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**(2021) 03 AFT CK 0019**

**In the Armed Forces Tribunal**

**Case No : Original Application No. 1626 Of 2020**

P. Vasudeva

APPELLANT

Vs

Union Of India And Others

RESPONDENT

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**Date of Decision :** 15-03-2021

**Acts Referred:**

Armed Forces Tribunal Act, 2007 — Section 14

**Citation :** (2021) 03 AFT CK 0019

**Hon'ble Judges :** Rajendra Menon, J;P.M. Hariz, Member (A)

**Bench :** Division Bench

**Advocate :** D.K. Ahluwalia, Anil Gautam

**Final Decision :** Disposed Of

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## **Judgement**

1. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as the AFT Act'), the applicant has filed this application with the following prayer:

- i) To summon the entire record of the case in original;
- ii) To set aside the impugned order of attachment to AMC Centre and College
- iii) To set aside the tentative charge sheet dated 12.07.2019 served upon the applicant,
- iv) To set aside the entire disciplinary proceedings being illegal, unjust and arbitrary;
- v) To direct the respondents to provide all documents sought for by the applicant from investigation stage of the onwards; case
- vi) To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper.

2. The applicant was commissioned into the Army Medical Corps on 22.01.1999 and claims to have 21 years' unblemished service record. It is said that she held

various appointments at different places and has always rendered service to the best of her ability with full dedication, as a consequence of which, she rose to the rank of It Colonel'.

3. In the last week of August, 2014, the applicant was posted at BASE Hospital, Lucknow as a 'Medical Officer (General Physician/Non-Specialised Cadre)'. On reporting to the BASE Hospital Lucknow, it is said that the responsibility of 'Officer-in-Charge, Medical Store' was allotted to her. It is her contention that as she had no specialized training for discharging the said duty and had no past experience of working or maintaining medical store'; she had certain reservations and on explaining her difficulties, she was advised to show positivity and was assured of all cooperation not only by the Commandant but all others. She assumed the charge as Officer-in-Charge of the medical store on 01.10.2014. It is alleged in the petition that at BASE Hospital Lucknow, the medical store, which is a very big department had various irregularities and was in a bad shape. On 14.06.2016, an anonymous complaint, said to have been issued by Sri Sal Agency was received by the Commandant of the Hospital, wherein allegations were made with regard to unauthorized use and disposal of medical store and reference were made to two specific vouchers issued for facilitating this illegal activity in the name of Armed Forces Medical Stores Depot (AFMSD), Lucknow to BASE Hospital Lucknow. It is said that the medicines indicated in the vouchers were sold in Delhi by certain individuals or institutions indicated in the complaint.

4. Be as it may be, it is the case of the applicant that after the matter was discussed with the applicant, One-Man Inquiry (OMI) was ordered by the Commandant to look into the allegations. The applicant rendered full assistance to the Inquiry Officer, provided him all details/documents and cooperated with the inquiry. In the inquiry, stores worth 1.36 crores were recovered and same were taken on charge and were utilized as per the orders of the Government to avoid any further loss. Entire matter was brought to the notice of the higher authorities at Headquarters and, therefore, a Staff Court of Inquiry was ordered by the General Officer Commanding, Headquarters Madhya Uttar Pradesh Sub Area, Lucknow. The Staff Court of Inquiry was finalized and report submitted. However, the applicant was never informed about the outcome of the inquiry nor the report given to her. It is her contention that during the Staff Court of Inquiry, the provisions of Army Rule 180 were never invoked and neither the copy of the One-Man Inquiry Report nor the Staff Court of Inquiry Report was supplied to her till date. Later on, it is said that the General Officer Commanding, Uttar Bharat Area, Bareilly on 26.06.2017 convened yet another Court of Inquiry and the same is said to have been finalized sometime in December, 2017. It is the case of the applicant that all the aforesaid three successive investigations clearly indicated that the applicant was not at all involved in any irregularity whatsoever and the two indents/vouchers in question, which were indicated in the complaint, were never issued or signed by the applicant nor was she, in any manner, responsible for any unauthorized action. It is her contention that as there was no evidence against the applicant, the provisions of Army Rule 180 were not

followed or invoked, the Court had reassembled in January, 2019, after more than one year and in the garb of invoking the provisions of Army Rule 180, proceedings were further initiated.

