

**(1997) 01 DEL CK 0080**

**In the Delhi High Court**

**Case No :** Civil Writ Petition No. 2441 of 1996

R.C. Kochhar

APPELLANT

Vs

Union of India

RESPONDENT

---

**Date of Decision :** 21-01-1997

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (1997) 1 AD 715 : (1997) 65 DLT 519 : (1997) 40 DRJ 714

**Hon'ble Judges :** Dalveer Bhandari, J

**Bench :** Single Bench

**Advocate :** Mukul Rohatagi, Inderjeet Sharma, B.K. Choudhry, Manish Kochhar, R.K. Anand, R.M. Ohri, Lokesh Sawhney and A.K. Vali, for the Appellant;

---

## **Judgement**

Dalveer Bhandari, J.

(1) The petitioner who is a Major General in the Medical Services of Army has preferred this writ petition with the prayer that the proceedings initiated by respondent No. 3 of Court of inquiry constituted vide orders dated 15th June, 1996 and the show cause notice dated 19th March, 1996 be quashed.

(2) The petitioner has prayed that respondent No. 1 be directed to issue directions to the Selection Board to consider the petitioner for promotion to the rank of Lieutenant General ignoring the mala fide and baseless proceedings initiated by respondent No. 3 against the petitioner.

(3) The petitioner is holding the substantive rank of Major General and occupying the office of the Deputy Director of Medical Services, Headquarter, in Southern Command, Pune in the Indian Army w.e.f. 27th September, 1995.

(4) The petitioner was serving as Commandant, Command Hospital, Western Command, Chandi Mandir before he was transferred to Pune. During that period, the petitioner's wife was the President of the Ladies' Club Command Hospital, Chandi Mandir. The members of that Club were wives and other officers of the said hospital. It is alleged in the petition that the petitioner was initially

commissioned in the Army Medical Corps in December, 1961 and thereafter he has been promoted to various ranks. It is alleged that the petitioner has an excellent record. He was never communicated any adverse remarks nor any disciplinary action whatsoever was ever initiated against him in his entire career. This is clearly borne out from the fact of his earning promotion after promotion within the stipulated period.

(5) In July, 1995, Lieutenant General Arun Gautam, respondent No. 3 herein reported to the Command Hospital, Western Command, Chandi Mandir, with a history of bleeding rectum. He had become extremely anaemic. An ultra sound examination was done on him in the Command Hospital which however proved to be inconclusive. Thereafter, the services of Gastro Entomologist were sought from the Army Hospital, Delhi Cantt., who conducted the Colonoscopic examination which showed approximately 10 Cms. growth in the colon and then multiple biopsies were done and the same revealed aden carcinoma which was also confirmed by the Pgi Hospital, Chandigarh.

(6) The petitioner on confirmation of the diagnosis, advised respondent No. 3 to get admitted to the hospital so that the could be referred to another Hospital where necessary facilities for the treatment of his serious disease were available. The petitioner found respondent No. 3 to be more worried and concerned about his medical classification and categorically enquired if he could be placed by the petitioner in higher medical category for at least one year. According to the petitioner, placing respondent No. 3 in higher medical category would have been totally against the Army Guidelines and instructions. The petitioner frankly told respondent No. 3 that it would not be possible for him to place respondent No. 3 in higher category. The respondent knew fully well that ordinarily on being referred by the Command Hospital, Chandi Mandir to the Army Hospital, Delhi Cantt. Delhi, he would be referred back to the Command Hospital at Chandi Mandir for medical classification, where he would be placed in category (P- 3) for a period of at least one year which would disentitle him to hold the sensitive post of G.O.C. in Chief/Army Commander, Western Command Without being referred to Command Hospital, Chandi Mandir.

