

ARMED FORCES TRIBUNAL REGIONAL BENCH, LUCKNOW

Transferred Application No. 123 of 2011

Wednesday, the 9th day of September, 2015

Reserved
(Court No. 2)

Lt. Col. Rohit Mittal (Through Smt. Bela Mittal) Applicant

By Shri Rajiv Manglik and Shri Rakesh Johri, Counsel for the Applicant.

Versus

Union of India and others Respondents.

By Shri Mukund Tewari, Counsel for the respondents alongwith Capt. Ridhishri Sharma, Departmental Representative.

ORDER

1. Writ Petition No. 18 of 2009 (S/B) was received by this Court from Uttaranchal Sub Area on 11.11.2011 and was renumbered as Transferred Application No. 123 of 2011. Reliefs sought are as under:-

“(i) To call for the records of the General Court Martial in respect of the petitioner; and

(ii) To quash and set aside proceedings of the GCM and quash and set aside the impugned orders dated 28.11.2008 announcing of sentence by GCM; and

(iii) To direct the official respondents to return the amount of Rs. 5,80,000/- belonging to Dr. Vikas Gupta, DW-2; and/or

- (iv) *To direct the respondents to reinstate the petitioner into the service with all consequential benefits including back wages; and/or*
- (v) *To award exemplary costs in favour of the Petitioner:*
- (vi) *To pass such other and further orders which their lordships may deem fit and proper in the existing facts and circumstances of the case.”*

2. Facts of the case are that the applicant was tried by General Court Martial (GCM) on six charges as below:

“CHARGE SHEET

The accused , IC-50269W Lieutenant Colonel Rohit Mittal of Military Farm and Frieswal Project, Meerut Cantt, attached to Headquarters 6 Mountain Artillery Brigade, an officer holding a permanent commission in the Regular Army, is charged with:-

<i>First Charge</i>	<i>SUCH AN OFFENCE, AS IS MENTIONED IN</i>
<i>Army Act</i>	<i>CLOUSE (f) OF SECTION 52 OF THE ARMY</i>
<i>Section 52(f)</i>	<i>ACT, WITH INTEND TO DEFRAUD,</i>

in that he,

at Dehradun, between 02 Jun 2004 and 31 Aug 2004, which came to knowledge of the authority competent to initiate action on 12 Jul 2005, when the Officer Commanding, Military Farm, Dehradun, with intend to defraud, caused production of milk by using Skimmed Milk Powder, which was supplied to the troops, well knowing that the same was not permitted vide Government of India, Ministry of Defence letter No A/87236/SMP/Q/MF-3/1471/D (QS) dated 12 May 2004.

<i>Second Charge</i>	<i>AN ACT PREJUDICIAL TO GOOD ORDER</i>
<i>Army Act</i>	<i>AND MILITARY DISCIPLINE,</i>
<i>Section 63</i>	

in that he,

amounting to Rs 5,80,000 (Rupees five lacs eighty thousand only) in his Office Almirah.

Sixth Charge *AN ACT PREJUDICIAL TO GOOD ORDER AND*
Army Act *MILITARY DISCIPLINE,*
Section 63

in that he,

at Dehradun, on the night of 19/20 Sep 2004, as Officer Commanding, Military Farm, Dehradun, improperly omitted to exercise due control over the functioning of Guards and picket of Military Farm, Dehradun, resulting in the loss of following stores, valued at Rs 1,12,515.00 (Rupees one Lac twelve thousand five hundred fifteen only), from the said Military Farm:-

<u>Items</u>	<u>Qty</u>	<u>Amount</u>
<i>(a) Milk Cluster with Rubber Liner</i>	<i>- 12</i>	<i>Rs 50,400/-</i>
<i>(b) Milk Claw Blow Blow complete Set</i>	<i>- 12</i>	<i>Rs 36,000/-</i>
<i>(c) Air Pulsator</i>	<i>- 02</i>	<i>Rs 9,600/-</i>
<i>(d) Complete Milking Unit with Measuring jar and Pulsator</i>	<i>- 01</i>	<i>Rs 10,720/-</i>
<i>(e) Milk lifting Machine</i>	<i>- 01</i>	<i>Rs 5,595/-</i>
<i>(f) Steel Pipe 1 1/2" (2 Mtrs)</i>	<i>- 01</i>	<i>Rs 200/-</i>
		<hr/>
	<i>Total</i>	<i>Rs 1,12,515/</i>

Sd./-

Place : Raiwala

(Gurkirpal Singh Basra)

Colonel

Dated: 09 May 2008

Officer Commanding Troops

Headquarters 6 Mountain Division

"to be tried by a General Court Martial".

