

COURT NO. 2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 3321 / 2023

Hav / SKT Ravinder Kumar

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Ankur Chhibber &
Mr. Anshuman Mehrotra, Advocates
For Respondents : Mr. Sameer Sinha, Advocate

CORAM :

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

The applicant "15427764 H Hav Ravinder Kumar" vide the present OA makes the following prayers:-

"(i) Quash the letters dated 29.09.2023, 05.10.2023 and 07.10.2023 whereby the respondents have rejected the request citing pendency of the disciplinary proceedings.

(ii) Direct the respondents to allow the applicant to participate in the Senior Cadre Course to be conducted between 09.10.2023 to 17.12.2023."

A further prayer through the OA seeking the grant of interim relief is to the effect:-

“(i) Allow the applicant to participate in the senior cadre course till the pendency of the present OA”

2. In as much as the prayer made through the present OA and the prayer seeking the grant of interim relief in sum and substance are virtually the same with the prayer made by the applicant seeking to participate in the ‘Senior Cadre Course’ to be conducted between 09.10.2023 to 17.12.2023 and also seeking the quashing of the letters dated 29.09.2023, 05.10.2023 and 07.10.2023 of the respondents whereby the respondents had rejected the request made by the applicant to participate in the ‘Senior Cadre Course’ in view of stated pendency of the disciplinary proceedings, vide order dated 23.11.2023 we directed that we consider it appropriate to take up the OA and the interim prayer for adjudication together.

3. The applicant was enrolled in the Army Medical Corps on 11.12.2008 and is presently posted with 302 Field Hospital since 21.08.2022. He has been promoted to the rank of Naik on 01.07.2012 and to the rank of Havildar on 19.04.2014 with seniority on 01.04.2014 and is in medical category SHAPE-1. As per the averments made in the short affidavit filed on behalf of the respondents, the applicant will be completing his normal service limit on 31.12.2032 (Afternoon) in the present rank.

4. The applicant vide letter dated 24.08.2023, copy of which has been submitted as Annexure - R 1 by the respondents, has been detailed to undergo the 'Senior Cadre Course' with effect from 09.10.2023 to 17.12.2023 at the Officers Training College, Army Medical Corps Center & College.

5. The applicant submits that pursuant to an anonymous complaint made by certain officers alleging that postings of Junior Commissioned Officers / Other ranks of the Army Medical Corps were issued for monetary considerations, the respondents issued a convening order dated 28.05.2021 in order to investigate into the allegations made against Brigadier YP Singh and other personnel connected with the said matter, Vide order dated 16.06.2021, the applicant herein was summoned to attend the proceedings of the Court of Inquiry as a witness and had also been called upon to report with copy of all bank account statements from 01.01.2019 duly attested by a suitable officer of the unit. Thereafter a tentative charge sheet dated 07.02.2023 was served on the applicant with the charges:-

"First Charge
Army Act Section 63

AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY
DISCIPLINE

in that he,

at Delhi, between the period from October 2019 to August 2020, which came into the knowledge of authority competent to initiate action on 08 October 2022, borrowed money from various personnel subject to Army Act amounting to Rs 4,49,000/- (Rupees Four lac forty-nine thousand

only) in contravention to Para 337 of the Regulations for the Army 1987.

Second Charge
Army Act Section 69

COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, CRIMINAL MISCONDUCT BY A PUBLIC SERVANT BY INTENTIONALLY ENRICHING HIMSELF ILLICITLY DURING THE PERIOD OF HIS OFFICE, CONTRARY TO SECTION 13(1) (b) READ IN CONJUNCTION WITH SECTION 13(2) OF THE PREVENTION OF CORRUPTION ACT, 1988

in that he,

at Delhi, between 2019 and 2020, which came to the knowledge of the authority competent to initiate action on 08 October 2022, being a public servant, intentionally enriched himself illicitly of an amount to the tune of Rs 4,49,000/- (Rupees Four lac forty- nine thousand only), beyond the known sources of income."

