

A.F.R.
Court No. 2

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

ORIGINAL APPLICATION No 194 of 2015

Monday, this the 04th day of April 2016

Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Air Marshal Anil Chopra, Member (A)

Brig HMS Chatwal, DDG, NCC Directorate (UP) 16, Ashok Marg,
Hazaratganj, Lucknow, PIN-226001.

...Applicant

Ld. Counsel for the: **Shri Indra Sen Singh, Advocate**
Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, South Block, DHQ, PO, New Delhi-110011.
2. The Chief of the Army Staff, IHQ of MoD (Army), South Block, New Delhi-110011.
3. The General Officer Commanding, HQ 2 Corps, C/O 56 APO, PIN-908502.

.....Respondents

Ld. Counsel for the : **Dr. Shailendra Sharma Atal,**
Respondents **Central Govt Counsel assisted by**
Lt Col Subodh Verma, OIC Legal
Cell and Col Rajiv Menon, Col MS
(Legal).

ORDER (ORAL)

1. Heard Ld. Counsel for the parties at great length and perused the record.
2. This is an application under Section 14 of the Armed Forces Tribunal Act 2007 being aggrieved with the punishment of Severe Displeasure (Recordable) passed by the Respondents in pursuance to Court of Enquiry.
3. Ld. Counsel for the applicant assailed the Court of Enquiry as well as finding recorded thereon on various grounds. At the thresh-hold, Ld. Counsel for the applicant invited attention of the Tribunal to the decision to convene Court of Inquiry and submitted that the order was not passed in accordance with the provisions of Rule 177 of the Army Rules 1954 (in short, Rule 177) read with Regulation 518 of Defence Services Regulations.
4. On the other hand, Ld. Counsel for the respondents submitted that it was done in pursuance to approval granted by the General Officer Commanding 2 Corps (GOC 2 Corps).
5. The provisions contained in Rule 177 may be reproduced as under:

*“177. **Courts of Inquiry.** – (1) A court of inquiry is an assembly of officers or of junior commissioned officers*

or of officers and Junior commissioned officers, 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 a Presiding Officer, who will either be an officer or a junior commissioned officer, and of one or more members. The Presiding Officer and members of court may belong to any Regt or Corps 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 belonging to one or more corps”.

6. A plain reading of aforesaid provision shows that court of inquiry may be convened only on the decision taken and order passed by the officer in command, in the present case Corps i.e. Corps Commander. Of course in appropriate case decision taken by the Corps Commander may be communicated by the Staff Officer, but the record must reflect that the decision was taken by the Corps Commander with conscious mind to hold court of inquiry and this fact must emerge from the order passed by the Staff Officers. In the present case the order to convene court of inquiry has been passed by Brigadier A HQ 2 Corps for GOC. For convenience sake the impugned order is reproduced as under :

“CONFIDENTIALCONVENING ORDER

A Court of Inquiry composed as under shall assemble at Mamum Cantt on the date and time fixed by the Presiding Officer to inquire with regard to matters set out in the Terms of Reference.

PRESIDING OFFICER

- (1) IC-38011W Maj Gen PK Srivastava
GOC, 40 Arty Div.

MEMBERS

2. IC-40312Y Brig Ali Adil Mahmood, VSM
Dy GOC, I Armd Div
3. IC-44921 A Brig SL Joshi
EME, HQ 2 Corps

Terms of Reference

2. The Court of inquiry is directed to inquire into the following matters:-

(a) The incident of 02 May 2012 and 26 May 2012 when Brig HMS Chatwal, Cdr 16 (I) Armd Dde used abusive language against Col RK Mangotra, Dy Cdr HQ 16(1) Armd Bde, as alleged by the latter in his letter No. 48748/Pers/RKM dt 18 Jul 2012 (copy enclosed).

(b) The cutting and selling of about 50 fully grown trees in 16 (I) Armd Bde Provost unit as alleged by said Col RK Mangotra in his letter ibid dated 18 July 2012.

(c) The mode and manner in which approx a sum of Rs. 1.5 lac was collected during the raffle draw of the Diwali Mela held in Oct 11, its accounting and disposal.

(d) Illegality/irregularity, if any, disposal of 02 x Lt Vehs (Class V) of 16 (1) Armd Bde.

(e) Illegality/irregularity, if any, in the expenditure of Command Welfare And Op Wks of 16 (1) Armd Bde.

