

**FORM NO. 4**

**(SEE RULE 11 (1))**

**IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA**  
**ORDER SHEET**  
**APPLICATION No. O.A. No. 13/2016**

APPLICANT (S) NK/NUR ASST  
Karanje Ketan Shankar

RESPONDENT (S) Union of India & Others

Legal Practitioner for Applicant (s) Legal practitioner for Respondents

Mr. Aniruddha Datta Mr. S.K. Bhattacharyya

<b><u>ORDERS OF THE TRIBUNAL</u></b>	
	Order Serial Number: Dated :27.09.2016
	<p>Present : Mr. Aniruddha Datta, Id. Counsel for the applicant and Mr. S.K. Bhattacharyya, Id. Counsel for the respondents assisted by Maj Narendra Singh, OIC, Legal Cell.</p> <p>We heard the learned counsel appearing for the parties and perused the records.</p> <p>This is an application filed by the applicant under section 14 of the AFT Act, 2007 read with Rule 17 of the Army Rules being aggrieved by the impugned show-cause notice.</p> <p>According to the counsel for the applicant, the applicant was enrolled in Army service on 21.3.2009 in the Army Medical Corps and posted in military hospital at Namkum at Ranchi. While doing duty in the post of Nursing Assistant on 8.04.2015, a patient named Smt. Nitu Singh reported to be admitted in the hospital. She was accompanied by her husband Lance Naik Manoj Kumar Singh and minor daughter. On 09.04.2015 when the applicant was on duty in ICU after taking over charge from one Nk Badal Chandra Gorai. After cleaning the ICU he took blood pressure of the</p>

patient Smt. Nitu Singh. While taking the blood pressure of Nitu Singh it is alleged that the applicant misbehaved with her and molested the lady within the premises of ICU. The allegation had been narrated in paragraph 3(d) of the affidavit-in-opposition filed by the respondents which for the sake of convenience is reproduced as under :-

*“ On 9<sup>th</sup> April 2015, at about 0900 hours, the aforesaid Smt. Nitu Singh, leveled an allegation that Nk (NA) K K Shankar, had touched her breasts on the pretext of recoding her TPR/BP (Temperature, Pulse & Respiration/Blood Pressure) between 0730 hours to 0800 hours, Lt. Col Swapan Kurien, the Nursing Officer-in-Charge of the ICU who was present in the ICU, was the first person to be informed by the patient herself”.*

It appears that thereafter Court of Inquiry was held and, thereafter, summary of evidence was ordered. Smt. Nitu Singh was discharged from military hospital, Namkum on 18<sup>th</sup> April 2015 on the request of patient kin and later on died on 27.04.2015 on account of difficulties in breathing. On account of death no proceeding could take place in the Court Martial. Hence, Army took a decision to issue show-cause notice dated 04.01.2016 in pursuance to power conferred by section 20 of the Army Act read with Army Rule 17 and an interim order was passed by the Tribunal restraining the respondents to pass any effective order. Later on, the Tribunal on 01.08.2016 directed the applicant to submit reply to the show cause notice before the next date of hearing and the same be sent before the Tribunal in sealed cover.

It is relevant to point out that the present OA has been filed without submitting any reply to show-cause notice. While assailing the impugned show-cause notice, counsel for the applicant particularly relied upon the findings made in paragraph 5 of the OA. It is submitted that in the show-cause notice only allegations would have been recorded and not the observations with tenure of final conclusion. We reproduced

the entire show-cause notice dated 04.01.2016 as under :-

**“CONFIDENTIAL**

Pages (Two)

