

SUPREME COURT OF INDIA

Union of India

Vs.

P.S.Gill

CrI.A.No.404 of 2013

(L.Nageswara Rao and Hemant Gupta,JJ.,)

27.11.2019

JUDGMENT

L.Nageswara Rao,J.,

1. The Union of India is in Appeal against the judgment of the Armed Forces Tribunal, Principal Bench, New Delhi (hereinafter, 'the Tribunal') quashing the order dated 23.02.2010, by which General Court Martial was convened against the Respondent.

2. In the year 2005, the Chief of the Army Staff directed an investigation by the Court of Inquiry into the allegations pertaining to irregularities in procurement of ration, as a result of which the quality of supplies for the troops was compromised. A Court of Inquiry was convened on 10.10.2005 by the General Officer Commanding-in-Chief (GOC-in-C) Western Command to identify the Army personnel responsible for the aforementioned irregularities. Twenty-three witnesses were examined by the Court of Inquiry. The Court of Inquiry identified Twelve Army personnel who were prima facie responsible for the said improprieties. The Respondent who was working as he Chief Director of Purchase (CDP), Army Purchase Organisation, Ministry of Defence was one out of the twelve persons against whom a prima facie case was found. Disciplinary action was also initiated against the Respondent by the GOC-in-C, Western Command on 14.06.2006 which was challenged by the Respondent by filing a Writ Petition in the High Court of Delhi. By an order dated 11.01.2007, the High Court quashed the Court of Inquiry on the ground that Rule 180 of the Army Rules, 1954 (hereinafter, 'the Army Rules') was violated. However, an option was given to the Appellants to either hold a fresh Court of Inquiry after complying with Rule 180 of the Army Rules or to proceed directly under Rule 22 by hearing the charge without relying on the Court of Inquiry. The Court of Inquiry was re-constituted pursuant to the option given by the High Court. Later, the Appellants sought a modification of the order dated 29.07.2008 and informed the High Court that proceedings would be initiated under Rule 22 of the Army Rules since most of the officers involved had already retired and that it would be difficult to re-constitute a Court of Inquiry. The High Court permitted the Appellants to proceed under Rule 22 with the condition that no reliance can be placed on the old Court of Inquiry. The order of the Chief of the Army

Staff by which cognizance was taken of the offences and the attachment order issued on 26.09.2008 were the subject matter of another Writ Petition filed by the Respondent in the High Court of Delhi, which was dismissed on 03.10.2008.

3. A hearing of the charge under Rule 22 against the Respondent was convened on 08.12.2008 and recording of summary of evidence under Rule 23 of the Army Rules was ordered against the Respondent on 24.12.2008. The Commanding Officer of the Respondent i.e. General Officer Commanding (GOC), 15 Infantry Division found that no offence was prima facie made out against the Respondent. The said view was approved by the GOC, 15 Corps on 28.04.2009. In the meanwhile, the Respondent retired on attaining the age of superannuation on 31.05.2009. However, Section 123 of the Army Act, 1950 was invoked by the Appellants to continue the proceedings against the Respondent. The GOC-in-C, Western Command examined the matter and the recommendations made by the GOC, 15 Infantry Division and GOC, 15 Corps. He disagreed with the views taken by the GOC, 15 Infantry Division and GOC, 15 Corps and arrived at a conclusion that a prima facie case was made out against the Respondent. An attempt was made by the Respondent to challenge the findings of the GOC-in-C, Western Command, but in vain. The General Court Martial was convened by a letter dated 23.02.2010. The Respondent filed O.A. No.147 of 2010, assailing the validity of the order convening the General Court Martial. He also sought for quashing the proceedings of the Court of Inquiry, summary of evidence and the conclusion of the GOC-in-C, Western Command holding him prima facie guilty. He further questioned the invocation of Section 123 of the Army Act against him to continue the proceedings even after his retirement. He also sought promotion to the rank of Major General along with his batchmates.

4. The Tribunal held that a prima facie case to proceed against the Respondent by a General Court Martial was not made out. The Tribunal was of the opinion that even if the entirety of evidence of the prosecution is taken to be true, no offence was made out against the Respondent. The Appellants made an attempt to obtain leave to Appeal under Section 31 of the Armed Forces Tribunal Act, 2007 (hereinafter, 'the Act') to approach this Court, which was not entertained. Aggrieved by the judgment of the Tribunal, the above Appeal is filed.

