

**COURT NO. 2, ARMED FORCES TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**  
**(Through Virtual Hearing)**

**OA 1135/2019 with MA 2049/2021**

**Brig S K Gupta (Retd)**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant** : Shri Ajit Kakkar, Advocate with  
 Shri Rajiv Manglik, Advocate

**For Respondents** : Gp Capt Karan Singh Bhati, Sr. CGSC

**CORAM :**

**HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)**

**HON'BLE LT. GEN. BOBBY CHERIAN MATHEWS, MEMBER (A)**

**ORDER**

The Applicant has invoked the jurisdiction of Armed Forces Tribunal under Section 14 of Armed Forces Tribunal Act 2007 claiming the following reliefs:-

- (a) To set aside the Order of invocation of Section 123 of Army Act 1950 in case of Applicant vide letter of IHQ of MOD (Army) dated 28.06.2019 and letter dated 05.07.2019.
- (b) To set aside order of attachment of Applicant to AMC Centre.
- (c) To set aside the Tentative Charge Sheet served upon to Applicant on 15.07.2019 being time barred.
- (d) To direct the Respondents to call the Applicant when absolutely necessary.
- (e) To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper.

2. It is the case of the Applicant that he was posted as Commandant at Base Hospital, Lucknow on 26<sup>th</sup> August 2015. An anonymous letter dated 14<sup>th</sup> June 2016 which was undated and signed under a company name of "Sri Sai Agencies Delhi" was received by him which alleged that certain items of medical stores not authorized to Base Hospital Lucknow and meant for use for Vascular and Cardiac Centres have been issued by AFMSD Lucknow to Base Hospital under 2 issue vouchers. The letter also

suggested that the writer of the undated letter met the then Commandant 6 months back to apprise him of this fact. Since the letter contained verifiable facts, the Applicant decided to get it checked if such vouchers actually existed. Once this was confirmed, he ordered a One Man Inquiry on 15<sup>th</sup> June 2016 to ascertain the verifiable facts.

3. After receipt of report of One Man Inquiry (OMI), the Applicant reported to higher authorities including MG Medical UB Area, MG Medical Central Command and GOC MUPSA. Based on the finding of OMI, the HQ MUPSA Lucknow ordered a Staff Court of Inquiry on 23<sup>rd</sup> June 2016. The Applicant later learnt that this Court of Inquiry was set aside. The Applicant was posted out of Base Hospital to HQ DGBR Delhi as DDG Medical as routine posting. A fresh Court of Inquiry was held in September 2017 in which the Applicant was one of the witnesses. Statement of Applicant was recorded and Section 180 was applied because the Medical Store Incharge Lady Officer cited the anonymous letter to allege that the alleged writer of the letter had met the Applicant who was the Commandant.

4. During the pendency of the Court of Inquiry and while posted at New Delhi, the Applicant on 29<sup>th</sup> January 2018 applied for premature retirement which was approved on 13<sup>th</sup> August 2018 and the Applicant retired on 15<sup>th</sup> October 2018. He was summoned again as witness as a retired officer and informed that due to improper procedure followed while applying Rule 180 of Army Rules on many witnesses in the Court of Inquiry, he was called again. Neither he cross-examined anyone nor was he cross-examined by anybody.

5. On 8<sup>th</sup> July 2019, the Applicant was delivered a letter dated 5<sup>th</sup> July 2019 at his work place invoking Section 123 of Army Act 1950. The Applicant replied to the said letter on 9<sup>th</sup> July 2019 by speed post but no reply was received. The Applicant reported to AMC Centre on 15<sup>th</sup> July 2019. After reaching AMC Centre on 15<sup>th</sup> July 2019, a Tentative Charge Sheet was served to him consisting of six charges, all framed under



Section 63 of Army Act 1950. The Applicant objected to the charges but a Summary of Evidence (SOE) was ordered.

6. It is the case of the Applicant that the charges framed against him are time barred under Section 122 of the Army Act. As per the claim in the charge sheet, the commission of offence came to the knowledge of the authorities on 31<sup>st</sup> May 2018.

7. As per Section 122, after the expiration of a period of 3 years from the date of such offence, no proceedings can be commenced and therefore, the case is already time barred and the trial has not even started. As such, the present OA was filed.

