

COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA 94/2021 WITH MA 111/2021 (OA 63/2018 RB Jaipur)

Lt Col Sanjiv Basu Mallick

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Indra Sen Singh, Advocate
 Shri Aditya Bari, Advocate

For Respondents : Shri Prabodh Kumar, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT. GEN.C.P.MOHANTY, MEMBER (A)

ORDER

MA 111/2021

Keeping in view the averments made in the application and in the light of the decision in **Union of India and others** Vs. **Tarsem Singh** (2009(1) AISLJ 371), the delay in filing the OA is condoned. MA stands disposed of.

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2. The instant case has been filed by the applicant, a serving Colonel in Indian Army, under Section 14 of the Armed Forces Tribunal Act, 2007, being aggrieved by non-redressal of several issues pertaining to him. However, at the time of final hearing, Ld. Counsel for the applicant

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submitted that the applicant is confining his prayer only with regards to prayer 8.6 which pertains to setting aside the adverse Confidential Report for the period 01.12.2017 to 29.01.2018, which is as under:

“8.6. Directions to the respondents to set-aside the Adverse Confidential Report illegally initiated upon the applicant for the period from 01 Dec 2017 to 29 Jun 2018 on 02 Jul 2018, being technically incorrect since that has been initiated on contrary to the provisions of para 27 & 30 of AO 02/2016/Ms. The IO, Col Rohit Dev, having been involved in a Court of Inquiry wherein Army Rule 180 has been invoked, due to a complaint filed by the rate applicant, should have ideally been debarred from initiating any Cr in respect of the applicant rate, a per the provisions of AO 02/2016/Ms, para 27-30. The Statement of case for debarment of IO, taken up by the rate applicant was also not referred to MS at IHQ of MoD (Army) under the provisions of para 29 of the AO 02/2016/MS by the RO and SRO respectively, which is an irregular affair in contradiction to the existing rules on the subject. The MS policy does not cater for the scope for reporting a CR in respect o the complainant rate if the reporting officer is absolved, simply because, once a complaint has been filed and C of I ordered against the reporting officer or IO, such reporting officer will automatically become vindictive and vengeful against the said rate. Moreover, in this case, the IO has been wrongfully absolved by a biased Court of Inquiry, as evident from the large number of procedural defects in the Court of Inquiry. Hence, ACR of the applicant for the

above period is prayed to be set aside in toto and it should be treated as Non Initiation Report (NIR)."

Facts of the case

3. It is relevant to refer to facts of the case, before proceeding to adjudicate the issue under consideration. The applicant was commissioned in the Indian Army on 12.06.1993 and has been promoted to the rank of Lieutenant Colonel. The applicant was posted to HQ 12 RAPID on 08.10.2017 vide MS Branch (MSIE), IHQ of MoD (Army) Sig No. 380941/MS-1E dated 24.08.2017, and then later transferred to HQ 163 Infantry Brigade on 02.09.2018. Thereafter, several issues were raised by the applicant with the authorities. Aggrieved by the non-redressal of aforesaid issues, the applicant has approached this Tribunal.

Submissions on behalf of the Applicant

4. Limiting his argument to prayer 8.6, Ld. Counsel for the applicant submits that his phone was snatched and he was physically assaulted by his CO Col Rohit Dev, coupled with a letter written by Col Dev on 03.01.2018 expressing the intention to initiate an adverse confidential report upon him, wherein the applicant was blamed of

suspicious and unruly conduct with disregard to the superior authority on the grounds that the applicant had walked away with his own personal laptop and had refused to handover the same to the junior officers, simply because, neither Col Rohit Dev, nor the junior officers were authorised to snatch or seize the personal laptop of another officer in their individual or official capacity, since it happened to be a personal and private property of another individual person.

5. Ld. Counsel submits that aggrieved by the physical assault by senior officer, he wrote a detailed DO letter on 04.01.2018 to the Maj Gen OP Gulia, GOC 12 RAPID regarding the humiliation & harassment repeatedly being faced by the applicant in the hands of Col Rohit Dev, Dy Cdr, 140 Armd Bde, seeking personal interview of the GOC for redressal of his grievances.

6. Arguing on the reply to the warning letter for initiation of adverse confidential report, Ld. Counsel submits that the applicant on 14.01.2018 responded to the letter of Col Rohit Dev and denied all the allegations levelled by Col Rohit Dev, wherein each of the allegations were

refuted with reasons and logic by the applicant in his said response to Warning for adverse CR. At the end of the applicant's reply, the applicant implored upon him to restore an amicable and tension free relationship and environment for a harmonious and peaceful functioning of the organisation.

