

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

OA 222/2022

WITH

MA 322/2022

Lt Col Pramod Negi Applicant
VERSUS
Union of India & Ors Respondents

For Applicant : Ms. Archana Ramesh, Advocate
For Respondents : Mr. Harish V. Shankar, Advocate

Reportable/Not Reportable

Dated 18th October, 2024

CORAM

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

ORDER

MA 322/2022

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay in filing the present OA. In view of the judgment of the Hon'ble Supreme Court in the matter of Union of India and Ors. Vs. Tarsem Singh [2009 (1) AISLJ 371] and the reasons mentioned in the application, the delay in filing the OA is condoned. The MA is disposed of accordingly.

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2. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this OA and the relief claimed in para 8 read as under:

(a) Quash and set aside the entire disciplinary proceedings initiated vide impugned letter number C/06270/SC/744/14(22)/AG/DV-2 dated 18 July 2014 of Additional Director General, Discipline & Vigilance, Ministry of Defence, New Delhi (Placed herein as Annexure A-1) (Impugned order) to include proceedings under Army Rule 22 (hearing of charge) and under Army Rule 23 (Summary of Evidence).

(b) Direct the respondents to lift the DV (Discipline and Vigilance) ban imposed on the applicant subsequent to the issue of directions of initiating Disciplinary proceedings on 27 June 2013 and thereafter.

(c) Direct the respondent to issue the movement order to the applicant to move back to the applicant posted unit Chief Engineer Lucknow zone.

(d) Direct the respondents to pay the cost of litigation and due compensation as deemed fit by Hon'ble Armed Forces Tribunal."

3. It is the case of the applicant that the disciplinary attachment and the orders passed for taking disciplinary action against him is time barred in view of the provisions of Section 122 of the Army Act. It is contended that in pursuance to the provision of Section 122 of the Army Act, the Competent Authority has to initiate action in the form of conducting trial by Court Martial etc. within a period of three years from the date of knowledge of the offence and in this case, as the disciplinary action by way of trial is being initiated against the applicant after the said statutory period of three years, it.

is totally time barred and therefore, the entire disciplinary action and the impugned attachment for disciplinary action should be quashed.

4. While hearing the matter, this Tribunal on 7th July, 2023 found that challenge to the order passed vide Annexure A-1 dated 18th July, 2014 and the trial proceedings initiated against the applicant are being proceeded with under Army Rule 22 in the matter of hearing of charges and under Rule 23 for recording of summary evidence and granted four weeks' time to the respondents to file additional affidavit. In para 2 of the order passed by us on 7th July 2023, we observed as under:

"2. Primarily the entire petition is based on the premise that the action taken by the respondents is barred by period of limitation prescribed under Section 122 of the Army Act and, therefore, the impugned action against the applicant for disciplinary action is barred under Section 122. In response to the same in the counter affidavit which was filed by the respondents on 06.09.2022 from Para 6 onwards, they have clearly stated that by finding the action proposed to be taken in terms of the impugned action to be barred under Section 122, the respondents are now proposing to take administrative action. That being so, in our considered view, entire petition has rendered infructuous and the applicant should in normal circumstances challenge the proposed action but at this stage, we are not aware what is the stage of the administrative action and what are the actions proposed to be taken or taken till date by the respondents in pursuance to the averments made in the counter affidavit vide Para 6 onwards, therefore, we direct the respondents to file additional affidavit indicating what action they propose to take in the matter after they had decided not to proceed with the trial in view of Section 122 and what is the difficulty in initiating and concluding the administrative action proposed."

Respondents took time on various dates and finally, as a matter of last indulgence, time was granted to the respondents till 24th September, 2024 to file the additional affidavit.

5. When the matter was taken up on 27th August, 2024 it was brought to our notice that the AG's Branch of the Head Quarter, Southern Command vide communication dated 6th September, 2024, addressed to the Legal Cell, HQ Delhi Area (AFT) has informed the office of the Legal Cell to indicate and say that the subject case pertaining to the applicant has become time barred for disciplinary action in view of the limitation prescribed under Section 122 of the Army Act and, therefore, no disciplinary action is being taken.

6. That being the position as on date, it is clear that the prayer made by the applicant to quash the proposed disciplinary action against him and his attachment for disciplinary action by the impugned order Annexure A-1 dated 18th July, 2014 is rendered infructuous. Accordingly, the prayer made by the applicant vide prayer clause 8 (a) and (b) now stands rendered infructuous as the respondents have decided to drop the disciplinary action against the applicant on account of the same being barred by the statutory period of limitation prescribed under Section 122 of the Army Act. Consequently prayer clause 8(b) has to be allowed and the respondents are directed to lift the DV (Discipline and Vigilance) ban imposed upon the applicant which was a consequence

of initiating the disciplinary proceedings against the applicant on 27th June, 2013. The DV ban imposed upon the applicant is, therefore, directed to be lifted and as a consequence thereof, respondents should now issue movement order to the applicant to enable him to move back to his unit i.e., Chief Engineer, Lucknow one or such place where he has to be posted.

7. The OA thus stands allowed and disposed of in terms of the aforesaid directions. However, we make it clear that the action of the respondents in closing the disciplinary proceedings and deciding not to proceed with the disciplinary action will not come in their way while taking such steps in the matter as are permissible in law based on the applicable rules and regulations. With the aforesaid, the OA stands disposed of.

Pronounced in open Court on this ¹⁸ day of October, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

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