was manufactured with only aim to get rid of the actual report held on record and complaint made by Maj Rajan Batta against the said report was already rejected by the competent authority."

So far as the ACRs for the years 1996-97 (D1) and 1997-98 (D2) are concerned, the CBI CFSL also gave a conclusive finding regarding the text of the ACR and the signatures of (then) Maj. Batta. The Court of Inquiry was finalised in April 2005 and it recommended disciplinary action against Lt. Col. Batta. The petitioner was cleared from the charge of alleged tampering but was administered re-proof for not adhering to the laid down channel of communication of ACR. Lt. Col. Batta approached the Delhi High Court by filing W.P (C) No. 23725 of 2005, in which it was alleged that the petitioner had fudged his ACR. Consequently on 16.7.2008, another Court of Inquiry was set up and without any justifiable reason, the petitioner was attached to 29 Infantry Division located at Mamun Cantt. from 18.8.2008. The petitioner challenged the maintainability of the second Court of Inquiry

before the Delhi High Court by filing W.P (C) No. 6123 of 2008, which was finally decided by this Court on it being transferred to this Tribunal. The initiation of the GCM proceedings is said to be barred by limitation under Section 122 of the Army Act. In view of the decision of this Tribunal, it is contended that the question of limitation under Section 122 of the Army Act has bearing on the question of law and facts. The GCM held that it is to be barred by limitation. That finding of the GCM based on facts and law was not confirmed by the Chief of the Army Staff. Hence the present petition.

3. Much thrust is laid that the knowledge of the so called forgery came to the notice of the MS Branch on the basis of the letter dated 15.3.2004 of Lt. Col. Batta. On that basis, it is stated that the period of limitation expired in the year 2007 and by the subsequent Court of Inquiry, the period of limitation cannot be extended. Therefore, the impugned order of the Chief of Army Staff not confirming the decision of the GCM holding that the proceedings are barred by limitation is arbitrary and legally not sustainable.

4. The petition is opposed by the respondents contending, inter alia, that the point of reference was to inquire into the alleged forgery and a Court of Inquiry was set up. The earlier one was non-conclusive, another Court of Inquiry was ordered to inquire into the points specified in the convening order. It was found to be legally sustainable. Pursuant to the recommendation given by the Court of Inquiry on 11.9.2008, the matter was placed before the competent authority (GOC-in-C, Western Command) on 30.7.2008 and this would be the date for the purpose of limitation. The GCM commenced from 20.8.2009 and the limitation starts from the date when the forgery came to the notice of the competent authority which passed the order for convening the GCM. Reliance in this regard is placed on the decision of the apex Court in **Union of India and others** v. **V.N Singh** (C.A No. 32 of 2003 decided on 8.4.2010), wherein the date of passing of the convening order was held to be the decisive date for the purpose of limitation.

5. Learned counsel for the petitioner has submitted that as per Army Act 122, 'no trial by court-martial of any person subject to the Act for any offence shall be commenced after the expiration of a period of three years.' Army Act Section 122 reads as follows:

"122. Period of limitation for trial.—(1) Except as provided by sub-section (2), no trial by court-martial of any person subject to this Act for any offence shall be commenced after the expiration of a period of three years (and such period shall commence,--

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to the authority competent to initiate action, the first day on which such offence comes to the knowledge of such person or authority, whichever is earlier; or

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the authority competent to initiate action, whichever is earlier)"

Here, emphasis has been made that once Lt. Col. Batta made a complaint to the higher authorities or when the first Court of Inquiry was set up, that date would be considered for the purpose of computing the period of limitation. From the facts, the GCM held that the cause of action arose in the year 2004 and if calculation is made from that year, the period of limitation expired in 2007. The Chief of Army Staff has exceeded the power vested in it, when it interfered with the finding of the GCM based on evidence. In this regard, it shall be appropriate to mention that this