7. Ld. Counsel further submits that primarily on the basis of the DO letter dated 04.01.2018 addressed to Maj Gen OP Gulia, GOC 12 RAPID, a Court of Inquiry was ordered by GOC 12 RAPID vide HQ 12 RAPID (A) Convening order dated 12.02.2018, to investigate the allegations and counter allegations made by Col Rohit Dev and the applicant through various letters/communication made by the two officers to various authorities as also the aspect of the applicant being AWL, as reported by HQ 140 Armd Bde vide their letter no. 301/14/A dated 02.01.2018, with instructions that the provisions of Army Rule 180 shall be complied with.

8. Drawing our attention to Army Orders, Ld. Counsel submits that as per the mandated provisions of Para 27 to Para 30 of Army Order 02/2016/MS, Col Rohit

Dev, who is supposed to be the IO of the applicant, since was involved in a disciplinary case as a consequence to a complaint by the applicant (Ratee), he should ideally have been debarred from initiation of any CR in respect of the ratee applicant.

Submissions on behalf of Respondents

9. Per Contra, the respondents have submitted a detailed counter affidavit to justify their action against the applicant, wherein it is the argument of the Ld. Counsel on behalf of the Respondents that the fear expressed by the applicant with reference to the reporting to Col Rohit Dev and his contention that Col Rohit Dev should be debarred from initiating his CR are unfounded.

10. Ld. Counsel argues that the applicant has drawn inference to Para 30 of Army Order 02/2016 which states that condition for 'Debarment from Endorsement due to IO/RO being involved in a disciplinary cases as a consequence to a complaint by the ratee', wherein the paragraph in entirety states that when any reporting officer is involved in a disciplinary case in terms of Para 29, as a consequence to a complaint by a ratee against him, the

reporting officer will be barred from initiating/endorsing any CR on the ratee, and in such cases, sanction of MS is required to be taken to debar the reporting officer from initiating/endorsement of the CR, and the case of debarment may be taken up by the ratee or any reporting officer through SRO.

11. Arguing on the validity of CR, Ld. Counsel submits that an Initiating Officer/Reporting Officer can be barred from endorsement when involved in a disciplinary case as a consequence of complaint by the ratee only if the sanction of the Military Secretary's Branch has been obtained and not otherwise, therefore, the initiation of CR by Col Rohit Dev is in conformity with rules and there is no infirmity.

Consideration

12. We have heard the arguments of both the sides, while giving thoughtful consideration to the same, and have perused the documents placed on record by both the parties including policy letters. The limited issue under consideration before us is whether the initiation of CR by

the IO pending disciplinary inquiry against him on a complaint by the ratee is valid or not ?

13. Keeping in view the intricacies involved in the case, which are subject matter of disciplinary proceedings, we proceed to examine the issue cautiously, and on perusal of Army Order 02/2016, we find that the Para 30 of the aforesaid AO caters to the present situation and is reproduced as under:

14. An exhaustive analysis of Para 30 would reveal certain conditions to be fulfilled for the application of this paragraph, detailed as under:

- a) Reporting officer is involved in a disciplinary case.
- b) Disciplinary Case is initiated as a consequence of complaint by a ratee.
- c) Sanction of Military Secretary is required to be taken to debar the reporting officer from initiating/endorsement of the CR.
- d) Case for debarment may be taken up by the ratee or any reporting officer through SRO.

15. On a perusal of the aforesaid conditions, we find that (a) and (b) are conditions which are adequately complied with in the instant case. As regards the condition (c) , we find that the sanction of the Military Secretary was not obtained, for which responsibility has been casted upon the ratee or any reporting officer as per condition (d).

16. At this point, it is relevant to refer to the letter no. ACR/SBM/2018/005 dated 19.02.2018 duly addressed to the GOC, 12 RAPID, who is SRO of the applicant. The applicant has clearly referred that the IO being involved in disciplinary case and therefore should be debarred from initiating the ACR of the applicant. We find that the applicant has once again raised this grievance vide another letter no. ACR/SBM/2018/005 addressed to SRO dated 16.05.2018. This letter is followed by another letter no. ACR/SBM/2018/010 dated 05.06.2018 again addressed to SRO. We find that after this series of letters, the applicant wrote another letter no. Legal/2018/SBM/044 dated 11.06.2018, this time to RO and SRO both, raising the same issue again. There is no response to the his aforesaid letters by the reporting officers as none is placed on record.

