

**(2003) 03 JH CK 0002**

**Jharkhand High Court**

**Case No:** Writ Petition (S) No. 6016 of 2002

Major Anand Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

**Date of Decision:** March 13, 2003

**Citation:** (2003) 2 JCR 585

**Hon'ble Judges:** S.J. Mukhopadhaya, J

**Bench:** Single Bench

**Advocate:** Kameshwar Prasad, Ad and Rajesh Kumar, for the Appellant; Ram Kishore Prasad, ACGSC, for the Respondent

**Final Decision:** Dismissed

### **Judgement**

@JUDGMENTTAG-ORDER

S.J. Mukhopadhaya, J.

This application has been preferred by the petitioner against the order dated 14th October, 2002 (Annexure 13) and the letter dated 24th October, 2002 (Annexure 16), whereby and whereunder, disciplinary proceeding has been initiated against him and he has been asked to attend the proceeding for hearing.

2. The case of the petitioner is that he was posted in 23rd Div. Ord. Unit at Ranchi since January, 1998, under the command of Colonel H.C. Chawla. In February, 1998, he found huge quantity of unauthorized ammunicions and explosives kept in the Unit and a Sepoy of the unit was caught with live hand-grenade while proceeding on leave. The matter was reported to C.O., Col. H.C. Chawla and then to the G.O.C., H.Q., 23rd, Inf. Div. and a Court of enquiry was carried out, but it was closed.

According to the petitioner, after the matter became public he was harassed physically and mentally, so he had to make several representations to the senior military authorities for his posting out of the command of Col. H.C. Chawla as Col. Chawla might implicate him in some false case, but no notice was taken and the petitioner was harassed further by stopping his authorized Government ration and

being socially boycotted from all regimental functions.

The petitioner brought to the notice of the Controller of Defence Accounts (CDA for short) about huge irregularities in ammunitions and explosives and CDA carried out enquiry. He found, prima facie, huge irregularities and in the final report, it was established that there was huge loss of State exchequer.

Further case of the petitioner is that he was falsely implicated in a case of absence from duty in November, 1998 by Col. H.C. Chawla by destroying best of the evidences and tampering documents, though in a case, this Court issued certain directions and another case, te. WP(S) 1600 of 2002 is pending.

It is alleged that on 10th August, 2002, the petitioner was called by the Commanding Officer, Col. H.C. Chawla where he was seated with two Majors, namely Major Anil Vishnoi and Major K.S. Gunasekaran who in collusion, assaulted the petitioner and petitioner suffered injury. He was kept in close arrest by Col. H.C. Chawla, without any charge-sheet served within 48 hours in spite of several requests made by him. The doctors also found injuries on his wrist and advised to get him examined on 11th October, 2000, but he was not sent for medical examination.

The petitioner further alleged that in contravention to the Army Act, though Rule 180 was invoked but no full opportunity was given to him, in spite of repeated requests and the Court of enquiry was conducted and completed by one Lt. Col., a Junior Officer. The wife of petitioner, Smt. Ranjana Anand filed a writ petition for habeas corpus i.e. Cr WJC No. 152 of 2000(R) and during the pendency of the enquiry, the petitioner was transferred to other Unit, where the Medical Officer found injuries on the body of the petitioner. It is stated that the order of transfer was quashed by the High Court on 6th September, 2000 and direction was given to enquire into the harassment and torture meted out to petitioner. The wife of the petitioner also filed a Complaint Case No. 599 of 2000 in a competent Court at Ranchi against Col. H.C. Chawla! Major Anil Vishnoi and Major K.S. Gunasekaran, which is stated to be pending.

3. The counsel for the petitioner submitted that while there is evidence to suggest mala fide on the part of the Officers and a criminal case against them is pending and cognizance has been taken, during the pendency of the said case, the summary proceeding as made vide order dated 14th October, 2002 should not proceed.

4. Reliance was placed on Supreme Court's decision in [Union of India \(UOI\) Vs. Major S.K. Sharma](#),

In the case referred above, the Supreme Court held that the Army authorities must proceed to hold Court Martial for the trial of the Army Personnel, in question, or to take other effectual proceeding against accused as contemplated by law.

5. There is no hard and fast rule framed nor any such law laid down by the Supreme Court to withhold a proceeding if the accused has lodged a separate complaint

against officer(s).

6. Admittedly, the petitioner has not filed any complaint case against any Army Personnel/Officer. It is his wife, Mrs. Ranjana Anand who filed a Complaint Case No. 599 of 2000, which is pending in a competent Court of law at Ranchi. Merely, on the ground that the wife of the petitioner has filed a complaint case against one or other Army Officer, cannot be ground to assail the proceeding nor can take away the jurisdiction of competent authority to proceed departmentally or under any law, as prescribed.

7. In the present case, neither Col. H.C. Chawla nor Major Anil Vishnoi or Major K.S. Gunasekaran have been impleaded as party respondents by name. In their absence, it is not desirable for this Court to give any finding in respect to such officers.

8. From the writ petition and enclosures attached thereto. It will be evident that the petitioner on one or other ground moved before one or other Court of law and has become a party to a number of litigations. He filed writ petition, CWJC No. 3118 of 1999(R), wherein the Court refused to interfere at that stage. Another writ petition, WP(S) No. 1600 of 2002 has been preferred by him which is pending. The wife of the petitioner filed a Criminal Writ, i.e. Cr WJC No. 153 of 2000(R), wherein certain directions were issued, but no finding was given against any one or other Officer. The Complaint Case No. 599 of 2000 has been preferred by the wife of the petitioner against the Army Officers.

In this case, I am not supposed to make any observations relating to the merit of the cases, referred to above, but it is noticed that the petitioner, an Army Personnel all the time, highlighting the internal matters of Indian Army in open public, by filing case either by himself or through his wife though the wife is not supposed to know the internal affairs of the Army. It would have been better for the petitioner to have availed internal remedy, at the first instance, before making various acts of Army Personnel public.

9. In the present case, the petitioner has failed to make out any case of mala fide either against Col. H.C. Chawla or Major Anil Vishnoi or Major K.S. Gunasekaran, nor could make out a case for interference with the proceeding as initiated vide order dated 14th October, 2002.

10. There being no merit, the writ petition is dismissed. However, there shall be no order, as to costs.