

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI
(Court No.2)**

O.A NO.329 of 2011

IN THE MATTER OF:

Brigadier S.K. Handa**APPLICANT**
Through : Mr. K. Ramesh, counsel for the applicant

Vs.

UNION OF INDIA AND OTHERS**...RESPONDENTS**
Through: Mr. Anil Gautam, counsel for the respondents

CORAM:

**HON'BLE MR. JUSTICE MANAK MOHTA, JUDICIAL MEMBER
HON'BLE LT. GEN. M.L. NAIDU, ADMINISTRATIVE MEMBER**

ORDER

Date: 15.09.2011

1. This application was filed in the AFT as OA No.329/2011 on 24.08.2011.
2. Vide this OA, the applicant has prayed for quashing and setting aside of Army HQ letter dated 20.5.2011 (Impugned order) reinvoking under Section 123 Army Act against him alongwith the tentative charge-sheet on the ground of not marshalling evidence 'de novo' from the prosecution witnesses in the reconstituted Court of Inquiry (COI) as also hearing of charges not complying with Army Rule 22 by not handing over the COI proceedings under Army Rule 184, as also not marshalling evidence by calling prosecution witness for establishment

of prime facie case against the applicant. The applicant has also requested that the respondents be directed to detach the applicant from HQ 9 Artillery Brigade on account of violation of Army Rule 22 read with Army Rule 184 and Para 405 of Regulations for the Army.

3. The facts of the case in brief are that the applicant was commissioned into the Army (Army Medical Corps) on 12.4.1972. In due course, he rose to the rank of Brigadier and was posted as DDG Food Inspection at IHQ of Ministry of Defence (Army). There were some allegations of financial irregularities in tendering, procurement and testing of various rations. On 10.10.2005, a COI was ordered in which Army Rule 180 was not followed.

4. It is alleged that the findings of the COI were quashed and set aside by the judgment of Hon'ble High Court of Delhi on 29.07.2008 (Annexure A-3) and vide order dated 12.9.2008 (Annexure A-4), the Hon'ble High Court modified its earlier order and permitted the respondents to proceed with the hearing of charges under Army Rule 22 de novo with the understanding that the earlier COI proceedings would not be made use of. Since the applicant had retired, Section 123 of the Army Act was revoked on 17.05.2010 and the disciplinary attachment was cancelled.

5. The respondents re-invoked Section 123 under the Army Act and attached the officer for disciplinary action once again on

20.5.2011. Consequently, the applicant was attached to the HQ 9 Artillery Brigade where the CO read out the tentative charge-sheet on 29.7.2011 and proceeded with Army Rule 23 i.e. to reduce the evidence in writing.

6. Meanwhile the applicant also filed OA No.172/2011 on 18.6.2011 challenging the justification of re-invoking under Section 123 of the Army Act against the applicant before the Hon'ble AFT, Lucknow Bench which was dismissed on 05.07.2011 on merits.

7. Ld. Counsel for the applicant further argued that in the earlier **WP(C) No.4391/2007** filed by him before the Hon'ble High Court of Delhi, the Hon'ble High Court observed on 29/30.7.2008 as under:-

"We consider that the aforesaid course of action suggested by the respondents as reasonable and the same is agreed to by learned counsel for the petitioners. We thus deem it appropriate to give liberty to the respondents to re-constitute the Board of Enquiry and to take on record the material which was before the earlier court of inquiry including the deposition, documents etc. Subject to giving full opportunity to the petitioners in compliance with rule 180 of the said rule as also other provisions of the Act and the Rules including leading their own defence witnesses. This naturally means the findings of the earlier court of inquiry stands withdrawn/quashed by consent. Consequently, the attachment order would have to go and is accordingly quashed with liberty to respondents to take further action in accordance with law. The provisional DV Ban and the promotion withheld on the basis of the report of the court of inquiry cannot be sustained

but the respondents would be at liberty to take action in accordance with law in view of re-constitution of the court of inquiry."

8. Ld. Counsel for the applicant further argued that in the same case, the modified order was passed by the Hon'ble High Court of Delhi on 12.9.2008 and the relevant portion of the said order reads as under:-

"We thus make it clear that the respondents have both the options available to them to be exercised in accordance with law as granted in the case of the other officers, Lieutenant General S.K. Sahni and Major General B.P.S. Mander, which formed the basis of the decision in WP (C) Nos.11839/2006 decided on 11.09.2008 and 4393/2007 decided on 03.09.2007, which judgments have been followed in the present case. Needless to say that no part of the Court of Inquiry can be used for proceedings under Rule 22 of the said Rules. The application stands disposed off."

