

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

8.

OA (Appeal) 2821/2025

Sqn Ldr Saurabh Jha

..... Applicant

Versus

Union of India & Ors.

..... Respondents

For Applicant : Mr. Kavish Aggarwala, Advocate
For Respondents : Mr. Anil Gautam, Sr. CGSC

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN SHASHANK SHEKHAR MISHRA, MEMBER (A)

ORDER
17.09.2025

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 the applicant seeks setting aside and quashing of the convening order by which a General Court Martial (GCM) has been ordered against him. The relief claimed is to quash the GCM being held against him primarily on the ground that while conducting the Court of Inquiry (CoI) and the Summary of Evidence (SoE), procedural and jurisdictional errors have occurred and therefore intervention at this stage is sought.

2. The respondents have raised a preliminary objection and contend that once a prima facie case has been found in the CoI and a detailed charge sheet has been issued and a regular Court Martial ordered interference at this preliminary stage when the Court Martial is in progress is not permissible. Inviting our attention to the law laid down

by the Hon'ble Supreme Court in Union of India and Others v. Virendra Kumar (2020) 2 SCC 714 the respondents argue that the applicant should face the GCM and thereafter he can invoke the jurisdiction of this Tribunal by way of an appeal only if he is found guilty and punished in the trial by GCM.

3. The impugned order dated 15.08.2025 constitutes a GCM for subjecting the applicant to trial with regard to certain acts of commission and omission alleged against him which were prima facie established in the investigation conducted through a CoI. It is alleged that the applicant, a Squadron Leader serving in the Indian Air Force, has been charged with six counts of commission and omission in connection with an aircraft accident that occurred on the night of 21.09.2022 at Air Force Station, Yelahanka, Bengaluru. Initially based on the incident reported an investigation was conducted by holding a CoI in accordance with the provisions of the Air Force Rules and prima facie evidence was found of commission and omission by the applicant in the discharge of his duties which resulted in the accident. Consequently the trial in question has been commenced based on the charges levelled against him. The applicant has challenged the GCM at this initial stage of its commencement primarily on the ground of procedural

irregularity in the conduct of the CoI, recording of SoE and the convening order relating to the GCM.

4. The issue presently before this Tribunal is whether, at this stage when only based on a CoI a GCM is being conducted, interference is required.

5. The answer to this issue can be found in the law laid down by the Hon'ble Supreme Court in *Virendra Kumar* (supra). In that case after a GCM was conducted and the officer was punished, grounds were raised challenging the final punishment on the basis that in the CoI and the SoE recorded, procedural impropriety had occurred inasmuch as the CoI was not conducted in accordance with the requirements of the Army Rules, 1954. Similar arguments as advanced before us with regard to procedural impropriety in the conduct of the CoI and SoE, hearing of charge, etc. were raised. A Bench of this Tribunal had interfered in the matter, which ultimately came before the Hon'ble Supreme Court. On the basis of alleged impropriety in the conduct of the CoI this Tribunal had set aside the dismissal of the employee therein Virendra Kumar. Aggrieved thereby the Union of India filed an SLP before the Hon'ble Supreme Court. After considering the objections of identical nature regarding breach of the Army Rules in the conduct of the CoI the Hon'ble Supreme Court examined the law laid down in *G.S.*

Sodhi v. Union of India (1991) 2 SCC 382 and *Union of India v. Sanjay Jethi* (2013) 16 SCC 116. Taking note of the law laid down in *Sanjay Jethi* (supra), in Para 11 the Hon'ble Supreme Court dealt with the issue in detail.

Finally, in Para 12, 12.1, 12.2, 12.3, and 12.4 of the judgment, the Hon'ble Supreme Court has observed as under:

"12.1 A close scrutiny of the above judgments would indicate that:

12.2 The proceedings of a court of inquiry are in the nature of a fact-finding inquiry conducted at a pre-investigation stage.

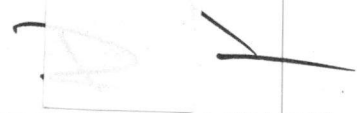
12.3 The accused is entitled to full opportunity as provided in Rule 180

12.4 If the accused raises a ground of non-compliance with Rule 180 during the framing of charge or during the recording of summary of evidence, the authorities have to rectify the defects as compliance of the procedure prescribed in Rule 180 is obligatory."

6. This being the position it is clear that the CoI is in the nature of a fact-finding inquiry conducted at a pre-investigation stage and as the final action is to be taken based on the trial to be conducted in the Court Martial, the irregularities if any in the earlier stage of investigation or inquiry can be looked into at the stage of the Court Martial itself. It is seen from the records that the trial has now commenced and the applicant will have the right to raise these grounds during the Court Martial. If there is any error or defect in the conduct of the CoI, the same can be rectified

and an opportunity will always be available to the applicant at the stage of Court Martial to raise all these objections. That being so at this stage when only a GCM is being convened and the trial is in progress the applicant can raise the grounds canvassed before us in the trial being conducted by the Court Martial and it would be for the Court to consider all these aspects and proceed in accordance with law.

7. Keeping in view these factors we find no ground to interfere in the matter at this stage. The petition is dismissed with the aforesaid observations and liberty granted to the applicant.


[JUSTICE RAJENDRA MENON]
CHAIRPERSON


[LT GEN SHASHANK
SHEKHAR MISHRA]
MEMBER (A)

/JYOTI/