

FORM NO – 21
(See Rule 102 (1))

ARMED FORCES TRIBUNAL, KOLKATA BENCH

APPLICATION NO : O.A. 110 OF 2011

FRIDAY, THIS 15TH DAY OF JUNE, 2012

CORAM : **Hon'ble Mr. Justice H.N.Sarma, Member (Judicial)**
 Hon'ble Lt. Gen. K.P.D. Samanta, Member (Administrative)

IC-46298N Lieutenant Colonel Mukul Dev,
Son of late S Dayal, presently posted at HEAD-
QUARTERS Bengal Area, 246 Acharya Jagadish
Chandra Bose Road, Kolkata 700027

-VS -

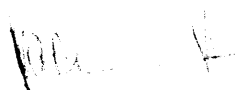
1. Union of India, service through Secretary
 Government of India ,Ministry Of Defence
 Sena Bhawan, New Delhi-110105
2. The Chief of Army Staff, Army Headquarters,
 Integrated Headquarters of Ministry of
 Defence(Army) Defence Headquarters Post
 Office, New Delhi 110011.
3. General Officer Commanding in Chief, Central
 Command, Lucknow, Uttar Pradesh.
4. Adjutant General, Integrated Headquarters of
 Ministry of Defence (Army), Defence Head-
 Quarters Post Office, New Delhi- 110011.
5. Brigadier P S Rathore, Deputy JAG , HQs
 South Western Command, Jaipur,Rajasthan.

..... Respondents

For the applicant : Mr. Rajib Mangalik, Advocate

For respondents : Mr. Sudipta Panda, Advocate
 (No. 1 to 4)

For respondent No. 5 :Col. Balasubramanian, Advocate



O R D E R

Per Lt. Gen. K.P.D, Samanta, Member(A) :

This original application filed under sec. 14 of the AFT Act, is mainly directed against the punishment of "severe displeasure (recordable)" awarded against the applicant vide order dt. 29.9.09 and also for non-disposal of the statutory complaint filed by the applicant against the said punishment. However, during the pendency of this application, the statutory complaint was finally disposed of by the Central Govt. on 21.2.12 without any relief to the applicant. By filing a supplementary application, the applicant has also challenged the same by way of amendment of the relief portion.

2. The facts necessary for disposal of this case may be stated briefly as follows :-

3. The applicant, Lt. Col. Mukul Deb was initially commissioned in the Indian Army as 2nd Lt. on 20.8.1988 and was allotted the Corps of Artillery. During the course of service, he obtained Law degree and applied for inter service transfer to JAG (Judge Advocate General) Branch and underwent all necessary procedures and formalities and he was eventually allowed such transfer to JAG Branch by the competent authority. However, according to the applicant, his transfer was not materializing as some interested persons were not in favour of his posting in JAG Branch and as such, he had to approach the Hon'ble Delhi High Court and after the decision of the Hon'ble High Court, he was posted as AJAG in the HQ of Central Command vide order dt. 8.2.2008 (annexure-A4). It



was a criteria appointment before promotion to the next rank. However, the applicant alleges that the respondent No. 5, Brigadier P.S.Rathore, who at the relevant time, was functioning as Dy. JAG in the same unit (HQ, Central Command), was not in favour of his (applicant's) posting and was trying to block his posting there in all possible ways. However, at the intervention of the higher authorities, the applicant could finally join as AJAG in the HQ, Central Command. Apart from functioning as AJAG, the applicant was also rendering legal assistance to the Col. of Q (lands-2) branch for facilitating disposal of cantonment appeal cases. According to the applicant, since respondent No. 5, who was his immediate superior, bore animus against him, he was trying his best to shunt him (applicant) out of JAG Branch and as a result of such consistent efforts on the part of respondent No. 5, an order was issued on 20.3.2009 (annexure-A5) whereby the applicant was transferred out to 'Q' Branch on the ground that there was sudden increase in cantonment board appeals and for speedy disposal of such appeals, a dedicated JAG branch officer was needed. In terms of this transfer order dt. 20.3.2009, the applicant was relieved from JAG Branch on 23.3.09 and the applicant joined in the new Q Branch on 24.3.09. However, soon thereafter, an order was issued on 2.4.2009, wherein it was clarified that it was actually not a case of transfer of the applicant but a temporary assignment till disposal of pending land appeals and that there was no change of designation and/or channel of communication or reporting. According to the applicant, he received such order on 6.4.2009 but prior to that as per army regulations, Part II order, which was mandatorily required to be published in the

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matter of his transfer from JAG Branch to Q branch, was already initiated and published on 4.4.2009 showing that the applicant relinquished the post of AJAG on 23.3.09 from JAG Branch and assumed the appointment of "SO" in Q (Lands-2) HQ Central Command on 24.3.09 (annexure-A11).

