

as the Commander of 164 Mountain Brigade on 30.03.2012. After taking over, Brigadier R.K. Jha was informed that the property of the Flag Staff House was not properly accounted for and certain items were missing as they were taken away by the Appellant. Brigadier R.K. Jha made inquiries with Major Amit Slathia and Havildar Yongendra Bahadur Gurung. On being satisfied that certain items were missing, Brigadier R.K. Jha directed Colonel S.S. Sidhu, the then Deputy Commander to undertake a physical check of the Flag Staff House property. According to the inquiry conducted by Major Siddharth Virmani and Havildar Yogendra Bahadur Gurung. Two Heat Pillars, three carpets and two flower pots were taken away by the Appellant along with his luggage by being treated as unserviceable.

3. When Brigadier R.K. Jha visited unit 4/1 GR along with Major Ishani Maitra, Education Officer of 164 Mountain Brigade, he was informed by her that Mrs.

Nirmala Singh, wife of the Appellant had borrowed money which was subsequently not returned. Having learnt about the excess commission and omission by the Appellant, the General Officer Commanding 17 Mountain Division directed a discrete investigation against the Appellant. After an investigation, Brigadier R.K. Jha found the following acts and omissions on the part of the Appellant :

“(i) It was reported by the then Deputy Commander, Colonel (Now Brigadier) S.S. Sidhu that Mrs. Sidhu had got a call from Mrs. L.I. Singh requesting for some money which as per the Officer, was politely declined.

(ii) It was reported by Major Amit Slathia, SC that he was under severe duress to obtain money for the Appellant from Civil Hired Transport contractors. As reported by the Officer, since he could not withstand the pressure and humiliation, he gave Rs.20,000/-

(Rupees twenty thousand only) out of his own pocket to the Appellant, by withdrawing money from an ATM at Pedong.

(iii) Major Akhil Mendhe, Second-in-Command of 6 RAJ RIF who happened to be in the Brigade Headquarters on a particular day when Brigadier R.K. Jha was interacting with the officers, informed Brigadier R.K. Jha that a loan of Rs.1.00.000/- (Rupees one lakh only) was arranged for Brigadier L.I. Singh, YSM from his Unit Wet Canteen Contractor.

(iv) Colonel M. Ravi Shanker, Commanding Officer 4/1 GR informed Brigadier R.K. Jha that when the Appellant was the Commander, a loan of Rs.2,00,000/- (Rupees two lakhs only) was arranged from his Unit Wet Canteen Contractor for the Appellant, which was subsequently returned.

(v) Lieutenant Colonel V.S. Parmar, Admn Comdt of Station Headquarters, Pedong reported that the Appellant had taken some favours from the vendors dealing with the Station Headquarters, Pedong."

4. Brigadier R.K. Jha reported accordingly to the General Officer Commanding 17 Mountain Division who in return reported to the GOC 33 Corps. Before ordering an investigation, it was decided that a preliminary investigation/ one man inquiry should be held. With a view to find out the correctness of the allegations against the Appellant, the General Officer Commanding 27 Mountain Division was asked to carry out the preliminary investigation.

5. On the basis of the report submitted in the preliminary investigation (One Man Inquiry) and the verbal complaints made by officers and non-commissioned officers to Brigadier R.K. Jha, a Court of Inquiry was convened on 09.06.2012. The

terms of reference given to the Court of Inquiry are as follows:

“(i) Borrowing of money from the wet canteen contractors of units under his command.

(ii) Pressurizing IC-59235K Maj. Amit Slathia, SC, AA&QMG, Headquarters 164 Mountain Brigade to obtain Rs.45,000/- from the Civil Hired Transport contractor for him (Brigadier L.I. Singh, YSM).

(iii) Illegally taking away official property of the Flag Staff House prior to relinquishing his appointment.

(iv) Accepting items viz., Laptop worth Rs.62,000/- and Cannon Camera worth Rs.56,000/- from M/s. United Enterprises and M/s. Narbada Enterprises respectively.

(v) Any other misdemeanour or financial impropriety which may have been committed.”

6. The General Inquiry Commander 33 Corps recorded a finding against the Appellant for the following acts and omissions:

“(i) Borrowing Rs.2,00,000/- from the Unit Canteen Contractor of 4/1 GR Sri Paramanand Agarwal and his manager Sri Om Prakash Agarwal through Col. Kapil Sood then CO 4/1 GR in Jan. 2011.

(ii) Borrowing Rs.1,00,000/- from the Unit Canteen Contractor of 6 RAJ RIF Sri Shiv Prakash Agarwal through Col. H.S. Baidwan, SC, Commanding Officer 6 RAJ RIF in Dec.2011.