(7) It is alleged in the petition that respondent No. 3 got himself admitted in the Army Hospital, Delhi Cantt. where he underwent surgery but somehow got classified in higher medical category in violation of the guidelines. The petitioner has placed newspaper reports that respondent No. 3 has been suffering from cancer of colon. These news report were published in national daily newspapers because the Senior Army Officer was hiding his serious ailment in order to get higher medical category.

(8) It is the case of the petitioner that because of not placing respondent No. 3 in higher medical category, he (respondent No.3) became hostile towards the petitioner and started harbouring prejudices against him. He somehow wanted to take revenge by spoiling the petitioner's career and was determined to spoil his career and started looking for an opportunity to do so.

(9) In August, 1995 the petitioner received his transfer orders from the Command Hospital, Chandi Mandir to Southern Command Headquarters, Pune and thereupon as is customary on such occasions, the petitioner and his wife were invited for a farewell dinner at 1) Command Hospital Officers" Mess 2) Command Hospital Nursing Officers" Mess Chandi Mandir and 3) Command Headquarters (Western Command) Officers" Mess Chandi Mandir.

(10) The petitioner's wife was also invited by the Ladies" Club, Command Hospital because she had served as the President of that Club. After the farewell functions, some gifts were presented to the petitioner and his wife by the host officers jointly in an open function out of their love and affection. It is submitted that it is customary that when any senior officer is transferred, such kind of farewell parties are arranged and some gifts for remembrances are given to the officers.

(11) In the show cause notice dated 19th March, 1996, it is indicated that following gifts were given to the petitioner and his wife:

"(A)On 21 August 95, you accepted four silver bowls, valued at approx. Rs. 1553.00 from the Nursing Officers at your farewell dinner hosted at the Nursing Officers Mess, Comd. Hosp (WC). These were returned on 3 March, 96, through an Or, ex Pune, and not on 22 August 95, as stated in you ibid letter.

(B)On 23 August 95, you wife accepted a Gold-plated cutlery set, valued at approx Rs. 3520.00 at your farewell dinner hosted by Comd. Hospital Officers Mess. The said gift, wrapped in a box, was carried by you and not left in the Mess, as contended in your ibid letter.

(C)On or about 16 Aug. 95, your wife accepted four pieces Gold- Plated cutlery set (possibly serving spoons) valued at approx Rs. 672.00 from Ladies Club, Comd Hosp. (WC), Chandi Mandir. This fact is in your knowledge."

(12) The total value of the gifts was Rs. 5745.00 . The case of the petitioner is that at the behest of respondent No.3, a show cause notice dated 19th March, 1996 was sent to the petitioner in which it is mentioned that he had accepted the aforesaid gifts and the action of the petitioner is contrary to orders and in deliberate violation of rules and regulations and thus reprehensible. On 8.4.96, the petitioner wrote to the Lieutenant General Kamaljit Singh requesting him to show which rules, orders and regulations have been violated by the petitioner and the reply to this was sent by Lieutenant General Kamaljit Singh which was also filed by the petitioner Along with the petition, in which it is mentioned that "orders, rules and regulations prohibiting acceptance of gifts by officers are well knowing and should be known to you" (Petitioner). It is also mentioned that the petitioner may refer to para 25, 26 of the Acs Branch Letter dated 3.3.89 and letter dated 27.5.93. In reply to show cause notice, the petitioner again complained that in the notice the concerned authorities have not mentioned which rules and regulations have been violated by the petitioner, so he is not in a position to give a suitable reply.

(13) Again, the Lieutenant General addressed a communication to the petitioner on 22.4.96 in which without mentioning which particular order, rule or regulation has been violated, it has been mentioned that "you are aware of the orders and letters on the subject." It is mentioned that "During your dining out from Hq Western Command you were presented a Memento of two silver plated jugs in a presentation box of trifling value Jug Rs. 388. Again in the reply dated 27.4.96, the petitioner again requested the Lieutenant General Kamaljit Singh to indicate him the rules, orders, regulations which have been violated by the petitioner.

