Major Ajay Bhard Waj Vs Union of India and Others

Court: Gauhati High Court (Shillong Bench)

Date of Decision: April 20, 2012

Citation: (2012) 3 GLT 237

Hon'ble Judges: Tinlianthang Vaiphei, J

Bench: Single Bench

Advocate: M. Singh, for the Appellant; S.C. Shyam, CGC, for the Respondent

Final Decision: Allowed

Judgement

T. Vaiphei, J.
The sole question which falls for consideration in this writ petition is whether the respondent authorities can convene a Court

of Inquiry in respect of the complaint lodged against the petitioner, for which he has already been counseled/reproved in terms of the provision of

Regulation 327 of the Book of Defense Service Regulation, 1987? The controversy arose on the following facts and circumstances. The petitioner

is holding the rank of Major in the Army, and is currently on deputation to the Assam Rifles. He was married to one Major Poonam Sharda

(respondent No. 6) on 02.10.2006, but the marriage was apparently on the rocks soon thereafter, which prompted him to institute a divorce suit

i.e. HMA Petition No. 16-S/3/2010 the Court of the Additional District Judge, Solan in the State of Himachal Pradesh. From their wedlock, they

have one daughter, who is now 31/2 year old, and is presently under the custody of the respondent No. 6. During the pendency of the divorce

proceeding, the respondent No. 6 lodged a complaint with the Army Wives Welfare Association (AWWA) charging the petitioner with adultery

i.e. having extra marital affairs with one Captain Mary Joy of the Army Medical Corps. The complaint was forwarded by AWWA to the General

Officer Commanding, who made an enquiry and thereafter issued the counseling letter dated 11.08.2010 advising the petitioner to avoid interacting

with the said Captain Mary Joy and required him to apprise himself of the provisions contained in ADO DV letter No. 79333/AG/DV-1 (P) dated

03.11.2000 regarding discipline with reference to the officers matrimonial affairs vide Annexure 4. Apparently, aggrieved by this letter of

counseling, the respondent No. 6 pursued the matter with the respondent authorities whereupon the impugned convening order dated 22.12.2011

was issued from the Office of the Deputy Inspector General, Assam Rifles Headquarters, Manipur Range Assam Rifles. This is how this writ

petition came to be filed by the petitioner. There is no dispute at the Bar that the Court of Inquiry being held in terms of the impugned convening

order is with respect to the same set of allegations contained in the complaint lodged by the respondent No. 6, for which the petitioner has already

been counseled. It is the contention of Mr. M. Singh, the learned counsel for the petitioner that once counseling has been done by no less an

Officer than a Lieutenant General in the Army in accordance with the said Regulations, the impugned order convening the Court of Inquiry with

respect to the same set of allegations is unwarranted and illegal.

2. Resisting the writ petition, the respondent authorities, in their affidavit-in-opposition, take the stance that the Court of Inquiry held against the

petitioner is in accordance with the provisions of Army Act and the Rules framed thereunder as he is, by a written complaint of his wife, accused of

indulging in extra marital affairs with another Commissioned Officer of the Indian Army. It is further contended by the respondent authorities that

the counseling letter issued by the Lieutenant General is merely advisory and does not bar the respondent authorities from proceeding against the

petitioner under the Army Act for committing gross matrimonial misconduct. According to the respondent authorities, the fact that the counseling

letter was merely advisory in nature and that such au informal inquiry could not bar the respondent authorities from convening the Court of Inquiry

is evident from the letter dated 2.8.2010 of Colonel A (D &V) for GOC addressed to the Headquarters Eastern Command (DV) (Annexure/R-

1). The respondent authorities also refutes the contention of the learned counsel for the petitioner that the Court of Inquiry so ordered would

influence the divorce proceedings before the Additional District Court inasmuch as the subject matter of the two proceedings are different: one for

dissolution of the marriage between the petitioner and respondent 6 and the other is for an inquiry into the complaint of the misconduct against the

petitioner under the Army Act. These are the sum and substance of the contentions of the respondent authorities in their affidavit-in-opposition.

3. There is no dispute at the Bar that the Court of Inquiry being held in terms of the impugned convening order is with respect to the same set of

allegations contained in the complaint lodged by the respondent No. 6, for which the petitioner has already been counseled. It is the contention of

Mr. M. Singh, the learned counsel for the petitioner that once counseling has been done by no less an Officer than a Lieutenant General in the

Army in accordance with the said Regulations, the impugned order convening the Court of Inquiry with respect to the same set of allegations is

unwarranted and illegal. On the other hand, Mr. S.C. Shyam, the learned CGC, appearing for the respondent authorities, strenuously defends the

impugned action and submits that the respondent authorities are well within their powers in convening the Court of Inquiry against the petitioner

under the Army Act and the rules framed thereunder. According to him, what was done by the Lieutenant General was advisory in nature, which

did not close the complaint in question, and the respondent authorities are, therefore, not precluded from convening the Court of Inquiry in view of

the seriousness and gravity of the charges leveled against him by his wife. He, therefore, urges this Court to dismiss the writ petition, which has not

merit at all.