Signed at Bareilly this tenth day of May 2008

Sd./-

(Surendra Pratap Tanwar)

Major General

*General Officer Commanding
6 Mountain Division"*

3. The applicant was found guilty of charges no. 1, 3, 5 and 6 and was awarded punishment of cashiering and 8 years R.I by GCM which was concluded on 28.11.2008. The applicant filed a pre-confirmation petition under Army Act, Section 164(1). The findings of conviction and sentence were confirmed by the competent authority vide its letter dated 27.04.2009. Aggrieved, the applicant filed the writ petition in Uttaranchal High Court.

4. The applicant was represented by his learned counsel Sri Rajiv Manglik and Sri Rakesh Johri. The applicant challenges the GCM on several counts of infirmities. The principal challenge, however, is on the charge of limitation for trial as provided in Army Act Section 122. The submission of learned counsel for the applicant is that the General Officer Commanding (GOC) Uttar Bharat Area gave his directions on 8.2.2005 to initiate disciplinary proceedings against the applicant; therefore, the Court of Inquiry was sent to HQ Central Command, which returned it with certain observations that were acted upon. Thereafter GOC Uttar Bharat Area gave another direction on 12.7.2005. The directions relating to the applicant, however, remained the same in both these orders and, therefore, the date of cognizance of the offence is 8.2.2005. The GCM commenced on 16.5.2008. Thus the date of commencement of trial is clearly beyond the time-limit of three years

laid down in Army Act Section 122 and, therefore, the entire trial is barred by limitation and is vitiated and therefore must be quashed.

5. The respondents were represented by Shri Mukund Tewari assisted by Departmental Representative Capt. Ridhshri Sharma. The respondents state that the applicant was tried earlier by a GCM on 12.6.2000, in which punishment of reprimand had been awarded to him. In the instant case, based on some information received by HQ Uttaranchal Sub Area, a surprise raid was conducted in the office of Military Farm and this was followed by a Court of Inquiry, ordered on 4.9.2004. Based on the recommendation of Court of Inquiry, the Commander, Uttaranchal Sub Area gave his recommendations on 2.2.2005 which were sent to HQ Uttar Bharat Area and the GOC Uttar Bharat Area gave his directions on 8.2.2005 in which he directed that disciplinary action be initiated against the applicant. The proceedings were then sent to HQ Central Command by HQ Uttar Bharat Area, which carried out a detailed analysis and then pointed out certain anomalies. The proceedings were sent back to HQ Uttar Bharat Area with certain observations, the main import of which was that the motive/intention of the offender had not been duly substantiated in the directions of GOC Uttar Bharat Area given in his order dated 8.2.2005. The anomalies pointed out by HQ Central Command were rectified and re-submitted to HQ Central Command and after their approval, the GOC Uttar Bharat Area gave his direction vide his letter dated 12.7.2005, in

which irregularities committed by the applicant had been specified. Therefore, the respondents state that complete knowledge of the irregularities committed by the applicant was taken cognizance of on 12.7.2005 and not on 8.2.2005 and, therefore, the actual date of commencement of limitation begins on 12.7.2005. The respondents would quote A.G's Branch Letter No.01086/122/AG/DV-1(P) dated 12.4.2001, which clarifies the period of limitation, that is the date from which it reckons. Therefore, according to the respondents, the GCM is not barred by limitation as provided in Army Act, Section 122. The respondents also plead in response to the issues raised by the applicant on other infirmities.

6. Heard both sides and scrutinized the documents.

7. The main challenge to the GCM proceedings is based on the charge of limitation as provided in Army Act, Section 122 which reads as under:

*“122. **Period of limitation for trial.** – (1) as provided by subsection (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 period shall commence. –*

(a) On the date of offence; or

(b) Where the commission of the offence was not known to 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; 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, which is earlier.]

