



**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI**

**TA NO. 199 OF 2009
(WRIT PETITION (C) NO. 3470 OF 2007)**

**NO. 14932861-W EX SEPOY DHYAN SINGH YADAV
SON OF SRI. KAMTA PRASAD
VILLAGE: KALYANPUR, POST: BAHEBALPUR,
TEHSIL: CHHIBRA MAU, DISTRICT: KANNAUJ.**

THROUGH: COL. ASHOK KUMAR, ADVOCATE

... PETITIONER

VERSUS

- 1. CHIEF OF THE ARMY STAFF
D H Q P O
NEW DELHI-110 011.**
- 2. GENERAL OFFICER COMMANDING IN CHIEF
SOUTHERN COMMAND
PUNE.**
- 3. GENERAL OFFICER COMMANDING IN CHIEF
NORTHERN COMMAND
C/O 56 A P O**
- 4. COMMANDANT-CUM-CHIEF RECORDS OFFICER
RECORDS MECHANISED INFANTRY PIN 900476
C/O 56 A P O**

5. **COMMANDING OFFICER
14 MECH INF
PIN 911714, C/O 56 A P O**



6. **UNION OF INDIA
THROUGH SECRETARY
MINISTRY OF DEFENCE
NEW DELHI- 110011.**

THROUGH: LT. COL. NAVEEN SHARMA

... **RESPONDENTS**

CORAM:

**HON'BLE MR. JUSTICE S.S KULSHRESHTHA, MEMBER
HON'BLE MR. S.S DHILLON, MEMBER**

JUDGMENT

10th December, 2009

1. The petitioner seeks to be reinstated in service with all consequential benefits and to quash the impugned order dated 20th July 2005 (the SCM proceedings against the individual) and 28th February 2007 (which is the reply of the Chief of the Army Staff on the statutory petition of the petitioner of 31st May 2006).

2. The petitioner was enrolled on 16th January 2003 and on completion of training was posted to 14 Mechanised Infantry. He states that



he was dismissed on 20th July 2005 due to an error in his domicile certificate ie. whereas the petitioner was a resident of Kanoj District, in his domicile certificate, it has erroneously been shown as Ahmadnagar. A tentative charge sheet dated 31st May 2005 was given to the petitioner, wherein he was charged under Army Act Section 44 for producing a fake domicile certificate obtained from unauthorised agency/sources to the enrolling officer. The hearing of the charge under Army Act Section 22 was held on 31st May 2005.

3. The petitioner has not given any argument/pleading on the merits of the case, rather the petition is based primarily on bringing out inconsistencies on the part of the respondents during investigation, trial and dismissal. These inconsistencies are enumerated at succeeding paragraphs.

4. The petitioner states that Maj. Dasgupta of 14 Mechanised Infantry was a prosecution witness in the hearing of charge under Army Rule 22 on 31st May, he was also prosecution witness No.1 during Summary Court Martial, which was held on 20th July 2005 and he was also the officer who promulgated his dismissal from service on the same day ie. 20th July 2005. He has contended that the officer appearing at all three places is inconsistent with Army Rules 39, 71 and 130 read in conjunction with Paragraph 473 of

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DSR and that such repeated presence of Maj. Dasgupta indicates a bias against the petitioner. The main objection is that this officer is barred from promulgation under AR 39 since he has been a prosecution witness in the same SCM.

5. The petitioner also contends that a junior Commissioned Officer viz. JC 418138L Sub. Sukhdev Singh has been a witness in the hearing under Army Rule 22 and also appeared as Witness No.2 in the summary of evidence. He contends that "mere documentation of disciplinary proceedings has been manipulated and not actual trial".

6. The petitioner also contends that the summary of evidence recorded by Capt. Jagpal Singh does not have the officer's signature on all pages.

7. The petitioner also states that the provisions of Army Rule 33(7) have not been complied with. In that, the charge sheet and the summary of evidence should have been given to him 96 hours in advance, which was not done in his case.



8. The petitioner also objects to the SCM proceedings being completed within a short span of an hour. He contends that this is against the Division Bench decision of the Allahabad High Court reported in 2002(4) SCC 86.

9. The petitioner has also stated that a young officer, Lt. Subir Mathur was thrust upon him as the defending officer and that the officer did not have the due knowledge of law required to fulfill his functions as a "friend of the accused".

10. The petitioner also contends that the plea of guilty endorsed on Page B of the GCM proceedings is irregular and that the accused did not plead guilty. He also states that the due certificate to be given by the officer conducting the Court on a plea of guilty was not recorded in consonance with Army Rule 115(2) read in conjunction with Army Rule 52 (2-A).

