



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

% ***Reserved on: May 24, 2023***

Pronounced on: September 11, 2023

+ W.P.(C) 5173/2022 & CM APPL. 15353/2022, 19954/2022,
6416/2023 & 19813/2023

MAJOR SANDEEP RANA Petitioner

Through: In person

Versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Vineet Dhanda, CGSC with
Mr. Vinay Yadav, Mr. Hussain Taqvi,
Ms. Gurleen Kaur, Advocates, Major
Partho Katyayan & Major Mahender

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT

SURESH KUMAR KAIT, J

1. The present petition has been filed by Ex-Major of the Territorial Army who is seeking to enforce his rights under the Territorial Army Act, 1948 and the Territorial Army Act Rules, 1948 for having been terminated/removed from services of Territorial Army.

2. The petitioner claims to have been appointed in the "Regular Army" in the area as a Short Service Commissioned Officer in 2005 and was relieved from the rank of Captain in the year 2010. Thereafter, he applied



for grant of Territorial Army Commission as per Territorial Army Act, 1948 and the Territorial Army Act and Rules, 1948. The provisions of para 9 of Appendix VIII of the aforesaid Act provides confirmation of officers appointed in the Territorial Army after completion of probation of three years in passing the prescribed examination. However, Ex-officers who have a minimum of three years previous commission service are exempted from the aforesaid criteria. The petitioner was thus selected and employed in the Territorial Army in the rank of Lieutenant on 16.07.2015 and joined the services on 01.08.2015.

3. The petitioner served in J&K (Counter Insurgency/Counter Terrorism Area) from 2015 to 2018 and he was granted ante dated Seniority in terms of the Gazette notification dated 17.09.2016 of Ministry of Defence (Army Branch) (Territorial Army) w.e.f. 02.06.2010 in the rank of Lieutenant for his former service in the Regular Army. Thereafter, by virtue of order dated 22.06.2018 and under the provisions of Rule 21-A of the Territorial Army Act Rules, 1948, he was embodied as a permanent staff of the Territorial Army. Therefore, the petitioner claims that his services are covered under the Territorial Army Act, 1948 and the Territorial Army Act Rules, 1948.

4. The petitioner further claims to have been transferred to 133 Infantry Battalion (TA) ECO DOGRA vide order dated 22.06.2018. He was thereafter promoted to the substantive rank of Major vide order dated 23.10.2018.

5. According to the petitioner, while he was holding charge of Company Commander in 133 Inf Bn TA Eco Dogra, Col MA Khan joined on 01.10.2019, who appointed him as the Accounts Officers, Adjutant and



Quarter Master of the Battalion which was in addition to the duties of Company Commander, already being performed by him. Thereafter, the petitioner took charge of Accounts Officer in terms of Para 809 of the “Defence Services Regulations” (DSR) from Maj Sachin Rana to the satisfaction of the Commanding Officer.

6. The petitioner further claims that on 28.11.2019, the Accounts clerk Havildar Rajeem Khan brought booklets of blank cheques to him and told that Col MA Khan had orally directed that those blank cheques be signed by the petitioner. The petitioner further claims to have asked him to fill in the details of the cheques, who in turn told that Col MA Khan had directed that the accounts ledgers may be verified later and the cheques must be signed before hand. However, the petitioner refused to sign those blank cheques. The petitioner has alleged that Col MA Khan called him to his office and used foul and threatening language and directed that as Accounts Officer, petitioner was expected to cooperate. The petitioner claims to have told Col MA Khan that it was not prudent to sign the blank cheques without verifying the ledgers. The petitioner has alleged that after this incident, Col MA Khan turned hostile towards him. The petitioner has further alleged that he had sought one day leave on 10.12.2019 to enable him to attend to his wife, who was at her critical advanced stage of pregnancy. However, Col MA Khan refused his request and instead he verbally directed the petitioner to reach at B company location , which was located at a distance of 180 km in deep interior forest area at Jalogi in District Mandi (HP).

7. Thereafter, on 23.01.2020, the petitioner requested Col MA Khan to allow him to operate from Battalion Headquarters at Kufri, Shimla in view



of the worsening Covid situation and high-risk pregnancy of his wife. However, he rejected the request of petitioner and ordered him to be permanently stationed at B coy. The petitioner also pleaded that he would not be able to supervise the accounts related work of the Battalion, however, Col MA Khan did not accede to his request. The petitioner further claims to have received two entire decks of blank cheques from Col MA Khan, which he refused to sign.

8. The petitioner has averred that his wife was facing serious health problems on 11.02.2020 and since he was posted in a forest location and since the company office did not have the printed leave application format available, so the petitioner gave a handwritten "Leave Application" dated 07.02.2020 and sent it to the Battalion HQ through regular post. Col MA Khan on 13.02.2020 informed the petitioner that instead of one month, one week's leave has been granted to him. The petitioner claims that from 16.02.2020 to 17.02.2020, he was at the Company's location for completing certain tasks. The petitioner has claimed that on 16.02.2020 and 17.02.2020, he was at the place of his posting and he was verbally told by Col MA Khan that he has been granted leave for one week only and so, he can rejoin on 23.02.2023. The petitioner has averred that he remained on leave on oral permission of this Commanding Officer. It is averred that petitioner remained on leave for six times similarly and after rejoining duty, the Commanding Officer issued Part-II Order sanctioning his leave. The petitioner has claimed that he was at Ambala on 18.02.2020 and on 20.02.2020 an entry was made in the official records maintained at the Battalion HQ which show that he had applied for "30 days PAL (part of



