

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 181 of 2020**Friday, this the 03<sup>rd</sup> day of December, 2021

**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

JC Kaswa (JC-697630Y Subedar/NT) son of Shri Bhagwana Ram, permanent resident of Village-Lagaria, Post Office-Lagaria, District-Churu (Rajasthan), presently posted in Command Hospital, Central Command, Lucknow).

..... Applicant

Learned counsel for the Applicant : **Shri Yashpal Singh**, Advocate.

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi.
2. Brigadier Records, Army Medical Corps Records, PIN-900450, C/o 56 APO.
3. Commandant, Command Hospital, Central Command, PIN-900450, C/o 56 APO.
4. Brig IC Adm & Cdr Tps, Command Hospital, Central Command, PIN-900450, C/o 56 APO.

.....Respondents

Learned counsel for the Respondents. : **Dr. Shailendra Sharma Atal**, Advocate  
Senior Central Govt. Counsel

## ORDER (Oral)

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- (a) *Issue/pass an order setting aside the tentative charge sheet dated 20.08.2020 (Annexure No 1) and convening order dated 25.08.2020 (Annexure No 2) issued by the Brig IC Adm & Cdr Tps, Command Hospital, Central Command, Lucknow initiating fresh disciplinary proceedings against the applicant for the alleged offence for which he has already been punished with 'Severe Reprimand' on 15.04.2020, and to this effect a Part-II order No 0157 dated 24.04.2020 has also been published, with all consequential service benefits.*
- (b) *Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*
- (c) *Allow this Original Application with cost.*

2. Brief facts of the case giving rise to this application are that the applicant while posted in Command Hospital, Lucknow was performing duty at medicine distribution centre of Command Hospital, Dispensary. On 30.04.2019 a civilian named Ankul Kumar belonging to Sanjay Medicals was caught with a cartoon of medicines at MI Room of Command Hospital, Lucknow. A Court of Inquiry was convened to pin point the responsibility of hospital staff regarding issue of medicines to the civilian on 30.04.2019. During the Court of Inquiry, tentative charge sheet dated 18.01.220 under Section 63 of the Army Act, 1950 was made and Summary of Evidence was recorded on 12.02.2020. On 07.04.2020 applicant was served a copy of Summary of Evidence and Charge Sheet and punishment "Severe Reprimand" was awarded to him on 15.04.2020. This was notified vide Part II Order dated 24.04.2020. Later, the aforementioned punishment was set-aside vide order dated 04.08.2020 being illegal due to non compliance of the statutory provisions with direction to conduct de novo proceedings from the stage of hearing of charge and framing of charge sheet under Army Rule 30

against the accused. Thereafter, vide order dated 22.09.2020 Part II Order with regard to punishment was cancelled vide Part II Order dated 13.08.2020. Based on order dated 04.08.2020 a tentative charge sheet was again made under Section 52 (c) of the Army Act, 1950 and convening order dated 25.08.2020 was issued for recording of Summary of Evidence. Applicant is stated to have forwarded a Statutory Complaint dated 17.08.2020 to Chief of the Army Staff against de novo disciplinary proceedings, outcome of which is still awaited. This O.A. has been filed to quash charge sheet dated 20.08.2020 and convening order dated 25.08.2020.

3. Learned counsel for the applicant submitted that medicine distribution centre, to which applicant was working, was headed by an officer and a JCO-in-Charge and applicant was working there as a supervisor. There are two medicine distribution points in Command Hospital viz Sanjivani dispensary and Nandini dispensary in which applicant had no role in physical collection/distribution of medicines. His further submission is that on 30.04.2019 when a civilian named Ankul Kumar was caught with medicines, applicant was blamed whereas he had no role in it. His further submission is that applicant was made to sign on already drafted statement, proceedings and opinion and findings of the court proceedings under coercion. His other submission is that Ankul Kumar was never produced in Court of Inquiry nor was his statement recorded. He submitted that upon verification it could not be established as to whether captured medicines belonged to the medicine distribution point or not. Advancing his submission he alleged that applicant was persistently harassed and humiliated with malafide

intention to ruin his meritorious service career by misuse of power again and again as his earlier punishment 'Severe Reprimand' was set aside and fresh summary proceedings have commenced on the authority of order dated 04.08.2020 which is double jeopardy and not sustainable in the eyes of law. He pleaded to set aside order dated 20.08.2020 and 25.08.2020.

