
(2020) 08 AFT CK 0003
In the Armed Forces Tribunal
Case No : Original Application No. 669 Of 2020

Soumen Das

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 10-08-2020

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14
Army Rules, 1954 — Rule 180

Citation : (2020) 08 AFT CK 0003

Hon'ble Judges : Rajendra Menon, J;B.B.P. Sinha, Member (A)

Bench : Division Bench

Advocate : Anand Kumar, Anil Gautam

Final Decision : Dismissed

Judgement

1. The applicant has invoked the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 and the prayer made in the application reads as under:

- (a) Call for the original records of Court of Inquiry proceedings and
- (b) Quash/set aside the Court of Inquiry proceedings, its findings & opinion and subsequent proceedings and/or
- (c) Pass any such order(s) /direction (s) which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

2. Applicant calls in question the proceedings of Court of Inquiry (COI), its findings and opinion conducted against the applicant vide Convening Order

(Annexure A/1) dated 24th August, 2017 issued by respondent No.3. Grievance of the applicant is that the COI proceedings have been fudged,

tempered, interpolated with the mala fide intention to involve the applicant, injure him and in doing so certain mandatory provisions of Army Rule 180

has not been complied with. While being posted in Army Hospital (RR), New Delhi, it was found that huge quantity of expired medicines or medicines

nearer to expire along with huge quantity of defective medicines were missing. There was no stock verification and certain medicines were also found

in the open civil market, even though the medicines were en-marked for consumption only by Army. Based on these facts a COI has been convened

and after the proceedings of the COI have been concluded, now disciplinary proceedings have been initiated and the tentative charge sheet issued. At

this stage the applicant has invoked the jurisdiction of the Tribunal and wants the COI proceedings, its findings and the opinion and the subsequent

proceedings initiated against him to be quashed.

3. It is the contention of the applicant that the entire proceedings of the COI are manipulated with mala fide intention only to involve the applicant

along with others and take action against him. Relying on a judgment of the Hon'ble Supreme Court in the case of Brigadier L.L Singh YSM Vs.

Union of India and Ors. (Civil Appeal Nos.9223-9224 of 2019) decided on 17th December, 2019 and certain orders of the Delhi High Court in the

matter of Lt Col C.G. Singh Vs. Union of India and Ors. (WP (C) 7660/2019) dated 5th August, 2019, it was vehemently argued that earlier the view

of this Court that at the stage of COI interference cannot be made is no more good law. He submitted that the Hon'ble Supreme Court and Delhi High

Court have said that if the COI stands vitiated on legal grounds, interference can be made. It is argued that violation of Army Act and Rules during

the COI and manipulation of the documents and proceedings are evident and therefore interference in the matter should be made and the proceedings

quashed at this stage itself.

4. Learned counsel for the applicant vehemently argued that based on the illegality in the conduct of the COI and the findings and opinion recorded

therein, it is a fit case where petition should be allowed.

5. Mr. Anil Gautam, learned counsel appearing for the respondents objected to the same and pointed out that earlier the applicant had approached this

Tribunal by filing OA No. 1718/2019 which has been decided by a Co-ordinate Bench of this Tribunal recently on 30th June, 2020 and in view of the

prayer made in the said application the present application is not maintainable as it is barred by the principle of res judicata. That apart, the learned

counsel submitted that as only a tentative charge sheet has been issued and the applicant's complaint is pending before the Competent Authority and

all the grounds raised by the applicant with regard to the conduct of the COI can be looked into by the Comifft Authority, interference into the matter

at this stage is called for.

6. We have heard learned counsel for the parties and perused the records. As far as the preliminary issue with regard to res judicata is concerned, we

find that in the earlier application filed by the applicant being OA No.1718/2019, even though in the grounds raised he had mentioned about the

illegality in the COI in question but a perusal of the said application clearly indicates that the challenge in the previous application was only with regard

to second attachment of the applicant vide order passed on 26th September, 2019 and the second movement order whereby he was attached to a unit

in Meerut and a Bench of this Tribunal, after considering various aspects of the matter found nothing wrong in the attachment order and dismissed the

OA. In the said application the applicant had alleged about his illegal attachment to a new unit at Meerut for fresh disciplinary proceedings, namely,

hearing on charge and recording of summary of evidence. That being so, merely on the ground of res judicata, we cannot dismiss this application. In

para 20 and 21 of the order passed on 30th June, 2020, the Co-ordinate Bench has made the following observations:

20. Having considered the contending arguments, we find that there is no legal infirmity in the impugned order dated 26.09.2019 of the

respondents to attach the applicants to a new unit at Meerut for fresh disciplinary proceedings, viz. Hearing of charge and recording of S

of E. Nonetheless, in our opinion, delay and inconvenience thereto would have been avoided had the respondent visualized the problems

earlier, before they tasked two different units/establishments, under two different Headquarters, to conduct these proceedings. Predictably,

such an action resulted in uncoordinated and inadequate actions by the units/officers concerned, which then led to infirmities and

irregularities being noted in the proceedings due to which the earlier proceedings had to be cancelled, which necessitated issued of fresh

orders for re-recording- of S off, including the impugned order.

21. In the result, we find that the OAs lack merit and are disallowed. However,

respondents need to identify appropriate lessons from the mistakes committed in allocation of responsibilities for conduct of disciplinary proceedings and put remedial measures in place to ensure that such actions, which result in legal infirmities and irregularities, and resultant delay are not repeated. Thither, the respondents are directed to ensure that no disadvantage is caused to the applicants as a result of this relocation of disciplinary proceedings. Furthermore, adequate opportunity, as allowed by the law, should be provided to the applicants to interact with their legal counsel and their family members.

7. Accordingly the preliminary objection stands rejected. As far as the grounds for interference in the matter at this stage are concerned, we are of the considered view that on the grounds canvassed before us, namely, on the bald allegation that the COI proceedings have been fudged, tempered, interpolated or procedural irregularities committed at this stage interference need not be made by us as the applicant can raise all these grounds which have already been raised before the Competent Authority so also in the disciplinary proceedings that is to be held and the authority would be in a better position to consider all these factors.

8. That being so, we are not inclined to interfere into the matter. As far as judgment rendered by the Hon'ble Supreme Court is concerned, we have gone through the same and we are of the considered opinion that the statutory violation and the illegalities considered by the Hon'ble Supreme Court were grave and serious in nature and there being allegations of mala fide that were established, the Hon'ble Supreme Court interfered in the matter primarily finding non compliance of Rule 180 of the Army Rules. In the present case we find no such infirmity in the matter.

9. Accordingly, finding no ground to interfere, we dismiss this application. However, liberty shall be available to the applicant to raise all the grounds as have been canvassed before us not only before the Competent Authority but also in the statutory proceedings to be held against him.