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

% Date of decision: 11th December, 2023

+ **W.P.(C) 15842/2023**

LT COL RAJPAL SINGH

..... Petitioner

versus

UNION OF INDIA AND OTHERS

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Dr. Abhay Kant Upadhyay with
Mr. Madan Lal Vats and Ms. Ankit
Sharma, Advocates.

For the Respondents: Mr. Harish Vaidyanathan Shankar,
CGSC for UOI with Mr. Srish Kumar
Mishra, Mr. Alexander Mathai
Paikaday, Mr. Krishnan V.,
Advocates.

Mr. Major Partho Katyayan,
Mr. Aakash Meena, GP.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL.63787/2023 (exemption)

Exemption allowed subject to all just exceptions.



W.P.(C) 15842/2023 & CM APPL.63786/2023 (stay)

1. Petitioner impugns order dated 10.11.2023 of the Armed Forces Tribunal, Principal Bench whereby the Original Application filed by the petitioner has been disposed of granting liberty to the petitioner to raise the grounds at the stage when the Court Martial is held or before the Competent Authority after Summary of Evidence is recorded.
2. A complaint was received against the petitioner from a colleague to the effect that the petitioner had defrauded him of approximately Rs.28 lakhs by luring him to invest in a private company and further a demand of Rs.2 lakhs was made to influence a Selection Board constituted for the grant of permanent commission to the said officer.
3. The disciplinary proceedings were initiated by convening a Court of Inquiry. The Tribunal has noticed in the order the allegations that were raised against the petitioner and the same are reproduced herein for the purpose of completion.

- “a. While serving with 20 RAJ RIF wef 10 Sep 17 to 03 Feb 18, the Applicant persuaded and lure him to invest in a private company, ‘Rich Hands Pictures Ltd’.*
- b. The Applicant coerced him to invest a total sum of Rs.28,60,000/-*
- c. The Applicant promptly assured of regular returns on regular scheduled dates of the scheme.*
- d. The Applicant charged 10% of the returns as taxation and commission charges.*



- e. *Applicant offered to influence the grant of permanent commission to him.*
 - f. *The Applicant asked him to pay Rs.2,00,000/- to be paid to Chairman of Permanent Commission Interview board. The Applicant has been involved in cheating and money laundering even in past.”*
4. The Court of Inquiry indicated a *prima facie* case against the petitioner. Post the Court of Inquiry, Summary of Evidence was directed to be recorded, which we are informed is underway. As per the petitioner, the Summary of Evidence was concluded and no incriminating material was found against the petitioner. However, there was a direction for additional Summary of Evidence, which is underway.
5. Contention of the petitioner is that the proceedings are barred by limitation as prescribed under Section 122 of the Army Act, 1950. He submits that there is a prohibition in conduct of any disciplinary proceedings after expiration of the period of 3 years from the date of the alleged offence. He submits that since the offence alleged is stated to have been committed in the year 2017 – 2018, the disciplinary proceedings against the petitioner are time-barred.
6. Reference may be had to Section 122 of the Army Act, 1950(hereinafter referred to as the Act), which reads as under:-

“122. Period of limitation for trial.—(1) Except as provided by sub-section (2), no trial by court-martial of any person subject to this Act for any offence shall be commenced after the expiration of a period of three years [and such period



shall commence,—

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to the authority competent to initiate action, the first day on which such offence comes to the knowledge of such person or authority, whichever is earlier; or

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the authority competent to initiate action, whichever is earlier.]

(2) The provisions of sub-section (1) shall not apply to a trial for an offence of desertion or fraudulent enrolment or for any of the offences mentioned in section 37.

(3) In the computation of the period of time mentioned in sub-section (1), any time spent by such person as a prisoner of war, or in enemy territory, or in evading arrest after the commission of the offence, shall be excluded.

(4) No trial for an offence of desertion other than desertion on active service or of fraudulent enrolment shall be commenced if the person in question, not being an officer, has subsequently to the commission of the offence, served continuously in an exemplary manner for not less than three years with any portion of the regular Army”

7. Section 122 of the Act prescribes a period of limitation for trial and prescribes that no trial by Court Martial shall be commenced after the expiration of a period of 3 years. The period of 3 years would commence from the date as mentioned in the said Section.

8. We may note that prohibition under Section 122 of the Act is with regard to the trial by Court Martial. It is an admitted case that as



on date there is no decision by the Competent Authority to try the petitioner by Court Martial and the proceedings are only at the stage of Summary of Evidence which is a stage prior to the Competent Authority deciding to try any person by Court Martial.

9. We may further note that the Tribunal has also recorded that the disciplinary proceedings are at a preliminary stage and the Competent Authority is yet to decide as to whether the Court Martial is to be held or not. The Tribunal has further noticed that at the stage of conduct of Court Martial, petitioner would have liberty to raise pleas of the bar of limitation as well as other objections and the same can be dealt with at that stage by the Competent Authority. Accordingly, the Tribunal has disposed of the petition granting liberty to the petitioner to raise the said plea at the stage when the Court Martial is held or before the Competent Authority after the Summary of Evidence is recorded.

10. We are of the view that the Tribunal has not committed any error in disposing of the petition while reserving liberty of the petitioner to raise such plea at an appropriate stage.

11. Reliance placed by learned counsel for the petitioner on the judgment of the Supreme Court in Civil Appeal No.8968/2019 titled *Col. Anil Kumar Gupta vs. Union of India & Ors.* dated 07.11.2022 is misplaced for the reason that the said petition was filed at a stage when a convening order for trial of the appellant therein by Court Martial had already been issued.

12. As noticed hereinabove, in the present case, the stage has not



yet reached for passing of convening order.

13. In any event, the Tribunal has permitted the petitioner to raise the said objection of limitation at the stage when the Competent Authority is taking a decision as to whether the petitioner is to be tried by Court Martial or not. Further, we may note that in *Col. Anil Kumar Gupta* (supra), the Supreme Court has though quashed the Court Martial, however, has permitted the authorities to continue to proceed with the disciplinary proceedings initiated against the petitioner. We may note that even if the trial by Court Martial may have become time-barred, the same would not preclude the respondents from taking appropriate disciplinary action, if so warranted, in accordance with law.

14. In view of the above, we find no merit in the petition. The petition is, accordingly, dismissed.

SANJEEV SACHDEVA, J

MANOJ JAIN, J

DECEMBER 11, 2023
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