

AFR
RESERVED
Court No.1

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

Original Application No. 155 of 2017

Monday, this the 22nd day of May 2017

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

Brig Amit Kumar Chatterjee, SM (IC-48355H) Son of Late Lt Col Ashit Kumar Chatterjee (presently attached with HQ 111 Sub Area, PIN-908111, C/O 99 APO) resident of H. No. B 110, Sector 4 Defence Colony, Dehradun-480001.

.....Applicant

Ld. Counsel for : **Maj (Retd) R.D. Singh,**
 the Applicant **Advocate**

Versus

1. Union of India, Through its Secretary, MoD, DHQ, PO-New Delhi-11.
2. Chief of the Army Staff, IHQ of MoD (Army), DHQ, PO, New Delhi.
3. GOC-in-C Eastern Command, HQ at Fort William, Kolkata, Lt Gen Sanjay Kumar Jha.
4. GOC, 33 Corps, PIN-908533, C/O 99 APO.
5. Lt Gen GS Chandel, DG, RRC (earlier GOC, 33 Corps), IHQ of MoD (Army), New Delhi.
6. Maj Gen Ajay Seth (then GOC, 17 Mtn Div) C/O 99 APO.
7. Maj Gen Saranjit Singh (Now Lt Gen) Chief of Staff (Presiding Officer, C of I) 33 Corps, PIN-908533, C/O 99 APO.

8. Maj Gen MK Yadav, 111 Sub Area, PIN-908111, C/O 99 APO.
9. Lt Gen Surinder Singh, GOC 33 Corps, C/O 99 APO (Now GOC-in-C (then GOC 33 Corps) Western Command, Chandigarh.
10. Brig MN Devaya (Officer recording S of E) Chief Engineer, 33 Corps, PIN-908533, C/O 99 APO.
11. Meenakshi Chatterjee, Resident of H. No. 12 GDA Officers Colony Patel Nagar, 1, Opposite Agrasen Bhawan, Ghaziabad (U.P.).
12. Priyasha Chatterjee, C/O Meenakshi Chatterjee Resident of H. No. 12 GDA Officers Colony Patel Nagar, 1, Opposite Agrasen Bhawan, Ghaziabad (U.P.).
13. Malaica Chatterjee, C/O Meenakshi Chatterjee Resident of H. No. 12 GDA Officers Colony Patel Nagar, 1, Opposite Agrasen Bhawan, Ghaziabad (U.P.).
14. Lt Col Subodh Thapliyal, 9 Corps Provost Unit, C/O 56 APO.

.....Respondents

Ld. Counsel for the Respondents : **Dr. Chet Narain Singh, Ld. Counsel for the respondents assisted by Maj Soma John, OIC Legal Cell.**

ORDER

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

1. We have heard Maj (Retd) R.D. Singh, Ld. Counsel for the applicant and Dr. Chet Narain Singh, Ld. Counsel for the respondents assisted by Maj Soma John, OIC Legal Cell and perused the records.

2. The applicant who was commissioned in the Indian Army on 17.12.1988 was promoted to the rank of Brigadier and appointed as Formation Commander 166 Mtn Bde between 04.12.2014 to November 2015. The allegation against the applicant is of illicit relationship with the wife of subordinate officer and accordingly charges have been framed. The General Court Martial (GCM) has been convened by order dated 29.04.2017 and proceedings are still on. While assailing General Court Martial proceedings Ld. Counsel for the applicant submitted that Court of Inquiry was without jurisdiction, violative of Rule 177 of the Army Rules, 1954 and the convening order has been passed in violation of said Army Rule 177 (supra) and Army Rule 180 has not been complied with. It is submitted that the proceeding is initiated by written instruction of authority in contravention of Rule 179 (1) of the Army Rules, 1954. Relying upon **Annexure Nos 19, 20, 21 and 22** he submitted that the applicant is suffering since he tried to raise an issue with regard to substandard construction of bunkers which is a serious instance of high level corruption. Allegation has been raised against higher officers that they had connived with applicant's own wife to take action against him. However during course of arguments it has not been disputed that the applicant had participated in the Court of Inquiry which was held in his presence. It has been

submitted by applicant's counsel that proceedings initiated against the applicant suffers from bias since he had raised the issue of substandard construction of bunkers. Ld. Counsel for the applicant submitted that the applicant was kept in close arrest but later on he was released. Ld. Counsel for the applicant relied upon earlier order of this Tribunal dated 06.01.2017 (**Annexure-7**) according to which the applicant has been permitted to approach again.