4. On the other hand, learned counsel for the respondents submitted that all personnel including the applicant deputed at the medicine distribution point were responsible for correct distribution and account, safety and security to medicines. His further submission is that applicant was blamed for the incident after due enquiry. He submitted that during the course of summary proceedings applicant pleaded his guilt and signed on all papers and he did not report to anyone for his humiliation and forceful signature, rather he refused to cross examine the witnesses. His other submission is that on finding that applicant was punished due to non compliance of the statutory provisions, his punishment was set aside and fresh proceedings started by order dated 04.08.2020. He pleaded for dismissal of O.A.

5. We have heard learned counsel for the parties and perused the material placed on record.

6. It is not disputed that applicant was deputed to work at medicine distribution point of Command Hospital, Lucknow where on 30.04.2019 a civilian named Ankul Kumar was caught with medicines. A Court of Inquiry was ordered by which applicant was blamed. Thereafter, summary of evidence was recorded and summary proceedings took place in which applicant took active part. He was punished "Severe

Reprimand” which was later set-aside by order dated 04.08.2020 with instructions to initiate de novo disciplinary proceedings from stage of hearing of charge and framing of charge sheet under Rule 30 of Army Rules, 1954.

7. Applicant had preferred a statutory complaint dated 17.08.2020 against fresh tentative charge sheet dated 20.08.2020 and convening order dated 25.08.2020 which seems to be pending.

8. From the aforesaid, it appears that summary trial proceedings held on 15.04.2020 including hearing of charge proceedings held on 21.01.2020 and summary of evidence recorded on 09.03.2020 were set aside by the competent authority vide order dated 04.08.2020 on finding that these were not held in accordance with rules, therefore a direction to conduct de novo disciplinary proceedings was issued, which when started was challenged by submitting a statutory complaint dated 17.08.2020, outcome of which is still awaited.

9. Contention of applicant that he has already been punished for the offence which he was forced to accept but initiating fresh summary proceedings against the same incident shall hit by clause double jeopardy as held in **Monica Bedi vs State of Andhra Pradesh**, CA No 782 of 2007 decided on 09.11.2010 and **Bhagwan Swarup vs State of Maharashtra**, AIR 1979 SC 1120.

10. We have perused the order dated 04.08.2020 and we find that punishment awarded earlier was set aside on the advice of DJAG, Central Command due to non application of statutory provisions and it cannot be presumed that the punishment was set aside on finding it that

the same was not in accordance with provisions on the subject. For convenience sake, relevant extract of order dated 04.08.2020 issued by Maj Gen Ramesh Kaushik, Commandant, Command Hospital, Central Command is reproduced as under:-

*“1. I have perused the Summary Trial proceedings held on 15 April 2020 by Brig Ashwin Galagali, Brig Adm and Cdr Tps, Command Hospital, Central Command in respect of JC-697630Y Sub (NT) JC Kaswa. I find that in the instant case, the mandatory provisions of Army Rule 22 and Army Rule 30 have not been duly complied with while framing of the charge sheet and hearing of charge.*

*2. Thus, in exercise of the powers conferred on me under Army Act Section 88 (a), I set aside the Summary Trial proceedings held on 15 April 2020 including Hearing of Charge proceedings held on 21 Jan 2020 and Summary of Evidence recorded and concluded on 09 Mar 2020, all conducted by/under the orders of Brig Ashwin Galagali, Brig IC Adm & Cdr Tps, in respect of JC-697630Y Sub (NT) JC Kaswa being illegal, due to non compliance of the statutory provisions.*

*3. I direct that the accused shall be relieved of all consequences arising out of the said Summary Trial proceedings.*

*4. I, further direct conduct of de novo disciplinary proceedings from stage of Hearing of Charge and framing of charge sheet under Army Rule 30 against the accused.”*

11. The aforesaid order clearly indicates to re-start disciplinary proceedings on the ground that the earlier proceedings were not held as per extant rules on the subject. Accordingly, fresh tentative charge sheet dated 20.08.2020 was made and convening order dated 25.08.2020 for recording Summary of Evidence initiated which has been challenged by preferring statutory appeal dated 17.08.2020.

12. In view of the above, since statutory appeal preferred by the applicant has not been decided by the competent authority, the present O.A. being premature at this stage is **dismissed**.

13. With the aforesaid observations, respondents are directed to decide applicant's statutory appeal dated 17.08.2020 within a period of two months from today. Applicant is at liberty to file fresh O.A. after decision of his statutory complaint.

14. No order as to costs.

15. Miscellaneous Applications, pending if any, shall stand disposed off.

**(Vice Admiral Abhay Raghunath Karve)**  
**Member (A)**

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**

Dated: 03.12.2021

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