

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

% *Judgment Reserved on : January 12, 2015*
Judgment Pronounced on : January 21, 2015

+ **W.P.(C) 5373/2012**

RAMESH KC Petitioner
Represented by: Mr.Alok Kishore, Advocate

versus

UNION OF INDIA & ORS. Respondents
Represented by: Mr.A.K.Gautam, Advocate

W.P.(C) 5374/2012

EX.NK.JYOTI KANTA MAHAPATRA Petitioner
Represented by: Mr.Alok Kishore, Advocate

versus

UNION OF INDIA & ORS. Respondents
Represented by: Mr.A.K.Gautam, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. In the two captioned writ petitions, two separate orders, both dated May 04, 2012, passed by the Armed Forces Tribunal (AFT) Delhi Bench passed in T.A.No.164 of 2010 and T.A.175 of 2010 have been impugned whereby the petitions filed by the petitioners have been dismissed on the view taken by the Tribunal that the petitions are devoid of any merit. In

both the petitions before the Tribunal, the petitioners had impugned the respective order passed against them of dismissal from service and, inter alia, had sought for their reinstatement in service.

2. Since common questions of fact and law arise for consideration, we are disposing of the two writ petitions by a common judgment.

3. The facts, in a nut shell are that based on the information revealed when Naik Partap Singh of 501 Survey Engineer Group was interrogated, both the petitioners along with two other army personnel and a civilian were arrested for their involvement in espionage activities, commonly referred to as the '*Roorkee Espionage Case*'.

4. Proceedings under the provisions of the Official Secrets Act, 1923 were initiated against all the accused, including the petitioners. While the civilian was tried and sentenced to undergo seven years' rigorous imprisonment by the Court of Sessions, the trial of the petitioners and other accused army personnel was taken over by the Army Authorities under Section 125 of the Army Act. Accordingly, the hearing of the charges framed against the accused commenced and the summary of evidence was recorded. Thereafter, the case was forwarded to the General Commanding Officer who, after satisfying himself that a prima facie case exists under the Army Rule 37, ordered the trial of the accused at a General Court Martial.

5. The Court Martial assembled on December 19, 2001, but due to exigencies of service, the same was adjourned sine die on December 31, 2001. One accused named Naik Pratap Singh approached this Court by way of a writ petition registered as W.P.(C) No.940/2002. In the writ petition a stay of the General Court Martial proceedings was granted on April 02, 2002.

6. The convening authority ordered re-assembly of the Court for the trial of the rest of the three accused on July 11, 2002, but could not proceed since all accused, which included the petitioners filed W.P.(C) No.4212/2002 in which stay was granted in their favour and thus the General Court Martial proceedings could not proceed.

7. Due to the operation of the aforementioned stay orders against the General Court Martial proceedings, the proceedings could not be proceeded with. Subsequently, vide order dated October 14, 2004, it was decided by the respondents to initiate administrative actions against the accused persons, including the petitioners.

8. Show cause notices were issued to them and replies to the same were tendered by the petitioners. Thereafter, vide orders dated January 26, 2005 and January 27, 2005 the respective petitioners of the instant writ petitions were dismissed from service.

9. Aggrieved, the petitioners approached this Court, inter-alia challenging the orders of dismissal, which writ petitions were transferred to the Armed Forces Tribunal for adjudication when the Tribunal was constituted and were registered by the Tribunal as TA No.164/2010 and TA No.175/2010.

10. A bare perusal of the impugned orders would reveal that the orders of dismissal were challenged by the petitioners mainly on the following grounds:-

(i) the issuance of the show cause notice and the order terminating the service of the petitioners were without application of mind;

- (ii) the forced confession statements were obtained from the petitioners under duress and apart from the same there was insufficient evidence against the petitioners to prove the charges;
- (iii) the petitioners being under arrest, they had no scope to tender a written statement against the charge-sheet and hence, they were not provided with the opportunity to defend themselves before the General Court Martial and the same was vitiated due to non-adherence to the principles of natural justice;
- (iv) vide letter dated October 14, 2004 the decision to take administrative action against the petitioners was wrongly taken since the respondent authority was not competent to order such an action and hence the same was a colourable exercise of power.

11. While passing the impugned orders the Armed Forces Tribunal has confined itself to the scrutiny of the administrative action initiated by the respondents to terminate the services of the petitioners.

12. With regard to the contentions of the petitioners that the General Court Martial proceedings were held in violation of the principle of natural justice, it has been observed by the Armed Forces Tribunal that no specific evidence was tendered by the petitioners to substantiate the same and hence the aforesaid contention has been rejected.

13. We fail to understand the logic of the said argument because in the instant case the services have been terminated not pursuant to any finding returned by the General Court Martial. As noted above, the termination is founded on the administrative power.

