

(2003) 04 DEL CK 0028

In the Delhi High Court

Case No : CW 415 of 2003

Maj. Gen. Surendra Kumar Sahni

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-04-2003

Acts Referred:

Citation : (2003) 3 AD 541 : (2003) 105 DLT 211 : (2003) 71 DRJ 693 : (2004) 1 SLJ 80

Hon'ble Judges : V.K. Jain, J;B.N. Chaturvedi, J

Bench : Division Bench

Advocate : Shyamala Pappu and Jagmohan, for the Appellant; K.K. Sud, ASG and Navin Chawla, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Chaturvedi, J.—The petitioner is a Major General, in Army Service Corps (ASC) of the Army. Presently, he is posted at Headquarters Southern Command, Pune, Maharashtra. Prior to that, he had been posted as Major General Army Service Corps (MG ASC) at Headquarters Central Command, located at Lucknow, during the period from 5th July, 1999 to 21st November, 2001. During his posting there, apart from discharging his normal duties, he also acted as Executive Officer, designated as such under relevant Regulations for the purposes of conclusion of contracts for the supply of "Meat Group" items of Troops" ration, stationed at different places under Central Command including Meerut and Lucknow. Acting in that capacity, he was required to adhere to the provisions contained in letter No. PC/RAKSHA/68063/Q/ST5/5089D(QS) dated 22-11-2002 of Government of India, Ministry of defense as well as terms and conditions of tender documents while concluding the contracts.

2. The petitioner while functioning as Executive Officer is alleged to have committed certain irregularities by his acts of commission or omission in operating the contracts, which the respondents detail as under in para 3 of their counter affidavit:

"3(a) Incorrect Transfer of Contract Carrying Capacity: The petitioner upgraded the Contract Carrying Capacity of M/s. Haji Abdul Sakoor & Co., a Class B contractor with a Contract Carrying Capacity of Rs. 1.80 crores, registered in Central Command on 15th July, 1997 to 7.2 crores on 4th September, 2000. On 28th November, 2000 barely three months after the up-gradation of the Contractor (and without adequately exercising the contractor in the enhanced Contract Carrying Capacity) the petitioner (General Officer) transferred a major part of the enhanced Contract Carrying Capacity (Rs. 6.50 crores), taking plea of the fact that the relevant orders did not mention the extent to which the Contract Carrying Capacity could be transferred. The transfer of the Contract Carrying Capacity should have been related to the Rs. 1.80 crores in which the Contractor's performance had been seen by the petitioner over a period of one year.

(b) Incorrect scrutiny and processing and recommendation of contract documents as Executive Officer of ASC Contracts on meat group items of Meerut for the year 2001-2002. The petitioner was the head of the Panel of officers responsible for processing and submitting recommendations for conclusion of contract for Meat Dressed for Supply Depot ASC Meerut. The respondent overlooked the fact- by omission or commission-that there was a discrepancy in the rates quoted in words and figures of the M/s. Perfect Supplies & Co. The rates quoted by the Tenderer in figures were Rs. 4429.00 and that in words was Rupees Four Thousand Twenty Nine. As per the policy he should have recommended the tender of M/s. Perfect Supplies & Co for sanction as being lowest as whenever there is a discrepancy in words, and figures the rates in words is to be taken as final. He, however, recommended the tender of M/s. Alamgir & Co who had quoted Rs. 4424.00 both in words and figures as the lowest. This irregularity was detected at Army Headquarters and the contract was sanctioned in favor of M/s. Perfect Supplies. When questioned about the discrepancy, the petitioner blamed it on the officer responsible for opening of the tenders, while absolving himself, the person responsible for certifying the propriety and correctness of documents to the Competent Financial Authority of all the blame.

(c) Incorrect Release of Earnest Money. In the meantime, the Earnest Money of the second and third lowest tenderer in the above tendering, that is supposed to be held by the Petitioner's office was released before the Acceptance of Tender Note could be issued. This led to a situation that money had to be recovered from other contracts that were being run by the firm, which was legally questionable. When questioned about the fact, the Petitioner apportioned the blame to his subordinate officer, absolving himself once again of his responsibility as the Head of the Office.

