

COURT No.2  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

10.

OA 601/2014

Ex. Sigman Hemant Kumar ..... Applicant  
VERSUS  
Union of India and Ors. .... Respondents

For Applicant : Mr. SS Pandey, Advocate  
For Respondents : Mr. Arvind Patel, Advocate with  
Maj Lauv Kumar, OIC, Legal Cell

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)  
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

17.10.2023

On behalf of the respondents reliance is sought to be placed on page 72 of the Court Martial Proceedings copy of which has been placed on record before us which document reads to the effect:-

*"STATEMENT BY THE ACCUSED Accused No 15690141X Signaman (Driver Mechanical Transport Hemant Kumar of 7 Infantry Divisional Signal Regiment is cautioned in terms of Army Rule 23 (3) in the presence of an independent witness JC-381200M Naib Subedar MS Bhatt of 7 Infantry Divisional Signal Regiment as under-*

*"Do you wish to make any statement? You are not obliged to say anything unless you wish do so, but whatever you say will be taken down in writing and may be given in evidence."*

*1. I was posted to this unit from Headquarter 4 Corps (Signals branch) on 20 September 2007 During posting in interview by the then Commanding Officer (CO) Colonel HK Gopinath, he asked me about the duties I had performed in my previous unit. I replied that I was performing*

*the duty of task clerk at Headquarter 4 Corps (Signals branch). After spending some time in the new arrival section I was posted to Regimental Headquarter on 01 October 2007. After my posting I reported to the Head Clerk at the Regimental Headquarter and was given exposure on different tasks. Then I was entrusted the duty of Personal Assistant (PA) to the CO.*

*2. I was married in November 2004 and my wife Smt Mukesh Kumari was staying at my native place in Village-Baghanki, District-Gurgaon, Haryana with my parents. I have one son. My wife was not getting along well with my mother since she wanted to pursue her higher studies against my mother's wishes. She was studying in her BA (Final) then. The differences aggravated after my Sister-in-law (my younger brother Shri Raj Kumar's wife Smt Poonam) joined the family in December 2006 since she was also against my wife pursuing her higher studies. Both my mother and sister-in-law wanted my wife to do the household chores rather than pursue higher studies. I tried to convince my mother to let my wife study further but my mother was absolutely against it. Even my younger brother would take his wife's side against my wife which further escalated our differences. Despite my plea to my parents, they also took the side of my brother Shri Raj Kumar and his wife against me and my wife.*

*3. My wife used to call me up on phone while I was here in the unit to relate the building up of tension at my home. With a view to de-escalate the rising tensions between my wife and my parents, my brother and my sister-in-law, I instructed my wife to pursue correspondence course instead of regular classes for her studies. My wife agreed to this suggestion and enrolled herself to pursue her studies through correspondence. But my mother did not approve this also and her differences with my wife persisted. I informed the then Head Clerk, Sub (Clerk GD) Sudhir Kumar Sharma, about my problems at my home. He suggested me to bring my wife to this station.*

*4. I applied for in living but the same was not sanctioned since I was under age. The Head Clerk suggested me to apply for out living which I did. I was granted permission for out living by the CO. I informed my wife about this and told her to join me here in this station. My wife refused to join me on the pretext that her studies would get disturbed. But I persisted in telling her that this would also contribute to reducing the differences my wife was having with my other family members, even if she stayed with me for a period of three months. She finally reconciled to the fact and agreed to join me*

*in this station. I went on leave for 30 days in March 2009 to bring my wife and son to this station.*

*5. I brought my wife to this station in April 2009. My wife stayed with me here for about six months. She complained that due to her prolonged stay here, she was missing out on her studies and would even lose her academic year. I tried to convince her to stay with me for some more time but she did not agree. Due to this we started having quarrels at home. This was conveyed by my wife to her father and she called him here. My father-in-law Shri Ramphal Singh came to our home in this station in January 2010 and advised me to insulate his daughter from the tensions at home so that she could focus on her studies. He then took my wife and my son with him to his native place at Village-Jamalpur, District-Gurgaon, Haryana. My wife told me that she would return to my native place only when I went to pick her up.*

*6. After my wife left this station with her father in January 2010, I applied for 30 days Part of Annual Leave (PAL) on 04 February 2010. I was granted the same and proceeded on leave with effect from 10 February 2010. I went to my native place during my leave and then went to my in-laws place and got my wife back to my home. For a few days everything was fine at my home but after some time the differences between my wife and my mother resurfaced. I tried to placate both my wife and my mother without success. Due to these ever increasing problems at home, I was mentally disturbed and my PAL was coming to an end. Three to four days before the end of my leave spoke to Captain Ankur Dewan, the Officer Commanding Headquarter Company and Adjutant, to extend my leave for another 23 days to address to my problems at my home. He inquired about the reasons for extending my leave to which I related him my family problems. I was granted 23 days Balance of Annual Leave (BAL).*

*7. During my leave extension period, while I was away to one of my relatives place, my brother Shri Raj Kumar manhandled my wife during an altercation. My wife immediately called me and her father on phone. When I reached back my father-in-law had already arrived and I saw that my wife had sustained physical injury. This led to an altercation between my father-in-law and my parents. I tried to bring the situation under control but did not succeed in doing so. My father-in-law left thereafter but kept threatening and warning me on phone that I was not properly looking after my wife and son. I told my parents about this who in turn told me to leave their home and go and stay*