Annual Leave)”. According to the petitioner, the said entry was fraudulently and dishonestly defaced by fudging and erasing 30 and superimposing WL after A to read AWL. The forged entry reads as “AWL Major Sandeep Rana” and it is initialed/counter signed by respondent No. 11 (Col. M.A.Khan) on 20.02.2020, whereas on the said date he was not in the Battalion Headquarters and he returned only on 21.02.2020 from the Company unit at Jalogi in Distt Mandi (HP). Thereafter, the petitioner again on 01.03.2020 telephonically requested Col MA Khan for 6 days’ leave from 09.03.2020 to 14.03.2020 which was orally allowed. The petitioner had sent a written application for leave by speed post on 03.03.2020. However, petitioner claims that Col MA Khan initiated a false Initial Report by Signal dated 21.02.2020 to the higher authorities of petitioner for being “Absent Without Leave”. The petitioner had rejoined the duties on 16.03.2020, however, was not aware that respondents had proposed punitive actions against him. Though the petitioner continued to perform his duty, he was not aware that his powers of the Accounts Officer had already been taken from him. On 24.06.2020, the petitioner was extremely shocked to know that he had to face Court of Inquiry in his Battalion at Shimla on 25.06.2020. On his request, he was provided with copy of Convening Order dated 18.03.2020 on 26.06.2020 i.e. nearly 3 months after its issuance.

9. In the Convening Order, it was noted that the petitioner had to face the Court of Inquiry assembled to investigate into the circumstances in which he had absented himself on two occasions w.e.f. 18.02.2020 to 23.02.2020 (6 days) and subsequently, from 07.03.2020 to 16.03.2020 (10 days).



10. During the course of hearing, petitioner submitted that the Convening Order was without any authority of law and the Court of Inquiry initiated under Rules 177 to 186 of the Army Rules, 1954 and Paras -518 to 526 of the Regulations of the Army, 1987 and Army Order 21/2000, was without jurisdiction.

11. The petitioner has alleged that to spoil and permanently damage his promotional prospects, Col MA Khan awarded him a uniform grading of “7” grades out of 10, so that his career in the Territorial Army is adversely impacted. Further submitted that the copy of his assessment was provided to him after 3 months while he was facing Court of Inquiry. The petitioner also pleaded that he had not received any verbal or written warning/advisory/minor censure/reproof before granting grading “7”. The inquiry was conducted from 25.06.2020 till 15.07.2020 to find out the circumstances under which the petitioner had absented himself without leave w.e.f. 18.02.2020 to 23.02.2020 (6days) and subsequently from 07.03.2020 to 16.03.2020 (10 days).

12. On 21.07.2020, respondent No.10-Col H.R. Singh issued orders to transfer the petitioner on paper to another Territorial Army Unit and disembodied/removed him from his permanent employment. Vide letter dated 22.07.2020, petitioner protested to the same. However, he was relieved on 23.07.2020 without giving him any opportunity to submit his choice of posting. Upon receipt of dis-embodiment slip dated 23.07.2020, the petitioner submitted a representation protesting that he had no intention to proceed on dis-embodiment being medical category SHAPE-I. The petitioner claims that he was medically fit SHAPE-I officer and there was a



definite vacancy in 165 Infantry Battalion (Territorial Army Unit) (H&H) ASSAM and several other Territorial Army Units but in order to victimize and penalize him, he was transferred to another Territorial Army Unit and was posted to relinquish his charge. The petitioner stood embodied under Territorial Army Rule 33 with the Regular Army Unit-14 GTC vide order dated 16.10.2020 w.e.f. 10.11.2020 for “disciplinary proceedings” vide Gazette of India Part II Section 4 dated 18.09.1991.

13. A tentative charge-sheet dated 08.01.2021 under Section 39(a) of the Army Act for the alleged offence of “Absenting himself without leave” on two occasions (for 6 days and 10 days) was issued to the petitioner. The petitioner vide letter dated 06.02.2021 complained to respondent no.7 regarding submission of forged and manipulated documents against him by respondent no.11. However, no action was taken and instead on 10.02.2021, the petitioner was disembodied by respondent no.9.

14. Thereafter, petitioner preferred an OA No.662/2021 before learned Armed Force Tribunal, however, during pendency of the said appeal, he was again embodied for three months under Rule 33 of the Rules. The respondent no.1 declared the petitioner “Absent without leave” and requested Delhi Police to apprehend him. Against the aforesaid arbitrary order of respondent no.9, petitioner preferred a petition being W.P.(C) 7186/2021 before this Court. During pendency of the said petition, the petitioner was embodied for three times on 06.08.2021, 18.11.2021 and 18.02.2022 respectively.

15. Petitioner submitted that the Court of Inquiry under the provisions of Army Act, 1950 and the Army Rules, 1954, have illegally been conducted against him. The petitioner not being in active service was not attached to



any regular army unit and was employed in the services of the Territorial Army on the permanent staff under Rule 21-A and Rule 22 of the Territorial Army Rules and was hence, amenable only to the provisions of the Territorial Army Act, 1948 and Territorial Army Rules, 1948.

