

**IN THE ARMED FORCES TRIBUNAL REGIONAL BENCH,  
GUWAHATI.**

**OA 18/2016**

**P R E S E N T**

**HON'BLE MR. JUSTICE B.P. KATAKEY, MEMBER (J)  
HON'BLE VICE ADMIRAL MP MURALIDHARAN, MEMBER (A)**

**No.738030-H Sergeant A.K. Singh  
51 ASP,  
C/O 99 APO**

..... **Applicant**

Legal practitioner for the applicant  
Dr. Gobind Lal  
Mrs. U Zeeham

**- Versus -**

1. Union of India  
Through its Secretary  
Govt of India,  
Ministry of Defence,  
South Block,  
New Delhi-110001
2. Chief of Air Staff,  
Air Force Headquarters  
Vayu Bhavan  
New Delhi-110011
3. Station Commander/Commanding Officer  
51 Air Stores Park (ASP)  
C/O 99 APO
4. Presiding Officer and Members of Col held at 51 ASP  
C/O 99 APO

..... **Respondents**

Legal practitioner for the  
Respondents

**Brig (Retd) N. Deka, CGSC**

Date of Hearing : 28.04.2016  
Date of Judgment & Order : 16.05.2016

### JUDGMENT & ORDER

*(V Adm MP Muralidharan, Member (A))*

1. This is second round of litigation by the applicant, Sergeant AK Singh No. 738030-H, a serving Air Warrior.
2. The applicant had earlier filed OA 12/2016, seeking direction to the respondents, to supply him the deposition of witnesses examined during the Court of Inquiry (in short COI) and to allow him to cross-examine the witnesses, who have deposed against him before proceeding with recording Summary of Evidence (in short SOE). The OA was disposed of vide order dated 31.03.2016 (Annexure-1) directing the applicant to approach the competent superior authority with his grievance by way of representation and further directing the said authority to pass necessary speaking order based on the records of the COI. Based on the directions of this Tribunal, HQ, EAC, passed a speaking order dated 19.04.2016 (Annexure-3) responding to the issues raised by the applicant in his appeal.
3. In the current OA, the applicant has once again prayed that the respondents be directed to furnish copy of the COI proceedings and has also sought time to further challenge the speaking order passed on 19.04.2016 before the next higher authority. The applicant also seeks further stay on recording of SOE till his representation to next higher authority is disposed of.
4. Dr. Gobind Lal, the learned counsel for the applicant, submitted that this Tribunal in its order in the earlier OA of the applicant, viz. OA 12/2016, had directed that the applicant shall be supplied with COI proceedings subject to the payment of required cost. Further as directed in the order, though the applicant had submitted representation to AOC-in-C, EAC, the speaking order, however, has not been signed by the AOC-in-C, but has been signed

by the Command Disciplinary Officer. While the speaking order states that the applicant was given all opportunities to cross-examine the witnesses during the COI, but he declined to do so, such assertion is without considering the issues raised by the applicant in his request for redressal of grievance, submits the learned counsel. Even though the speaking order says that the applicant will be given all opportunities to cross-examine the witnesses and produce defence witnesses during the recording of SOE, according to the learned counsel, it is not in keeping with the request of the applicant to have a first opportunity to cross-examine the witnesses during the COI. The learned counsel further submitted that the Hon'ble Apex Court in ***Union of India and others Vs Sanjay Jethi and another, (2013) 16 SCC 116***, has held that in a COI participation of a delinquent officer, whose character or military reputation is likely to be affected, is a categorical imperative. The Hon'ble Apex Court has further held that the participation has to be meaningful, effective and he has to be afforded adequate opportunity as it has a binding effect on COI, submits the learned counsel.

5. The learned counsel for the applicant further submitted that as the representation has been rejected by the speaking order, the applicant desires to approach the next higher authority in chain of command. In the meantime, as the respondents are planning to proceed with the recording of SOE, learned counsel prayed that the proceedings of SOE be stayed till disposal of the representation by the next higher authority. Learned counsel also requested that the applicant be given COI proceeding so as to enable him to prepare his representation to the next higher authority.
6. Brig. N. Deka (Retd), learned CGSC for the respondents, submitted that the order of this Tribunal in OA 12/2016 has been complied with by the respondents on issue of the speaking order (Annexure-3). It is also submitted that all issues raised by the applicant in his representation had been responded to in the speaking order including that the applicant would be provided with a copy of COI proceedings on payment of requisite amount in

accordance with Air Force Rule 156(9). The applicant had also been given the opportunity to peruse the COI proceeding and cross-examine the witnesses during the COI, but he declined to do so at that stage, submits the learned counsel.

7. Learned counsel further submitted that during recording of the SOE, the applicant would be given opportunity to cross-examine the witnesses including those who had deposed against him during the COI. The administration would also summon defence witnesses as required including those are not subject to the Air Force Act during the recording of SOE. Learned counsel further submitted that COI proceedings have already been approved by the convening authority and further steps in accordance with regulations have been initiated for disciplinary proceedings against the applicant. It is also submitted that his claim for copy of COI proceedings and cross-examination of witnesses at this stage is only to delay the recording of SOE and disciplinary proceedings. Learned counsel also submitted that there are a number of judgments of the Hon'ble Apex Court wherein it has been held that COI is only for fact finding and rules of natural justice were not applicable at COI stage.
8. We have heard the rival submissions and perused the records.
9. Essence of the applicant's contention is that he was not given an opportunity to cross-examine the witnesses who deposed against him in the COI which resulted in initiation of disciplinary proceedings against him. In his earlier OA, he had sought time to appeal to the competent authority for redressal of his grievances and had sought stay in the interim, on the proceedings of recording of SOE. The applicant had been given the opportunity to do so. We observe that the speaking order passed by the competent authority has responded to all the issues raised by the applicant. The applicant not being satisfied with the response, now wants to appeal to the next higher authority and seeks further stay in recording of SOE till that appeal is disposed of. He further claims that COI proceedings are necessary to prepare that appeal.

