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RESERVED
Court No.1
(List 'A')

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION NO 28 of 2010

Thursday this the 25th day of May 2017

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

Ex Havildar/Clerk Vijay Shankar Rai (Army No. 4265333H) son of Late Bankey Lal Rai, Permanent resident of Village-Gaddopur, Post Office-Gaddopur (Muftiganj), District-Jaunpur (U.P.).

….Applicant

Ld. Counsel for the Applicant: **Shri P.N. Chaturvedi,** Advocate

Verses

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.

2. General Officer Commanding-in-Chief, South West Command, C/o 56 APO.

3. General Officer Commanding, 1 Corps, C/o 56 APO.

4. General Officer Commanding Delhi Area, Delhi Cantt.

5. 10th Battalion of Bihar Regiment (10 Bihar), c/o 56 APO.

6. Officer-in-Charge Records, Records Bihar Regiment, Danapur Cantt, District-Patna (Bihar).

7. Branch Recruiting Officer, Jamnagar (Gujrat).

…Respondents

Ld. Counsel for the Respondents. : **Shri Bhanu Pratap Singh,** Central Govt Counsel assisted by Maj Soma John, OIC, Legal Cell**.**

ORDER

"Per Hon'ble Mr. Justice Devi Prasad Singh, Member (J)"

1. Application under Section 14 of the Armed Forces Tribunal Act, 2007 has been preferred being aggrieved with the award of severe reprimand passed in pursuance to Summary Court Martial (SCM) proceedings.

2. We have heard Shri P.N. Chaturvedi, Ld. Counsel for the applicant and Shri Bhanu Pratap Singh, Ld. Counsel for the respondents assisted by Maj Soma John, OIC Legal Cell and perused the records. We have also permitted for the ends of justice to Maj Soma John to assist the Tribunal.

3. The applicant was recruited in the Indian Army as Sepoy Clerk (GD) in Bihar Regiment on 11.01.1985. Later on, he was promoted to the rank of Lance Naik, Naik and Havildar. In August 2001, the applicant was posted on the rank of Havildar Clerk at BRO, Jamnagar, Gujarat. The applicant's tenure at the place of posting was from 04.08.2001 to 17.09.2002. The applicant was charged by ex-Sepoy S.K. Das for seeking illegal gratification of Rs. 5,000/- and Rs. 30,000/- from recruit Clerk Vijai Prasad of Grenadier Regiment and Prem Nath Singh of Dogra Regiment respectively at the time of despatching them from Army Recruiting Office, Jamnagar to their respective training centres. After receipt of complaint the applicant was posted to 10, Bihar Regiment at Dimapur.

4. A Court of Inquiry was ordered by Station Headquarter Jamnagar on 11.03.2003 which was held at Maratha Light Infantry, Jamnagar between 19.09.2003 to 22.09.2003. After receipt of opinion of Court of Inquiry wherein, prima facie, findings of involvement of application was recorded and communicated to Commander Mumbai Sub-Area who directed for taking disciplinary action against the applicant on 20.12.2003. The direction of Commander, Mumbai Sub-Area was received by10 Bihar on 16.02.2004. On 12.03.2004, Head Quarter Mumbai Sub-Area was approached by 10, Bihar Regiment to attach the applicant with local unit for disciplinary action. In the absence of reply, the Unit requested Head Quarter for copy of Court of Inquiry for initiating disciplinary action against the applicant. The Unit moved on 26.11.2004 to U.N. Mission and the case was taken up by this Unit with Head Quarter Delhi Area for empowering Officer Commanding Rear, Lt. Col Nagendra Singh to initiate disciplinary action against the applicant. However, the case was rejected in view of Para- 53 of the Defence Service Regulations.

5. In the meantime Unit received the complete Court of Inquiry from Head Quarter Sub Area Pune on 04.04.2005. The applicant was attached with 13 JAK Rif for disciplinary action. Presiding Officer was nominated but he could not complete the proceedings since he proceeded for U.N. Mission on 13.05.2005. Later on, 10 Bihar Regiment on 12.01.2006 was de-inducted from U.N. Mission and the case was handed over back to 10 Bihar Regiment. The matter was

referred to Deputy Judge Advocate General 1 Corps for advice which was given on 29.09.2006.