3. A close reading of the O.A. shows that substantially complex question of facts and law is involved with allegations and counter allegations at different corners.

4. So far as allegation with regard to use of substandard material in construction of bunkers is concerned specific pleading is contained in para 4.4, 4.4.1 and 4.5. For convenience sake the same is reproduced below:-

“4.4. It is relevant to mention that when the applicant had taken over the Brigade as Brigade Commander in Dec 2014, 33 Corps had already planned to construct bunkers on Indo-China border in entire corps zone with prefabricated Hollow cement bricks for which contract with very huge amount stood executed. It could be imagined that about 200 bunkers, were to be constructed in Brigade Area of the petitioner only-what to speak of entire Corps Zone. Staging area for unloading/loading was being done at Corps Engineer dumping ground, under Chief Engineer, 33 Corps. Several reports from unit of Brigade, came to the petitioner that large number of hollow fabricated bricks are breaking while loading/unloading and in the carriage. Petitioner was surprised that

how it could be possible as the bricks in question have to bear with the adverse effect of gun shots/bombs/shellings during war. And if it was true, then definitely it was unsuitable for construction of Bunkers at the Indo-China Border-very sensitive and vitally important for the security of the Nation.

4.4.1. To verify the facts, applicant ordered to his Commanding Officers of the Units, to randomly pick the bricks and made to testify its worthiness in their presence. And at firing range-three to four bricks in question were placed one after each other at target area, and burst of one round-pierced them all the shattered it. The matter was not only reported to then GOC, 17 Mtn Div and then GOC, Corps, but was also demonstrated to them. To the horror of petitioner, he was told that since the very huge amount are going to be at stake, keep quite and let the things go on. This was not acceptable to the petitioner as it amounted to compromising with the security of the Nation-and he was constrained to put it in black and white and also informed Respondent No. 3 when he has visited to Op Area of the Brigade. However, construction of the Bunkers continued with the substandard material. This fact was also informed to respondent No. 9, on his taking over the 33 Corps. But it was in vain as he also did not take any action.

4.5. The dissent of petitioner in the subject matter as it appears in series of unfolding events, was not taken in right spirit, obviously, due to their deep involvement in the scam and repercussion which it may invite on its closure. So a deep rooted conspiracy was hatched, to keep the applicant at bay and in nexus and collusion of theirs, on extraneous consideration, with ulterior motive to injure the petitioner and in that a great ugly betrayal and conspiracy, has been hatched and executed by the involved persons in very ugly design to irreparably harm the petitioner in disguise of colour of process of law in that several persons, including the wife an daughter of petitioner, Lt Col Subodh Thapliyal etc have been clubbed in, with ulterior motive to give different texture. And

in furtherance there to, even before so called drama of fact finding, applicant was removed from command in Jan 2016 and all ills were used, in abuse of power and giving different colour and texture, to deceit their discovery of aforesaid.”

5. A copy of the charge sheet has been filed as **Annexure No. 9** which for convenience sake is reproduced as under:-

“CHARGE SHEET

The accused IC-48355H Brigadier Amit Kumar Chatterjee, Sena Medal Commander 166 Mountain Brigade, attached to Headquarters 111 Sub Area an officer holding a permanent commission in the regular Army, is charged with:-

First Charge
Army Act
Section 69

COMMITTING A CIVIL OFFENCE THAT IS TO SAY ADULTERY, CONTRARY TO TO SECTION 497 OF THE INDIAN PENAL CODE.

In that he,

At Dharamshala, between 13 November 2015 and 19 November 2015, committed adultery, by having sexual intercourse with Mrs Ekta Thapliyal, well knowing her to be the wife of IC-54804H Lieutenant Colonel Subodh Thapliyal, without the consent of the said IC-54804H Lieutenant Colonel Subodh Thapliyal.

Second Charge
Army Act
Section 45
Alternative to the
Charge)

BEING AN OFFICER BEHAVING IN A MANNER UNBECOMING HIS POSITION AND THE CHARACTER EXPECTED OF HIM.

In that he,

At the place and period, as mentioned in the first charge, indulged in an inappropriate relationship with Mrs Ekta Thapliyal, wife of IC-54804H Lieutenant Colonel Subodh Thapliyal.

Third Charge
Army Act
Section 69

COMMITTING A CIVIL OFFENCE THAT IS TO SAY, ADULTERY, CONTRARY TO SECTION 497

OF THE INDIAN PENAL CODE.

