

lc 56663X Col Anil Kumar Gupta vs Union Of India Ministry Of Defence on 7 November, 2022

Author: Bela M. Trivedi

Bench: Bela M. Trivedi, Uday Umesh Lalit

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8968 OF 2019

IC-56663X COL ANIL KUMAR
GUPTA

.... APPELLANT

VERSUS

UNION OF INDIA & ORS.

.... RESPONDENTS

JUDGMENT

BELA M. TRIVEDI, J.

1. The present appeal filed by the appellant under Section 30(1) of the Armed Forces Tribunal Act, 2007 is directed against the impugned judgment and order dated 30.09.2019 passed by the Court No. 2 Armed Forces Tribunal, Principal Bench, New Delhi (hereinafter referred to as “the Tribunal”) in O.A. No. 32 of 2019 with M.A. No. 645 of 2019, whereby the Tribunal has dismissed the said O.A. filed by the appellant. The O.A. No. 32 of 2019 was preferred by the appellant before the Tribunal challenging the charge-sheet dated 19.11.2018 containing three charges pertaining to the appellant having behaved in a manner unbecoming his position and the character expected of him, under Section 45 of the Army Act, 1950, and challenging the order dated 22.11.2018 passed by Convening Authority directing the trial of the appellant by way of General Court Martial (GCM).
2. The short facts leading to the present appeal are that the appellant was commissioned as an officer in the Indian Army in 14 battalion of the Rajputana Rifles (Infantry) on 07.12.1996. On 13.08.2015, Col. Ramneesh Pal Singh, a close friend and colleague of the appellant wrote a letter to Brig. Ajav Vig which is reproduced hereunder:

“CONFIDENTIAL Colonel Ramneesh Pal Singh 14 th Battalion The Rajputana Rifles
Commanding Officer PIN-912014 C/o 56 APO RPS156206/Pers 13,Aug 15 Brig Ajav
Vig Cdr 79Mtn Bde Pin-908079 C/o 56 APO COMPLAINT IN R/O IC 56663 COL
ANIL K GUPTA

1. I am writing, this letter to bring to your notice an act of stealing brother officer's affection by LC 56663, Col Anil K Gupta. The officer is presently posted at HQ DG NCC in New Delhi, tenanted the appt of Dir NCC (PLU) COORD.

2. The offr has been sending indecent msgs to my wife, which sexually explicit in nature and there is reasonable cause to believe it they have indulged in illegitimate physical relationship My wife, Mrs. Sugandhi Aggarwal has been equally involved and has reciprocated positively to these msgs.

The offr vis my house in Delhi on 13th Jul 2015, after lying to his wife about some official social engagement and was present there from 2030H, for approx. two hours.

3. With regard to my marriage, I intend initiating divorce proceedings in the civ court, based on charges of infidelity. However, I would request you to initiate suitable inquiry into the incident and take up case for disep action against the offr, as deemed fit. May I also request you to initiate the process for forthwith posting out of Col AK Gupta from Delhi.

With warm regards Sd/-

	CONFIDENTIAL	
Sd/- 31.10.15	Sd/- 31.10.15	Sd/- 31/10 XV"

3. Consequent to the said letter, a Court of Inquiry was conducted by the HQ Delhi Area to investigate into the complaint made by Col. Ramneesh Pal Singh. The said Court of Inquiry was finalized on 11.11.2016 with the directions of GOC Delhi Area to initiate disciplinary proceedings against the appellant. After the hearing of the Charge in terms of Army Rule 22, on 24.07.2017 directions were given for recording the Summary of Evidence. On the completion of Summary of Evidence, a prima facie case was made out against the Appellant and accordingly, three charges were framed against the appellant with regard to he having behaved in the manner unbecoming his position and character expected of him, under Section 45 of the Army Act vide the charge-sheet dated 19.11.2018. Consequent thereto, on 22.11.2018 the Convening Authority directed the trial by General Court Martial.

4. The appellant vide his letter dated 04.01.2019 addressed to the Convening Authority, raised an issue pertaining to the period of limitation in terms of Section 122 of the Army Act, however, since the directions for trial were given, he was advised to raise the issue before the General Court Martial. The appellant, thereafter on 07.01.2019, filed an Original Application being no.32/2019 before the Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, challenging the charge-sheet dated 19.11.2018 as well as the order dated 22.11.2018 passed by the Convening Authority directing trial of the appellant by General Court Martial. The said OA having been dismissed by the Tribunal vide the impugned judgment and order, the present appeal is filed. This Court vide the order dated

02.12.2019, while issuing a notice to the respondents, had stayed the disciplinary proceedings as well as the General Court Martial proceedings.

