

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

19.

O.A. No. 223 of 2011

Sub Ved Prakash

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. K.G. Sharma, Advocate.

For respondents: Mr. R. Balasubramanian, ASG with Mr J.S. Yadav for
R-1 to R-4
None for R-5

CORAM:

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

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

ORDER

12.03.2012

1. Petitioner vide this petition has prayed to quash the impugned attachment order dated 28.10.2009, as no disciplinary case is pending against him after this Hon'ble Tribunal quashed the Court of Inquiry vide judgment dated 09.03.2010 and on 04.06.2010 in O.A. No. 108/2010. He has also prayed that the period of attachment w.e.f. 07.11.2009 onwards and till the finalisation of the Court of Inquiry be treated as the period spent on duty and all consequential benefits be awarded in his favour. It is also prayed that the convening order relating to holding of Court of Inquiry against the petitioner be quashed and restrain the respondents from holding Court of Inquiry against him on the allegation of making direct correspondence with the Chief of Army Staff. He has also prayed that direction may be issued to the respondents to inquire into both the complaints dated 31.05.2008 and 10.06.2008 and the proper decision may be taken on that. He has also prayed that respondents

be directed to supply all the relevant documents to him for proving the allegations in the complaints before finalising his statement and consider the petitioner for further promotion and for award of Honorary Rank on the ensuing Independence Day.

2. Petitioner was enrolled in the Indian Army in Army Service Corps as Sepoy Clerk on 02.06.1982 and during the period 1982-2007, he rose upto the rank of Subedar on the basis of his excellent past performance. On 04.03.2006, he joined the Unit 383 Company ASC (Supply) Type A (Jamnagar) on permanent posting from 531 ASC Battalion (Jhansi) and started working under Lt. Col D.D. Manik, the then Officer Commanding (OC) being the Respondent no. 5 herein. During his posting as Head Clerk in 382 Company ASC and thereafter in different capacities, he came to know that certain procedural as well as financial irregularities were being committed which were detrimental and against the interest of the Army and same were brought to the notice of the local authorities. But instead of plugging the loopholes in the system and procedures, petitioner was advised to be flexible in implementation of rules and follow oral instructions given by the OC. Since the malpractices were of serious nature, some of them being in gross violation of well established procedures and rules of Army, petitioner did not agree to follow illegal instructions.

3. Petitioner preferred a complaint on 31.05.2008 under Para 317 of the Regulations of the Army mentioning financial and procedural irregularities in the functioning of the Unit and another complaint under Para 317 was sent on 10.06.2008 against the then OC, Lt Col D.D. Malik addressed to the Chief of

Army Staff through the Station Commander, Jamnagar with a request that the allegations need to be investigated by holding a fair and impartial inquiry. He was advised by Station Commander Brig. Rajeshwar Singh to withdraw both the complaints otherwise he will have to face the consequences.

4. The Court of Inquiry was initiated against him on these complaints on 21.06.2008 and Court of Inquiry found him guilty on 17.07.2008 and 28.10.2009 and attachment order for disciplinary action was issued. This was challenged by the petitioner by filing a petition before this Tribunal vide OA No. 108/2010 and this Tribunal after considering the allegations quashed the Court of Inquiry vide order dated 09.03.2010 and it was observed that;

"We, therefore, direct that the Court of Inquiry be set aside and a fresh Court of Inquiry be convened, wherein Army Rule 180 be applied against any person whose character or military reputation is affected. Based on such fresh Court of Inquiry, the authorities are at liberty to take whatever action they deem appropriate."

5. Thereafter a review application being M.A. No. 121 of 2010 was moved by Lt Col D.D. Manik being the Respondent no. 5. That was also considered by the same bench of this Tribunal and thereafter a detailed order was passed on 04.06.2010 and it was observed that;

"Considering the above circumstances, the Court of Inquiry does not inspire any confidence with regard to the application of Army Rule 180. While it is evident that Army Rule 180 has not been applied against the petitioner, the applying of such rule against Lt Col Manik (Respondent No. 5) is also selective. It is, therefore, for the authorities to decide the outcome and utility of this Court of Inquiry. However, we hold that this Court of Inquiry cannot form the basis to initiate disciplinary proceedings against the petitioner. Should any disciplinary proceedings be contemplated against the

petitioner, a fresh Court of Inquiry should be constituted for such purpose, wherein the petitioner should be entitled to protection of Army Rule 180 as mandated by law. The petition is accordingly disposed of."

6. After the disposal of this review application, fresh Court of Inquiry was initiated against the petitioner on 28.09.2010 but because of certain officers were posted out then again a fresh Court of Inquiry was convened on 26.07.2011 which had commenced its proceedings on 08.08.2011. As submitted by learned counsel for the respondents on instructions, that now findings of Court of Inquiry have been concluded and directions have been issued for initiating disciplinary proceedings against the petitioner.

7. We do not know about the findings of the Court of Inquiry nor we know fate of it. The proceedings of Court of Inquiry are in a sealed cover and same has also not been supplied to the petitioner. Therefore, in these circumstances, we have to consider whether the order of attachment dated 28.10.2009 was justified or not. It is true that once Court of Inquiry has been quashed by this Tribunal then respondents in all fairness should have immediately revoked the order of attachment dated 28.10.2009 and it was open for them to pass a fresh order when the fresh Court of Inquiry was initiated.

8. The explanation of the learned counsel for the respondents is that review application was pending and fresh Court of Inquiry was initiated wherein petitioner was an essential witness, therefore, it was thought appropriate to retain the petitioner at Jamnagar to facilitate the quicker

disposal of the matter. Be that as it may, once the Court of Inquiry was quashed then there was no justification to retain the petitioner for such a long time. But the fact remains that he was retained. Now the fresh Court of Inquiry has already been initiated and as per instructions of learned counsel for the respondents same has been concluded and directions for initiating disciplinary action against the petitioner have been issued. The findings of Court of Inquiry have not been placed before us, therefore, no purpose will be served by quashing these findings of Court of Inquiry at this stage. However, we direct that all relevant papers pertaining to the disciplinary action and the Court of Inquiry and statements of all witnesses should be supplied to the petitioner forthwith and the action should be completed as far as possible within a period of two months from passing of this order as petitioner is scheduled to ~~be retired~~ ^{retire} on 30.06.2012. So far as the benefit of recommendation for awarding Honorary Rank is concerned that will be subject to outcome of the disciplinary proceedings, if any. Petition is accordingly disposed of.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
March 12, 2012
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