

**(2020) 06 AFT CK 0009**

**In the Armed Forces Tribunal**

**Case No :** Original Application No. 1537, 1700, 1718, 1773 Of 2019,  
Miscellaneous Application No. 2478, 3316, 3317, 3318, 3319 Of 2019

AK Patel And Others

APPELLANT

Vs

Union Of India And Others

RESPONDENT

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**Date of Decision :** 30-06-2020

**Acts Referred:**

Armed Forces Tribunal Act, 2007 — Section 3(o)(ii)  
Army Act, 1950 — Section 124  
Army Rules, 1954 — Rule 22, 23, 24

**Citation :** (2020) 06 AFT CK 0009

**Hon'ble Judges :** Sunita Gupta, J; Philip Campose, Member (A)

**Bench :** Division Bench

**Advocate :** Anand Kumar, Anil Gautam, R.S. Chhillar, Vijendra Singh Mahndiyan,  
Tarunvir Singh Khehar, Prabhdeep Singh Bindra

**Final Decision :** Disposed Of

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**Judgement**

1. Aggrieved by their attachment, vide HQ 22 Infantry Division order dated 26.09.2019, to a military unit in Meerut (63 Field Regiment/22 Infantry

Division) for conduct of fresh disciplinary proceedings (hearing of charge and recording of S of E) related to alleged illegal sale of medicines from

Army Hospital (R&R), New Delhi in 2017, the four applicants, who are among 12 personnel, against whom disciplinary proceedings are underway

pursuant to directions of GOC Delhi Area on Court of Inquiry (C of I) conducted thereto, have filed this OA seeking the following reliefs :

(a) Quash the attachment order for Meerut, and/or

(b) Direct the respondents to complete the proceedings of recording of Summary of Evidence (SOE) in a time bound manner at Delhi and finalise the

case.

2. Brief facts of the case are that, on complaint was received by Army Hospital (R&R), New Delhi from the office of the Drug Controller regarding

seizure of 27 items of drugs from Balaji Medicos, Bhagirath Palace, Delhi with markings of 'Defence Supply - Not for Sale' and that an FIR thereto

(FIR No. 10207) had been filed in Police Station, Kotwali, Delhi the previous day, viz. 10.08.2017. A Board of Officers was ordered by Commandant

AH (R&R) to carry out stock taking wherein it was found that, out of the 27 types of medicines seized, 16 medicines of similar nomenclature were

available to AH (R&R). Further, on 14.08.2017, two personnel of AH (R&R), including Applicant No. 1, were caught by Counter Intelligence Unit

(CIU) officials when they brought unauthorized medicines into the hospital and an amount of Rs. 59,400/- was found in possession of Applicant No. 1.

The Board of Officers carried out on-the-spot investigation of Applicant No. 1, Applicant No, 3, Applicant No. 4 and a fourth individual, which led to

further seizure of Rs. 4,97,000/- belonging to Applicant No. 3 and some other incriminating documents related to misappropriation of medicines. C of I

was ordered by HQ Delhi Area on 24.08.2017 and the proceedings were duly submitted. After consideration of findings and opinion of C of I, on

26.03.2018, GOC Delhi Area found 4 JCOs and 8 NCOs (including the applicants) blameworthy and ordered disciplinary action against them.

Administrative action was also ordered against an officer for failure to exercise proper command and control over his subordinates. Consequently, 5

personnel (including the applicants) were attached to 11 Raj Rif (35 Infantry Brigade) under HQ 2 Corps at Delhi for disciplinary proceedings while

remaining 7 personnel were attached to Raj Rif Regimental Centre, Delhi Cantt under HQ Delhi Area. Tentative charge-sheet was framed and

'hearing of charge' was completed on 16.12.2018. The respondents have admitted that, due to incorrect allocation of responsibilities to units under two

different HQs, viz. HQ 2 Corps and HQ Delhi Area, and apparent lack of coordination, which resulted in the unit assigned moving out in between for

operational training, the progress was sluggish and fault ridden. As an apparent consequence, DJAG HQ 2 Corps, vide letter of 10.06.2019, advised