(iii) Borrowing Rs.35,000/- from Hav. Rajendra Singh of 6 RAJPUT through his wife Mrs. Nirmala Singh in Aug.2011.

(iv) Directing IC-59235K Maj. Amit Slathia, SC, AA&QMG of Headquarters 164, Mountain Brigade to obtain a gratification of Rs.45,000/- from the Civil Hired Transport Contractor for himself and thereafter accepting Rs.20,000/- from Maj. Amit Slathia, SC who paid the same from his own pocket so as to avoid his repeated demands.

(v) Misappropriating the following property of the Government given him for his own use at his Flag Staff House:-

<i>(aa) Heat Pillar</i>	<i>-</i>	<i>02</i>
<i>(ab) Carpet 6" x 4"</i>	<i>-</i>	<i>01</i>
<i>(ac) Carpet 3" x 2"</i>	<i>-</i>	<i>02</i>
<i>(ad) Crystal Flower Pot (Medium)</i>	<i>-</i>	<i>01</i>
<i>(ae) Crystal Flower Pot (Big)</i>	<i>-</i>	<i>01</i>

(vi) Accepting illegal gratification in the form of a Laptop (Dell Model No.552 (XPX 15 R)

worth Rs.62,000/- from M/s. United Station Headquarters, Pedong and Headquarters 164 Mountain Brigade.

(vii) Accepting illegal gratification in the form of Canon Digital Camera (SLR EoS 60 D) and 4 GB card worth Rs.56,000/- from M/s. Narbada Enterprises, a firm carrying out business of supplying stores with Headquarters 164 Mountain Brigade.

(viii) Transferring Rs.97,211/- in three transactions to his daughter then studying in New Zealand through Mr. Ramesh Gurung brother of No.5349475F Nk Dinesh Gurung of 3/ 4 GR so as to avoid any detection of transfer of money from his account.

(ix) Issuing directions to IC-47865X Lieutenant Colonel T.S. Kadian, SM to procure items for Pedong Sainik Institute through M/s. Narbada Enterprises only, thereby influencing

the entire tendering process and in turn obtaining items at a high rate such as Sharp Video Projection System at Rs.95,000/- though the prevailing market rate and DGS&D rate are Rs.40,000/- and Rs.26,500/- respectively, thus causing wrongful loss to the State.

(x) Committing financial impropriety leading to misappropriation of Regimental Fund of Headquarters 164 Mountain Brigade by way of directing IC-47865X Lieutenant Colonel T.S. Kadian, SM to clear his personal expenditure incurred in the Flag Staff House and during his visit by making false handmade bills. Such a practice was also in contravention to rules/regulations on proper utilization of Regimental Funds.”

7. A *prima facie* case was made against the Appellant and he was attached to the Headquarters, 20 Mountain Division in accordance with the provisions of Army

Instructions 30 of 1986. The Appellant filed O.A. No.85 of 2013 in the Armed Forces Tribunal, Principal Bench, New Delhi challenging the order of attachment, which was dismissed by the Tribunal at the admission stage. Aggrieved by the said order of the Tribunal, the Appellant filed a Writ Petition in the High Court of Delhi. In the meanwhile, the disciplinary proceedings were initiated against the Appellant by commencing hearing of charge in terms of Rule 22 of the Army Rules, 1954 (for short "the Army Rules") on the basis of the tentative charge sheet. During the hearing of charge, 17 witnesses were examined and the Appellant cross-examined two witnesses.

8. By an order dated 29.04.2013, the High Court stayed further proceedings against the Appellant. The Writ Petition was dismissed by an order dated 20.03.2015, giving liberty to the Appellant to pursue his remedies under Section 30 and 31 of the Armed Forces Tribunal Act, 2008. A Review Application filed by the

Appellant was allowed by the Tribunal on 27.01.2016 and the Original Application was admitted. The order by which the Review Application was admitted by the Tribunal was challenged by the Respondent- Union of India in this Court, unsuccessfully. By an order dated 06.02.2019, O.A. No.85 of 2013 was finally disposed of by directing the Respondent- Union of India to supply a copy of the one man inquiry report to the Appellant and to commence the disciplinary proceedings against the Appellant. Applications filed by the Appellant for Review and Leave to Appeal to this Court were dismissed by the Tribunal. The judgment and the order by which application for review was dismissed are assailed by the Appellant in these Appeals.

