

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.52 of 2013

Thursday, the 12<sup>th</sup> day of September 2013

THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH  
(MEMBER-JUDICIAL)

AND

THE HONOURABLE LT GEN ANAND MOHAN VERMA  
(MEMBER – ADMINISTRATIVE)

Lt Col RD Sharma  
Attached to 47 Infantry Brigade  
C/o 56 APO (Hyderabad).

.. Applicant

By Legal Practitioners:  
M/s. K. Ramesh,  
Ms. Archana Ramesh & M.K. Sikdar

vs.

1. Union of India,  
Through Secretary  
Ministry of Defence  
New Delhi-110 011.

2. The Chief of Army Staff  
Through Adjutant General (ADGDV)  
Army Headquarters  
New Delhi-110 011.

3. The General Officer  
Commanding-in-Chief  
Southern Command  
Pune, Maharashtra.

4. Commander 47 Infantry Brigade  
C/o 56 APO.

.. Respondents

By Mr. B.Shanthakumar, SPC

### **ORDER**

(Order of the Tribunal made by  
Hon'ble Lt Gen Anand Mohan Verma,  
Member-Administrative)

1. The petitioner seeks relief of quashing the order of attachment dated 1<sup>st</sup> November 2012 and tentative Charge Sheet dated 12<sup>th</sup> January 2013, and requests issue of directions to respondents to revert him back to the Unit 249 and declassify the result of No.3 Selection Board of November 2012.

2. The facts of the petitioner's case are that the petitioner got posted to 18 MADRAS on 17<sup>th</sup> May 2010 when the Unit was on UN Mission. He was 2IC of the Unit. On return from the UN Mission, Subedar Major Raju Kurian of the Unit submitted a complaint against CO of the Unit Col VV Bhaskar. Consequent to this, a Court of Inquiry was ordered by Headquarters 54 in Infantry Division to ascertain the veracity of the contents of the complaint against Colonel V.V. Bhaskar and other personnel of 18 MADRAS. The Presiding Officer of the Court of Inquiry was Brigadier R.K.Singh, Commander 54 Arty Bde. The Court of Inquiry examined witnesses in which the

petitioner's evidence was also recorded as Witness No.27. During the Court of Inquiry(CoI), Army Rule 180 was invoked against the CO and the Subedar Major. The said Army Rule was also invoked against the petitioner during the Court of Inquiry while Witness No.68, i.e., Col VV Bhaskar was being examined by the CoI. Based on the statements of the witnesses the Court of Inquiry found the petitioner blameworthy on four counts. Based on the opinion of the CoI HQ 54 Infantry Division recommended disciplinary action against the petitioner vide their letter dated 7<sup>th</sup> September 2012 to HQ Southern Command. Based on this recommendation, HQ Southern Command requested Army HQ for attachment of the petitioner for disciplinary action and the Army HQ, DV Directorate issued attachment order in respect of the petitioner vide their letter dated 1<sup>st</sup> November 2012 by which the petitioner was attached to 47 Infantry Brigade under the provisions of 30/86 till finalisation of the disciplinary action pending against him. The petitioner reported to the Unit where he was ordered to be attached and charges were heard by the Commanding Officer on 19<sup>th</sup> January 2013 under the provisions of Army Rule 22. The Commanding Officer ordered the evidence to be recorded in writing vide HQ 47 Inf Bde dated 21<sup>st</sup> January 2013. The petitioner filed this application seeking relief as mentioned above. The interim relief asked for by the petitioner was

to stay the operation of the proceedings of the Summary of Evidence till the matter is *sub judice*. This Tribunal ordered stay of Summary of Evidence on 10<sup>th</sup> June 2013 which remains in force.