5. It is said that the manner in which the proceedings were held, is contrary to Army Rule 180, the process was totally unknown to law and contrary to the requirement of the Statute and without pointing out any statement, document or material, which adversely affected the character and military reputation of the applicant, action was taken. The applicant participated in the proceedings brought to the notice of the Competent Authority various anomalies were pointed out to show that the reassembly of Court of Inquiry after 30 months of the incident was not called for, particularly as no material has been found against the applicant in the previous investigation conducted.

6. Grievance of the applicant is that inspite of these factors and inspite of invoking the provisions of Army Rule 180 in an illegal manner without following any proceedings in accordance to law, disciplinary action was directed against her and by the impugned order dated 07.06.2019, she has been attached to Army Medical Corps Centre 8z, College, Lucknow and, thereafter, hearing of charges was being carried out, accordingly, challenging the entire illegal action, this application has been filed.

7. Learned counsel for the applicant took us through various facts as are indicated in the application and argued that there is no evidence against the applicant and without following the requirement of Army Rule 180 in its letter and spirit, the applicant is being proceeded against without taking note of the fact that there is no evidence against her. It is said that she has not issued any indent; there is no signature of hers in the vouchers and even on the date when the vouchers/indents are said to have been issued, she was on leave. Raising various grounds as are detailed in Para 5 (A), (B), (C) and (D) etc. and contending that the applicant has not signed the two indents/vouchers at Annexure A5 and also Annexure A-6, the indents/vouchers do not bear her signatures. The charges framed in the Tentative Charge-sheet suffer from multiplicity and by taking us through the charges as are indicated in the Tentative Charge-sheet issued to the applicant vide Annexure-A1, it was tried to be emphasized that they do not constitute any allegation or offence which can be termed as misconduct for which disciplinary action can be taken. Contending inter alia that only with a view to harass the applicant when she is facing various medical issues and is not able to get proper treatment, impugned action is taken, submissions were made to say that the entire proceedings be quashed. Learned counsel took us through the detailed allegations contained in the Tentative Charge-sheet and tried to indicate that the applicant is, in no way, responsible for the charges.

8. Learned counsel for the respondents argued that after intervention of this Court and after certain interim orders/directions were issued on 05.11.2020 in the matter of permitting the applicant to report to Chandimandir and conclude

the additional Summary of Evidence etc., the Summary of Evidence has been completed and the matter is now before the Competent Authority to take a decision, based on the material collected so far, as to whether a regular Court Martial is to be conducted or the matter is to be closed.

9. Learned counsel for the respondents vehemently argued that based on the grounds canvassed in the application at this interlocutory stage, when after recording of Summary of Evidence, the matter is before the Competent Authority, interference into the matter is not called for. He argued that, at this stage, invoking jurisdiction of this Tribunal under Section 14 of the AFT Act and requesting this Tribunal to step into the shoes of the Competent Authority, the statutory procedure, which has to be concluded by the Competent Authority, cannot be taken over by the Tribunal. In support thereof, learned counsel invited our attention to an order recently passed by us on 23.10.2020 in Brig Suresh Gupta Vs. Union of India & Ors. [O.A. No. 1546 of 2020] and argued that interference into the matter at this stage is not called for. He also invited our attention to the law laid down by the Hon'ble Supreme Court in the case of Union of India and Others Vs. Ex. No. 3192684 W. Sep. Virendra Kumar - [(2020) 2 SCC 714] and another judgment of the Hon'ble Supreme Court in Union of India & Ors. Vs. Lt Colonel Dharamvir Singh [Civil Appeal No. 1714 of 2019 reported in 2019 SCC OnLine 230, to say that in a disciplined force like the Army, when disciplinary action is initiated, pre-emptive exercise of jurisdiction to strike down the proceedings initiated is unwarranted. Learned counsel argued that, at this stage, this Court should not interfere into the matter. The applicant may raise all the grounds before the Competent Authority, who would take note of all these factors and proceed in the matter. Learned counsel, therefore, argued that interference into the matter be not made.