CO 11 Raj Rif to issue fresh orders for de novo recording of combined S of E in respect of 5 accused personnel, who were attached to 11 Raj Rif for

disciplinary proceedings. Accordingly, on 21.06.2019 fresh orders were issued by CO, 11 Raj Rif for recording S of E. It is alleged on behalf of the

applicants that, Major Ambar Chadha, Officer recording S of E, had torn up the earlier recorded S of E. In the meanwhile, joint S of E for 7 personnel

attached to Raj Rif Regimental Centre was received by HQ Delhi Area on 10.07.2019, wherein a number of irregularities were noted, and

consequently, DJAG HQ Delhi Area advised for setting aside the S of E proceedings submitted, which recommendation was proved by the

Competent Authority. Faced with this situation in terms of irregularities and lack of coordination in S of E recordings due to the responsibility for the

same having been given to units/establishments under two different HQs, viz. HQ 2 Corps and HQ Delhi Area, the Competent Authority (GOC-in-C

Western Command) decided that all 12 accused should be attached to one unit under HQ 2 Corps. Accordingly, with the sanction of the Competent

Authority, on 16.09.2019, orders were issued directing that S of E of all 12 accused in the case would be done at Meerut at 63 Field Regiment, part of

22 Artillery Brigade under HQ 22 Infantry Division, which comes under HQ 2 Corps, and also, all the disciplinary proceedings to commence de novo

with Army Rule 22 initiated against the accused, including the applicants in this case. Accordingly, GOC 22 Infantry Division signed the order dated

26.09.2019, among others, for attachment of five personnel, including the four applicants, to 63 Field Regiment located at Meerut. The hearing of

charge was conducted by CO 63 Field Regiment on 09.11.2019 and Major Barun Kumar of the unit was detailed to record S of E on 18.11.2019.

Hence, this OA.

3. Heard the learned counsels for both sides and perused the pleadings and documents on record, including the related files of HQ Western Command

and HQ Delhi Area, which were handed over to the Tribunal after the final hearing on 11.03.2020.

4. Mr. Anand Kumar, learned counsel for the applicants, has submitted that Applicant No. 1 was promoted to the rank of Havildar in the Army

Medical Corps on 10.10.2014 and posted to AH (R&R) New Delhi on 31.07.2016, Applicant No. 2 was promoted to the rank of Nb Sub on

01.12.2016 and posted to AH (R&R) on 13.01.2017, Applicant No. 3 was promoted to the rank of Nb Sub on 11.03.2017 and posted to AH (R&R) on

30.04.2017, while Applicant No. 4, of Havildar rank, was posted to AH (R&R) on 11.03.2017. Counsel has alleged that the applicants were coerced

into signing pre-written statements during conduct of C of I and that their hearing of charge before CO, 11 Raj Rif on 17.12.2018 was conducted in an illegal manner without giving copy of the charge-sheet. Further, while recording of S of E was underway by Major Ambar Chadha of 11 Raj Rif on 15.07.2019, it was informed that S of E had been cancelled and would be recorded afresh. Hence, recording of fresh S of E commenced on the same day. However, after two months, on 13.09.2019, they were informed about fresh proceedings to be conducted at Meerut and the applicants to be attached thereto with 63 Field Regiment. By then, substantial progress in recording S of E had been made and opportunity had been provided to cross-examine the prosecution witnesses, including Brigadier I/C Administration and Civilian Pramod Joshi, owner of Balaji Medicos and civilian Sunil Jassal. Learned counsel has alleged malafide in the first S of E being set aside and second S of E being ordered, as well as in the fresh attachment to unit in Meerut being ordered for recording of S of E afresh. He has claimed that the change of location is being done to put the applicants at a disadvantage as they will be far away from their families and will be unable to make use properly of legal counsel. Counsel has also contended that change in location will cause prejudice against the applicants as the civilian witnesses, who are very material to the case, will not be able to appear before the S of E at Meerut. Counsel has also alleged that all these changes are being done to "protect senior officers involved in the case.

