

**(2013) 10 DEL CK 0359**  
**In the Delhi High Court**  
**Case No : W.P.(C) No. 5684/2012**

Gurdev Singh

APPELLANT

Vs

Union of India

RESPONDENT

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**Date of Decision :** 01-10-2013

**Acts Referred:**

Army Act, 1950 — Section 122  
Arms Forces Tribunal Act, 2007 — Section 14(F)  
Army Rules, 1954 — Rule 180

**Citation :** (2013) 6 ILR Delhi 4405

**Hon'ble Judges :** Gita Mittal, J;Deepa Sharma, J

**Bench :** Division Bench

**Final Decision :** Disposed Off

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## Judgement

Gita Mittal, J.—By way of the present petition, the petitioner has assailed a judgment dated 23rd May, 2011 passed by the Armed Forces Tribunal dismissing the petitioner's TA No. 484/2010. The petitioner also challenges the order dated 26th September, 2011 whereby the Armed Forces Tribunal has dismissed the review petition filed by the petitioner challenging the judgment dated 23rd May, 2011.

2. The two impugned orders have been assailed on several grounds detailed in the writ petition. One of the primary grounds of challenge is that legal issue of limitation u/s 122 of the Army Act 1950 and violation of Rule 180 of the Army Rules, 1954 as one of the grounds though noticed in the order dated 23rd May, 2011 by Armed Forces Tribunal was not adjudicated upon. We are, therefore, confining the present order for consideration of this issue only.

3. The impugned order has noted that the petitioner had objected to the proceedings for the reason charges against him are barred by limitation provided u/s 122 of the Army Act, 1950. Our attention is drawn to the chargesheet dated 29th January, 1992 issued to the petitioner on which he was subjected to General Court Martial.

4. The charge on which the petitioner was tried relate to different periods between October 1993 to May 1994.

5. The challenge by the petitioner before us to the order impugned is that the learned Tribunal has gravely erred in not deciding this issue which should have been adjudicated upon as it precluded the petitioner's trial by the General Court Martial.

6. Our attention has been drawn by learned counsel for both the parties to the submissions noted in the order dated 23rd May, 2011 by the Armed Forces Tribunal. In para 1 of the said order, the Tribunal has noted the contention of the petitioner that his trial for the alleged offence was barred by limitation in view of the provisions laid u/s 122 of the Army Act. We find that the Tribunal has referred to the submission made on behalf of the petitioner. Unfortunately while disposing of this petition by detailed order dated 26th September, 2011, adjudication of the petitioners objection premised on Section 122 of the Army Act 1950 escaped notice.

7. The petitioner has thereafter filed a Review Petition u/s 14(F) of the Arms Forces Tribunal Act, 2007 on 27th July, 2011.

8. This objection has been detailed in para 8 of the Review application and ground E at page 87 of the impugned petition filed by the petitioner.

9. It is trite that the bar of limitation would certainly interdict the trial of the petitioner by the General Court Martial if it could be held that the same was beyond the prescribed period of limitation u/s 122 of the Army Act. The adjudication of this issue was therefore essential in order to decide whether the proceedings before the General Court Martial were time barred or not. The petitioner has challenged the order dated 23rd May, 2011 and 26th September, 2011 on several grounds laid before us in the writ petition.

10. In view of the above narration, it is not essential to deal with those grounds which are on the merits of the trial and on the evidence led by the parties before the General Court Martial. In case, it is held that the trial itself was barred by limitation there would be no requirement to examine these several issues. These grounds are left open for consideration.

11. In view of the above, we direct as follows:-

(i) the order dated 23rd May, 2011 and 26th September, 2011 are hereby set aside and quashed and the matter is remanded back to the Armed Forces Tribunal for consideration qua the objection of the petitioner based on Section 122 of the Army Act, 1950.

(ii) We make it clear that we have not opined on the merits of the other objection of the petitioner.

(iii) In case the petitioner is still aggrieved by the adjudication of the Armed Forces Tribunal, it shall be open to the petitioner to assail all orders passed by

the Armed Forces Tribunal on all grounds raised in the present writ petition by way of appropriate proceedings as well as all grounds available in law.

(iv) the parties shall appear before the Registrar of the Armed Forces Tribunal on 10th October, 2013 for directions.

12. The writ petition is disposed of in above terms.