10. In rebuttal, learned counsel for the applicant again submitted that when the entire proceeding is undertaken in an illegal and arbitrary manner and when there is nothing against the applicant to proceed with, the action taken is unsustainable. It is submitted that at least notice be issued to the respondents, they be directed to file their counter affidavit and thereafter the matter examined on merits.

11. He invited our attention to certain order passed by the Coordinate Bench of this Tribunal in O.A. No. 1135 of 2019 on 29.07.2019 titled Brig SK Gupta (Retd.) Vs. Union of India & Ors. to say that in the said case, notices have been issued and the matter is under consideration before this Tribunal.

12. We have heard the learned counsel for the parties at length and have gone through the records.

13. From the record, it is seen that primarily when the applicant approached this Tribunal in November, 2020 making a complaint with regard to the proceedings initiated by attaching her, her complaint was that, she has been advised not to travel in the present COVID-19 situation and her medical condition was indicated

as a factor, which warranted interference into the order of attachment and the proceedings held. A detailed order dated 05.11.2020 was passed by a Coordinate Bench of this Tribunal and after taking note of various submissions, it was directed that the applicant should report to Chandimandir on the date specified by the respondents and thereafter additional Summary of Evidence be concluded and all medical assistance be provided to the applicant.

14. We are informed today that the recording of Summary of Evidence is completed and now the final decision into the matter is to be taken by the Competent Authority. That being so, we are now required to consider as to whether at this interlocutory stage in the proceedings, interference by us invoking jurisdiction under Section 14 of the AFT Act is called for or not.

15. If we go through the grounds canvassed before us for interfering into the matter, we find that primarily the applicant has referred to the vouchers/indents and it is her contention that they do not bear her signatures and on certain dates, she was on leave and she is not responsible for anything. She also makes a complaint and when initiating One-Man Inquiry and Court of Inquiry, Army Rule 180 was not invoked and when, in the present Court of Inquiry, which led recording of Summary of Evidence, Army Rule 180 was invoked, it was done in an illegal and arbitrary manner and it is also tried to be indicated to us that a bare reading of Tentative Charge-sheet indicates that no allegations or acts of misconduct are made out against the applicant and some of the charges indicated in the Chargesheet, bearing seven imputations or allegations are nothing but repetition and multiplicity of the charges.

16. Based on these submissions, we are required to take a decision as to whether at this interlocutory stage of the disciplinary proceedings, judicial review in the matter is called for or not.

17. It is a well settled principle of law that, at an interlocutory stage in the disciplinary proceedings, interference invoking the powers of judicial review should not be made, until and unless blatant and grave irregularities or procedural impropriety are pointed out, violation of statutory rules or constitutional provisions should be established on a bare perusal of the record and by evaluating the evidence and material on record by stepping up into the shoe of the Competent Authority, judicial scrutiny and review is not permissible.

18. While considering somewhat similar situation in the case of Brig Suresh Gupta (*supra*), this Bench had taken note of various aspects of the matter and it was the considered view of this Court that a Court of Inquiry is held in accordance to the requirement of Rule 177 of the Army Rules, 1954. It is an assembly of officers or Junior Commissioned Officers for the purpose of *prima facie* assessing as to whether a case for initiating disciplinary proceedings against the officer concerned is made out or not. We have held that it is not an inquiry in the real sense and it is only a proceeding initiated before taking recourse to the regular process of conducting the inquiry, particularly by convening the Court

Martial. Thereafter, we had considered various statutory provisions and after taking note of the limited jurisdiction available to us under Section 14 of the AFT Act, we were of the considered view that this Tribunal will not sit over the decision of the Competent Authority as if it is exercising appellate jurisdiction, when only a preliminary fact-finding inquiry where sufficiency of the material to proceed against the person concerned is to be examined and an opinion formed by the Competent Authority whether to initiate disciplinary proceedings or not, at this stage, the Tribunal cannot meticulously analyse or scrutinize the evidence and by holding that it is a case of 'No Evidence', quash the proceedings.