5. The Charges against the Respondent are as follows:

"First Charge

AA Sec 52 (f) SUCH AN OFFENCE AS IS MENTIONED IN CLAUSE () OF SECTION 52 OF THE ARMY ACT, WITH INTENT TO DEFRAUD in that he, at New Delhi, on 15 Mar 2005, which came to the knowledge of the authority competent to initiate action on 25 Sep 2008, while performing the duties of Chief Director of Purchase, Army Purchase Organization, Ministry of Defence, contrary to Army Purchase Organization, Ministry of Defence, Department of Defence Consolidated Order no.3 of 1987, with intent to defraud, approved addition of two more tendering stations (namely Gadarwara, District Narsingpur (MP) and

Narsingpur (MP) in Acceptance of Tender for Risk Purchase Contract No.J-13028/1/4-03/45- RP/2005-PUR III dated 28 Feb 2005 for Masur Whole awarded to M/s. GREEN FED (Gujrat Co-operative Grain Grower's Federation Ltd.,) after issue of Acceptance of Tender on the last day of Delivery Period.

Second Charge

AA Sec 63 (Alternative to first charge) AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE in that he, at New Delhi, on 15 Mar 2005, which came to the knowledge of the authority competent to initiate action on 25 Sep 2008, while performing the duties of Chief Director of Purchase, Army Purchase Organization, Ministry of Defence, contrary to Army Purchase Organization, Ministry of Defence, Department of Defence Consolidated Order no.3 of 1987, improperly approved addition of two more tendering stations (namely Gadarwara, District Narsingpur (MP) and Narsingpur (MP) in Acceptance of Tender for Risk Purchase Contract No. J-13028/1/4-03/45-RP/2005- PUR III dated 28 Feb 2005 for Masur Whole awarded to M/s. GREEN FED (Gujrat Co-operative Grain Grower's Federation Ltd) after issue of Acceptance of Tender on the last day of Delivery Period.

THIRD CHARGE

AA SEC. 52(f) SUCH AN OFFENCE AS IS MENTIONED IN CLAUSE (f) OF SECTION 52 OF THE ARMY ACT, WITH INTENT TO DEFRAUD in that he, at New Delhi, on or about 29 July 2005, which came to the knowledge of the authority competent to initiate action on 25 Sep 2008, while performing the duties of Chief Director of Purchase, Army Purchase Organization, Ministry of Defence, and being aware that para 4(VI) of No. J11011/1/2000-CDN, Govt of India, Min of Def, APO Guidelines to prevent legal complications dt 30 Mar 2000 prohibited any deviation from ASC Specification and Price reduction in Risk Purchase contracts, with intent to defraud acquiesced with decision of Director General of Supply and Transport vide letter No.69642/5/1-05/163-RP/05/Q/ST-7 dt 29 Jul 2005 granting relaxation to M/s Punjab State Civil Supplies Corporation Ltd in a Risk Purchase Contract Acceptance Tender No. J-13075/5/163/2005-PUR III dt 27 Jun 2005 for 350/400 grains per 100 gms of Kabli Chana on price reduction of 0.5% instead of 300-350 grains per 100 gms as stipulated in Revised ASC specification No.97.

FOURTH CHARGE

AA SEC. 63 (Alternative to third charge) AN OMISSION PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE in that he, at New Delhi, on or about 29 July 2005, which came to the knowledge of the authority competent to initiate action on 25 Sep 2008, while performing the duties of Chief Director of Purchase, Army Purchase Organisation, Ministry of Defence and being aware that para 4(VI) of No. J- 11011/1/2000/CDN, Govt of India, Min of Def, APO

Guidelines to prevent legal complications dt 30 Mar 2000 prohibited any deviation from ASC Specification and Price reduction in Risk Purchase contracts, improperly acquiesced with decision of Director General of Supply and Transport vide letter No. 69642/5/1-05/163-RP/05/Q/ST-7 dt 29 Jul 2005 granting relaxation to M/s Punjab State Civil Supplies Corporation Ltd in a Risk Purchase Contract Acceptance Tender No. J- 13075/5/163/2005-PUR III dt 27 Jun 2005 for 350-400 grains per 100 gms of Kabli Chana on price reduction of 0.5% instead of 300-350 grains per 100 gms as stipulated in Revised ASC specification No. 97.