17. On the other hand, we find that repeated reminders are being served on the applicant from 31.05.2018 regarding his CR being due, and the documents to be supplied to the competent authority for initiation of CRs. However, the earliest reply to the series of letters addressed by the applicant could be found in a HQ 12 Corps (D&V) letter no. 1961/12ID/DV(PC) dated 21.06.2018 addressed to HQ 12 Corps by Col A(D&V) for GOC, which is followed by another letter no. 2000/140 AB/MS dated 22.06.2018 of HQ 12 Corps (MS) categorically referring to the letters addressed by the applicant, which is reproduced as under:

HQ 12 Corps
PIN - 908512
c/o 56 APO

22 Jun 18

2000/140 AB/MS

HQ 12 RAPID (A)

DEBARMENT FROM INITIATION / REVIEW OF ACR

1. Ref the fwg:-

- (a) Letter No ACR/SBM/2018/005 dt 19 Feb 18 written by Lt Col SB Mallick addsd to GOC 12 RAPID.
- (b) HQ 12 RAPID (A) letter No 3368/5/DT/A1 dt 01 Mar 18.
- (c) Letter No ACR/SBM/2018/005 dt 16 May 18 written by Lt Col SB Mallick addsd to GOC 12 RAPID
- (d) HQ 12 RAPID (A) letter No 3343/2/DT/A1 (PC) dt 11 Jun 18.
- (e) HQ 12 RAPID (A) sig No 3343/2/DT/A1 (PC) dt 21 Jun 18.

2. Ref Para 27 of AO 02/2016/MS, clearly defines the meaning of disciplinary case. In the instant case a C of I was order against the

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IO of the off (Col Rohit Dev), However, the offr has been absolved of all the allegations leveled by the rate (Lt Col SB Mallick) vide HQ 12 Corps A (D&V) letter No 1961/12ID/DV(PC) dt 21 Jun 18 (copy att).

3. Moreover, Para 29 of AO 02/2016/MS states that case for debarring the reporting offr from initiating / endorsement of CRs is to be taken up by higher reporting offr with prior approval of the MS, which in the present case has not been taken up. Hence, the prerogative of debarment from initiation of AGR solely rests with RO/SRO.

4. For info and necessary action pl.

Sd/-
(J
Agarkar)
Col
Col MS
For GOC

Encls: As above.

Copy to:-

HQ 140 Armd Bde (A)
71 GL Sec Type 'C'

For info and necessary action pl.

18. On a perusal of the Army Order and the letters placed on record by both, the applicant and the respondents, we find that the Para 30 clearly specifies that the case for debarment may be taken up by the ratee or any reporting officer through SRO, and in the instant case, the applicant has initiated his case for debarment through series of letters addressed to the SRO from the date as early as 19.02.2018, and if the case for debarment of IO to initiate CR was not undertaken by the concerned SRO, it is absolutely not the fault of the applicant, and that the

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applicant cannot be bound to bear the burden of an adverse CR, when the SRO was not vigilante enough, and he has neither taken up a case for the same with the competent authority i.e. MS Branch nor explained the reasons of rejection of appeal to the ratee.

19. We are of the opinion that the word used in Para 30 is "involved in a disciplinary case" thereby, clearly implying that the emphasis of the aforesaid paragraph is not on the question whether any disciplinary case is pending/concluded against the IO on a complaint by ratee or not, therefore, making it clear that no matter the IO was absolved of the charges in subsequent CoI, any initiation of CR from the date the CoI was directed is not permissible and that the initiation of CR by the IO is still in contravention of the Para 30 of the Army Order 02/2016.

20. Furthermore, it is important to observe that even if the IO has been absolved of the charges levelled by the applicant in CoI, doesn't mean that once the IO has been absolved of the charges, the bias in his mind towards the applicant will wither away, and that the same is visible on perusal of the CR of the applicant for the concerned period.

21. It is pertinent to note that it was the legal as well as moral responsibility of the concerned SRO to take up the case with the MS Branch, and the applicant cannot be made to suffer the consequences, if he has vigilantly taken up the case with his SRO, vide a series of letters, which has been copied to the MS Branch as well.

22. We find it relevant to observe that only on 20.06.2018, when the CoI proceedings were perused by the GOC 12 RAPID, and in agreement to the findings of the CoI, the recommendations for Administrative action was initiated against the applicant, after which, the CoI received formal confirmation from the GOC 12 Corps on 20.07.2018, which by itself signifies that until the CoI was confirmed by the Competent Authority, the CoI cannot be considered to have attained finality, since, GOC has the power and authority to order a second CoI if he finds any lapse of procedure. Therefore, by any stretch of imagination, the arguments by the Respondents that the IO was absolved of all the charges by CoI, and can initiate the CR of the applicant, does not hold ground at all, as the CR was initiated by the IO prior to the date of confirmation of CoI by SRO.

23. In view of the above analysis, we are of the considered opinion that the impugned CR under question shall be expunged from the records of the applicant, being in contravention of Para 30 of the Army Order 02/2016.

24. Consequently, this OA is allowed, only with respect to expunction of CR without any other consideration or adjudication.

25. Pending miscellaneous application(s), if any, stands disposed of.

26. No order as to costs.

Pronounced in the open Court on 16 day of October, 2023.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(LT GEN C.P. MOHANTY)
MEMBER (A)

/ps/