

THE ARMED FORCES TRIBUNAL

REGIONAL BENCH, GUWAHATI

OA-32/2014

Col Ashish Pandey

Applicant

By legal practitioners for

Applicant

Mr.Deepam Borah

- Versus -

1. **Union of India through the Secretary,**
Ministry of Defence,
New Delhi-11001
2. **The Chief of Army Staff**
Through Military Secretary
Integrated HQ of Mod (Army)
Kashmir House, Rajaji Marg,
New Delhi- 110011
3. **The Director General**
Married Accommodation Project (MAP)
E-in-C's Branch
Integrated HQ of MoD(Army)
Kashmir House, Rajaji Marg,
New Delhi-110011.
4. **HQ SWAC (C Discp O)**
C/ o 56 APO
Pin-936176
5. **Group Capt. A K Shrivastava, (S-MET-O)**
Presiding Officer
Court of Inquiry (MAP AP Pune)
C/o HQ 2 Wing AF
Air Force Station Pune
Lohegaon, Pune-411032.

Respondents

By legal practitioner for

Respondents

Mr.C.Baruah, CGSC

P R E S E N T

HON'BLE MR.JUSTICE B.P.KATAKEY, MEMBER(J)

HON'BLE LT.GENERAL N.B.SINGH, MEMBER ((A)

ORDER
10.03.2016

(Justice B.P.Katakey)

This OA has been filed praying for the following reliefs:

- (a) To allow the Original Application.*
- (b) To quash and set aside the impugned Convening Order for the Court of Inquiry dated 22.12.2011 (Annexure-1) as well as the consequent impugned letters bearing Ref. Nos.HQ SWAC Letter No.SWAC/9002/3/Wks dtd 10.Dec 13,Army HQ DG MAP letter No.20210/MAP/143/confd/A dtd 17 Jan 14,Army HQ Engineer-in-Chief Branch letter number 90900/Col/MAP/Gp-2/Mon/E1A dated 24 Feb 14,Army HQ DG MAP letter No. 10131/MAP/Coord /14/BOO dated 10 Sep 14 and HQ 2 Wing AF letter No. 2W/C 2901/1010/WKs dated 12 Nov 14 (Annexure -4 series) and impugned signal dated 09.10.2014 (Annexure-8) which brings out the malafide intent of the Respondent Authorities in somehow implicating the applicant on one pretext or the other.*
- (c) Costs of the application, and*
- (d) Any other relief(s) which the Hon'ble Tribunal may deem fit and proper.*

[2] The applicant by the present application has challenged the order convening the Court of Inquiry dated 22.12.2011 apart from the procedure followed in conducting such Court of Inquiry, contending, inter alia , that the procedures laid down in Chapter VI of the Army Rules, 1954,(hereinafter referred to as 1954 Rules) in conducting the Court of Inquiry have not been followed. According to the applicant, despite passing of order as required under Rule 180 of the aforesaid Rules, the applicant has not been given adequate opportunity of cross examining the witnesses apart from examining his own witness, in violation of the procedure for conducting such Court of Inquiry. It is also the contention of the applicant that the right to get copies of the documents sought for by him as envisaged in Rule 184 of the aforesaid Rules has also been violated inasmuch as the copies of the relevant documents asked for by the applicant have not been supplied. The applicant, therefore, has challenged the Court of Inquiry proceeding

which was convened vide order dated 22.12.2011.

[3] The respondents in their counter affidavit filed have contended that the order convening the Court of Inquiry dated 22.12.2011 has been passed as the fact finding inquiry was considered to be necessary. It has also been submitted that since the character of the applicant was likely to be involved in such Court of Inquiry, the order under Rule 180 of the 1954 Rules was passed giving procedural safeguard to the applicant, who, however, did not avail that opportunity. It has also been contended by the respondents that relevant documents were supplied to the applicant and hence, according to the respondents there is no procedural irregularities in conducting the Court of Inquiry.

[4] We have heard Mr. D.Barah, learned counsel appearing for the applicant. Also heard Ms D.Tamuli, learned counsel representing Mr.C.Baruah, learned CGSC assisted by Wing Commander PallaviPendse, appearing for the respondents.

[5] The learned counsel appearing for the applicant referring to the averments made in the OA as well as the provisions contained in Chapter VI of 1954 Rules has submitted that adequate opportunity of cross examining the witnesses apart from the opportunity to examine his own witness have been denied to the applicant. It has also been submitted that though the applicant asked for copies of certain relevant documents, all those relevant documents have not been supplied to him though copies of few of the documents supplied to him thereby violating the provisions of Rule 184 of 1954 Rules.

[6] Per contra, the learned counsel appearing for the respondents placing reliance on the averments made in the counter affidavit filed has submitted that the provisions of Chapter VI of 1954 Rules have been meticulously followed. It has also been submitted that despite giving opportunity of cross-examining the witnesses and also to examine his own witness, the applicant did not avail that opportunity and hence, it cannot be said that there is violation of any rules regarding conduct of the Court of Inquiry. It has also been submitted that all the relevant documents have been supplied to the applicant.

[7] The arguments advanced by the learned counsel for the parties received our due consideration. We have also perused the pleadings of the parties.

[8] It is an admitted position of fact that the Court of Inquiry which was convened on 22.12.2011 has been concluded and the report has been submitted which, however, is yet to be considered by the Air Officer Commanding- in- Chief ,South West Air Command , the authority to take a call on the said proceedings i.e. the Court of Inquiry.

[9] Having regard to the fact that the Court of Inquiry was convened to find out the fact and also that no decision so far has been taken by the competent authority on the report of the said Court of Inquiry, we are not inclined to go into any disputes relating to the conduct of the Court of Inquiry at this stage. We are confident that the authority concerned shall look into all the aspects of the Court of Inquiry before taking the final decision on the report submitted by such Court of Inquiry. Necessary decision in that regard shall be taken within a period of two months from the date of receipt of a copy of this order.

[10] The OA is accordingly disposed of. No costs.

MEMBER (A)

MEMBER(J)

MC