*in that he,
at field, between 30 October 2016 and 01 November 2016, committed adultery, by having sexual intercourse with Mrs. Ekta Tapliyal, well knowing her to be the wife of IC-54804H Lieutenant Colonel Subodh Thapliyal, without the consent of the said IC-54804H Lieutenant Colonel Subodh Thapliyal.*

Fourth Charge
Army Act
Section 45
(Alternative to the
third Charge).

BEING AN OFFENCER BEHAVING IN MANNER UNBECOMING HIS POSITION AND THE CHARACTER EXPECTED OF HIM.

in that he,

at the place and period, as mentioned in the third charge, indulged in an inappropriate relationship with Mrs. Ekta Thapliyal wife of IC-54804H Lieutenant Colonel Subodh Thapliyal.

Fifth charge
Army Act
Section 57 (a)

IN A DOCUMENT SIGNED BY HIM KNOWINGLY MAKING A FALSE STATEMENT.

in that he,

at Hashimara, on 05 December 2014, while being Commander 266 Mountain Brigade, submitted his personal and service particulars as per Appendix 'A' to Army Order 135/78, duly signed by him, to Headquarters 17 Mountain Division, well knowing that the entries mentioned in said Appendix, as listed in column 'A' of Annexure-1 attached to this charge sheet, to be false.

Sixth Charge
Army Act
Section 57(a)

IN A DOCUMENT SIGNED BY HIM KNOWINGLY MAKING A FALSE STATEMENT.

in that he,

at Hashimara, on 25 July 2015, while being Commander 166 Mountain Brigade, submitted his 'Record Card' duly signed by him, to Headquarters 33 Corps, well knowing that the entries mentioned in the said 'Record Card' as listed in column 'A' of Annexure-2 attached to this charge sheet, to be false.

Seventh Charge
Army Act
Section 57 (a)

IN A DOCUMENT SIGNED BY HIM
KNOWINGLY MAKING A FALSE
STATEMENT

in that he,

at Hashimara, on 26 August 2015, while being Commander 166 Mountain Brigade, submitted his 'Record Card' duly signed by him, to Headquarters 17 Mountain Division, well knowing that the entries mentioned in the said 'Record Card' as listed in column 'A' of Annexure-2 attached to this charge sheet, to be false.

Eighth charge
Army Act
Section 57(a)

IN A DOCUMENT SIGNED BY HIM
KNOWINGLY MAKING A FALSE
STATEMENT

in that he,

at Hashimara, on 09 July 2015, while being Commander 166 Mountain Brigade, submitted his 'Paramount Card' duly signed by him, to Headquarters 17 Mountain Division, well knowing that the entries mentioned in said 'Paramount Card' as listed in column 'A' of Annexure-3 attached to this charge sheet, to be false.

Ninth Charge
Army Act
Section 57(a)

IN A DOCUMENT SIGNED BY HIM
KNOWINGLY MAING A FALSE
STATEMENT

in that he,

at Hashimara, on 17 December, 2014 while being Commander 166 Mountain Brigade in 'Application and Record Card Offrs' (IAFF(PS)-1658), duly signed by him, for issue of new service 'Identity Card' (IAFZ-2015), mentioned his date of birth as 21 July 1967, well knowing the said date of birth to be false.

Tenth Charge
Army Act
Section 39(a)

ABSENTING HIMSELF WITHOUT LEAVE

in that he

At New Delhi, while on temporary duty at Directorate General of Military Intelligence, Integrated Headquarters of Ministry of Defence (Army), absented himself without

leave from 23 September 2015 to 25 September 2015.

Eleventh Charge *ABSENTING HIMSELF WITHOUT LEAVE*
Army Act
Section 39(a) *in that he*

at field, absented himself without leave from 2000 hrs on 31 October 2016 until 1230 hrs on 01 November 2016.”

6. From the perusal of the charge sheet it appears that the allegation against the applicant is that he has committed adultery of having sexual intercourse with Mrs Ekta Thapliyal wife of Lt Col Subodh Thapliyal. That apart another allegation is that certain documents were signed by the applicant making false statement knowingly. The other allegation seems to be absence without leave from 23.09.2015 to 26.09.2015.

7. A plain reading of the charge sheet shows that it wholly involves factual controversy which may not be adjudicated upon without recording evidence from both sides. Apart from prosecution option is also open to the applicant to lead evidence in GCM proceedings. Such allegation does not seem to make out a case to interfere at initial stage where its authenticity is based upon evidence laid by the parties. So far allegation made by the applicant with regard to use of sub standard material in constructing bunkers is concerned, option is open to the applicant to approach appropriate forum.