6. In the Summary Court Martial proceedings, the applicant pleaded not guilty and after due trial he was awarded punishment of 'severe reprimand' in accordance with Section 64 and 47 of the Army Act, 1950. Applicant preferred statutory complaint against the punishment awarded on 25.09.2007 to GOC-in-C South-Western Command which was forwarded to Headquarter 1 Corps with a copy to 10 Bihar and the photo state copies of all Summary Court Martial proceedings and then to Headquarter. After receipt of parawise comments, matter was referred for decision of statutory complaint.

7. However, fate had its own way. Applicant was found to commit a theft of Court of Inquiry proceedings including the findings and opinion and the directions thereon while performing the duties of Rear Clerk when the Brigade was on U.N. Mission as well as the record of Summary Court Martial proceedings while working in office of 10 Bihar. On 30.06.2008, Commanding Officer 10 Bihar ordered for a Court of Inquiry. In pursuance thereto, tentative charge sheet as well as pre-trial documents were issued to the applicant on 28.09.2008.

8. The Commanding Officer, Col M.K. Singh who constituted the Court on 01.10.2008 ordered for Summary of Evidence deputing Capt Dipankar Bose as Recording Officer of Summary of Evidence. Later, the name was changed to Maj Anuj Gupta. In pursuance to said inquiry, and in view of findings recorded in Summary of Evidence, on 04.04.2009 the applicant was again awarded punishment of 'severe

reprimand' and 14 days' pay fine by Col M.K. Singh, Commanding Officer, 10 Bihar Regiment. On applicant's request a copy of punishment dated 04.04.2009 was given to the applicant on 15.07.2009.

9. Shri P.N. Chaturvedi, Ld. Counsel for the applicant vehemently argued that the trial of the applicant was time barred and hit by Section 122 of the Army Act, 1950. He also submitted that Rule 177 of Army Rules, 1954 has been violated and the trial of the applicant suffers from vice of arbitrariness.

10. On the other hand, Ld. Counsel for the respondents assisted by Maj Soma John, OIC Legal Cell relied upon the averment contained in para-2 of the counter affidavit and submitted that it was 20.12.2003, Commander Mumbai Sub Area endorsed the direction to take disciplinary action against the applicant which was received by 10 Bihar Regiment on 16.02.2004. For convenience sake, para-2 of the counter affidavit, in its entirety, is reproduced as under:-

> *"2. That a court of inquiry was ordered by Station Headquarters, Jamnagar vide order dated 11.03.2003, and the court of inquiry was held at 8 Maratha Light Infantry, Jamnagar between 19.09.2003 to 22.09.2003. As per opinion of the court of inquiry the Commander Mumbai Sub Area endorsed the direction to take disciplinary action against the applicant on 20.12.2003 and the directions of the Commander was received by 10 Bihar Regiment from Army Recruiting Office, Jamnagar on 16.02.2004."*

11. In reply to para-2 of the counter affidavit, the applicant in para-4 of the rejoinder affidavit averred that it relates to factual aspects hence

needs no comments. For convenience sake, para-4 of the rejoinder affidavit is reproduced as under:-

> *"That the contents of paragraphs 1 to 20 of the counter reply give the factual aspects with regard to processing of disciplinary case against the applicant without touching the legal aspects and accordingly need no comments."*

12. In view of the above, it becomes an admitted fact by the applicant himself that it was on 20.12.2003 that the Commanding Officer directed to initiate disciplinary action against the applicant. It is submitted by Ld. Counsel for the respondents that the date of knowledge to authority competent to initiate disciplinary action shall be 20.12.2003 to reckon the period of limitation. On the other hand, Ld. Counsel for the applicant submitted that at Jamnagar the incident was known to the officers of the Indian Army. So far as date of knowledge is concerned, the spreading of news or rumour with regard to involvement of applicant in the matter of bribery does not mean that the competent authority had knowledge of involvement of the applicant in the incident of demand of bribery. For convenience sake, Section 122 of the Army Act, 1950 is reproduced as under:

> *"**122. Period of limitation for trial**.— (1) Except as provided by sub-section (2), no trial by court-martial of any person subject to this Act for any offence shall be commenced after the expiration of a period of three years [and such period shall commence.-*
>
> *(a) on the date of the offence; or*
>
> *(b) where the commission of the offence was not known to the person aggrieved by the offence or to the authority competent to initiate action, the first day on which such offence comes to knowledge of such person or authority, whichever is earlier; or*

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the authority competent to initiate action, whichever is earlier.]1

(2) The provisions of sub-section (1) shall not apply to a trial for an offence of desertion or fraudulent enrolment or for any of the offences mentioned in sec-37.

(3) In the computation of the period of time mentioned in sub-section (1), time spent by such person as a prisoner of war, or in enemy territory, or in adding arrest after the commission of the offence, shall be excluded.