(14) On 8.5.1996, the petitioner had sent another letter to the Lieutenant General Kamaljit Singh in which it has been mentioned that despite petitioner's writing to him on 8.4.96, 16.4.96 and 22.4.96, the Lieutenant General Kamaljit Singh or any one else had not apprised the petitioner which rules, orders, and/or regulations have been violated by him.

(15) The petitioner referred to para 5 of the Army Headquarters dated 23.3.89, which fixes equal responsibility on the givers and takers of the gifts. He further submitted that in fact, liability is also on the host officers of the Command Hq Mess, where the petitioner was invited for dinner on behalf of the Army Cadre. It may be pertinent to mention that even respondent No. 3 was present in the function where the gifts were presented to the petitioner. In this reply, the petitioner categorically mentioned that a show cause notice has been issued to him with a view to spoil his unblemished service record in order to stall his promotion due shortly for the reason that he did not agree to overlook the guidelines issued by the Director of Medical Services Army Headquarters, in regard to medical classification of the officer who was suffering from a malignant disease (Cancer) in the interest of security of the nation. The petitioner prayed that in view of these facts, show cause notice be withdrawn.

(16) The petitioner has submitted a detailed reply to the show cause notice in which he had also mentioned that in the earlier petition CW2111/96, this Court vide order dated 24.5.96 held that before seeking judicial interference in respect of the impugned action, the petitioner should file a reply to the show cause notice. In this show cause notice, the allegations and imputations leveled in the show cause notice have been denied and it is mentioned that they are erroneous and misconceived. It is also emphatically denied that the gifts of the nature and value referred to in the notice were accepted by the petitioner and his wife in violation of any order, rule, and regulation. It is mentioned in this reply that the only prohibition for the officers is not to accept gifts of high value when such gifts are given by an organisation and other Indian nationals. The petitioner had mentioned para 26 of the letter dated 23.3.89 which places limitation on giving a memento. The memento given at the time of transfer or posting of an Army Officer has to be inexpensive and of regimental/formation pattern. The reasons for this are obvious. The memento has to be fully contributed by the concerned officer himself and mementos of the same value have to be given to all officers. Therefore, the object and intention underlying in the aforesaid prescription is to

save the concerned officers from bearing a heavy financial burden for taking such a memento. The giving and taking of a memento Therefore, cannot be equated with presentation of a gift by an individual officer or a group of officers out of affection to an officer out of love and affection on the occasion of transfer, posting, retirement, etc.

(17) In this reply, it is mentioned that the Army Headquarters letter dated 27.5.93, explained the circumstances and the manner in which the mementos are given/taken at the time of posting, retirement, and does not contain any new provision as far as gifts are concerned. The letter dated 27.5.93 also does not prohibit acceptance of a gift where presented by fellow officers out of love and affection in an open function to an army officer, on the occasion of his transfer or posting. The only prohibition there is in respect of acceptance of valuable gifts from outsiders and other Indian national organisation. It is mentioned that show cause notice has been issued at the instance of Lieutenant General Gautam, Respondent No. 3 to jeopardise all the chances of next promotion of the petitioner.

(18) It is alleged that ultimately, the petitioner was left with no option but to approach this court and he filed a writ petition in which a notice was issued on 2.7.96 and this Court also stayed the inquiry proceedings till further orders.

(19) On behalf of the respondents, a counter-affidavit has been filed by Major A.K. Vashisht, Officer-in-charge, Legal Cell, Headquarter Area on 6.7.1996 and thereafter affidavits of Lieutenant Commandant Shamsheer Singh dated 19.7.96 and 18.8.96 were filed. It is mentioned that in the interest of military discipline, specially at a very high level of a Major General and keeping in mind the seriousness of the allegations made by the petitioner, it is felt that the whole issue pertaining to gifts needs to be probed so that the involvement of the petitioner and or others if any, can be ascertained, and appropriate action can be taken. It is further averred that it is not the intention of the respondent to either victimise the petitioner or to shield blameworthy. The matter is under investigation, whether the petitioner or any other person is at fault or not. The relevant orders will be scrupulously applied. Similarly, if it is found that the allegations are baseless, necessary action will be taken.