(f) *Illegality/irregularity, if any, in expenditure/ accounting of Unit Public/Regimental Fund maintained by HQ 16 (1) Armd Bde.*

(g) *Any other issue(s) connected therewith or relevant thereto.*

3. *The Court of Inquiry shall clearly bring out the lapses and pin point responsibility of the person(s) connected therewith or relevant thereto.*

4. *The statement of the witness shall be recorded on oath/affirmation in terms of Army Rule 181.*

CONFIDENTIAL

5. *The Court shall invoke and comply the provisions of Army Rule 180 in respect of Brig HMS Chatwal, Col RK Mangotra and other persons whose character or military reputation is affected by the inquiry.*

6. *Attention of the Presiding Officer and members is drawn to following:-*

(a) *Army Rules 179 to 181 and Para 518 of the Regulations of the Army, 1987.*

(b) *IHQ of MoD (Army) letter No. 46440/AG/DV-1(P) dated 03 May 2001, even NOs dated 02 Jul 2007 and 12 Feb 2010 and HQ Western Command Letter No. 0337/!DV-2 dated 05 Jan 2012.*

7. *Proceeding of the Court of Inquiry duly completed in all respect will be forwarded to this HQ in sextuplicate by 10 Aug 2012*

Case File: 1463/Complaint/A2

Sd/-

(Sunil Gupta)
Brig A
for GOC

Headquarters
2 Corps
PIN- 908502
c/o 56 APO
23 Jul 2012”

7. Perusal of the impugned order shows that the Brig A had not indicated in his order as to when the Corps Commander

took the decision to hold Court of Inquiry or what its composition was. Only a reference has been made in the signature block that it has been passed 'for GOC'. Impugned order dated 23.07.2012 is silent with regard to application of mind by the Corps Commander. The original record has been produced before the Tribunal along with draft copy of the convening order. It shows that certain corrections with pencil have been done by the Corps Commander in the convening order providing that the Presiding Officer shall be of the rank of Maj Gen and two Brig shall be its members. Draft copy of the order does not contain the date and the signature of the Corps Commander. The entire record produced does not show that the Corps Commander took a conscious decision to convene the Court of Inquiry against the applicant with composition or select members and direct the Staff Officer to circulate the order accordingly.

8. Much emphasis has been placed by Ld. Counsel for the respondents to the minutes and according to him decision to hold Court of Inquiry was also on the basis of office note duly recorded by the Corps Commander. For convenience sake, the office note relied upon by Ld. Counsel for the respondents, is reproduced as under:

- “1. Further to Note 3 ante.*
- 2. The report recd from Cdr placed opposite.*

3. *The report is at variance in several aspects with the report of the Dy Cdr, HQ 16 (I) Armd Bde, which needs to be enquired into.*

4. *HQ 16 (I) Armd Bde has since then ordered a C of I to enquire into various aspects relating to public and regt funds and anonymous complaints. The C of I should also have covered the aspect of tree cutting in 16 (I) Armd Bde Pro Unit premises. The fmn will be apprised accordingly, however, the Cdr has brought out in his report that he has reported the matter to the Stn Cdr. Therefore, in case a Stn C of I has already been convened, the aspect of tree cutting need not be covered by the C of I ordered by the Bde.*

5. *Recom that we await the findings of the C of I.*

6. *For dirns pl”.*

(Emphasis supplied)

9. A plain reading of aforesaid office note shows that it was on the direction of the Head Quarter the Corps Commander proceeded ahead and no decision has been taken by the Corps Commander to convene the Court of Inquiry along with composition of officers required under Regulation 518 (supra) though in the counter affidavit it has been stated that every thing was done by the Corps Commander and office note was duly approved by him. Regulation 518 of the Army Regulations deals with the court of inquiry and its composition. For convenience sake Regulation 518 of the Defence Services Regulations for the Army is reproduced below :-

“518. Court of Inquiry and Station Boards.- *The convening officer is responsible that a court of inquiry or station board is composed of members whose experience and training best fit them to deal with the matter at issue. The personnel detailed to constitute the Court of Inquiry or Station Board should have no personal interest or involvement, direct or indirect, in the subject matter of the investigation. A court of inquiry may consist of officers only, or of one or more officers together with one or more JCOs, WOs, NCOs as may be desirable. When the character or military reputation of an officer is likely to be a material issue, the presiding officer of the court of inquiry wherever possible, will be senior in rank and other members at least equivalent in rank to the officer.*

When investigating damages to service equipment, the evidence of a technical officer who is experienced and fully conversant with the technical details of the equipment should be recorded. A station board may consist of any person selected by the convening officer. The members of a mixed civil and military board will take precedence in accordance with any general or special instructions issued by the Central Government. The stationary and forms required by a board will be supplied by the unit which applies for it”.

10. From the above it is explicit that the aforesaid Regulation shows that the convening officer is responsible that the court of inquiry shall be composed by members whose experience and

training best fit them to deal with the matter at issue. The personnel detailed to constitute the court of inquiry or station board should have no personal interest or involvement, direct or indirect in the subject matter of the investigation.

11. A plain reading of the aforesaid Regulation shows that it is for the Corps Commander to apply his mind with regard to composition of court of inquiry. It can not be left for the office or the staff officer to take a decision with regard to composition of court of inquiry. We have noticed from the original record that in the draft copy the Corps Commander has only indicated that Presiding Officer shall be of the rank of one Maj Gen and two Brigs shall be its members. Otherwise also the draft copy can not be treated to be final and conclusive order of the Corps Commander. The draft copy shall attain finality when it is produced again before the Corps Commander or any other authority empowered for the purpose in correct form and duly approved and signed by such officer. In the present case record does not show that the draft copy was duly typed and produced before the Corps Commander to take follow up action by the officer to issue direction.