FIFTH CHARGE

AA SEC. 52(f) SUCH AN OFFENCE AS IS MENTIONED IN CLAUSE (f) OF SECTION 52 OF THE ARMY ACT, WITH INTENT TO DEFRAUD in that he, at New Delhi, on or about 23 Aug 2005, which came to the knowledge of the authority competent to initiate action on 25 Sep 2008, while performing the duties of Chief Director of Purchase, Army Purchase Organization, Ministry of Defence, and being aware that para 4(VI) of No. J11011/1/2000-CDN, Govt of India, Min of Def, APO Guidelines to prevent legal complications dt 30 Mar 2000 prohibited any deviation from ASC Specification and Price reduction in Risk Purchase contracts, with intent to defraud acquiesced with decision of Director General of Supply and Transport vide letter No.69644/7/4-05/165-R/05/Q/ST-7 dt 23 Aug 2005 granting relaxation to M/s MMTC in a Risk Purchase Contract Acceptance Tender No. J13075/7/165/2005-PUR III dt 27Jun 2005 for 350-400 grains per 100 gms of Kabli Chana on price reduction of 0.5% instead of 300-350 grains per 100 gms as stipulated in Revised ASC specification No. 97.

SIXTH CHARGE

AA SEC. 63 (Alternative to fifth charge) AN OMISSION PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE in that he, at New Delhi, on or about 23 Aug 2005, which came to the knowledge of the authority competent to initiate action on 25 Sep 2008, while performing the duties of Chief Director of Purchase, Army Purchase Organisation, Ministry of Defence and being well aware that para 4(VI) of No. J11011/1/2000/CDN, Govt of India, Min of Def, APO Guidelines to prevent legal complications dt 30 Mar 2000 prohibited any deviation from ASC Specification and Price reduction in Risk Purchase contracts, improperly acquiesced with decision of Director General of Supply and Transport vide letter No. 69644/7/4-05/165-R/05/Q/ST-7 dt 23 Aug 2005 granting relaxation to M/s MMTC in a Risk Purchase Contract Acceptance Tender No. J-13075/7/165/2005-PUR III dt 27 Jun 2005 for 350-400 grains per 100 gms of Kabli Chana on price reduction of 0.5% instead of 300-350 grains per 100 gms as stipulated in Revised ASC specification No. 97."

6. The Tribunal, being aware of the law that it is only the probative value of the material on record that has to be looked into at the time of framing of charge, proceeded to

decide as to whether a prima facie case is made out. In respect of the first charge which is related to the addition of two more tendering stations namely Gadarwara and Narsingpur, Madhya Pradesh, the Tribunal examined the exhibits that were placed on record in support of the said charges. The Tribunal held that the addition of two tendering stations was not within the jurisdiction of the Respondent. Brigadier P.P.S. Bal of CDP, Army Purchase Organisation, Army Headquarters, New Delhi in his testimony stated that he was aware of the consolidated order No.3 of 1987 permitting the inclusion of two additional tendering stations. Moreover, a decision was taken by the competent authority that there should be additional tendering stations for which there was no objection from the audit authorities or by the Principal Controller of Defence Accounts (PCDA). The Tribunal further held that no monetary benefit was derived by the Respondent by adding two tendering stations and there was no extra expenditure borne out by the Appellants due to the addition of two new stations.

7. In so far as the second charge is concerned, which deals with the extension of the delivery period and the issue of final performance notice, the Tribunal was of the opinion that there is nothing on record to substantiate any act or omission on the part of the Respondent by which the supplier was benefited. Moreover, evidence suggested that extra expenditure was incurred by the supplier for transportation. The Tribunal opined that there was no violation of any Government instructions. The evidence of DW-1, Mr. P.V.D. Prasada Rao, Deputy Secretary to the Government of India, Ministry of Agriculture, Department of Agriculture & Cooperation, New Delhi was recorded in the summary of evidence and was perused by the Tribunal. It was concluded that there was no foundation even to prima facie show the lapses on the part of the Respondent.

8. Deviation from ASC specifications and price reduction in risk purchase contract was the subject matter of charges Nos.3 to 6. After pursuing the evidence of PW-1, Brigadier PPS Bal and PW-2, Col. Ambrish Malhotra, the Tribunal accepted the contention of the Respondent that Director General of Supplies and Transport (DGST) was the sole authority to grant relaxation of specifications and the Respondent who was a CDP did not have the power to over-rule the decision of DGST. For the aforesaid reasons, the submission of the Appellants that the Respondent was under an obligation to protest the violation of guidelines by the DGST was not accepted by the Tribunal. Even the seventh charge pertaining to the issuance of letters on 02.08.2005, 12.09.2005 and 13.09.2005 without taking into account the existing guidelines regarding the price reduction in R.P. contracts was held in favour of the Respondent by the Tribunal. On the basis of the above evidence, the Tribunal found that no prima facie case was made out against the Respondent and the charges framed against him were found unsustainable. Consequently, the charges were quashed.