(20) Learned Counsel for the respondents has referred to Rules 177 and 180. Both Rules 177 and 180 are reproduced as under :

"177.Courts of Inquiry. (1) A Court of inquiry is an assembly of officers or of officers and junior commissioned officer or warrant officers or non-commissioned officers directed to collect evidence, and if so required to report with regard to any matter which may be referred to them.

(2)The Court may consist of any number of officers of any rank, or of one or more officers together with one or more junior commissioned officers or warrant officers or non-commissioned officers. The members of the Court may belong to any branch or department of the service, according to the nature of the

investigation.

(3)A Court of inquiry may be assembled by the officer in command of any body of troops, whether belong to one or more corps."

"180. Procedure when character of a person subject to the Act is involved. - Save in the case of a prisoner of war who is still absent, whenever any inquiry affects the character or military reputation of a person subject to the Act, full opportunity must be afforded to such person of being present through out the inquiry and of making any statement, and of giving any evidence he may wish to make or give, and of cross-examining any witness whose evidence, in his opinion, affects his character or military reputation and producing any witnesses in defense of his character or military reputation. The Presiding Officer of the Court shall take such steps as may be necessary to ensure that any such person so affected and not previously notified, receives notice of and fully understands his rights under this rule."

(21) Rule 182 mentions that proceedings of the Court of inquiry are not admissible in evidence.

(22) Army Orders of Adjutant General's Branch have been placed on record. Paras 1 and 3 of the same are set out as under:

"1.No person subject to the Army Act shall directly or indirectly accept without the consent of the Government any gift, gratuity or reward for any act performed in his official capacity, nor shall he accept any gift, gratuity or reward from any person to whom he can, directly or indirectly, show favor or disfavour in the exercise of his official functions, or in circumstances where such acceptance might place him in an embarrassing position or affect the correct discharge of his duties."

"2.Army personnel may, however, accept gifts of trifling value with the prior sanction of the GOC-in-C Command concerned when attending public reception. A gift not exceeding Rs. 50.00 now (Rs. 400.00 ) in value shall be regarded as a gift of trifling value."

(23) Mr. Rohtagi, learned Counsel for the petitioner submitted that the petitioner has not violated para (1) or (3) of the Army Orders or any other provisions, rule or regulation of the Army in any manner. He also submitted that entire case has to be understood in the background of this case. The petitioner was transferred from Chandi Mandi to Pune and on the eve of his transfer, some gifts were given to him and his wife.

(24) Mr. Rohtagi submitted that it was not a case where the officer had received any gifts, gratuity or reward for any act performed in his official capacity and there was no question of his directly or indirectly showing favor or disfavour in the exercise of his official functions which might embarrass his position or affect his position in discharge of his duties.

(25) In the instant case, the petitioner was going on posting to Pune and those doctors and nurses who had given the gifts to the petitioner are never likely to receive any favor from the petitioner. He submitted that the gifts were not very valuable and they were given in an open function in the presence of respondent No. 3. The learned Counsel submitted that the spirit and object of these rules must be understood in proper perspective. He submitted that there is no rule, regulation or order which has been violated by the petitioner.

(26) Mr. Rohtagi submitted that despite the petitioner's repeated written requests, the respondents could not indicate any order, rule, regulation or clause which has been violated by the petitioner. He submitted that it has been a custom from the time immemorial in the Army that whenever any officer retires or is transferred, a farewell function is organized and in that function, some gifts are given out of sheer love and affection of other officers.

(27) Mr. Rohtagi also submitted that though the petitioner had leveled specific allegations against respondent No. 3, and he was in service at the relevant time, but he chose not to file any reply to these allegations, perhaps because, he had no plausible reply to submit before the Court.

