

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

O.A. NO. 11 OF 2015

P R E S E N T

**HON'BLE MR.JUSTICE N.K.AGARWAL, MEMBER (J)
HON'BLE LT GEN (RETD) GAUTAM MOORTHY, MEMBER (A)**

JWO Biman Chakraborty

Junior Warrant Officer,
Presently serving as the Medical Assistant,
11 Air Force Dental Centre under 5 Air Force
Hospital, Rowraih, Jorhat, Assam.

... **Applicant**

**Ms. Rita Devi,
Mr.A.R.Tahbilder,**
Legal practitioner for Applicant

-Versus-

1. **The Union of India,**
Represented by the Secretary,
Ministry of Defence, South Block, New Delhi, Pin-110011;
2. **Chief of the Air Staff,** Air Head Quarter, Vayu Bhawan,
Rafi Marg, New Delhi, Pin-110011;
3. **Air Officer Commanding-in-Chief,** Eastern Air Command,
Indian Air Force, Shillong, Meghalaya;
4. **Air Officer Commanding,** 5 Air Force Hospital,
Rowraih, Jorhat, Assam;
5. **Smt. Rima Borah Dutta,** wife of Sri Jitupon Dutta,
Resident of village Panichakua, P.O.-Panichakua,
District-Jorhat, Assam, Pin-78006.

... **Respondents.**

Mr.C.Baruah, CGSC
Legal practitioner for Respondents

Date of Hearing :- 29.09.2015

Date of Judgment & Order :- **01.10.2015**

JUDGMENT & ORDER

(N.K.Agarwal,J)

The instant Original Application has been filed by the applicant, inter alia, praying for the following relief (s) :-

- a) The proceeding of the Court of Inquiry initiated against the applicant on the basis of the complaint lodged by the complainant Smt.Rima Borah Dutta be set aside and quashed along with its report dated 27.03.2014 ;
- b) The charge sheet dated 13.09.2014 and the SOE on the basis of the aforesaid Charge sheet be set aside and quashed.

(2) According to the application, the applicant, a Junior Warrant Officer, presently serving as the Medical Assistant at 11 Air Force Dental Centre under the 5 Air Force Hospital, Rowrah, Jorhat, was subjected to Court of Inquiry on the basis of a complaint lodged by respondent No.5, who was employed in the hospital on casual basis as a Lady Attendant. The allegation made in the complaint is that the applicant tried to outrage the modesty of the complainant, i.e., respondent No.5, in absence of the Commanding Officer, 11 Air Force Dental Centre. During that period, the applicant was the in-charge of the Dental Center. The Court of Inquiry, without following the relevant provisions of law regulating the proceedings of such Court of Inquiry, in a one sided proceedings, held the applicant guilty of the charge and prepared the Inquiry Report on 27.03.2014. On the basis of such

illegal finding of the Court of Inquiry, the authorities issued Charge Sheet to the applicant on 13.09.2014 under sections 65 and 71 of Air Force Act, 1950 and hence, the applicant was forced to file this application for quashing the chargesheet dated 13.09.2014 as well as the Court of Inquiry Proceedings and its report dated 27.3.2014.

(3) By filing the affidavit in opposition, the respondent Nos. 1, 2, 3 and 4 have refuted the allegations as alleged in the application by the applicant. According to the respondents, on 12 September, 2013, Mrs. Rima Borah Dutta, wife of Mr. Jitupon Dutta, a temporarily employed Lady Attendant of 11 AFDC reported to Sqn Ldr Shaleen Airon, then CO, 11 AFDC about the indecent mis-behaviour of JWO Biman Chakraborty. Considering the seriousness of matter, Sqn Ldr Shaleen Airon asked the complainant, Mrs. Rima Borah Dutta to submit her complaint in writing. Thereafter Mrs. Rima Borah submitted her written complaint on 18 Sep 13 alleging sexual harassment by the applicant. On receipt of written complaint, the Commanding Officer, 11 AFDC inquired into the allegations made by Complainant at his level. Thereafter, Sqn Ldr Airon, the then CO informed the matter to next higher authority, i.e., Air Officer Commanding (AOC), 5 Air Force Hospital (AFH). The matter was also informed to 16 Provost & Security (Unit), a unit which is specialized in inquiring matters within IAF and works independently. On receipt of the complaint, AOC, 5 AFH, ordered a Court of Inquiry (COI) in order to ascertain the veracity of allegations made by the complainant. The COI, enquired the matter in depth and recorded the statement of witnesses on Oath as directed by the competent authority. Since the complaint was made in Assamese Language, a competent translator was made available to translate from Assamese Language to