6. Vide letter dated 09.02.2023, the applicant was informed by the respondents that disciplinary proceedings were likely to commence from the next week of February 2023 in terms of AR-22 and 23 and that he was being given an opportunity to inspect the proceedings of the Court of Inquiry and Exhibits and intimate the statement / documents, the copies of which were required by him in terms of AR-184. The letter dated 09.02.2023 issued by the respondents no. 164/Discp/A indicates that the applicant was attached with 9 Assam Regiment. The applicant thus submits that even before the service of the tentative charge sheet, he had been sent on attachment to 9 Assam Regiment with effect from January 2023.

7. The applicant has submitted to the effect that despite several representations made by him he has not been supplied all requisite documents and that the disciplinary proceedings have not moved forward and are kept in abeyance for about 10 months now, which has been adversely affecting his career prospects. The applicant submits that though he was detailed to attend the 'Senior Cadre Course' between 09.10.2023 to 17.12.2023, the respondents vide the impugned letters dated 29.09.2023, 05.10.2023 and 07.10.2023 have declined to permit him to proceed for the 'Senior Cadre Course' till the disciplinary proceedings are completed, as per the directions received from HQ 14 INF DIV letter no. PC - 1900 / RAVINDER / A3 dated 05.10.2023 and HQ CENTAL COMMAND letter no Pen 190105/D/AMC Records/ AG/DV- 2 (Hav Ravinder) dated 29.09.2023.

8. The applicant submits that this action of the respondents in preventing him to attend the "Senior Cadre Course" is wholly unjustified in as much as there is no charge sheet that has been served on him and it is only a tentative charge sheet which has been served and that the applicant has not even been suspended pending the alleged inquiry.

9. Reliance was placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in *Union of India & others vs K. V. Jankiraman and others* (1991) 4 SCC 109 whereby the questions involved were set forth vide para 8 thereof as under:-

"8. The common questions involved in all these matters relate to what in service jurisprudence has come to be known as "sealed cover procedure". Concisely stated, the questions are: (1) What is the date from which it can be said that disciplinary/criminal proceedings are pending against an employee? (2) What is the course to be adopted when the employee is held guilty in such proceedings if the guilt merits punishment other than that of dismissal? (3) To what benefits an employee who is completely or partially exonerated is entitled to and from which date? The "sealed cover procedure" is adopted when an employee is due for promotion, increment etc. but disciplinary/criminal proceedings are pending against him at the relevant time and hence, the findings of his entitlement to the benefit are kept in a sealed cover to be opened after the proceedings in question are over. Hence, the relevance and importance of the questions."

Vide observations in Paras 16, 17 and 18 thereof it was observed to the effect:-

"16. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are

serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy. It was then contended on behalf of the authorities that conclusions Nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows: (ATC p. 196, para 39)

"(1) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;

*(2) * * **

*(3) * * **

(4) the sealed cover procedure can be resorted to only after a charge memo is served on the concerned official or the charge-sheet filed before the criminal court and not before;"

17. There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion No. 1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. Thus read, there is no inconsistency in the two conclusions.

18. We, therefore, repel the challenge of the appellant-authorities to the said finding of the Full Bench of the Tribunal."

10. Reliance was also placed on behalf of the applicant on the order dated 17.04.2014 of this Tribunal in OA 282/2013 with MA 626/2013 titled as **Col Punam Bali vs UOI & Ors** with specific reliance on

observations in paras 15, 16, 17 and 18 of the said order which are to the effect:-

"15. The question that falls for consideration is as to whether after conclusion of the preliminary inquiry, can it be presumed that the disciplinary proceedings have been initiated against a delinquent official. Merely on the basis of conclusion of the preliminary inquiry and ordering of disciplinary action, can it be presumed that the disciplinary action has been initiated or it is only the first step for initiation of disciplinary proceeding.

*16. This view is no longer res integra. The initiation of disciplinary proceeding will commence only from the date the charge-sheet has been served on the delinquent official. This view has been followed by the Apex Court in **Union of India and Others Vs. K.V. Jankiraman and others, (1991) 4 Supreme Court Cases 109**. Following the observations made by the Apex Court in **Union of India and Others Vs. K.V. Jankiraman and others (supra)**, the Apex Court in **Union of India & Ors. Vs. Anil Kumar Sarkar, 2013 STPL (Web) 201 SC** has held as under:*

"The common questions involved in all those matters were:

(1) What is the date from which it can be said that disciplinary proceedings are pending against an employee?