12. Ld. Counsel for the respondents tried to defend the impugned order on the basis of averments made in the counter affidavit. Arguments advanced by Ld. Counsel for the

respondents seem to be misconceived. It is well settled proposition of law that every order should stand on its own leg. In case convening order does not refer to decision taken by the Corps Commander or the competent authority, then it shall be presumed that no decision was taken by the Corps Commander, i.e. the convening authority. In a recent case: ***State of Punjab vs Bandeep Singh and others***, 2016 (1) SCC 724 their Lordship of Hon'ble Supreme Court have held that decision must be composite and self sustaining one containing all reasons which prevailed on the officer/official to arrive his conclusion. Order of statutory authority cannot be construed in the light of explanation subsequently given by the officer. It must be construed objectively with reference to the language used in the order. In the present case respondents do not have any carte blanche to take any decision it chooses. The authority cannot take a capricious, arbitrary or a prejudiced decision. Decision must be informed and impregnated with reasons, which seems to be lacking,

13. No decision has been taken by the Corps Commander with regard to composition of court of inquiry; rather decision for court of inquiry does not seem to be taken by conscious application of mind by the Corps Commander. Hence, we are of the view that the entire subsequent action stands vitiated.

14. It is well settled proposition of law that a thing should be done in the manner provided by the Act or the statute and not otherwise vide ***Nazir Ahmed vs. King Emperor***, AIR 1936 PC 253; ***Deep Chand vs. State of Rajasthan***, AIR 1961 SC 1527, ***Patna Improvement Trust vs. Smt. Lakshmi Devi and ors***, AIR 1963 SC 1077; ***State of U.P. vs. Singhara Singh and others***, AIR 1964 SC 358; ***Barium Chemicals Ltd vs. Company Law Board***, AIR 1967 SC 295; ***Chandra Kishore Jha vs. Mahavir Prasad and others***, 1999 (8) SCC 266; ***Delhi Administration vs. Gurdip Singh Uban and others***, 2000 (7) SCC 296; ***Dhananjay Reddy vs. State of Karnataka***, AIR 2001 SC 1512; ***Commissioner of Income Tax, Mumbai vs. Anjum M.H. Ghaswala and others***, 2002 (1) SCC 633; ***Prabha Shankar Dubey vs. State of M.P.***, AIR 2004 SC 486 and ***Ramphal Kundu vs. Kamal Sharma***, AIR 2004 SC 1657.

15. Hon'ble Supreme Court in the case reported in ***Jaisinghani vs. Union of India and others***, AIR 1967 SC 1427 ruled that decision should be made by the application of known principles and rules and in general such decision should be predictable and a citizen should know where he is.

16. Before parting with the present controversy, we would like to make a note that order of 'severe displeasure (recordable)'

has been granted to the applicant relating to the period when he was Commander 16 (I) Armd Bde. The controversy relates to July 2012 whereby the applicant was found to have used obscene word in the private gathering against his own junior colleague. Language used by the applicant may be improper, but it must be kept in mind that it was done in a private gathering. However, it appears that other charges were added against the applicant before holding court of inquiry. We refrain from recording any findings with regard to other charges keeping the fact that on account of substantial illegality committed by the Corps Commander in convening the court of inquiry, the outcome of the court of inquiry cannot be taken into account to punish the applicant by the impugned punishment order. On account of defective and illegal order for convening court of inquiry, all subsequent decisions taken by the respondents are vitiated. It is well settled law that once foundation of the order goes, all subsequent decisions or order passed thereon stand vitiated and would be non est in the eyes of law.

17. We have asked a specific question to Ld. Counsel for the respondent Shri (Dr) Shailendra Sharma 'Atal' as to whether the applicant has mis-appropriated any fund of public exchequer, the reply is in negative.

18. We are not advertent to other grounds taken and argued by Ld. Counsel for the applicant since the O.A. deserves to be allowed on the aforesaid ground alone.

19. In view of findings recorded hereinabove, we allow the O.A. Impugned censure order dated 26.06.2013 and order dated 27.10.2014 of the Central Government rejecting the statutory complaint of the applicant are hereby set aside. The applicant shall be entitled to all consequential benefits.

No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

(Justice D.P. Singh)
Member (J)

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An oral prayer has been made by Ld. Counsel for the respondents for grant of Leave to Appeal under Section 31 of the Armed Forces Tribunal Act, 2007. We feel that no question of general public importance is involved in the present case, hence we reject the oral prayer.

(Air Marshal Anil Chopra)
Member (A)

(Justice D.P. Singh)
Member (J)