# SUPREME COURT OF INDIA

Rajvir Singh

Vs.

Secretary, Ministry of Defence

C.A.No.2107 of 2012

(Aftab Alam and Chandramauli Kr. Prasad JJ.)

15.02.2012

## JUDGMENT

**AFTAB ALAM, J.**

1. Leave granted.

2. This appeal is directed against the judgment and order dated August 19, 2011 passed by the Armed Forces Tribunal, Regional Bench, Lucknow, by which it dismissed Original Application No.116 of 2011 filed by the appellant and rejected his challenge to the direction for the General Court Martial to re-assemble for his trial contending that his trial was barred by time as provided under section 122 of the Army Act, 1950 (for the sake of brevity the Act).

3. A General Court Martial was directed to be convened by order dated August 23/26, 2010 passed by the General Officer Commanding, Madhya Bharat Area, (GOC, MB Area for short) to try the appellant on different charges relating to gross financial irregularities punishable under Section 52(f) of the Act. The appellant challenged the order before the Armed Forces Tribunal (in Original Application No. 216 of 2010) on the plea that his trial by the General Court Martial was barred by limitation under section 122 of the Act. At that stage, the Tribunal did not go into the merits of the appellant's challenge and dismissed the Original Application leaving it open for the appellant to raise his objections before the Court Martial. In pursuance of the liberty given by the Tribunal, the appellant raised the objection before the Court Martial that his trial before it was barred by limitation. The Court Martial upheld the appellant's objection and by order dated February 17, 2011, allowed the plea in bar raised by the defence. However, the Confirming Authority,

i.e., the (Officiating) GOC, MB Area, refused to confirm the order of the General Court Martial and by order dated March 29, 2011, which is in some detail, found and held that reckoning from the date on which the commission of the offence and the identity of the appellant as one of the offenders came within the knowledge of the competent authority, the order giving direction for convening the General Court Martial was passed within a period of three years and, therefore, the bar of limitation did not come in the way of the trial of the appellant before the General Court Martial. Having, thus, arrived at the finding, he directed the GCM to proceed with the trial of the appellant as if the plea in bar was found not proved. The appellant challenged the order of the Confirming Authority once again before the Tribunal in Original Application no. 116 of 2011. But the Tribunal, mainly relying upon the decisions of this Court in Union of India and others v. V.N. Singh (2010) 5 SCC 579 and J.S. Sekhon v. Union of India and another (2010) 11 SCC 586, held that the General Court Martial was convened within the period of limitation. It, accordingly, rejected the application and upheld the order passed by the Confirming Authority.

4. The charges against the appellant pertain to the periods 2005-2006 and 2006-2007 when he was posted as officiating Commandant, Central Ordnance Depot, Chheoki. According to the charges, in procurement of stores he violated and flouted the relevant rules and in making purchases worth about Rs.2.2 crores he caused wrongful loss of Rs.60.18 lakhs to the Government.

5. In this regard, first a pseudonymous complaint dated October 27, 2006 came making allegations of gross irregularities committed by the appellant in purchase of stores for the Central Ordnance Depot. The complaint was seen by the General Officer Commanding-in-Chief, Central Command (GOC-in-C, CC in short) on November 15, 2006. The complaint was followed by a report by the Central Command Liaison Unit which also highlighted the irregularities committed in procurement of stores at the Central Ordnance Depot, Chheoki. This report was seen by the GOC-in-C on December 6, 2006. On December 9, 2006, an order was issued on behalf of the GOC-in-C, for convening a Court of Inquiry to investigate the alleged irregularities/misdemeanors in the Central Ordnance Depot during the financial years 2005-2006 and 2006-2007. The irregularities/misdemeanors that were required to be inquired into were listed under the headings (a) upgradations of demand and (b) local purchase. The Court of Inquiry submitted its report on January 24, 2007 in which, apart from some other officers, the appellant was clearly indicted. It appears that the report of the Inquiry Committee was first placed before the GOC, MB Area, who on February 20, 2007 made a recommendation in light of the report. In his recommendations the GOC, MB

Area, observed that the Court of Inquiry had examined only a small fraction of the local purchase and had the Court gone into greater details more irregularities would have come to light. However, on the basis of the materials coming before the Court of Inquiry, the GOC, MB Area, found that there was adequate evidence regarding cognizable acts of omission/commission committed by several officers, including the present appellant in regard to whom he observed that he was to be blamed for causing wrongful loss to the government to the tune of Rs.60.18 lakhs in the process of procurements of stores worth Rs.2.2 crores by committing a number of procedural irregularities/illegalities.