16. The petitioner claims that he has been illegally incarcerated only for the purpose of humiliating and harassing and the power of embodiment and dis-embodiment has been illegally misused by the respondents. Hence, the present petition deserves to be allowed.

17. On the other hand, respondents in their counter affidavit have averred that the petitioner was embodied in Territorial Army after commissioning on 01.08.2015 till 23.07.2020 as per organizational need. He was posted at 133 Infantry Battalion (TA) Ecological DOGRA and absented himself without leave w.e.f. 18.02.2020 to 23.02.2020 and again from 07.03.2020 to 16.03.2020. The Court of Inquiry was convened vide order dated 18.03.2020 to investigate the circumstances under which he absented himself on the said two occasions. The said inquiry was concluded on 15.07.2020 where he was found blameworthy for being absented without leave (AWL).

18. Learned CGSC further submitted that the Territorial Army was formed with a purpose to have force for wartime employment which is maintained at the lowest cost, during peace time. It is a 'part time' concept which aims at providing basic military training to gainfully employed citizen. Unlike regular army, it does not provide a full time career.

19. In the case of petitioner, after completion of two years' tenure on 23.07.2020 in 133 Infantry Battalion (TA) DOGRA, the petitioner was



posted to 165 Infantry Battalion (TA) (Home & Hearth) ASSAM, however, there was no vacancy for operational embodiment, so the petitioner was disembodied till there was any need. Therefore, vide signal dated 21.07.2020, petitioner was directed to proceed to 165 Infantry Battalion w.e.f. 24.07.2020 and he was to be embodied as per organizational requirement.

20. Since the petitioner had proceeded on its embodiment posting to 164 Infantry Battalion, (TA) (Home & Hearth) ASSAM w.e.f. 24.07.2020, AA Sec. 123 was invoked and he was directed to join 14 GTC, Subathu in order to join the disciplinary proceedings. He was further directed to be embodied w.e.f. 16.10.2020 and was granted three months' time for it. However, he refused to report to 14 GTC and joined only on 10.11.2020 i.e. after a delay of 15 days. The disciplinary proceedings continued and the petitioner was again directed to be embodied till 04.07.2021. The petitioner again failed to report to 14 GTC and instead filed OA No.662/2021 before the learned Armed Force Tribunal, Principal Bench, New Delhi, which was dismissed as withdrawn by the petitioner. He was again declared absent without leave vide unit letter dated 12.05.2021.

21. Learned CGSC pointed out that the petitioner had also approached this Court by filing a petition being W.P.(C) 7186/2021 wherein vide order dated 29.07.2021, he was permitted to join the Territorial Army on or before 23.08.2021 and further direction was also issued to the respondents to conclude the disciplinary proceedings by 22.09.2021.

22. During the course of hearing, attention of this Court was drawn to Para- 93 of Territorial Army Regulations, 1948 which reads as under:



“93. Failure to Report for Training or for Service- A member of the Territorial Army, who fails to attend Recruit or annual training in accordance with TA Rules 19 and 20 and whose absence has not been satisfactorily accounted for, renders himself liable to punishment under the Army Act, 1950, or under Section 10 of the Territorial Army Act, 1948 or under Territorial Army Rules 29 to 31, as the case may be. One failing to report for service when called upon to do so in accordance with Territorial Army Rule 33 will be an absentee without leave and will be liable to punishment under the Territorial Army Act, Section 10, or the Army Act, 1950. ”

23. Learned CGSC submitted that petitioner was found absent without leave on two occasions which is a grave offence and by this petition, he is trying to make unsubstantiated claim which cannot be permitted. The only rule where-under petitioner could have been embodied was Territorial Army Rule 33. It was submitted that Territorial Army is based on part-time concept and Territorial Army personnel are awarded for organisational/administrative requirement as per various Rules of Territorial Army Regulations, 1948 and they are subject to both Army Act, 1950 as well as Territorial Army Act, 1948. Learned counsel submitted that the averments made in the present petition are without any merit and this petition deserves to be dismissed.

24. To oppose the claim made by the petitioner, the counter affidavit on behalf of Col.MA Khan has also been placed on record. It is averred therein that petitioner was performing the duties as Company Commanders of B company. However, was not staying at the company location but at the Battalion headquarters. The petitioner was irregular in attending the office



and used to move out of the unit location without any permission or without informing his superiors. Many times, he was verbally counselled to adhere to discipline, but on many occasions, he showed disrespect to the uniform. The petitioner was instructed to perform official duties as mandated. He was arrogant in nature, was irregular to office house, which hampered official work and unit functioning. Col.MA Khan alleged that the funds allotted to the battalion were utilised to procure goods on Government E-Marketplace (GeM) portal, however, the petitioner was deliberately slow in noting sheets and the cheques. He was instructed to be regular, instead he would use foul language with his colleagues and subordinates.

25. Col.MA Khan in his affidavit has further alleged that on 20.02.2020, petitioner was missing from his company location. Upon inquiry, it revealed that he had left the company location on 18.02.2020 and did not return till 23.02.2020. The petitioner left the company location on 07.03.2020 without obtaining permission from the higher authorities and absenting himself without leave. Col.MA Khan has pleaded that petitioner was never forced to follow illegal orders nor he was compelled to do anything wrong. It is averred that the disciplinary action taken against the petitioner for being absent without leave is just and proper and needs no interference by this Court.

