

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.

T.A.No. 242 of 2010

[arising out of WP(C)NO. 14183 of 2004 of Delhi High Court]

Maj.Gen. PSK Choudary (Retd.) ...Petitioner

Versus

Union of India & Ors. ...Respondents

For the Petitioner : Sh. PDP Deo, Advocate

For the Respondents: Ms. Jyoti Singh, Advocate

C O R A M:

HON'BLE MR. JUSTICE A.K.MATHUR, CHAIRPERSON

HON'BLE LT.GEN. M.L.NAIDU, ADMINISTRATIVE MEMBER

JUDGMENT

1. Petitioner by this Writ Petition has challenged the order dated 24th July, 2004 issued by General Officer Commanding in Chief, Western Command on the findings of

the GCM in respect of plea in bar. It is also prayed to quash the order dated 29th July, 2004 of GOC-in-C Western Command for re-assembly of the GCM.

2. Brief facts which are necessary for disposal of this petition are that petitioner was commissioned in the Regiment of Artillery and in due course of time he became Major General and took over on 20th February, 1998 as Additional Director General, Weapons and Equipment, Army Headquarters.
3. On 13th March, 2001 *tehelka.com* gave a presentation on the sting operation (Operation West End) carried out by them at Hotel Imperial. Thereafter, news channels on the television began showing excerpts of the videotapes made public by *tehelka.com*.
4. In the night of 13th March, 2001 Defence Secretary, Ministry of Defence, Government of India called the

petitioner and told him about his alleged involvement in the so called sting operation and took written statement from the petitioner regarding the alleged commission of offence.

5. On 14th March, 2001 suspension order was issued by the Deputy Chief of Army Staff, Army Headquarters, the competent authority to initiate such action as accepting money tantamounting to accepting illegal gratification. On issue of the suspension order, General Officer Commanding-in-Chief of Headquarters Western Command, analysed the alleged offence of petitioner and after having satisfied himself that there was a specific offence and charge against petitioner, took subsequent action by ordering withholding of 25% of basic pay of petitioner by order dated 15th March, 2001. Thereafter, a convening order was issued by Respondent No. 3 on 18th March, 2001

for holding Court of Inquiry as many other officers of Army were also named in *tehelka.com*.

6. On 29th May, 2001 a notice under Section 5(2)(a) of the Commission of Inquiry Rules, 1972 was issued by Hon'ble Justice Venkataswami Commission of Inquiry and was received by the petitioner through Deputy Chief of Army Staff (P&S), Army Headquarters, where petitioner was required to appear before the Commission appointed by Government of India to investigate the tehelka sting operation.

7. Thereafter, petitioner made a statutory representation on 17th July, 2001, through his counsel, requesting not to take any further action on the basis of the findings of the Court of Inquiry since a commission of inquiry had already been appointed by Government of India. Statutory

representation of the petitioner did not find favour of the respondent.

8. On 25th September, 2001 petitioner was ordered by Weapons and Equipment Directorate to move on attachment to Headquarters 2 Corps for processing disciplinary proceedings against him and petitioner complied that on 27th September, 2001 and he moved to Headquarters 2 Corps.

9. On 10th October, 2001 petitioner was brought before his Commanding Officer Lt. Gen. Kapil Vij, GOC 2 Corps, where, charges against him were read out and immediately thereafter he ordered for recording of summary of evidence.

10. It is alleged that while applying Army Rule 22 petitioner was not given sufficient opportunity for

preparation of his defence, he was not allowed to note down the charges and he was also not allowed to speak.

11. Thereafter, Major General Aditya Singh, GOC 1 Armoured Division was detailed for recording summary of evidence. Thereafter, Major General Aditya Singh was replaced by Major General DN Desai to record summary of evidence.

12. On 22nd July, 2002 petitioner was informed that summary of evidence would be recorded at Headquarters Technical Group, EME, at Delhi Cantt and was moved to Delhi. Petitioner was attached till the inquiry was in progress. Thereafter, on 10th December, 2002 petitioner was informed that summary of evidence will commence on 11th December, 2002. The recording of summary of evidence started on day-to-day basis and was completed on 7th July, 2003. The petitioner remained under suspension and the petitioner, in the meanwhile, superannuated on 30th

September, 2003. However, provisions of Section 123 of the Army Act, 1950 was invoked for petitioner by the General Officer Commanding, Headquarter 2 Corps and he was made subject to the Army Act even after retirement and was placed under open arrest.

13. Thereafter, the Respondent No. 2 issued a letter dated 21st April, 2004 to the petitioner regarding holding of GCM against him and asked the petitioner to name the defending officer for conduct of GCM.

14. The trial commenced on 26th May, 2004. During the trial petitioner raised the special plea to jurisdiction of the Court under Rule 51 of the Army Rules, 1954 on the ground that petitioner was not given required documents asked by him before the trial for the purpose of preparing his defence. Petitioner also raised a plea of bar of limitation under Section 122 of the Army Act, 1950,

though, this objection was overruled by Judge Advocate. However, the Court Martial was pleased to record his plea and allowed the petitioner to lead evidence in support of the plea in bar of limitation.