(4) No trial for an offence of desertion other than desertion on active service or of fraudulent enrolment shall be commenced if the person in question, not being an officer, has subsequently to the commission of the offence, served continuously in an exemplary manner for not less than three years with any portion of the regular Army.

NOTES

1. Sub-sec (1) and (2). —(a) The effect of this section is that on the expiration of three years from the commission of the offence — the period of three years to be computed in accordance with sub-sec (3) — the offender is free from being tried or punished under AA by a Court-martial for any offence except those mentioned in AA.s.37. desertion or fraudulent enrolment. It follows that where an accused person is charged with desertion commencing on a date more than three years before his trial begins, he cannot be found guilty under AA.s.139(1) of absence without leave from that date, but such absence must, be restricted to a period not exceeding three years immediately prior to the commencement of the trial. Where, however, such a finding and sentence has been wrongly confirmed, the authorities specified in AA.s.163 may substitute a valid finding and pass a sentence for the offence specified or involved in such finding.

(b) A plea in bar of trial may be raised on this ground: AR 53(1)(c).

2. The section, does not prohibit deductions being ordered from his pay and allowances under AA.s.90(a),(c), (g) and (h) or 91(a), (f) and (g) even though the period of limitation for trial has expired.

Though the section specifically stipulates the period of limitation for trial by court-martial,the same principle would equally apply to summary disposal of offences under AA.s.80, 83, 84 or 85.

3. (a) Offences mentioned in AA.s.37 and desertion on active service can be tried at any time by a Court-Martial. For desertion not on active service and fraudulent enrolment, a person, not being an officer, cannot be tried if he has since served continuously in an exemplary manner for not less than three years with any portion of the regular Army. See sub-sec (4).

(b) A person is considered as having served in an exemplary manner if at any time during his service subsequent to the commission of the offence he has had no red ink entry in his conduct sheet for a continuous period of three years (Regs Army para 465). For 'red ink entries' see Regs Army paras 386 and 387(b).

4. (a) An 'offence' includes a 'civil offence' as defined in AA.s.3(ii); see AA.s.3(xvii).Where, therefore, a person subject to AA has committed a civil offence and his trial by court-martial is barred under this section, he may be handed over to the civil authorities to be dealt with according to law as a civil offence is triable by a criminal court at any time.

5. For forfeiture of service in the case of desertion and fraudulent enrolment, see Regs Pension Reg 123.

6. Sub-sec (3): The period of three years referred to in sub-sec (1) is extended by any time spent by the offender as a prisoner of war, or in enemy territory or in evading arrest after the commission of the offence; for instance, if a person absconds immediately after misappropriating Govt or regimental funds and later surrenders or is apprehended after the expiry of three years, he can still be tried by a court-martial, the period during which he had absconded being ignored.

7. 'Enemy territory' means any area, at the time of the presence therein of the person in question, under the sovereignty of or administered by or in the occupation of a state at that time at war with the Union.

8. Sub-sec (4). —'On active service', see AA.ss.3(i) and 9.

9. See note 3(b) above. This exemption does not apply to an officer.

10. 'Regular Army' see AA.s.3(xxi).”

13. A plain reading of the aforesaid provisions indicates that the period of three years shall commence firstly from the date of offence; or where the commission of offence is not known to the person aggrieved by the offence or to the authority competent to initiate action, the first day on which such offence comes to the knowledge of such person or authority, whichever is earlier.

14. The applicant has made general statement that everyone came to know with regard to alleged misconduct in the year 2002 itself but he has failed to point out as to how and in what manner the authority competent was informed or came to know regarding the commission of offence. Merely because he was transferred after receipt of complaint, does not mean that he has committed the offence. The legislature to their wisdom has used the words in sub-section (b) of Section 122 of Army Act, 1950 to deal with the situation, (i) where the commission of the offence was not known to the aggrieved person, and (ii) the authority competent to initiate action, the first day on which such offence comes to the knowledge of such person or authority.

15. In the present case, the legislature has used the words, “offence” and not “the allegation”. According to Black’s dictionary, the words “offence” and “allegation” have been defined as under:-

> *“Offence.- A violation of law; the term ‘crime’, ‘offence’, and ‘criminal offense’ are all said to be synonymous, and ordinarily used interchangeably . ‘Offence’ may comprehend every crime and misdemeanour, or may be used in a specific sense as synonymous with ‘felony’ or with ‘misdemeanour’, as the*

case may be, or as signifying a crime of lesser grade, or an act not indictable, but punishable summarily or by a forfeiture of a penalty."

