
(2022) 01 AFT CK 0015

In the Armed Forces Tribunal

Case No : OA 1135 Of 2019 with MA 2049 Of 2021 & MA 5 Of 2022

Brig S.K. Gupta (Retd.)

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 18-01-2022

Acts Referred:

Commercial Courts Act, 2015 — Section 12A
Negotiable Instruments Act, 1881 — Section 138
Arbitration and Conciliation Act, 1996 — Section 23(4), 29A
Code of Criminal Procedure, 1973 — Section 167
Armed Forces Tribunal Act, 2007 — Section 3, 3(o), 14
Army Act, 1950 — Section 122, 122(1)(b), 122(1)(c), 123, 123(2)
Prevention of Money Laundering Act, 2002 — Section 5(1), 5(3)
Banking Regulation Act, 1949 — Section 35A

Citation : (2022) 01 AFT CK 0015

Hon'ble Judges : Sunita Gupta, Member (J); Vice Admiral P. Murugesan, Member (A)

Bench : Division Bench

Advocate : Ajit Kakkar, Capt Karan Singh Bhati

Final Decision : Disposed Of

Judgement

M.A. No. 5 of 2022 :

1. Vide this application, applicant seeks stay on the notice of attachment vide RVC Centre & College letter No. 128/8/HQ (PC) dated 30.12.2021 and

stay against the disciplinary proceedings till the case is finally decided by this Tribunal.

2. It is submitted by Mr. Ajit Kakkar, learned counsel for the applicant, that the respondents issued a tentative charge sheet dated 15.07.2019

stating that certain omissions prejudicial to good order and military discipline cognizable under the Army Act 1950, Section 63 having come to the

knowledge of the authority competent to initiate action on 31.05.2018. However, the trial is yet to begin. Applicant retired on 15.10.2018 and

completed post-retirement on 15.10.2021. There was no disciplinary case declared or pending against him while in service as stated in Para 3 of the

letter of approval of his PMR dated 16.08.2018. Hence, clause (a) and (b) cannot be grounds for invoking Section 123 of the Army Act, 1950 against

him. As per the tentative charge-sheet dated 15.07.2019, charges against him came to the notice of the Competent Authority on 31.05.2018 while he

was in service. Hence, clause (c) also cannot be the basis for invoking Section 123 in his case.

3. Section 123(2) of the Army Act, 1950 clearly provides that no person shall be tried for an offence, unless his trial commences within a period of

three years after he had ceased to be subject to this Act. Section 123 is no longer applicable to the applicant and the Army Act has no jurisdiction over

him. It is legally impermissible to initiate any trial against the applicant under the Army Act, 1950.

4. It is further submitted that the proceedings have already become time-barred under Section 122(1)(b) and (1)(c) of the Army Act on 31.05.2021 as

per the respondents own deadline duly affirmed by the date on the tentative charge-sheet. As such, initiation of any proceedings against the applicant

is in violation of the Army Act, 1950, therefore, the disciplinary proceedings against the applicant be stayed till the case is finally decided.

5. Per contra, Gp Capt Karan Singh Bhati, learned Sr. CGSC for the respondents, does not dispute that the period prescribed under this section i.e.

Section 123, is three years and as stated in the counter affidavit, it was not disputed that 31.05.2018 was the first day on which the commission of

offence by the applicant came to the knowledge of the General Officer Commanding, who is the Competent Authority to initiate action under sub-

Section (1)(b) of Section 122 of the Army Act, 1950. It is also not disputed that the proceedings can be initiated within three years, which under

normal circumstances, come to an end on 31.05.2021. However, learned counsel submitted that in view of the ongoing pandemic and resultant

difficulties faced by the litigants across the country, Honâ??ble Apex Court, vide its order dated 23.03.2020, had directed that the limitation in filing

petitions/applications/suits/appeals/all other proceedings, irrespective of the period of limitation, prescribed under the general or special laws, shall

stand extended with effect from 15.03.2020 till further orders. Subsequently, on 08.03.2021, based on the fact that the country was returning to

normalcy, further directions were issued that in computing the period of limitation for any suits/appeals/applications/ petitions or proceedings, the period

from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall be made

available with effect from 15.03.2021 and certain other directions on computing the balance limitation period. Subsequently, once again taking note of

the extraordinary situation caused by the sudden and second outburst of COVID-19 virus, the order dated 23.03.2020 was restored and the period of

limitation was extended till further orders.