4. I have carefully considered the rival submissions advanced by the learned counsel appearing for both the parties and I have also gone through

the materials on record. Regulation 327 of the Book of Defense Service Regulation, 1987 is the crucial provision, which is reproduced below :

(d) It should be ensured that before administering reproof by way of a warning or otherwise the competent authority applies its mind to the case

and comes to a conclusion that ends of justice would be met by closing the case with reproof. Once a decision has been arrived at and the case

closed by administration of a reproof by a competent authority, no superior authority can reopen the case.

Though the term used therein is ""reproof, in my opinion, there is no substantial difference between reproof and counseling on the one hand and

reproof and advise on the other hand, which are interchangeable. Thus, once a complaint is lodged against a serving Officer, an inquiry is to be

made in the first instance in respect of such complaint for the purpose of administering reproof. Before administering reproof by way of warning or

otherwise, the competent authority is required to apply his mind to the case and comes to a conclusion that ends of justice would be met by closing

the case with reproof. Once a decision has been arrived at and the case closed by administration of a reproof upon the delinquent officer by a

competent authority, which may take the form of warning or minor censure, no superior authority can reopen the case. On reading and re-reading

Regulation 327, there is no doubt in my mind that if such an enquiry ended in a warning or advice or reproof, it will have the effect of closing the

case and that no superior authority can be reopen the case in respect of the same subject matter of the complaint. If the Officer making such an

inquiry finds that the gravity of the case does not call for reproof and require a higher penalty, he is not expected to close the matter with a reproof;

he is rather expected to recommend a case for convening a Court of Inquiry. In other words, once the counseling/reproof advice has been done by

a competent in terms of Regulation 327, in my considered opinion, convening of Court of Inquiry in respect of the same set of allegations contained

in the complaint, for which counseling has been done, is, to say the least, irrational. There is no dispute at the Bar that the Lieutenant General who

administered reproof upon the petitioner was to do so. I am not unmindful of the limited scope of my jurisdiction to interfere with the proceedings

of the Army authorities. However, if the petitioner is able to make out a case of irrationality i.e. Wednesbury unreasonableness or illegality or

procedural impropriety as explained in Tata Cellular Vs. Union of India, in the decision-making process of the respondent authorities, the

impugned action is liable to be interfered with.

5. In the instant case, I am unable to understand the rationale for convening the Court of Inquiry against the petitioner after he has been duly

administered reproof by a competent authority in respect of the same set of allegations. The doctrine of ""Wednesbury unreasonableness"" applies to

a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the

question to be decided could have arrived at: the decision is such that no authority properly directing itself on the relevant law and acting

reasonably could have reached it. In the way, the impugned convening order also suffers from the vice of non-application of mind: the respondent

authorities have completely overlooked the provisions of Regulation 327 of the Defence Service Regulations, 1987. Drawing my attention to the

procedure for the award of investigation and disposal of general complaint, the learned CGC, however, vehemently submits that as a rule, signed

complaints and petitions from persons subject to the Army Act whose identity has been verified, must be investigated unless prima facie, the

complaint/petition appears false and frivolous, in which case action should be initiated against the originator as deemed appropriate. It is thus the

contention of the CGC that as there is a complaint lodged by the wife of the petitioner who is also an Army Officer, respondent authorities have no

alternative but to investigate such complaint. I have given my anxious consideration to the submissions of the learned CGC, but am unable to

accept the same. Before a written complaint is formally investigated, the Army authorities have the discretion to order to make an inquiry to

determine as to whether they should proceed under Regulation 327 for the purpose of administering reproof or to convene a Court of Inquiry

under the Army Act. The respondent authorities have chosen to proceed under Regulation 327, which ended in administering

reproof/warning/advise upon the petitioner. In my opinion, such reproof so administered should obviate the need for a Court of Inquiry otherwise

what was the justification for a proceeding under Regulation 327 if such exercise was to be followed by a Court of Inquiry under the Army Act. In

my judgment, the provision of Regulation 327 (d) interdicting the reopening of the case will, proprio vigore, apply. If they are, however, satisfied

that the complaint contained an allegation of serious nature calling for investigation, they may proceed to convene a Court of Inquiry under the

Army Act and the rules framed thereunder. In the instant case, the respondent authorities, after considering the nature of allegations contained in

the complaint, found it fit to proceed under Regulation 327 for the purpose of administering reproof and the proceeding was conducted by an

Officer in the rank of Lieutenant General. When the Lieutenant General after making the inquiry decided to counsel the petitioner and did so, the

necessity for convening a Court of Inquiry thus stands obviated. The petitioner who has been counseled/reproof/advised in terms of the counseling

letter could not have expected that a Court of Inquiry could still be convened against him after such counseling. This is why I consider the

impugned action of the respondent authorities to be irrational as well as without jurisdiction being violative of Regulation 327 (d) of the Defense

Service Regulations, 1987. For the reasons stated in the foregoing, this writ petition succeeds. The order dated 20.12.2011 convening a Court of

Inquiry against the petitioner is hereby quashed. It is stated by the learned counsel for the petitioner that the petitioner has not been allowed to join

his new place of posting at Bareli on account of the Court of Inquiry held against him in terms of the impugned order. If that is so, in view of

quashing of the impugned convening order, the petitioner shall be allowed to join his new place of posting at Bareli. No cost.