4. At this stage, started the main trouble for the applicant. The higher authorities did not view the action of the applicant in initiating publication of Part II order on 4.4.2009 wherein designated himself as "SO" notwithstanding the fact that by an earlier order dt. 2.4.2009, it was clarified that there was no change of his designation or channel of reporting or communication by such movement from JAG branch to Q Branch. Subsequently, a court of inquiry was ordered and based on such report of COI, eventually, a show cause notice was issued to the applicant on 21.8.2009 (annexure-A22) asking him to show cause for such lapse. The applicant submitted his detailed reply to the show cause apart from submitting non-statutory complaint against his transfer. However, the competent authority considering his reply to the show cause, did not accept the pleas raised by the applicant and finally by the impugned order dt. 29.9.2009 (annexure A1), punishment of "severe displeasure (recordable)" was issued against the applicant. The applicant preferred a statutory complaint against such punishment on 29.10.2009 and when the complaint was not disposed of for a fairly long time despite several reminders, the applicant approached this Tribunal by filing the present OA seeking quashing of the impugned order dt. 29.9.09 and also for a direction to initiate action against respondent No. 5, who, according to the applicant, was responsible for his harassment in this fashion. As already stated,

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during the pendency of the OA, the statutory complaint was disposed of on 21.2.12 and the applicant has challenged the same by amending the prayers.

5. The official respondents have filed a reply affidavit wherein they have denied all the allegations of the applicant on all material points. It is the case of the respondents that the applicant joined HQ Central Command on posting as AJAG on 18.2.2008. At HQ, Central Command, in addition to his routine duties in JAG Branch, he was additionally tasked to provide legal assistance to Col. Q (Lands) to facilitate him in disposal of cantonment appeals since newly enacted Cantonment Act, 2006, empowered the GOC-in-C to hear such statutory appeals. Due to change of appellate authority in 2009, there was sudden spate of appeal cases and therefore, a conscious decision was taken at the level of GOC-in-C, Central Command and Chief of Staff, HQ, Central Command to detail a JAG officer to handle such cases and to work in Q Branch for expeditious disposal of such cases in order to avoid delay and also to avoid movement of bulky files from Q Branch to JAG Branch and vice versa. Accordingly, on 20.3.2009, instructions were issued in writing that the applicant would work in Q Branch (Land 2) till pending appeals were resolved. However, in the order dt. 20.3.2009, the word "transferred" was inadvertently used, which was clarified subsequently by letter dt. 2.4.2009 stating that there was no change in either appointment of the applicant nor in his channel of ACR reporting. Additionally, the said order dt. 20.3.2009 was also subsequently cancelled by order dt. 25.7.2009 where it was clarified that the word "transfer" has been misconstrued by the applicant as posting whereas it only meant working from another office for

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reasons stated above (annexure-R3). It is also stated by the respondents that the entire matter was explained to the applicant when he sought interview with the COS. In spite of all these, the applicant on his own and without any authority started designating him as SO1 (Staff Officer-1), Q (Land-2) Branch whereas he was holding the post of AJAG only. Subsequently also the applicant was intimated that there was no change of appointment and reporting channel vide letters from R4 and R5 dt. 18.5.2009 and 13.6.2009 respectively. Notwithstanding that, the applicant continued to designate him as SO1 Q (Land-2) by defying all directions from higher authorities and subsequently, it came to light that he in connivance with Col. Q (Land2), AAG and Adm. Officer got part II order published showing assumption of appointment of SO 1 Q (Land-2) and also got his name included as such in the strength return (IAFF-3008). When these matters came to the knowledge of higher authorities, they took it seriously and an investigation was ordered by holding a court of inquiry which found all the above four officials guilty for such misdeed. Accordingly, the applicant, Col. S.K.Malhotra (Col. Q (Land-2), Lt. Col. V.M.Singh, AAG and Maj Bahukhandi (Adm. Officer) were awarded censure by the GOC-in-C, Central command. Apart from this, the applicant was also awarded a non-recordable warning for using foul and intemperate language to senior officers. It is also stated that the respondent No. 5 was not involved in any manner in this process and his name has been unnecessarily and purposely dragged by the applicant. The respondents have justified their actions taken against the applicant in the manner aforesaid.