5. Learned counsel for the applicants has contended that, once attachment of the applicants had been ordered to a unit in Delhi, granting legal powers over them to the CO of the unit, based on a decision approved by the Competent Authority, it cannot be changed to CO of another unit in Meerut illegally and arbitrarily. Para 1 of Army Order (AO) 7/2000 on Attachment of Service Personnel for Progressing Disciplinary/Vigilance cases is reproduced as hereunder :

1. In a number of cases attachments of personnel subject to the Army Act, other than officers, are necessitated to process their cases in criminal courts or under the Army Act. The procedure contained in the succeeding Paras would, henceforth, be followed in regard to their attachments away from their units. It hardly needs an emphasis that proper attachment of such personnel, particularly for proceedings

against them under the Army Act, bestows jurisdiction upon the officer commanding the unit to which attached and the Cdrs in chain.

Therefore, there is an imperative need to ensure that there is no default in regard to the attachment, including that the same is ordered by

the authority competent to do so as provided here in under." [Emphasis supplied]

Counsel has contended that, as the necessity for the fresh attachment order has not been specified, it is contrary to the instructions contained in the

AO. 6. Counsel has submitted that there is no provision to order reinvestigation when a person has been heard by a CO and S of E has been recorded

and thus, no superior authority can direct reinvestigation when the CO has applied his mind and framed Tentative Charge Sheet and recorded S of E.

This violates the mandate of AR 22 as has been held in the case of Lance Dafedar Laxman Vs. Union of India & Ors. [DRJ 1992 (24)].

7. Learned counsel for the applicants has also contended that re-recording of S of E at Meerut has caused severe prejudice to the applicants as it has

resulted in witnesses having 'improved' their statements during the second S of E, resulting in adverse implications on the applicants' case.

8. Counsel has also contended that recording of joint S of E is illegal because no such provision exists within the ambit of Section 22 of Army Rules,

1954 which lays down the powers of the CO with regard to recording of S of E.

9. Counsel has also claimed that illegal transfer of the case to Meerut has resulted in curtailment of the rights of the applicants to interact with their

families and seek legal counsel. The respondents have unfairly and unjustly quoted expediency to curtail grant of leave to the applicants even to meet

family and other exigencies. Counsel has asserted that denial of leave in this manner is nothing but an arbitrary misuse of power by the respondents.

10. Learned counsels for the respondents, on the other hand, have controverted the arguments made on behalf of the applicants.

11. Mr. Anil Gautam, learned counsel for the respondents in O.A. Nos. 1537 and 1718 of 2019, submitted that, initially, orders for re-recording the S

of E were issued by HQ 2 Corps in June 2019 due to the sluggish pace of proceedings. Thereafter, in July 2019, when S of E for 7 personnel was

received from HQ Delhi Area, a number of infirmities and irregularities were noted, leading to setting aside of the same. On examination of the

problem, it was inferred that the S of E of all the accused persons, including the applicants, must be recorded under one HQ, viz. HQ2 Corps, to

prevent errors and infirmities from creeping in. This led to the decision by the competent authority of recording the S of E afresh for all 12 accused

persons under the direct control of HQ 22 Infantry Division at Meerut. There is no malafide involved, nor has any evidence to support such vague

charges been provided by the applicants.

12. Dr. Vijendra Singh Mahndiyan, learned counsel for the respondents in O.A. No. 1700 of 2019, while endorsing arguments of Mr. Gautam, placed

reliance on the order dated 10.05.2019 of the Larger Bench of AFT (PB) New Delhi in the matter of Maj Gen M.S. Jaswal Vs. Union of India &

Ors. [O.A. No. 965 of 2017], wherein it was ruled that the matters related to attachment cannot be taken up for adjudication by the AFT as it will fall

under the exception provided under Section 3(o)(ii) of the Armed Forces Tribunal Act, 2007.

Further, he asserted that Meerut is not far from Delhi and outpass is being granted regularly, which can be verified from the details of outpass availed

by the applicants, as mentioned in the relevant register. Even leave is being granted in emergencies, notwithstanding the need to complete the S of E

recording at the earliest.