(d) Allowing Mohd Alamgir, a partner of a registered contractor M/s. Mohd Alamgir & Co to run another contract of M/s. Perfect Supplies on Power of Attorney, which is against existing rules.

(e) Inaction against Contractor. M/s. Mohd Jehangir & Co was a Contractor at Supply Depot ASC Lucknow, where the Petitioner was himself stationed, there were 119 warnings issued to the contractor by Officer Commanding Supply Depot ASC Lucknow during 1st April, 2001 to 31st March, 2002. However no action was taken by the petitioner, who was the Executive Officer against the firm.

(f) Non Rescission of Contract: A contract which was not commenced by the contractor M/s. Perfect Supplies for Meat Group items at Meerut and allowing local purchase to be carried out for full year from 1st April, 2001 to 31st March, 2002 leading to a loss of Rs. 13,03,165.04 to the Government Exchequer. The petitioner did not take any action being Executive Officer to rectify the irregularities and he did not safeguard the interest of the organization.

3. In anticipation of a vacancy in the post of Lt. General ASC arising on 1st October, 2002, a Selection Board was held in August, 2002 to fill up the said vacancy. The petitioner claims that he was selected for the said post by the Selection Board and after clearance by Raksha Mantri, the matter is said to be pending before ACC. In the meantime, on some anonymous/pseudonymous complaints pertaining to the conclusion of the contracts while functioning as Executive Officer at Central Command pertaining to "Meat Group" Items, a Court of Inquiry was ordered to be convened to inquire into the alleged acts of commission or omission as extracted hereinabove from Para 3 of the counter affidavit of the respondents. The plea of the petitioner is that the matter had already been disposed of by Lt. General P.S. Joshi, erstwhile General officer Commanding in -chief (GOC-in-chief) and thus there is no justification for re-opening the whole issue after lapse of about one year, especially when the name of the petitioner is pending for approval by ACC for promotion to the rank of Lt. General. In regard to allegations against him, as detailed hereinabove, which constitute subject matter of fact finding exercise by the Court of Inquiry, the petitioner pleads that allegations under the heads 3(a)(b) & (c) have already been inquired into and decided in his favor, while on 3(d) count, the period of the contract and inquiry being from 1-4-2002 to 31-3-2003 action, if any, required to be taken pertains to the period of his successor as he was posted out from Headquarters Central Command, Lucknow on 6-11-2001. With respect to allegations under head 3(e) again, it is pleaded that the action, if any, was required to be taken by the successor of the petitioner only as the performance report of the contractor ending 31-10-2001 was received in the office of MG ASC Central Command in January, 2002 only Vide DDST UP Area Letter No. 341702/2/ST5(ii) dated 31st January, 2002. In relation to allegations in Para 3(f), it is stated that the contract was sanctioned by the Quartermaster General, hence, only he could have rescinded the contract and no blame is liable to be apportioned to the petitioner in that respect.

4. Referring to relevant instructions on the subject as to how anonymous, pseudonymous and signed complaints are to be dealt with, the petitioner sought to complain that such instructions were not complied with before ordering

convening of the Court of Inquiry to investigate into the allegations. It is added that the copies of the complaints containing allegations, which constitute subject matter of investigation by the Court of Inquiry were required to be furnished to the petitioner and he was to be afforded an opportunity of replying to the allegations and it was only if his reply, if any, was found unacceptable that an order to convene a Court of Inquiry could have been made. In the present case, it was pleaded on behalf of the petitioner that as the aforesaid exercise was not undertaken before ordering a Court of Inquiry, the order in that respect stands vitiated and consequently the petitioner cannot be required to appear before such a Court of Inquiry as directed.