6. Respondent No. 5 has also filed a separate reply affidavit denying all the allegations brought against him. He has more or less adopted the contentions of the official respondents.
7. We have heard the Id. advocates appearing for the parties *in extenso* and have gone through the documents placed on record. Ld. advocate for the official respondents have also produced some official records relating to COI proceedings for our perusal.
8. Mr. Rajib Mangalik, Id. adv. for the applicant apart from narrating the facts stated above, has mainly argued that it was the respondent No. 5, who was behind all the happenings as he was ill disposed against the applicant and he wanted to harass the applicant and to destroy his future promotional prospects. As a background, it is pointed out that respondent No. 5 was earlier posted at Jalandhar where the applicant was also posted in the Artillery Brigade. At that point of time, some financial irregularities were committed by the said respondent No. 5 and the applicant knew about it. It was the apprehension of respondent No. 5 that had the applicant been posted as AJAG in his unit, then his present image might be tarnished as the applicant might divulge his past illegal activities. That is why, when the applicant was given posting in the JAG Branch where the respondent No. 5 was also functioning as Dy. JAG, the said respondent No. 5 tried to block his posting there by raising objections that the applicant did not have the requisite experience and training to be posted as AJAG and if he was posted in AJAG, he would become senior to the existing experienced AJAGs. However, such objections were overruled by MS Branch and it was observed that

the applicant required to be groomed and had to complete the requisite period of service as AJAG for further promotion and it was only after intervention of the Court that the applicant was given posting and was allowed to join.

9. So far as the main issue is concerned, it is submitted by the Id. adv. that the applicant was indeed transferred from JAG Branch to Q (Land-2) branch by order dt. 20.3.2009 at the instance of respondent No. 5 and there was also relieving order and assumption of charge in the new office and as such, the applicant was perfectly right in contending that he was transferred, for all intent and purpose, to a new post from the post of AJAG. Even though it was detrimental to the interest of the applicant, as in that event, he would not have been able to complete the requisite period of service as AJAG for being eligible to get further promotion. As a disciplined uniformed officer, he complied with the order though he made formal non-statutory complaint against his transfer. So far as the clarificatory order dt. 2.4.2009 is concerned, the Id. adv. has submitted that the applicant did not receive such order prior to 6.4.2009 by which time the Part II order was published on 4.4.2009 and, therefore, the applicant acted bona fide as Part II order was required to be published in terms of relevant Army Regulations. Therefore, the applicant could not have been punished for acting in accordance with rules nor he did anything justifying such punishment. It is further argued that even though respondent No. 5 was also indicted in the court of inquiry, but no action was taken against him whereas the applicant was punished with recordable severe displeasure which will seriously jeopardize his further chance of promotion and in fact, he has already been rejected by the promotion

board in view such warning. The Id. advocate has relied on the following two decisions of the Hon'ble Apex Court :-

1. UOI & Ors –vs- J. Ahmed, AIR 1979 SC 1022
2. Man Singh –vs- State of Haryana, AIR 2008 SC 2481

In J. Ahmed (supra), it was held by the Hon'ble Supreme Court that error in judgement in evaluating developing situation cannot be termed as misconduct. It is contended by the Id. adv. that the applicant acted bona fide and no ulterior motive was there and followed the rules and regulations and in doing so, even if, committed certain error, for which he cannot be punished to suffer perpetually in the matter of next promotion.

In the latter case, it was held that for the same offence, discriminatory action cannot be taken against different officers. It is submitted that when the applicant as well as respondent No. 5 along with four others were also indicted in the COI, the authorities could not have absolved the respondent No. 5 and punish the applicant.

10. Mr. Ankur Chibber, Id. adv. along with Mr. Sudipta Panda, Id. adv. for the official respondents has raised two preliminary objections. His first contention is that the applicant has filed another OA before the Principal Bench being OA 85 of 2010, which is pending, where more or less similar relief has been sought for. Therefore, the present OA is not maintainable in view provisions of Order 2, rule 2 of CPC. Id. adv. for the applicant, per contra, has submitted that as per scheme of the AFT Act, plural remedy is barred and a person can file one application for single cause of action. In the Principal Bench, the applicant has

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called in question his non-promotion based on a different cause of action. We have gone through the copy of the OA filed before the Principal Bench, as produced by the respondents in the supplementary affidavit and we find that in that OA, the applicant had challenged his non-promotion because of certain ACRs, whereas in the present OA, he has assailed the punishment awarded against him. In that view of the matter, we are of the opinion that the preliminary objection so raised, has no force and is rejected.