13. Counsel has referred to Section 124 Army Act, 1950 to contend that this section confers jurisdiction to be tried at any place, whatsoever. Further,

Army Order (AO) 7/2000 is the authority for attachment of service personnel for progressing disciplinary cases. Relevant paras are reproduced as

hereunder:

ADJUTANT GENERAL BRANCH AO 7/2000 Attachment of Service Personnel other than Officers to Units and Formations nearest to the

place of their trial in a Criminal Court or for Progressing Disciplinary/ Vigilance case under the Army Act.

1. In a number of cases attachment of personnel subject to the Army Act, other than officers, are necessitated to process their cases in

criminal courts or under the Army Act. The procedure contained in the succeeding Paras would, henceforth, be followed in regard to their

attachments away from their units. It hardly needs an emphasis that proper attachment of such personnel, particularly for proceeding

against them under the Army Act, bestows jurisdiction upon the officer commanding the unit to which attached and the Cdrs in chain.

Therefore, there is an imperative need to ensure that there is no default in regard to the attachment, including that the same is ordered by

the authority competent to do so as provided here in under. Attachment of Personnel Released on Bail and Awaiting Trial in a Criminal

Court

2. In accordance with Para 420 of the Regulations for the Army (Revised Edition 1987), a Junior Commissioned Officer, Warrant Officer or

Other Rank released on bail and awaiting trial by the civil power, will, during the period he remains on bail, perform all military duties

without prejudice to his trial by the civil power.

3. The arrest of a person subject to the Army Act by the civil police is required to be reported to his Commanding Officer by them in

accordance with the instructions issued by the Ministry of Home Affairs vide letter No. F/9/7/60-Judl-II dated 14 Jul 60 (reproduced in AO

409/71). Immediately on receipt of this information, the arrested person will be instructed, telegraphically, that as and when he is released

on bail by the court, he will report for duty to the nearer unit/station HQ or Formation HQ without delay so that he may be able to perform

duty, in terms of the provisions of the Regulations quoted above and that non-compliance of the orders will be punishable under the Army

Act. The unit/ station HQ or Formation HQs to which such person reports on release on bail, will intimate the date of his arrival/reporting to

his parent unit. To avoid delay, the attachment in such case shall be got formalized by the immediate Formation HQ of the parent unit, not

below Sub Area, HQ or equivalent as the case may be, by empowering and authorising the Sub Area HQ (or equivalent HQ) or higher

Headquarters concerned, in writing, under whose jurisdiction such attachment is required to be made to attach the said individual w.e.f. the

date of his joining/reporting. The latter shall, there-upon and accordingly, attach the individual anywhere under its command keeping in

view the administrative convenience as also to facilitate the civil investigation/trial. The above notwithstanding no unit/station HQ or

Formation HQs shall refuse to allow such person to join on establishing his

identity/bonafide. Further, such attachment shall not be denied awaiting written request from the parent unit/Fmn HQs of the individual.

4. xxx XXX XXX

5. xxx xxx xxx

6. xxx XXX XXX

Attachment of Personnel for Progressing Disciplinary/Vigilance Cases under the Army Act

7. Where attachment is visualized in progressing disciplinary/vigilance cases under the Army Act, including the cases which have been

taken over from the Civil (Criminal) Courts for trial under the said Act, the procedure outlined in Para 3 above will be invoked by the

competent authorities as specified therein. During attachment the individuals will continue to be held against the strength and appointment

of the parent unit and no replacement will be made until completion of the disciplinary proceedings. to change the command with a view to

secure award of enhanced punishment/ penalty e.g. for a trial b\_y Summary Court Martial. Disposal of Offences Committed by Personnel

Away from Their parent Units

8. xxx xxx xxx

9. X.X.X XXX XXX

10. XXX XXX XXX

11. Army Orders 163/72 and 89/81 are hereby cancelled.

14. Mr. Tarunvir Singh Khehar, learned counsel for the respondents in O.A. No.1773 of 2019, has placed reliance on judgment dated 07.12.2007 of

the Hon'ble Supreme Court in the matter of Sakiri Vasu Vs. State of Uttar Pradesh [Criminal Appeal No. 1685 of 20071 - (2008) 2 SCC 409, to

contend that the respondents have the implied power to take decision in such matters. Para 18 of the judgment is reproduced as hereunder :

18. It is well settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the

proper doing of that thing. In other words, when any power is expressly granted by the statute, there is imp liedly included in the grant, even without

special mention, every power every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it imp

liedly also grants the power of doing all such acts or employ such means as are essentially necessary for its execution.