8. Dr. Chet Narain Singh, Ld. Counsel for the respondents assisted by Maj Soma John, OIC Legal Cell rightly invited attention to Section 3 (o) of the Armed Forces Tribunal Act, 2007 where service matters have been defined. For convenience sake Section 3 (o) (supra) is reproduced as under:-

“3 (o). “Service matters”. In relation to the persons subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950), mean all matters relating to the conditions of their service and shall include-

(i) remuneration (including allowances), pension and other retirement benefits;

(ii) tenure, including commission, appointment, enrolment, probation, confirmation, seniority, training, promotion, reversion, premature retirement, superannuation, termination of service and penal deductions;

(iii) summary disposal and trials where the punishment of dismissal is awarded;

(iv) any other matter, whatsoever,

But shall not include matters relating to:-

(i) Orders issued under section 18 of the Army Act, 1950 (46 of 1950), sub-section (1) of section 15 of the Navy Act, 1957 (62 of 1957) and section 18 of the Air Force Act, 1950 (45 of 1950); and

(ii) transfers and postings including the change of place or unit on posting whether individually or as a part of unit, formation or ship in relation to the persons subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950).

(iii) leave of any kind;

(iv) Summary Court Martial except where the punishment is of dismissal or imprisonment for more than three months”

9. Objection raised by respondents’ counsel seems to be quite correct that controversy with regard to construction of bunkers is an issue which does not fall within the domain of Tribunal for adjudication, being not a service matter.

10. Apart from above, Ld. Counsel for the respondents as well as OIC Legal Cell invited attention to Rule 51 of Army Rules, 1954 according to which option is open to the applicant to raise plea of jurisdiction before the GCM and in case such a plea is raised it shall be obligation of the GOC to decide the issue of jurisdiction as preliminary issue. For convenience sake Rule 51 (supra) is reproduced as under:-

“51. Special plea to the jurisdiction. -

(1) The accused, before pleading to a charge, may offer a special plea to the general jurisdiction of the court, and if he does so, and the court considers that anything stated in such plea shows that the court has no jurisdiction it shall receive any evidence offered in support, together with any evidence offered by the prosecutor in disproof or qualification thereof, and any address by or on behalf of the accused and reply by the prosecutor in reference thereto.

(2) If the court overrules the special plea, it shall proceed with the trial.

(3) If the court allows the special plea, it shall record its decision, and the reasons for it, and report it to the convening authority and adjourn; such decision, shall not require any confirmation, and the convening authority shall

either forthwith convene another court for the trial of the accused, or order the accused to be released.

(4) If the court is in doubt as to the validity of the plea, it may refer the matter to the convening authority, and may adjourn for that purpose or may record a special decision with respect to such plea, and proceed with the trial:

11. In the present case, on query made by the Tribunal Ld. Counsel for the respondents had not invited attention to any pleading on record which may be said that plea of jurisdiction has been raised before the GCM and straightaway the O.A. has been filed for the second time. Apart from Rule 51 (supra) it is open to the applicant to raise objection on charges framed. Objection with regard to charges framed during GCM is liable to be decided in accordance to law. We are in respectful agreement with the respondents that option is open to the applicant to raise objection in pursuance of Army Rules 49 and 51 to raise grievance whether the GCM has right to look into factual grounds raised by the applicant.

12. The other limb of objection by the respondents is that applicant's earlier O.A. bearing No. 7 of 2017 has been decided by order dated 06.01.2017. A copy of order dated 06.01.2017 has been annexed as **Annexure-7** to the O.A. While deciding the O.A. we have given option to the applicant to raise objection and directed the respondents to

follow the statutory provisions while proceeding ahead in the matter. Relevant portion of the order dated 06.01.2017 is reproduced as under:-

“According to Applicant’s Ld. Counsel, Mrs Meenakshi Chatterjee is hatching a conspiracy against the Applicant and on the basis of letter written by Lt Col Subodh Thapliyal, she has made allegations with regard to illicit relationship of Mrs Ekta Thapliyal, wife of Lt Col Subodh Thapliyal and the Applicant. It is submitted that conspiracy has been hatched to deprive the Applicant from promotional avenue in the Indian Army.

Ld. Counsel for the Applicant has relied upon the following cases:-

(i) Maj Gen Rakesh Kumar Loomba vs. Union of India & Ors reported in Mil LJ 2008 Del 150; and

(ii) Vinayak Daultarao Nalawada vs Core Commander, Lt Gen GOC, HQ 15 Corps, reported in 1987, LAB I.C. 860.

