

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

08.

O.A.No. 547 of 2010

Brigadier K.P. Chand

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. K. Ramesh, Advocate.

For respondents: Sh. R. Balasubramanian, Advocate with Capt. Alifa Akbar.

CORAM:

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

HON'BLE LT. GEN. S.S. DHILLON, MEMBER.

ORDER
01.02.2011

1. Petitioner by this petition has prayed that the order dated 18th May 2000 passed by HQ Bengal Area may be quashed being contrary to the principles of natural justice and the punishment of censure awarded by the order dated 12th July 2010 may be quashed.

2. The petitioner is in a rank of Brigadier and the allegations against the petitioner was that he tried to molest the wife of his colleague and, therefore, a complaint was filed and a Court of Enquiry was held against him and after that a show cause notice was issued to him on 13th may 2010 by the HQ Easter Command on the basis of the Court of Enquiry placed before the GOC-In Chief-Easter Command who after due deliberation and consideration found petitioner guilty for

improperly maintaining a direct contact with the wife of a Colonel (name is deliberately not mentioned) for a prolonged period. The GOC after due consideration has directed to initiate the administrative action against him for misconduct and called upon him to file a show cause notice. Petitioner filed a reply to show cause notice and after considering the show cause notice a final order of punishment was passed by the order dated 12th July 2010 by the GOC of a severe displeasure recordable. Against this order the present petition has been filed by the petitioner.

3. The reply has been filed by the respondents and the respondents have contested the matter that they have complied with all principles of natural justice and that the recording of displeasure is based on the material.

4. We have heard learned counsel for the parties and perused the record.

5. Learned counsel for the petitioner submitted that he has not been given a copy of the findings given by the Court of Enquiry and, therefore, a serious prejudice has been caused to him. Learned counsel has invited out attention to the decisions of the Apex Court in **The State of Punjab v. Bhagat Ram AIR 1974 SC p0age 2335, Union of India & Ors. V. Mohd. Ramzan Khan 1991 (1) SLR page 159** and in the case of **Managing Director ECIL v. B. Karunakar 1993 (5) SLR page 532.**

6. Learned counsel for the respondents has invited out attention to the decision of the Apex Court in 1997 SCC page 1 and submitted that the question where to supply finding of a Court of Enquiry has already been settled by the Apex Court and

their Lordships has held that supply of copy is not necessary because proceedings of the Court of Enquiry are in the nature of preliminary enquiry. Learned counsel has further submitted that there is no prejudice caused to the petitioner and relied upon the decision of the Apex Court in **Haryana Financial Corporation & Anr. V. Kailash Chandra Ahuja (2008) 9 SCC page 31** wherein their Lordships after considering the earlier decision of **B. Karunakar** (supra) has held that a charged employee must show prejudice when the copy of the report of Court of Enquiry is not given to him.

7. We have considered all the four decisions submitted by learned counsel for the petitioner. Suffice it to say that in view of the decision given by the Supreme Court in **Major General Inder Jit Kumar v. Union of India & Ors. (1997) 9 SCC page** clinches the issue that the findings of the Court of Enquiry is not required to be given. Their Lordships has taken a view that it is in the nature of preliminary enquiry and, therefore, the supply of the same will not be of any substance. It is true that when Court of Enquiry is held under the Army Rule 177, the incumbent get a full opportunity under Rule 180 to cross-examine the witnesses and the copies of the statement are also supplied to him. Therefore, there is a sufficient compliance of principles of natural justice. The very purpose of conducting the Court of Enquiry is to appraise the Disciplinary authority i.e. GOC or any other rank connected therewith that whether prima facie delinquency has been committed by the incumbent or not. Therefore, that is the basis on which the GOC has issued a show cause notice it is who has to make up his mind whether on the basis of the evidence available on record a prima facie case is made out against the delinquent or not. On the basis of finding recorded by the Court of Enquiry, he can give a show cause notice and

thereafter take a decision in the matter on the receipt of his reply to show cause notice as to whether what punishment is to be imposed or not. Administrative action he can give show cause notice and levy the punishment. But in case of major punishment the procedure is to be followed by holding a regular court martial in case of Army. Therefore, in the present case, when delinquent has been granted opportunity to appear before the Court of Enquiry and to cross-examine the witnesses thereafter a show cause notice was given and after reply filed by him disciplinary authority has imposed the punishment. Therefore the findings of the Court of Enquiry in this context, is of no relevance. It is the application of mind by the disciplinary authority who has to make up his mind whether delinquency has been committed or not. As compared with the Air Force and the Navy, both these branches of Defence Forces have their peculiar rules and regulations depending on the nature of the services. Therefore, the reference of the provisions of the Navy Rules or of the Air Force Rules cannot be of any assistance for the interpretation of the provisions of Rules 177, 180 and 184 of the Army Rules. All these rules are peculiar, looking to their nature of services. Therefore, the reference of the Navy Rules or the Air Force rules cannot be taken into consideration for interpreting the provisions of the Army Rules.

8. In view of the matter, we are of the opinion that the contention of the learned counsel for the petitioner cannot be countenanced and we are satisfied that the punishment is in fully consonance with the delinquency committed by him.

9. Consequently, the petition is dismissed with no order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
February 01, 2011