

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI**O.A. (Appeal) No. 01 of 2015****Friday, the 13th day of February, 2015**

The Honourable Justice V.Periya Karuppiah
 (Member-Judicial)
 and
 The Honourable Lt Gen K Surendra Nath
 (Member-Administrative)

IC-46216 A Col VV Bhaskar, SM 43 years
 Headquarters Jharkhand and Bihar Sub Area
 Pin-900441, Danapur, Bihar
 Attached with HQ 47 Infantry Brigade
 Pin-908047, C/o 56 APO
 R/o Plot No.1, Phase 3, Venkusa Estates
 Kowkooor, Alwal, Secunderabad - 500 010

...Applicant

By Legal Practitioners:
 Mr.Rajiv Manglik and Mr.M.Erajasimhan

vs

1. Union of India
 Through The Secretary
 Ministry of Defence, South Block
 New Delhi - 110 011
2. The Chief of Army Staff
 Integrated HQ of MOD (Army)
 DHQ PO, New Delhi - 110 011
3. General Officer Commanding
 54 Infantry Division, C/o 56 APO

...Respondents

Mr.N.Ramesh, CGSC

ORDER

[Order of the Tribunal made by
Hon'ble Lt Gen K Surendra Nath, Member (Administrative)]

The applicant, Col V.V.Bhaskar, SM, has filed this OA No.01/2015 requesting to call for the records of the case with regard to the convening order dated 19.12.2014; for the conduct of the General Court Martial (GCM) and to try the charges mentioned in the charge sheet dated 17.12.2014 being barred by period of limitation prescribed under Section 122 of Army Act as also to quash and set aside the proceedings of the Court of Inquiry and Summary of Evidence. In the interim, he would also ask for a stay of the holding and progressing of the GCM during the pendency of the OA.

2. Briefly, the applicant would state that Sub Maj Raju Kurian K, due to personal grudge against the applicant wrote a complaint dated 12 August 2011 against the applicant under para 317 of the Regulation for the Army and the complaint specifically indicates the allegations of misappropriation of funds as well as the name of the appellant and thus the offence and the name of the offender was very clearly mentioned in the complaint. The applicant would state that a Court of Inquiry (Col) was ordered on 29.09.2011 to look into the complaint received on 12 August 2011. The said Court of Inquiry was subsequently cancelled and a fresh Court of Inquiry was convened on 07 October 2011 and additional terms of reference were added to include the incident that occurred at Focoloari Camp (Democratic Republic of Congo) as reported by the applicant. The applicant states that the Col was not conducted in the true spirit of the Army Rule 180 and the statements were recorded even without the presence of the Presiding Officer. He would also further state that the Summary of Evidence (SoE) was not based on the findings of the Col. The applicant was issued tentative charge sheet dated 03 December 2012 and that the recording of the SoE was conducted without complying with the provisions of Army Rule 22(1) and Army Rule 180 in the true letter and spirit. Further additional SoE was recorded and which commenced

on 29 January 2014 and continued till 21 April 2014. He would further state that he was issued with charge sheet dated 17 December 2014 containing 10 charges and GCM has been convened *vide* letter dated 19 December 2014. The applicant would state that the charges framed against him are time barred in terms of restriction of 3 years laid down under Section 122 of the Army Act. In support of his claim, he would quote the Hon'ble Apex Court in the case of Col Rajvir Singh vs Secretary, Ministry of Defence in Civil Appeal No. 2107/2012 decided on 15 February 2012 that held that the GCM cannot assemble and try the offences which are barred by period of limitation prescribed under Section 122 of the Army Act and for the purpose of counting 3 years limitation period, the first date on which the offence came to the knowledge of the proper convening authority should be taken as the date for setting out the limitation period. Since, in the instant case, the date of complaint was received by the convening authority was on 19 August 2011, the period of limitation expires on 18 August 2014 and, therefore, he can no longer be tried by the GCM as the offences are time barred in terms of Section 122 of the Army Act.

3. The respondents in their pleadings have stated that the Armed Forces Tribunal (AFT) is an Appellate Court in terms of its terms and objectives. They would also state that the O.A. cannot be entertained under Section 15 (1) of the AFT Act as the power of the Tribunal to exercise powers is only in relation to an "appeal against any order, decision, finding or sentence passed by a court martial or any matter connected therewith or incidental thereto". They would state that "any matter connected therewith or incidental thereto" would be in relation to an order, finding or sentence. This cannot be invoked when no such order, decision or finding has been passed by the court martial. To buttress their claim, they have quoted the case of **Sakiri Vasu vs State of UP and others (2008) 2 SCC 409**. They would submit that "any matter connected therewith or incidental thereto" has to confine within the legislative intent behind Section 15 to provide appeal against decision by court martial. The term cannot be interpreted to enlarge the scope of jurisdiction as intended by the applicant to a stage even prior to assembly

of court martial. Therefore, they would state that it is premature for the applicant to come before this Tribunal when the court martial has already been convened and no orders or decisions have been passed against which they have an opportunity to appeal.