So far as Rule 180 of the Army Rules, 1954 is concerned there appears no room of doubt that compliance of statutory mandate is a must, non compliance of which may vitiate the proceedings. But the fact remains that after Court of Inquiry, Summary of Evidence has been recorded and the matter is pending before the Appropriate Authority, if satisfied, to take a final decision and pass Convening Order to proceed with the disciplinary proceedings. It is for the Convening Authority to look into the matter and take final decision on the basis of evidence collected during Court of Inquiry and later on while recording Summary of Evidence. Right conferred on the Army authorities flows from statutory provisions contained in the Army Act, Army Rules and Regulations framed there under. Since the Army is exercising statutory power with regard to

holding appropriate disciplinary proceeding/Court Martial proceeding by applying mind to the evidence collected, it shall not be appropriate to interfere at this pre-mature stage. It is open to the Applicant to defend his cause before the Appropriate Authority dealing with the matter.

Otherwise also the Applicant shall have full opportunity to defend his cause and raise objections during proceedings, if any initiated on the basis of court of inquiry and summary of evidence, and in case some substantial illegality has been done, then the allegation or the charges framed against the Applicant shall be rejected by the Appropriate Authority and the Applicant may be acquitted of the charges leveled against him. The Applicant has approached the Tribunal at pre-mature stage.

However, we are of the view that while proceeding with the matter the Appropriate Authority must strictly follow the statutory provisions of Army Act, the Rules framed there under and Army Regulations on the subject so that while proceeding against the Applicant, the Applicant may not suffer from any prejudice of injustice on account of non compliance of statutory mandate. Career of Army Officer should not be interfered except by due process of law with strict compliance of law and the Rules and Regulations.

Needless to say that in case the Applicant files any objection during the course of proceedings while exercising his statutory rights, the same shall be considered by the Authority concerned at every stage by passing a speaking and reasoned order. In case there is any flaw or illegality in the Court of Inquiry or Summary of Evidence, the same shall inure to the benefit of the Applicant and may be raised at the appropriate stage.

With the above observation we decline to grant relief as claimed by the Applicant and leave it open to the Respondents at this stage to proceed in accordance with law expeditiously so that the Applicant may not suffer with adverse consequences on account of delay in the matter. It shall always be open to the Applicant to approach the Tribunal or other statutory forum in case he suffers from adverse consequences on account of proceedings in question.

With the above observations, the O.A. is disposed of finally.

No order as to costs.”

13. The following cases have been cited by Ld. Counsel for the applicant questioning the charges:

- (i) ***Dr. Rajveer Singh vs. State of U.P. & Ors***, {2013(31) L.C.D. 933},
- (ii) ***Prithpal Singh vs. Union of India & Ors***, 1985 LAB. I. C. 264.
- (iii) ***R.P. Shukla & Ors. vs. Central Officer Commanding-in-Chief, Lucknow & Ors***, AIR 1996, Madhya Pradesh, 233,
- (iv) ***Mohd Yunus Khan vs. State of Utter Pradesh & Ors***, (2010) 10 SCC 539,
- (v) ***Pepsu Road Transport Corporation vs. Lachman Das Gupta & Anr***, (2001) 9 SCC 523,
- (vi) ***K.I. Shephard & Ors vs. Union of India & Ors***, (1987) 4 SCC 431,
- (vii) ***State of Mysore vs. P.R. Kulkarni & Others, etc.*** (1973) 3 SCC 597,
- (viii) ***Smt Shalini Soni & Ors. vs. Union of India & Ors***, (1980) 4 SCC 544 and
- (ix) ***Bachan Singh vs. State of Punjab***, (1982) 3 SCC 24.

However, we do not propose to consider for the reason that we have declined to interfere in the controversy (supra) with regard to sexual exploitation of junior officer's wife, more so when the applicant's own wife stood against him which cannot be without any smoke.

14. The documents relied upon by the applicant, copies of which have been filed as **Annexures-19, 20, 21 and 22** to the O.A. are material which was in applicant's possession even before disposal of earlier O.A. No. 7 of 2017 vide order dated 06.01.2017 (supra) and this would not impress upon us to interfere at pre-mature stage, hence there is no good ground to interfere. Under the teeth of earlier order dated 06.01.2017 the present O.A. does not seem to be maintainable. However we re-iterate that for the allegations (supra) option is open to the applicant to raise the issue with regard to allegation for use of substandard material in construction of bunkers before appropriate forum in accordance with law and also file objection in accordance with Army Rule (supra).

15. Subject to above, the O.A. seems to be not maintainable, hence **rejected** in limine.

No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

anb

(Justice Devi Prasad Singh)
Member (J)