8. In the counter affidavit it is alleged that a case of irregularity in procurement of unauthorized stores in Base Hospital, Lucknow came to light via a pseudonymous complaint which was received on 14<sup>th</sup> June 2016 in the office of the Applicant Brigadier SK Gupta, Commandant, Base Hospital, Lucknow alleging that misappropriation of Medical Store is in progress. Based on the complaint, a One Man Inquiry was ordered by the Commandant and medical stores related to Cardiac and Vascular Surgery worth 1.37 crore were confiscated.

9. Cardiac and Vascular Surgeries are not being performed in any hospital in the entire Central or Eastern Command. Armed Forces Medical Stores Depot Lucknow, however items used in these super speciality surgeries were procured and issued to some hospitals and these items were charged off and disposed off by Base Hospital Lucknow. In the year 2015, these imported items worth Crores of rupees, related to cardiac and vascular surgery were supplied by Armed Forces Medical Stores Depot, Lucknow to the Base Hospital Lucknow which did not have the surgical facilities.

10. Inquiry revealed that a huge fraud has been committed worth crores of rupees, with the active connivance of staff at Armed Forces Medical Stores Depot Lucknow, Base Hospital Lucknow and the vendor,

concerning procurement, supply and disposal of unauthorized items of cardiac and vascular surgeries.

11. The Applicant, who performed the duties of Commandant, Base Hospital, Lucknow from 26<sup>th</sup> August 2015 to 30<sup>th</sup> January 2017 has been found blameworthy by the Court of Inquiry for lack of supervision.

12. During the pendency of Court of Inquiry and while posted at New Delhi, the Applicant, on 29<sup>th</sup> January 2018 put up his papers for premature retirement citing personal reasons and he was thus prematurely retired at his own request on 15<sup>th</sup> October 2018. As the Applicant had retired, Section 123 of the Army Act 1950 was invoked. He reported to the Headquarters Army Hospital Corps, Centre & College Lucknow on 15<sup>th</sup> July 2019 wherein he was served with Tentative Charge Sheet consisting of six charges.

13. After hearing of charges, the evidence was ordered to be reduced into writing. As a consequence, the recording of Summary of Evidence was in progress which is attempted to be delayed/stalled by the Applicant by filing this OA. It was denied that the action is hit by Section 122 or 123 of the Army Act.

14. It is further alleged that 31<sup>st</sup> May 2018 is the first day on which the commission of offence by the Applicant came to the knowledge of the General Officer Commanding, Uttar Bharat Area who is the competent authority to initiate action, which falls under the provision of Sub Section 1(b) of Section 122 of Army Act 1950. The said date is also the first day on which the identity of the Applicant came to be known to the General Officer Commanding, Uttar Bharat Area who is the competent authority to initiate action, which falls under the provision of Sub Section 1(c) of Section 122 of Army Act 1950. Keeping these provisions in mind, invoking Army Act, Section 123 against the Applicant is reasonable, justified and legal.

15. It is submitted that there is no merit in the OA, same is liable to be dismissed.



16. We have heard Shri Rajiv Manglik, Learned Counsel arguing for the Applicant and Shri K.S. Bhati, Learned Sr. CGSC for the Respondents and have carefully perused the available records.

17. Learned Counsel for the Applicant submits that although challenge was laid to the invocation of Section 122 and 123 of the Army Act 1950 in the OA on various grounds, however, taking the first day on which the commission of offence came to the knowledge of the General Officer Commanding, Uttar Bharat Area, competent authority to initiate action as 31.05.2018, now, the proceedings have become time barred and the Applicant is not subject to the jurisdiction of Army Act and therefore, the proceedings are liable to be quashed.

18. Learned Counsel for the Respondents, on the other hand, refers to the conduct of the Applicant for submitting that an application for stay of the disciplinary proceedings and stay on the notice of attachment vide RVC Centre and College letter No. 128/8/HQ (PC) dated 31<sup>st</sup> December 2021 and vide MA 05/2022 was moved by the Applicant which was disposed off with the directions to take all these pleas before the Court Martial. However, instead of reporting before the Court Martial, the Applicant is avoiding the process and look out notice has been issued against him and therefore the Applicant is not entitled to any relief. Number of accused are involved in this scam and Court Martial proceedings have been initiated against them. Various other submissions were also made by Learned Counsels for the parties which were extensively dealt with in detail while disposing of MA No. 05/2022 and therefore, it will be in fitness of things to give a brief detail of MA No. 05/2022 filed by the Applicant for stay of the attachment order and disciplinary proceedings.

