

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision : February 19, 2015*

+ **W.P.(C) No.77/2014**

LT.R.P.YADAVPetitioner
Represented by: Mr.Sukhjinder Singh, Advocate

versus

UNION OF INDIA & ANR.Respondents
Represented by: Mr.Ankur Chhibber, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. The present writ petition has been filed by the petitioner impugning the order dated September 24, 2013 passed by the Armed Forces Tribunal rejecting MA No. 277/2012 and MA No. 478/2012 wherein prayer made by the writ petitioner was to be permitted to examine Lt.Commander V.K.Lekhi and Lt.Commander S.Gantayat on oath; and that the respondents be directed to produce the investigation reports of the said persons submitted in terms of Regulation 149 of Part II (Statutory) Regulations for the Navy.

2. Briefly encapsulated, the facts leading to the filing of the present writ petition are that in the month of March 2001, the petitioner was deputed on temporary duty at INS Hamla at Mumbai. At that point of time, certain fellow naval officers from Sri Lanka were also undergoing training at Mumbai.

3. On the intervening night of April 6/7, 2001, the wife of one Sri Lankan naval officer, namely Ms.Piyathilaka, alleged that someone was peeping through the window of the bathroom at the first floor of their cabin. The incident was reported to the administration of INS Hamlaand. The Commanding Officer INS Hamla investigated the matter by appointing a Board of three Senior Officers of the rank of Lieutenant Commander. He did so on April 07, 2001. The Board got completed April 12, 2001 and during the course of the Board proceedings, 11 witnesses were examined and 5 documents were exhibited, and the Board came to the conclusion that the petitioner was involved in the alleged incident.

4. The preliminary investigation report of the Board was received and analyzed in the Headquarters, Southern Naval Command and taking into consideration that a prima-facie case was made out against the petitioner, a decision was taken to try the petitioner by the Court Martial and accordingly the Commanding Officer, INS Valsura was directed to investigate the matter. The Officer appointed to investigate had recorded summary of evidence and thereupon Commanding Officer INS Valsura had forwarded the connected documents to Headquarters, Southern Naval Command. Whilst the papers submitted by Commanding Officer INS Valsura were being processed, it came to light that the key witness; namely : Sri Lankan Naval Officer and his wife, i.e. the victim had left as she was in an advanced stage of pregnancy. The other Sri Lankan Naval officers had also departed; their training having been completed. Accordingly, it was considered that holding of a Court Martial was not only inexpedient but also impracticable and thereafter it was decided to invoke the provisions of Regulations 216 of the Regulations for the Navy

Part II to terminate the services of the petitioner on the ground of misconduct.

5. On May 28, 2003, the petitioner was served with a notice of termination of service, and vide order dated June 04, 2003 he was dismissed from service.

6. Aggrieved by the same, the petitioner has approached this court by and under W.P.(C) No.4336/2003 challenging the administrative discharge.

7. With the promulgation of the Armed Forces Tribunal Act and the constitution of the Tribunal, the writ petition stood transferred to the Tribunal where it was renumbered as T.A. No. 73/2010, and the same is still pending disposal before the Tribunal. Two civil miscellaneous applications filed, praying as above noted in paragraph 1 have been disposed of.

8. The impugned order is dated September 24, 2013 and has disposed of MA No.277/2012 and MA No.478/2012.

9. We are, therefore, concerned only with the pleadings with respect to the two miscellaneous applications though learned counsel for the writ petitioner argued and in respect of which arguments he has filed the written submissions, as if the main matter was being argued.

10. As regards MA No. 277/2012, learned counsel for the petitioner contended that Lt.Commander V.K.Lekhi had given a statement that it was a case of mistaken identity, wherein the petitioner had been implicated falsely. Learned counsel argued that Lt.Commander V.K.Lekhi not only gave a statement before the board of investigation about the same but was fully corroborated by the statement of Lt.Commander SurenderRao. Most importantly, it was argued that

Lt.Commander V.K.Lekhi had given the statement in writing to the petitioner that he was not involved in the alleged misconduct.

11. Additionally, qua MA No.478/2012, it was submitted that Lt.Commander S.Gantyat was appointed as the investigating officer vide order dated May 16, 2001. He investigated the matter and submitted a report absolving the petitioner of the allegations leveled against him, but another order was subsequently passed to appoint Lt.Commander S.K.Mahapatra as the investigating officer. The order dated May 16, 2001 was subsequently withdrawn on June 06, 2001 and if the said officer had not complied with the mandate of the order directing him to conduct investigation, disciplinary proceedings would have been initiated against him. In these circumstances, the petitioner prayed that Lt.Commander S.Gantyat may be summoned or in the alternative, be directed to tender his evidence by way of affidavit.

