

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

55.

OA 439/2024

Sub/NT Akhilesh Kumar

..... Applicant

Versus

Union of India & Ors.

..... Respondents

For Applicant

: Mr. Piyush Thakran Advocate for
Mr. Abhishek Ritabh Shukla, Advocate

For Respondents

: Mr. Neeraj, Sr. CGSC

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER
07.02.2024

Heard on the question of admission.

2. Invoking the jurisdiction of this Tribunal under Section 14 of Armed Forces Tribunal Act, 2007, the applicant has filed this application with various prayers. However, the main prayer of the applicant is to quash the disciplinary action initiated against him and to further hold that actions taken on anonymous/pseudonymous complaint are not permissible in view of the Departmental of Personnel & Training (DoPT) instruction dated 18th October, 2013 and 1st August, 2014 and to quash the impugned attachment order.

3. Facts in brief indicate that the applicant was enrolled on 09.01.2001 in the Medical Corps of Indian Army. The

DoPT has issued various circulars and letters for handling anonymous complaints and as per allocation of business and rules no action based on anonymous/ pseudonymous complaint can be taken except for allegations which could be verified. Instructions in this regard have also been issued by the Chief Vigilance Commissioner in the form of guidelines and based on all these factors the applicant wants that certain complaints received by Respondents No. 3 and Respondents No. 4 against various officers and other persons serving in 166 Military Hospital (MH) be quashed.

4. Applicant is also implicated for the acts of commission and omission and as he has been attached for disciplinary action, he wants quashing of the same on the grounds that the DoPT Circulars and the Chief Vigilance Commissioner guidelines prohibit taking action on such a complaint. Grievance of the applicant is also with regard to the manner in which the Court of Inquiry (CoI) was conducted; the Summary of Evidence was recorded in violation of certain procedural aspects particularly Rule 180 of the Army Rule.

5. Respondents have raised a preliminary objection and submit that as far as attachment of the applicant is concerned, the same is beyond the purview of jurisdiction of this Tribunal. In view of the provisions of Section 3 (o) of the

Armed Forces Tribunal Act, 2007 the issue of attachment of the applicant cannot be looked into in these proceedings. As far as, conducting the CoI and complaint with regard to action to be taken based on the DoPT circulars and the CVC guidelines is concerned, respondents have placed heavy reliance on a judgment recently rendered by AFT, RB, Mumbai in OA 98/2023 Maj Gen Devendra Arora vs. Union of India & Ors. (decided on 09.01.2024) wherein identical prayer made in the matter of taking disciplinary action based on anonymous complaint has been rejected.

6. We have heard learned counsel for the parties on the issue at length and while considering the preliminary objections of the learned counsel for the respondents regarding jurisdiction of this Tribunal, we find it is pertinent to refer to Section 3 (o) of AFT Act, 2007 which reads as follows:-

(ii) transfer and postings including the change of place or unit on posting whether individually or as a part of unit, formation or ship in relation to the persons subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950)."

Under the exclusion clause contained in Sub Clause (ii) while transfer and posting including change of place or unit attachment etc. do not come within the purview of service matters; in the instant case, the issue of attachment of the

applicant is clearly with a purpose of initiating disciplinary proceedings and therefore not beyond the jurisdiction of this Tribunal and to that effect we are of the considered view that this Tribunal does have jurisdiction to deal with this matter.

7. As regards order of attachment passed while pending disciplinary action, the issue has been dealt with in detail in Para 8 and 9 in the case of Maj Priyanka Singh vs. Union of India & Ors. (OA No. 3664/2023 decided on 08.01.2024) passed by this Tribunal, which reads thus:-

8. *That apart, the preliminary objection to say that orders of attachment issued pending Disciplinary action does not come within the purview of service matter as defined under Section 3(o), i.e., the exclusion clause as contained in Sub clause (ii) also require consideration for the simple reason that the order in question of attachment is not a simple transfer or posting order in the normal sense as it is understood. The said clause which reads as under:*

(ii) transfer and postings including the change of place or unit on posting whether individually or as a part of unit, formation or ship in relation to the persons subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950)."

9. *When the attachment has to be interpreted and understood on the basis of the purpose and legislative intent for enabling such a provision for taking Disciplinary action and when one of the prayer is that the Disciplinary action itself is vitiated on account of various factors pleaded in the petition, the attachment becomes an issue which is incidental to or ancillary to the prayer for quashing the Disciplinary proceedings and, therefore, the question as to whether such an attachment would also come within the ambit of the exclusion clause under Section 3(o) warrants detailed determination.*

Therefore, in view of the above observation, we are of the opinion that such order of attachment falls very much under our jurisdiction.