(2) What is the course to be adopted when the employee is held guilty in such proceedings if the guilt merits punishment other than that of dismissal? and

(3) To what benefits an employee who is completely or partially exonerated is entitled to and from which date? Among the three questions, we are concerned about question No. 1. As per the rules applicable, the "sealed cover procedure" is adopted when an employee is due for promotion, increment etc. but disciplinary/criminal proceedings are pending against him at the relevant time and hence, the findings of his entitlement to the benefit are kept in a sealed cover to be opened after the proceedings in question are over. Inasmuch as we are concerned about the first question, the dictum laid down by this Court relating to the said issue is as follows:-

"16. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to

have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalize the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy. In para 17, this Court further held:

17... The conclusion No. 1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge- memo/charge-sheet has already been issued to the employee..." After finding so, in the light of the fact that no charge-sheet was served on the respondent-employee when the DPC met to consider his promotion, yet the sealed cover procedure was adopted. In such circumstances, this Court held that "the Tribunal has rightly directed

the authorities to open the sealed cover and if the respondent was found fit for promotion by the DPC, to give him the promotion from the date of his immediate junior Shri M. Raja Rao was promoted pursuant to the order dated April 30, 1986. The Tribunal has also directed the authorities to grant to the respondent all the consequential benefits... We see no reason to interfere with this order. The appeal, therefore, stands dismissed." The principle laid down with reference to similar office memorandum are applicable to the case on hand and the contrary argument raised by the appellant-Union of India is liable to be rejected."

17. This view has been consistently followed by the Apex Court in **UCO Bank & Another Vs. Rajinder Lal Capoor, (2007) 6 Supreme Court Cases 694**, Relying on the judgment of the Apex Court in **Union of India Vs. K.V. Jankiraman (supra)**, the following observations have been made:-

"The departmental proceeding, it is trite law, is not initiated merely by issuance of a show-cause notice. It is initiated only when a charge-sheet is issued. This aspect of the matter has also been considered in Coal India Ltd. Vs. Saroj Kumar Mishra, (2007) 9 SCC 625 wherein it was held that date of application of mind on the allegations leveled against an officer by the competent authority is a result whereof a charge-sheet is issued would have been initiated and not prior thereto. Pendency of a preliminary enquiry, therefore, by itself cannot be a ground for invoking Clause 20 of the Regulations."

18. In **The Union of India & Ors Vs. Anil Kumar Sarkar (supra)**, relying on the judgment of the Apex Court in **Union of India Vs. K.V. Jankiraman and UCO Bank Vs. Rajinder Lal Capoor, (supra)**, the following observation in this behalf has also been made:-

"27. There can be no quarrel with the settled legal proposition that the disciplinary proceedings commence only when a charge-sheet is issued to the delinquent employee."

whereby the observations made in **UOI & Ors vs KV Jankiraman (supra)**

as reiterated in **Union of India and Others versus Anil Kumar**

Sarkar (2013) 4 SCC 161 have been reproduced which are laid down in *UOI & Ors vs KV Jankiraman* (supra) as already reproduced hereinabove.

11. Reliance was also placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in *UCO Bank and Another vs Rajinder Lal Kapoor* (2007) 6 SCC 694 wherein it was observed vide para 21 to the effect:-

"21. The aforementioned Regulation, however, could be invoked only when the disciplinary proceedings had clearly been initiated prior to the respondent's ceasing to be in service. The terminologies used therein are of seminal importance. Only when a disciplinary proceeding has been initiated against an officer of the bank despite his attaining the age of superannuation, can the disciplinary proceeding be allowed on the basis of the legal fiction created thereunder ie, continue "as if he was in service". Thus, only when a eroid departmental proceeding is initiated by reason of the legal fiction raised in terms of the said provision, the delinquent officer would gal fiction raised in service although he has reached his age of superannuation. The departmental proceeding, it is trite law, is not initiated merely by issuance of a show-cause notice. It is initiated only when a charge-sheet is issued se Union of India v. K.V. Jankiraman. This aspect of the matter has also bee considered by this Court recently in Coal India Ltd. v. Saroj Kumar Mishra wherein it was held that date of application of mind on the allegations levelled against an officer by the competent authority as a result whereof a charge-sheet is issued would be the date on which the disciplinary proceedings are said to have been initiated and not prior thereto. Pendency of preliminary enquiry, therefore, by itself cannot be a ground for invoking Clause 20 of the Regulations. Albeit in a different fact situation but involving a similar question of law in Coal India Ltd. this Court held: (SCC p. 631, paras 12-13)

"12[13]. It is not the case of the appellants that pursuant to or in furtherance of the complaint received by the Vigilance Department, the competent authority had arrived at a satisfaction as is required in terms of the said circulars that a

charge-sheet was likely to be issued on the basis of a preliminary enquiry held in that behalf or otherwise.