12. Per contra, it was contended by the respondents that the statement of Lt.Commander V.K.Lekhi on which the petitioner relies and claims that Lt.Commander V.K.Lekhi has given the same to him, was a concocted document and the original had never come on record during the course of the proceedings against the petitioner. The statement was never on record, either before the board of investigation or before the officer who recorded the summary of evidence when a decision was taken to hold court-martial against the petitioner. The same was an undated document and further, it could not be known as to under what consideration and under what circumstances the said statement was given to the petitioner. It was also stated that had the same been a genuine document, the same would nonetheless have been in the power and possession of the competent authority who investigated the matter. Lt.Commander V.K.Lekhi was examined by the board of investigation

and his statement given during investigation also clearly indicated that the said document was not in existence and he also had no knowledge of the facts that were mentioned in the said document. Moreover the submission of counsel for the petitioner that the said statement of Lt.Commander V.K.Lekhi was in consonance with statement given by Lt.Commander Sunder Rao is also not correct as we have seen the statement of Said Lt Commander Sunder Rao in the BOI wherein he has not said what stated in the document in question rather he in his statement says that he was informed by the Srilanka officer that the petitioner was the culprit.

13. As regards the second application, it was contended by the respondents that copies of the relevant documents which were relied upon, were indeed supplied to the petitioner as the same were part and parcel of the petition itself. The petitioner had submitted the application after a delay of more than eight years, and in the interregnum, had twice approached the Andhra Pradesh High Court with the same plea that he was not supplied with copies of the relevant documents and the same also stood dismissed. As regards summoning of Lt.Commander Gantayat, it has been specifically pleaded that though he had been ordered vide order dated May 16, 2001 to investigate the matter but due to official commitment he could not start the investigation and thus vide order dated June 06, 2001 Lt.Cdr.S.K Mahapatra was appointed as the investigating officer.

14. The learned counsel appearing for the petitioner relied upon the undernoted decisions to support his contentions. (2007) 11 SCC 802 S.R.Sinha vs Mrinal Sengupta & Ors., wherein the Supreme Court held as under:

“ 2. It is difficult to appreciate the approach of the High Court in the revision application for the reason that is no bar against

the examination of a witness even at a stage subsequent to the recording of the statement of the accused in exercise of power under Section 311 of the Criminal Procedure Code. This fact is recognized in para 4 of the impugned order. However, the reason why the learned Judge refused the prayer was that it would require the recalling of the witness at a belated stage and that would cause prejudice to the accused person. What is important is that if the interest of justice so demands and a witness is required to be recalled or even a-court witness is required to be examined, the inconvenience that may be caused of recalling witnesses for cross-examination, if that becomes necessary in order to ensure that there is no prejudice caused to the accused persons, should not by itself be a ground to refrain from recalling the witness or examining a witness. The observation of the learned Judge that it gives the impression as if the prosecution is tilting in favour of one party at the cost of the other does not seem to be wholly justified. There is no question of suspecting the prosecution or the fairness of the learned public prosecutor.”

2014 (1) SCT 281 Union of Inida & Ors. Vs Sanjay Jethi & Anr.,

wherein the Supreme Court observed as under:

“57. Before parting with the case, we think and we are constrained to think that we should say some-thing about the order of the tribunal. Section 14 of the Armed Forces Tribunal Act, 2007 occurs in Chapter III of the said Act and deals with jurisdiction, powers and authority of the tribunal in service matters. Under subsection (5) of Section 14 the tribunal is required to decide both questions of law and facts that may be raised before it. The respondent had approached the tribunal under Section 14 of the said Act. In the Statement of Objects and Reasons it has been spelt out for constituting an Armed Forces Tribunal for adjudication of complaints and disputes regarding service matters and appeals arising out of the verdicts of the court martial to provide for quicker and less expensive justice to the members of the said armed forces of the Union. The Preamble of the Act provides for adjudication or trial by the tribunal of justice and compliance in respect of many a matter. As we find the tribunal has been conferred powers to deal with the cases in promptitude. Promptitude

does not ostracize or drives away the opposite exposition of facts and necessary ratiocination. A seemly depiction of factual score, succinct analysis of facts and law, pertinent and cogent reasoning in support of the view expressed having due regard to the rational methodology, in our considered opinion, are imperative. We have said so as we find that the tribunal by the impugned order has not adverted to the necessitous facts. We say so despite sustaining the verdict.”