6. The report of the Court of Inquiry along with the recommendations of the GOC, MB Area was forwarded to the GOC-in-C, CC on April 26, 2007. On May 7, 2007, the GOC-in-C, CC wrote a note in the form of recommendations on the report of the Court of Inquiry convened on his direction. He started by saying that he had perused the proceedings of the Court of Inquiry and he partially agreed with the findings and opinion of the Court. He observed that there was cogent and adequate material evidence regarding the cognizable acts of omission/commission committed by various officers of the Central Ordnance Depot, Chheoki. In regard to the appellant the GOC-in-C made the following observations in paragraph 6 of his recommendation:

> 6. The culpability of IC-42501F Col Rajvir Singh, Offg Commandant, COD Chheoki, is established for causing wrongful loss to the Govt to the tune of Rs.60.18 lakhs in the process of procurement of stores through local purchase in the years 2005-2006 and 2006-2007 by committing the following procedural irregularities/illegalities:-
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> (The above quoted passage was followed by a list of different irregularities/illegalities allegedly committed by the appellant).

7. It, however, appears that on the basis of the materials before him the GOC-in-C, CC was also unhappy and dissatisfied with the role of one Major General S.P. Sinha, who, at the material time, was the ADGOS (CN A) in the Central Command and who at the time the GOC-in-C was making his recommendation was posted as MGAOC, HQ-Western Command. Hence, in paragraph 7 of his recommendations he stated as follows:- 7. I recommend that a (sic.) appropriate (sic.) constituted C of I be ordered by integrated HQ of MoD (Army), MGO's Branch for investigation into the acts of omission/commission in respect of Maj. Gen. SP Sinha, ADGOS (CN A) and any other higher auth, Col Rajvir Singh, Offg Commandant and offrs of the COD Chheoki as opined by the Court in the process

of procurement of stores by the COD, Chheoki during the pd 2005-06 and 2006-07.

8. It is significant to note that insofar as the appellant is concerned, the GOC-in-C, CC, was undeniably the competent authority to initiate proceeding against him and to convene a General Court Martial to try him. Further, on the basis of the Court of Inquiry report and the recommendation of the GOC, MB Area, the GOC-in-C, CC, had clearly formed the opinion that the culpability of the appellant was established and there was cogent and adequate material evidence regarding the cognizable acts of omission/commission committed by him. Nonetheless, on May 7, 2007, the GOC-in-C, CC did not direct for initiating proceeding against the appellant and to convene the General Court Martial for his trial but clubbed his case with Major General S.P. Sinha in whose case the integrated headquarter of MoD Army was the competent authority and sent his recommendation to the integrated HQ to hold a Court of Inquiry to examine the role of the Major General in the irregularities committed at the Central Ordnance Depot, Chheoki, during his tenure there.

9. On the basis of the recommendation made by the GOC-in-C, CC, by his letter dated February 19, 2008, the integrated headquarters of MoD directed the HQ, Western Command (where Major General S.P. Sinha was at that time posted) to convene a Court of Inquiry to investigate the acts of omission/commission on the part of the Major General the then ADGOS (CN A), detailing the issues into which the investigation was required to be made. A copy of the letter was sent to the GOC-in-C, CC for information and further advising him to issue appropriate directions in respect of the appellant who was indicted by the Court of Inquiry that was held on his direction.

10. It was only then that the GOC-in-C, CC gave direction for initiation of disciplinary action against the appellant (and some other officers) vide order dated May 12, 2008, for the misdemeanors as stated in paragraphs 4 to 12 of the order insofar as the appellant is concerned (and in paragraphs 13 to 16 in regard to some other officers).

11. Following the order of the GOC-in-C, CC, a tentative charge-sheet containing 18 charges was given to the appellant on August 20, 2008. The hearing of charges was then held as required under rule 22 of the Army Rules, 1954 and at the end of the hearing, the Commanding Officer found that none of the charges were proved and there was no sufficient evidence to proceed further with the charges. The Confirming Authority, however, did not accept the view taken by the Commanding Officer and by order dated September 7, 2009, directed for taking additional

summary of evidence. As directed by the Confirming Authority, additional summary was taken but once again the Commanding Officer by his order dated March 9, 2010, found that none of the charges were proved. The Confirming Authority i.e. the GOC, MB Area, once again did not accept the order of the Commanding Officer. He framed four charges under section 52(f) of the Act relating to financial irregularities in procurement of store for the Central Ordnance Depot and directed the appellant to be tried by Court Martial. It was pursuant to this order that the General Court Martial came to be constituted which was challenged by the appellant as barred by limitation, as noted above.

