



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

% **Reserved on: May 26, 2022**

Pronounced on: June 03, 2022

(i) + W.P.(C) 4307/2022, CM.APPL.16359/2022 & CM.APPL. 16430/2022

IC 57454M COL JPS BAKSHI Petitioner

Through: Mr. A.K. Bhardwaj & Mr. Jaideep Singh, Advocates.

Versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Harish Vaidyanathan Shankar, CGSC with Mr. S. Bushra Kazim, Mr. Srish Kumar Mishra & Mr. Sagar Mehlawat, Advocates for UOI.

(ii)+ W.P.(C) 4371/2022, CM APPL. 16365/2022 & CM APPL. 16432/2022

IC - 60269K LT COL PUNEET SHARMA Petitioner

Through: Mr. A.K. Bhardwaj & Mr. Jaideep Singh, Advocates.

Versus

UNION OF INDIA AND ORS Respondents

Through: Mr. Harish Vaidyanathan Shankar, CGSC with Mr. S. Bushra Kazim, Mr. Srish Kumar Mishra & Mr. Sagar Mehlawat, Advocates for UOI.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE SAURABH BANERJEE



JUDGMENT

SURESH KUMAR KAIT, J

1. The above captioned two petitions have been filed by the petitioners seeking setting aside of order dated 23.02.2022 passed by the Armed Forces Tribunal in OA 122/2022 and OA 156/2022 respectively and consequently, setting aside the Court of Inquiry dated 27.01.2022 being illegal, biased and against the principles of natural justice as well as in violation of mandatory provisions of Army Rule-180.

2. The petitioner - Col. J.P.S. Bakshi [in W.P.(C) 4307/2022], who is currently posted as Director in Border Roads Organization and petitioner-Col. Puneet Sharma [in W.P (C) 4371/2022] are aggrieved of order dated 23.02.2022 passed by the learned Arms Forces Tribunal vide which their challenge to the Attachment Order proposing disciplinary action against them based on the report bearing No. C/06290/WC/852/20(07)/AG/DV-2 dated 27.01.2022, has been dismissed. The petitioners are also aggrieved by order bearing No. 2020/Discp/DV-2 (236 Engineer Regiment) dated 06.03.2020, vide which respondent No. 5-GOC HQ 11 Corps has directed HQ 7 Inf Div to take disciplinary action against the petitioners.

3. While advancing arguments on behalf of petitioners, learned counsel



appearing on their behalf submitted that the impugned directions to attach the petitioners and take disciplinary action against them are based upon illegal court of inquiry; having being conducted in a biased manner. It was submitted that the Presiding Officer- respondent No.5 has conducted the inquiry proceedings on the sole ground that disciplinary action has been directed vide impugned Attachment Order dated 27.01.2022 and even copy of disciplinary proceedings has not been furnished to the petitioners.

4. To put-forth the factual position, petitioner- COL JPS Bakshi on 09.12.2016 and petitioner- COL Puneet Sharma on 09.06.2016 took over the command of 236 Engineer Regiment when the Regiment was deployed in Counter Insurgency Operations in Guwahati (Assam) on OP-RHINO. The main body of the Regiment moved to under HQ 11Corps. 236 Engr Regt on 02.06.2018. The first meeting to monitor progress and execution of the works was held on 04.06.2018 wherein they, along with other officials of the team, came to know about 24 sites of six units where the work was under initial progress. Petitioners further claim that while the Regiment was in the process of shifting the unit stores from the Railway Station to a place 30 kms away from Jalandhar Cantt., the Regiment was allotted six additional (special) construction works of constructing security wall/fence



around various Military Units/Installations in the Corps zone of HQ 11 Corps, covering the area of approx. 14.36 km, by HQ 11 Corps vide MO4 letter No A/40355/18-19/WC/SAE/MO-4 dated 30.05.2018. The last date for construction of integrated Fence works/jobs was fixed as 30.11.2018 and for other constructions of Hybrid Fence works/jobs, was fixed as 31.12.2018. Petitioners claim that the dead line for execution of the aforesaid work was stipulated without consulting them and since they both were also in the process of familiarizing with the location, the short period of 06 months created huge pressure and stress on the unit of petitioners.