11. Mr. Chhibber has further contended that the impugned order was issued on 29.9.09 and the applicant preferred a statutory complaint on 29.10.09 but he filed the present OA only in December 2011 i.e. more than six months after the impugned order was passed or more than six months after his statutory complaint was filed. Therefore, the present OA is barred by limitation. However, admittedly, the statutory complaint filed by the applicant against the impugned order dt. 29.9.09 on 29.10.09 was finally disposed of in February 2012. In the meantime, the applicant also pursued with the authorities for disposal of his representation/complaint. It is not explained by the respondents why such statutory complaint was kept pending for such a long time compounding agony of the applicant. A party is entitled to claim relief from a court of law only if he acts equitably. It is not proper for a model employer like UOI respondents to keep pending statutory complaint of an army officer for more than two years and then complain that the application filed by him for redressal of his grievance, is barred by limitation. We, therefore, find no justification in the objection, as raised by Mr. Chhibber, Id. adv. for the official respondents and reject the same outright.

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12. Ld. advocate for the official respondents has categorically denied the allegations of the applicant of mala fide or bias and has submitted that the applicant purposely and intentionally published Part II order knowing fully well that there was no change of designation or reporting channel. This certainly is a misconduct and therefore, there was nothing wrong in awarding censure against him after following all procedures and after giving due opportunity to the applicant.

13. Ld. adv. for the respondent NO. 5, has more or less adopted the arguments of the official respondents. Additionally, he has submitted that the Id. adv. for the applicant during the course argument alleged about certain financial irregularities having being committed by the respondent No. 5 while he was posted at Jullundhar. The Id. advocate has vehemently denied such wild allegation and contended that there was no averment in the OA regarding this nor any document has been produced and mere allegation during argument stage, without giving opportunity to the party to counter the same, is not tenable. He has denied that respondent No. 5 bore any grudge against the applicant as alleged. He further submitted that all actions were taken by higher authorities and the respondent No. 5 has no role to play in the matter. He has also pointed out that the applicant has filed this application at a belated stage and thereby impleading the respondent No. 5 and seeking action against him, acted with ulterior motive when respondent No. 5 was on the verge of his next promotion. Both the Id. advocates for the respondents have referred to certain decisions of Hon'ble apex Court regarding mala fide. We need not refer the same as it is now



well settled that mala fide is very easy to allege but difficult to prove. We will also take no judicial notice of the allegation made by the applicant against respondent No. 5 regarding alleged financial irregularities, in the absence of any materials on record. Ld. counsel for the respondents have also taken a point that the applicant has a right to approach this Tribunal for redressal of his grievance but cannot seek a direction to take action against a third party. By referring to the term "person aggrieved", it is contended that the prayer of the applicant to take action by way of initiating disciplinary proceeding against respondent No. 5 is not tenable. The decision of the Apex Court in the case of Dr. Duryodhan Sahu & Ors –vs- Jitendra Kumar Mishra, AIR 1999 SC 114 has been referred to wherein it was held that Administrative Tribunal has no jurisdiction to entertain PIL. By referring to para 18 of the judgement, it has been contended that for filing an application before this Tribunal, a person must be aggrieved by an 'order' and not otherwise. Therefore, the prayer made by the applicant in this OA seeking direction for initiating disciplinary proceeding against respondent No. 5 is not in accordance with the provisions of Act.

14. In this case, the basic facts are not disputed. It is undisputed that the applicant was posted in the JAG Branch, HQ, Central Command as AJAG on 18.2.2008. It is also undisputed that while functioning as such, he was also rendering legal advice to the Colonel of Q Branch in resolving land disputes, in addition to his normal duty. It is the admitted position that it was decided at the higher level that a full time JAG branch officer was required in the Q Branch to deal with sudden increase in land dispute matters and the applicant was



assigned such job. It is true that at the relevant point of time, there were three other AJAG but it was respondent No. 5, who being supervisory officer, nominated the applicant, which according to applicant, was purposely done to side track him from JAG Branch. Be that as it may, it appears that the entire problem started with the issue of order dt. 20.3.2009 (annexure-R1). For better understanding this order is quoted below :-

- “ 1. Keeping in view large No. of appeals pending in Q (Lands-2), IC-46298N Lt. Col Mukul Dev is hereby tfr to Q (Lands-2) with imdt effect.
2. Offr will work in Q(Lands-2) branch till all pending appeals are resolved.
3. This has approval of COS.”

15. It appears that the word “**tfr**” (i.e. short form of ‘transferred’) is the cause of all misunderstanding and consequent misapprehension in this case. For use of such word in the order, the applicant presumed that he was actually transferred to a different post in Q Branch because there is no post of AJAG in the Q Branch which the applicant was holding in his former JAG branch. The presumption is further aggravated following the release order dt. 23.3.2009 issued by the respondent NO. 5 vide (annexure-A7), which reads thus :-

1. Ref. Brg (Pers & Admn) sect SN No. 190105/37/Gen/Brg(P&A) Sectt dated 20 Mar 2009
2. As per SN under ref, you are relieved from this office wef 23 Marc 09 and report to Q (Lands 2) Br accordingly.