15. Reliance is also placed on the order dated 23.07.2010 of AFT (PB) New Delhi in the matter of Nlc Rajvir Singh Vs. Union of India & Ors. [O.A.

No. 348 of 2010<sup>1</sup>, wherein reference is made to decision of the Delhi High Court in the matter of Vishay Pritia Singh Vs. Union of India [147 (2008)

Delhi Law Times 202 (DI3)<sup>1</sup> to support the premise that the respondents can attach an individual to a different unit for disciplinary proceedings. Paras

3, 5, 6 and 7 of the order passed in O.A. No. 348 of 2010 is reproduced as hereunder:

â??3. The application is resisted by the respondents contending, inter alia, that the Army Order No. 7/2000 itself dealt with the power of

making attachment of an individual to another unit for the purpose of disciplinary action. The bar, which was incorporated on the basis of

Note (5), which was earlier added to Section 120(2), had already been deleted by the Central Government. Now, subsequent to the deletion

of Note 15), there appears to be no point in re-agitating time and again with regard to attachment of an individual to a different unit. In this

regard, reliance was placed on the decision of the Delhi High Court reported in Vishay Priya Singh v. Union of India and others (147

(2008) Delhi Law Times 202 (DB)). Further, it has also been stated that the definition of ""Commanding Officer"" itself is clear when it is

read in the context of Para 9 of Regulations for the Army. It confers jurisdiction upon the officer commanding the unit to which the

individual is posted or ""attached"" to proceed against him.

4. xxx xxx xxx

5. It has next been argued that the attachment of the applicant by Respondent No.4 to a different unit is not in consonance with the spirit of

Para 8 of AO 7/2000. The words ""this power, however, shall not be exercised merely to change the command"" refer only to enable the

authority to make the attachment of the individual to another unit. It is to be noted that the words cannot be read in isolation. The entire

sentence runs as under: ""This power, however, shall not be exercised merely to change the command with a view to secure award of

enhanced punishment/penalty e.g. for a trial by Summary Court Martial"". Here

the restriction, which was imposed under Para 7, makes it clear that though the power vests with the authority to make attachment of individuals to different units with a view to facilitating the disciplinary proceedings, it should be keeping in view administrative convenience. The sentence, as referred to above, is to be read at least from where it is ascertainable that the power for making attachment of the individual to other units. However, from the side of the respondents, it is contended that limitations have been given in that clause i.e. with regard to Note (5), for the purpose of awarding enhanced punishment. In this regard, Section 120(5) of the Army Act shall be referred to, which refers to the powers of different level of officers to award punishment. Here, in this case, the Commanding Officer of the parent unit and the Commanding Officer of the other unit, to which the applicant was attached, appear to be of equal ranks and there appears to be no cause for the exercise of the powers for the purpose of ensuring enhanced punishment.

6. It is further contended by counsel for the respondents that when proceedings under Army Rules 22-24 had already been initiated against the applicant and witnesses were also examined, even at this stage, his attachment to another unit is not illegal and it has caused him no prejudice at all. Further, the proceedings under Army Rules 22-24 had been initiated de novo. In that eventuality, no prejudice can be said to have been caused to the applicant. To the contrary, he would be in an advantageous position to cross examine the witnesses once again.

7. In view of the above, we do not find any merit in the application. In the result, it is dismissed.

16. Counsels for the respondents have asserted that, as Meerut is not far from Delhi, adequate opportunities for outpass are being provided to the applicants. Leave is also being provided in case of urgent requirement.

