

A.F.R.
Court No. 2
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 162 of 2016
Thursday this the day of 30th November, 2017

Hon'ble Mr. Justice S.V.S.Rathore, Member (J)
Hon'ble Lt. Gen. Gyan Bhushan, Member (A)

Tomy Varghese, Son of Sri S. Varghese, permanent resident of Chathenickattu (H), Kizhakkekara, Post Office Muvattupuzha, District - Ernakulam, Kerla, presently posted as Group Testing Officer, No.1, Air Force Selection Board, Clement Town, Dehradun-248002.

..... **Applicant**

By Legal Practitioner: Shri Birendra Pratap Singh, Advocate, Learned Counsel for the Applicant.

Versus

1. Union of India through Chief of Air Staff, Air Headquarters, Vayu Bhawan, New Delhi.
2. Chief of Air Staff, Air Headquarters, Vayu Bhawan, Rafi Marg, New Delhi.
3. Air Officer Commanding-in-Chief, Headquarter Western Air Command, Indian Air Force, Subroto Park, New Delhi.

... **Respondents**

By Legal Practitioner: Shri Asheesh Agnihotri, Learned counsel for the respondents assisted by Wg Cdr Sardul Singh, Departmental Representative

ORDER

Per Hon'ble Mr. Justice S.V.S. Rathore, Member (J)

1. By means of this Original Application (O.A.), the applicant has prayed the following relief:-

“(i) Issue an order or direction to the respondents quashing the impugned order dated 19.06.2015 together with order dated 18.02.2016 as contained in Annexure No.1 and 2 to the instant original application, and /or

(ii) Issue an order or direction to the respondents hereto ignore the impugned order of punishment and restore the reputation of applicant in the service documents while considering the candidature of the applicant for promotion etc, and/or

(iii) Issue an appropriate order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case including an order of awarding damages as well as cost of the instant application in favour of the applicant and against the respondents, hereto.

2. By means of an order dated 18.02.2016 the applicant was informed that he has been awarded a severe displeasure for six months on 23.05.2015. Applicant preferred a review application which has been rejected by the Chief of the Air Staff on 02.07.2015. The applicant was commissioned as an officer in Indian Air Force and is serving as a Wing Commander. He was posted as Senior Logistic Officer's (SLO's), 45 Wing Air Force with effect from 02 Jul 2012 and remained there as Senior Logistic Officer (SLO) till 23 Jul 2014. The applicant was relieved from the post of SLO, 45 Wing, after handing over the charge of SLO to Wing Commander D.K. Tiwary on 24 Jul 2014. On 27.08.2014 inspection was carried out by Computer Emergency Response Team (CERT) in Senior Logistic Officer (SLO) Office and inspected the Personal Computers (PCs) held in logistic Section. During the

aforesaid inspection, Computer Emergency Response Team (CERT) found traces of War Plan CD in Personal Computer (PC) SI No. 1096A41294 and MAC SI. No. 001fdoe6ce11. The aforesaid PC was taken away by CEO, Group Captain Nanda Kumar on 27.08.2014 at about 1545 hours. Because of these anomalies, a Court of Inquiry was constituted under the order of Air Officer Commanding to inquire into the circumstances under which the violation of Procedure as laid down in Para 3 (c) (ii) Chapter VII of Information Security Instructions, IAP 3903 was observed in PC SI. No. 1096A41294 and MAC SI. No. 001fdoe6e11 and Group Captain S Chandhok was appointed as Presiding Officer. Later on, due to posting out of Group Captain S. Chandhok, Group Captain Soni Abraham was appointed as Presiding Officer of the Court of Inquiry. In the Court of Inquiry, statement of four witnesses namely, Witness No. 1 Wing Cdr DK Tiwary, Witness No. 2 – Flt Lt. S. Trivedi, Witness No. 3 – Group Captain Nanda Kumar, and Witness No. 4 – Flt Lt. Swati Sharma were recorded. After recording the aforesaid statements of witnesses, the Presiding Officer of Court of Inquiry recorded its deliberations in the following manner:

“The court deliberated on the statements made by the four witnesses and the evidence produced by them. It is of the opinion that the present evidence is insufficient to come to a definite conclusion. It appears that some traces of War Plan CD were found on the internet PC of SLO by the DASI team on 27 Aug 2014. However, the details of the same or the data contents on the CD/PC are not available. Cyber forensic analysis report is required to know the exact facts to come to some conclusion. The present evidence is inconclusive”.

