

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

41.

OA (Appeal) 2181/2024

Maj Sandeep Dhaka Applicant
(Thru Pairokar Lt. Col Ramesh Grewal
Versus
Union of India and Ors. Respondents

For Applicant : Mr. Janesh Kumar, Advocate
Mr. Alok Kishore, Advocate
For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC

CORAM

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

ORDER
09.07.2024

OA 2181/2024

Challenging the order convening a Court of Inquiry (COI) and subjecting the appellant to trial, after the COI found the allegations to be prima facie correct, by issuing a charge sheet and conducting General Court Martial proceedings, the appellant has filed this OA under Section 15 of the Armed Forces Tribunal Act, 2007 in the form of an appeal and wants quashing of the convening order and GCM and the prayer made in para 8 reads as under:

- (a) *To summon and examine the entire records of the case in original, i.e., complete proceedings of the GCM, record of all the investigation and recommendation/direction of various authorities thereon and pre trial proceedings culminating into convening of the GCM for the trial of the applicant.*
- (b) *To quash the order of the GCM dated 04.06.2024, while arbitrarily rejecting the Special Plea to Jurisdiction in total disregard of the law on the subject as also after denying the applicant an*

opportunity to lead evidence in support of his plea to which he was entitled by law

- (c) To quash and set aside the convening order of court of inquiry and reassembly order.*
- (d) To quash and set aside the attachment order dated 31.08.2023 (Annexure A-3) pursuant to which the applicant is being tried by the GCM, in progress.*
- (e) Quash the tentative charge sheet dated 26.09.2023 and hearing of charge held under AR 22.*
- (f) Quash the charge sheet dated 26.05.2024 and Convening Order of the GCM.*
- (g) Quash and set aside the order of the GCM dated 04.06.2024 rejecting the plea of jurisdiction.*
- (h) Alternatively to issue appropriate orders directing the GCM to take on record the relevant evidence in terms of AR 51.*

2. As far as quashing of the attachment order dated 31st August, 2023 is concerned, the same is beyond the jurisdiction of this Tribunal as it does not fall within the purview of service matter as defined in Section 3(o) of the Armed Forces Tribunal Act, 2007, it comes within the exempted clause in sub-clause (ii) pertaining to the jurisdiction not being available to this Tribunal to consider cases of transfer and posting and change of place of posting or unit on posting of an individual. As far as other grounds for quashing the COI and the prayer for rejecting the order passed by the GCM with regard to special plea of jurisdiction is concerned, we find that the appellant was proceeded against and the charges levelled against him are for an offence under Section 354 of the Indian Penal Code, i.e., using criminal force to a woman with intent to outrage her modesty. It is alleged that while posted at Military Hospital, Hissar on 16th

April, 2023, the appellant used criminal force to Capt ABC of Military Hospital, Hissar by groping her from behind, forcibly kissing her on the lips and acting in a manner with intention to outrage her modesty. A COI was conducted against the appellant and finding him to be prima facie guilty, he was subjected to regular Court Martial and we find that the charges levelled against the appellant were for offences under Section 69 of the Army Act, 1950 which reads as under:

“Army Act Section 69 :

COMMITTING A CIVIL OFFENCE, THAT IS TO SAY USING CRIMINAL FORCE TO A WOMAN WITH INTENT TO OUTRAGE HER MODESTY, CONTRARY TO SECTION 354 OF THE INDIAN PENAL CODE,

In that he

At Hisar, on 16 April 2023, used criminal force to Captain ABC of Military Hospital, Hisar by causing following injuries to her intending thereby to outrage her modesty:-

- (a) Swelling over upper lips, mild tenderness.*
- (b) Reddish bruise 0.5 cm x 02 cm over left side of neck, 05 cms below left ear lobe.*
- (c) Bluish bruise 1.5 cm x 01 cm over right middle finger's knuckle.*
- (d) Reddish bruise 01 cm x 01 cm over upper inner quadrant of right breast.*
- (e) Reddish bruise 01cm x 01 cm over upper back in the midline, 10 cms below nape of neck.*

*Sd/-
(Amit Slathia)
Col*

*Place: Hisar
Date: 26 April, 2024*

*Officer Commanding Troops
57 Armoured Brigade”*

3. The appellant raised a plea of jurisdiction. By a detailed order the same has been rejected. Gp Capt Karan Singh Bhati,

learned Sr. CGSC appearing on behalf of the respondents on advance notice, informs us that the Court Martial proceedings are at the verge of conclusion. After conducting the COI and the proceedings under Rule 22 of the Army Rule, the prosecution has concluded examination of evidence and closed its case; the defence has been opened and the appellant has also examined one or two defence witnesses and now the Court Martial is at the verge of coming to a conclusion.

4. Taking note of the totality of the circumstances and the nature of complaint made with regard to the COI being illegal and the charge sheet untenable, the convening order being not in accordance with law, we are of the considered view that at this interlocutory stage, when the Court Martial is coming to an end, it is not appropriate for this Tribunal to intervene into the matter and make any indulgence. On the contrary, the appellant should raise all the grounds in his arguments/final submission before the Court Martial where the matter is pending. It would be for the Court Martial authorities to evaluate the grievances of the appellant at the first instance and thereafter take a decision in the matter, then after at the stage of confirmation of the Court Martial proceedings by the Competent Authority in accordance with the statutory Act, i.e., the Army Act, a further right shall accrue to the appellant to challenge the order. At this premature stage when the Court Martial has reached the advance stage and is coming to an end and looking to the serious nature of the charges levelled

against the appellant, we see no reason to make any indulgence in the matter. The OA is, therefore, dismissed with liberty to the appellant to assail the final action that may be taken against him in case he has any grievance still subsisting by raising the grounds, as canvassed in this application, at that point of time.

5. The OA is thus dismissed.

[REDACTED]
[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

/vks/