12. Having narrated the relevant facts we may now take a look at the provision relating to limitation. Section 122 of the Act provides as follows:- 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.

13. On behalf of the appellant it is contended that the period of limitation for his trial before the Court Martial would commence from February 20, 2007, when on the basis of the report of the Court of Inquiry, the GOC, MB Area, sent his recommendation to the GOC-in-C, CC indicting the appellant. It is pointed out that it was the GOC, MB Area, who passed the order dated August 23/26, 2010 convening the General Court Martial, directed the Commanding Officer to take further summary of evidence in the hearing of the charges under rule 22 and finally passed the order directing the Court Martial to reassemble for the appellant's trial. It is, thus, the GOC, MB Area who is the competent authority to take action against the appellant and it is the date of his knowledge of the commission of the alleged offence and the identity of the appellant as the alleged offender that is relevant under section 122.

14. It is further submitted that in any event the GOC-in-C, CC was undeniably the competent authority to initiate action against the appellant. On May 7, 2007, the alleged offence and the identity of the appellant as the alleged offender was fully within his knowledge on the basis of the recommendation of GOC, MB Area and the report of the Court of Inquiry ordered by him. His knowledge is evident from his recommendation to Integrated HQ, wherein, he stated that the culpability of the appellant was established. The period of limitation must, therefore, commence from a date not later than May 7, 2007 and reckoning from that date, the period of three years came to end on May 6, 2010. But the order for convening the General Court Martial was finally passed by the GOC, MB Area on August 23/26, 2010, that is, clearly beyond the period of limitation. Hence, the appellant's trial before the General Court Martial was clearly hit by section 122 and was barred by limitation.

15. On behalf of the respondents, on the other hand, it is argued that the period of limitation in this case can only commence from May 12, 2008 when the GOC-in-C, CC directed that disciplinary action be initiated against the appellant and that later date must be deemed to be the date when the competent authority had the knowledge within the meaning of section 122 of the Act.

16. This is the argument adopted both in the order passed by the GOC, MB Area and the decision of the Tribunal upholding that order.

17. In the order, dated March 29, 2011 passed by the GOC, MB Area, in paragraph 34, it is observed as under: -

> If the law laid down by the Hon'ble Supreme Court had been followed, the only question which the Court was to decide was, (sic.) which was the date on which the authority competent to initiate action issued its direction to initiate disciplinary action. However, the reasons given by the Court show that the Court was squarely guided by the issues framed by the learned Judge Advocate, which ran absolutely contrary to the law laid down by the Hon'ble Supreme Court (as also the policy in vogue referred to by the learned Advocate Judge).
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> (emphasis added)

18. Affirming the view taken by the GOC, MB Area, the Tribunal in paragraph 12 of its judgment held and observed as follows - In the case at hand on 7/5/2007, the date on which the applicant alleges the competent authority to have acquired knowledge, perusal of the said document which is Annexure No. A-6 to the Original Application reveals that the respondent No. 3 is not able to form an opinion as to whether or not any offence has been established and furthermore he is not able to form a definite opinion regarding culpability of the applicant therefore he recommends for constitution of an appropriately constituted Court of Inquiry by Integrated HQ of the Mod (Army), MGO's Branch for investigation into the acts of omission/commission in respect of ADGOS (CN A), the applicant and the officers of the Central Ordnance Depot, Chheoki. Thus it cannot be conclusively established regarding knowledge of the offence by respondent No. 3 at this stage. However, pursuant to recommendations of 7/5/2007 HQ Central Command approached Integrated HQ of the Mod (Army) for further inquiry in respect of officers for their involvement in the allegations. On 12/5/2008 the respondent No. 3 perused the proceedings of the Court of Inquiry held to investigate the allegations of various irregularities in Central Ordnance Depot, Chheoki and agreed with the recommendations of General Officer Commanding Madhya Bharat Area. The culpability of applicant, according to respondent No. 3 was established for causing wrongful loss to the Government. Upon being so satisfied regarding establishment of culpability the respondent No. 3 on 12/5/2008 he directed disciplinary action against the applicant. It is that date which would be counted as starting point towards computation of limitation for the purposes of Section 122(l) (b) of the Act.