6. Now again, in view of the third outburst of COVID-19, the Honâ??ble Supreme Court, in its order dated 10.01.2022 in M.A. No. 21 of 2022 in

M.A. No. 665 of 2021 in Suo Motu Writ Petition (C) No. 3 of 2020 In re: Cognizance for Extension of Limitation, has directed as under :

â??The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the

period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general and special laws in respect of

all judicial or quasi-judicial proceedings.â??

7. Learned counsel submitted that relying upon the Honâ??ble Apex Courtâ??s order dated 27.04.2021, the Principal Bench of this Tribunal in OA

(Appeal) No. 1135 of 2021 titled Nk Saurabh Singh Vs. Union of India & Ors., vide order dated 23.07.2021, dismissed the OA (Appeal) filed by

the applicant therein challenging the order dated 28.06.2021 issued by the General Court Martial rejecting the plea of the applicant being time-barred

as per Section 122 of the Army Act, 1950.

8. Reliance is also placed on the order dated 12.11.2021 passed by the AFT, Regional Bench at Lucknow in O.A. No. 782 of 2020 titled C ol Soumen

Kar (Retd.) Vs. Union of India & Ors .in which one of the co-accused along with the applicant filed an OA under Section 14 of the Armed Forces

Tribunal Act, 2007 (hereinafter referred to as â??the AFT Actâ??) challenging the letter dated 17.10.2020 and seeking directions to the respondents

not to invoke provisions of Section 123 of the Army Act on the applicant and to close the proceedings, inter alia, on the same allegation that the

proceedings have become time-barred as the court martial proceedings did not commence during the period of three years and, therefore, the

applicant ceases to be subject to the Army Act. Paras 8 and 9 of the aforesaid order dated 12.11.2021 being relevant are reproduced as under :

8. From the aforesaid, it is clear that trial should commence within three years of invocation of Section 123 of Army Act, 1950. Nevertheless it is also a fact that the entire country was in the grip of the Covid Pandemic for many months commencing March 2020, and normal work of all institutions in the country had been severely disrupted.

9. Additionally, the Hon'ble Apex Court in suo motu writ petition (civil) No. 3 of 2020 has taken cognizance for extension of limitations that due to Covid

Pandemic, period of 15.03.2020 to 14.03.2021 shall be excluded from the proceedings. Thus, it is quite clear that due to Covid Pandemic there have been huge

delays in every aspect in our work life. We have seen that during the peak covid pandemic period, even prisoners were ordered to be set free, keeping in view of precarious situation all over the world.

9. Counsel further referred to order dated 14.12.2021 vide which the review application filed by the applicant in this matter was rejected. Learned

senior counsel further referred to the status of this matter for submitting that number of accused are involved in this scam and the court martial

proceedings have been initiated against them. It is submitted that the applicant has been evading the arrest. The proceedings are going to commence

on 17.01.2022 and it will be open to the applicant to take all such plea which may be available to him in law. However, as observed by the Hon'ble

Supreme Court in the case of Union of India & Ors. Vs. Lt Col Dharamvir Singh [(2019) 15 SCC 79]3, pre-emptive judicial strikes are

unwarranted. As such, there are no grounds for staying the disciplinary proceedings against the applicant.