3. Thereafter the applicant appeared as witness No. 5 before the Court of Inquiry and his statement was recorded as well as he was duly questioned by

the Court of Inquiry. After recording the statement of applicant, Court of Inquiry again recorded its deliberations in the following manner:-

“The court deliberated on the statements made by all the five witnesses and the evidence produced by them. It has come to the conclusion that the present evidence is insufficient and inconclusive. Neither the CPU nor the Cyber Forensic analysis report is available to know the details of the data. Cyber forensic report is essential to corroborate with the present evidence to come to some conclusion. The present evidence is inconclusive”.

4. After considering forensic investigation report dated 25.09.2014, the Court of Inquiry recorded its findings on 27.11.2014 to the effect that no violation of procedure as laid down in Information Security Instructions, IAP 3903 has been observed and thereafter made recommendation that Computer Processing Unit in question is to be low level formatted by the Station and reused by the station for day to day task.

5. Entire material of Court of Inquiry was placed before Air Officer Commanding, 45 Wing Air Force and after considering the same, necessary remarks were recorded on 15.12.2014 and the said authority recorded his agreement with the findings and recommendations of Court of Inquiry and thus, the Court of Inquiry was concluded.

6. Case of the applicant is that after completion and conclusion of the aforementioned Court of Inquiry, without any authority of law, the Dy CSO (Air) HQ, WAC returned the Court of Inquiry for reassembly and for rectification of certain observations of CJA dated 06.02.2015. Convening authority ordered reassembly of the Court of Inquiry to rectify the observations as made by Dy CSO (Air)/CJA, HQ WAC. In pursuance

thereof the Court of Inquiry was reassembled on 25.03.2015. Court of Inquiry was of the opinion that the applicant is to be re-examined and a fresh forensic analysis was also sought to be carried out. In pursuance of the deliberations, the applicant was also summoned by the Court of Inquiry and questioned on 08.04.2015. Apart from the applicant, Flt. Lt Shubhi Sharma was also summoned as Witness No. 6 and was also questioned by the Court. The statements of the applicant and Flt Lt Shubhi Sharma were recorded on 08.04.2015. Thereafter on 09.04.2015, the reassembled Court of Inquiry recorded its deliberations and opined that the applicant is likely to be blamed for violating the procedure as laid down in Para 3 (c) (ii) Chapter VII of information Security Instructions, IAP 3903 by using a single storage device (CD 45 Wg/CDRW/103) on both internet and intranet (AFNET).

7. There after as a Witness No. 7, Flt Lt Abhijeet Kumar, who was performing duties of SITO wef 17.03.2015, was summoned and the applicant had cross examined him on 09.04.2015. Thereafter the Court of Inquiry came to the conclusion that the applicant is responsible and blameworthy for violating the procedure as laid down in Para 3 (c) (ii) Chapter VII of Information Security Instructions, IAP 3903 by using a single storage device CD 45 Wg/CDRW/103 on both internet and Intranet (AFNET) while posted in 45 Wing Air Force as SLO from 02 Jul 2012 to 24 Jul 2014. The Court of Inquiry also drawn the action under Para 790 (e) of Regulations of the Air Force 1964 and in pursuance thereof final statement of the applicant was recorded. The Court of Inquiry recorded its final deliberations as well as recommendations on 13.04.2015. On the basis of

conclusion of Court of Inquiry, applicant was awarded entry of “Severe Displeasure for six months”.

8. Submission of learned counsel for the applicant is that there was no violation of the procedure as laid down in Para 3 (c) (ii) Chapter VII Information Security Instructions, IAP 3903 by using a single storage device (CD 45 Wg/CDRW/103) on both Internet and Intranet (AFNET) while being posted at 45 Wing Air Force as SLO from 02 Jul 2012 to 24 Jul 2014.

