



**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

M.A. No.2231/2004
in
O.A. NO.2411/2003

This the 5th day of January, 2005.

**HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE SMT. MEERA CHHIBBER, MEMBER (J)**

Pooran Lal ... Applicant

(By Shri M.K.Bhardwaj, Advocate)

versus

Union of India & Others ... Respondents

(By Smt. Shail Goel, Advocate)

ORDER (ORAL)

Hon'ble Shri V.K.Majotra, Vice-Chairman (A) :

Through this MA, action under Section 340 Cr.PC has been sought against respondents.

2. The learned counsel of applicant stated that chargesheet against applicant had not been issued by the competent authority inasmuch as major penalty proceedings were initiated by an authority subordinate to the appointing authority. The learned counsel contended that the appointing authority and the disciplinary authority in the case of applicant was Deputy Chief of Army Staff (T&C) and not Brigadier. As such, respondents in their counter affidavit in the OA had made a false averment that Brig. Rana Goswami, Sub Area Commander was the appointing authority for applicant. The learned counsel pointed out that in





Tribunal's orders dismissing the OA of applicant it was observed that Brig. Rana Goswami was the appointing as well disciplinary authority of applicant and accordingly, applicant's plea about issuance of chargesheet by an incompetent authority failed. The learned counsel pointed out that such a finding of the Tribunal was based on the false affidavit of respondents to the effect that Brig. Rana Goswami, Sub Area Commander was the appointing and disciplinary authority of applicant. The learned counsel stated that as respondents had submitted a false affidavit before the Tribunal in OA No.2411/2003, they are liable for action under Section 340 Cr. PC.

3. On the other hand, the learned counsel of respondents referred to respondents' orders dated 29.9.1986 (Annexure A-1) regarding delegation of powers under the Central Civil Services (Classification, Control and Appeal) Rules, 1965 under which Sub Area Commander is the appointing authority for the applicant and he is also his disciplinary authority in terms of rule 12 of CCS (CCA) Rules, 1965 (Annexure A-2).

4. We have considered the respective contentions made on behalf of the parties.

5. As regards jurisdiction/competence of Commander/Brigadier, the following observations were made in Tribunal's order dated 2.4.2004:

"9. In so far as jurisdiction and competence of commander/Brig. As disciplinary authority is concerned, as this fact is alleged by the applicant, the burden is on him to establish it. The appointment of the applicant has not been annexed, moreover as per the schedule ibid, in group 'B' non-gazetted post in lower formation, it is only Chief Administrative Officer who is the competent authority being the appointing as well as disciplinary authority. It is stated by the respondents that Brig. is the appointing as well as disciplinary authority of the applicant and this contention has not been rebutted by the applicant in his rejoinder. May that be so as held by the apex Court in **Inspector**



General of Police v Thavsiappan (1996 (2) SCC 145) as well as **State of UP v Chander Pal Singh** (2003 (2) SCSLJ 84), initiation of enquiry by incompetent authority when dismissal is by the competent authority would not invalidate the proceedings. Having failed to establish that the Brig./commander is not the appointing authority of the applicant, the plea put forth is without substance.

10. Ld. Counsel for the applicant further states that both Enquiry Officer as well as the disciplinary authority are biased and the chargesheet is an out come of malafides is concerned, nothing precludes the applicant from raising this grievance before the competent authority and the law shall take its own course.”

6. In the counter reply in OA 2411/2003 respondents had stated as follows:

“The OC Details issuing the Show Cause Notice is a competent authority authorized to do the same. The charge sheet issued by Brigadier Rana Goswami, Sub Area Commander, the appointing and disciplinary authority both, too is in accordance with the CCS (CCA) Rules, 1965.”

7. Annexure-IV attached with the present MA states that as per Part-V for civilian posts in Defence Services the appointing authority of Stenographer Grade-I in lower formation under GS Branch is Deputy Chief of Army Staff (T&C). However, respondents’ orders dated 29.9.1986 issued by the Army Headquarters delegate the powers of appointment to Groups ‘C’ and ‘D’ to Commanders, Independent Brigade Groups, Independent Sub Area, Brigades and Sub Areas, for their respective Commands. In this view of the matter the Sub Area Commander is empowered to initiate disciplinary proceedings against applicant, as he is the appointing authority in the case of applicant. The powers of the Deputy Chief of Army Staff for appointment for Group ‘C’ posts having been delegated to the Sub Area Commanders, we do not find any fault with the

Vb

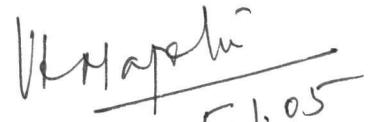


contentions raised on behalf of respondents as respects the appointing and disciplinary authorities of applicant.

8. In result, we do not find any merit in the MA which is dismissed accordingly.



(Meera Chhibber)
Member (J)



(V. K. Majotra)
Vice-Chairman (A)
5.1.05

/as/