5. Learned counsel appearing on behalf of petitioners submitted that the construction work/ job was sanctioned as an emergent measure to strengthen the security around the Military Units/Installations on an urgent basis due to the situation arising out of the opening of the cantonment routes to the general public and the heightened security threat from the enemy across the western border, however, role of petitioners was limited to monitoring of execution of the work after receipt of the necessary materials which were required to be sanctioned and procured, through a process of electronic-contract for which General GOC 11 Corps and General Staff (GS) Branch of HQ 11 Corps, were the Competent Financial Authority



(CFA). Neither petitioners nor any officer of their Command were responsible in selecting vendors for supplies of the requisite material. During the course of hearing, learned counsel for petitioners drew attention of this Court to Para-16(a) to (l) in both the petitions to show how the proposal for procuring the necessary material was prepared, submitted and uploaded for supply of material required.

6. Learned counsel appearing on behalf of petitioners submitted that both the petitioners are highly meritorious and have clean career and never had any adverse remarks against them. Vide letter dated 01.06.2019 written by GOC HQ 91 Sub Area to GOC HQ 11 Corps, the respondents alleged financial impropriety by the petitioners' unit. The first being "variation in request for proposal and supply order, wherein store list has been considerably reduced" and the second, "the supply order was placed on lesser quantity than request for proposal but the costing is done as per the request for proposal". According to petitioners, pursuant thereto, the HQ 91 Sub Area and GOC HQ 11 Corps, verbally directed the petitioners unit to instruct the suppliers/vendors/contractors to refund the excess amount received by them, as the then Chief Engineer; the then BGS; the then Commander 138 (I) Infantry Brigade and the then General Officer CHQ 91



Sub A could influence many of the vendors and consequently, between 04.06.2019 to 10.06.2019 suppliers/vendors/contractors deposited amount of Rs.1.92 crores in the Government Treasury received by them in excess.

7. Thereafter, vide Convening Order dated 19.06.2019, a Court of Inquiry to investigate the circumstances under which the discrepancies between request for proposal and corresponding supply order placed by 236 Engineer Regiment, was convened under the provisions of Rule 180 of Army Rules, 1950. Thereafter, an attachment order was also issued removing the petitioners from their permanent place of posting and attaching them to different units at a faraway place.

8. Learned counsel for petitioners next submitted that the Court of Inquiry and the consequential first attachment order dated 07.07.2020 were set aside by the learned Arms Force Tribunal vide order dated 25.09.2020 [OA No. 1175/2020 preferred by petitioner- COL JPS Bakshi], which according to learned counsel is also applicable to the case of petitioner- Col. Puneet Sharma [who has since filed OA no. 1362/2020] also. It was pointed out by learned counsel that these petitions arise out of attachment order dated 27.01.2022 for the second Court of Inquiry pursuant to Convening Order dated 06.01.2021 to investigate into the circumstances under which



discrepancy(ies) occurred between the Request For Proposal and the corresponding Supply Order placed by 236 Engineer Regiment against Job No.4774,4775 4776, 4777, 4779 and 4780 in respect to security related operational work undertaken by the petitioners' unit.

9. Learned petitioners' counsel drew our attention to the provisions of Rule 180 of Army Rules to submit that the court of inquiry was held in complete violation thereof, without there-being any iota of incriminating evidence against both of them. Attention of this Court was also drawn to various instances of biased and unfair inquiry conducted by the Presiding Officer, who used to publicly pass remarks against the petitioners and did not afford full opportunity of defence to the petitioners. Neither copies of documents placed on record were supplied nor statement of witnesses have been shown to the petitioners, thereby rendering them to counter what has been added during the proceedings. Furthermore, learned counsel submits, denial of an opportunity to examine the witnesses cited in spite of the specific written directions of the Convening Authority as well as repeated written requests made by the petitioners, has vitiated the enquiry proceedings.

10. Learned counsel for petitioners challenged the validity of the



attachment orders by submitting that the Chief of Army Staff was the only competent authority to issue the attachment orders and as the same have not been issued by him and therefore, be declared illegal and nullity under law. Further, the earlier Court of Inquiry on the same subject matter was convened by the very same officers (BGS) who conveniently convened the Court of Inquiry and also appeared before it as witnesses, which led setting aside of the first attachment order dated 07.07.2020. However, the respondents have relaunched the same Court of Inquiry, albeit with a different Presiding Officer with the *mala fide* intention to save senior officers, who were actually involved in creating the discrepancies.