9. Consequent upon the dismissal of O.A. No.85 of 2013 by the Tribunal, the Appellant reported to the Headquarters, 21 Mountain Division on 17.01.2019. A copy of the one man inquiry was handed over to the Appellant and recording of summary evidence which

commenced on 26.03.2016 was in progress. In the meanwhile, the Appellant retired from service on 30.04.2019. Thereafter, Section 123 of the Army Act was invoked to continue the disciplinary proceedings against the Appellant. As the interim order passed by this Court on 06.02.2019 was operative, the disciplinary proceedings could not proceed.

10. Before the Tribunal, the Appellant contended that initiation of disciplinary proceedings against him was vitiated by *mala fide*. He further contended that there was infraction of Rule 180 of the Army Rules. The main submission of the Appellant before the Tribunal was that a copy of the one man inquiry report was not furnished. As the one man inquiry report was the basis for initiation of the Court of Inquiry proceedings, it was contended that the Appellant was deprived of an opportunity to defend himself effectively before the Court of Inquiry. The Appellant further complained that an opportunity as provided by Rule 180 of the Army

Rules was not extended to him during the course of the inquiry proceedings. The Tribunal rejected his submission of any *mala fide* made against the Appellant. However, the Tribunal held that the Appellant was wrongfully denied a copy of the one man inquiry report during the inquiry proceedings. Insofar as the complaint of an opportunity not being given to the Appellant as per Rule 180 of the Army Rules, the Tribunal observed that the Appellant was present throughout the proceedings of the Court of Inquiry and that he avoided the opportunity of cross-examining the witnesses as well. The allegation of violation of Rule 180 made by the Appellant was not accepted by the Tribunal. The Tribunal took note of the fact that the disciplinary proceedings were stalled due to cases pending in courts. While directing that the one man inquiry report shall be handed over to the Appellant, the Tribunal directed the Respondents to complete the process of disciplinary proceedings.

11. Mr. Sudhanshu S. Pandey, learned counsel appearing for the Appellant made a valiant effort to convince us that the initiation of disciplinary proceedings against the Appellant was due to extraneous considerations. He submitted that the records have been concocted to show compliance of the procedure provided in Rule 180 during the Court of Inquiry. According to him, there is a clear violation of Rule 180 of the Army Rules as the Appellant was not given sufficient opportunity to defend himself. He submitted that the Appellant is being tormented with an ulterior motive in spite of his retirement after a meritorious record of service. He urged that the entire disciplinary proceedings should be quashed as the Appellant has been victimized on the basis of certain frivolous complaints even after his retirement.

12. Mr. R. Balasubramanian, learned Senior Counsel appearing for the Respondents produced the original record of the Court of Inquiry. Mr. Balasubramanian

submitted that there is no truth in the allegation that the records have been manipulated by the Respondents. He submitted that the one man inquiry was only in the nature of a preliminary investigation to verify the facts before the Court of Inquiry was ordered against the Appellant. He argued that there was no violation of the Rule 180 of the Army Rules as held by the Tribunal. He submitted that full opportunity was given to the Appellant during the course of the proceedings before the Court of Inquiry. He stoutly defended the judgment of the Tribunal by commending for our consideration non- interference with the judgment of the Tribunal.

13. In view of the order we propose to pass, it is not required to take into consideration the submissions made on behalf of the Appellant regarding the allegation of *mala fides*. Admittedly, the one man inquiry report was not furnished to the Appellant. There is no dispute that the basis for the convening of the Court of Inquiry is the one man inquiry report. The

Tribunal directed the Respondents to provide a copy of the one man inquiry report to the Appellant before continuing with the disciplinary proceedings against the Appellant. Though, we are not disturbing the findings of the Tribunal regarding the compliance of Rule 180 of the Army Rules, we are of the considered opinion that the direction given by the Tribunal requires modification. Without the report of the one man inquiry, the Appellant was certainly disabled from effectively defending himself in the Court of Inquiry. The Appellant is entitled to an opportunity to cross examine the witnesses against him after examining the one man inquiry report. Further, the Appellant raised the issue of the one man inquiry report not being provided to him at the earliest possible time. Therefore, the directions issued by the Tribunal that disciplinary proceedings be conducted afresh requires to be modified. The Court of Inquiry has to be conducted afresh. The Appellant is entitled to cross-examine witnesses and produce witnesses in his favour.

14. For the aforementioned reasons, we affirm the judgment of the Tribunal with the modification mentioned above. The Court of Inquiry shall be held against the Appellant afresh. As the Appellant has retired from service, the Court of Inquiry may be initiated and completed expeditiously. Further proceedings, if any, may be conducted without any delay.

15. The Appeals are disposed of accordingly.

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.....J.
[L.
NAGESWARA RAO]

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.....J.
[AJAY
RASTOGI]

**New Delhi,
December 17, 2019.**