9. Ms. Diksha Rai, learned counsel appearing for the Appellant contended that the judgment of the Tribunal is vitiated due to a jurisdictional error. According to her, the O.A. in this case was filed under Sections 14 and 15 of the Act against an order by which the Court Martial was convened. The Tribunal, according to Ms. Rai, did not have jurisdiction to entertain the O.A. at the interlocutory stage.

She relied on the statement of objects and reasons of the Act to submit that jurisdiction is conferred on the Tribunal only for adjudication of complaints and disputes regarding service matters and appeals arising out of the verdicts of the Court Martial. According to her, a verdict is a final judgment or order passed by the Court Martial and as such, an order by which the General Court Martial was convened cannot be the subject matter of an appeal before the Tribunal. On the merits of the case, she contended that the Tribunal has transgressed its limit by delving deep into the merits of the case which can be done only by the Court Martial.

10. Mr. K. Ramesh, learned counsel for the Respondent argued that Section 14 of the Act provides that the Tribunal shall exercise all jurisdiction, powers and authorities exercisable by all Courts (except the Supreme Court or the High Courts exercising jurisdiction under Articles 226 and 227 of the Constitution), in relation to service matters. Mr. Ramesh further submitted that according to Section 14 (2), any person aggrieved by an order pertaining to any service matter may make an application to the Tribunal. He submitted that jurisdiction of the Tribunal cannot be curtailed on pedantic grounds and the order by which General Court Martial was convened was rightly set aside by the Tribunal.

11. Sections 14 and 15 of the Armed Forces Tribunal Act, 2007 which are relevant for adjudication of the dispute in this case are as follows:

"14. Jurisdiction, powers and authority in service matters. —(1) Save as otherwise expressly provided in this Act, the Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority, exercisable immediately before that day by all courts (except the Supreme Court or a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) in relation to all service matters.

(2) Subject to the other provisions of this Act, a person aggrieved by an order pertaining to any service matter may make an application to the Tribunal in such form and accompanied by such documents or other evidence and on payment of such fee as may be prescribed.

(3) On receipt of an application relating to service matters, the Tribunal shall, if satisfied after due inquiry, as it may deem necessary, that it is fit for adjudication by it, admit such application; but where the Tribunal is not so satisfied, it may dismiss the application after recording its reasons in writing.

(4) For the purpose of adjudicating an application, the Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely—

(a) summoning and enforcing the attendance of any person and examining him on oath;

- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) reviewing its decisions;
- (g) dismissing an application for default or deciding it ex parte;
- (h) setting aside any order of dismissal of any application for default or any order passed by it ex parte; and
- (i) any other matter which may be prescribed by the Central Government.

(5) The Tribunal shall decide both questions of law and facts that may be raised before it.

15. Jurisdiction, powers and authority in matters of appeal against court martial. —

(1) Save as otherwise expressly provided in this Act, the Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable under this Act in relation to appeal against any order, decision, finding or sentence passed by a court martial or any matter connected therewith or incidental thereto.

(2) Any person aggrieved by an order, decision, finding or sentence passed by a court martial may prefer an appeal in such form, manner and within such time as may be prescribed.

(3) The Tribunal shall have power to grant bail to any person accused of an offence and in military custody, with or without any conditions which it considers necessary: Provided that no accused person shall be so released if there appears reasonable ground for believing that he has been guilty of an offence punishable with death or imprisonment for life.

(4) The Tribunal shall allow an appeal against conviction by a court martial where—

(a) the finding of the court martial is legally not sustainable due to any reason whatsoever; or

(b) the finding involves wrong decision on a question of law; or

(c) there was a material irregularity in the course of the trial resulting in miscarriage of justice, but, in any other case, may dismiss the appeal where the Tribunal considers that no miscarriage of justice is likely to be caused or has actually resulted to the appellant: Provided that no order dismissing the appeal by the Tribunal shall be passed unless such order is made after recording reasons therefor in writing.

(5) The Tribunal may allow an appeal against conviction, and pass appropriate order thereon.