11. IN view of the aforesaid, learned counsel submitted that the impugned order dated 23.2.2022 passed by the learned Armed Forces Tribunal in OA No.122/2022 and OA No. 156/2022 respectively deserve to be set aside. Learned counsel for the petitioner also prayed that the impugned Court of Inquiry dated 27.01.2022 be held as violation of principles of natural justice as well as the mandatory provisions of Rule 180 of Army Rules and a direction be passed to stay the operation of the impugned Attachment Order with immediate effect till the production of the complete Court of Inquiry and its original Video Recording on record



before this court, or in the alternative, direct the respondents to shift the Attachment of the petitioners for his Summary of Evidence to a different formation other than 15 Infantry Division.

12. Lastly, learned counsel placed reliance upon decisions in ***Ltd. Gen. Surendra Kumar Sahni Vs. Chief of Army Staff & Ors.*** 2007 SCC OnLine Del 1928; ***Harbhajan Singh Vs. Ministry of Defence, Govt. of India & Ors.*** 1982 SCC OnLine Del 359 and ***Lt. Gen. S.K. Dahiya Vs. Union of India & Ors.*** ILR Supp. 4 (2007) Del 189 to allow these petitions.

13. On the other hand, learned Central Government Standing Counsel appearing on behalf of respondents has opposed these petitions on the ground that impugned Attachment order and the court of inquiry initiated by the respondents are based on facts and evidence and do not deserve any interference by this Court. Learned counsel submitted that the impugned order dated 23.02.2022 is well merited and does not call for any interference by this Court and hence, these petitions deserve to be dismissed.

14. The arguments advanced by learned counsel representing both the sides were heard at length and the material placed on record has also been perused.

15. Pertinently, vide Convening Order dated 19.06.2019, a Court of



Inquiry to investigate the circumstances under which the discrepancies between requests for proposal and corresponding supply order occurred, was convened and the attachment order dated 07.07.2020 was issued. However, the same was set aside by the learned Arms Force Tribunal on 25.09.2020, as the officers who convened the Court of Inquiry also appeared as witnesses. It is not the case of petitioners that they were exonerated in first round of inquiry and thereby, the second round initiated by the respondents is vicious. Rather it has been brought to the notice of this Court that the second Court of Inquiry is convened by different Presiding Officers and therefore, this Court is not required to go into this aspect.

16. The relief sought in these petitions pertains to second Attachment Order dated 27.01.2022, pursuant to Convening Order dated 06.01.2021 to investigate the discrepancies which occurred in respect of proposal and supply of material order placed by the 236 Engineer Regiment against Job No.4774,4775 4776, 4777, 4779 and 4780 for security related operational work undertaken by the petitioners' unit. The petitioners had challenged the aforesaid Attachment Order before the learned Armed Forces Tribunal, which was dismissed vide order dated 23.02.2022. The relevant paras of impugned order dated 23.02.2022 read as under:-



“2. Having heard the learned counsel for the parties, we are of the considered view that the CoI is not a trial. It is only a fact finding inquiry which has a limited purpose and based on the report of the CoI, now the matter is before the competent authority, who, after following the mandate of Rule 22 of the Army Rules, will take necessary action in the matter. We are also informed by the respondents that based on the application submitted, a few witnesses and certain documents, which were relevant for the issue, have already been supplied to the applicant. It has been the consistent view of the Tribunal based on the Supreme Court judgment that at the stage of CoI until and unless specific statutory violations and mala fides are established, interference into the matter is not called for.

3. Keeping in view these facts, we find no reason to interfere with the matter. The applicant may raise these grounds before the competent authority where further proceedings are to be held.”

17. During the course of hearing, learned counsel appearing on behalf of petitioners challenged the aforesaid order primarily on the ground that the learned Tribunal has failed to take into consideration the pleas urged by the petitioners that during Court of Inquiry, despite several written and verbal requests, copies of key documents were not furnished to the petitioners nor were they permitted to inspect the same. Another ground urged is that 50% W.P.(C) 4307/2022 & W.P.(C) 4371/2022



of the questions asked by the petitioners in cross-examination were declared irrelevant.

18. Pertinently, the order dated 23.02.2022 records that Court of Inquiry is not a trial and it is only a fact finding inquiry and the matter is before the competent authority for further action in terms of Section 22 of the Army Rules.

19. Relevantly, Section 22 of The Army Rules, 1954 postulates that the charged persons shall be heard in the presence of the Commanding Officer in the presence of the accused and also that the accused person shall have full liberty to cross-examine any witness against him, provided the charge against the accused arises as a result of investigation by a court of inquiry.

