

Court No.1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

Dy No. 1697 of 2018
Inre O.A. No. Nil of 2018

Thursday, this the 5th day of July, 2018

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

IC-47653 M Col Youdhvir Singh
 Belonging to 1 Raj CTR, NCC, Pilani
 Presently attached to HQ 9 Arty Bde
 PIN – 926909, C/o 56 APO

.....Applicant

Ld. Counsel for : **Shri Rajiv Manglik &**
 the Applicant **Col Rakesh Johri, Advocate**

Versus

Union of India & Others

.....Respondents

Ld. Counsel for the : **Dr. Shailendra Sharma Atal,**
 Respondents **Ld. Counsel for Central Govt assisted by Major**
Rajshri Nigam, Departmental Representative.

ORDER (Oral)

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed the following reliefs :-

“(a) To declare the action of the respondents as unjust, arbitrary and illegal; and

(b) To call for the records of the complete case including the IB report and action taken by respondents (HQ DG NCC) upon that and the report and recommendations of the Internal Complaint Committee; and

(c) To declare that the investigations into the alleged complaint can be made only as per the provisions of the service rules as applicable to the applicant herein as per the provisions of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and quash and set aside the

ICC report and its recommendations and subsequent proceedings on its basis; and

(d) To direct the respondents to conduct proper investigation connected with the issue of complaint by Ms. XX and other corruption charges and bribe charges as brought out by IB Report and the applicant by independent agency; and

(e) Such further order or orders, direction/directions be passed as to this Learned Tribunal may deem fit and proper in accordance with law.”

2. The Registry has put up certain objections on the point of maintainability. It is pointed out that the date of accrual of cause of action has not been mentioned and the said date is required for computation of the limitation period. To rectify this defect, 15 days time was granted to the learned counsel for the applicant. Learned counsel for the applicant has filed an application to contest the defects raised by the Registry.

3. Heard learned counsel for the parties on the point of maintainability. On behalf of the respondents also, a preliminary objection has been raised that this O.A. is premature as no order has been passed against the applicant by any authority concerned.

4. In brief the facts of the case as averred in O.A. are that the applicant was commissioned in the Armed Corps of the Army on 11.06.1988. In the month of October 2013, he was posted to NCC as Commanding Officer, 20 Mizoram Independent Company. After posting to NCC, he came to know that in December 2012, one Colonel then Lt. Col. Mukul Dev was posted to the office of HQ DG NCC as Joint director (Vigilance/MS) and his duty involved vigilance of NCC. The applicant came to know that after posting of Col. Mukul Dev in the HQ DG NCC, several allegations were raised by him which involved the corrupt practices being followed in the office of HQ DG NCC including corruption and no investigation was carried out for the said corruption in the procurement etc.. It also came to the knowledge of the applicant that Col. Mukul Dev raised issues with regard to the use of Government transport by the civilian officers including one Mrs Vibha Sood for commutation from residence to the office, though they were not authorised to use the Govt. transport for the said purpose as they were in the grade pay of Rs.8700/- or Rs.7600/- and Govt. transport for commuting from residence is authorised to the officers drawing grade pay of Rs.10,000/- and above. It also came to the knowledge of the applicant that Col. Mukul Dev also raised

objections about the status of the civilian officers vis-a-vis the Army officers as the civilian officers including Mrs. Vibha Sood were designated as Director and enjoying the grade pay of Rs.7600/- and subsequently appointed as Dy. Director General. Thus, there was tremendous tug of war between Mrs Vibha Sood and other civil officers vis-a-vis Army Officers and Col. Mukul Dev. The applicant also came to know that at the instant of Mrs Vibha Sood, a civilian officer earlier made certain allegations of misbehaviour against Col Mukul Dev and a court of inquiry was ordered to investigate the matter and the allegations were found to be incorrect. During the course of investigations by the court of inquiry, it was learnt that Col Mukul Dev had made serious allegations of corruption against Mrs Vibha Sood, but HQ DG NCC has not taken any further action to get the allegations investigated although it was mandatory to do so. The applicant visited the office of the DG NCC for official work on 19th August 2015 through the office of Col. Mukul Dev. It was Wednesday and as per the norms, all the Army Officers wear civilian dress on Wednesday while attending the office. When the applicant reached the office of Col Mukul Dev, it was latched from outside. It is submitted that the applicant was offered a cup of tea by one civilian lady, namely Ms XX, who was planning to enter into the office of Col Mukul Dev. It is further submitted that since the office of Col Mukul Dev was latched, the applicant went into the next office for a cup of tea and also to enquire regarding the release of the new vehicles for his unit. He was offered the tea by Ms. XX along with some snacks and was asked the paper slip for tea. On informing that the applicant was not posted on the strength of DG NCC, she appeared to be a bit confused and thereafter reluctantly demanded Rs. 10/- as the charges for the tea and snacks which the applicant paid and the lady left after that. To the utter surprise of the applicant, subsequently when the applicant was sitting in the office of Col Katarya and discussing official work at about 1300 hrs on the same day, the lady Ms. XX, along with one Mr. Rawat, an assistant in P&F Dte came and complained that the applicant had tried to touch her back below neck and above waste while the tea was being served. Thereafter when the applicant denied such allegation. Mr. Rawat and other staff misbehaved with the applicant. It also came to the knowledge of the applicant that Mrs. Vibha Sood, immediately thereafter collected all the Civilian employees of HQ DG NCC near the first floor staircase of the Building and gave a lecture to them provoking them to go on strike and to target the Service Officers more vigorously. The applicant could feel that the allegations have been