10. As regards the attachment order, reliance is placed on the order dated 10.05.2019 passed by the Larger Bench of this Tribunal in O.A. No. 965 of

2017 titled Maj Gen M.S. Jaswal Vs. Union of India & Ors and other connected OAs, to say that the word 'attachment' is included in the

exclusion clause of Section 3 of the AFT Act and as such, the Armed Forces Tribunal has no jurisdiction to entertain petition against an attachment

order.

11. Rebutting the submissions of Mr. Bhati, learned senior counsel for the respondents, Mr. Kakkar, learned counsel for the applicant, relied upon the

judgment passed on 08.05.2020 by the Madras High Court in the matter of Settu Vs. The State rep. by The Inspector of Police [(2020) SCC OnLine

Mad 1026] and judgment dated 12.05.2020 passed by the High Court of Uttarakhand in Vivek Sharma Vs. State of Uttarakhand [(2020) SCC

OnLine Utt 302], wherein the High Courts did not agree with the submissions of the State(s) that by considering the provisions of Section 167 of the

Code of Criminal Procedure, which provides for "default bail" for not filing the charge-sheet within 60/90 days, as the case may be, the period

stands extended in view of the Hon'ble Supreme Court order and the accused were ordered to be released on bail. These orders were upheld on

19.06.2020 by the Hon'ble Supreme Court in Criminal Appeal No. 452 of 2020 titled S. Kasi Vs. State through the Inspector of Police.

12. Reliance is also placed on the order dated 18.11.2020 passed by the Delhi High Court in W.P.(C) 3551/2020 & 12626/2020 titled M/s. Vikas WPS

Ltd. & Ors. Vs. Directorate Enforcement & Anr. [(2020) SCC OnLine Del 1732] and order passed by the High Court of Calcutta on 01.10.2021 in

Gobindo Das & Ors. Vs. Union of India & Ors. [(2021) SCC OnLine Cal 2739], wherein the High Court came to the conclusion that the order of

the Hon'ble Supreme Court in Suo Motu Writ Petition is not applicable in those cases of money laundering. It is submitted that the ratio of these

cases are squarely applicable to the present case where investigation was not completed within the stipulated period. Hence, the respondents cannot

take recourse to the exclusion of the period of limitation as ordered by the Hon'ble Supreme Court in the suo motu writ petition and, therefore,

since the proceedings have become time-barred, as such the disciplinary proceedings should be stayed. Mr. Kakkar submits that the orders passed in

Nk Saurbh Singh and Col Soumen Kar were per incuriam as in both the judgments, the subsequent order passed by the Hon'ble Supreme Court

in the matter of S. Kasi Vs. State was never considered.

13. Countering the submissions of learned counsel for the applicant, learned senior counsel for the respondents submits that the applicant cannot take

benefit of these judgments because the Uttarakhand High Court and Madras High

Court were dealing with the provisions of Section 167 of the Code of Criminal Procedure and the same is not applicable to the Army Act. Similarly, the provisions of the Prevention of Money Laundering Act, 2002 are not applicable to the Army Act, which is a special Act. Reiterating the fact that even the Principal Bench of this Tribunal in *Nk Saurabh Singh* (supra) and the Regional Bench at Lucknow in *Col Soumen Kar* (supra), in a similar issue, have taken the view that the proceedings are not time-barred, hence, there are no grounds for staying the disciplinary proceedings.

14. We have given our considerable thought to the respective submissions of the learned counsel for the parties. Records reveal that the OA itself has been filed by the applicant challenging the tentative charge-sheet and the attachment order on the ground that the proceedings are hit by Sections 122 and 123 of the Army Act, 1950. During the pendency of this OA, now the respondents have decided to initiate disciplinary proceedings against the applicant and as stated by the learned counsel for the respondents again several others accused who are also involved in the same offence.