15. Petitioner requested the Court to call defence witnesses namely Lt. Genl. Surjit Singh (Retd.) and Lt. Gen. SS Mehta (Retd.), competent authorities and aggrieved persons under Section 122 of the Army Act and the then superior authority of petitioner for the purpose of initiating action. Hon'ble Court directed the prosecutor to produce the witnesses for defence.

16. It is alleged that without petitioner having been given opportunity to meet these witnesses they were examined. The prosecution has also examined Shri BB Mohan, representative from Discipline and Vigilance Directorate, Army Headquarter and Naib Subedar Mohan Singh, Head

Clerk of 'A' branch Headquarter Western command as witnesses before GCM to produce documents asked by defence pertaining to the case of petitioner in regard to holding and progress of the court of inquiry held in the case of support of plea in bar of limitation.

17. After perusing all these the GCM arrived at the finding and announced in the open court that the plea in bar raised by the petitioner was established and, therefore, referred the matter to the convening authority and closed the court sine die. The plea in bar was unanimously accepted by all the members of the Court and overruled the advise of the Judge Advocate. However, the convening authority did not uphold the unanimous decision of the Court Martial upholding the plea of bar and directed for reassembly of GCM at 1100 Hrs on 6th August, 2004 by the order dated 29th July, 2004. Hence,

petitioner challenged this order by filing this petition before Delhi High Court, which has been transferred to this Tribunal for final adjudication.

18. The contention of the petitioner was that the period of limitation should be counted from the date 14/15 March, 2001, when the order of suspension was passed and the 25% of the pay was withheld. Accordingly, the convening of Court Martial on 26th May, 2004 is beyond the period of limitation. This has been upheld by the Court Martial authorities by upholding plea of bar that the respondent acquired the knowledge of the commission of alleged offences by the petitioner on 14th / 15th March, 2001, therefore, the period should commence from 14/15th March, 2001 and not from 14th June, 2001 when the direction was issued on the basis of the Court of Inquiry. If the starting point is taken as 15th March, 2001, then,

the convening of Court Martial from 26th May, 2004 is beyond period of limitation, and, if it is to be construed from 14th June, 2001, then convening of the Court Martial on 26th May, 2004 is within limitation.

19. We have heard learned counsel for the parties and perused the record. Learned counsel for the petitioner was strenuously urged before us that the respondent acquired knowledge of tehelka expose and petitioner was summoned by the Defence Secretary and took a written statement from the petitioner, but, the fact that they have a specific knowledge, which is evident from the fact that the petitioner was placed under suspension on 14th March, 2001 and from 15th March, 2001 orders issued for withholding of 25% of pay and allowances of the petitioner. Therefore, 14th/15th March, 2001 should be deemed to be commencement period and convening of

Court Martial on 26th May, 2004 is beyond the period of limitation and in support thereof learned counsel for the petitioner cited a decision of the Delhi High Court in the case of *V.K. Anand v. Union of India & Ors. (WP[C] No. 1210 of 2003)*.

20. Learned counsel for the respondent has pointed that tehelka expose was not a limited affair, number of other persons were involved, therefore, the Court of Inquiry was ordered and after conclusion of Court of Inquiry the matter was placed before competent authority and competent authority ordered for Court Martial against the petitioner. The action which was immediately initiated on 13th / 14th March, 2001 on the basis of prima facie and not on definite information.

21. It is not possible to act upon every news item appearing in electronic media or print media. This will jeopardise the dignity of the institution as well as that of the incumbent. Therefore, it was thought proper to first investigate the matter and, thereafter, take a proper action against the culprits. If authorities were to act and order for GCM barely on the basis of news item appearing on electronic or print media, it will create great havoc as the authenticity of the information is yet to be established by the proper investigation. Therefore, it was pointed out that when the news item appeared in the electronic media the petitioner was placed under suspension, but, simultaneously Court of Inquiry was ordered. The Court of Inquiry submitted its report and the same was placed before the competent authorities on 15th March, 2001. As certain further information was sought and, thereafter, the

competent authority having been satisfied that there is prima facie case, then, ordered for Court Martial on 14th June, 2001. Thereafter, GOC-in-C Western Command directed to convene GCM at Ferozepur. The GCM finally assembled on 26th May, 2004 on three charges. Therefore, it was contended that the trial commenced on 26th May, 2004 when the Members of the Court Martial took oath and decided to proceed with the trial. It is submitted that 14th June, 2001 should be treated as commencement point i.e. starting point of limitation, therefore, it is within three years of the conducting of the inquiry under Section 122 (1)(b) of the Army Act, 1950 and in support thereof learned counsel has invited our attention to a recent decision of the apex Court in the case of *Union of India & Ors. V. VN Singh (Civil Appeal No. 32 of 2003)* and the case of this Tribunal

decided on 23rd April, 2010 in the case of *RR Sinha v. Union of India & Ors. [OA No. 161 of 2010]*.

In the case of *VN Singh (supra)* Hon'ble Supreme Court considered the scope of Section 122 of the Army Act, 1950 and observed that:

"... .. 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."