26. To rebut the arguments advanced on behalf of the respondents, petitioner reiterated that he is a full time Non-Departmental Territorial Army Officer just like Col. MA Khan. It was submitted that Col. MA Khan hardly permitted the petitioner to spend time in battalion headquarters. Petitioner was first ordered to proceed to B Company on 15.10.2019 and thereafter, on temporary duty to Ludhiana on 16.10.2019. Petitioner was thereafter



ordered to be at Chandigarh from 10-12-2019 although he was permanently stationed at B Company. To show the harassment caused by Col. MA Khan to the petitioner, it was submitted that when the petitioner was directed to move to B Company, he was not allowed to take Government vehicle nor any driver and he was directed to proceed on his own personal vehicle. From 02.12.2019 till 19.12.2019, petitioner was at the location of respondent No.4 and even though respondent No.14, to whom petitioner had to handover the charge, was on leave from 07-12-2019 till 21-12-2019 and no officer was left in the Battalion HQ, he was directed to report at B location. To further humiliate the petitioner, Col. M.A. Khan telephonically appointed Naib Sub Inspector Vijay Singh as Adjutant to run the affairs of the Battalion (HQ), without any charge being handed over to him by the petitioner. However, petitioner on the directions of Col. M.A. Khan proceeded to B company and also diligently followed further orders even though he continued to be Incharge of the Accounts Officer and was forced to stay 180 kms away from the battalion office.

27. Further, when respondent No.14 joined on 22.12.2019, Col. M.A. Khan directed him to appoint himself as Adjutant and Quarter Master of the Battalion, who took the charge w.e.f.23.12.2019, without physical handing over of the charge. So, the assertion of respondent / Col. M.A. Khan that he first asked the petitioner to hand over the charge to respondent No.14 and thereafter, asked him to report B company location in a Government vehicle is totally false.

28. To submit that petitioner never refused to go to B company, petitioner drew attention of this Court to question No.29 of the Summary of Evidence, which is as under:-



“Question 29 : On 24 January 2020 after sanctioning my request for 04 (four) days ' leave in person, you ordered me to move to “B” company immediately. Why did you still not make IC-61895A Lieutenant Colonel SK Saroj as your accounts officer with effect from 24 January 2020 while he was available at Battalion Headquarters or at “A” company location.

Ans : No comments being out of preview of tentative charges.”

29. With regard to allegation of respondents that petitioner was irregular in office, he submitted that he was given the charge of Accounts Officer on 28-11-2019; on 29-11-2019 Col. M.A. Khan was away being the Presiding Officer of the Opening and Closing Board of the answer sheets of candidates of TA Recruitment and thus, the counter signing authority was away. On 01-12-2019 the petitioner reached Ambala Cantt and on 02-12-2019, he was at the location being the member of the evaluation board of the answer sheets of the TA Recruitment candidates, and so, he was never irregular and there was no delay in signing the cheques on his behalf.

30. Petitioner submitted that he has always respected the uniform and performed his duties with dedication and devotion and it so evident from the Annual Confidential Report (ACR) dated 19-03-2020 given by respondent-Col. M.A. Khan regarding performance of the petitioner. Petitioner submitted that no warning letter ever was issued to him and so, the averments made against the petitioner are the *mala fide* intentions of respondent to spoil his image. Petitioner submitted that 30 days' annual leave application submitted by him was in the official records of the



battalion which has been overwritten as absent without leave (AWL) and if petitioner was missing from his duties, respondents have not been able to show what efforts were made to trace him or to find out his whereabouts.

31. The petitioner averred that no proof has been placed on record by the respondents to establish that a signal of Absence Without Leave was sent to the Next of Kin of the petitioner and as such provisions of Section 377 (a) (viii) of the Defence Services Regulations, 1987 were not followed by the respondents. Attention of this Court was drawn to question No.6 of Inquiry proceedings to substantiate the aforesaid. Also submitted that if at all petitioner had been absent without leave, then the appropriate course for respondents could be to have leveled charges under Army Rule 22 of the Army Act.

32. It was submitted that Col. MA Khan had misused the prescribed procedure of granting verbal sanction of leave and allowed petitioner to avail leave on verbal sanction and behind petitioner's back made a report on "*Absent Without Leave*" to harass him because he had refused to sign blank cheques as directed by him. Petitioner had drawn attention of this Court to a letter dated 23.02.2020 written by the petitioner to Col. M.A.Khan wherein he had in writing raised his grievances. However, Col. M.A.Khan got a Court of Inquiry instituted and by misusing his power and position, got the petitioner ousted from his full time service in Territorial Army.

33. The submissions presented by both the sides were heard at length and the material placed before this Court has been carefully perused.

34. The allegation against the petitioner is that he had absented himself without sanction of leave on two occasions i.e. w.e.f. 18.02.2020 to



23.02.2020 (6 days) and subsequently from 07.03.2020 to 16.03.2020 (10 days).