15. As seen above, one of the co-accused in the case of *Col Soumen Kar* (supra), also challenged initiation of proceedings against him on the ground that same has become time-barred. However, not only on the ground of exclusion of the period of limitation but even on merits of the case, the OA was dismissed and the review petition was also rejected. Similarly, in *Nk Saurabh Singh* (supra) also, similar plea was taken that the proceedings were time-barred under Section 122 of the Army Act, which was rejected by the Principal Bench of this Tribunal.

16. A careful reading of the judgement in *M/s. Vikas WSP Ltd.* (supra), goes to show that the question raised before the Delhi High Court was the effect of the lockdown declared by the Central Government due to the outbreak of the COVID-19 pandemic on the period of the provisional attachment order passed under Section 5(1) of the Prevention of Money Laundering Act, 2002. In that case, a provisional attachment order dated 13.11.2019 was passed attaching certain properties of the petitioners for a period of 180 days from the date of the order. A Show Cause Notice was issued by the Adjudicating Authority on 18.12.2019. However, before the proceedings could be concluded, on 23.03.2020, the Government of India

declared a nationwide lockdown with effect from 24.03.2020 due to the spread of the COVID-19 pandemic. The lockdown declared by the

Government of India was partially lifted on 20.04.2020 and the Adjudicating Authority began functioning in a restricted manner thereafter. On

26.05.2020, the Adjudicating Authority issued the notice/summons to the petitioners indicating the next date of hearing. Challenge was laid down

before the High Court on the ground that as the period of 180 days from the date of the Provisional Attachment Orders had expired in terms of

Section 5(3) of the Act, the said order ceased to have effect and the Adjudicating Authority had become functus officio and the proceedings in the

complaint cannot proceed. The relevant observations in Paras 29 to 32 of the order are reproduced as under :

29. It is thus settled law that where the provision of the Act is clear and unambiguous, it has no scope for any interpretation on equitable ground.

28. In view of the above dicta, the submission of the learned counsel for the respondents that as the delay in proceedings before the Adjudicating Authority

cannot be blamed on the respondents, the respondents must not be penalized and the time period should be extended, cannot be accepted. It is not a question of

penalization of the WP(C) No.3551/2020 Page 19 respondents for the delay, but of application of the mandate of law from which there is no escape. Equally, the principle of Actus Curiae Neminem Gravabit can also have no application.

29. The reliance of the learned counsel for the respondents on the orders passed by the Supreme Court in *Suo Motu Writ Petition (Civil) No. 3/2020*, is also

unfounded. The Supreme Court, in its order dated 23.03.2020, directed as under:-

This Court has taken *Suo Motu* cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant

difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/ appeals/all other proceedings within the period of

limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State). To obviate such difficulties and to ensure that

lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby

ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable

or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings. We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all

Courts/Tribunals and authorities.â??

30. Clearly, the above order extended the period of limitation. In the present case, Section 5(1) and 5(3) do not provide the period of WP(C) No.3551/2020 Page

20 limitation, but the period of validity of the Provisional Attachment Order. The same would not stand extended due to the above order of the Supreme Court.

This becomes more evident from the order dated 06.05.2020 passed by the Supreme Court in I.A. 48411/2020, whereby it was pleased to extend the period of

limitation prescribed under the Arbitration and Conciliation Act, 1996 and under Section 138 of the Negotiable Instruments Act, 1881, observing as under:-

â??IA No.48411/2020 - FOR DIRECTIONS By way of filing this application for directions, the applicant has made the following prayer: To issue appropriate

directions qua (i) arbitration proceedings in relation to section 29A of the Arbitration and Conciliation Act, 1996 and (ii) initiation of proceedings under

section 138 of the Negotiable Instruments Act, 1881; In view of this Court's earlier order dated 23.03.2020 passed in Suo Motu Writ Petition (Civil) No.3/2020

and taking into consideration the effect of the Corona Virus (COVID 19) and resultant difficulties being faced by the lawyers and litigants and with a view to

obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunal across the

country including this Court, it is hereby ordered that all periods of limitation prescribed under the Arbitration and Conciliation Act, 1996 and under section