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 section 37.*

3. *In the computation of the period of time mentioned in sub-section (1) any time spent by such person as a prisoner of war, or in enemy territory, or in evading 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.”*

8. There is no ambiguity that the period of limitation will commence from the date on which the knowledge of the offence came to the knowledge of the competent authority, who is empowered to initiate disciplinary action. In the instant case, the date on which this ‘knowledge’ came to the notice of the competent authority need to be clearly decided. The Hon’ble Supreme Court in its order in the case of *Rajvir Singh versus Secretary, Ministry of Defence and others* in **Civil Appeal No. 2107 of 2012**, decided on 15.2.2012 held as follows:

“Army Act, 1950, Sections 122 and 53(f)- Army Rules, 1954, Rule 22 – Appellant a colonel in the Army while posted as commandant Central Ordnance depot making purchases by flouting the rules and causing loss of Rs. 60,18 lakhs – Offence came to knowledge of General Officer Commanding in Chief Central Command on 7.5.2007 but General Officer Commanding ordered convening of General Court Martial on 23/26.08.2010. whereas the limitation to convene the General Court martial was 3 years under Rule 122 which expired on

6.5.2010 – Order convening General Court martial and subsequent set aside. 2010(2) SCT 539: 2010(4) SCT 246, Distinguished.

9. The Hon’ble Court in its aforesaid order stated as follows:

“23. It is thus, to be seen that the order dated May 12, 2008 is almost in identical words as the one passed on May 7, 2007. Therefore, no escape from the fact that the GOC-in-C, CC was in knowledge of the offence and the identity of the appellant as one of the alleged offenders on May 7, 2007. Reckoning from that date, the order passed by GOC, MB Area, to convene the General Court Martial on August 23/26, 2010 is clearly beyond the period of three years and hence, barred in terms of section 122.”

“24. One feels sorry to see a trial on such serious charges being aborted on grounds of limitation but that is the, mandate of the law. It is seen above that GOC-in-C, CC had come to know about the offence and the offender being the appellant on May 7, 2007. It took one year from the date for him to pass the order for initiating disciplinary action against him on May 12, 2008. There were still two years in hand, which is no little time but that too was spent in having more than one round of hearing of the charges in terms of rule 22 with the result that by the time the order came to be passed to convene General Court Martial, more than three years had lapsed from the date of the knowledge of the competent authority.”

10. The order of the Hon’ble Apex Court in the Case of *R. Aghoramurty, Registrar of Companies, Bombay versus M/s Bombay Dyeing and Mfg. Co. Ltd. and others*, **JT 1991 (5) SC 432**, is also relevant in this case. The Apex Court held as under:

“....We find from the paper book (page 11) that after receipt of reply from the company dated 29th July 1986 and 16th October 1986 and after receipt of the report of the Registrar of Companies, the Department of Company affairs felt that on the basis of the Company’s reply no definite conclusion in regard to the correctness or otherwise could be arrived at and that according an inspection of the books of account

under Section 209A of the Companies act was necessary. The above averment on the other hand clearly shows that the Registrar of Companies had knowledge and even sent a report to the department. But it was the Department in turn ordered inspection. Therefore, the complaint cannot be heard to say that till the inspection report came he said to have knowledge of the offence. It must be noted that the “knowledge” as per Section 468 of the Code is that of the complainant; if the Department for its own reasons ordered further investigations by way of inspection etc. That does not mean that complainant can be said to have knowledge only after receipt of inspection report.”

11. The policy letter quoted by the respondents clarifies the date on which knowledge of a particular offence is gained by the competent authority, from which the period of limitation shall begin. This policy letter also lays down that after investigation or a Court of Inquiry, the period of limitation shall commence from the date of endorsement by the competent authority on that Court of Inquiry.

12. In the instant case, plea in Bar was raised by the applicant at the commencement of GCM. This plea in Bar was rejected. We find no reason assigned for rejection in GCM proceedings.

13. The Commander, Uttarakhand Sub Area while sending his recommendations dated 2.2.2005 stated the following:

**“RECOMMENDATION OF CDR UTTARANCHAL SUB AREA
ON THE C OF I TO INVESTIGATE IRREGULARITIES IN
MIL FARM, DEHRADUN”**

1. *I agree with findings and opinion of the Court of Inquiry.*
2. *Maj (now Lt Col) Rohit Mittal, OC, Mil Farm Dehradun and his key staff are resp for alleged irregularities, omission of*

duties and violation of departmental instr/govt orders, in the overall functioning of Mil Farm Dehradun.