16. Following this release order, the applicant took over in the Q branch on 24.3.2009 and relevant departmental letters were issued addressing him in his new posting. According to the Id. adv. for the applicant all these factors clearly prove that the applicant was actually transferred out of JAG Branch. Prima facie,

there is some substance in this argument of the Id. adv. for the applicant. In fact, it was the main issue for which a C of I was convened at the level of the GOC-in-C.

17. Now, the main allegation against the applicant is that the applicant initiated process for publication of Part II order notifying such transfer and posting, which, according to the applicant, is mandatory as per Army Regulations and such Part II order was in fact published on 4.4.2009. This is also not denied by the respondents. But their case is that prior to 4.4.2009, on 2.4.2009 (annexure-R2), a clarificatory order was issued to the following effect :-

1. Further to this office letter No. 190105/37/Gen/Brg(P&A) Sectt dated 20 Mar 2009
2. It is clarified that IC 46298N Lt Col Mukul Dev has been assigned the task of expediting Cant. Board Appeal Cases pending with Q (Lands02). However, due to this assignment, there is no change in the appt of Lt. Col Mukul Dev as AJAG or channel of reporting.
3. The same was clarified to Lt. col. Mukul Dev during his interview tih the COS on 23 Mar 2009"

18. The basic case of the official respondents is that although the applicant was clearly informed that there was no change of his designation by such posting for a limited period, he went of publishing the Part II order purposely and thus violated the order of higher authority. It is true that the Part II order was published on 4.4.09 whereas the applicant was granted an interview on 23.3.09 by the Chief of Staff and the COS himself clarified the position to him. Despite that he published the Part II order showing him as SO. Possibly, the applicant was too much eager for his promotion and was apprehending that since he has been shunted out from the post of AJAG to a new job, he may not be able to complete

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the requisite period of service and would not get his due promotion. He was completely obsessed about the mala fide angle on the part of respondent NO. 5 and to prove his case, he did publish the Part II order. Even if it is accepted that the applicant did not rely on the assurance of the higher authority and that the written order dt. 2.4.09 clarifying the position was not received by him before 4.4.09 i.e. date on which the Part II order was published, (he received it on 6.4.09 as stated) but the fact remains that even by change of assignment, the applicant continued to hold the post of AJAG and was working on a different office under the same headquarters where there is no post of AJAG and that is why possibly, he designated himself as SO, which designation and post was available in the new office.

19. From this entire episode of transfer/side stepping of the applicant from one branch (JAG Branch) to another (Q Branch), though within the same HQ, we observe that it was authenticated by a written order (annexure-R1), and executed as well by relieving him from JAG Branch (annexure-A7), where he was posted in a promotion criteria appointment of AJAG. Physically the applicant was shifted to the Q Branch and he started functioning by reporting to the superior officers in Q Branch and not in JAG Branch. In such a situation, it is not appropriate for the authorities to even assure the applicant that his criteria appraisal reports would still be written by the Dy. JAG (respondent No. 5, Brig. Rathore), who was heading the JAG Branch and not the Q Branch.

20. It is worthwhile to note herein that upon a close scrutiny of the clarificatory order issued on 2.4.2009, it is absolutely clear that the said order has not



cancelled the posting of the petitioner in the Q (Lands-2) Branch but only certain arrangements, as regards channel of reporting etc. has been restored. For all intent and purpose, the original transfer order to Q (Land-2) Branch remain in existence.

21. Be that as it may, it appears that a court of inquiry was held where the applicant and five other officials were found to be at fault for publishing such Part II order and according to the respondents, all of them were punished with non-recordable displeasure while the applicant was awarded a recordable severe displeasure. This has caused great prejudice to the applicant as his promotional prospects have been adversely affected and it would be very difficult for him to recover the injury. The said Part II order dt. 4.4.09 was subsequently cancelled on 8.6.09 (vide annexure R8). In our considered view, publication of Part II order which is apparently necessary to know the current status of an officer. Under the peculiar circumstances created by the action of the respondents themselves, cannot be used as a tool to harm the applicant perpetually by denying him promotion.

22. At this stage, we need to discuss and analyse the subject Court of Inquiry (C of I), the indictment which resulted in punishment of 'recordable severe displeasure' being awarded to the applicant, insignificant action against three others and strangely yet no action against two other Brigadiers (including respondent No. 5), all of whom were held responsible in varying degrees by this C of I, which was partially agreed by the GOC in C without endorsing or recording any reasons whatsoever.

