

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Court No. 1

O.A. No. 445 of 2019 with M.A. No. 312 of 2021, M.A. No. 209 of 2021
Alongwith O.A. No. 361 of 2019 (Decided)

Col. R.K. Gupta

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India & Others

Respondents

By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>06.01.2022</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>1. Heard Shri Praveen Tripathi, Ld. Counsel for the applicant and Dr. Shailendra Sharma Atal, Ld. Counsel for the respondents.</p> <p>2. Applicant has filed present application under Section 14 of the Armed Forces Tribunal Act, 2007 and has sought following reliefs:-</p> <p style="padding-left: 40px;">“(I) To pass an order or direction commanding the respondents to set aside the disciplinary proceeding on the basis of undated pseudonymous complaint (Annexure No. 1) and order dated 08.05.2019 (Annexure No.6).</p> <p style="padding-left: 40px;">(II) Pass any order which this Hon'ble Tribunal deem fit and proper under the facts and circumstances of the case in favour of the petitioner, in the interest of justice.</p> <p style="padding-left: 40px;">(III) Allow the Original Application with Exemplary cost.</p> <p>3. The applicant has also prayed for interim relief :-</p> <p style="padding-left: 40px;">“Pending final decision of this Original Application, it is most respectfully prayed that this Hon'ble Tribunal may graciously be pleased to stay the disciplinary proceeding on the basis of undated pseudonymous complaint (Annexure No. 10 and order dated 08.05.2019 (Annexure No. 6), during the pendency of instant Original Application, in the interest of justice.”</p> <p>4. The instant Original Application has been filed by the applicant for setting aside the disciplinary proceedings initiated against the applicant under Army Rule 22 on the basis of undated pseudonymous complaint and order dated 08.05.2019.</p> <p>5. Submission of learned counsel for the applicant is that pseudonymous complaint against the applicant submitted by Subedar AK Singh (Retd) and Sub RN Pandey (Retd) is a concocted story without any evidence. As per IHQ of MoD (Army) policy dated 21.09.2015, no action is to be taken on 'complaint where the identity of the complainant is doubtful or the complainant is pseudonymous'. In the present case, there is neither any address of</p>

complainants nor their signatures are available on complaint therefore, the aforesaid complaint is to be pseudonymous complaint and no further action was warranted. An enquiry was also conducted in view of the aforesaid complaint and since the identity of complainant could not be established therefore, the complaint was found to be pseudonymous complaint and the same was treated as closed vide letter dated 18.07.2018 passed by OP No. 5.

6. Learned counsel for the applicant further submitted that after a gap of five months of closure of complaint, OP No. 3 passed an order dated 07.12.2018 to OP No. 2 for attachment of applicant for reassembly of court of Inquiry. Hence, the order dated 07.12.2018 is wholly illegal as the same is passed in utter violation of policy/guidelines issued from the Ministry of Defence letter dated 21.09.2015. OP No. 2 issued an attachment order in very illegal and arbitrary manner wherein he directed attachment of applicant without considering the policy in vogue that pseudonymous complaint was treated as closed. The applicant was issued a tentative charge sheet on 08.05.2019 and hearing of charges under Army Rule 22 in very illegal manner. In the meantime, summary of evidence is recorded and completed on 14.08.2019 but the applicant is unnecessary detained and attached to the OP No. 6 as the summary of evidence has been completed on 14.08.2019 and no action is being taken by the respondents to terminate the disciplinary proceeding or conclude the disciplinary proceeding.

7. Learned counsel for the applicant placed reliance on the following judgments of the Hon'ble Supreme Court:-

(a) Criminal Appeal No. 404 of 2013, **Union of India & Ors vs. P.S. Gill**, decided on 27.11.2019 in which the Hon'ble Court has dismissed the appeal as the case was related to service matters under Section 3(o) and therefore, Court held that impugned order of the Tribunal does not suffer from lack of jurisdiction.

(b) Civil Appeal No. 1714 of 2019 (Arising out of SLP (C) No. 3480 of 2019), **Union of India & Ors vs. Lt Colonel Dharamvir Singh**, decided on 15.02.2019 in which the Hon'ble Court has allowed the appeal as the case was related to attachment of an officer for initiation of disciplinary enquiry.

8. Learned Counsel for the respondents has raised a preliminary objection stating that applicant has preferred instant Original Application with a prayer to set aside the disciplinary proceedings pending against the applicant without availing the alternative remedy and further submitted that under the provisions of Section 21 of the Armed Forces Tribunal Act, 2007, the instant Original Application is not maintainable in this Tribunal and it is liable to be dismissed on this very ground. Section 21 of the Armed Forces Tribunal Act, 2007, is reproduced as follows :-

“21. Application not to be admitted unless other remedies exhausted.

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(1) The Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of the remedies available to him under the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or the Air Force Act, 1950 (45 of 1950), as the case may be, and respective rules and regulations made thereunder.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or the Air Force Act, 1950 (45 of 1950), and respective rules and regulations :—

(a) if a final order has been made by the Central Government or other authority or officer or other person competent to pass such order under the said Acts, rules and regulations, rejecting any petition preferred or representation made by such person;

(b) where no final order has been made by the Central Government or other authority or officer or other person competent to pass such order with regard to the petition preferred or representation made by such person, if a period of six months from the date on which such petition was preferred or representation was made has expired.