"Allegation.- The act of declaring something to be true. Something declared or asserted as a matter of fact especially in a legal pleading; a party's formal statement of a factual matter as being true or provable, without its having yet been proved."

Accordingly mere allegation or rumour shall not take place the knowledge of offence by competent officer unless factual material is collected and findings is recorded by appropriate body and for that court of inquiry has been provided under the Act.

16. In view of above, there appears to be difference between the word "allegation" and the word "offence". Allegation does not constitute the offence unless prima facie the case is established against the charged officer. It was the court of inquiry which recorded findings after due compliance of Rule 180 of the Army Rules, 1954 though prima facie case has been established against the applicant on account of serious mis-conduct like payment of bribery and after receipt of report of court of inquiry, the Commanding Officer issued order dated 20.12.2003 to initiate disciplinary action against the applicant. Needless to say that while passing order to take disciplinary action against serving persons which was always incumbent that disciplinary authority must satisfy himself that prima facie case is made out on the basis of enough material to proceed against a person and it constitutes offence under law. Under Section 37 of the Army Act, the finding of General Court Martial or District Court Martial is always passed on satisfactory recording of evidence by competent officer.

Under Section 49 of the Act, the accused has right to raise objection during arraignment on the ground that it does not disclose an offence under the act or is not in accordance with these rules and under Section 48 the charges upon which the accused is arraigned shall be read and, if necessary, translated and the applicant shall be required to plead separately to each charge.

17. Under para 179 of the Army Rules, 1954, the court of inquiry is a fact finding body to find out whether prima facie offence has been committed under the Rules keeping in mind the definition given in para 3 (xvii) of the Army Act, 1950 unless a finding is recorded that prima facie case is acceded with regard to commission of offence by appropriate authority in accordance with rules. It cannot be presumed that Commander or competent authority has knowledge with regard to commission of offence provided under Section 122 of the Army Act.

18. Accordingly we are of the opinion that soon after court of inquiry and conclusion of evidence/material through it, the competent authority shall initiate action for commission of offence and initiate disciplinary action. That is why legislature to their wisdom has provided that it shall not be applicable for the offence of desertion i.e. under Section 37 (mutiny). Accordingly we are of the view that the date of knowledge under the statutory provision shall be 20.12.2003 that the authority has issued the order for disciplinary action against the applicant.

19. In the case reported in ***Union of India & Ors vs. V.N. Singh***, AIR (2010) 5 SCC 579, their Lordships of the Hon'ble Supreme Court under Section 122 (1) (b) held that where the commission of the

offence was not known to the person aggrieved by the offence or to the authority competent to initiate action, the first day on which such offence comes to the knowledge of such authority, is the date of knowledge. Therefore the competent authority passed an order or directed for disciplinary action against the accused. For convenience sake relevant portion of the judgment from the case of V.N. Singh (supra) is reproduced as under:-

> *"32. The term "the person aggrieved by the offence" would be attracted to natural persons i.e. human beings who are victims of an offence complained of, such as offences relating to a person or property and not to juristic persons like an organisation as in the present case. The plain and dictionary meaning of the term "aggrieved" means hurt, angry, upset, wronged, maltreated, persecuted, victimised, etc. It is only the natural persons who can be hurt, angry, upset or wronged or maltreated, etc. If a government organisation is treated to be an aggrieved person then the second part of Section 122 (1) (b) i.e. "when it comes to the knowledge of the competent authority to initiate action" will never come into play as the commission of offence will always be in the knowledge of the authority who is a part of the organisation and who may not be the authority competent to initiate the action. A meaningful reading of the provisions of Section 122 (1) (b) makes it absolutely clear that in the case of a government organisation, it will be the date of knowledge of the authority competent to initiate the action, which will determine the question of limitation. Therefore, the finding of the High Court that Brigadier K.S. Bharucha was an aggrieved person is legally and factually incorrect and unsustainable.*
>
> *33. Further neither Brigadier Mr. K.S. Bharucha, nor Major General B.S. Suhag were competent to initiate action against the respondent because the term "competent to initiate action" refers to the competency of the authority to initiate or direct disciplinary action against any person subject to the provisions of the Army Act. When an offence or misconduct is alleged to have been committed by a person subject to the Army Act, then the Officer in chain of command is required to take action for investigation of the charges and trial by Court Martial as per Section 1 Chapter V of the Army Rules or order Court of Inquiry and subsequently finalise the Court of Inquiry*

under Section 2 Chapter VI of the Army Rules. These powers are vested in the officers in chain of command. Those powers are not vested with staff Officers. Since the respondent was commanding 4 RPD, his next officer in command was GOC, Delhi Area and the power to take disciplinary action was vested with him in terms of para 16(a)(i) of the Defence Service Regulations, read with the Command and Control Instructions dated January 1, 1991 issued by the Headquarter Western Command. Therefore, Brigadier K.S. Bharucha had only technical control of 4RPD and had therefore recommended to his higher authority to close down the case but himself had not taken a decision to close down the case or to continue the case against the respondent.