*at my father-in-law's place with my wife. Due to all this my wife was mentally disturbed and kept unwell. My extension of leave upto 04 April 2010 was also coming to an end. But there was no respite from the differences in my family nor had my wife's health improved and there was no one to look after my son. I did not get any support from my parents also. My wife's condition had deteriorated and I had to admit her in a private hospital near my home. My wife was admitted in the hospital and underwent treatment from 01 April 2010 to 05 April 2010 after which she was discharged. The doctors told me that my wife was mentally weak and if she was subjected to further mental harassment she might end up taking wrong steps. I told my parents about the same who expressed their inability to do anything about it. By that time my leave had also come to an end. Since there was no one to look after my wife and son, I did not know what to do. My wife was given bed rest by the doctors for one month and hence she could not do any household work. Reacting to this my parents told me to get separated from them which I did. After separation I moved to my old house nearby and started staying there. I got no support from my parents: I used to work occasionally on my piece of land. Due to non availability of any source of income I stated having financial problems. To get over the financial problems my wife told me to go back to the unit but due to the situation at home I refused to join back.*

*8. To improve our financial problems my wife started working at a school near our home. My father-in-law also tried to convince me to go back to my unit since the difference between my wife and my parents/brothers had reduced ever since we had separated. My father-in-law met my father with a view to put our life back on track and facilitate my return to my unit. My father agreed to this and brought us back home and told me to rejoin my duty. I also realized my mistake and my wrong decision of not reporting back to my unit. I did not indulge in any unauthorized activity during this period. Since I realized my mistake, I reported back to the unit on 17 July 2012.*

*9. I hereby produce the photocopy of medical documents of my wife.*

*10. The Presiding Officer examines the above document and finds it in order and attaches it as Exhibit-26.*

*11. The above statement has been read over to the individual in the language understood and he signs it as correct."*

2. On behalf of the applicant on 16.10.2023 had been submitted two documents both dated 19.01.2023 which are scanned as under:-

“

Applicant  
16/10

7 Inf Div Sig Regt  
PIN-917807  
C/o 56 APO  
19 Jan 2013

PC-15690141X/HK/01/Sigs/

Number 15690141X  
Rank Siginn Trade Dvr MT  
Name Hemant Kumar  
7 Inf Div Sig Regt  
PIN-917807  
C/o 56 APO

SUMMARY COURT MARTIAL

1. Ref our letter No PC-15690141X/HK/01/Sigs/ dt 19 Jan 2013.

2. You will be tried by Summary Court Martial on 23 Jan 2013. The names of members of the court are as under :-

(a) The Court	-	IC-52419A Col Vikas Sehgal	X
(b) In attendance	-	IC-77352X Lt Srinidhi G	
	-	JC-372430Y Sub Devinder Kumar	
(c) Friend of the accused	-	IC-71169Y Capt Sushil Kumar	

2. Please intimate if you wish to call any witness in your defence. Your reply should reach the undersigned by 0900 hrs on 20 Jan 2013.

(Vikas Sehgal)  
Colonel  
Commanding Officer

Applicant  
16/10

7 Inf Div Sig Regt  
PIN-917807  
C/o 56 APO

13 Jan 2013

PC-15690141X/HK/01/Sigs/

Number 15690141X Sigm (Dvr MT)  
Hemant Kumar  
7 Inf Div Sig Regt  
PIN-917807  
C/o 56 APO

SUMMARY COURT MARTIAL

1. You will be tried by Summary Court Martial on 23 Jan 2013.
2. Please intimate if you wish any officer from the under mentioned officers as friend of the accused or to detail any other officer for the purpose:-
  - (a) IC-71169Y Capt Sushil Kumar
  - (b) SS-45866F Lt Megha Pande
  - (c) IC-77352X Lt Srinidhi G
3. Your reply should reach the undersigned by 1000 hrs on 20 Jan 2013.

(Vikas Sehgal)  
Colonel  
Commanding Officer

3. Vide letter no. PC-15690141X/HK/01/Sigs it has been stated therein that the names of the Members of the Court by which the applicant would be tried by the Summary Court Martial on 23.01.2013 are to the effect:-

“

(a) *The Court – IC-52419A Col Vikas Sehgal*

- (b) *In attendance – IC-77352X Lt Srinidhi G*  
- *JC – 372430Y Sub Devinder Kumar*  
(c) *Friend of the accused – IC-71169Y Capt Sushil Kumar”*

4. At this stage, the original of the said letter has been produced by the respondents. The original Summary Court Martial proceedings produced by the respondents are taken on record.

5. On behalf of the respondents it is submitted to the effect that the document placed at page 18 in the original Summary Court Martial proceedings, copy of which has been submitted on behalf of the applicant referred to hereinabove may have been a typographical error submitting to the effect further that the applicant had been given an opportunity to exercise his right of choice of choosing ‘friend of the accused’ as sought to be submitted vide the certificate placed at page 19 of the original Summary Court Martial dated 20.01.2013 which reads to the effect:-

*“1.Reference Para 2 of your letter No PC-15690141X/HK/01/Sigs/ dt 19 Jan 2013.*  
*2.You may detail IC-71169Y Capt Sushil Kumar as friend of the accused from 7 Inf Div Sig Regt.”*

which has also been signed by the applicant, with it also having been submitted on behalf of the respondents, that even if it be an error, the same does not vitiate the trial and that the right to have a friend of the accused is not a mandatory right, in terms of Rule 129 of the Army Rules 1954.

6. Submissions addressed on behalf of either side.
7. On behalf of the respondents it is prayed that written submissions be allowed to be filed which are allowed to be so filed not exceeding five pages which be filed within a week. Written submissions of the applicant, if any, be filed by the applicant.
8. Re-list the matter on **25.10.2023**.

**(JUSTICE ANU MALHOTRA)**  
**MEMBER (J)**

**(REAR ADMIRAL DHIREN VIG)**  
**MEMBER (A)**

**AP**