Their Lordships held that:

"... .. the first day on which such offence comes to the knowledge of such person or authority whichever is earlier."

22. We consider the rival submissions of the parties and perused the record. Section 122 relates to *Period of Limitation for Trial*, which reads as under:

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 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.

23. According to Section 122 no offence shall be tried after expiry of period of three years and which shall be the commencing point of the period for counting the period of three years (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 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.

24. In sub Section 2 of Section 122 of the Army Act, 1950 certain offences have been exempted and in sub Section 3 of Section 122 of the Army Act, 1950 computation of period of time spent by person as a prisoner of war or in enemy territory or in evading arrest after the commission of the offence shall also be excluded. Section 4 also exempts certain persons for the offences like desertion other than desertion on active service or of fraudulent enrolment shall be commenced if the person in question, being an officer, has subsequently to the commission of the offence, served continuously in an exemplary manner for not less than three years continuously.

25. Therefore, moot question which comes for our consideration is that in the present case which should be the date for commencement of the period of limitation of

three years. Section 122 (1)(b) says that when it comes to the knowledge of competent authority that should be the period of commencement of the period of limitation. Two aspersions '*competent authority*' and '*its knowledge*' are relevant in the present case. If we take it that everything said in the electronic media or in print media casting expression on any of the incumbent, which comes to the knowledge of all on the same date should be taken as a commencement period, then, of course it came to the knowledge of all the persons including authorities, they heard this sting operation in electronic media, but, what is the guarantee that all such kind of sting operations are true or genuine. The cases are galore where it has come to the knowledge that such kind of sting operations are sometimes framed up to malign the image of any respectable person or the institution. Therefore, it is not

always safe to act upon such publicity on the press or electronic media without verifying the truth of the matter. Though, in the present case, looking to the public image of the Indian Army, petitioner was placed under suspension, but, that was not the authentic information. It was prima facie a report, therefore, Army acted promptly and placed the incumbent under suspension. That does not mean that the Army has acquired actionable information/knowledge. The knowledge means actionable information. Actionable information can only be acquired at after authorities completely probed the matter in a greater depth. Therefore, in order to have that knowledge, the authorities ordered a Court of Inquiry and report of the Court of Inquiry was finally accepted on 14th June, 2001 by GOC-in-C Western Command, hence, he acquired actionable information on 14th June, 2001 i.e. the

date on which he directed initiation of disciplinary proceedings against the accused and the trial commenced on 26th May, 2004.

26. Therefore, in the present case, it is not right that the period of commencement of the limitation should be from 14th / 15th March, 2001 when petitioner was placed under suspension. That suspension order was only a prima facie action on the basis of the media information which was yet to be acquired an actionable information by competent authority to act upon that. This view has been taken by coordinating bench of this Tribunal also in the case of *RR Sinha (supra)*, relying on a decision of the apex court in the case of *VN Singh (supra)*. Our attention was also drawn to a decision of Delhi High Court in the case of *VK Anand (Supra)* where there was a difference of

opinion between the Judges of Division Bench and matter was referred to a third Judge and the question was whether GCM was time barred or not in the facts and circumstances of that case. Third Judge held that action was beyond period of limitation, thereby, set aside the Court Martial proceedings and upheld the objection under Section 122 of the Army Act. In the circumstances of that case it was held that the 'actionable knowledge' was acquired by both the Respondents 4 & 5 on 4th November, 1998 itself and in any event on 30th March, 1999 when the proceedings were finalised, and, therefore GCM which was held after a period of three years was said to be barred by time.

27. In the present case the suspension order was a prima facie order and it was not an "actionable information". The

knowledge means an 'actionable information' and that actionable information only came to the knowledge of competent authority after the proper Court of Inquiry conducted and the allegation of tehelka expose was found to be prima facie correct, thereupon, Court Martial was ordered. As mentioned above, if authorities act on the information of electronic or print media, without verifying the authenticity and truth of it, then, it will cause great havoc and will ruin the life of the officers. Thus, it is necessary that in order to take a serious decision in the matter involving GCM against the senior officers correct facts should be apprised by the competent authority.

28. In the present case when the authentic information came to the knowledge of the competent authority on pursuance of the Court of Inquiry, thereafter, the

authorities acted on the matter and order GCM, which commenced its proceedings on 26th May, 2004. However, the date of commencement of period of limitation shall be 14th June, 2001 when competent authority, on report of Court of Inquiry, acquired complete knowledge i.e. actionable information. The period of limitation cannot be counted from the date of suspension order i.e. 14th / 15th March, 2001.

29. Before parting with the case we may emphasise that the matter of such nature should be taken with expedition. It is not necessary that the authorities should wait till the end of the period of limitation for initiating the action. Such action of delay unnecessarily causes the suspicion and creates legal complications. It is again reiterated that in such matters the action should be taken promptly and

without unnecessary delay. The delay will create unnecessary complications, which should be avoided. Hence, we do not find any merit in the petition and same is dismissed. No order as to costs.

[Justice A.K. Mathur]
Chairperson

[Lt. Genl. ML Naidu]
Member (A)

New Delhi
26th May, 2010