36. On the facts and in the circumstances of the case this Court finds that the period of limitation for the purpose of trial of the respondent commenced on 03.12.1994 when the GOC-in-C, Western Command being the competent authority directed disciplinary action against the respondent in terms of Section 122 (1) (b) of the Army Act. The period of three years from the direction dated 03.12.1994 would expire on 02.12.1997, whereas GCM commenced the trial against the respondent on 17.12.1996 which was well within the period of limitation of three years. Therefore the impugned judgment is legally unsustainable and will have to be set aside."

20. In the case reported in ***Union of India & Ors vs Major General Madan Lal Yadav (Retd),*** AIR (1996) SCC 1340, their Lordships of the Hon'ble Supreme Court held that trial begins the moment the General Court Martial assembles for proceeding with the trial. For convenience sake the operative portion of the aforesaid judgment is reproduced as under:-

"The broader view is that the trial commences the moment the GCM assembles for proceeding with the trial, consideration of the charge and arraignment of the accused to proceed further with the trial including all preliminaries like objections to the inclusion of the members of the Court-martial reading out the charge/charges, amendment thereof etc. The narrow view is that trial commences with the actual administration

of oath to the members etc. and to the prosecution to examine the witnesses when the accused pleads not guilty. The question then emerges: which of the two views would be consistent with the conducive to a fair trial in accordance with the Act and the Rules?

It is true that the legislature has made a distinction between Section 122 (3) and Section 123 (2). While in the former, power to exclude time taken in specified contingencies is given, in a little, no such provision is made for exclusion of the time since the accused will be kept under detention after he ceased to be governed by the Act. It is equally settled law that penal provisions would be construed strictly. As posed earlier, which of the earlier, which of the two views broader or narrow- would subserve the object are purpose of the Act is the question. We are of the considered view that from a conspectus of the scheme or the Act and Rules the broader view appears to be more conducive to and consistent with the scheme of the Act and the Rules. As soon as GCM assembles the members are charged with the duty to examine the charge/charges framed in summary trial to give an opportunity to the accused to exercise his right to object to the empanelment of member/members of the GCM to amend the charge and the right to plead guilty. These procedural steps are integral and inseparable parts of trial. If the accused pleads guilty further trial by adducing evidence by the prosecution is obviated. The need for adduction of evidence arises only where the accused pleads "not guilty". In that situation, the members are required to take oath or affirmation according to Rule 45. It is to remember that the members get right power and duty to try an accused only on appointment and the same ends with the close of the particular case. Therefore, Rule 45 insists on administration of oath in the prescribed manner. For a judicial officer the act of appointment gives power to try the offender under Criminal procedure Code; warrant of appointment by the President of India and the oath takes as per the form prescribed in Schedule III of the Constitution empowers the High Court/Supreme Court Judges to hear the petition or appeals. For them, need to take oath on each occasion of the trial or hearing is obviated. Therefore, the occasion to take oath as per the procedure for GCM and the right of the member of the GCM arises with their empanelment GCM and they get power to try the accused the moment they assemble and commence examination of the case, i.e., charge-sheet and the record. The trial, therefore, must be deemed to have commenced the moment the GCM assembles and examination of the charge is undertaken."

20. Keeping the aforesaid judgment of Hon'ble Supreme Court there appears to be no room of doubt that initiation to proceed against the applicant on disciplinary action shall commence from 20.12.2003 whereas summary of evidence commenced on 14.12.2006 and continued till 04.08.2007. Thus in pursuance to order dated 30.12.2003 trial begins on 14.12.2006 and concluded on 04.08.2007. Charge sheet was served on 27.11.2006. By hard luck of the applicant the trial begins, Summary Court Martial takes place almost six before the expiry of limitation provided under Section 122 of the Army Act, 1950.