10. As regards the conduct of COI, the Hon'ble Apex Court in the case of **Major General Inder Jit Kumar Vs. Union of India and others (1997) 9 SCC 1** held as follows-

*"7. Under Rule 177 of the Army Rules, 1954, a Court of Inquiry can be set up to collect evidence and to report, if so required, with regard to any matter which may be referred to it. The Court of Inquiry is in the nature of a fact-finding inquiry committee. Army Rule 180 provides, inter alia, that whenever any inquiry affects the character or military reputation of a person subject to the Army Act, full opportunity must be afforded to such a 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 of Inquiry is required to take such steps as may be necessary to ensure that any such person so affected receives notice of and fully understands his rights under this rule. ...."*

*"8. The appellant has also contended that a copy of the report of the Court of Inquiry was not given to him and this has vitiated the entire court-martial. The appellant has relied upon Rule 184 of the Army Rules, 1954 in this connection. Rule 184, however, provides that the person who is tried by a court-martial shall be entitled to copies of such statements and documents contained in the proceedings of a Court of Inquiry as are relevant to his prosecution or defence at his trial. There is no provision for supplying the accused with a copy of the report of the Court of Inquiry. The procedure relating to a Court of Inquiry and the framing of charges was examined by this Court in the case of Major G.S.Sodhi v. Union of India. This Court said that the Court of Inquiry and participation in the Court of*

*Inquiry is at a stage prior to the trial by court-martial. It is the order of the court-martial which results in deprivation of liberty and not any order directing that a charge be heard or that a summary of evidence be recorded or that a court-martial be convened. Principles of natural justice are not attracted to such a preliminary inquiry. Army Rule 180, however, which is set out earlier gives adequate protection to the person affected even at the stage of the Court of Inquiry. In the present case, the appellant was given that protection. He was present at the Court of Inquiry and evidence was recorded in his presence. He was given an opportunity to cross-examine witnesses, make a statement or examine defence witnesses. The order of the Court of Inquiry directing that a court-martial be convened and framing of charges, therefore, cannot be faulted on this ground since it was conducted in accordance with the relevant rules."*

11. It is observed that the Air Force Rule 156(2) is parameteria with Army Rule 180 referred to by the Hon'ble Apex Court. Further Army Rule 184 is parameteria of Air Force Rule 156(7) & (8). Therefore, as held by the Hon'ble Apex Court, Principles of natural justice are not attracted during COI and there is also no provision for supplying a copy of COI unless the competent authority decides that the individual is to be tried by Court Martial. The competent authority is yet to take a decision as to whether the applicant is to be tried by the Court Martial as the stage for that purpose is yet to come, the SOE having not yet recorded. It is further observed that the proceeding of COI or any confession or statement or answer to the question put by the COI shall not be admissible in evidence against a person subject to the Air Force law before the proceeding of a Court except to contradict any false evidence being given before that Court in accordance with Air Force Rule 156(6). It is also observed that Air Force Rule 24 provides adequate opportunity to an accused to cross-examine any witness during recording of SOE.

The respondents have also submitted that such an opportunity would be afforded to the applicant including producing any defence witness.

12. As regards the observation of the Hon'ble Apex Court in ***Sanjay Jethi (Supra)***, referred to by the learned counsel for the applicant it is observed that the facts differ from the instant case. In the said case, the applicant was contending that additional papers had been attached post COI and the additional COI subsequently convened post directives of the Regional Bench of this Tribunal at Mumbai, the applicant was denied the opportunity to cross-examine and also denied certain documents. Therefore, the Tribunal had set aside the proceedings for a second time and had directed the respondents therein to conduct fresh COI, which was under challenge. While the Hon'ble Apex Court upheld the findings of the Tribunal, it was also held that the concept of full opportunity cannot be stretched beyond a certain limit and has to be decided on facts.

13. In the instant case, the respondents have asserted that the applicant who was afforded an opportunity to cross-examine witnesses during the COI declined to do so. The applicant has nowhere brought out that he was not given such an opportunity but has only stated that he was not given copies of statements despite requesting for the same. We are, however, not entering into that dispute at this stage, as it may amount to prejudging the issue before the competent authority takes a decision to try the applicant by a Court Martial. As observed earlier, the supply of copy of COI becomes mandatory only when a decision is taken to 'Court Martial' an individual. No such decision has been taken in the instant case. Despite that the respondents have decided to furnish the applicant copy of the COI subject to payment of cost. We also do not see any merit in the claim of the applicant that he needs a copy of the COI to prefer an ROG to the next higher authority against the speaking order of HQ EAC or that SOE should not be recorded till such an appeal is made by the applicant and disposed of by the competent authority.

14. In view of the foregoing, the OA is devoid of merit and is accordingly dismissed.
15. There will be no order as to costs.

**MEMBER (A)**

**MEMBER (J)**

*Kalita*