

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

OA 2905/2025 with MA 4126/2025

Sqn Ldr Mukund Sharma **Applicant**
Versus
Union of India & Ors. **Respondents**

For Applicant : Mr. Shiv Kant Pandey, Mr. Amit
Pandey Ms. Nisha Pandey, Advocates
For Respondents : Mr. Neeraj, Sr. CGSC

CORAM

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

O R D E R
19.09.2025

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 the applicant has called in question tenability of an order annexure A-1 dated 10.07.2025 whereby a General Court Martial has been convened consisting of five members to hold an inquiry into the acts of commission and omission alleged against the applicant. There are serious allegations of acts of commission and omission against the applicant who is a permanent commissioned officer in the Indian Air Force working as a Sqn. Ldr. and the allegations are particularly with regard to non performance of the duties, non reporting or discharging

duties pertaining to training and other activities. Allegations are with regard to not reporting for PFR test on various occasions and further illegalities committed by him. The applicant calls in question the composition of the court of inquiry and has also submitted a representation (Annexure A-10) against convening of the court martial. Various allegations have been made in the petition to say that the court of inquiry was not conducted properly and the inquiry conducted against the applicant does not prima facie make out any ground for conducting a trial. Violation of certain rules in the conduct of court martial, court of inquiry is also indicated in the body of the Application.

2. In the court of inquiry conducted, detailed deliberations into the matter is undertaken and a detailed finding to the effect that the applicant is guilty of the charges leveled against him was submitted. Various objections raised by the applicant particularly with regard to convening and assembly of the court martial have also been decided by annexure A-15 dated 02.01.2025. From the records we also find that 17 charges, as per the formal charge sheet annexure A-16, have been leveled against the applicant and they all pertain to

more than 17 instances of disobeying the lawful command given by superior officers, behaving in a manner unbecoming to the position and character of an Air Force Officer and various other behavior in an improper manner.

3. The moot question warranting consideration, at this stage, is that after conduct of a regular court of inquiry finding a *prima facie* case made out when a trial is being conducted against the applicant by convening a general court martial should this Tribunal exercise its jurisdiction under Section 14 interfere into the matter and quash the entire proceedings initiated for trial by the court martial. In our considered view this is not permissible. The court of inquiry even though conducted under the statutory Rules is an inquiry into certain allegations made but the court of inquiry is nothing but an investigation into the charges of commission and omission and to assess whether a *prima facie* case for trial by Court Martial or otherwise is made out. Once a court of inquiry finds material available for conducting a regular trial and when a formal charge sheet is issued in the trial, all opportunities would be granted to the applicant to defend himself and, therefore, at this stage, merely on the

ground of certain allegations with regard to the court of inquiry, in the peculiar facts and circumstances of the case, we are not inclined to interfere into the matter particularly when from the records of the court of inquiry, we find that on various occasions, the applicant refused to appear and participate in the court of inquiry and his attitude indicates that he did not cooperate in conduct of the court of inquiry.

4. The Supreme Court in the case of **Union of India & Ors. v. Virendra Kumar** (2020) 2 SCC 714, has already considered similar issues with regard to grounds of irregularity and illegality in conduct of the court of inquiry and after analysing various judgments on the issue in para 12 has culled out the principles in the following manner:-

“12. A close scrutiny of the above judgments would indicate that:

(a) The proceedings of a Court of Inquiry are in the nature of a fact-finding inquiry conducted at a pre-investigation stage;

(b) The accused is entitled to full opportunity as provided in Rule 180;

(c) As a final order of conviction on the basis of a trial by the Court Martial, irregularities at the earlier stages cannot be the basis for setting aside the order passed by the Court Martial.” (Emphasis supplied)

5. In view of this also, we are not inclined to interfere into the matter as the applicant will get an opportunity to defend himself effectively and raise all grounds in the ongoing court martial, in question.

6. Taking note of all these circumstances and the fact that court of inquiry is nothing but only an investigation or inquiry and in the regular trial the applicant can raise all the objections as are permissible under law and the same shall be considered by the court which is conducting the trial, interference into the matter when there are serious allegations of insubordination by the applicant, a commissioned officer, in the Indian Air Force, interference by this Tribunal is not called for. The applicant can always raise all these issues before the five member court martial at the trial and the statutory provisions require decision on the issues by the court.

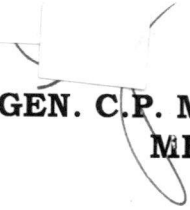
7. That being so, at this preliminary stage, when only a court martial is convened and a charge sheet has been issued, interference into the matter is not called for.

8. We dismiss the OA with liberty to the applicant to raise all the grounds in the pending court martial. No costs.

9. All pending MA(s) stand closed.



[JUSTICE RAJENDRA MENON]
CHAIRPERSON



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

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