21. In the case reported in ***Union of India & Ors vs. Vishav Priya Singh***, (2016) 8 SCC 641, the Hon'ble Supreme Court held that Summary Court Martial may be held in a unit other than the one to which accused belongs to. Relevant portion of the aforesaid judgment, for convenience sake, is reproduced as under:-

> *"It is noticeable that the expression "to which the accused belongs" finds mention in Rule 39 of the Rules as dealt with herein above in the context of GCM or DCM but not with respect to SCM. Under Rule 133 of the Rules the proceedings of an SCM must immediately on promulgation be forwarded through the Deputy Judge Advocate General of the command "in which the trial is held". On the other hand, under Rule 146 of the Rules the proceedings of an SCM must be preserved with the records of the corps or the department "to which the accused belonged". It is thus possible and well contemplated that the trial by SCM may be held in a unit other than the one to which the accused belongs". Rules 39 and 146 further disclose that wherever the statute wanted to specify the unit or department "to which the accused belonged" it has done that with great clarity. No such qualification is specified in respect the CO who is to convene, constitute and complete the SCM."*

22. Ld. Counsel for the applicant relied upon the case of ***K.K. Sreedharan and Others vs. State of Kerala and another***, in Criminal Appeal No. 1374 of 2004 decided on 21.07.2011 set aside the order which commences after statutory period of limitation provided under Section 122 of the Act. In case of ***K.K. Sreedharan*** (supra) their Lordships of Hon'ble Supreme Court held that while recording findings the trial did not begin within three years from the date of knowledge of GCM. In para 8 of the aforesaid judgment relied upon by Ld. Counsel for the applicant, the Hon'ble Supreme Court had formed opinion based on court of inquiry but recommended for trial on 19.02.2008 and final order of GCM was passed on 23/26.08.2010. For convenience sake para 13 and 14 of the aforesaid judgment is reproduced as under:-

> *"13. On behalf of the appellant it is contended that the period of limitation for his trial before the Court Martial would commence from February 20, 2007, when on the basis of the report of the Court of Inquiry, the GOC, MB Area, sent his recommendation to the GOC-in-C, CC indicting the appellant. It is pointed out that it was the GOC, MB Area, who passed the order dated August 23/26, 2010 convening the General Court Martial, directed the Commanding Officer to take further summary of evidence in the hearing of charges under rule 22 and finally passed the order directing the Court Martial to reassemble for the appellant's trial. It is, thus, the GOC, MB Area who is the competent authority to take action against the appellant and it is the date of his knowledge of the commission of the alleged offence and the identity of the appellant as the alleged offender that is relevant under Section 122.*
>
> *14. It is further submitted that in any event the GOC-in-C, CC was undeniably the competent authority to initiate action against the appellant. On May 7, 2007, the alleged offence and the identity of the appellant as the alleged offender was fully within his knowledge on the basis of the recommendation of GOC, MB Area and the report of the Court of Inquiry ordered by him. His knowledge is evident from his recommendation to Integrated HQ, wherein, he stated that the culpability of*

> *the appellant was established. The period of limitation must, therefore, commence from a date not later than May 7, 2007 and reckoning from that date, the period of three years came to end on May 6, 2010. But the order for convening the General Court Martial was finally passed by the GOC, MB Area on August 23/26, 2010, that is, clearly beyond the period of limitation. Hence, the appellant's trial before the General Court Martial was clearly hit by section 122 and was barred by limitation.*

23. The case relied upon by Ld. Counsel for the applicant in ***K.K. Sreedharan and Others*** (supra) does not extend any help rather help the respondents that the trial commences within a period of three years.

24. From the perusal of record and pleadings, it appears that Rule 180 has been complied with and the applicant was given required opportunity to defend his cause. At every stage principle of natural justice seems to have been complied with, with due opportunity to the applicant to defend the cases.

25. However, keeping the charges of bribery we feel that applicant has been given lesser punishment than was required in the present scenario of the country where corruption is flowing in the stream of blood. Keeping the time leg we are not enhancing the punishment awarded to the applicant but it shall be proper for the Armed Forces including the Army to award major penalty in the event a person is found to be involved in corruption cases.

26. No other ground has been raised by Ld. Counsel for the applicant. However to place on record we are not proceeding against the applicant nor the Army but eulogize Ld. Counsel for the

respondents and Maj Soma John of JAG Branch in explaining the question with regard to limitation and citing judgment of the Apex Court.

27. In view of the above, we feel that O.A. lacks merit and hence **rejected.**

No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

(Justice Devi Prasad Singh)
Member (J)

Dated: May, 2017

Rathore