

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

O.A NO. 558 OF 2010

SURG. LT. CDR. AS THAKUR

...APPLICANT

VERSUS

UNION OF INDIA AND OTHERS

...RESPONDENTS

FOR APPLICANT

MR. S.S PANDEY, ADVOCATE

FOR RESPONDENTS

LT. CDR. VARUN SINGH

CORAM

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

J U D G M E N T

24.09.2010

1. Surg. Lt. Cdr. A.S Thakur, the applicant herein, seeks to quash the One Man Investigation report, the attachment order dated 18.5.2010 and the order dated 30.8.2010 putting the applicant to court martial.
2. It is submitted by the applicant that on false and frivolous complaints, he was put to investigation. There was patent defiance of the provisions contained in Regulation 205 of the Regulations for Navy Part II (Statutory). Further, the summary of evidence was recorded in the absence of the applicant. He was not afforded any opportunity to attend those proceedings and to know what the witnesses have deposed. There is also violation of the principles of natural justice. It is also stated that at no point of time, the applicant was afforded opportunity to cross examine the prosecution witnesses either during the investigation by OMI or during the summary of evidence.

3. On behalf of the respondents, a counter affidavit has been filed annexing three certificates to prove the presence of the applicant and to show that sufficient opportunity was afforded to the appellant in compliance with the provisions of Regulation 205(1) of the Regulations for Navy Part II (Statutory).

4. In order to appreciate the points raised by the parties, it would be appropriate to refer to the facts. The applicant was a Medical Officer serving the Indian Navy. He was posted as Principal Medical Officer in DUNAGIRI Ship from 26.9.2008. On 25.8.2009, one sailor R.K Sharma expired while on board due to cardiac arrest. The Commanding officer, Sushil Das, directed the applicant to visit the family of late RK Sharma and inform them about the progress of the paper work in connection with release of service benefits. Further, the applicant was asked to take his wife along while visiting the house of late RK Sharma. During the visit, he conveyed the message given by the Commanding Officer and enquired about the well being of the family. Mrs. Rekha Sharma, wife of late RK Sharma told him that

her son Deepak Kumar was facing some psychiatric disorder and requested the applicant to help her in his treatment. Being a doctor, the applicant assured Mrs. Sharma of taking care of that matter. The outcome of the visit was conveyed to the Commanding officer by the applicant. The applicant again visited the house of Mrs. Sharma and took Master Deepak Kumar in his car to the Cantonment with the permission of Mrs. Sharma. He counselled Master Deepak to be more responsible towards his mother and sister. Out of love and affection, he gave sweets and crackers to the child. On 21.10.2009, the applicant proceeded on temporary duty to INS Brahmaputra. Subsequently, he came to know that Mrs. Sharma gave a complaint against him stating that the applicant had sexually molested her son on 19.10.2009. On 28.1.2010, a one man inquiry (OMI) was ordered against the applicant by the Chief of Staff to investigate into the alleged molestation of Master Deepak Sharma. Based on the report given by the OMI, the applicant was attached to INS Angre. A summary of evidence was recorded, notice of which was not allegedly given to the applicant. On the basis of the report given by the investigating officer, the applicant was asked to give statement in terms

of Regulation 152(2). At no point of time, the applicant was informed about the charges. On 30.8.2010, the applicant was issued a notice stating that a court martial would be held from 7.9.2010. The applicant raised objection to the illegal pre-trial proceedings and further requested to be provided with copies of documents, including complaint. When the court martial began, the applicant made similar request to provide him the documents. But, according to the applicant, same has not been issued to him. He, therefore, seeks the above relief.

5. The main point agitated from the side of the applicant is that Regulation 205 was not complied with, which was mandatory. Further, the applicant was not even afforded the opportunity to cross examine the prosecution witnesses and to examine witnesses in defence. The whole action of the OMI is, therefore, in violation of the principles of natural justice.

6. There is no denial from the side of the respondents as to the mandatory import of Regulation 205. But, it is stated that its compliance was

ensured as would appear from the certificates annexed with the counter affidavit. No doubt, Regulation 205 ensures mandatory protection to the individuals whose character and military reputation is affected. It is with this object, Regulation 205 was framed. It speaks of the mode and manner in which the investigation is to be carried out. Regulation 205 reads as under:

“205. Procedure when character or conduct of a person in Government service involved:- (1) Save in the case of a prisoner of war who is still absent, whenever any inquiry affects the character or reputation of a person in Government service or may result in the imputation of liability or responsibility for any loss or damage or is made for the contravention of any regulations or general or local orders, full opportunity shall be accorded 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 him and producing any witness in his defence.”