4. We have heard the arguments of Mr.Rajiv Manglik, counsel for the applicant and Mr.N.Ramesh, learned CGSC assisted by Maj Suchithra Chellappan, learned JAG Officer (Army) appearing for the respondents and perused all the documents placed before us.

5. The applicant's learned counsel in his verbal arguments would cite the rulings of the Hon'ble Guwahati High Court in the case of Air Cmde Mrigendra Singh, VSM vs Uol and others [WP(C) 5606/2012] and Hon'ble Delhi High Court in the case of Maj Saurabh Saharan vs Uol and others [WP (C) No.1755/2013 and CM No.3355/2013] that have literally interpreted the scope of AFT Act Section 15(1). Further buttressing his claim the learned counsel would also cite the order of the Hon'ble AFT Bench, Kolkata, in the case of Lt Col Virender Singh vs Uol and others (OA (Appeal) No.2/2014) which on the back of above judgments has ruled that *the pre-trial decisions of the authorities with regard to court of inquiry, summary of evidence or tentative charge sheet stage, would come within the purview of the expression "or any matter connected therewith or incidental thereto" and in that case an appeal calling in question such decisions can also be appealed against before this Tribunal u/s 15 of the Act.*

6. We have carefully gone through the judgment of the Hon'ble Guwahati High Court in the case of Air Cmde Mrigendra Singh, VSM vs Uol and others. We find that in striking down the order of the AFT, Guwahati Bench, and examining the proceedings of Court of Inquiry against the applicant (Air Cmde Mrigendra Singh) the Hon'ble Guwahati High Court had exercised its inherent powers under Article 226 of the Constitution. Further, a careful perusal of the Hon'ble Delhi High Court judgment in the case of Maj Saurabh Saharan vs Uol and others (Supra), the Hon'ble High Court noted that the Tribunal would be competent to pronounce upon the proceedings and procedure adopted by the court martial pending

confirmation of sentence. For better understanding, the relevant paragraph is reproduced below:

"1-13 xx xx xx

14. It is, therefore, held that any order, decision, finding or sentence passed by a court martial or any other matter connected therewith or incidental thereto would be within the Tribunal's authority and jurisdiction. The Tribunal would be competent to pronounce upon the proceedings and procedure adopted by the court martial, pending confirmation of sentence."

7. From the above, it is clear that in awarding relief to Air Cmde Mrigendra Singh, VSM, the Hon'ble Guwahati High Court had exercised powers under Article 226 of the Constitution for which this Tribunal has no authority or jurisdictional powers. In the case of Maj Saurabh Saharan vs UOI and others (Supra), the Hon'ble Delhi High Court has held that the Tribunal is competent enough to adjudicate on the "proceedings and procedures" adopted by the court martial pending confirmation of the sentence.

8. For a better understanding of Section 15 of AFT Act, relevant extract is reproduced below:

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"15. Jurisdiction, powers and authority in matters of appeal against court-martial:

- (1) Save as otherwise expressly provided in this Act, the Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable under this Act in relation to appeal against any order, decision, finding or sentence passed by a court-martial or any matter connected therewith or incidental thereto.*
- (2) Any person aggrieved by an order, decision, finding or sentence passed by a court-martial may prefer an appeal in such form, manner and within such time as may be prescribed.*
- (3). The Tribunal shall have power to grant bail to any person accused of an offence and in military custody, with or without any conditions which it considers necessary:*

Provided that no accused person shall be so released if there appears reasonable ground for believing that he has been guilty of an offence punishable with death or imprisonment for life.

(4) *The Tribunal shall allow an appeal against conviction by a court-martial where:*

(a) *the finding of the court-martial is legally not sustainable due to any reason whatsoever; or*

(b) *the finding involves wrong decision on a question of law; or*

(c) *there was a material irregularity in the course of the trial resulting in miscarriage of justice is likely to be caused or has actually resulted to the appellant.*

Provided that no order dismissing the appeal by the Tribunal shall be passed unless such order is made after recording reasons therefor in writing."

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9. A careful reading of the above reveals that Section 15 (1) provides jurisdictional basis for the Armed Forces Tribunal to exercise appellate powers on matters relating to orders, decision, findings or sentence passed by a court-martial. On the other hand, Section 15 (2) provides the right of appeal to an aggrieved person. The said right of appeal is against an order, decision, finding or sentence passed by a court-martial(*emphasis added by us*). This Section provides the aggrieved person a right to appeal against proceedings and decisions of a Court Martial, and it is circumscribed to that extent and cannot be interpreted to provide relief against events leading to the convening of a Court Martial for which alternate remedies are available. We are of the view that even a liberal interpretation of the said Section cannot provide such rights or reliefs. In view of the foregoing, we respectfully differ with the opinion of the Hon'ble Kolkatta Bench of AFT and are inclined to agree with the contention of the learned counsel for respondents, that the interpretation of "connected therewith or incidental thereto" should be in the context of appeal against orders, decisions, findings or sentence passed by the Court Martial and as the Hon'ble Delhi High Court has observed such rights can also be

exercised against the procedures and proceedings adopted by the Court Martial (*emphasis added by us*).