8. As far as the main prayer for quashing the disciplinary proceedings is concerned, the issue as to whether based on the DoPT circular and the Chief Vigilance Commissioner's guidelines action can be taken by the Army Authorities has been considered by the AFT, RB, Mumbai in the case of Maj Gen Devendra Arora (supra) and the following two questions formulated in Para 18 read as under:-

18. (1) whether, Anonymous/Pseudonymous Complaints received in this matter ought to have been filed by respondents even though it contained verifiable facts without investigating the same?

(2) Relief, if any as claimed by the applicant?

9. As far as question No. 1 is concerned, the same has been considered in Para No. 19 and after detailed discussion from Para 19 onwards upto para 32 the issue has been finally decided in Para 33. Para 19 and 33 are reproduced hereunder:-

19. Regarding Q No. (1) while the applicant stresses upon the CVC guidelines, providing for filing of Anonymous/Pseudonymous Complaints without probe, the respondents submit that Army Personnel are not strictly bound by the CVC guidelines and are guided by instruction issued by IHQ of MoD on the subject from time to time and there is no

bar against investigation into Anonymous/Pseudonymous Complaints containing verifiable allegations.

xx
xx

xx
xx

xx
xx

xx
xx

33. Moreover, the stated position of the respondents is that CVC Guidelines apart, Army Personnel are also governed by Army Act, 1950; Army Rules, 1954 and Regulations for the Army (Revised Edition), 1987 and the concerned authorities may issue appropriate guidelines separately. This submission of learned counsel for the respondents is acceptable. There is no prohibition on Army Authorities against issuing directions for processing such complaints. Principle of Harmonious Construction shall have to be resorted for evening out any inconsistencies which may appear prima facie between CVC guidelines and directions made by Army Authorities in this regard. It has indeed been done as per observations made in Appendix 'E'. The learned counsel has also referred to citation of AIR CDME Mrigendra vs Union of India & Ors. (2014) 1 Gauhati Law Reports 205; WP(C) No. 5606/2012 decided on 17.09.2013. In this judgment, CVC guidelines dated 22.11.1992 was applied in case of Air Force Personnel. However, it was observed therein that CVC Guidelines were being applied because there was no provision in the Statue, Rules or Regulations applicable to the Air Force Personnel which lays down as to how an authority in the Air Force shall deal with an Anonymous/Pseudonymous Complaint. The Court observed that this gap can be filled by issuance of executive instructions in the form of Officer Memorandum dated 12.11.1992. This citation shall not be applicable in the present case as there are specific Army Orders and letter from Adjutant General showing as to how such a complaint shall be dealt with as against the facts contained in the aforesaid citation shall be dealt with as against the facts contained in the aforesaid citation wherein there were no existing rules in respect of Air Force Personnel. This citation in fact fortifies the position that if there are tailor made specific directions passed in relation to Army Personnel, and then the same shall prevail over executive directions. This citation apart, some citations

have also been filed which relate to Central Government Officers/Employees and as such are not in respect of Armed Forces personnel.

Thereafter the prayer identical in nature made in this OA, has been rejected.

10. As regard question No. 2 is concerned, the same is discussed in Para No. 35 in the following manner:-

35. Regarding Q. No. (2):- Thus, no impropriety has been committed by the respondents in examining allegations contained in the anonymous complaint filed against the applicant and some other Army Personnel. In fact, after probing the matter by holding One Man Inquiry, when it was found that there is prima facie substances in the allegations, further steps have been taken which includes convening formal inquiry etc. One Man inquiry report itself becomes the complainant which is now being probed further. When it was found that disciplinary action shall have to be initiate against the applicant, adequate opportunity has been given to the applicant as per provision of Army Rule 180 which requires to be present thought the inquiry, make submissions, give evidence and cross-examines witness, producing witness in defence etc. The applicant, being well educated, is not expected to say that his signatures were deceptively obtains on document purporting to be one under Army Rule 180. The respondents have submitted that while ordering Court of Inquiry provisions of Army Rule 177(3) have been adhered to. As regards DV ban, the same has been applied as a prima facie case has been made out against the applicant. It does ot appear that DV Ban has been imposed without application of mind. Thus, no relief as claimed can be granted to the applicant. The present Original Application No. 98/2023, consequently, stands dismissed.

11. Taking note of the aforesaid principle of law laid down by the AFT, RB, Mumbai read along

with the judgment in the case of Union of India and Others vs. Ex No. 3192684 W. Sep. Virendra Kumar [(2020) 2 SCC 714], which is nothing but investigation and inquiry into certain facts which is followed by regular disciplinary action or court martial, no interference at this primary stage by this Tribunal is called for.

12. Accordingly finding no merit, we dismiss this OA with liberty to the applicant to challenge the action finally after conclusion of the disciplinary action.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

Ps
OA 439/2024