13[14]. The circular letters issued by the appellants put restrictions on a valuable right of an employee. They, therefore, are required to be construed strictly. So construed, there cannot be any doubt whatsoever that the conditions precedent contained therein must be satisfied before any action can be taken in that regard."

It was furthermore observed that: (SCC p. 632, para 18)

"18[20]. A departmental proceeding is ordinarily said to be initiated only when a charge-sheet is issued."

Reliance was also placed on behalf of the applicant on observations in para 20 and 21 of the judgment of the Hon'ble Supreme Court in *Anil Kumar Sarkar* (supra) wherein it was observed to the effect:-

"20. In Coal India Ltd. v. Ananta Saha this Court held as under: (SCC p. 155, para 27)

"27. There can be no quarrel with the settled legal proposition that the disciplinary proceedings commence only when a charge-sheet is issued to the delinquent employee. (Vide Union of India v. K.V. Jankiraman and UCO Bank v. Rajinder Lal Capoor.)"

21. We also reiterate that the disciplinary proceedings commence only when a charge-sheet is issued. Departmental proceeding is normally said to be initiated only when a charge-sheet is issued."

Reliance was thus placed on behalf of the applicant further on paragraphs 19 and 20 in *Col Punam Bali* (supra) thereof which reads to the effect:-

"19. The conclusion arrived at by the Apex Court in the aforementioned judgments clearly reflects that the disciplinary proceedings commence only when the charge-sheet can be said to have been issued and not before that. The reasoning given by the Apex Court is that it takes long time to conclude the preliminary inquiry as a

result of which a delinquent official is denied the promotion etc. due to him. Therefore, in order to obviate that possibility, the Apex Court categorically ruled out that the pendency of preliminary inquiry will not come in the way of promotion etc. of a delinquent official. The disciplinary proceeding commences only after the competent authority applies its mind on the material available before it and a charge-sheet is served on the concerned employee. Therefore, it is evident that only after a charge-sheet is served on an employee, the disciplinary proceeding will be deemed to have been initiated.

20. In the present case, we have to examine as to at what stage the charge-sheet has been served on the petitioner and as to whether that stage has reached or not. After conclusion of the court of inquiry under Rule 180 of the Army Rules, a decision is required to be taken by the competent authority for initiation of the disciplinary proceedings. Sub rule (1) of Rule-22 contemplates that every charge against a person subject to the Act shall be heard by the Commanding Officer in the presence of the accused. Sub Rule (2) of Rule-22 empowers the Commanding Officer to dismiss a charge brought before him if, in his opinion, the evidence does not show that an offence under the Act has been committed. Sub-Rule (3) provides that after compliance of sub-rule (1), if the Commanding Officer is of the opinion that the charge ought to be proceeded with, he shall within a reasonable time (a) dispose of the case under Rule 180 in accordance with the manner and form in Appendix III; or (b) refer the case to the proper superior military authority (c) adjourn the case for the purpose of having the evidence reduced to writing or (d) if the accused is below the rank of warrant officer, order his trial by a summary court martial. Therefore, it clearly appears that only after hearing of the charge under Rule 22(1) the Commanding Officer decides to proceed with against an accused, who shall have full liberty to cross-examine any witness who deposes against him, and to call such witness and make such statement as may be necessary for his defence. It is at this stage, after examining the material which has come on record and after providing the opportunity to the accused to cross examine any of the witnesses who have deposed against him, if the competent authority prima facie concludes that there is sufficient material to proceed against the accused, he may proceed against the accused. The Commanding Officer has also the option to dismiss the charge if he is satisfied that the charge ought not be proceeded with. It is at this stage that the substance of the charge is made known to the accused.