3. The focus of the petitioner's case pleaded by the learned counsel Mr. Ramesh would be not invoking Army Rule 180. He would plead that in the complaint submitted by Subedar Major Raju Kurian, there is no complaint against the petitioner at all and all the allegations are against the Commanding Officer. In the Court of Inquiry that followed this complaint, the Army Rule 180 was invoked against Col VV Bhaskar and Subedar Major Raju Kurian. While Witness No.68, Col VV Bhaskar, was being examined, name of the petitioner came up and the Presiding Officer invoked Army Rule 180 against the petitioner for only one question in which the petitioner declined to cross-examine Col VV Bhaskar. Nowhere else, the learned counsel would plead, that the said Army Rule was invoked against the petitioner, and yet the CoI found the petitioner blameworthy on four counts based on which this attachment order was issued under the provisions of Army Instruction 30/86 and charges were framed against him. The petitioner would plead that there are plethora of Army HQ letters which specifically direct the Presiding Officer to invoke Army Rule 180 lest all the subsequent actions fall flat in a Court of Law. The petitioner would further plead that there was an

error on the part of the Commanding Officer of the petitioner, in that when he heard the charges under Army Act 22 he did not take cognizance of non-compliance of Army Rule 180 in the Court of Inquiry. The petitioner would cite several cases in support of his pleadings that it is mandatory to enquire that the charged officer is given full opportunity to participate in the Court of Inquiry as provided in Army Rule 180. The learned counsel would plead that the petitioner deserves justice by quashing and setting aside the impugned order and be despatched back to the Unit where he was commanding before his attachment rather than quash the impugned attachment order and the Court of Inquiry with liberty to respondents to start afresh. Learned counsel would plead that if this is not done, the very purpose of having come to the Armed Forces Tribunal with clean hands would be lost as there is not an even an iota of mistake on the part of the petitioner by any stretch of imagination. He would also plead that result of No 3 Selection Board be declared.

4. The respondents would admit that there was a complaint by Subedar Major Raju Kurian against Col VV Bhaskar based on which Court of Inquiry was ordered by HQ 54 Infantry Division of which Cdr 54 Arty Bde Brig RK Singh was the Presiding Officer. The Court after a thorough investigation blamed a number of officers and JCOs for various acts/omissions and GOC 54 Inf Div directed that disciplinary

and administrative actions be initiated against the personnel found blameworthy by the CoI including the petitioner. The petitioner was attached with HQ 47 Inf Bde for necessary disciplinary proceedings. The charges against the petitioner were heard by the Commanding Officer, Brigadier R Bhatia, in which four prosecution witnesses were examined and the petitioner was given full opportunity to cross-examine each one of them. After hearing all the charges, Commanding Officer ordered Summary of Evidence to be recorded vide HQ 47 Infantry Brigade letter dated 21.1.2013 which was in progress and was on the verge of completion. Throughout recording of Summary of Evidence, the petitioner was given full opportunity to cross-examine the prosecution witnesses and was given opportunity to produce defence witnesses. The respondents would produce a list of defence witnesses called for by the petitioner. The respondents would claim that on seeing that sufficient evidence has been gathered against him during recording of Summary of Evidence, he has gone to the Armed Forces Tribunal to stop further recording of Summary of Evidence. The respondents would submit that during the course of Court of Inquiry, reasonable evidence came to light against the petitioner for various acts of omission/commission and hence disciplinary proceedings were initiated against him. He has been

given ample opportunity to cross-examine the witnesses during the hearing of the charges and recording of Summary of Evidence.

5. The respondents would object to the petitioner filing this application before Armed Forces Tribunal in that the petitioner failed to adhere to the chain of reporting to get redress and has violated paragraphs-557 to 559 of Regulations for the Army. The respondents would admit that the Army HQ have issued a Policy Letter for not accepting a statutory petition when disciplinary action is under process since such petitions delay disciplinary proceedings.

6. During the Court of Inquiry, Army Rule 180 was invoked against the petitioner which is reflected at Page 317 of the Court of Inquiry. Substantial evidence came to light indicating the petitioner's act of omission/commission. During the recording of Summary of Evidence since 14 January 2013 the petitioner did not raise the issue of Army Rule 180 with his Commanding officer. Filing this O.A at this stage when the Summary of Evidence is almost completed appears to be aimed at delaying the disciplinary proceedings. The respondents would request the Tribunal to pass appropriate orders as deemed fit and dismiss the said O.A. being devoid of any merit.