5. The respondents sought to defend their action relating to convening of the Court of Inquiry stating that the allegations contained in Para 3(a) of the counter affidavit are not based on any complaint, rather the same emanate from the official record of which the petitioner has been well aware of. In this connection, it was pointed out that while being posted out to Southern Command, the petitioner, without any authorisation, carried with him some of the original files pertaining to the contracts. These files were returned by him after lapse of about ten months only on being directed by the then Chief of Staff, Headquarters Central Command. With respect to allegations in Para 1(b), it is stated that the copy of the complaint was annexed to the convening order for perusal of the Court of Inquiry and the same could have been brought to the notice of the petitioner at the time of the assembly of the Court of Inquiry.

6. It was submitted before us by Shri Sud that in view of the relevant instructions on the subject whenever an anonymous or pseudonymous complaint contains specific and verifiable facts, the same could always be investigated into. It was contended that the Court of Inquiry is held simply for the purposes of fact finding which affords in terms of Army Rule 180, ample opportunity to the witness to safeguard his character or military reputation by cross examining the witnesses and also by producing his witnesses in defense of his character or military reputation. Shri Sud laid emphasis that in view of a specific direction in the convening order for compliance with the requirements of the Army Rule 180, full protection is ensured to the petitioner to safeguard his interest in the course of proceedings before the Court of Inquiry.

7. The petitioner is aggrieved by the order convening the Court of Inquiry and directing him to appear before it as a witness as well as by delay in approval of his name for promotion to the next rank of Lt. General. He seeks quashing of the convening order dated 23-9-2002 and a direction to the first and second respondents to declassify the result of the Selection Board pertaining to his promotion to the rank of Lt. General and to effectuate his promotion forthwith in the event of his being found fit and recommended for promotion by the Selection Board. He also claims seniority from the date when vacancy in the said post arose, and after the date when the Selection Board had been held in respect of him.

8. We have heard the counsel for the parties. We have also perused the original records produced by the respondents.

9. Annexure-A to the petition contains an Army Order laying down the policy and guidelines for dealing with anonymous/pseudonymous and signed complaints. In terms of said Army Order, no action was required to be taken on anonymous/pseudonymous complaints and the same were simply to be filed after perusal of the commander concerned. Another Army Order No.A56571/AG/DV-1(P) dated 4-3-2002, brought about some modification in the said policy and guidelines by virtue of which all such cases where anonymous/pseudonymous complaints contain specific and verifiable allegations, the same could be investigated into and disposed of at the discretion of the immediate Formation Head Quarter of the person against whom the allegations are leveled. In terms of an Office memorandum M of D I D.No.C-13029/I/VIG-III/91, dated 22-11-1992 9Annexure-G) made applicable to the defense personnel as well, whenever the Head of Department/Chief Executive, on a prima facie examination of an anonymous/pseudonymous complaint, takes a decision, to pursue further action as to the verification of facts, a copy of such complaint, as far as possible, is required to be first made available to the officer concerned for his comments and only thereafter action, if any, is to be taken. In the present case, no copy of any complaint was furnished to the petitioner in order to invite his comments, if any, before taking decision for convening the Court of Inquiry. Omission on the part of the respondents to act in compliance with the said requirement of the office memorandum/(Annexure-G), according to the petitioner renders the order convening the Court of Inquiry vitiated and bad in law. There is no contest on behalf of the respondents in so far as applicability of the aforesaid instructions in connection with taking of cognizance of anonymous/pseudonymous complaints to defense personnel is concerned. In the present case, no copy of complaint(s) pertaining to the alleged charges covered under para 3(b) to (f) is claimed to have had been supplied to the petitioner inviting his comments before making the order convening the Court of Inquiry to investigate into allegations directed against the petitioner. The admitted position as reflected from the counter affidavit of the respondents is that a copy of complaint containing allegations covered under Para 3(b) of the counter affidavit was forwarded to the authority concerned along with convening order of the Court of Inquiry and the petitioner was to be apprised of the same only at the time when the Court of Inquiry was to assemble. The stand so taken by the respondents is obviously not in conformity with the instructions contained in the aforesaid office memorandum (Annexure-G). The reason for supplying a copy of anonymous/pseudonymous complaints and affording an opportunity to the official concerned to offer his comments is to enable the authority concerned to apply its mind to the whole matter before exercising its discretion relating to convening of the Court of Inquiry to investigate into the allegations against him. Since the convening authority in the instant case appears to have passed the impugned order convening a Court of Inquiry without furnishing the copy of the complaint(s) in question and affording