English Language. The Court of Inquiry examined a total of eight witnesses including the Applicant and found that the Applicant is blameworthy of various acts which constitute an offence of outraging the modesty and molestation. The Court found the applicant herein blameworthy of making sexually coloured remarks and putting his hands inside the blouse of the lady (the complainant therein) as well as kissing on her head and various acts. Those acts of applicant herein were committed on various occasions at 11 AFDC from 02 July 2013 to 16 Sep 13. During the investigation, the Court of Inquiry applied Para 790 (a) (b) & (c) and thereafter para 790 (e), Regulation for the Air Force. After extending every possible opportunity to the applicant, the Court of Inquiry recommended disciplinary action against him. The proceeding of the said Court of Inquiry were approved by AOC-in-C, EAC, IAF on 07 July 2014 and directed initiation of disciplinary action against Applicant. Accordingly, charge sheet was issued on 13 September, 2014 based on the findings of Court of Inquiry. The charges were heard by Air Officer Commanding in term of Rule 24 of Air Force Rules, 1969. After considering the case, the Air Officer Commanding directed that the evidence be reduced to writing. In pursuant to the direction of Air Officer Commanding, the evidence were reduced to writing by the detailed officer from 15 September, 2014 till 08 December, 2014. The evidences, reduced to writing, were considered by the Air Officer Commanding who recommended the case for trial by General Court Martial (GCM). Though the case is under consideration at HQ,EAC, IAF, the GCM as recommended by Air Officer Commanding, has not been assembled till date. According to the respondents, the Court of Inquiry was conducted in accordance with law and consequently, the chargesheet was issued. It has also been stated that the applicant would have full opportunity of raising all the

defences during the GCM proceedings. But at this stage, the application being premature, is not tenable and deserves to be dismissed.

(4) We have heard the learned Counsel appearing for both the parties and perused the paper books.

(5) Undisputedly, the Court of Inquiry conducted was in the nature of preliminary enquiry so as to form an opinion whether or not, a prima facie case exists. It is settled law that Court should not interfere in such proceedings, the effect of which would be to stall the ultimate action which would be taken by the authorities, unless glaring illegality which goes to the root of the matter, is noticed. After going through the entire paper books, we could not find any such glaring illegality in the proceedings adopted by the respondents. The applicant also failed to demonstrate any such illegality. So far as contention of the applicant, that the complaint has already been withdrawn by the complainant on a date subsequent to the date of Inquiry Report, is concerned, is of no help to the applicant at this stage, inasmuch as, the above factual matrix and its effect shall be judged during GCM proceedings.

(6) Learned Counsel for the applicant also tried to take shelter on the Judgement passed by the Hon'ble Supreme Court in the case of **Vishaka and Others Vs. State of Rajasthan and others**, reported in **(1997) 6 SCC 241**. However, the Committee constituted for the Court of Inquiry consisted of a lady officer. Thus, the reliance placed by the applicant on the aforesaid Judgment passed by the Hon'ble Supreme Court is also misplaced.

(7) Considering every aspect of the matter, in our considered opinion, as the chargesheet has already been issued and we have also not found any glaring defect/illegality/infracton of any rules, the applicant is not barred from taking appropriate defence, if the General Court Martial is convened. Hence, the application deserves to be dismissed at this stage.

(8) For the foregoing reasons, the Original Application is liable to be and is hereby dismissed. However, there is no order as to costs.

MEMBER (A)

MEMBER(J)

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