7. Heard both sides and perused documents.

8. As admitted by the respondents, there is a Policy of Army HQ not to accept the statutory petition when disciplinary action is under process and therefore, the petitioner had no other remedy available to him than coming to this Tribunal. As regards Paragraphs-557 to 559 of Regulations for Army, these are related to correspondence with high officials, correspondence with embassies, legations or other diplomatic missions and correspondence with officers at Army HQ respectively. There is no mention in these paragraphs about approaching the Court or Tribunal and therefore, the objections on this ground raised by the respondents are not sustainable.

9. The starting point of the disciplinary action against the petitioner is the CoI which found him blameworthy. This is followed by directions of GOC 54 Infantry Division and finally issue of attachment order by Army HQ which has been challenged by the petitioner. The short point that needs, therefore, to be determined is whether or not the CoI in respect of the petitioner was conducted in accordance with the legal provisions?

10. Army Rule 177 states that a Court of Inquiry which is an assembly of officers, JCOs and WOs or NCOs , is directed to collect evidence. Army Rule 179 provides " *The Court shall be guided by the written instructions of the authority who assembled the court.*" Army Rule 180 reads:



*"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."*

The import of this Army Rule is that whenever character or military reputation of a person is involved, he must be given full opportunity to be present throughout the enquiry to make any statement and give any evidence or to cross-examine any witness whose evidence in his opinion affects his character or military reputation. Presence of the person throughout the Inquiry is the basic feature of the Army Rule 180. In the absence of compliance of this Rule the Court of Inquiry stands vitiated since the delinquent was not permitted to

participate when the examination of witnesses was in progress. Army Rule 180 is a salutary rule and peculiar to Army Act. The requirements of Rule 180 are mandatory as held by the Hon'ble Apex Court and Delhi High Court in a number of cases. The reason for making Rule 180 as mandatory is that it incorporates the principles of natural justice which alone can ensure fair trial to a person whose character or military reputation is in danger. In the case of **Lt Col Prithi Pal Singh Bedi v. Union of India reported in (1982) 3 SCC 140, at page 176**, the Hon'ble Apex Court held,

*" Rule 180 cannot be construed to mean that whenever or wherever in any enquiry in respect of any person subject to the Act his character or military reputation is likely to be affected setting up of a Court of enquiry is a sine qua non. Rule 180 merely makes it obligatory that whenever a Court of enquiry is set up and in the course of enquiry by the Court of Inquiry character or military reputation of a person is likely to be affected then such a person must be given full opportunity to participate in the proceedings of Court of enquiry. Court of Inquiry by its very nature is likely to examine certain issues generally concerning a situation or persons. Where collective fine is desired to be imposed, a Court of enquiry may generally examine the shortfall to ascertain how many persons are responsible. In the course*

*of such an enquiry there may be a distinct possibility of character or military reputation of a person subject to the Act likely to be affected. His participation cannot be avoided on the specious plea that no specific enquiry was directed against the person whose character or military reputation is involved. To ensure that such a person whose character or military reputation is likely to be affected by the proceedings of the Court of Inquiry should be afforded full opportunity so that nothing is done at his back and without opportunity of participation. "*

In the case of Lt **Gen S.K. Sahni vs. COAS, in W.P (C) No.11839/2006**, Delhi High Court held,

*"19. While spelling out in unambiguous terms, the different protections available to a person under Rule 180, a Division Bench of this court in the case of Col.A.K.Bansal v. UOI and others, CWP 1990/88, decided on 18.1.1991 while quashing the proceedings of the court of inquiry and their findings and the penalty of severe displeasure imposed upon the petitioner in that case, held as under:-*

*" The rule incorporates salutary principles of natural justice for a fair trial and full right of being heard, to a person whose character or military reputation is likely to be affected in a court of enquiry. Four rights are expressly*