20. Further, Section 180 of The Army Rules, 1954 reads as under:-

“180. Procedure when character of a person subject to the Act is involved.—Save in the case of a prisoner of war who is still absent whenever any inquiry affects the character or military reputation of a person subject to the Act, full opportunity must be afforded to such person of being present throughout the inquiry and of making any statement, and of giving any evidence he may wish to make or give, and of cross-examining any witness whose evidence in his opinion, affects his character or military reputation and producing any witnesses in defence of his character or military reputation. The presiding officer of the court shall take such steps as may be



necessary to ensure that any such person so affected and not previously notified receives notice of and fully understands his rights, under this rule.”

21. The contention raised by the petitioners is that out of the list of witnesses, only a few witnesses were permitted to be examined and also 50% of the questions put by them in the cross examination were declared irrelevant. It is not the case of petitioners that they were not present when the witnesses were examined. In a catena of decisions, the Hon'ble Supreme Court has held that proceedings before the Courts of Inquiry are in the nature of 'fact finding enquiry' conducted at a pre-investigation stage and are not adversarial proceedings. The petitioners shall have complete right to examine and cross-examine the witnesses which they deem necessary, during disciplinary proceedings.

22. The petitioners have urged that copies of key documents or inspection thereof, has not been provided to them, whereas the learned Tribunal has noted that copies of relevant documents have been provided to the petitioners. On this count, we find that furnishing petitioner the copy of disciplinary proceedings or each and every document produced before the Presiding Officer during Court of Inquiry, is not mandatory, as the proceedings under the Court of Inquiry are in the nature of preliminary W.P.(C) 4307/2022 & W.P.(C) 4371/2022



enquiry for the purpose of collecting evidence and report and not final in nature. Thus, there appears to be no violation of provisions of Section 22 or Section 180 of The Army Act, 1954 at this stage.

23. So far as reliance placed upon decision in ***Surendra Kumar Sahni (Supra)*** is concerned, in the said case the petitioner was working as Director General Supplies and Transport, had challenged the Court of Inquiry conducted by the respondents on the ground that it was based upon anonymous complaint to falsely implicate him and without following Rule 180 of the Rules. The respondents therein had pleaded that the Court of Inquiry was in the form of fact finding inquiry and denied breach of Rule 180. The Hon'ble Supreme Court had observed that *"the respondent were under an obligation to provide an opportunity to the petitioner whether he wanted to lead any defence, cross-examine any witnesses already examined in the Court of Inquiry or take any other steps in terms of Rule 180. Admittedly, the officer was not notified, either at the initiation of the enquiry or at the stage when in the opinion of the competent authority the character or the military reputation of the officer could be questioned. On the contrary, at a subsequent stage he was called upon to record that the provisions of Rule 180 have been complied with, which the petitioner*



specifically declined by writing a detailed representation dated 9-6-2006 to the authorities.” In the aforesaid view of the said case, the Supreme Court observed that since provisions of Rule 180 of Rules were not complied by the respondents, therefore, proceedings pursuant to the Court of Inquiry, could not be taken further. The Supreme Court, allowed the writ petition filed by the petitioner therein to the aforesaid limited extent, while giving liberty to the respondents to continue further proceedings under Rule 180 or in the alternative, to take recourse to Rule 22 of the Rules.

24. Similarly, in ***Harbhajan Singh (Supra)***, the petitioner who was a Major in Army and had challenged the validity of his dismissal order on the ground that during Court of Inquiry proceedings, he was not allowed to produce the defence witnesses and so, the procedure laid down in Rule 180 was not followed; though respondents had stated that the petitioner had not requested for defence witnesses. In these facts of the said case, the Court held that since opportunity to procure the relevant witnesses in defence was not provided to petitioner, therefore, Court of Inquiry was vitiated. On the other hand, in the present petitions, it is not the case of petitioners that they were not given notice of the Court of Inquiry initiated against them or they were not permitted to participate in the proceedings.



25. Thus, decisions in *Surendra Kumar Sahni* and *Harbhajan Singh (Supra)*, are of no assistance to the case of petitioners, as petitioners have been granted opportunities and served with the relevant documents.

26. In view of the above, finding no reason to interfere with the order dated 27.02.2022, these petitions are dismissed. Needless to say, respondents are under the obligation to comply with the mandatory requirements envisaged under Section 22 or Section 180 of the Army Act, 1954 during the proceedings.

(SURESH KUMAR KAIT)
JUDGE

(SAURABH BANERJEE)
JUDGE

JUNE 03, 2022

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