the petitioner an opportunity of offering his comments, if any, ignoring the relevant instructions on the subject, there was improper exercise of power on the part of the convening authority in making the impugned order convening the Court of Inquiry to investigate into the allegations as detailed in para 3(b) to (f) of the counter affidavit and consequently the same is, liable to be set aside to that extent. In the given circumstances, learned Additional Solicitor General appearing for the respondents fairly conceded that the fact finding exercise by the Court of Inquiry would be restricted to the allegations contained in para 3(a), leaving aside the allegations in para 3(b) to (f). The allegations in para 3(a) of the counter affidavit are said to be based on official records only and not on any complaint. There could thus be no occasion for supplying copy of any complaint to enable the petitioner to offer his comments before the authority concerned ordered convening of the Court of Inquiry in question. The petitioner having been at the helm of affairs at the relevant time could be taken to have been well conversant with the official records relating to the incorrect transfer of contract carrying capacity which constitutes the subject matter of fact finding exercise by the Court of Inquiry in terms of allegations in para 3(a) of the counter affidavit. Apart from having dealt with the matter himself while performing the duties as Executive Officer, Central Command, the petitioner would otherwise appear to be in the knowledge of all the relevant facts pertaining to incorrect transfer of contract carrying capacity in respect of M/s. Haji Abdul Sakoor & Co. by virtue of having been in possession of the original files pertaining to the contracts for a period of about 10 months even after being posted out from Headquarters Central Command to Headquarter Southern Command. It is thus not a case where the petitioner would be taken by surprise while appearing before the Court of Inquiry to depose as a witness in regard to alleged incorrect transfer of contract carrying capacity in respect of M/s. Haji Abdul Sakoor & Co. Rule 180 of the Army Rules provide sufficient safeguard to protect one's character or military reputation by cross-examining the witnesses to be produced before the Court of Inquiry and also by examining one's own witnesses in defense. Thus, no fault could be found with the convening of Court of Inquiry to investigate into the allegations pertaining to incorrect transfer of contract carrying capacity of M/s. Haji Abdul Sakoor & Co. as mentioned in para 3(a) of the counter affidavit and consequently no interference is called for in that respect.

10. The allegations of incorrect transfer of contract carrying capacity directed against the petitioner pertains to a period prior to the date of holding the Selection Board to fill up the vacancy occurring in the post of Lt. General ASC. Admittedly, the Selection Board has already made its recommendations in respect of the said vacancy which awaits approval by ACC. It lies within the domain of ACC's jurisdiction to accept or reject the recommendations of the Selection Board in that respect for any valid reason and until any such decision is taken it is pre mature to interfere with the process. There is thus no justification to issue a direction to 1st and 2nd respondents to declassify the result of the Selection Board pertaining to the promotion of the petitioner to the rank of Lt.

General. Further, until ACC's approval of recommendations by the Selection Board there is no occasion to issue a direction to the respondents to effectuate the promotion of the petitioner and accord him seniority in terms of his prayer in that regard.

11. In the result, the convening order dated 23-9-2002 for a Court of Inquiry relating to investigation into the allegations contained in para 3(b) to (f) of the counter affidavit is quashed. The fact finding exercise by the Court of Inquiry in respect of the allegations contained in para 3(a) of the counter affidavit shall, however, remain unaffected and the petitioner will abide by the directions to appear before the Court of Inquiry as a witness. Prayer(d) is declined.

12. The petition is disposed of in the aforesaid terms. No costs.