*recognized-(1) The officer has a right to be present throughout the enquiry meaning thereby that the entire evidence is to be recorded in his presence; (2) of making statement in defence (3) cross-examination of the witnesses whose evidence is likely to affect his character or military reputation. It is the judgment of the person whose reputation is in danger to testify as to whether an evidence of a particular witness is likely to affect his character or military reputation, and (4) such a person has a right to produce evidence in defence of his character or military reputation. It is the mandatory duty of the presiding officer not only to make all these opportunities available to the person whose character and military reputation is at stake but also that person is fully made to understand all the various rights mentioned in that said rule. ""*

In the case **Col Kamal Deep Singh vs. UOI and others, in O.A.No.93 of 2012**, the Principal Bench, Armed Forces Tribunal, New Delhi, held,

*" Therefore, we are of the opinion, so far as the conduct of this Court of Inquiry cannot be sustained because of the breach of principle of natural justice under rule 180 of the Army Rules. "*

In the case of **Major Harbhajan Singh vs. The Ministry of Defence and ors.** decided by Delhi High Court in **C.W.204 of 1975**, it was held,

*" 15. I, therefore, hold that the findings of guilt against the petitioner recorded by Court of Inquiry are vitiated by the facts that the relevant witnesses were not procured by the Court for ascertaining the existence of relevant facts and by denying the opportunity of citing defence witnesses to the petitioner. The evidence of other witnesses for prosecution was found sufficient by the Court of Inquiry for holding that the prosecution case was proved but the legal infirmity is that the defence evidence was not allowed and assessment was one sided. "*

The Delhi High Court in the case of Major General RK Loomba in **WP(C) No.3831/2007** page 28 has held:

*"The Delhi High Court in the case of General Officer Commander-in-Chief v. R.P. Shukla 10 SCC 294, at page 295, has held,*

*" 5. The High Court vide its judgment dated 4.1.1996 allowed the writ petition on the sole ground of non-observance of Army Rule 180 and accordingly set aside the entire proceedings of the Summary Court Martial including*

*charge-sheet dated 9.4.1992 and also set aside the punishment awarded to the respondents therein with a further direction that they will be entitled to be reinstated in the services. Being aggrieved by the above judgment, the appellant has preferred the present appeal in this Court. "*

*In Chopra vs. UOI and Ors., AIR 1982 SC page 1413, it has been held,*

*" The rule is eminently in public interest. There is one other reason why the requirements of Rule 180 are to be strictly interpreted, the normal protection of fundamental rights of the provisions of Article 311, available to the civil servants under the Union or a State are not available to military personnel. The army personnel must maintain high degree of efficiency and preparedness at all the times and the same cannot be maintained effectively unless every member of the armed forces is able to see fair play in action."*

In the backdrop of the above judgments, it is well-established that Army Rule 180 is sacrosanct and non-compliance with Army Rule 180 would render a Court of Inquiry vitiated and the proceedings would be liable to be set aside.

11. Reverting to the Court of Inquiry which is in three volumes and in which the petitioner was examined as Witness No.27, the petitioner's

name/appointment appears in the statements of number of witnesses. Witness No.1, i.e., Sub Major Raju Kurian in his statement for the answers to questions mentioned petitioner's name/appointment at three places which are reflected at pages 19 (Q.No.16) 29(Q.No.5) and 34(Q.No.35). The questions and answers thereto should have been considered by the Court of Inquiry to be affecting character and military reputation of the petitioner and Army Rule 180 should have been invoked and the petitioner should have been asked to be present throughout the Court of Inquiry as provided for in Army Rule 180 and cross-examine any witness that he may have wished to. Witness No.6, Subedar Sumanna, in reply to questions named the petitioner. In a similar manner, Witness No.7, , Major Rajpal Singh named the petitioner in answer to Question No.5. Witness No.23, Major Kamakhya Singh in reply to two questions named the 2IC i.e.. the petitioner and in reply to Question No.31 named the petitioner. In all these instances, the Court should have asked the petitioner to be present during the recording of statement and invoked the provisions of Army Rule 180. Admittedly, in one instance, the provisions of Army Rule 180 were invoked which was during the examination of Col VV Bhaskar as reflected at Question No.1 by the Court to Col VV Bhaskar on 10<sup>th</sup> April 2012 which reads as follows:

*" (In view of contrary statement by Col VV Bhaskar, SM that he had not taken a loan of Rs.1,00,000/- from RTC for UN Mission, AR 180 was invoked on Lt Col RD Sharma to cross examine Col VV Bhaskar, SM. Lt Col RD Sharma declined to cross examine Col VV Bhaskar, SM and stated that, he stood by his earlier statement that Col VV Bhaskar, SM has instructed him to arrange for Rs.1,00,000/- for UN Mission. The court then asked Col VV Bhaskar, SM whether he had instructed Lt Col RD Sharma to arrange for UN mission Rs.1,00,000/-. Col VV Bhaskar, SM responded by saying that he did not give any instructions to Lt Col RD Sharma to arrange Rs.1,00,000/- for UN mission). "*

The CoI in its Opinion found the petitioner blameworthy on six counts without giving the petitioner the benefits of Army Rule 180. This despite the fact that the Convening Order issued by HQ 54 Infantry Division clearly mentions that provisions of Army Rule 180 would be complied with by Court. The convening Order reads:

"CONVENING ORDER

*1. A C of I composed as under will assemble at a time, date and place to be fixed by the Presiding Offr to ascertain the veracity of the contents of the complaint dated 12 Aug 2011 submitted by JC-498651X Sub Maj Raju Kurien of 18 MADRAS against IC-46216A Col VV Bhaskar ex Commanding Officer and other*



*personnel of 18 MADRAS addressed to The Principal Secretary to the Defence Minister and others. (Copy att as Appx A to this convening order):-*

*(a) Presiding Offr - Brig RK Singh, Cdr, 54 Arty Bde.*

*(b) Members (i) Col PS Shaekhawat, Dy Cdr, 47 inf Bde.*

*(ii) Col VV Chandran, OC 100 GL Sec.*

*(iii) Col Vaibhav Agarwal, CO 96 Fd Regt.*

*2. The ibid court will also ascertain the veracity of the contents of a report dated 20 Jun 11 initiated by Col VV Bhaskar regarding the incidents that took place during night intervening 20 and 21 Jun 2011 at Focolari Camp (Congo) while 18 MADRAS was deployed in UN Mission (MONUC) as part of HQ 301 Inf Bde Group. (Copy att as Appx B to this convening order).*

*3. Provns of AR 180 will complied with by the court wherever applicable.*

*4. The attention of the Court is also invited to the following provisions/instructions for guidance and compliance:-*

*(a) Army Rules 177 to 182.*

*(b) IHQ of MoD (Army) letter No.46440/AG/DV (P) dt 03 May 2001.*

*(c) Regulations for the Army, 1987 (Para 317, 516, 517, 518)*

*5. The court will give its opinion and recommendations on the contents of the complaint lodged by Sub Maj Raju Kurien against Col VV Bhaskar, as mentioned at Para 1 above.*

*6. The court will also give its opinion and recommendations on the report initiated by Col VV Bhaskar about the events that took place in the bn during the night intervening 20 and 21 Jun 2011 at Focolari Camp (Congo) as mentioned at Para 2 above."*

GOC 54 Infantry Division who directed that the disciplinary action be initiated against the petitioner failed to take note of the fact that Army Rule 180 had not been complied with in respect of the petitioner. This error continued when HQ Southern Command vide their letter dated 27<sup>th</sup> September 2012 addressed to Army HQ AG's Branch produced as Annexure R IV by the respondents failed to take note of the fact that provisions of Army Rule 180 had not been complied with and requested the Army HQ to issue attachment orders under the provisions of Army Instructions 30/86. The Army HQ vide their letter dated 1<sup>st</sup> November 2012 issued the Attachment order attachment of the petitioner under the provisions of Army Instructions 30/86. Army Instructions 30/86 reads as under:

"ARMY INSTRUCTION NO. 30 OF 1986

*30. Attachment of officers to other units for disciplinary purposes:-*

1. *Officers against whom disciplinary action is contemplated may, where necessary, be attached to other units, at the discretion of Army Headquarters or GOC-in-C Command concerned for the purpose of investigation and progress of the disciplinary case. 'However, such attachment will be ordered only when a prima facie case against him is established and not during investigation stage by a Court of Inquiry, even for officers whose character and military reputation is likely to be a material issue at the Court of Inquiry. In exceptional cases where as officer's continued retention in his appointment say as CO, is not desirable, he may be attached to another unit or formation even at the commencement of Court of Inquiry.*
2. *During the attachment period the officers will continue to be held against the appointment held by them immediately before attachment and no replacement will be made until completion of the disciplinary proceedings.*
3. *This suspends AI 106/60. "*

This Army Instruction clearly states that such attachment is to be ordered only when a prima facie case against an officer is established and not during investigation. In the instant case, the very fact that

Army Rule 180 had not been invoked against the petitioner would render a finding of a prima facie case against the petitioner unsustainable and therefore, the attachment order issued under the provisions of Army Instructions would also be legally not sustainable. The charges that have been framed against the petitioner also suffer from the infirmity of being based on findings of a Court of Inquiry which stands vitiated in respect of the petitioner. In the light of the above discussions, we are inclined to hold that the Court of Inquiry suffers from the infirmity of non-compliance of Army Rule 180 and therefore, the disciplinary action that have been initiated against the petitioner is liable to be quashed being legally not sustainable.

12. The petitioner has asked that he be posted to the Unit where he was prior to the attachment. We are of the view that it is up to the respondents to post the petitioner suitably, since the Attachment Order is set aside. The petitioner would also request declaration of result of No.3 Selection Board which was held according to the petitioner in November 2012. In the O.A or during the pleadings by the learned counsel for the petitioner no evidence has been brought on record to establish that the said Selection Board was held and result in respect of the petitioner is withheld by the respondents. Therefore this relief cannot be granted. Consequent to setting aside

of the attachment and quashing of the disciplinary action against the applicant, the respondents may take suitable action as deemed fit.

13. In fine, the application is partly allowed. The respondent's order vide Army HQ Letter No.C/06270/SC/688/AG/DV-2, dated 1<sup>st</sup> November 2012 is quashed, charges framed against the petitioner are quashed and the respondents are directed to stop disciplinary action against the petitioner based on Opinion of the above mentioned CoI. Our observation with regard to other reliefs have been recorded in Paragraph 12 above. No order as to costs.

Sd/  
LT GEN ANAND MOHAN VERMA  
MEMBER (ADMINISTRATIVE)

Sd/  
JUSTICE V. PERIYA KARUPPIAH  
MEMBER (JUDICIAL)

**12.09.2013**  
**(True copy)**

**Member (J)** – Index : Yes / No  
**Member (A)** – Index : Yes / No

Internet : Yes / No  
Internet : Yes / No

*VS*

To:

1. Union of India,  
Through Secretary  
Ministry of Defence  
New Delhi-110 011.

2. The Chief of Army Staff  
Through Adjutant General (ADGDV)  
Army Headquarters  
New Delhi-110 011.

3. The General Officer  
Commanding-in-Chief  
Southern Command  
Pune, Maharashtra.

4. Commander 47 Infantry Brigade  
C/o 56 APO.

5. M/s. K. Ramesh,  
Ms. Archana Ramesh  
& M.K. Sikdar  
Counsel for Petitioner.

6. Mr. B. Shanthakumar, SPC  
Counsel for respondent.

7. OIC, ATNK & K Area HQ, Chennai.

8. Library, AFT, Chennai.

HON'BLE JUSTICE V. PERIYA KARUPPIAH  
(MEMBER-JUDICIAL)  
AND  
HON'BLE LT GEN ANAND MOHAN VERMA  
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