It may be mentioned at this stage that the said Regulation does not stipulate the impact of its violation. It cannot be said that in the event of non-adherence of the procedure, no legal right exists. The applicant has the legal

right to cross examine the witnesses. Further, Regulation 205 requires to afford the applicant full opportunity of being present throughout the inquiry and of making any statement and of giving any evidence he may wish to and of cross examining any witness, whose evidence in his opinion, affects his character and military reputation and producing any witness in his defence. That apart, the Regulations, guidelines and the circulars are issued for the purpose of conducting a fair inquiry. Reliance may be placed in the case of **State of Kerala and others v. Kurian Abraham (P) Ltd and another** (2008(3) SCC 582). To ascertain whether there was compliance of Regulation 205, it would be relevant to refer to the certificates annexed to the counter affidavit. The certificates showed the presence of the applicant at the time of OMI and of having been provided opportunity to cross examine the witnesses. The certificates also bore the signatures of the applicant. That apart, the letter dated September 10 (Paper No. 57 of the additional papers of the applicant and in particular Paragraphs 5 to 7) confirmed the presence of the applicant at the time of recording of the evidence by OMI.

7. It has further been argued by learned counsel for the applicant that the compliance of Regulation 205 is to be ensured from the attending circumstances as well as from the reply of the respondents. In that, he had referred to the statements recorded by the OMI. It is pointed out that nowhere in the certificates it is stated that the applicant had been provided the opportunity of cross examining the witnesses. Whatever be the reply given by the respondents in response to the letter dated September 10, it simply states that in view of Regulation 207, the statements recorded would not be admissible as evidence during trial by the court martial. As has already been mentioned, the certificates bore the signatures of the applicant proving his presence while recording the evidence by OMI and having provided him the opportunity to cross examine the witnesses.

8. It has next been contended by counsel for the applicant that the statements of the witnesses furnished to the applicant do not convey whether opportunity was afforded to the applicant to cross examine the witnesses. As has already been indicated, from the letter of the applicant

himself and from the certificates, it is well ascertainable whether the right to cross examine and his presence have been afforded to him or not. Even if there were deficiencies in the recording of the statements of the witnesses in the course of investigation that would not affect the report given by the OMI. It is made for the satisfaction of the appropriate authority for passing convening orders. In **Chetan Singh and another v. State of Haryana** (AIR 1976 SC 2474), it was held by the apex Court that in the circumstances of the case, non-obtaining of certain materials such as ballistic expert report could not shake the prosecution case. This view is reiterated in **Lakhbir Singh and another v. State of Punjab** (AIR 1994 SC 1029) and **Surendra Paswan v. State of Jharkhand** (2003(12) SCC 360). If the ocular testimony is cogent and convincing for the purpose of passing the convening order by the appropriate authority, that would not be a matter to interfere with at this stage. Reliance may be placed in the case of **Karnel Singh v State of M.P** (1995(5) SCC 518), wherein it was observed by the apex Court thus:

“5. Notwithstanding our unhappiness regarding the nature of investigation, we have to consider whether the

evidence on record, even on strict scrutiny, establishes the guilt. In cases of defective investigation the court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. Any investigating officer, in fairness to the prosecutrix as well as the accused, would have recorded the statement of the two witnesses and would have drawn up a proper seizure-memo in regard to the 'chaddi'. That is the reason why we have said that the investigation is slipshod and defective."

We observe that the OMI had observed all necessary procedures.

9. Counsel for the applicant further contended that in the summary of evidence, the evidence was recorded without ensuring the provisions contained in Regulation 149. However, from the side of the respondents, it is contended that nowhere this Regulation provides for the personal appearance of the applicant, against whom evidence is required to be taken. Counsel for the applicant, however, asserted that though explicitly there is no such arrangement for ensuring the presence of the applicant, the

principles of natural justice demand that whatever evidence is collected, at least his presence should have been ensured. We do not find any such flaw in the proceedings. Such requirement under Regulation 205 has been fully complied with and this compliance has already been noticed.

10. In view of the above, we do not find any merit to interfere with the matter. Accordingly, the application is dismissed.

(S.S DHILLON)
MEMBER

(S.S KULSHRESTHA)
MEMBER