19. We may take note of the law laid down by the Hon'ble Supreme Court in Lt Colonel Dharamvir Singh's case (supra), wherein the Hon'ble Supreme Court interfered with the exercise of jurisdiction by the Delhi High Court under Article 226 of the Constitution and held that at such a preliminary stage when an army officer, who is subjected to the statutory provisions of the Army Act, 1950, is proceeded against, the High Court or the Tribunal should not take upon itself the task of pre-empting the jurisdiction of the Statutory Authority and take -over to itself, the essential function of determining as to whether or not recourse to the disciplinary jurisdiction should be invoked or not. Hon'ble Supreme Court has held that such pre -emptive judicial strikes are unwarranted.

20. We are of the considered view that, at this stage, when only a prima facie view has been taken and when the Competent Authority, based on the Summary of Evidence and other proceedings held, is to take a decision exercising his jurisdiction with regard to further action to be taken, pre-empting the same on the grounds canvassed before us is not warranted. Even in the matter of violation of Army Rule 180. It has been observed by the Honble Supreme Court in the case of Ex Sep Virendra Kumar (supra), that the proceedings of Court of Inquiry are nothing but a process that is a fact-finding inquiry conducted at a pre-investigation stage and the accused is entitled to participate in the proceedings fully. It has been observed by the Honble Supreme Court in the aforesaid case that no final orders are passed based on such proceedings of the Court of Inquiry. Final orders are only passed after a trial is conducted in a regular Court Martial and, therefore, irregularities at an earlier stage cannot be the basis for setting aside the Court Martial.

21. In Para 9 of the judgment rendered by the Honble Supreme Court in the case of Ex Sep Virendra Kumar (supra), earlier judgments of the Honble Supreme Court in the case of Prithi Pal Singh Bedi Vs. Union of India [(1982) 3 SCC 140] and in the case of Union of India Vs. Sanjay Jethi - [(2012) 16 SCC 116] have been taken note of and in Paras 9, 10 and 11, the principles of law have been discussed in the following manner:

"9. This Court had occasion to consider the scope of Rule 180 and it is necessary to take note of the judgments of this Court in which Rule 180 was discussed. The orders by which General Court Martial was convened were challenged by petitions filed under Article 32 of the Constitution of India in Lt. Col. Prithi Pal

Singh Bedi & Ors. v. Union of India & Ors. One of the contentions on behalf of the petitioners therein was that it was obligatory upon the authorities to appoint a Court of Inquiry whenever an inquiry affects the character or military reputation of the persons subject to the Act and, in such an inquiry full opportunity must be afforded to such person of being present throughout the inquiry and making any statement or giving any evidence that he wishes to make and of cross-examining any witnesses. Interpreting Rule 180, this Court held that it cannot be construed to mean that whenever or wherever any inquiry in respect of any person who is subject to the Act is conducted and his character or military reputation is likely to be affected, setting up of a Court of Inquiry is sine qua non. However, this Court held as follows:

"40. Rule 180 merely makes it obligatory that whenever a Court of enquiry is set up and in the course of enquiry by the Court of enquiry character or military reputation of a person is likely to be affected then such a person must be given a full opportunity to participate in the proceedings of Court of enquiry. Court of enquiry by its very nature is likely to examine certain issues generally concerning a situation or persons. Where collective fine is desired to be imposed, a Court of enquiry may generally examine the shortfall to ascertain how many persons are responsible. In the course of such an enquiry there may be a distinct possibility of character or military reputation of a person subject to the Act likely to be affected. His participation cannot be avoided on the specious plea that no specific enquiry was directed against the person whose character or military reputation is involved. To ensure that such a person whose character or military reputation is likely to be affected by the proceedings of the Court of enquiry should be afforded full opportunity so that nothing is done at his back and without opportunity of participation, Rule 180 merely makes an enabling provision to ensure such participation."

10. This Court in Major G.S. Sodhi v. Union of India rejected the challenge to the Court Martial proceedings while dismissing the Writ Petitions filed under Article 32 of the Constitution. The main grievance of the petitioners in that case was the violation of the procedure prescribed in Rules 22 and 23 of the Army Rules. While recording a finding that there has been substantial compliance of Rules 22 and 23, this Court has held that recording of evidence is only to find out whether there is a prima facie case to convene a court-martial. This Court was of the opinion that the object and effect of the Rules should be considered in the context bearing in mind the general principle whether such an incomplete compliance has caused any prejudice to the delinquent officer. However, it was held that if there is any violation of mandatory rules, the benefit of the same should be given to the delinquent officer. The conclusion in that case was that there was no violation of the Rules and in any event no prejudice was caused to the petitioners therein. In Union of India & Ors. v. Major A. Hussain (IC-14827), this Court while setting aside the judgment of the High Court of Andhra Pradesh upheld the order of conviction of the respondent by the Court Martial. While dealing with the submissions made on Rule 180, this Court relying upon Major