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23. The related Court of Inquiry (COI) was convened by HQ Central Command vide their Convening Order No 190105/Com/89/C/AG/DV dated 16.06.2009 by Col Vineet Deb on behalf of GOC-in-C Central Command. It is evident that this COI was convened by the Army Commander i.e. GOC-in-C, which was proposed to investigate into the circumstances under which Part II Order dated 04.04.2009 was published regarding side stepping of Lt Col Mukul Deb, the applicant, from the appointment of AJAG to Q (Land) II (SOQ) that was also reflected in the Strength Return IAFF – 3008 and the cancellation of the said Order thereafter. As per the said Convening Order the COI was also required to “**pin point the responsibility for the above publication.**”.

24. We have perused the entire COI proceedings, as produced by the Respondents on the day of hearing on 12.06.2012. We have also gone through the HQ Central Command DV Branch file No 190105/COI/MD/C/AG/DV dealing with this C of I and other related issues. We have analysed 34 pages of Notings in the form of Minute Sheets. Based on *ibid* materials, the Army Commander gave his direction on this COI which is quoted below :-

“DIRECTIONS OF THE GENERAL OFFICER COMMANDING-IN-CHIEF, CENTRAL COMMAND ON COURT OF INQUIRY PROCEEDINGS TO INVESTIGATE INTO THE CIRCUMSTANCE UNDER WHICH PART II ORDER NO 0/0161/2009 DATED 04 APRIL 2009 WAS PUBLISHED VIDE WHICH LT COL MUKUL DEB, AJAG WAS SIDESTEPED TO Q (LANDS-2) AND THE NAME OF THE OFFR REFLECTED AS SO Q (LAND-2) IN IAFF-3008, THE STRENGTH RETURN OF HQ CENTRAL COMMAND AND ITS CANCELLATION THEREAFTER.”

1. I have perused the Court of Inquiry proceedings and partially agree with the findings of the Court.

2. The facts on record reveal that Lt Col Mukul Dev AJAG, JAG Deptt, HQ Central Command has deliberately got a wrong Part II Order No. 0/0161/2009 dt 04 April 2009 published, despite he having been certified by Chief of Staff, HQ Central Command that the new task assigned to him in QMG Branch does not entail a change of his posting/ reporting channel. These orders were clarified again to the officer on 02 Apr 09 by Brig Pers & Adm.

3. Based on the evidence, the following officers of HQ Central Command are blamed for the acts of omission/commissions on their parts as under:-

(a) **IC-42346L Col SK Malhotra, Col Q (Lands-2).** As Col Q (Lands-2), he has failed to ex due caution in recommending publication of Part II Order No 0/0161/2009 dated 04 April 2009, reflecting relinquishment of appointment of AJAG by Lieutenant Colonel Mukul Dev with effect from 23 March 2009 and assuming the non existent appointment of SO Q (Lands-2), in his branch on the Noting Sheet No. 260101/6/Q3 L-2 dated 02 April 09.

(b) **IC 4698 N Lt. Col. Mukul Dev, AJAG.**

(i) Having been aware that the transfer of the officers within the Army are carried out under the orders of Military Secretary Branch and also having been clarified that the task of expediting Cantt Board Appeal cases with Q (Land-2) assigned to him was without any change in his appointment, willfully and deliberately got Part II Order No. 0/0161/2009 dated 04 April 2009 published for relinquishment of the appointment of AJAG on 23 March 2009 (AN) and assumed the appointment of SO Q (Lands-2) on 24 March 2009 (FN).

(ii) Improperly designated himself as SO Q (Lands-2) even after clarification was given to him that there was no change in his appointment, thus violated the instructions issued to him.

(c) **IC-46061W Lt Col VM Singh, AAG.** As offg Col A, he has failed to ex due caution in signing the Part II Order No. 0/0161/2009 dated 04 April 2009 for relinquishment of the appointment of AJAG and assuming appointment of SO Q (Lands-2) by Lieutenant Colonel Mukul Dev with effect from 24 March 2009 without verifying that such an appointment exists in Headquarters Central Command.

(d) **IC-54911N Lt Col A Bahukhandi, Adm Offr.** As Adm Offr, he has failed to ex due caution in authenticating the Part II Order No. 0/0161/2009 dated 04 April 2009 for relinquishment of the

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appointment of AJAG by Lieutenant Col Mukul Dev and assuming the non-existent appointment of SO Q (Lands-2) without verifying if such an appointment existed in Headquarters Central Command. He then negligently signed the IAFF 3008, indicating the change in appointment with reference to Lt Col Mukul Dev as SO Q (Lands-2), based on the said Part II Order.

4. I, therefore, direct that the administrative action in the form of appropriate '**Censure**' be initiated for lapses mentioned against them at Para 3 (a) to (d) above, against the following officers of HQ Central Command :-

- (a) IC-42346L Col SK Malhotra, Col Q (Lands-2).
- (b) IC-46298N Lt Col Mukul Dev, AJAG.
- (c) 46061W Lt Col VM Singh, AAG.
- (d) IC-54911N Lt Col A Bahukhandi, Adm Offr.