Consideration:

17. We have given careful consideration to the arguments made by both sides and find that the primary issue before us is whether the attachment order of the applicants to the unit at Meerut for re-hearing of charges and re-recording of S of E against the applicants in the case pertaining to allegations of illegal sale of medicines by personnel posted at AH (R8r,R) New

Delhi is valid as per the law.

18. Learned counsel for the applicants has referred to the fact that the 'hearing of charge' was done at two different units in Delhi from December

2018 onwards and the setting aside of the earlier S of E and issuance of orders in September 2019 for attachment to unit in Meerut and fresh

recording of S of E is illegal and reflective of malafide and bias against them whereby they will be placed at a disadvantage. Further, as the counsel

and the families of the applicants are based at Delhi, the attachment far away from Delhi at Meerut amounts to harassment and unfairness as they

will be denied interaction with their families as well as their legal counsel.

19. Counsels for the respondents have contended that, firstly, the issue of attachment, even for disciplinary purposes, cannot be taken up by this

Tribunal, as it is included in the exclusions under the term 'transfers and postings' as mentioned in the exclusions at Para 3(o)(ii) of the Armed Forces

Act, 2007. Further, they have asserted that the attachments to a unit in Meerut are legal as per Section 124 of the Army Act, 1950, which stipulates

that the trial for an offence under the Army Act can be held at "any place whatever". Further, the attachment order conforms to the provisions of

Army Policy issued vide AO 7/2000, whereby attachment of personnel for disciplinary proceedings to other units confers jurisdiction on the CO of

such units and Commanders in the chain. Learned counsels have conceded that issue of the fresh attachment order and orders for re-recording S of E

have been necessitated due to errors and irregularities that were noted by the respondents in the initial recordings at Delhi at 11 Raj Rif (for 5

personnel, including the applicants) and at Raj Rif Regimental Centre (for 7 personnel). Hence, notwithstanding the consequent delay, the respondents

had no other option but to recommence the disciplinary proceedings afresh in one single unit and accordingly 63 Field Regiment at Meerut under HQ

22 Infantry Division was assessed as most suitable and orders issued accordingly. The 'hearing of charge' was conducted by CO 63 Field Regiment

accordingly and recording of S of E is in progress since November 2019.

20. Having considered the contending arguments, we find that there is no legal infirmity in the impugned order dated 26.09.2019 of the respondents to

attach the applicants to a new unit at Meerut for fresh disciplinary proceedings, viz. hearing of charge and recording of S of E. Nonetheless, in our

opinion, delay and inconvenience thereto would have been avoided had the respondent visualized the problems earlier, before they tasked two different units/establishments, under two different Headquarters, to conduct these proceedings. Predictably, such an action resulted in uncoordinated and inadequate actions by the units/officers concerned, which then led to infirmities and irregularities being noted in the proceedings due to which the earlier proceedings had to be cancelled, which necessitated issue of fresh orders for rerecording of S of E, including the impugned order.

21. In the result, we find that the OAs lack merit and are disallowed. However, respondents need to identify appropriate lessons from the mistakes committed in allocation of responsibilities for conduct of disciplinary proceedings and put remedial measures in place to ensure that such actions, which result in legal infirmities and irregularities, and resultant delay, are not repeated. Further, the respondents are directed to ensure that no disadvantage is caused to the applicants as a result of this relocation of disciplinary proceedings. Furthermore, adequate opportunity, as allowed by the law, should be provided to the applicants to interact with their legal counsel and their family members.

M.A. Nos. 3319/2019, 3318/2019, 3317/2019 and 3316/2019:

22. All the four applicants filed aforesaid MAs praying for sanction of leave and allowing them movement and outpasses. It is stated that for last seven months, applicants have not been granted leave.

23. In view of the averments made in the respective applications, we find justification in the prayers made by each of the applicants. We allow the applications to the extent that the respondents should grant leave and outpasses to the applicants as and when appropriate application is moved considering the reasons assigned by them. Similarly, outpasses and adequate opportunity to interact with their family members/Advocates be provided to each applicant in accordance with law.

24. All other pending MA(s), if any, also stands disposed of. No order as to costs.

Pronounced in open court on this 30th day of June, 2020.