> (emphasis added)

19. As noted above, both the GOC, MB Area and the Tribunal, base their orders on the decisions of this Court in. V.N. Singh (supra) and J.S. Sekhon (supra). The decisions of the GOC, MB Area and the Tribunal appear to be based on a complete misinterpretation of the two decisions of the Court. In both, V.N. Singh and J.S. Sekhon, the real issue before the Court was who was the competent authority to initiate action against the delinquent officer and whose knowledge would be relevant for the purpose of section 122 of the Act. In both cases, it was contended, on behalf of the delinquent officers, that the knowledge of the person aggrieved long preceded the knowledge of the competent authority and reckoning from the date of knowledge of the aggrieved person, the order convening the General Court Martial was barred by limitation. In V.N. Singh, it was submitted on behalf of the officer that one Brigadier K.S. Bharucha was the aggrieved person and in J.S. Sekhon, it was submitted that the Commander Works Engineer was the person aggrieved and if the period of limitation was computed from the date of their knowledge then the order convening the General Court Martial was barred by limitation. In both cases, the Court held that that part of section 122 that referred to the knowledge of the person aggrieved had no application to the facts of the case and the relevant date for computing the period of limitation was the date of knowledge of the competent authority to initiate action against the delinquent officer. In paragraphs 32 and 34 of the decision in V.N. Singh, the Court observed as follows: -

> 32. The term the person aggrieved by the offence would be attracted to natural persons i.e. human beings who are victims of an offence complained of, such as offences relating to a person or property and not to juristic persons like an organisation as in the present case. The plain and dictionary meaning of the term aggrieved means hurt, angry, upset, wronged, maltreated, persecuted, victimised etc. It is only the natural persons who can be hurt, angry, upset or wronged or maltreated etc. If a Government organisation is treated to be an aggrieved person then the second part of Section 122(1) (b) i.e. when it comes to the knowledge of the competent authority to initiate action will never come into play as the commission of offence will always be in the knowledge of the authority who is a part of the organisation and who may not be the authority competent to initiate the action. A meaningful reading of the provisions of Section 122(1)(b) makes it absolutely clear that in the case of government organisation, it will be the date of knowledge of the authority competent to initiate the action, which will determine the question of limitation. Therefore, the finding of the High

> Court that Brigadier K.S. Bharucha was an aggrieved person is legally and factually incorrect and unsustainable.
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> 34. The facts of the present case establish that the Technical Court of Inquiry was convened by DDST, Headquarter Delhi Area on 8- 1-1994 which recommended examination of certain essential witnesses for bringing into light the correct details and the persons responsible for the irregularities by a Staff Court of Inquiry and accordingly the Staff Court of Inquiry was ordered on 7-5-1994 by GOC-in-C Western Command which concluded in its report dated 31-8-1994, mentioning for the first time the involvement of the respondent in the offence. The GOC, Delhi Area i.e. the next Authority in chain of command to the respondent recommended on 19-10-1994 initiation of disciplinary action against the respondent whereas the GOC-in-C, Western Command gave directions on 3-12-1994, to initiate disciplinary action against the respondent. Therefore, the date of commencement of the period of limitation for the purpose of GCM of the respondent, commenced on 3-12-1994 when direction was given by GOC-in-C, Western Command to initiate disciplinary action against the respondent. The plea that the date of submission of the report by Technical Court of Inquiry should be treated as the date from which period of limitation shall commence has no substance. It is relevant to notice that no definite conclusion about the correct details and the persons responsible for the irregularities was mentioned in the report of Technical Court of Inquiry. On the facts and in the circumstances of the case, this Court is of the view that the High Court wrongly concluded that the period of limitation expired on 4-3-1996.

20. Similarly, in paragraphs 16 and 19 of the decision in J.S. Sekhon, it was held as follows –

> 16. According to the counsel appearing for the appellant, when the vigilance check report was submitted, Commander Works Engineer who is the person aggrieved came to know that there was a commission of an offence and therefore period of limitation as envisaged under Section 122 of the Act would commence from that date and when limitation is computed from the said date, convening of the General Court Martial on 9-3-1998 was barred by time, as it was beyond the period of three years as contemplated under Section 122 of the Army Act.
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> 19. In our considered opinion, the expression person aggrieved by the offence is irrelevant in the facts and circumstances of the present case and

> what is relevant is the knowledge of the authority competent to initiate action. The aforesaid acts were committed against the Government and not a natural person. In the facts of the present case no single person can be said to be aggrieved person individually due to the act of defrauding the Army. What is applicable to the facts of the case is the expression when it comes to the knowledge of the competent authority to initiate action.