5. I also direct that SOP for publishing DO Part II Orders in HQ Central Command be formalized and promulgated to all concerned.

Place : Lucknow

Dated : 28 August 2009

Sd/-
(JK Mohanty)
Lieutenant General
General Officer Commanding-in-Chief

Case No : 190105/Comp/89/C/AG/DV

25. We have the following observations with regard to the manner in which this COI was convened, conducted, analysed and directions from the Army Commander was obtained which resulted in different degree of administrative actions against some out of those who were held responsible in the said COI.

- (a) The matter was not at all that severe or grave administrative breach to initiate a COI. After all it was publication of Part II Order which is nothing but a statement of "Occurrence" that was done on 04.04.2009 and later cancelled after it was found out by the higher officials that a transfer of an officer could not have been done without the approval of

the MS Branch at Army HQ. The entire episode did not cause any loss of property, fund or moral fibre. It was, if at all, an incidence which could have been tackled within the space of routine administration. It definitely did not warrant a senior officer of the rank of GOC-in-C to order a COI for such a mundane and routine administrative affair.

(b) That apart by issuing clarificatory order dt. 2.4.09, the posting of the applicant in the Q (Land-2) Branch has not been cancelled or kept in abeyance. There has been remarkable departure from the sanction of the Army commander-in-Chief on the material points on which the COI was directed to be held and the convening order which only confined to "pin point the responsibility for the above publication" and not enquiring into the side stepping of the applicant. Therefore, the very convening of this COI could have been avoided unless there were different motives to be attributed by obtaining strength from findings of such a COI.

(c) Coming to the COI itself, we find that convening order clearly spells out that the COI would also "pin point responsibility for above publication" of wrong Part II Orders. Our attention was drawn to Para 584 (c) of Regulations of Army 1986 which clearly gives out situations where Part II Orders are published. Despite such directions of the convening authority in the said convening order, HQ Central Command, while replying to a query raised by MOD (AG) (their Note No. 48545/Stat/CC/1163/AG/DV 4(b) dated 25.08.2010 in Para 2 (ii) there

of), has stated that the subject COI pertains to only investigation of illegal publication of Part II Order and the terms of reference was to "Investigate the circumstances under which such Part II Orders were published". This aspect of "pin pointing responsibility ..." has been omitted in their reply to MOD

(d) It is evident from Para 3 (b) and (c) of HQ Central Command Note of even No. dated 02.11.2010 addressed to MOD (AG) that in the aforesaid reply HQ Central Command (DV) had not furnished full and complete facts to the MOD by not revealing one part of the convening order which was to "Pin point the responsibility for above publication". Since the ibid query was required to be answered accurately; half truth answer in this manner would have given a different twist while MOD was adjudicating on the Statutory Complaint submitted by the applicant, who was aggrieved with administrative action taken against him.

(e) We also noticed that the COI, in its opinion, has clearly given following facts based on its findings :-

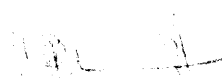
- (i) The Court felt that entire episode of wrong Part II Order was published due to ambiguous written instructions that were interpreted without efforts resulting in wrong Part II Orders.
- (ii) The COI held following officers responsible for this lapse.
 - (aa) Brig U.K. Chopra.
 - (ab) Brig P.S. Rathore
 - (ac) Lt Col Mukul Deb

(iii) In addition, the Court held following officers responsible for aggravation for the above lapse

- (aa) Col S.K. Malhotra
- (ab) Lt Col V.M. Singh
- (ac) Lt Col A. Bahukhandi

(f) It is interesting to note that the opinion of the Court with regard to Lt Col Mukul Deb, who was punished for maximum severity, was responsible for a lapse of "not exercising caution" while initiating a noting. So were the other officers, who were blamed for "not exercising due caution". Brig U.K. Chopra and Brig P.S. Rathore were held responsible for the lapse for issuing vague instructions in transfer of Lt Col Mukul Deb and relieving him from the post of AJAG respectively. Very strangely, these aspects were not indicated to the MOD by HQ Central Command in response to their query, which was raised while MOD was examining Lt. Col. Mukul Deb's statutory complaint.