138 of the Negotiable Instruments Act 1881 shall be extended with effect from 15.03.2020 till further orders to be passed by this Court in the present

proceedings. In case the limitation has expired after 15.03.2020 then the period from 15.03.2020 till the date on which the lockdown is lifted in the

jurisdictional area where the dispute lies or where the WP(C) No.3551/2020 Page 21 cause of action arises shall be extended for a period of 15 days after the

lifting of lockdown. In view of the above, the instant interlocutory application is disposed of." 31. In fact, the most relevant in this series of orders to the present

controversy is the order dated 10.07.2020, which clearly shows that the above

referred two orders of the Supreme Court were only in relation to the period of limitation and did not extend the period to do something required under a Statute or the period of validity of an order, as in the present case. Realizing such difference, the Supreme Court extended the period to pass an Arbitral Award under Section 29A and for completion of pleadings under Section 23(4) of the Arbitration and Conciliation Act, 1996 as also for completing the process of compulsory pre-litigation, mediation and settlement under Section 12A of the Commercial Courts Act, 2015, however, refused to extend the period of validity of a cheque. This itself shows that the orders of the Supreme Court are not a universal extension of time across the board, be it limitation or period prescribed for doing a particular thing, or as in the present case, the period of validity of an order. For ready reference, the order dated 10.07.2020 is quoted hereinbelow:-

“Parties have prayed to this Court for extending the time where limitation is to expire during the period when there is a lockdown in view of COVID-

or the time to perform a particular act is to expire during the lockdown. I.A. No. 49221/2020 -Section 29A of the Arbitration and Conciliation Act,

1996 WP(C) No.3551/2020 Page 22 Taken on Board. In Suo Moto Writ Petition (C) No. 3/2020, by our order dated 23.03.2020 and 06.05.2020, we ordered that all periods of limitation prescribed under the Arbitration and Conciliation Act, 1996 shall be extended w.e.f. 15.03.2020 till further orders. Learned Attorney

General has sought a minor modification in the aforesaid orders. Section 29A of the Arbitration and Conciliation Act, 1996 does not prescribe a period of

limitation but fixes a time to do certain acts, i.e. making an arbitral award within a prescribed time. We, accordingly, direct that the aforesaid orders shall also

apply for extension of time limit for passing arbitral award under Section 29A of the said Act. Similarly, Section 23(4) of the Arbitration and Conciliation Act,

1996 provides for a time period of 6 months for the completion of the statement of claim and defence. We, accordingly, direct that the aforesaid orders shall

also apply for extension of the time limit prescribed under Section 23(4) of the said Act. The application is disposed of accordingly.

Pre-Institution Mediation and Settlement under Section 12A of the Commercial Courts Act, 2015. Under Section 12A of the Commercial Courts Act,

2015, time is prescribed for completing the process of compulsory pre-litigation, mediation and settlement. The said time is also liable to be

extended. We, accordingly, direct that the said time shall stand extended from the time when the lockdown is lifted plus 45 days thereafter. That is to say that if the above period, i.e. the period of lockdown plus 45 days has expired, no further period shall be liable to be excluded. I.A. No.

48461/2020- Service of all notices, summons and exchange of pleadings WP(C) No.3551/2020 Page 23 Service of notices, summons and exchange of pleadings/documents, is a requirement of virtually every legal proceeding. Service of notices, summons and pleadings etc. have not been possible during the period of lockdown because this involves visits to post offices, courier companies or physical delivery of notices, summons and pleadings.

We, therefore, consider it appropriate to direct that such services of all the above may be effected by e-mail, FAX, commonly used instant messaging services, such as WhatsApp, Telegram, Signal etc. However, if a party intends to effect service by means of said instant messaging services, we direct that in addition thereto, the party must also effect service of the same document/documents by e-mail, simultaneously on the same date.