9. Applicant has been found guilty for violation of Para 3 (c) (ii) Chapter VII Information Security Instructions, IAP 3903 which is reproduced as under:-

“(c) **Handling of Secondary Storage Device.**

(i) Use of secondary storage device as well as their access points both on Internet and Internet domain are to be restricted to bare minimum. Auto run should be disabled in all PCs. On all PCs intranet (AFNET) CD/DVD drives are to be disabled. These CD/DVD drives on Intranet PCs can be temporarily enabled by system administrator for specific requirements of clients regarding installation of standard software. All USB ports are to be disabled for mass storage devices except selected appointments for which USB access for mass storage devices will be given as per existing policy (Item No 8 Appendix-B). For stand-alone service (not internet) PCs CD/DVD drives are to be disabled and only USB are to be enabled for using secondary storage devices/printers. For all PCs on Internet CD/DVD drives with read and write access is to be provided. All USB ports of Internet machines are to be disabled except for use of printer/keyboard/mouse. No Single

storage device should be used on both networks to maintain complete isolation between them. Suitable colour coding will be implemented to distinguish between Intranet (BLUE Colour) and Internet (RED Colour) devices/cables including secondary storage devices. The above arrangement will ensure the following:-

(aa) Use of external HDD only on Intranet/(AFNET) machines to certain authorised users (and non-Internet machines).

(ab) Use of CD/DVD drive with R/W privileges only on Internet machine.

(ii) The above will ensure that no single storage device could be used on both internet and intranet machine by a common user thereby maintaining the air gap effectively. Any information from a trusted source on a CD/DVD and to be transferred to Intranet machines will be transferred through central Data Access Point (DAP). However in case inescapable operational, maintenance and admin requirements exists for enabling Mass Storage devices on internet PCs, one time consolidated clearance is to be obtained from VCAS/AOC-in-C. These clearances should be reviewed annually.

(iii) The standardised format of CDs/DVDs is required to monitor the source of issue. All these removable media must have a clearly legible registration number and suitable marking of formation holding them using logo/label printer.

(iv) Dte of AFNET will introduce software for white-listing, managing and accounting of removable media. A provision should be made to generate 'alert' whenever an unauthorised USB device is connected".

10. Oral submission of the applicant is that he has not violated any procedure prescribed under the rules, and even it is found that there was any violation of the procedure, then it was only a bonafide mistake and there was no malafide intention of the applicant, and as such, the mistake, if any, was unintentional. It is submitted that such punishment would cause irreparable loss to him as his future prospects of promotion shall stand jeopardised.

11. **Per Contra** Learned Counsel for the respondents has argued that the entire Court of Inquiry was conducted as per material available on record as directed by the concerned authority and statements of the applicant was also recorded. Applicant's statement itself reveals that he has acted in violation of safeguards mentioned in the said Para 3 (c) (ii) Chapter VII Information Security Instructions, IAP 3903 reproduced in Para 9 of the judgment. It is also argued by learned counsel for the respondents that it is only due to absence of any mala fide intention; minor punishment of Severe Displeasure for six months has been awarded which does not suffer from any illegality.

12. Before proceeding further, we may take note of statement of the applicant himself which reads as under:

“Witness No. 5 *Wg Cdr T Varghese (025908-B) Lgs (Witness No. 5) summoned by the court for further examination.*

Questioned by the court

Q1. Did you have a CD containing War plan as the SLO at 45 Wg?

Ans. I had a CD (Sl No 45 WG/CDRW/103) containing Lgs War Plan 01/2014 since 22 or 23 June 2014.

Q2. Please explain the usage and actions done by you with the above CD?

Ans. The CD Sl. No. 45WG/CDRW/103 was not in use since the provision of 'Truecrypt' container in the SLO's AFNet PC somewhere in the year 2013, though previously the same CD was being used for preparing Lgs War Plan and transfer of the same from Standalone to AFNet PC. After receipt of Op role of 15 Sqn, I updated the Lgs War Plan in the month of June 2014 and decided to retain a soft copy in ibid CD for the benefit of new SLO, who was to take over from me in July 2014. When I tried to verify the contents of ibid CD in my AFNet PC, I found the CD non-accessible. Thereafter I put ibid CD in the SLO's internet PC to format the same and renamed the CD to 'Lgs War Plan' to prevent any inadvertent misuse of the CD. I did not try to open the content of ibid CD on that instance on 16 June 2014. Subsequently, probably on 22 or 23 June 2014, I copied Lgs War Plan 01/2014 into ibid CD from the Truecrypt container of SLO's AFNet PC. The ibid CD was not put in the SLO's internet PC before or after the instance on 16 June 2014.

