IN THE GAUHATI HIGH COURT
THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR, TRIPURA, MIZORAM AND ARUNACHAL PRADESH

SHILLONG BENCH

WP(C) No. (SH) 9 of 2012

Major Ajay Bhardwaj,
Son of Shri Roshan Lal Bhardwaj,
Permanent resident of Hill View,
Village Kohari,
PO Kandaghat, District Solan,
Himachal Pradesh- 173215 : Petitioner

-vs-

1. The Union of India represented by the
Secretary, Ministry of Defense,
Government of India,
New Delhi-110011

2. Union of India
represented by the Secretary
Ministry of Home Affairs,
Govt. of India,
New Delhi-110011

3. Director General of Assam Rifles
C/o 99 APO East Khasi Hills,
Meghalaya,
Shillong-793011

4. Deputy Inspector General Head Quarters
Manipur Range Assam Rifles,
C/o 99 APO

5. GOC-IN-C Head Quarters Eastern Command
Pin-908542

6. Major Poonam Sharda,
Daughter of Mr Satya Prakash Sharda
Permanent r/o House No. 587G,
Sector 21, Panchkula
Haryana 134121
Currently posted at
1/1 DET, Western Command,
Liaison Unit,

C/o 56 Army Postal Office. : Respondents

BEFORE
THE HON'BLE MR JUSTICE T VAIPHEI

For the Petitioner : Mr M Singh, Adv

For the Respondents : Mr SC Shyam, CGC

Date of hearing : 20.04.2012

Date of Judgment & Order: 20.04.2012

JUDGMENT AND ORDER (Oral)

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 counselled/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.

2. 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 3½ 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 counselling 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 ADG 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 counselling, 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 petiion 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 counselled. 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.

3. 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 counselling 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 counselling letter was merely advisory in nature and that such an 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.

4. 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 counselled. 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 Leutenant 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.

5. 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 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 counselling 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 case, (1994) 6 SCC 651*** in the decision-making process of the respondent authorities, the impugned action is liable to be interfered with.

6. 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.

7. 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 Bareili 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.

JUDGE

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