35. The petitioner has averred that Court of Inquiry under the provisions of Army Act, 1950 and the Army Rules, 1954 is illegal, as he was not attached to any regular Army Unit and was employed in the services of the Territorial Army on the permanent staff under Rule 21-A and Rule 22 of the Territorial Army Rules and his services are governed by Territorial Army Act, 1948 and Territorial Army Rules, 1948.

36. Petitioner is aggrieved that the inquiry proceedings have been initiated against him to stall his future prospects and harass him. Petitioner is also aggrieved that on 21.07.2020 he was disembodied and was relieved on 23.07.2020, despite there-being a definite vacancy in 165 Infantry Battalion (Territorial Army Unit). However, he was again embodied w.e.f. 10.11.2020 with the Regular Army Unit-14 GTC, under Territorial Army Rule 33, in terms of Gazette of India Part II Section 4 dated 18.09.1991 for disciplinary proceedings conducted under the provisions of Army Act, 1950 and the Army Rules, 1954. Petitioner is aggrieved that being in the employment of Territorial Army, his services were governed under Rule 21-A and Rule 22 of the Territorial Army Rules, 1948 and Territorial Army Act, 1948.

37. The stand of respondents is that the services of Territorial Army personnel are governed by Territorial Army Regulations, 1948 and they are subject to both Army Act, 1950 as well as Territorial Army Act, 1948 and petitioner had absented himself without sanction of leave, against which disciplinary action was initiated and a Court of Inquiry was conducted, wherein he was found guilty.



38. The Hon'ble Supreme Court in *Santosh Devi Vs. Union of India*, (2016) 13 SCC has drawn a very fine distinction between Territorial Army Rules and Indian Army Act, observing as under:-

“7. The distinctive features of Territorial Army and Regular Army are significant in the present case. As per Army Order No. 77/1984, the Territorial Army is a part of the regular Indian Army. The role of Territorial Army is to relieve the Regular Army from static duties, assist civil administration in dealing with natural calamities and maintenance of essential services in situations where life of the communities is affected or the security of the country is threatened, and to provide units for the Regular Army as and when required. As explicit in the Statement of Objects and Reasons of the Territorial Army Act, 1948, the role of the Territorial Army is:

- (a) to provide a second line to and a source of reinforcement for the Regular Army;*
- (b) to assist in internal defence duties in a national emergency;*
- (c) to be responsible for anti-aircraft and coastal defence; and*
- (d) to give the youth of India an opportunity of training themselves to defend their country.*

8. Section 4 of the Act provides that the personnel of the Territorial Army comprise of two classes— (a) officers, and (b) enrolled persons. As per Section 6, any person who is a citizen of India may offer himself for enrolment and may, if he satisfies the prescribed conditions, be enrolled for such period



and subject to such conditions as may be prescribed. According to Section 6-A, every person employed under the Government in a public utility service who is between the age group of 20-40 years, subject to other provisions and rules, is liable, when so required, to perform service under the Territorial Army. Section 7 provides for liability for military service. Section 7-A casts a duty on every employer by whom a person who is required to perform military service under Section 7 was employed, to reinstate him in his employment on termination of military service in an occupation and under conditions not less favourable than those which would have been applicable to him at his employment. As per Section 9, every officer while rendering service as such officer and every enrolled person when called out, or embodied, or attached to the Regular Army shall, subject to suitable adaptation, be subject to the provisions of the Army Act and the Rules or Regulations made thereunder. In terms of Section 14(2)(b) of the Territorial Army Act, the Central Government is empowered to make rules prescribing the manner in which, the period for which, and the conditions subject to which any person may be enrolled under the Act or may be required to perform compulsory service in the Territorial Army.

9. The terms and conditions of service of personnel belonging to the regular Indian Army and the personnel belonging to Territorial Army are governed by two different Acts. The former is governed by the Army Act, 1950 while the latter is governed by the Territorial Army Act, 1948. It is implicit in Section 9 of the Territorial Army Act that



when the person enrolled in the Territorial Army is not called out during that period of disembodied state, he is not subjected to the provisions of the Army Act. It is thus clear from the statutory scheme that a fine distinction is made between Regular Army personnel and personnel enrolled in Territorial Army. Further distinction has to be made between the Territorial Army personnel who are embodied and those who are in disembodied state. It is only when the Territorial Army personnel get embodied, which means that when they are called out or attached to any portion of the Regular Army for active duty, that the provisions of the Army Act, 1950 are applied to the Territorial Army personnel. When the Territorial Army personnel are in a disembodied state i.e. when they are not called out or attached to any portion of the Regular Army for active duty, then the Territorial Army Act, 1948 governs the service conditions and this is the statutory scheme.”

39. The first and foremost question for consideration and determination by this Court is as to whether having been employed in the Territorial Army, petitioner's services shall be governed by the Territorial Army Act, and Rules, 1948 and as to whether, the Court of Inquiry under the provisions of Army Act, 1950 and the Army Rules, 1954 is arbitrary or legal?

40. At this juncture, it is relevant to note provisions of Section 9 of the Army Act, 1950, which read as under:-

“9. Application of the Army Act, 1950

(1) Every officer, when doing duty as such officer, and every enrolled person when called out or embodied or attached to the Regular Army shall



subject to such adaptations and modifications as may be made therein by the Central Government by notification in the Official Gazette, be subject to the provisions of the Army Act, 1950 and the rules or regulations made thereunder in the same manner and to the same extent as if such officer or enrolled person held the same rank in the Regular Army as he holds for the time being in the Territorial Army.