made against the applicant due to mistaken identity as the lady was to enter the office of Col Mukul Dev, who was having a constant tussle with the civilian officers, on many issues specifically corruption, status and perks which were being illegally enjoyed by the civilian officers at the cost of the Organisation and the Service Officers in uniform, and thus it was probably a trap laid for Col Mukul Dev at the instance of Mrs. Vibha Sood and the applicant was being made a scape goat being an Army Officer. The applicant also gained knowledge that the office of DG NCC has also been informed by some intelligence sources in writing that the incidence of the 19 Aug 2015 regarding the complaint by the lady, Ms. XX was a trap for Col Mukul Dev and thus the allegations have been made against the applicant as a mistaken identity. It is submitted that at the instance of email from Int sources and their visit to the office of the DG NCC was later confirmed by the witnesses during Summary of Evidence (SoE) recorded in respect of the charge framed against the applicant. The copy of the Int report received by the office of DG NCC is attached as **Annexure A-1.**” The applicant also came to know that Ms XX had made a complaint in writing against the applicant and the office of DG NCC had ordered the investigation of the complaint by the internal complaint committee (ICC) set up for the purpose. Mrs Vibha Sood was the presiding officer of such ICC. The applicant submitted representation dated 15th Sept 2015 (Annexure A-3) bringing out the abovementioned facts and requesting that the investigations into the allegations should be entrusted to the independent agency which should not comprise of any officer from the P&F DTE specially Mrs Vibha Sood.

5. Learned counsel for the applicant has submitted that the ICC has submitted its recommendation, but the copy of the same has not been provided to him inspite of his written request. It is also submitted that the applicant can challenge the said recommendation only when the copy thereof is provided to him. He has also argued that the period of limitation of 90 days is provided for filing appeal and the said period shall commence from the date when copy of the recommendation is given to the applicant. The applicant was supplied with the copy of the statements of some of the witnesses and no copy of the report was supplied and the respondents proceeded with the disciplinary action against the applicant, though the applicant has statutory right to challenge the said report of the ICC under Section 18 of the Act 2013. It is argued that there are gross irregularities in conducting the ICC. It is also pleaded that ICC finalised its report and the

applicant was issued the attachment order for further disciplinary action. It is pleaded in Paras 4.31 and 4.32 as under :

“4.31. That the commanding officer of the applicant though came to the conclusion that the issue involved is much more serious as the witness gave the copy of the IB report and other allegations against corruption against Mrs. Vibha Dood and other civilian staff, he sought advice from higher HQ vide letter No CF/CYS/135/A dated 09 Jan 2018 (Annexure A-13).

4.32. That the higher HQ rejected the contention of the commanding officer and directed to proceed against the applicant and recording of Summary of Evidence (SoE) was ordered. It is submitted that it has also come during the summary of evidence during cross examination of the complainant that she refused to reply as to who has written the complaint but stated that the complaint was given after 2-3 days from the date of incidence. It is submitted that the incident is dated 19 Aug 2015 (Wednesday) and 2-3 days means Monday (Sat and Sun being Holidays) but surprisingly the complaint was received by the office of Mrs. Vibha Sood on 20 Aug 2015 itself as per the stamp of the Dak Diary and thus proves that the whole incident was pre-planned for Col Mukul Dev in whose office the applicant was present.”

6. Thus, it is clear from the pleadings that a departmental enquiry has been initiated against the applicant and the summary of evidence is being recorded, applicant has also cross-examined the witnesses. In recording the summary of evidence, the applicant will get all the opportunities to put up his defence and to adduce his evidence, but the applicant instead of waiting for the out-come of the disciplinary proceedings, has come before this Tribunal on the ground that the ICC under Section 13 of the Act 2013 has not provided copy of its recommendation to the applicant. At this stage when the summary of evidence is being recorded and the departmental proceedings has been initiated, then to go back to the recommendation of the ICC, is simply an afterthought defence of the applicant to delay the departmental proceedings.

7. Learned counsel for the respondents has vehemently argued that it is a premature O.A. as no order has been passed against the applicant. Departmental proceedings have been initiated against the applicant and summary of evidence is being recorded. The only ground is that the recommendations of the ICC have not been provided to the applicant.

8. In reply to the submission, learned counsel for the applicant has drawn our attention towards Section 18 of the Act of 2013, which deals with delay. Said section reads as under :

“18. (1) Any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clause (i) or clause (ii) of sub-section (3) of

section 13 or subsection (1) or sub-section (2) of section 14 or section 17 or non-implementation of such recommendations may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed.

(2) The appeal under sub-section (1) shall be preferred within a period of ninety days of the recommendations.”