(g) The Notings on the file (19015/COI/MD/C/AG/DV merely relate to views of various Staff officers and their opinion and we shall not comment on them. We would however, like to point out our observations that the GOC-in-C in his direction on the COI has conveniently omitted the names of the two Brigadiers (Brig Chopra and Brig Rathore) thereby keeping his administrative process incomplete. Ideally he, having found them being blamed for omissions/commissions of lapses, the said COI, should have either dealt with them administratively or exonerated them completely or partially by



disagreeing on the findings of the COI with adequate reasons endorsed in his directions. Such incomplete administrative actions at the level of Command HQ by Army Commander is often not seen and indicative of lack of transparency and non-application of mind which create a ground for hostile discrimination on the part of the aggrieved officer.

(h) The lapses pointed out in processing the file vide note dt. 24.8.10 & 18.2.11 (vide annexure-A24) have not been reconciled by the superior authorities.

26. In view of our ibid discussions and observations especially with regard to incomplete directions by the GOC-in-C, we feel that the matter must be brought up to the notice of COAS (Respondent No 2) as it is for him to direct completion of action as appropriate. The COAS may also note that Senior Officers at that level must endorse their views on such enquiry reports in a transparent manner indicating their agreement or disagreement or partial agreement with adequate reasons.

27. Brigadiers, who head branches in Command HQ do have important supervisory role in this case, but their failure, though pointed out by the C of I, has gone un-noticed by the GOC-in-C while giving his direction. The COAS must issue directions to rectify such lapses in HQ Central Command.

28. We also find that that the GOC-in-C has partially agreed that the findings of the Court but has not mentioned his views with reasons for said partial

14/8/11

agreement. Such actions create doubts in our mind since they can never be termed "transparent". The COAS may also consider this aspect.

29. Considering the matter from all its angles, we are of the opinion that the recordable censure of "severe displeasure" issued against the applicant is not only too harsh but totally uncalled for. As admittedly, the respondents have accepted that in the order dt. 20.3.09 the word "transferred" should not have been used and that it was used inadvertently. It is clear from the above discussion that by use of such word i.e. "transferred", the entire misconception and misunderstanding started although the respondent authorities tried to rectify their alleged fault or mistake by issuing subsequent clarificatory order but without cancelling the same. Therefore, in our considered view, the alleged lapse of the applicant lies unsubstantiated. The respondents cannot also escape the liability of publishing an order which was couched in a confusing language. It is also to be noted that apart from this incident, no other misconduct was alleged against him though the Id. adv. for the respondents has submitted that in another occasion the applicant was issued with a non-recordable warning for using foul and intemperate language against higher officers, which, however, is not under challenge in this case.

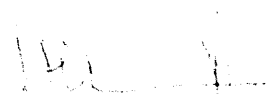
30. We have gone through the show cause notice and the detailed reply given thereto by the applicant. But in the impugned order dt. 29.9.09, there was no discussion of the points raised by the applicant in his reply to the show cause. It simply states in para 3 as follows :-

"3. Apropos, I direct that my "severe displeasure (recordable)" be conveyed to IC 46298N Lieutenant colonel Mukul Dev, Assistant Judge

Advocate General of Headquarters, Central command for the above mentioned lapse on his part.”

31. In our considered opinion when by such recordable censure, the entire service career of an young army officer is going to be ruined, it should not be taken lightly and at least reasons for non-acceptance of the reply given by the delinquent officer should have been recorded, which is the basic principle of natural justice. The order is not at all a speaking order. We, therefore, cannot sustain this impugned order and it is liable to be set aside and quashed. Consequently, the order dt. 21.2.12 rejecting the statutory complaint filed by the applicant against the impugned punishment order is set aside and quashed. The applicant on this issue stands exonerated.


32. In this context, we also direct the COAS (respondent No. 2) to re-examine as to why the administrative action on the subject C of I has remained incomplete for nearly three years, in which two other Brigadiers, including respondent No. 5, were also investigated upon, apportioned some degree of supervisory lapse, but their names have been conveniently omitted from the directions by the GOC in C, who has not recorded any reasons for such omission, neither in his order nor in response to the MOD, when queried for by them, while they were processing the statutory complaint of the applicant. Actions like withholding information or not assigning adequate reasons while dealing with such cases especially, by senior officers compounds lack of transparency leading to denial of natural justice apart from the vices of not rendering public service in a holistic way. The COAS shall look into this aspect objectively.

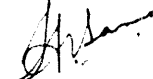


33. In the result, the original application is allowed on contest but without cost. The impugned orders dt. 29.9.09 and 21.2.12 are hereby quashed. The applicant be exonerated of the charge levelled against him in the show cause notice dt. 21.8.09.

34. Let the original records be returned to the respondents on proper receipt,.

35. Let plain copy of the order be handed over to the parties.


(LT. GEN K.P.D.SAMANTA)
MEMBER(ADMINISTRATIVE)


(JUSTICE H.N.SARMA)
MEMBER(JUDICIAL)