5. The learned counsel appearing for the appellant relying upon Section 122 of the Army Act submitted that the trial by Court Martial was vitiated being barred by the period of limitation prescribed under the said provision. According to him the aggrieved person i.e. Col. Ramneesh Singh knew about the commission of the alleged offence when he wrote the letter on 13.08.2015 and the Convening Authority had passed the order directing the trial by the General Court Martial on 22.11.2018 i.e. three years after the letter written by Col. Ramneesh Singh. Hence the period of three years having already expired as contemplated in Section 122 of the Army Act, the Tribunal had committed an error in not quashing the order dated 22.11.2018 passed by the Convening Authority and consequently the trial proceedings. He also submitted that the charge-sheet dated 19.11.2018 framing three charges against the appellant under Section 45 of the Army Act, based on the said allegations was also required to be quashed and set aside.

6. Per contra, the learned senior advocate Mr. R. Balasubramanian appearing for the respondents vehemently submitted that from the letter dated 13.08.2015 written by the aggrieved person Col. Ramneesh Singh it could not be construed that he had the knowledge about the commission of the alleged offence by the appellant. According to him, after the completion of Summary of Evidence, a prima facie case was made out against the appellant and hence the charge-sheet was issued on 19.11.2018 and consequently the Convening Authority had directed the trial by the General Court Martial vide order dated 22.11.2018. He also drew the attention of the Court to the letter dated 03.11.2000 written by the Lt. General, Adjutant General's Branch, Army Headquarters DHQ PO, New Delhi containing the policy dealing with disciplinary aspect of matrimonial affairs of officers, which mentioned as to what constituted the alleged misbehavior amounting to adultery, to submit that it was only after conducting a court inquiry, it could be concluded that an alleged offence of stealing the affection of the officer's wife has been committed by the officer or not, and in the instant case, the said offence was prima facie made out only after the completion of Summary of Evidence. He further submitted that since the department has initiated the departmental proceedings against the appellant for the charges which are of serious nature, the Tribunal had rightly not interfered with the said proceedings.

7. In order to appreciate the rival contentions raised by the learned counsel for the parties, it would be apposite to reproduce the relevant provision contained in Section 122 of the Army Act, which reads as under:

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

(a) on the date of the offence or,

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

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

8. From the bare reading of the said provision, it clearly transpires that no trial by Court Martial of any person subject to the Army Act, for any offence could be commenced after the expiration of a period of three years, and such period would commence on the date of offence or 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. Hence for the purpose of Section 122, the two dates will be relevant i.e., the date when the alleged offence comes to the knowledge of the person aggrieved and the date on which the authority competent to initiate action comes to know about the alleged offence. As per Section 3(xvii) “offence” means any act or omission punishable under the said Act and includes a civil offence as defined in Section 3(ii) which means an offence triable by a criminal court. Chapter- VI of the Army Act deals with the offences. Section 45 which falls under the said Chapter states that Army officer, junior commissioner officer or warrant officer who behaves in a manner unbecoming his position and the character expected of him shall be liable to suffer punishment as prescribed therein.

9. In the instant case, having regard to the contents of the letter dated 13.08.2015 written by the aggrieved person i.e., Col. Ramneesh Singh to the concerned authority, it clearly transpires that he was aware of the alleged act of the appellant having stolen the affection of his wife on the date of the said letter. He had specifically mentioned in the said letter that it was for bringing to the notice of the concerned authority about the appellant’s act of stealing affection of his wife. He had further alleged therein that the appellant was sending indecent messages to his wife which were sexually explicit in nature and that he had reasonable cause to believe that the appellant and his wife had indulged in illegitimate physical relationship with each other. Therefore, the date 13.08.2015 would be the crucial date on which the aggrieved person had the knowledge about the commission of the alleged offence. Therefore the time had started running from the said date for the purpose of Section 122 of the said Act. In that view of the matter, the submission of the learned senior advocate appearing for the respondents that date of aggrieved person’s knowledge about the commission of the alleged offence by the appellant, should be construed as the date when the respondents prima facie concluded after the Court of Inquiry that the appellant had committed the offence, cannot be accepted. The date 13.08.2015 therefore would be the date on which the aggrieved persons i.e., Col. Ramneesh Pal Singh had the knowledge about the commission of the alleged offence by the appellant. The Convening Authority having directed the trial by General Court Martial vide order dated 22.11.2018, the same was clearly beyond three years and therefore barred under Section 122 of the Act.

10. We are therefore of the opinion that the trial by the General Court Martial directed vide the order dated 22.11.2018 was clearly barred under Section 122 of the Army Act. The said proceedings deserve to be quashed and set aside and are accordingly set aside.

11. However, we hasten to add that as per the well settled legal position ¹, the power of judicial review in the matter of disciplinary proceedings is extremely limited. It is circumscribed by the limits of correcting errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. The power of judicial review is an evaluation of the decision-making process and not of the merits of the decision itself. It is therefore clarified that the disciplinary proceedings initiated against the appellant pursuant to the chargesheet issued on 19.11.2018 shall continue in accordance with law.

12. The appeal stands partly allowed accordingly. ¹ Regional Manager, UCO Bank and Anr. vs. Krishna Kumar Bhardwaj, (2022) 5 SCC 695CJI [UDAY UMESH LALIT] NEW DELHI;J. 07.11.2022 [BELA M. TRIVEDI]