Lastly, an unreported decision dated November 23, 2012 in WP (C) No. 5970/2012, wherein it was observed as under:

“Since the Armed Force Tribunal is the primary adjudicatory authority to appreciate the evidence and record its findings, and concededly we find that the tribunal has not discussed the evidence at the Court of Inquiry and in particular the question and the answer as noted herein above, we dispose of the writ petition setting aside the impugned decision dated August 06, 2012 and as a consequence we restore T.A. no. 178/2010 for fresh adjudication by the Tribunal with a direction that the evidence led at the Court of Inquiry based whereon the penalty was imposed would be considered and dealt with by the Tribunal by noting the argument advanced by the writ petitioner.”

15. As regards the first application dismissed by the Tribunal, pertaining to the statement of Lt.Commander V.K.Lekhi, allegedly a material factor in the case of the petitioner, perusal of the record would indicate that a copy of the statement of Lt.Commander V.K.Lekhi as filed by the petitioner is indeed an undated document. The petitioner had also not disclosed as to where from he procured a copy of the document in question, and moreover no light was thrown as to the facts and circumstances under which such a statement would have been given. The record also does not reveal as to under what authority would Lt.Commander V.K.Lekhi have offered his comments on the investigation. Admittedly, the board of investigation was constituted after

the sanction and approval of the competent authority and the said Lt.Commander V.K.Lekhi was not a member and therefore, it was highly unlikely that such a situation could be countenanced, wherein there were two investigations, i.e., one by the board of investigation and another as contemplated by the said document, which purported to report the comments on the investigation. The said statement of Lt.Commander V.K.Lekhi was never on record either before the board of investigation or before the officer in charge, who recorded the summary of evidence. Lt.Commander V.K.Lekhi had already given his statement when he was examined by the board, and when specific question was put to him as to whether he wanted to say something regarding the incident, he declined to mention any of the facts as sought to be conveyed by way of the said statement, except for stating that he considered it his duty to inform the petitioner to report the matter to the ESO, and the same was done by him at 08:15 hours.

16. Briefly extracted, the relevant portion of the board proceeding reads as under:

“Q.129. What did Lt RP Yadav narrat to you?

Ans. He told me that he was woken up in the night by three Srilankan Officers regarding somebody peeping into their cabin. He informed me that the officers came and sat down in his cabin and said that they suspected his of being the person who was peeping. To this he denied the same and after some more discussion on aspects like whether he was drunk etc. the Srilankan Officers left his cabin apologizing for the inconvenience caused. Subsequently Yadav came out of the cabin while the three officers were still in the veranda. The officers told him that there was no more problem and he can go in.

Q. 130. Did you talk to any one of the Srilankan Officer?

Ans. No.

Q 131. Have you anything else to say?

Ans. Yes, I as Oi/C Valsura detachment considered it my duty to inform the command regarding the incident. Towards this end I requested Lt RP Yadav to immediately report the matter to EXO. The same was done by him at 0815 hrs."

17. Moreover the submission of counsel for the petitioner that the said statement of Lt.Commander V.K Lekhi was in consonance with statement given by Lt.Commander Sunder Rao is also not correct as we have seen the statement of Said Lt.Commander Sunder Rao in the BOI wherein he has not said what stated in the document in question rather he in his statement says that he was informed by the Srilanka officer that the petitioner was the culprit.

18. Thus the contention of the petitioner is without any basis and needs to be rejected. It is trite that where a private document surfaces mysteriously additional evidence qua the same need not be allowed to be led.

19. As regards on supply of documents are concerned, suffice it to state that the petitioner was indeed supplied with the documents beforehand, and said fact can be easily demonstrated by a bare perusal of the documents placed on record by the petitioner himself. As regards summoning of Lt.Commander Gantayat it has been specifically pleaded by the respondents that though he had been ordered vide order dated May 16, 2001 to investigate the matter but due to official commitment he could not start the investigation and thus vide order dated June 06, 2001 Lt.Cdr.S.K.Mahapatra was appointed as the investigating officer. The said stand has been taken by the respondents in its counter affidavit and

further we find that the counsel for the petitioner has not been able to show any document which establishes that Lt.Cdr.Gantayat proceeded with the investigation. Thus, if no report of investigation was submitted by Lt.Cdr.Gantayat, the question of directing the respondents to produce the same does not arise.

20. The decisions relied upon by the petitioners are thus not applicable to the limited issue which we are called upon to decide.

21. The writ petition is dismissed but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

FEBRUARY 19, 2015
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