General Inderjit Kumar v. Union of India held that proceedings before a Court of Inquiry are not adversarial proceedings as the Court of Inquiry is in the nature of a fact-finding enquiry committee. This Court was of the view that it is unnecessary to examine if pre-trial investigation is adequate or not when there is sufficient evidence to sustain conviction by the Court Martial. It was further held that the requirement of proper and adequate investigation is not jurisdictional and any violation thereof does not invalidate the Court Martial unless it is shown that the accused has been prejudiced or a mandatory provision has been violated. As the Respondent therein participated in the recording of summary of evidence without raising any objection, the submission regarding violation of principles of natural justice at an earlier stage was rejected by this Court. 11. In Union of India & Ors. v. Sanjay Jethi & Ann, the question regarding the bias of members of the Court of Inquiry was decided in favour of the delinquent officer. The interpretation by this Court of Rule 180 is as follows:

"53. In a Col participation of a delinquent officer whose character or military reputation is likely to be affected is a categorical imperative. The participation has to be meaningful, effective and he has to be afforded adequate opportunity. It needs no special emphasis to state that Rule 180 is framed under the Army Act and it has the statutory colour and flavour. It has the binding effect on Col. The rule provides for procedural safeguards regard being had to the fact that a person whose character and military reputation is likely to be affected is in a position to offer his explanation and in the ultimate event may not be required to face disciplinary action. Thus understood, the language employed in Rule 180 lays postulates of a fair, just and reasonable delineation. It is the duty of the authorities to ensure that there is proper notice to the person concerned and he is given opportunity to cross-examine the witnesses and, most importantly, nothing should take place behind his back. It is one thing to say that Col may not always be essential or sine qua non for initiation of a court martial but another spectrum is that once the authority has exercised the power to hold such an inquiry and Col has recommended for disciplinary action, then the recommendation of Col is subject to judicial review. While exercising the power of judicial review it becomes obligatory to see whether there has been due compliance of the stipulates prescribed under the rule, for the language employed in the said rule is absolutely clear and unambiguous. We may not dwell upon the concept of full opportunity in detail. Suffice it to say that one cannot stretch the said concept at infinitum on the bedrock of grant of opportunity and fair play. It has to be tested on the touchstone of the factual matrix of each case."

22. All these factors have been analysed by us while considering the case of Brig Suresh Gupta (supra) and we had come to the conclusion that interference at this preliminary stage is not called for.

23. If we analyse the grounds canvassed before us, in the present case, in the backdrop of all these factors, we find that, at this stage, the applicant wants us to quash the entire disciplinary proceedings and exonerate her by examining the

alleged indents/vouchers/documents, take note of her grounds in the matter of her being on leave, not responsible for signing the vouchers and indents etc. and exonerate her. She also wants us to take note of all the seven allegations indicated in the imputation of misconduct as contained in the Tentative Charge-sheet and hold that the allegations do not constitute any misconduct or offence and she may be exonerated. In our considered view, this is not permissible. These are factors, which, at this stage, are to be examined before the Competent Authority before whom the matter is pending after completion of Summary of Evidence and it is for the Competent Authority to take note of the grievance of the applicant and take a decision.

24. Accordingly, holding that we cannot, at this stage, step in the shoe of the Competent Authority and exonerate the applicant, we refrain from interfering into the matter and dispose of this case with a direction to the applicant to canvass all these grounds either before the Competent Authority or in case a trial is held, before the Court Martial, which will take decision and thereafter in case any grievance still subsists, she may be at liberty to invoke our jurisdiction.

25. With the aforesaid, the OA stands disposed of. However, we observe that looking to the medical condition of the applicant, if any adjustment or facilities are to be provided to her, the Competent Authority will look into the same and ensure that the applicant is provided all facilities as are necessary for effectively defend herself in the proceedings to be held.