14. With regard to the challenge to the show cause notice, the Armed Force Tribunal has held that the same was disclosing full details of the

involvement of the petitioners in the Roorkee Espionage case. The Armed Forces Tribunal has noted that it was also mentioned in the show cause notice that : *‘A Summary of Evidence with regard to your involvement in Roorkee Espionage case was recorded and you were found guilty of the following charges:- (a) First Charge-Army Act Section 69. Committing a civil offence, this is to say, for a purpose prejudicial to the safety or interests of the state communicating a document in relation to military affairs of Government, to a person, which might be directly or indirectly useful to an enemy, contrary to section 3(i)(c) of the Indian Official Secret Act 1923; (b) Second Charge- Army Section 63. An Act prejudicial to good order and military discipline.’*

15. The Armed Forces Tribunal has noted that the show cause notice issued on February 02, 2005 issued by Brigade Commander clearly states that Summary of Evidence and additional Summary of Evidence were recorded against the petitioners on the orders of the Adm Bn Cdr RRRC, Delhi with regard to the involvement of the petitioners in the Roorkee Espionage Case. It has been further noted by the Armed Forces Tribunal that in the said show cause notice there is not even a whisper of what directions were issued by the Army Headquarters. Therefore the Tribunal has concluded that the letter dated October 14, 2004 addressed by the Adjutant General had simply directed administrative action to be initiated and the same had not influenced the competent authority which issued the show cause notice.

16. In coming to the conclusion the Tribunal has noted that the Adjutant General, while issuing directions vide letter dated October 14, 2004, had clearly stated that having examined the case in its entirety, he had given his

approval for taking administrative action under the Army Act, Section 20(3) read with Army Rule. Thus, the letter was a request for the Competent Authority to take action accordingly. Therefore, the Armed Forces Tribunal concluded that the same did not constitute an order to the Competent Authority, who was responsible for its own actions. In this respect, the Armed Forces Tribunal also observed that it is a settled position of law that the respondent authority is competent to take a decision considering the factual aspect to initiate administrative action. In this regard the Armed Forces Tribunal placed its reliance on the decisions in LPA No.170/1999 dated November 13, 2002, Union of India & Ors. Vs Ex Sgt Avimanyu Panda, JT 2001 (4) SC 597 UOI Vs Harjeet Singh Sandhu, 1985 (2) SCC 412 Chief of Army Staff & Ors. Vs Major, Dharam Pal Kukrety, MLJ 1996 SC 3 Union of India & Ors., Vs J.S. Sivia. Further, reliance has been placed by the Tribunal on the decision reported as 2008(9) AD (Delhi) 773 S.S. Shekhavat Vs Union of India, wherein this court has held as under:-

“20. However, the rule position, the policy issued by the Chief of Army Staff with respect to the award of censure and the law laid down in the cases of Major Dharam Pal Kukrety, Harjeet Singh Sandhu and J.S. Sivia (Supra) permits the respondents to pass the impugned order despite findings returned by the court martial holding the incumbent not guilty of the charges even for the 2nd time provided such a punishment is justified for the reasons available on record as an administrative action which is also described as “custom of service.”

17. Thus, in view of the above, the Armed Forces Tribunal has rejected the contention of the petitioners that the order dated October 14, 2004 was a colourable exercise of power.

18. A further perusal of the impugned orders would reveal that after having duly considered the records pertaining to the involvement of the petitioners in aforesaid activities and also the dismissal order passed by the Commander 92 Infantry Brigade, the Armed Forces Tribunal has arrived at a finding that the respondent authority had clearly stated that it had examined the summary of evidence and the reply dated December 04, 2004 submitted by the petitioners. The Armed Forces Tribunal has also noted that the respondent authority had also considered an additional reply dated January 15, 2005 in respect of which the authority had considered the gravamen of the show cause notice and the reply thereto. After having considered the same, it has been opined that the respondent authority was satisfied that the petitioners did not produce any evidence or effective reasoning to counter the charges framed against them. Thus, the Armed Forces Tribunal has accorded a satisfaction that the respondent authority had arrived at a reasoned conclusion that the petitioners are guilty of having committed an offence which is prejudicial to the safety and interest of the State and thus, the petitions before the Tribunal have been dismissed.

19. Aggrieved by the aforesaid findings of the Armed Forces Tribunal, the petitioners have filed the present writ petitions wherein, from the perusal of the grounds, it becomes evident that the petitioners have primarily challenged the findings of the Armed Forces Tribunal with regard to the letter dated October 14, 2004 pursuant to which administrative actions against the petitioners were initiated and they were dismissed from services. In this regard, the petitioners have clearly reiterated their previous stance before the Armed Forces Tribunal. Per contra, it has been contented by the

respondents that the findings returned by the Armed Forces Tribunal is correct.