The Commanding Officer is also empowered to adjourn the case for recording of the summary of evidence or dispose of the case under Section 80. Therefore, it can be safely stated at this stage the charge against the officer is being prima facie tried. We so say because the procedure provided under the Army Rules are different from what is provided under the CCA Rules governing the Civil Services. Under Army Rule 22, after the court of inquiry has been concluded, the delinquent official is given the opportunity of being heard on the charges and is allowed to cross examine the witnesses who had deposed against him. Only at this stage, the charge-sheet is deemed to be served on the officer. Therefore, the contention of the learned counsel for the respondents that the policy clearly provides that the DV Ban can be imposed only after the competent authority comes to the conclusion on the basis of court of inquiry that a prima facie case has been made out to initiate disciplinary action against the petitioner, cannot be accepted. In the present case, disciplinary proceedings are said to have been initiated against the petitioner only on the basis of the report of court of inquiry. At this stage it cannot be said that competent authority has applied its mind to the facts and circumstances of the case. It is only after conclusion of hearing of charge after giving accused a chance of being heard, can it be said that that competent authority has applied its mind and not at the stage while examining report of court of inquiry. This interpretation is in consonance with view expressed by apex court. A charge can be framed against a person accused of criminal offence after the report under section 173 Cr.P.C is filed and the court hears the accused on the question of charge. It is at this stage that disciplinary proceeding can be said to have been initiated not at a stage when report under section 173 Cr.P.C is filed. Merely on the basis of conclusion of court of inquiry and ordering of disciplinary action, it cannot be concluded that a prima facie case is made out to initiate disciplinary action against the petitioner. It can only be said that there is a ground to proceed against the petitioner. The expression 'prima facie case' is said to have been established only when sub-rules (1) and (3) of Rule 22 are complied with. It may also be noted that during the course of court of inquiry, no person can be identified as an accused. It is only after completion of the court of inquiry, role of a person is determined. In view of the judgment of the Hon'ble Supreme Court in K.V. Jankiraman & Others (supra), it can safely be stated that the initiation of disciplinary proceeding will commence only from the date the charge-sheet has been served. Therefore, holding and conclusion of a court of inquiry will not be a ground to hold that the disciplinary proceedings can be said to have been

initiated against the petitioner. Only after the charge-sheet has been served, it will be presumed that the disciplinary proceedings have been initiated against the petitioner. The underlying principle is that there must be some satisfaction recorded by the competent authority to proceed against the delinquent officer which can be done only after hearing of the charge under Rule 22(1) and giving full opportunity to the accused to address the competent authority at the stage of hearing of the charge. Therefore, the argument of the learned counsel for the respondents in this behalf cannot be accepted."

12. It has thus been submitted on behalf of the applicant that in as much as the disciplinary proceedings have not yet commenced, in as much as they can be said to have commenced only when the charge sheet has been issued and not before that, merely because a tentative charge sheet dated 07.02.2023 was issued to the applicant, the same does not suffice to put an embargo on his attending the 'Senior Cadre Course' for which he was detailed by the respondents themselves to attend the same vide letter dated 24.08.2023.

13. Through the short affidavit submitted by the respondents dated 17.11.2023 the respondents have submitted that the applicant cannot proceed on the 'Senior Cadre Course' till the finalization of disciplinary proceedings and is attached with 9 Assam Regiment and thus could not report for the set cadre course. The respondents further submit to the effect that in terms of para 196 of the Army Medical Corps Record Office Instruction no. 6 / 2014 copy of which has been annexed as Annexure R-5, the short affidavit of the respondents in terms of para 196 thereof a

minimum of 80% attendance on a course is a mandatory requirement.

Para 196 of the said ROI no. 6 / 14 reads as under:-

"Attendance

196. A minimum of 80% attendance on the course is a mandatory requirement. Any unforeseen contingency not be issued by AMC Records in time, the maximum permissible delay would be 20 calendar days, However, for each such case approval of OIC Records will be obtained for disposal/directions."

14. The respondents have also submitted that the said course scheduled from 09.10.2023 to 17.12.2023 is of a total period of 69 days and the permissible limit of delay of 20 calendar days is over in the instant case as the applicant being attached with 9 Assam Regiment for disciplinary proceedings was not dispatched to undergo the said course. The respondents have also submitted on record a copy of letter dated 29.09.2023 of the Office, Training College, Headquarters, Army Medical Corps Center and College to submit that the applicant had not reported to undergo the said course.