9. Learned counsel for the respondents further submitted that Section 21 of AFT Act, 2007 restricts the applicant to approach the Tribunal unless he exhausts the statutory remedy provided to him under the Army Act. The O.A. filed by the applicant is premature at this stage since the applicant presently, has no cause of action. In support, he has placed reliance on the following judgments :-

- (a) AFT (PB), New Delhi judgment in O.A. 152/2009 **Maj Gen AK Lal (Retd) vs. UOI and Others** dated 19.01.2010. The O.A. was dismissed as premature in view of Section 153 of Army Act which stipulates that finding and sentence are not valid, unless confirmed.
- (b) AFT (PB), New Delhi judgment in O.A. 176/2015, **Hav Sham Das D vs. UOI and Others** dated 07.04.2015. The O.A. was dismissed as not maintainable wherein the applicant had challenged the order passed by the General court Martial (GCM) rejecting Special Plea to jurisdiction as also the order rejecting prayer not to permit the prosecution to use the court of Inquiry proceedings for contradicting their witnesses while the GCM was still under progress. The Tribunal vide the aforesaid order held that only a final order by the Court Martial would be appealable under sub-section (1) of Section 15 of the AFT Act, 2007. The Tribunal also observed that any contrary interpretation of the entire system of administration of justice in

the Armed Forces unworkable.

- (c) The Hon'ble Supreme Court judgment in CrI. A.D. No. 16040 of 2015, **Hav Sham Das D vs. UOI and Others** dated 03.07.2015. The Hon'ble Apex Court dismissed the appeal filed by hav Sham Das D challenging the aforesaid order dated 07.04.2015 passed bhy AFT (PB), New Delhi.
- (d) AFT (PB), New Delhi judgment in O.A. 421/2016 with MA 326/2010, **Col Ashwani Sinha vs. UOI and Others** dated 25.05.2016. The O.A. was dismissed as not admitted, wherein, the applicant had challenged the order of attachment passed against him as also the Court of Inquiry and Tentative Charge Sheet.
- (e) AFT (PB), New Delhi judgment in O.A. 1369/2016, **Col Manish Kumar Chakraborty vs. UOI and Others** dated 10.11.2016. The O.A. was dismissed as not maintainable, wherein, the applicant had challenged the disciplinary proceedings against him in which recording of Summary of Evidence was in progress.
- (f) The Hon'ble Supreme Court judgment in I-A No. 1-2/ 2017 in Civil Appeal Diary No.(S) 3144/2017 **Col Manish Kumr Chakraborty vs. UOI and Others**. The Hon'ble Supreme Court vide order dated 17 Feb 2017 declined to interfere with the aforesaid impugned order dated 10.11.2016 passed by AFT (PB), New Delhi.
- (g) M.A. No. 2087/2020 in OA 1135/2019, **Brig SK Gupta vs. UOI and Others** dated 16.12.2020. The AFT (PB), New Delhi vide its order dated 16.12.2020 directed the applicant to attend the recording of additional Summary of Evidence. The said applicant who is a co-accused in the same case was the Commandant, Base hospital Lucknow at the time of the offence and he had taken pre-mature retirement on 15.10.2018. subsequently, Brig SK Gupta (Retd) filed a writ petition in the Hon'ble Delhi High Court vide WP(C) 11049/2020 against the order of AFT (PB). The Hon'ble Delhi High Court vide its order dated 23.12.2020 refused to interfere with directions of the Hon'ble AFT (PB) and reiterated that Birg SK Gupta (Retd) shall face consequence if he failed to appear for recording of additional Summary of Evidence at AMC Centre & College, Lucknow.

10. Learned counsel for the respondents further submitted that General Court Martial (GCM) proceedings against the applicant have been completed and now pending confirmation against which applicant has remedy to file pre-confirmation petition under Section 164 of the Army Act, 1950 and also post

confirmation under Army Act, 1950. Thus, he submitted that there being remedies available to the applicant against disciplinary proceedings initiated against him and the same not being availed by the applicant, the present Original Application is not maintainable under Section 21 of the AFT Act, 2007. He pleaded for dismissal of the Original Application being not maintainable.

11. Section 164 of the Army Act, 1950 which deals with pre and post confirmation petitions is reproduced as under :-

“164. Remedy against order, finding or sentence of court-martial.

(1) Any person subject to this Act who considers himself aggrieved by any order passed by any court-martial may present a petition to the officer or authority empowered to confirm any finding or sentence of such court-martial, and the confirming authority may take such steps as may be considered necessary to satisfy itself as to the correctness, legality or propriety of the order passed or as to the regularity of any proceeding to which the order relates.

(2) Any person subject to this Act who considers himself aggrieved by a finding or sentence of any court-martial which has been confirmed, may present a petition to the Central Government, the (Chief of the Army Staff)¹ or any prescribed officer superior in command to the one who confirmed such finding or sentence, and the Central Government the (Chief of the Army Staff) or other officer, as the case may be, may pass such order thereon as it or he thinks fit.”

12. We find that applicant has preferred the present Original Application with a prayer to set aside the disciplinary proceedings initiated/completed against him without availing the alternative remedy under the provisions of Section 21 of the Armed Forces Tribunal Act, 2007. Even at this stage, the applicant has remedy to file pre and post confirmation petitions under the provisions of Section 164 of the Army Act, 1950. Therefore, the instant Original Application is not maintainable in this Tribunal and it is liable to be dismissed.

13. We also find that disciplinary proceedings against the applicant are nearly completed, therefore, interim prayer to stay the disciplinary proceedings at this stage is **rejected**.

14. It is pertinent to mention here that judgments relied up by the applicant are not relevant in this case being based on different facts and circumstances as clarified in para 5 above, hence, applicant cannot be given the benefit of aforesaid judgments.

14. In view of the aforesaid, we are of the considered view that the instant Original Application for adjudication of controversy involved in the present matter, is not maintainable and cannot be admitted for hearing, and it deserves to be dismissed. Accordingly, the Original Application is **dismissed**.

16. No order as to costs.

17. All pending Misc. Applications are also disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)