(2) When an offence punishable under the Army Act, 1950 (46 of 1950) has been committed by any person whilst subject to that Act under the provisions of sub-section (1) such person may be taken into and kept in military custody and tried and punished for such offence as aforesaid in like manner as he might have been taken into and kept in military custody, tried and punished if he had continued to be so subject."

41. Afore-noted provisions of Section 9 of the Army Act, 1950 mandates that the provisions of Army Act shall apply to a person who is attached to the Regular Army. There is no dispute to the position that petitioner, an ex-serviceman of Regular Army, was selected for services of Territorial Army on the rank of Lieutenant on 16.07.2015 and since he had three years' experience of previous Service Commission, he was granted ante dated seniority from 02.06.2010. On 22.06.2018 he was embodied as permanent staff of Territorial Army; promoted to the rank of Major on 23.10.2018 and posted in 133 Infantry battalion (TA) ECO DOGRA as Company Commander.

42. On the aspect of embodiment in Territorial Army, the provisions of Section 21A and 22 the Act read as under:-



“21-A. Service on the permanent staff. - (a)
Every enrolled person who volunteers with the written consent of his employers, if any, for employment on the permanent staff of a Territorial Army unit, may, if found suitable by the Commanding Officer of the, unit, be embodied under the orders of the Officer Commanding the Area in which the unit is located, for such period as he is required to fill a vacancy on the permanent staff of the unit.

(b) Every officer who volunteers with the written consent of his employer, if any, for employment on the permanent staff of a Territorial Army unit, may, if found suitable, be embodied under the orders of the Director, Territorial Army, for such period as he is required to fill a vacancy on the permanent staff of that unit or of any other unit of the Territorial Army to which he may be transferred with his consent.

22. Embodiment. - For the purposes of [clause (a) of rule 19] rule 20, rule 21 and rule 21A a person shall be deemed to be embodied with effect from the date specified for such embodiment in the order issued under the authority of the Officer Commanding the Area in which the unit is located. [or the Director, Territorial Army, as the case may be.]

43. The afore-noted Section 22 of the Act mandates that a person is deemed to be embodied in a unit, as and when an order is issued under the authority of the Officer Commanding the area. No doubt, having been employed under the Territorial Army, the petitioner’s services are governed by Territorial Army Act and Rules, 1948. Section 9 of the Territorial Army



Act, 1948 mandates that if a person employed in Territorial Army, is not called out during the period of disembodiment state, he cannot be subjected to the Army Act.

44. In the present case, in order to bring the case of petitioner within the ambit of Army Act, 1950, he was required to be disembodied from the services of Territorial Army. It is required to be seen under what circumstances petitioner was disembodied from the services of Territorial Army even though his services were governed by the Territorial Army Act and Rules.

45. The case of petitioner is that on 14.10.2019, he was directed to reach B Coy, by undertaking 10 hours journey and was not provided the Government vehicle. On the very next day itself i.e. on 15.10.2019, he was directed to proceed to report to Sikhli, Ludhiana as a temporary duty member in Territorial Army Recruitment Rally. In November, 2019 petitioner was appointed as Accounts Officer, even though in December, 2019 he was directed to report at Chandigarh for evaluation of answer sheets and he was permanently stationed at B Company, which is 180 kms away from unit Head Quarters, still he was continued to be Incharge of accounts of the Unit.

46. The allegation against the petitioner is that he intentionally delayed signing of the noting sheets and cheques due to his arrogant nature and by being irregular to his office hours, whereas the plea of petitioner is that being stationed at B Company he could not manage to appropriately hold the accounts of the office and also, he was being pressurized to sign blank cheques. The petitioner has also pleaded that from 02.12.2019 till



19.12.2019, he was at the location of respondent No.4 and even though respondent No.14, to whom petitioner had to handover the charge, was on leave from 07-12-2019 till 21-12-2019, however, the petitioner was forced to join B Company location without handing over charge of accounts. It does not appeal to this Court as to why respondent No.14 upon resuming his duties on 22.12.2019 was asked by Col. M.A. Khan to appoint himself as Adjutant and Quarter Master of the Battalion and take over the charge of accounts w.e.f.23.12.2019, even though there was no physical handing over of the charge by the petitioner.

47. The plea put-forth by petitioner for absenting himself without sanction of leave on two occasions i.e. w.e.f. 18.02.2020 to 23.02.2020 (6 days) and subsequently from 07.03.2020 to 16.03.2020 (10 days), is that on 11.02.2020, his wife was in the advance stage of pregnancy and was facing serious health problems and also, since the printed leave application format was not available in the forest location of Battalion 'B', he had submitted his hand written application for grant of one month's leave. However, he was informed and granted one week's leave by Col.M.A. Khan on 13.02.2020. According to petitioner, on 16.02.2020 and 17.02.2020, he was at the place of his posting and Col. M.A.Khan told him that he was granted one week's leave and he could join on 23.02.2020. The petitioner has averred that he had applied for 30 days PAL (part of annual leave) which was duly entered in the official records, whereas the entry was later fraudulently read as AWL (absent without leave) on 20.02.2020, though Col. Khan was not in the company unit as on the said date and returned only on 21.02.2020. The petitioner has also averred that on 01.03.2020 he had



telephonically requested for six days leave from 09.03.2020 to 14.03.2020 and had also sent leave by speed post on 03.03.2020. The petitioner claims to have joined office on 16.03.2020.

