

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

**O.A NO. 112 of 2011**

**IN THE MATTER OF:**

**Hav. Avinash U. Pardeshi** .....**APPLICANT**  
Through : Mr. Tanmay Mehta, 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**

**JUDGMENT**

**Date: 07.05.2012**

1. This OA was filed in the Armed Forces Tribunal on 15.03.2011 and was registered as OA No.112/2011.
2. Vide this OA, the applicant has sought quashing of the order of court martial alongwith the show cause notice (Annexure P-6) and also challenged the order of dismissal dated 08.09.2010 (Annexure P-1) passed thereon. He has also sought directions to the respondents to reinstate the applicant in service, with all consequential benefits.
3. Brief facts of the case are that the applicant was enrolled in the Indian Army on 01.01.1995. Applicant was a musician by trade. He was charged for abetment of offence committed by L/NK M. Suresh Babu in respect of sale of five passports prepared for visit to Germany

to a civilian Mr. Nagarajan. He was also charged for visiting Embassy of Germany without proper authority and clearance, in contravention of existing orders.

4. Consequently, a court of inquiry was held, the applicant was served with a show cause notice on 23.06.2010 by the GOC, HQ Delhi Area under Section 20(3) of Army Act read with Rule 17 of the Army Rules. The notice was signed by Col A(D&V) for GOC. The applicant responded to the show cause notice on 26.08.2010 and denied all the charges as also the evidence recorded in the COI and subsequently in the summary of evidence. In his reply, the applicant has stated that the applicant has not been supplied with the findings of the COI nor the recommendations of the summary of evidence and therefore, was unable to reply completely to the charges made against him. He further contended that there is no evidence to prove the charges against him.

5. The service of the applicant was terminated by the orders of GOC HQ Delhi Area on 08.09.2010 who considered both the show cause notice as also the reply submitted by the applicant to the show cause notice dated 26.08.2010.

6. Learned counsel for the applicant submitted that the applicant had put in almost 16 years of unblemished service.

7. Learned counsel for the applicant argued that the applicant was provided only statements and documents but not supplied with the

findings and the recommendations of the COI. Therefore, his reply was based on the documents supplied to the applicant and he has averred in his reply that it was “*reply to the limited extent with respect to the documents supplied*”. The documents related to COI and the summary of evidence do not contain any incriminating evidence to show that the applicant had any knowledge of the alleged transactions by L/NK M. Suresh Babu. Thus, there was no evidence to infer his part for committing, abetting or conspiring with L/NK M. Suresh Babu. Moreover, the applicant had never gone to the Embassy complex and was not aware as to the purpose L/NK Suresh Babu was visiting the German Embassy.

8. Learned counsel for the applicant further argued that as far as the applicant recollects, the applicant had been verbally instructed to accompany L/NK Suresh Babu to some place and he can certainly say that he was not informed about the place he is going to visit and the purpose of visit. He has now come to know about the implication of L/NK Suresh Babu in some criminal case which is being investigated by the CBI. Even after the interrogation of the applicant by the CBI, nothing came out against him and accordingly he has not been chargesheeted/challaned in the Court.

9. Learned counsel for the applicant further argued that the COI and the summary of evidence were conducted in English language which he does not understand. Therefore, he is not aware as to what

statements were recorded by the COI or in the summary of evidence. Learned counsel further argued that without admitting anything, the applicant submits that his visit alongwith L/NK Suresh Babu at German Embassy does not demonstrate about his knowledge about the acts of L/NK Suresh Babu or collusion of any sort with him. Further, the applicant has never met or discussed this issue with any other person involved in the alleged act.

10. Learned counsel for the applicant further stated that the applicant had completed 15 years and 8 months of service. Therefore, the punishment of dismissal awarded to the applicant in the instant case is too harsh especially, in view of the fact that there was no evidence whatsoever even remotely connected to the applicant in the summary of evidence. The applicant was a very senior Havildar and was on the verge of earning his pension. His character was also exemplary.

11. Learned counsel for the applicant further submits that as per regulation 448(c), the action should have been initiated by the Commanding Officer for his discharge under Army Rule 13 and should have been approved by the Brigade Commander, which was not done in this case. The show cause notice was signed by Col A(D&V) for GOC Delhi Area. Learned counsel for the applicant also states that there has been violation of Army Rule 184, therefore, the applicant was prejudiced in preparation of his defence.

12. Learned counsel for the applicant further argued that Army Rule 180 was not invoked in its letter and spirit and therefore, the COI was vitiated and thus no action should have been initiated based on only the COI. Especially so, since nothing came out in the summary of evidence. He, further argued that the show cause notice was based on the COI which itself is liable to be vitiated and therefore, the entire action is the colourable exercise of power by the administrative authorities.