10. Further, a careful reading of the judgment in the case of Sakiri Vasu vs State of UP and others (2008) 2 SCC 409 would show that the Hon'ble Apex Court while giving a liberal interpretation to the understanding of the "doctrine of Implied Power", the Hon'ble Bench observed that when alternate remedies are available, High Court should not normally entertain writ petitions. The operative part of the judgment is as under:

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"27. As we have already observed above, the Magistrate has very wide powers to direct registration of FIR and to ensure a proper investigation and for this purpose he can monitor an investigation, ensure that investigation is done properly (though he cannot investigate himself). High Court should discourage the practice of filing a writ petition or petition under section 482 of CrPC simply because a person has a grievance that his FIR has not been registered by police or after being registered, proper investigation has not been done by them. For this grievance, the remedy lies under section 36 and 154 (3) before the police officer concerned and if that is of no avail, under section 156 (3) of CrPC before Magistrate or by filing a writ petition or a petition under section 482 of CrPC.

28. It is true that alternate remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternate remedy, the High Court should not ordinarily interfere."

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11. In the extant case, a court martial has already been convened and, therefore, the facts and circumstances before this Tribunal are different from the two cases cited by the learned counsel for the applicant. In the case where GCM has been convened, the Hon'ble Principal Bench, in its order dated 20.10.2010 in the case of Lt Gen P.K.Rath vs Uol and others (O.A.No. 610/2010) has commented that when a court martial has already been convened and the matter is under consideration, there are no grounds to interfere at the interlocutory stage. The pertinent paragraph of the order is reproduced below:

"We have perused the petition. Since the court martial has already been convened and the matter is receiving consideration, therefore, we do not find any ground to interfere at this interlocutory stage."

12 . We find from the OA placed before us that the Court of Inquiry proceedings were completed on 28 July 2012. Further, the Summary of Evidence including additional Summary of Evidence was completed on 29 April 2014. The applicant therefore had adequate opportunities and time to seek redressal / alternate reliefs under Army Act Section 27 (Remedy of aggrieved officers) from the appropriate authorities / appropriate forum, i.e., Central Government on the alleged irregularities in the conduct of the Court of Inquiry and in the recording of Summary of Evidence. However, the applicant has come to us after nearly 1½ years of completion of Court of Inquiry and 8 months after completion of Summary of Evidence and only after the General Court Martial has been convened.

13. Section 122 of Army Act (period of limitation for trial), unlike its counterpart in CrPC Sections 467 to 473 (Bar to taking cognizance after lapse of the period of limitation), does not provide for any relaxation for committal to trial, beyond three years. Neither does it provide for exclusion of period of stay / injunction even when ordered by a Court of Law. Further, there are no provisions under the Army Act, for extension of period of limitation as is available in Section 473 CrPC. We are of the view that coming to the Tribunal at this belated stage seems to be a means to delay the proceedings of committal to trial before the General Court Martial. We are, therefore, not inclined to stay the proceedings of the General Court Martial as asked for by the applicant.

14. As already noted, the counsel for applicant has pleaded that the charges for which he is being tried by the General Court Martial are time barred under section 122 of the Army Act. We have seen the original complaint made by Sub Maj Raju Kurian K purported to have been received on 19 August 2011 by the convening authority. While we observe that some of the charges may *prima facie* appear to come under the limitation envisaged in section 122 of the Army Act, there are other charges which appear to have come to light only at the conclusion of the Court of Inquiry. The principle laid down by Apex Court with regard to application of Section 122 of Army Act in the case of Col Rajvir Singh vs

Secretary, Ministry of Defence in Civil Appeal No.2107/2012 (Supra) would be applicable. The General Court Martial has already been convened. Therefore, the applicant is at liberty to plead before the General Court Martial under the Army Rule 51 (Special Plea to the Jurisdiction) and 53 (Plea in bar) as well as the alleged violations while conducting the Court of Inquiry and in the recording of the Summary of Evidence. We emphasize these are only our observations and should not be construed as directions to either party, nor shall influence the decision of the General Court Martial which has to be taken independently.

15. We reiterate that the applicant is at liberty to approach this Tribunal in appeal against any order, decision, finding or sentence passed or any matter pertaining to procedures adopted by the General Court Martial.

16. With these observations, the original application is dismissed. No order as to costs.

Dasti.

Sd/

Lt Gen K Surendra Nath
Member (Administrative)

Sd/-

Justice V.Periya Karuppiah
Member (Judicial)

13.02.2015

Member (J) – Index : Yes/No

Internet : Yes/No

Member (A) – Index : Yes/No
ap

Internet : Yes/No

True copy

To

1. The Secretary
Ministry of Defence, South Block
New Delhi – 110 011
2. The Chief of Army Staff
Integrated HQ of MOD (Army)
DHQ PO, New Delhi – 110 011
3. General Officer Commanding
54 Infantry Division, C/o 56 APO
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7. Library, AFT/RB, Chennai.

Hon'ble Justice V.Periya Karuppiah
(Member-Judicial)

and

Hon'ble Lt Gen K Surendra Nath
(Member-Administrative)

O.A.(Appeal) No.01 of 2015

Dated : 13.02.2015