48. The petitioner has averred that he had sought verbal sanction from Col. M.A. Khan every time he proceeded on leave, which process was adopted by Col. M.A. Khan for sanctioning the leave and after joining, his leaves used to be sanctioned by Col. MA. Khan by issuing Part-II Sanction order. However, vide Signal dated 21.02.2020, Col. M.A. Khan, informed the higher authorities with regard to petitioner being absent without leave.

49. On 12.03.2020, disciplinary proceedings were initiated against the petitioner and a Court of Inquiry under Rules 177 to 186 of the Army Rules, 1954 and Paras -518 to 526 of the Regulations of the Army, 1987 and Army Order 21/2000 was initiated against the petitioner.

50. With regard to proceeding on leave w.e.f. 18.02.2020 to 23.02.2020, the petitioner has placed on record a copy of his application dated 03.03.2020 to show that he had applied for leave from 9th to 14th March, 2020 as casual leave with 8th and 15th as prefix and suffix being holidays. The said leave send by speed post was received by Sepoy Ajay Kumar of the 133 Infantry Battalion on 09.03.2020. It cannot therefore be said that petitioner had proceeded on leave from 07.03.2020 to 16.03.2020 without intimating his authorities. The petitioner was disembodied from his employment vide order dated 21.07.2020, though he protested to the same vide his letter dated 22.07.2020. However, with anintent to proceed with disciplinary proceedings, petitioner was temporarily embodied on 16.10.2020. The disciplinary proceedings were initiated against him under



the Army Act, 1950.

51. It is important to note that Section 9 of the Territorial Army Act, 1948 mandates that if a person employed in Territorial Army, is not called out during the period of disembodiment state, he cannot be subjected to the Army Act. Meaning threreby, if a personnel of Territorial Army is embodied or attached to any unit of Regular Army for active duty, the provisions of Army Act, 1950 should apply. Hence, in the considered opinion of this Court, petitioner could not have been subjected to the disciplinary proceedings under the Army Act.

52. On the aspect of disembodiment of the petitioner, this Court finds that it is not the case of respondents that there was no vacancy and so, petitioner was disembodied. The respondents vide letter dated 23.07.2020 have embodied 10 personnel in different battalions and therefore, disembodiment of petitioner due to non-availability of vacancy cannot be accepted. Also, it is not the case of respondents that petitioner is physically unfit to perform his duties.

53. In the light of the provisions of relevant Acts and Rules discussed above, this Court finds that not only the disciplinary proceedings against the petitioner have been initiated under inappropriate provisions of law but also smells foul and *mala fide* against the petitioner.

54. On the allegation that petitioner intentionally delayed signing of the noting sheets and cheques due to his arrogant nature, it is worthwhile to note question No.29 put to the Col. M.A. Khan and its reply by him, in the Summary Evidence, which reads as under:-



“Question 29: *On 24 January 2020 after sanctioning my request for 04 (four) days 'leave in person, you ordered me to move to 'B' company immediately. Why did you still not make IC-61895A Lieutenant Colonel SK Saroj as your accounts officer with effect from 24 January 2020 while he was available at Battalion Headquarters or at 'A' company location.*

Ans : *No comments being out of preview of tentative charges.”*

55. In another question No.220, it was put to Col. M.A. Khan as to whether any warning was ever issued to petitioner, to which he replied in the negative. Also when the Court asked Col. M.A. Khan why no counseling of the officer was done, he replied that it was due to his busy schedule.

56. To counter the claims of the respondents that petitioner had without information proceeded on leave, the prosecution Witness no. 1 – Subedar Ratan Singh, during the Summary of Evidence has stated that he was informed by the petitioner that he is proceeding on 07 days’s leave and he in turn had informed Col. M.A.Khan about petitioner’s proceeding on leave.

57. In response to question No.6, omitting the signal dated 21.02.2021 vide which wife of the petitioner, who is his next kin, was not informed about initiation of inquiry proceedings, it is admitted by the respondents that *“it was a procedural lapse and error”*.

58. With regard to aforesaid questions and errors pleaded in the present petition, the respondents in their counter affidavits have mechanically repeated their allegations against the petitioner and stated it is a matter of record, without exactly throwing any light on their reasons for such replies.

59. With regard to work conduct of the petitioner, the Company Havildar



Major (CHM) Sandeep Kumar, in his statement during the disciplinary proceedings, has categorically applauded the work of petitioner specifically stating that he never resorted to illegal practice and worked hard to raise the standard and morale of the troops. Even in the ACR report dated 19.03.2020 of the petitioner, Col. M.A.Khan has mentioned that petitioner has given a high work performance and there is no complaint regarding discipline and there is no mention of "Absent without leave". The remarks in the ACR of petitioner are written as under:-

"Maj. Sandeep Rana is a tall, smart, well-built officer with interesting personality. He is a meticulous, diligent and mature officer. He is level headed and arrives at a most suitable solution even under adverse situations.

As a Coy Cdr of a Ecological Territorial Army unit, he accomplished the assigned task in a professional manner. The officer is enterprising confident and adventurous.