21. In both the cases, the authority competent to initiate action against the delinquent officer had passed the direction for taking action against the delinquent officer on the same day it came to know about the commission of the offence and the identity of the offender. Hence, in both cases, at some places, the date of knowledge and date of the direction to initiate action against the delinquent officer are used interchangeably and that is the reason for the Tribunal to misinterpret the decision to mean that the period of limitation would commence from the date of direction to initiate action against the delinquent officer.

22. The Tribunal is also incorrect in observing that on May 7, 2007, GOC-in-C, CC had formed only a tentative opinion about the appellant because on that date he made the recommendation to the Integrated HQ for investigation into the act of omission/commission in respect of Major General S.P. Sinha and any other higher authority, including the appellant. It is noted above that the recommendation of the GOC-in-C, CC to the Integrated HQ was only in regard to Major General S.P. Sinha. So far as the culpability of the appellant is concerned, he had already formed the opinion on the basis of the report of the Court of Inquiry and the recommendation of the GOC, MB Area. Moreover, when the Integrated HQ vide its letter of February 19, 2008 pointed out that the appellant was indicted by the Court of Inquiry ordered by him and in his case it was for him to append directions, there was no further material before the GOC-in-C, CC in connection with the appellant. The order that the GOC-in-C, CC passed on May 12, 2008 for taking disciplinary action against the appellant reads as follows: -

> 1. I have perused the proceedings of the Court of Inquiry held to investigate the allegations of various irregularities in Central Ordnance Depot, Chheoki vide Headquarters Central Command, convening order Number 174091/57/C/A(PC), dated 09 December 06 and generally agree with the recommendations of the General Officer Commanding, Madhya Bharat Area.
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> 2. The Court of Inquiry proceedings reveal that there is cogent and adequate evidence on record to establish various acts of omission/commissions on

part of certain officers of Central Ordnance Depot, Chheoki as mentioned in the succeeding paragraphs.

IC-42501F Colonel Rajvir Singh

4. The culpability of IC-42501F Colonel Rajvir Singh, Officiating Commandant, Central Ordnance Depot Chheoki, is established for causing wrongful loss to the Government to the tune of Rs. 60.18 Lakhs (Rupees Sixty Lakh eighteen thousand only) in the process of procurement of stores through local purchase in the year 2005-06 and 2006-07, by committing the following illegalities:-

(a) xxx

(b) xxx

(c) xxx

5. xxx

6. xxx

7. xxx

8. xxx

9. xxx

10. xxx

11. xxx

12. xxx

13. to 16. xxxxxxx

17. Apropos above, I direct that disciplinary action against the above mentioned officers be initiated for the misdemeanors as mentioned against each of them in Para 4 to 16 above.

23. It is, thus, to be seen that the order dated May 12, 2008 is almost in identical words as the one passed on May 7, 2007. There is, therefore, no escape from the fact that the GOC-in-C, CC was in knowledge of the offence and the identity of the appellant as one of the alleged offenders on May 7, 2007. Reckoning from that date, the order passed by the GOC, MB Area, to convene the General Court Martial on August 23/26, 2010 is clearly beyond the period of three years and hence, barred in terms of section 122.

24. One feels sorry to see a trial on such serious charges being aborted on grounds of limitation but that is the mandate of the law. It is seen above that GOC-in-C, CC had come to know about the offence and the offender being the appellant on May 7, 2007. It took one year from that date for him to pass the order for initiating disciplinary action against him on May 12, 2008. There were still two years in hand, which is no little time but that too was spent in having more than one rounds of hearing of the charges in terms of rule 22 with the result that by the time the order came to be passed to convene General Court Martial, more than three years had lapsed from the date of the knowledge of the competent authority.

25. Before concluding, we may also note that other officers who were allegedly involved in irregular purchases for the Central Ordnance Depot, Chheoki, also seem to have got away with very light, if at all, any punishment. Major General S.P. Sinha was subjected to an administrative action in which an order was passed on August 6, 2010 expressing severe displeasure (non-recordable) against him. Lt. Col. Neeraj Gaur was finally acquitted by the General Court Martial. Lt. Col. Aloke Ghose was given severe displeasure (non-recordable) after the Commanding Officer found charges against him not proved. Major (now Lt. Col.) M.K. Bawa was similarly given severe displeasure (non-recordable) after the Commanding Officer found charges against him not proved. Against Lt. Col. Uma Shankar no further action was taken after charges against him were not proved in SoE.

26. In light of the discussions made above, the appeal must succeed. The judgment and order passed by the Tribunal is set aside and the direction by the GOC, MB Area, for reassembly of the General Court Martial is quashed.

27. The appeal is allowed. There will be no order as to costs.