15. The respondents further reiterate that vide letter dated 24.08.2023 of the Army Medical Corps Record Office vide para 9 thereof, it is stipulated as under:-

"9. If any indl is involved in discp proceedings (Court of Inquiry, Summary of Evidence etc), necessary clearance from competent authority will be obtained before dispatching indl for sub course."

to submit that in accordance therewith, necessary clearance from the competent authority is required before dispatching an individual for a

course when he is involved in disciplinary proceedings (Court of inquiry, summary of evidence, etc.). Inter alia, it is averred as under in the said short affidavit of the Respondents:-

"Further, it is humbly submitted that comments related to non-dispatching of the applicant to undergo Senior Cadre Course be offered by 9 ASSAM Regiment i.e. wherein the applicant presently attached for disciplinary proceedings and 302 Field Hospital i.e. parent unit of the applicant."

ANALYSIS

16. On a consideration of the submissions that have been made on behalf of either side, it is essential to observe that it is an admitted fact that the charge sheet has not been served on the applicant so far and what was served on the applicant is a tentative charge sheet dated 07.02.2023. During the course of submissions made on behalf of the respondents it was submitted to the effect that the investigation in the matter is still in progress and that two witnesses who have chosen not to put in appearance, have been issued judicial warrants for their presence.

17. In terms of the verdicts of the Hon'ble Supreme in *K. V. Jankiraman* (supra), *Anil Kumar Sarkar* (supra), *Rajinder Lal Kapoor* (supra) and *Coal India Ltd & Ors versus Ananta Saha & Ors* 2011 (5) SCC 142 and this Tribunal in OA 282/2013 with MA 626/2013 titled as *Col Punam Bali vs UOI & Ors* and in OA 1712/2023 titled as *Hav/NA Ajay Kumar Azad vs UOI & Ors* and in OA 1718/2023 titled as *Hav / Na Shyam Shanker Prajapati vs UOI & Ors* dated 14.07.2023 which is on

facts *pari materia* to the facts of the instant case, in which case there was only a completion of the Summary of Evidence and in which case the respondents were not permitting those applicants to undergo the 'Senior Cadre Course' which was a promotion related course and important for the career of the applicants, the said applicants of OA 1712 / 2023 and OA 1718 / 2023 were permitted to attend the 'Senior Cadre Course' without prejudice to the disciplinary inquiry / trial, if any, in as much as a decision to convene a court martial or a trial was yet to be taken in that case.

CONCLUSION

18. The facts of the instant case, as observed hereinabove make it apparent that no disciplinary proceedings against the applicant have in fact been initiated against the applicant as no final charge sheet has been served on the applicant after completion of investigation and inquiry. Thus, the applicant cannot be prevented from attending the 'Senior Cadre Course' presently. However, in as much as it has been submitted on behalf of the respondents that as the 'Senior Cadre Course' commenced on 09.10.2023 and is to continue till 17.12.2023 in terms of Para 196 of the Army Medical Corps Record Office Instruction 6 / 2014 which requires a minimum 80% of attendance on the course as a mandatory requirement, though the applicant has not even attended 64% of the course approximately, nevertheless, the applicant does not fall within the

ambit of maximum permissible delay of 20 calendar days with which he could attend the 'Senior Cadre Course' which commenced on 09.10.2023.

19. In these circumstances, we consider it appropriate that the applicant is permitted to attend the next 'Senior Cadre Course' that the respondents conduct.

20. A further prayer was made on behalf of the applicant that the seniority of the applicant be protected qua which it was submitted on behalf of the respondents that the seniority of the applicant if protected, be allowed to be protected only till conclusion of the disciplinary proceedings. In relation thereto, we consider it appropriate to direct that the seniority of the applicant "~~15427764~~ ^B HAV Ravinder Kumar" shall be protected in accordance with law.

21. With these observations, the OA 3321/2023 stands disposed of.

Pronounced in the ~~Open~~ Court on the 28th day of November, 2023.

[~~REAR ADMIRAL DHIREN VIG~~
MEMBER (A)]

[JUSTICE ANU MALHOTRA]
MEMBER (J)]

/AP/