20. We have considered the contentions raised by the respective counsel.

21. The limited aspects which warrant consideration of this Court are : (i) whether the letter dated October 14, 2004 issued by the Adjutant General restricted the Competent Authority from taking an independent decision or applying its mind to the reply of the petitioners in this regard ; (ii) whether the show cause notice dated November 24, 2004 did not disclose the documents which had been leaked by the petitioners during the course of their act of espionage; (iii) whether having initiated the General Court Martial proceedings, can the respondents resort to administrative action; and (iv) whether the petitioners were illegally detained.

22. So far as the first aspect is concerned, it is clearly evident from the records that vide letter dated October 14, 2014 the Adjutant General had not ordered the Competent Authority to initiate administrative actions against the petitioners. It was merely a request to the Competent Authority to take appropriate action against the petitioners. The Competent Authority duly considered the same and while independently applying its mind to the facts of the case and evidence on record ordered the initiation of administrative action against the petitioners. Moreover, the Competent Authority which issued the show cause notice was not under the command of the Authority who directed to take administrative action. Thus, the contentions of the petitioners in this regard are clearly baseless and are accordingly rejected.

23. With regard to the second aspect, it is worth noting that the show cause notice clearly mentioned that a Summary of Evidence was recorded against the petitioners. In the summary of evidence, the petitioners were

provided with a tentative charge sheet, which clearly laid down the documents which the petitioner communicated to the enemy. Thus, the claim of the petitioners that they were not aware of the documents for which they were charged is without any basis. Moreover, it will be relevant to note that in the case of Ramesh K.C., the said documents have also been referred to in the show cause notice. Thus, the petitioners had full knowledge of the documents which were relied upon by the respondents to establish the guilt of the petitioners for having committed offences under the Official Secrets Act, 1923. Hence, it is immaterial whether or not the show cause notice dated November 24, 2004 itself contained the full details of the involvement of the petitioners in the Roorke Espionage case. Therefore, the impugned administrative action cannot be held to be vitiated on this ground.

24. The third aspect has been adequately discussed in the impugned orders which has been taken note of in paragraph 16 hereinabove, and hence, in view of the settled law as cited by the Armed Forces Tribunal, it is held that the contention of the petitioners in this respect warrants rejection.

25. The final aspect with regard to the alleged illegal detention of the petitioners requires us to note from the records before us, that in the '*Roorkee Espionage Case*' there were 41 accused persons, out of which 5 persons were brought before the General Court Martial. Against all other delinquents administrative action was taken. It was more so because it was decided to hold the General Court Martial of the 5 accused persons earlier and the case against other delinquents was time barred. Thus, administrative action was taken. The Armed Forces Tribunal has also taken note of order

of this Court dated September 13, 2004 passed in WP© No.2924/2003 which reads as under:-

“So long the decision is not taken by the respondents regarding handing over the case to the civil authorities or any other decision, the petitioner shall remain attached to Rajputana Rifles, Delhi Cantonment. However, the petitioner shall not leave the unit without prior permission of the Commanding Officer. He shall report to the Commanding Officer every morning and shall also attend the roll call, which is carried out in the evening every day. This order shall be operative till a decision is taken by the respondents for handing over the case to the civil authorities when action could be taken in accordance with law or any other decision is taken in the matter.

It is also made clear that this order shall not be treated to be an order of releasing the petitioner on bail with regard to the subject matter of the allegations. Decision with regard to the handing over of the case or otherwise shall be taken within four weeks.”

26. The Armed Forces Tribunal has also noted the order of this Court dated September 13, 2004 wherein, on two occasions, this Court has specifically mentioned that ‘*or any other decision*’ which shows that they were privy to the fact that instead of the General Court Martial, since the General Court Martial had become time barred, administrative action could be initiated against the writ petitioners before they were handed over to the civil authorities at Roorkee. Furthermore, the Armed Forces Tribunal has also noted that on termination of their services on January 27, 2005, the petitioners sought specific permission to stay in the RRRC so that they can pursue their case which was lodged in the civil court as also their case in the Delhi High Court. As such, the petitioners gave a certificate to the RRRC in

which they stated that they were willing to be attached to the Adm Bn RRRC on their own accord after being dismissed from service on January 27, 2005.

27. Thus, the aforesaid facts revealed from the impugned order clearly establishes that the contentions of the petitioners with regard to their alleged illegal detention is clearly a last ditch attempt to challenge the administrative actions taken against them.

28. Resultantly, it is held that the impugned passed by the Armed Forces Tribunal do not warrant any interference and the same are upheld.

29. The writ petitions are accordingly dismissed but without any orders as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

JANUARY 21, 2015

mamta