Q3. Where did you take the print out of updated Lgs War Plan 01/2014?

Ans. From the SLO's AFNet PC using the dedicated printer connected to it.

Q4. Elaborate the routine office work carried out on SLO's internet PC?

Ans. The SLO's internet PC is routinely used for uploading of RFPs in respect of Local Purchase to www.eprocure.nic.in uploading of Surplus Reports to MSTC web site and monitoring of the e-auction from MSTC website, email correspondence with various agencies like vendors, MSTC, etc and for market survey for local purchase/repair. The internet connectivity to

ibid PC was down since Apr 2014 and hence it was not used for any internet activity till July 2014. On 16 June 2014, the ibid PC was switched on in the morning, as it was the norm, and to my memory, was used only to format and rename the CDRW/103”.

13. When we examine the statement of the applicant recorded during Court of Inquiry and scrutinise it in the light Para 3 (c) (ii) Chapter VII Information Security Instructions, IAP 3903 reproduced in Para 9 of the judgment, wherein it is clearly mentioned that the applicant violated the procedure though being a senior most officer, we find that the procedure as contained in handling of restricted and important documents has not been adopted while using the operational war plan CD, there was restriction for use of it. The applicant had admitted that it was handed over to his successor at the time of handing/taking over the charge. Thus it is crystal clear that the rules were violated while using the operational war plan CD at the time of handing/taking over of charge.

14. A plain reading of the above quoted para shows that very high restrictions have been imposed for the use of CD on Internet and the Intranet computers, in as much as, violation of this restriction may lead to hacking of the computer. The applicant in his statement has admitted said act which indicate that restrictions imposed by above quoted para were flouted.

15. Law is settled on the point that a Court of Inquiry is only a fact finding body. Since, in the inspection, traces of War plan CD were found on internet computer, therefore, the Court of Inquiry was ordered to fix the liability for such lapses of procedure quoted above. On two previous

occasions, the Court of Inquiry could not give any definite opinion for want of adequate evidence. Thereafter, Court of Inquiry for violation of the procedure was re-assembled under the orders of superior officer in chain of command. If the Court of Inquiry could not reach any conclusion for fixing liability for such violation, then it would not operate as res-judicata, barring further proceeding to fix the liability after rectification of point raised by the superior officer. Court of Inquiry is quite different from trial of a person. So if at one stage Court of Inquiry has failed to fix liability then it would not mean that the matter stands closed and no further enquiry to fix the liability can be made. Thus submission of Ld. Counsel for the applicant that the superior officer could not order for re-assembling the Court of Inquiry, has no substance.

16. Further submission of counsel for the applicant is that initially Court of Inquiry assembled on 29.08.2014 in terms of the reference to inquire into the circumstances under which War plan CD was put in internet PC. However, the forensic analysis of PC in question revealed no such violation has been carried out and the Convening Authority duly disposed of the matter. Further, the action of the authorities in reassembling of the Court of Inquiry was without any authority of law as well as without any justifiable reason, hence was illegal as well as discriminatory. We are not impressed by the submission of learned counsel for the applicant. The Court of Inquiry reassembled based on certain observation from CJA, HQ, WAC and the applicant was recalled to attend the court of inquiry as a witness from 08.04.2015 to 11.04.2015.

17. In view of the discussions made above, we are of the view that the minimum punishment has been awarded to the applicant in this matter. The charge against the applicant is proved. We do not find the punishment excessive in view of the circumstances of the present case.

18. Accordingly, O.A. deserves to be dismissed and is hereby **dismissed**.

19. No order as to costs.

(Lt. Gen. Gyan Bhushan)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated : November , 2017.

RS