*Military Hospital  
Namkum (Ranchi)  
PIN -: 900374  
C/o 56 APO*

30612/M-3/PC/2015/KKS

04 Jan 2016

*No 15428325K  
Naik/Nursing Assistant  
Karanje Ketan Shankar  
MH Namkum*

**SHOW CAUSE NOTICE**

1. *Ref HQ J&B Sub Area DV Br letter No. 4310/KK/Namkum/A(DV) dt 28 Nov 2015.*
2. *On perusal of the proceedings of the Court of Inquiry & Summary of Evidence held to investigate the circumstances of alleged molestation on 09 Apr 2015 of Late Mrs Nitu Singh wife of No. 4279536X L/Nk Manoj Kumar Singh of 23 Infantry Div Camo admitted in Intensive Care Unit (ICU) of MH Namkum by you, the following lapses on your part have come to my notice:*
  - (a) *As a health provider while performing the duties of Nursing Assistant in ICU on 09 Apr 2015, you established inappropriate physical contact with Late Mrs Nitu Singh, a 33 year old lady patient on Seriously Ill List (SIL) admitted in ICU, with sexual intent to her modesty by touching and pressing her breast in the garbof recording her body temperature.*
  - (b) *You not only touched the lady patient inappropriately, but also made vulgar and embarrassing remarks to her as follows:*
    - (i) *While recording her temp, before placing the thermometer in her right armpit you commented that why she was wearing a bra.*
    - (ii) *While drawing her blood sample, you commented that her hands were soft.*
  - (c) *In spite of being well aware of the legal requirement of mandatory presence of a lady attendant while interacting with a female patient, you failed to ensure the presence of a lady attendant for procedures requiring physical contact with her even when the nursing officer in charge was present in ICU and another nursing officer and a ward sahayika on duty in ICU were present in the vicinity in the burns room.*

3. *As regards the said issues, Late Mrs Nitu Singh's statement (copy enclosed) is consistent all throughout the Court of Inquiry proceedings, which includes extensive cross-examination by you and is corroborated by the prosecution witnesses during recording of the same. She has also brought out your malafide intension as you took a long time to clean one particular glass in her chamber. Due to sudden demise of Late Mrs Nitu Singh on 27 Apr 2015, her statement could not be taken during recording of Summary of Evidence. The prosecution witnesses however, reiterated the statement of Late Mrs Nitu Singh given at the Court of Inquiry during recording of the Summary of Evidence and maintained their consistency in spite of thorough cross-examination by you.*

4. *Thus, there is sufficient adverse material on record of the Court of Inquiry proceedings & subsequent Summary of Evidence to substantiate the accusations made against you and that you have lapsed on the above counts.*

5. *You have committed a grave offence and have inflicted a serious blow to the faith of people in medical profession and have brought disrepute to the hospital and the organization. Being a Nursing Assistant, entrusted with the task of looking after the patients, it will not be in the interest of the organization to keep you in service as your charter of duties entails you to attend female patients frequently. In view of your act of misconduct, I have serious reasons to believe that your continuation in service will endanger the safety and honour of women and you are unfit to work in a highly disciplined organization like Army.*

6. *Apropos, administrative termination by way of dismissal from service in terms of Army Act Section 20(3) read with Army Rule 17 is called for under powers of Commandant, Military Hospital, Namkum by virtue of Govt of India, MoD Gazette Notification dated 12 Jan 2012. I, however, afford you an opportunity to explain your conduct on the above lapses on your part.*

7. *You should submit your reply to this show cause notice within 30 days of its receipt, failing which it shall be assumed that you have no ground to urge against the proposed action and an ex-parte decision will be taken.*

8. *In this regard the following documents are enclosed for your ready reference.*

(a) *A copy of the statement of Late Mrs Nitu Singh recorded in the proceedings of Court of Inquiry.*

(b) *A copy of the proceedings of Court of Inquiry.*

© *A copy of the Summary of Evidence.*

*Sd/-  
(RDS Ahluwalia)  
Brig  
Commandant*

**CONFIDENTIAL**

On the other hand, the learned counsel for the respondents Mr. S.K. Bhattacharyya submits that the OA is not maintainable and the OA was preferred at the pre-matured stage without adjudication of the Army authority. It is further submitted that the competent authority of the respondents have got every right to issue show-cause notice in pursuance to power conferred under sub-section 3 of Section 20 of the Army Act. For the sake of convenience section 20 of the Army Act is reproduced below :-

***“20. Dismissal, Removal or reduction by the Chief of the Army Staff and by other officers.***

*(1) [The Chief of the Army Staff] may dismiss or remove from the service any person subject to this Act, other than an officer.*

*(2) [The Chief of the Army Staff] may reduce to a lower grade or rank or the ranks, any warrant officer or any non-commissioned officer.*

*(3) An officer having power not less than a brigade or equivalent commander or any prescribed officer may dismiss or remove from the service any person serving under his command other than an officer or a junior commissioned officer.*

*(4) Any such officer as is mentioned in sub-section (3) may reduce to a lower grade or rank or the ranks, any warrant officer or any non-commissioned officer under his command.*

*(5) A warrant officer reduced to the ranks under this section shall not, however, be required to serve in in the ranks as a sepoy.*

*(6) The commanding officer of an acting non-commissioned officer may order him to revert to his permanent grade as a non-commissioned officer, or if he has no permanent grade above the ranks, to the ranks.*