19. During the pendency of the present OA, since the disciplinary proceedings against the Applicant had started, the Applicant moved MA 05/2022 seeking the aforesaid reliefs. At that time, Mr. Ajit Kakkar, Learned Counsel for the Applicant submitted that the Respondents issued

a Tentative Charge Sheet dated 15<sup>th</sup> July 2019 stating that Certain Omissions Prejudicial to Good Order and Military Discipline cognizable under the Army Act 1950 came to the knowledge of the authority competent to initiate action on 31<sup>st</sup> May 2018. The Applicant retired on 15<sup>th</sup> October 2018. There was no disciplinary case declared or pending against him while in service. Hence, Clause (a) & (b) could not be invoked under Section 123 of the Army Act against him. As per the Tentative Charge Sheet dated 15<sup>th</sup> July 2019, charges against him came to the notice of the competent authority on 31<sup>st</sup> May 2018. Hence, Clause (c) also cannot be the basis for invoking Section 123 in his case. It was further submitted that proceedings have already become time-barred under Section 122(1)(b) and (c) of Army Act on 31<sup>st</sup> May 2021. Therefore, disciplinary proceedings were liable to be stayed.

20. It was not disputed by Learned Counsel for the Respondents that the period prescribed under Section 123 of the Army Act is 3 years and the commission of offence came to the knowledge of the General Officer Commanding, competent to initiate action under sub Section 1(b) of Section 122 of the Army Act 1950 on 31<sup>st</sup> May 2018. Under normal circumstances, the proceedings which can be initiated within 3 years came to an end on 31<sup>st</sup> May 2021. However, Learned Senior Counsel relied upon various orders passed by Hon'ble Supreme Court from time to time for excluding the period from 15<sup>th</sup> March 2020 till 28<sup>th</sup> February 2022 due to ongoing pandemic Covid-19 and resultant difficulties faced by the litigants across the country. It was submitted that if this period is excluded then the proceedings were within time. Reliance was also placed on the order dated 12<sup>th</sup> November 2021 passed by AFT, Regional Bench at Lucknow in OA 782/2020 titled **Col. Soumen Kar (Retd.) vs. Union of India & Ors.** where the Lucknow Bench had rejected the plea of co-accused that the proceedings have become time barred under Section 123 of the Army Act.



21. This submission was opposed by Counsel for the Applicant by relying upon certain judgments and after dealing in great detail, the Tribunal vide order dated 18<sup>th</sup> January 2022 disposed off the MA observing as under:-

***"20. Last but not the least, since disciplinary proceedings are going to start against the applicant, it will be open to the applicant to raise all such plea before the Competent Authority and in case such a plea is raised by the applicant, the General Court Martial would decide the plea unaffected by any observation made in this order as the present order is simply being passed on the submissions made by the applicant for stay of the disciplinary proceedings and we are not making any comment on whether the period from 15.03.2020 to 28.02.2022 can be excluded for computation of the period of three years for initiating proceedings against the applicant or are not tenable or time-barred as alleged by the applicant under Section 122/123 of the Army Act, 1950.***

***21. In view of the foregoing, we do not deem it appropriate to stay either the attachment order or the disciplinary proceedings to be initiated against the applicant as it will be open to the applicant to raise all such pleas, which may be available to him under the law."***

22. It is admitted by Learned Counsel arguing for the Applicant that the Applicant had not appeared before the General Court Martial for raising all such pleas. However, it is stated that since 3 years have already passed, therefore, he is not amenable to the jurisdiction of Army Act. The question whether 3 years have passed or not, again revolves around the fact whether the period from 15<sup>th</sup> March 2020 to 28<sup>th</sup> February 2022 is to be excluded for computation of the period of 3 years for initiating proceedings against the Applicant and therefore, we again make it clear that the Applicant should raise all these pleas before the

General Court Martial who shall decide the pleas unaffected by any observation made by us in the Order dated 18<sup>th</sup> January 2022.

23. With these observations, the OA stands disposed off. Pending MA, if any, also stands disposed off.

24. Learned Counsel for the Applicant made an oral prayer for grant of Leave to Appeal to Hon'ble Supreme Court. However, as required under Section 31 of the Armed Forces Tribunal Act, no substantial question of law of public importance is involved in the matter which warrants grant of Leave to Appeal. Accordingly, oral prayer is declined.

25. Pronounced in the open court on this <sup>th</sup>12 day of May 2022.

[JUSTICE SUNITA GUPTA]  
MEMBER (J)

[LT. GEN. BOBBY CHERIAN MATHEWS]  
MEMBER (A)

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