

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

5.

OA 2929/2023

Col Harish Chandra Joshi

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant

: Shri Rajiv Manglik, Advocate for  
Mr. Ankit Rana (DM Jurisconsultants),  
Advocate

For Respondents

: Mr. V. Pattabhi Ram, Advocate

CORAM :

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

ORDER  
29.09.2023

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 applicant has filed this O.A and the reliefs claimed read as under:

- (a) To declare the action of the respondents as unjust, arbitrary and illegal and
- (b) To direct the respondents No 1-4 to invoke Section 123 of the Army Act, 1950 against Lt Col DS Patil and initiate due disciplinary proceedings against him: and
- (c) To award exemplary costs upon the Respondents in the facts and circumstances of the record; and
- (d) To pass such further order or orders, direction/directions as this Hon'ble Tribunal may deem fit and proper in accordance with law.

2. The impugned order filed is an order whereby the services of one Lt Col DS Patil have been terminated with effect from 19.05.2023. The applicant, in principle, wants this Tribunal to direct the Army authorities

to invoke the jurisdiction under Section 123 of the Army Act and initiate disciplinary proceedings against Lt Col DS Patil for the alleged acts of commission and omission as complained by the applicant. It is the grievance of the applicant that on filing a complaint by him against Lt Col DS Patil, a Court of Inquiry (CoI) was conducted to investigate the allegations against Lt Col DS Patil for committing financial fraud, cheating and criminal breach of trust against the applicant and causing financial loss to him to the tune of Rs.51,00,000/-. In spite of such finding of financial fraud and cheating, no action has been taken to prosecute Lt Col DS Patil by conducting a Court Martial.

3. Facts in nutshell indicate that since 2018 Lt Col DS Patil is said to have started four projects and obtained ownership of land in various areas as are indicated in Para 4.4 of the O.A. It is said that in June 2018 the said Lt Col DS Patil approached the applicant and offered him to invest in a piece of land measuring 6000 sq. ft. in Majholi Island (Assam) costing Rs.3,00,000/-. The applicant was assured by Lt Col DS Patil that they being course mates and best friends, a reasonable rate can be offered and if the deal goes by, huge profit can be earned. Similar instances of investments into projects of Lt Col DS Patil are said to have been undertaken by the applicant and in the process, it is said that the applicant had entered into 14 transactions amounting to Rs.35,00,000/-. On the allegation that Lt Col DS Patil had committed fraud, cheating and breach of trust, the applicant filed a complaint. The complaint was investigated upon by conducting a CoI, wherein it was found that though the acts of omission and commission alleged against Lt Col DS Patil were

based on private transactions between the applicant and Lt Col DS Patil and they amounted to criminal offences and the departmental authorities did not take any action in the matter. Now the applicant wants us to issue a direction to take disciplinary proceedings against Lt Col DS Patil for the acts of commission and omission on his part with regard to the transactions with the applicant.

4. The respondents have raised a preliminary objection and submit that this Tribunal has jurisdiction to deal with matters which come within the purview of "service matters" as are detailed in Section 3(o) of the Armed Forces Tribunal Act, 2007 and as the transactions which resulted in grievance to the applicant amounts to criminal breach of trust and cheating which are criminal offences under the Indian Penal Code that also arising out of the personal transaction between the parties unconnected with any military duty or official transaction, it is not a service matter and this Tribunal has no jurisdiction in the matter. Even though Shri Rajiv Manglik, learned counsel for the applicant vehemently argued that the respondents having conducted a CoI were duty bound to conduct a Court Martial against Lt Col DS Patil and punish him.

5. We are of the considered view that for the said purpose, no direction can be issued by this Tribunal. Under Section 14 of the Armed Forces Tribunal Act, 2007, this Tribunal has jurisdiction to adjudicate upon service disputes as are defined under Section 3(o) and the transactions between the applicant and Lt Col DS Patil being private transactions arising out of totally private agreement between them, unconnected with the military duties or official duties of either of them,

in our considered view, it is not a service matter. The grievance of the applicant may give rise to cause for initiating criminal action for cheating or criminal breach of trust, fraud, etc. against Lt Col DS Patil and for this the applicant is free to invoke the jurisdiction of the criminal court by lodging an FIR, seek investigation by the police or file a criminal complaint. The dispute being a personal dispute between two individuals which may result in a criminal offence and by no stretch of imagination, the same being a service matter, we see no reason to make any indulgence into the matter.

6. The O.A is therefore dismissed with liberty to the applicant to take recourse to such remedy as may be permissible under law.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

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

/jyoti/