*(7) The exercise of any power under this section shall be subject to the said provisions contained in this Act and the rules and regulations made thereunder.”*

The proviso to Rule 17 of the Army Rules, 1954 empowers the competent authority to dismiss or remove the services of a personnel without any regular inquiry in case it is found that inquiry is not feasible or possible. For the sake of convenience Rule 17 of the said Army Rules is reproduced

as under :-

*“17. Dismissal or removal by Chief of the Army Staff and by other officers. – Save in the case where a person is dismissed or removed from service on the ground of conduct which had led to his conviction by a criminal court or a court-martial, no person shall be dismissed or removed under sub-section (1) or sub-section (3) of section 20; unless he has been informed of the particulars of the cause of action against him and allowed reasonable time to state in writing any reasons he may have to urge against his dismissal or removal from the service:*

*Provided that if in the opinion of the officer competent to order dismissal or removal, it is not expedient or reasonably practicable to comply with the provisions of this rule, he may after certifying to that effect, order the dismissal or removal without complying with the procedure set out in this rule. All cases of dismissal or removal under this rule where the prescribed procedure has not been complied with shall be reported to the Central Government.”*

Keeping the aforesaid statutory provisions which confers power on the appropriate authority to issue such notice, undoubtedly there appears to be no reason to record the findings otherwise when the Army authority acted within their jurisdiction while issuing the said impugned notice dated 04.01.2016. The authority who has been conferred by certain powers by the statute or by the Act of Parliament may take decision and proceed thereon in case prima-facie satisfied with regard to the guilt of the person or it is fit and proper to proceed against the incumbent. Satisfaction of the competent authority by issuance of show-cause notice at the initial stage seems to call for no interference. No irreparable loss or injury have caused to the applicant.

The learned counsel for the applicant has relied upon a decision reported in (1987) 2 SCC 179 in the case of **State of Uttar Pradesh vs. Brahm Datt Sharma and another** whereby the Hon'ble Supreme Court held that the departmental enquiry may be initiated at any stage. Then, further it has been held by the Hon'ble Supreme Court that a show-cause notice issued to a government servant under

statutory provisions calling upon him to show-cause ordinarily should not be interfered with. For the sake of convenience, paragraph 9 of the aforesaid decision is reproduced below :-

*“9. The High Court was not justified in quashing the show cause notice. When a show cause notice is issued to a government servant under a statutory provision calling upon him to show cause, ordinarily the government servant must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. The purpose of issuing show cause notice is to afford opportunity of hearing to the government servant and once cause is shown it is open to the government to consider the matter in the light of the facts and submissions placed by the government servant and only thereafter a final decision in the matter could be taken. Interference by the court before that state would be premature. The High Court in our opinion ought not have interfered with the show cause notice.”*

The aforesaid proposition of law have been reiterated in other judgment of the Supreme Court reported in (2006) 12 SCC 28 in the case of **Union of India and another vs. Kunisetty Satyanarayana**. For the sake of convenience paragraphs 13 and 14 of the judgment (supra) are reproduced below :-

*“13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge-sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh, Special Director V. Mohd. Ghulam Ghouse, Ulagappa v. Divisional Commr., Mysore, State of U.P. v. Brahm Datt Sharma, etc.”*

*14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be pre-mature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because he does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the procedures and/or hold that the charges are not established. It is well settled that a*

*writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.”*

In view of above, we feel that the present OA seems to be not maintainable being preferred against the show-cause notice.

The learned counsel for the claimant had relied on two judgments, one dated 25.9.2002 passed by the Guwahati High Court in Civil Rule No. 1887 of 1998 in the case of **Bir Bahadur Chhetri vs. Union of India and Ors.** and a decision reported in DLT 47,1999 dated 04.01.1999 passed by the Delhi High Court in the case of **Avimanyu Panda (Ex.Sgt.) vs. Union of India & Ors.** For the sake of convenience, para. 18 of the judgment in Bir Bahadur’s case (supra) is reproduced as under :-