(28) The petitioner also submitted that the show cause notice is absolutely vague and deserves to be quashed. He has placed reliance on a judgment of Calcutta High Court, Hari Prasad Singh Vs. Commissioner of Income Tax, West Bengal and Others, . In the said judgment, it is specifically mentioned that charges in enquiry must be clear and specific. In this case, the show cause notice which has been given to the petitioner is absolutely vague. It does not mention any particular rule or regulation of the Army Act which has been violated by the petitioner.

(29) The respondents failed to point out any rule, regulation, section or clause which has been violated by the petitioner despite repeated requests.

(30) Mr. Rohtagi submitted that this Court of inquiry has been initiated at the behest of respondent No. 3 to settle his earlier scores with the petitioner, who did not grant higher medical category to respondent No. 3 in the interest of the security of the nation. The petitioner, for not succumbing to the pressure, had to pay such a heavy price and still faces great ignominy. The said enquiry has been initiated to ruin prospects of petitioner's future promotion.

(31) Mr. Anand appearing for the Union of India submitted that the petitioner could not accept any gift which was of a value of more than Rs. 400.00 (which was previously Rs. 50.00 ) and the petitioner had accepted total gifts of Rs. 5745.00 . Therefore, the petitioner has violated the Army Rules and the Court of Inquiry which has been instituted is totally justified. He submitted that the respondents are interested in finding out the truth of the whole matter and this inquiry has not been initiated to victimise the petitioner and pendency of this inquiry is not going to affect the chances of the petitioner for promotion.

(32) I have carefully examined and perused the pleadings submitted by the parties. I have also looked into the relevant rules, regulations and the office memorandums issued by the respondents from time to time. The entire allegation against the petitioner, who is a Major General in Army is that on his transfer he received gifts worth about Rs. 5745.00 and for that a Court of inquiry has been constituted.

(33) When the entire case is examined in the sequence of events, it becomes abundantly clear that the entire Court of inquiry against the petitioner has been initiated on extraneous considerations. It may be pertinent to mention that looking to the career prospects, it was vital for the respondent No. 3 to have received higher medical category and when the petitioner refused to oblige him then the entire Court of inquiry has been initiated against him.

(34) The army official can be held guilty of impropriety in case he has received gifts of very high value. It would be appropriate for the respondents to frame a rule or regulations in which it can be indicated that receiving gifts beyond a particular amount would be in violation or breach of the Army rules or regulations. Until any rule, clause or section is incorporated, the petitioner or any one else cannot be compelled to face the Court of inquiry. Before the Court of enquiry is instituted, there must be a clear allegation of violating any particular rule or regulation. No vague or fishing inquiry can be permitted. The pendency of Court of inquiry is bound to prejudice the chances of the petitioner's future promotion.

(35) It is unfortunate that an officer who has such an excellent record has been treated in such an indecorous and a shabby manner at the fag-end of his career.

(36) Before parting with this case, I would take this opportunity to impress upon the Chief of the Army Staff to ensure that the officers are not harassed in such a manner. The harassment of such senior officers would have adverse impact on the services they render to the country. The nation can never get the best out of their officers unless they are protected from such harassment, humiliation, ignominy and disgrace.

(37) Looking to the extraordinary facts and circumstances of this case, and in the interest of justice, I direct that an inquiry initiated by respondent No. 3 in the form of Court of inquiry vide order dated 15.6.96 and the show cause notice dated 19.3.1996 are liable to be quashed.

(38) I also direct respondent No. 1 to issue direction to the Selection Board to consider the case of the petitioner for promotion to the rank of Lieutenant General, ignoring the Court of inquiry initiated against him as expeditiously as possible.

(39) The writ petition is allowed and accordingly disposed of. In the facts and circumstances of this case, I direct the parties to bear their own costs.