(6) Notwithstanding anything contained in the foregoing provisions of this section, the Tribunal shall have the power to—

(a) substitute for the findings of the court martial, a finding of guilty for any other offence for which the offender could have been lawfully found guilty by the court martial and pass a sentence afresh for the offence specified or involved in such findings under the provisions of the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or the Air Force Act, 1950 (45 of 1950), as the case may be; or

(b) if sentence is found to be excessive, illegal or unjust, the Tribunal may—

(i) remit the whole or any part of the sentence, with or without conditions;

(ii) mitigate the punishment awarded;

(iii) commute such punishment to any lesser punishment or punishments mentioned in the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950), as the case may be;

(c) enhance the sentence awarded by a court martial: Provided that no such sentence shall be enhanced unless the appellant has been given an opportunity of being heard;

(d) release the appellant, if sentenced to imprisonment, on parole with or without conditions;

(e) suspend a sentence of imprisonment;

(f) pass any other order as it may think appropriate.

(7) Notwithstanding any other provisions in this Act, for the purposes of this section, the Tribunal shall be deemed to be a criminal court for the purposes of sections 175, 178, 179, 180, 193, 195, 196 or 228 of the Indian Penal Code (45 of 1860) and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)."

12. It is also relevant to examine Section 3 (o) of the Act which defines 'service matters' which is as under:

"(o) "service matters", in relation to the persons subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950), mean all matters relating to the conditions of their service and shall include—

(i) remuneration (including allowances), pension and other retirement benefits;

(ii) tenure, including commission, appointment, enrolment, probation, confirmation, seniority, training, promotion, reversion, premature retirement, superannuation, termination of service and penal deductions;

(iii) summary disposal and trials where the punishment of dismissal is awarded;

(iv) any other matter, whatsoever, but shall not include matters relating to—

(i) orders issued under section 18 of the Army Act, 1950 (46 of 1950), sub-section (1) of section 15 of the Navy Act, 1957 (62 of 1957) and section 18 of the Air Force Act, 1950 (45 of 1950); and

(ii) transfers and postings including the change of place or unit on posting whether individually or as a part of unit, formation or ship in relation to the persons subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950);

(iii) leave of any kind;

(iv) summary court martial except where the punishment is of dismissal or imprisonment for more than three months;

13. At the outset, it is relevant to note that the O.A. was filed both under Sections 14 and 15 of the Act. Section 15 confers jurisdiction and power on the Tribunal to entertain appeal against any order, decision, finding or sentence passed by a Court Martial.

14. Section 15 (2) of the Act provides for an appeal which can be filed by the person aggrieved by an order, decision, finding or sentence passed by a Court Martial. The order challenged in the OA in this case is a proceeding by which the General Court Martial was convened. As there was no order, decision, finding or sentence by the Court Martial, an appeal under Section 15 per se is not maintainable.

15. Section 14 enables a person aggrieved to make an application to the Tribunal in any service matter. 'Service matters' are defined in Section 3 (o) to mean all matters relating to

the conditions of their service, which shall include termination of service, inter alia. There are some matters which are excluded from the purview of the definition of 'service matters'. There is no dispute in this case that the said exclusions do not come into play.

16. Any matter relating to the conditions of service falls within the definition of 'service matters' under Section 3 (o) of the Act and can be the subject matter of an application filed before the Tribunal. 'Conditions of service' mean those conditions which regulate the holding of a post by any person right from the time of his appointment till his retirement and even after his retirement including pension etc. Therefore, conditions of service also include dismissal from service.

17. The words 'relating to' appearing before the words 'conditions of service' in the definition of 'service matters' in Section 3(o) of the Act should be given a wide interpretation. In *Mansukhlal Dhanraj Jain v. Eknath Ogale* (supra) this Court referred to *Blacks' Law Dictionary* where 'relate' was defined as under:

"to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with; 'with to'."

18. It is clear from the above that any proceeding which leads to an order of termination would fall within the expression 'relating to conditions of service'. In any event, the proceedings initiated against the Respondent cannot be said to be not related to his service. A final order to be passed by the General Court Martial, apart from the imposition of other penalties, might have led to the termination of the service of the Respondent.

19. We have no doubt in our mind that Section 14 of the Act which confers jurisdiction over service matters of the Army personnel should receive wide construction. This Court had held that an interpretation which confers jurisdiction should be preferred over an interpretation which takes away jurisdiction .

20. We are also conscious that the object with which the Act was made is to provide adjudication of complaints and disputes regarding service matters and not only appeals against the verdicts of the Court Martial. It is trite law that statement of objects and reasons can be used as a tool for interpretation . The sequitur of the above discussion is that the impugned judgment of the Tribunal does not suffer from lack of jurisdiction.

21. Regarding the charges sought to be framed against the Respondent, we do not find any error in the approach of the Tribunal. The material on record was perused by the Tribunal to come to a conclusion that no prima facie case is made out against the Respondent. We do not see any reason to interfere with the said findings.

22. Accordingly, the Appeal is dismissed.