*“18. Advancing his third ground, learned counsel for the petitioner has submitted that the order passed under Rule 17 is a judicially reviewable order inasmuch as the court can look into the reasons recorded in taking an administrative action under Rule 17 which vest a discretionary power on the authority and such exercise of discretionary power is always subjected to judicial review. Referring to the case of Union of India –Vs- Tulsiram Patel, reported in AIR 1985 SC 1416 particularly paragraph 137 of the said judgement, it is submitted that though the High Court under Article 226 of the Constitution cannot sit in judgement over the reasons given by the disciplinary authority like a Court of an Appeal, the Court can interfere if it finds that the reasons given by the disciplinary authority to the effect that it was not a reasonably practicable to hold an enquiry as envisaged under Article 311(3) of the Constitution of India, are irrelevant inasmuch as, such recording of reasons of its decision by the disciplinary authority would be an abuse of the power. This Court finds that there is enough force in the submission. There is no second opinion that the Court cannot sit over the reasons recorded by the disciplinary authority in its satisfaction as a Court of Appeal. But if the reasons shown are found to be unreasonable, unsatisfactory and violative of the statutory provisions, the Court cannot restraint itself from interfering with the same. Taking into account the reasons stated in the affidavit of the respondents, this Court is of the*



*considered view that those reasons need intervention of this Court.”*

In the case of Avimanyu Panda (supra) the Delhi High Court has held as follows :-

*“52. Therefore, here is a case where decision had been taken to dismiss the petitioner from service and thereafter the showcause notice was issued. It is quite understandable as to how when the respondents, dealing with the matter administratively, could take a decision that if court martial is held, that would embarrass the complainant and, decision could be taken only in accordance with law. Taking a final decision and issuing showcause notice is an arbitrary exercise of power and is violative of Article 14 of the Constitution of India. The view taken by the respondents is a view which would not be taken by a person properly instructed in law. The respondents had completely accepted case of the complainant without any basis and that is wholly illegal. Accordingly, the writ petition is allowed and the order of dismissal date 21.8.1995 and the order passed by the appellate authority dated 12.1.1996 are set aside.”*

In case the aforesaid two judgments of Delhi High Court and Guwahati High Court are looked in, we find that they do not have any relation or ratio in the facts and circumstances of the present case. It is well-settled proposition of law that a judgment should be looked into in reference to its context. The judgments of Delhi High Court and Guwahati High Court seem to lose their significance in the present case. The decision taken by the respondents is in pursuance to show-cause notice. Violative of statutory provisions and Constitutional mandate is a question which may be considered after service of order of dismissal on the applicant and later on by the appropriate forum. The petition filed at the pre-matured stage ordinarily should not be interfered with by Court or Tribunal. Law must be permitted to move to on to test. The competent authorities may be able to apply their mind keeping the gravity of misconduct committed by the incumbent while discharging the duties and that too when a case related to Indian Army where discipline is a prime concern not only to Army but to entire Nation.

In pursuance to order passed by the Tribunal dated 01.08.2016 decision dated 06.09.2016 has been communicated in sealed cover to the Tribunal which has been returned back in sealed cover of the Tribunal to the OIC, Legal Cell, HQ Bengal Area, who shall send it direct to the authority concerned.

The authority concerned is directed to serve the order passed within a period of two weeks from the date receipt of a certified copy of this order with liberty to the applicant to approach the appropriate authority or before the appropriate authority of the Army in case he is aggrieved with the order.

Apart from above, keeping the emphasize given by the applicant, no observation could have been made with regard to commission of offence committed by the applicant without holding regular inquiry. In the present case, the victim died during course of statutory proceedings. Hence, the authorities of the Army decided to proceed on administrative side in accordance with the provisions referred to herein above. While issuing the show-cause notice under the statutory power conferred by statute it was incumbent on such authority to refer his satisfaction with regard to commission of crime by the applicant.

Accordingly, we are of the view that the authorities concerned have rightly recorded the satisfaction with regard to commission of offence committed by the applicant. To take a decision with regard to award appropriate punishment in accordance with statutory provisions, recording of satisfaction or a finding while proceeding on administrative side pass an order of punishment even without enquiry does not seem any impropriety or illegality. Of course, while assailing such order it is always open to the delinquent employee to challenge such order in the event of punishment.

We feel that on this ground OA cannot be allowed because it is not maintainable and it lacks merit. Accordingly, the OA is dismissed with no order as to costs.

It is clarified that we have not gone into the merits of the controversy and the same is left open for agitating the same before the appropriate forum and stage. O.A. rejected.

The relevant original records, if any, be returned to the respondents by the Registry.

Let a plain copy of this order, duly counter signed by the Tribunal Officer, be given to the parties after observance of requisite formalities.

(Lt Gen Gautam Moorthy)  
Member(Administrative)

(Justice Devi Prasad Singh)  
Member (Judicial)

Ss