Extension of validity of Negotiable Instruments Act, 1881-I.A. Nos. 48461 and 48672/2020 (IA. No. 48671/2020, 48673/2020) I.A. No.

48671/2020 for impleadment is allowed. With reference to the prayer, that the period of validity of a cheque be extended, we find that the said period

has not been prescribed by any Statute but it is a period prescribed by the Reserve Bank of India under Section 35-A of the Banking Regulation Act, 1949.

We do not consider it appropriate to interfere with the period prescribed by the Reserve Bank of India, particularly, since the entire banking system functions on the basis of the period so prescribed.

The Reserve Bank of India may in its discretion, alter such period as it thinks fit. Ordered accordingly.

The instant applications are disposed of accordingly.

(Emphasis supplied)

32. The above distinction is also apparent to the Government of India as it promulgated The Taxation and Other Laws (Relaxation of Certain WP(C)

No.3551/2020 Page 24 Provisions) Ordinance, 2020 on 31.03.2020, extending the time limit for completion of any proceedings or passing of any order etc.

specified in the Acts specified therein. However, the Prevention of Money

Laundering Act, 2002 is not one of the specified Acts under the Ordinance.

Therefore, the respondents cannot take benefit of even this Ordinance. On the other hand, the Ordinance clearly shows that the reliance of the respondents on the

orders of the Supreme Court is liable to be rejected.

17. After referring to various judgments and orders passed by the Honable Supreme Court in Suo Motu Writ Petition (C) No. 3 of 2020, it was

observed that the Honable Supreme Court extended the period of limitation. However, Section 5(1) and 5(3) of the Prevention of Money

Laundering Act does not provide the period of limitation but the period of validity of the Provisional Attachment Order. The same would not stand

extended due to the above order of the Honable Supreme Court.

18. The High Court accordingly set aside the notice/summons issued by the Adjudicating Authority on the ground that it became functus officio and

could not have proceeded with the original complaint. These judgments, therefore, do not help the applicant and the question involved in those cases

was pertaining to the validity of the attachment order and not to period of limitation.

19. Moreover, in the case of Lt Col Dharamvir Singh (supra), there was challenge to the validity of the attachment order passed by the respondents

for initiating disciplinary proceedings. The writ petition was entertained by the High Court and the impugned order was stayed. The matter went to

Honable Supreme Court. While allowing the appeal, Honable Apex Court, observed as under :

The assumption of jurisdiction by the High Court in a Writ Petition under Article 226 of the Constitution was misconceived. We are also of the view that

having regard to the definition of the expression 'service matters' in Section 3(o) of the Armed Forces Tribunal Act 2007 and the jurisdiction of the Armed

Forces Tribunal under Section 14, such a Writ Petition ought not to have been entertained by the High Court. The learned Single Judge should have exercised

caution and ought to have been circumspect before he proceeded to stay an order of attachment. Such pre-emptive judicial strikes are unwarranted. The course

of action followed by the Single Judge has serious repercussions for the maintenance of discipline in the Army. Discipline is the essence of the organisation and

structure of an Armed Force.â??

20. Last but not the least, since disciplinary proceedings are going to start against the applicant, it will be open to the applicant to raise all such plea

before the Competent Authority and in case such a plea is raised by the applicant, the General Court Martial would decide the plea unaffected by any

observation made in this order as the present order is simply being passed on the submissions made by the applicant for stay of the disciplinary

proceedings and we are not making any comment on whether the period from 15.03.2020 to 28.02.2022 can be excluded for computation of the period

of three years for initiating proceedings against the applicant or are not tenable or time-barred as alleged by the applicant under Section 122/123 of the

Army Act, 1950.

21. In view of the foregoing, we do not deem it appropriate to stay either the attachment order or the disciplinary proceedings to be initiated against

the applicant as it will be open to the applicant to raise all such pleas, which may be available to him under the law.

22. With the aforesaid observations, MA stands disposed of.

Pronounced in open Court on this 18th day of January, 2022.