Maj Sandeep Rana is happily married and leads a socially happy and dignified life. "

60. Even after giving such wonderful remarks in Coloumn 11 under Pen picture by IO, RO and SRO in the ACR of the petitioner, Col. M.A. Khan in Part ii- Basic Assessment has given only 07 marks out of 10 to petitioner.

61. It is trite to note that despite there-being serious lacunae in the prosecution case, petitioner was held guilty and terminated from his services as an outcome of the inquiry.

62. Recently, this Court in ***Nasimuddin Ansari Vs. Union of India & Ors.*** 2023 SCC OnLine Del 4623 dealt with a case wherein pursuant to a



Court of Inquiry, the petitioner was imposed penalty of reduction to a lower stage in the time-scale of pay by three stages for a period of one year with further direction that he shall not earn increment of pay during the period, though reduction shall not have a future effect of postponing his increments; this Court held that the Disciplinary Authority therein, was not bound to accept the findings of the Inquiry Report, which was premised upon no evidence against the petitioner therein. This Court held that finding of misconduct has to be based upon some evidence. In the facts of the said case, this Bench set aside the major penalty imposed upon the petitioner observing as under:-

“100. As already discussed above, the petitioner was not found responsible for the irregularities in the recruitment process in the two stages of Departmental Enquiry conducted against him. Respondent's insistence to put a Disagreement Note despite the findings of charges “not proved” by Inquiry Reports, only reflects the predetermined mind and mala fide of the respondents to impose penalty. The significance of transparency and reasonableness in adjudicatory process by the Disciplinary Authority can never be over emphasised in Disciplinary matters on which the entire career of an officer is dependant. Any wrong decision not only brings disrepute but also dampens the zeal to work with honesty. The competency in any Department can be inculcated only by appreciation of good work and severe action against the delinquent officers. The Respondents being the appointing Authority and responsible for the entire disciplined force, cannot be expected to work in such an arbitrary and non transparent manner. The penalty imposed by the respondents is not sustainable.



101. I agree with the judgment written by my esteemed colleague, Ms. Neena Bansal Krishna, J. The present case is a glaring example of victimizing the petitioner maliciously, malafidely and with a predetermined mind. We are conscious of the settled law of the Hon'ble Supreme Court in the case of State of Karnataka v. Umesh (supra) that in exercise of Judicial Review, Court must restrict itself to determine whether the Rules of natural justice have been complied with. It is not in dispute that the Disciplinary Authority is not bound to accept the findings of Inquiry Report and can form its independent opinion, but this can be done only on justifiable grounds and not in a whimsical, capricious, arbitrary, mala fide manner and on non-existent grounds.

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103. Every action of the Authority should be based on reasonable grounds and that too without any personal grudge, bias and vindictiveness. Whereas in the present case, the Disciplinary Authority has crossed all limits. In such like cases, the courts should not spare officers who take decisions as taken against the petitioner herein. Due to such disparaging action vide Disagreement Note dated 11.07.2017 and Disciplinary Order dated 26.10.2017, the Disciplinary Authority not only made the petitioner defend himself for half a decade before the respondents but also litigate before this Court as well, for another prolonged period of half a decade. Such Officers of the Disciplinary Authority cannot be spared, as any wrong decision not only brings disrepute to the Department but also dampens the zeal of the officers to work with honesty.”



63. While taking serious note of *mala fide* on the part of respondents, this Court in *Nasimuddin Ansari (Supra)* took a stringent view and held as under:-

“104. In view of above discussion, the respondents cannot escape their accountability with impunity as such conduct calls for strict action. The interest of justice would be met if we compensate the petitioner herein for the suffering anxiety and mental agony; monetary expenditure incurred and energy spent to get his due promotion and consequential benefits thereto after a long battle of litigation, which he was otherwise entitled to.

105. Accordingly, we direct the respondents to pay the costs for an amount of Rs. 5,00,000/- (Rupees Five Lakhs only) in favour of the petitioner within four weeks of passing of this judgment. However, the Department should not be made to suffer for the deliberate dereliction of duty by an Officer. Therefore, the costs shall be paid by the Department in the first instance, but it shall be entitled to recover the same equally from the erring officers who had written the Disagreement Note dated 11.07.2017 and the Disciplinary Order dated 26.10.2017.”

64. The present case is similar to the above mentioned case where this Court is constrained to observe that Col. M.A. Khan has acted in an arbitrary and *mala fide* manner with a predetermined mind to harass the petitioner and if such an Officer is not put to task; other officers having such mind will continue to pass any type of arbitrary orders, which would kill the talent and morale of the good Officers. We highly deprecate such type of practice in any department.



65. Accordingly, the present petition is allowed and the order dated 21.07.2020 passed by the respondents is hereby set aside. Petitioner is directed to be embodied into the services of Territorial Army forthwith, with consequential benefits, however, with arrears of 50% backwages. The respondents are directed to issue necessary order to this effect within four weeks. Though the distress of trial and financial loss suffered by the petitioner cannot be compensated in monetary terms, however, for their arbitrary and unjust action, respondents are directed to pay amount of Rs.1,00,000/- to recompense the petitioner, which respondents may recover from Col. M.A.Khan.

66. With directions as aforesaid, the present petition and pending applications are accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 11, 2023

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