9. Thus, Section 18 of the Act envisages a recommendation made under sub-Section (2) of section 1. It is provided in the Act of 2013 that the copy of the recommendation shall be provided to the parties. In the instant case, the only grievance of the applicant is that the copy of the recommendation has not been provided to the applicant. Section 13 also mandates that the copies of the recommendation should be sent to the employer. Admittedly the employer of the applicant has already initiated departmental proceedings against the applicant. Therefore, it can very well be presumed that the said recommendation has been sent to the employer of the applicant and, therefore, the applicant, now at this stage when the departmental proceedings have been initiated, cannot challenge that the copy of the recommendation of the ICC has not been provided to him. It is also not clear from the pleadings whether the departmental proceedings have been initiated on the recommendation of the ICC or the authority concerned has suo moto initiated the action.

10. Learned counsel for the respondents has argued that the ground of mistaken identity has absolutely no force because the applicant was named by the victim and, therefore, the question of mistaken identity in respect of Col Mukul Dev, does not inspire confidence. Since the departmental enquiry is pending, therefore, we refrain to give any opinion on this point.

11. Prior to the filing of the instant O.A., the applicant has preferred O.A.No.633 of 2016 before Hon’ble Principal Bench of Armed Forces Tribunal, New Delhi with the same prayer. That O.A. was disposed of finally on 12.08.2016. The observations of the Principal Bench in Para 8 of the said order are relevant for the purpose of the instant O.A., which reads as under :

*“8. Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 has been enacted as a comprehensive legislation to provide for safe, secure and enabling environment to every woman irrespective of her age or employment status, free from all forms of sexual harassment by fixing the responsibility on the employer as well as public authorities, providing a statutory redressal mechanism. The Apex Court in **Vishaka & Ors. Vs. State of***

Rajasthan & Ors. 1977 (7) SCC 323) frowning upon sexual harassment of women at work place and holding that sexual harassment against working women in is unacceptable issued directions for passing proper legislation providing a statutory redressal mechanism and thereupon, the above Act was passed by the Parliament. We find no merit in the case projected by the applicant that he being an army officer, enquiry into any complaint or sexual harassment against him can be conducted only by a Court of Inquiry covered by the Army Rules and not by any Committee constituted under the above Act. The applicant has been directed to appear before the statutory Committee for a preliminary enquiry over a complaint filed by a lady officer imputing of 7isbehaviour to her. Whatever be his defence or challenge to the constitution of that Committee he can present them before that Committee or any other authority as provided by law but he cannot rush to this Tribunal invoking its jurisdiction when an order issued directing him appear in any part of the enquiry conducted on the complaint do not fall under the ambit of 'service matters' covered under Section 2(o) of the Act. We hold that this Tribunal has no jurisdiction to entertain the OA and accordingly it is dismissed.

(underlined by us)

12. The said O.A. was dismissed and it was held that whatever the defence of the applicant may be regarding the constitution of the Committee or any other defence, but he cannot rush to the Tribunal invoking the jurisdiction of the Tribunal. Only an order issued directing him to appear and take part in the enquiry conducted on the complaint, does not fall under the ambit of service matters under Section 2(o) of the Act. Thus, Hon'ble Principal Bench was of the view that the O.A. was not maintainable and accordingly, it was dismissed. Again the applicant filed Civil Misc. Writ Petition before the Hon'ble Delhi High Court, wherein Hon'ble High Court, Delhi vide its order dated 22.08.2016 has held that the Tribunal had jurisdiction which the Tribunal has not exercised. After the order of Hon'ble High Court, Delhi, the applicant, instead of preferring his O.A. before the Principal Bench, has filed this O.A. before this Tribunal.

13. Learned counsel for the respondents has argued that Hon'ble Delhi High Court had no jurisdiction to sit in appeal against the order passed by the Armed Forces Tribunal and to say that Armed Forces Tribunal had jurisdiction in view of the pronouncement of the Hon'ble Supreme Court in the case of **Union of India & Ors vs. Maj Gen Shri Kant Sharma & Ors** (2015) 6 SCC 773. We refrain, at this stage, to express any opinion on this point. At this stage we are of the considered view that even if for the argument sake, pleadings are taken to be true as on its face value even then only summary of evidence is being recorded which cannot be interfered with. The only grievance at this stage remains that copy of recommendation has not been provided to the applicant. Accordingly, we are of the considered view that this O.A. is not maintainable. Under Section 18 of the

Act 2013, an appeal can be preferred against an order, while no such order has been filed by the applicant.

14. Accordingly, this O.A. is **dismissed** in limine at the admission stage being premature. However, in the interest of justice, we direct the authority concerned to provide copy of the recommendation of the ICC to the applicant at the earliest in accordance with the provisions of Section 13(1) of the Act of 2013, if not already provided.

15. At this stage, learned counsel for the applicant has made a prayer for grant of leave to appeal under Section 31 of the Armed Forces Tribunal Act, 2007, but we do not find any question of law of general public importance involved in this matter. Therefore, the leave to prefer an appeal is hereby refused.

(Air Marshal B.B.P. Sinha)
Member (A)

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

Dated: 05th July, 2018
PKG