13. In support of his contentions, learned counsel for the applicant cited **AIR 1994 SCC 1074 Managing Director, ECIL, Hyderabad etc. etc. Vs B. Karunakar, etc. etc.**, wherein the Hon'ble Apex Court has observed that "*Delinquent is entitled to copy thereof before disciplinary authority takes decision regarding guilt or innocence. Refusal to furnish a copy amounts to denial of reasonable opportunity for defence.*" They have further opined that "*in order to ensure natural justice reasonable opportunity should be given to the delinquent. Refusal to furnish copy of Inquiry Officer's report to delinquent amounts to denial of reasonable opportunity.*"

14. Learned counsel for the applicant also cited **2008 (154) DLT 297 Manjeet Singh Vs Union of India**, wherein the Hon'ble High Court of Delhi has held that "*A perusal of the record of the Court of Inquiry goes to show that in the present case as many as 40 witnesses had been examined during the Court of Inquiry held against Lance Naik Jagat*

*Singh. It is not clear as to how much time had been taken to record the statements of the aforesaid witnesses. None of the witnesses have made any categorical allegation against the petitioner.” Further they have held that “Rule 180 of the Army Rule mandates that whenever it is proposed to take any action against the incumbent whose reputation and character is found to be in question on account of the evidence recorded during the court of inquiry, it becomes necessary to follow the procedure as prescribed by the Rule (Supra) in toto. However, what has been done by the respondents was only to permit the petitioner to cross examine the witnesses after the conclusion of the enquiry that also without supplying the copies of the evidence so recorded which was a misnomer.”*

15. Learned counsel for the respondents submitted that the applicant was detailed for a violin course to be conducted at Delhi in August 2007 and was attached to Raj RIF Regimental Centre. The detailment for the violin course came by name and he was informed of the detailment initially by L/NK M. Suresh Babu in July 2007. The applicant knew L/NK M. Suresh Babu earlier as they had served together in Artillery Centre Band for 4-5 years. Since the training for violin course had not commenced, Sub Maj HB Thapa of Army Band instructed the applicant to practice alongwith the Army Band. In early September 2007, L/NK Suresh Babu of Army Bank informed Sub Maj HB Thapa that he required some one to assist him with procurement of passports and visa for the Army Band’s visit to Chile and he

specifically asked for the applicant to assist him. The applicant assisted L/NK Suresh Babu in processing the documents for preparation of passports and visas. He visited the passport office at Patiala House twice alongwith L/NK Suresh Babu and also got involved in preparation of passports. After the passports were prepared, the applicant alongwith L/NK Suresh Babu visited the American Embassy twice to obtain the transit visa. When the band was to visit Germany, the applicant accompanied L/NK Suresh Babu to the passport office on three occasions and the German Embassy twice. During the processing of the passport applications, the applicant had noticed names of 52 persons when only 42 persons were to visit Germany. The applicant met a civilian Mr. Nagarajan who had given a lift in his car while they were visiting the German Embassy. The applicant in his own statement given during conduct of the COI stated that he was aware about the wrong doing of L/NK Suresh Babu and he was also aware that official passports were being handed over to Mr. Nagarajan by L/NK Suresh Babu but he did not reveal these details initially during the COI as he was worried about the well being of L/NK Suresh Babu's family.

16. Learned counsel for the respondents also argued that during the recording of summary of evidence, the applicant refuted all facts that he had stated during the COI. The COI found the applicant guilty of abetment of offence committed by L/NK Suresh Babu with respect to sale of five passports to a civilian, Mr. Nagarajan and twice visiting

Embassy of Germany without proper authority and clearance. Since the trial of the applicant by Court Martial was felt to be inexpedient and impracticable as he had retracted from his earlier admissions during the summary of evidence, it was decided by the GOC Delhi Area to take administrative action under Army Act Section 20(3) read with Army Rule 17. After considering the reply of the applicant to the show cause notice, a speaking order was passed whereby the services of the applicant were directed to be terminated w.e.f. 08.09.2010.

17. Learned counsel for the respondents further submitted that as per Army act, the documents that were supplied to the applicant are the proceedings of the COI less the recommendations and opinion. Thus, there is not any violation of Rule 184 of Army Rules.

18. Learned counsel for the respondents further contended that the show cause notice was issued on the orders of the GOC Delhi Area who was the competent authority. Though the show cause notice was signed by Col A(D&V) but it was signed on behalf of the GOC. On receipt of the reply to the show cause notice on 26.08.2010, again the GOC examined the facts placed before him and issued the order for termination of the services of the applicant on 08.09.2010. At para 3 of this order, he clearly stated that *“Considering the nature of evidence received at the summary of evidence, due to the retraction of statement by Hav Avinash U Pardeshi of 297 Fd Regt and other legal technicalities, trial of Hav. Avinash U Pardeshi was considered to be*



*inexpedient and impracticable. However, as his involvement in abatement of offence committed by L/NK M. Suresh Babu with respect to sale of five passports prepared for visit to Germany to a Civilian, Mr. Nagarajan was established at the Court of Inquiry, his further retention in service was not considered desirable. Accordingly, a Show Cause Notice dated 23 Jun 2010 was served to him for termination of his services under Army Act Section 20(3) read with Army Rule 17 on the basis of evidence available at the Court of Inquiry.” The GOC has further observed that “The NCO has however failed to refute the strong credible evidence of his involvement at the Court of Inquiry. His reply, therefore, is neither satisfactory nor inspires any confidence as to his innocence and is therefore rejected.”*

19. We have heard both the parties at length and having examined all the documents available on record alongwith the proceedings of the COI. We are of the opinion that the Army Rule 180 was applied in letter and spirit especially where the evidence in respect of the applicant emerged. Therefore, to say that the COI was vitiated is incorrect.