9. Consequent to this order of the Hon'ble High Court of Delhi, the respondents re-convened the Court of Inquiry on 17.05.2010 (Annexure A-5). Ld. Counsel for the applicant conceded that though summons were issued by the respondents for complying with Army Rule 180 in terms of the COI based on the Hon'ble High Court's order dated 29/30.7.2008, the applicant was unable to attend the proceedings because in April 2010, the applicant had filed an OA No.57/2010 in the AFT Lucknow Bench, correspondence of which is

enclosed as letter dated 23.07.2010 (Annexure-A-7), letter dated 18.9.2010 regarding summoning witness (Annexure-A-8) and receipt of summons dated 18.9.2010 (Annexure-A-9). The reasons for not being able to attend the COI proceedings as a witness and for cross examination was because the case was pending in the AFT and it could have jeopardised his defence.

10. Ld. Counsel for the applicant further submitted that respondents re-invoked Army Act Section 123 once again on 20.5.2011 (impugned order). Consequently, the applicant again approached the AFT Lucknow, Bench on 18.6.2011 by filing the OA No.172/2011. This OA was pertaining to quashing of re-invoking of the provisions of Section 123 of the Army Act. The said OA was disposed off on 05.07.2011 by the AFT Lucknow Bench, dismissing the case of the applicant on merits.

11. The applicant reported to the CO, HQ 9 Artillery Brigade on 29.7.2011 when he was handed over the tentative chargesheet containing 10 charges. The applicant submitted a petition to the CO for copy of the proceedings of all evidence so that he could prepare his defence on the same day (Annexure A-13). However, the CO proceeded to reduce the evidence in writing as per Army Rule 23.

12. Ld. Counsel for the applicant also cited **DRJ 1992 (Page 125)** titled **Lance Dafedar Laxman Vs UOI & Ors.**, in support of his contentions.

13. Having heard the Ld. Counsel for the applicant at length, we have thoroughly examined the documents filed by applicant himself. We also directed the respondents to submit papers with respect to present status of the case. During course of arguments, Ld. Counsel for the applicant conceded that the copies of the Court of Inquiry have been received. We have also perused the record provided by the respondents.

14. We observe that though on 29.7.2011, Col V.K. Pant was examined by the CO, the applicant declined to examine him on the plea that Col V.K. Pant had made no statement. We further note that the CO i.e. Brig M.M. Masur, Cdr 9 Artillery Brigade in the presence of two independent witnesses under Army Rule 22 (1) and (3) decided to proceed with the recording of evidence in writing under the provisions of Army Rule 23. It is conceded that the COI proceedings were not provided to the applicant at this stage. However, based on the demand of the applicant, the same was provided to him on 19.8.2011.

15. We have seen from the submissions made by the Ld. Counsel for the applicant as also from the annexures to the OA that the respondents decided to reconvene the COI for compliance of Army

Rule 180 as per the directions given by the Hon'ble High Court of Delhi vide its orders dated 30.7.2008 and 12.9.2008. Though, the applicant did not appear before this reconvened COI for the reasons that his case was subjudice before the AFT Lucknow Bench, but there was no stay order on these proceedings. The applicant should have availed the opportunity provided to him. Now he cannot demand 'de novo' proceedings. The COI is deemed to have complied with Army Rule 180. Therefore, the CO is well within his rights to remand the case for the evidence to be reduced to writing after having read out the tentative charge-sheet to the applicant, proceed with the process defined in Army Rule 23.

16. Since the process of recording of summary of evidence under Army Rule 23 did not commence till such time the necessary papers in terms of the proceedings of the COI were handed over to the applicant, we find that there has been no infringement to the rights of the applicant. As such, the defence of the applicant has not been compromised and the process of investigation cannot be termed as vitiated. It is during this recording of summary of evidence for which the applicant has now been provided with all the material, he will be entitled to cross examine the witnesses as also to call the witnesses in his defence.

17. It is only after the conclusion of this process under Army Rule 23, the CO will take a decision in terms of Army Rule 24. Therefore,

the applicant will get full opportunity to cross examine the witnesses as also to call the witnesses in his defence and as such his defence will not be jeopardised. Thus, at this stage no ground exists to interfere.

18. As regards the prayer for quashing and setting aside the attachment order dated 20.5.2011 (Impugned order), re-invoking Army Act Section 123, we are of the opinion that since for the same relief, the case has already been dismissed on merits by Hon'ble AFT Lucknow Bench on 05.07.2011 in case No.172/2011 filed by the applicant himself. Copy of the order has been placed by the applicant. Hence no cause survives.

19. In view of the foregoing, we find no ground to entertain this petition. The case is not admitted and is dismissed in limini. No orders as to costs.

(M.L. NAIDU)
(Administrative Member)

(MANAK MOHTA)
(Judicial Member)

Announced in the open Court
on this 15th day of September, 2011.