3. *I recommended that disciplinary action be initiated against Maj (Now Lt Col) Rohit Mittal, OC Mil Farm for the following alleged irregularities committed in Mil Farm Dehradun:-*

- (a) Production of milk using Skimmed Milk Powder.*
- (b) Pilferage, illegal sale and misappropriation of sale proceeds of milk/milk products.*
- (c) Extraction of cream illegally incl its false tendering and procurement.*
- (d) Improper acctg and procurement of feed and fodder. Failing to ensure contractual obligations relating to sup of fodder and resorting to purchase of fodder from a fictitious firm.*
- (e) Improper procurement of dry fodder and illegal storage of Bhoosa for Generating surpluses, for wrongful gains.*
- (f) Falsifying docu pertaining to the procurement of cattle feed.*
- (g) Surplus payments made to contractors, wherein Income Tax/Surcharge were not deducted, thereby causing loss to the State.*
- (h) Possession of unaccounted money, Rs 5.80 lacs in cash, in office almirah.*
- (j) Procurement of Guar Feed in excess to the sanction qty in the STA's thereby resulting in financial loss to the State.*
- (k) Failing to exercise proper control and supervision over key pers who were allowed tacitly to indulge in corrupt practices."*

14. Based on this recommendation, the GOC Uttar Bharat Area vide his letter dated 8.2.2005 gave the following directions:

**“DIRECTIONS/RECOMMENDATIONS OF
GENERAL OFFICER COMMANDING, UTTAR
BHART AREA ON THE C OF I TO INVESTIGATE
INTO ALLEGED IRREGULARTIES IN MIL FARM,
DEHRADUN”**

“1. I, partially agree with the recommendations of Cdr Uttaranchal Sub Area.

2. IC-50269W Maj Rohit Mittal, OC Mil Form Dehradun is found resp for various irregularities, omissions of departmental instrs/govt orders, in the overall functioning of Mil Farm, Dehradun.

3. I direct that disciplinary action be initiated against IC-50269W Maj Rohit Mittal, OC Mil Farm, Dehradun for various improper acts of omission and omission on his part as brought out in recommendations of Cdr Uttranchal Sub Area.

x x x x x x x x x x x x”

15. Thereafter, as has been pointed out by the respondents, proceedings of Court of Inquiry were sent to HQ, Central Command and after the rectification was done, the GOC, Uttar Bharat Area gave another direction vide his order dated 12.7.2005, in which he stated as follows:

**“DIRECTIONS/RECOMMENDATIONS OF
THE GENERAL OFFICER COMMANDING, UTTAR
BHART AREA ON THE COURT OF INQUIRY TO
INVESTIGATE IRREGULARTIES IN MIL FARM,
DEHRADUN”**

“1. I, partially agree with the recommendations of Commander Uttaranchal Sub Area.

2. I direct that disciplinary action be initiated against IC-50269W Maj (Now Lt Col) Rohit Mittal, OC Mil Farm, Dehradun for serious financial and procedural irregularities, lack of effective supervision over his subordinates and misappropriation of Govt Stores/funds with intend to defraud.

x x x x x x x x x x x”

16 There is a difference in the wordings of the directions given with regard to the applicant. The directions given on 12.7.2005 lay down some charges, which the respondents state, were specific and not general. At this stage, we compared the charge-sheet with the recommendations of Commander, Uttar Bharat Sub Area and we find that the charges which were framed against the applicant are directly extracted from the recommendations of the Commander, Uttaranchal Sub Area. For instance, Charge no. 1 is a derivation of para 3-A of the recommendation of Commander, Uttaranchal Sub Area. Charge No. 2 is an alternative to charge no. 1. Charge no. 3 is for misappropriation which is derived from recommendation 3(b) of the recommendations of Commander, Uttar Bharat Area. Similarly charges no. 5 and 6 are also derived from the recommendations 3(h) and 3(k) of Commander, Uttar Bharat Area. Therefore, it is logical to infer that the GOC Uttar Bharat Area, who gave his direction on 8.2.2005, was well aware and had the knowledge of irregularities committed by the applicant, for which he was subsequently tried by GCM and, therefore, the period of limitation shall commence w.e.f. 8.2.2005 and not 12.7.2005.

17. We echo the sentiments of the Hon'ble Supreme Court expressed in the case of *Rajvir Singh (supra)*, in that we feel sorry that trial on such serious charges deserves to be quashed on the ground of limitation, but that is the mandate of law. The GOC Uttar Bharat Area had come to know about the offence on 8.2.2005. Thereafter it took more than three years for the GCM to commence, which is clearly barred by the limitation provided in Army Act Section 122.

18. In the light of above, this T.A is partly allowed. The proceedings of GCM conducted from 16.5.2008 onwards are hereby quashed. The applicant shall be deemed to be notionally in service w.e.f 28.11.2008 until he reached the service which allows him to be entitled for pension and thereafter he will be entitled to all pensionary benefits. The sentence of R.I. has already been undergone by the applicant, which cannot be undone. No order as to costs.

(Lt. Gen. A.M. Verma)
Member (A)

(Justice Abdul Mateen)
Member (J)

LN/-