20. We have also examined the citations quoted by the learned counsel for the applicant. In case of **AIR 1994 SCC 1074 Managing Director, ECIL, Hyderabad etc. etc. Vs B. Karunakar, etc. etc.**, the Hon’ble Apex Court at page 1092 also has held as under:-

*“If after hearing the parties, The Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment the Courts/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short-cuts. Since it is the Court/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment.”*

In the present case the applicant has not able to establish the facts that how he has been prejudiced by non-supply of complete COI. On the contrary, evidence collected during COI and summary of evidence has been supplied and he was aware of the allegations levelled against him. Thus, mere non-supply of complete COI would not fatal the proceedings. The contentions raised in this regard are not sustainable.

21. We have also examined the judgment given by the Hon'ble Apex Court in **2010(1) SCC 325 Southern Railway Officers Association Vs Union of India & Ors.** In this case the Hon'ble Apex Court has held that if there is sufficient material to take action and enough reasons were recorded as to why the inquiry was not reasonably practicable, even then the administrative authority is permitted to take action. It has further been held that even acquittal by the criminal court is no ground to not to take departmental action.

22. In another judgment of the Hon'ble Apex Court in the matter of **2010 (1) SCC 504 M.D. State Bank of Hyderabad and Anr. Vs P. Kata Rao** their Lordships have held that "*Mere acquittal in criminal case may not annul departmental action.*"

23. In view of the foregoing, we are of the opinion that there is no discrepancy in the issuance of show cause notice under the Army Act Section 20(3) and Army Rule 17. The gravamen of the charges were listed. The COI was given to the applicant though it did not contain findings and the opinion of the COI. This is as per rules and regulations. Therefore, no prejudice has been caused to the applicant in preparation of his defence. In his reply dated 26.08.2010 to the show cause notice, the applicant has retracted from the statements made by him in the COI and has confirmed that he is in possession of the proceedings of the COI less the findings and opinion of the COI. Therefore, the applicant has qualified his reply to say that "*it may be*

*treated to the limited extent with respect to the documents supplied and I reserve my right to file detailed reply as and when the aforesaid documents were supplied”.*

24. We do not consider this as a legitimate ground to say that the reply was interim or that he was capable of giving a detailed reply only after findings and the opinion were provided to him. Especially so, since the gravamen of the charges were listed in detail in the show cause notice itself. As such, no prejudice to the applicant's defence has been caused.

25. The GOC HQ Delhi Area who was the competent authority considered the material placed before him in terms of the COI, summary of evidence, show cause notice dated 23.06.2010 and the reply thereto of the applicant dated 26.08.2010. Having considered all the documents and the circumstances of the case, a detailed speaking order was passed by the GOC HQ Delhi Area on 08.09.2010 in which all the aspects argued by the applicant in this OA were considered by him.

26. We have also considered the fact that as on the date of his dismissal, the applicant has put in almost 15 years and 8 months of service. In normal course, he would have been entitled to pension having completed 15 years of service. His past record was also exemplary. We have also taken note of the averment made by the respondents that the applicant was detailed by Sub Maj HPO Thapa,

OIC Army Band to assist L/NK M. Suresh Babu in preparation of passports and obtaining of transit visa for the Army Band's visit to Chile. For which he visited the US Embassy on two occasions. However, he was not detailed to assist L/NK Suresh Babu when the Band was scheduled to visit the Germany. He did so on his own accord. The charge against the applicant is of abetment of offence committed by L/NK M. Suresh Babu in respect of sale of five passports prepared for visit to Germany to a civilian Mr. Nagarajan and for visiting Embassy of Germany without proper authority and clearance, in contravention of existing orders. Considering the charges against the applicant and also taking into account his unblemished service for 15 years and 8 months, we feel that the punishment of dismissal is rather harsh. Especially so, since the applicant did not obtain any monetary consideration by abeting with L/NK M. Suresh Babu. We have also gone through the statement of L/NK Suresh Babu and other in this respect. Furthermore, the CBI having interrogated him has not filed any case against him as has been done in the case of L/NK M. Suresh Babu. Therefore, in the interest of justice, to the extent of dismissal order, interference is needed.

27. Therefore, we feel that it is in the interest of justice that his dismissal be treated as "discharge". Order accordingly. Consequential benefits to follow. This exercise may be completed within a period of 120 days from the date of this order.

28. The OA is partly allowed. No orders as to costs.

**(M.L. NAIDU)**  
**(Administrative Member)**  
**Announced in the open Court**  
**on this 7<sup>th</sup> day of May, 2012.**

**(MANAK MOHTA)**  
**(Judicial Member)**