Tribunal gave a categoric finding in T.A No. 3 of 2009 (W.P (C) No. 6123 of 2008) that the fresh Court of Inquiry on the point of reference was not barred by limitation in the given circumstances of that case. There is no denial of the fact that in the Court of Inquiry, the involvement of the petitioner came to light and on that basis, order was passed on 30.7.2008 to convene a GCM. The GCM commenced from 20.8.2009 and it is within the period of limitation. The date of passing of the order by the appropriate authority would be taken for the purpose of limitation, in view of Section 122(1)(b). The observations made by the apex Court relevant to the extent are extracted below:

> "……. A meaningful reading of the provisions of Section 122(1)(b) makes it absolutely clear that in the case of Government organisation, it will be the date of knowledge of the authority competent to initiate the action, which will determine the question of limitation. …… The power to initiate action in terms of Section 122(1)(b) of the Army Act was only with GOC Delhi Area who is next superior authority in chain of command. The record shows that even the power to convene a Court of Inquiry was available only with GOC Delhi Area and GOC-in-C Western Command since they are the authorities in command of body of troops and the power to convene a Court of Inquiry in terms of Army Rule 177 is vested only with an officer in command of body of troops. …… The plea that the date of submission of the report by Technical Court of Inquiry should be treated as the date from which period of limitation shall commence has no substance. …… On the facts and in the circumstances of the case this Court finds that the period of limitation for the purpose of trial of the respondent commenced on

> December 3, 1994 when the GOC-in-C Western Command being the competent authority directed disciplinary action against the respondent in terms of Section 122(1)(b) of the Army Act. The period of three years from the direction dated December 3, 1994 would expire on December 2, 1997 whereas the GCM commenced the trial against the respondent on December 17, 1996 which was well within the period of limitation of three years. ……."

The expression "aggrieved by the offence" may be interpreted to mean that the Government organisation or the competent authority in whose notice such misconduct came for the first time. As has already been mentioned, the competent authority noticed the alleged misconduct on 30.7.2008 on the basis of the recommendation of the Court of Inquiry. The date of passing of the order for GCM i.e. 30.7.2008 is the cut-off date from which the period of limitation begins for the purpose of computation. It virtually gave cause of action for the aggrieved person. In view of the decision of the apex Court in **V.N Singh's case** (supra), the Government of India being the authority concerned is the aggrieved party. Therefore, from that date the right to sue is accrued to the person aggrieved. Reliance can be had from the decision reported in **Bolo** v. **Koklan** (AIR 1930 PC 270), wherein the Privy Council observed as follows:

> "14. …….. In this decision Their Lordships of the Privy Council observed as follows:

> '….. There can be no 'right to sue' until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right, by the defendant against whom the suit is instituted.'
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> 15. A similar view was reiterated in C. Muhammad Yunus v. Syed Unnissa (AIR 1961 SC 808) in which this Court observed: (AIR p. 810, para 7)
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> '7. …. The period of six years prescribed by Article 120 has to be computed from the date when the right to sue accrues and there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right.
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> In C. Mohammad Yunus, this Court held that the cause of action for the purposes of Article 58 of the Act accrues only when the right asserted in the suit is infringed or there is at least a clear and unequivocal threat to infringe that right. Therefore, the mere existence of an adverse entry in the revenue records cannot give rise to cause of action."

6. Further, it is argued on behalf of the petitioner that the law of limitation is founded on public policy. The statute of limitation needs strict interpretation. When, for the first time the forgery or the malpractice was noticed in 2004, the knowledge cannot be shifted merely on the premises of a subsequent Court of Inquiry. The unlimited and perpetuated threat of limitation creates insecurity and uncertainty. The limitation is essential for public order and in the interest of justice. Here, in this case, the forgery came to light after the conclusion of the Court of Inquiry on 11.7.2008 and

on that basis, orders were passed. The appropriate authority noticed the misconduct from the recommendation of the Court of Inquiry on the basis of which convening order was passed on 30.7.2008. Under such circumstances, the impugned order does not require any interference.

The petition is dismissed.

(S.S DHILLON)
MEMBER

(S.S KULSHRESTHA)
MEMBER