11. The petitioner has also contended that it being a civil offence, an FIR should have been lodged in compliance of Paragraph 418 of DSR and that prior sanction of DJAG of HQ Southern Command should have been obtained, as laid down in Paragraph 459 of DSR. The petitioner is also



unhappy with the so called 'cryptic' rejection of his petition by the Chief of Army Staff.

12. Counsel for respondents began by stating that at no stage has the petitioner made any defence against or rebutted the central issue i.e. which is whether a false domicile certificate had been given by the individual or not. Being the sole and only beneficiary of such false domicile certificate, the onus for disproving the charge rests on the petitioner. Ipso facto, it tantamounts to acceptance of such wrongdoing. Learned counsel for the respondent, addressing all these issues, has brought out the following aspects:

(a) With regard to the detailment of Maj. Dasgupta, the officer who was a witness in the hearing under Army Rule 22 as well as Prosecution Witness No.1 in the summary of evidence, to which there is no bar. Also, there is no illegality in his carrying out promulgation of the proceedings since it is clearly mentioned at page J of the Court Martial proceedings that the Court proceedings terminated at 1230 hours on 20th July and the trial closed at this time. Promulgation was done at 1245 hours by the officer concerned in his

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official capacity and there is no question of influencing the finding or proceedings of the Summary Court Martial. Here, the expression 'promulgation' shall be construed to mean to make official declaration of the order or the decree passed by the Court Martial. In that process, capacity of Maj. Dasgupta was that of promulgator and that capacity cannot, by any stretch of imagination, be mixed up with the constitution of Court Martial. This promulgation could be made by anyone including the one who was earlier examined as a witness. This promulgation is conferred only for putting that order of ^SGCM into execution and has nothing to do with the decision making process.

(b) With regard to Sub. Sukhdev Singh, the individual was an independent witness during the initial hearing under Army Rule 22 and Prosecution Witness No.2 in the recording of the summary of evidence. There is no bar to such detailment and neither has the counsel for the petitioner been able to indicate the specific law which has been violated in this regard.



(c) With regard to the provision of Army Rule 33(7) regarding giving charge sheet, summary of evidence and other documents to the accused 96 hours before the trial, learned counsel for the respondents produced the certificate, wherein the accused (petitioner) has received these documents at 1100 hours on 16th July while the Summary Court Martial commences at 1115 hours on 20th July. The mandatory 96 hours have been complied with.

(d) With regard to the short period in which the trial was completed, i.e. 1115-1230 hours on 20 July 2005, since there was only one charge, to which the accused pleaded guilty, the time was sufficient to complete all formalities as required by law and there was no infringement on any count.

(e) With regard to the friend of the accused, the petitioner himself has given a certificate whereby he does not desire to have an officer assigned to him to assist him at the trial. Such statement of the accused is there in the writ petition filed by the petitioner. Despite that, the Court still detailed a Commissioned Officer viz. Lt. Subir Mathur to perform the functions of "friend of the accused"

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during trial. For SCM proceedings, the friend of the accused does not have to be legally qualified and neither has counsel for the petitioner been able to bring out the relevant clause or legal provision to this effect.

(f) With regard to the plea of guilty, the mandatory provision under Army Rule 115(2) is on record and has been complied with as mandated.

(g) This being a Military case, there is no involvement of civilian officials. Therefore, the application of provisions of Defence Service Regulation Para 418 is not mandatory and neither is a prior sanction of the DJAG required under Para 459 of DSR.

(h) With regard to the post confirmation petition dated 31st May 2006 to the Chief of Army Staff, an adequate and well reasoned speaking order of 28th February 2007 has been given to the petitioner.

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13. With regard to the merits of the case, it may be mentioned that for entry/enrolment in the service of Mechanised Infantry Regiment, domicile certificate is a mandatory requirement to be submitted in proper form. The petitioner, when appeared before IC 41769 and Lt. Col. Sanjay Kapur (enrolment officer), purposely showed his address as "Village & Post Office – Darewadi, Thana-Bhingar, Telegraph Office, Tehsil & District-Ahmednagar (Maharashtra)". On verification, it was found to be a false declaration, concealing the true address viz. Village – Kalyanpur, District – Kannauj (UP). He willfully suppressed this material information. Further, the petitioner himself is the beneficiary as he got enrolled on the basis of the declaration made by him. The burden rested on him to prove that the declaration was a genuine one. He could not discharge that burden. Even if he had stayed in Maharashtra for a short period, that would not fulfill the mandatory requirement. There has been no rebuttal of any aspects of the charge and the prosecution witnesses have more than adequately brought out the fact that the petitioner/accused produced a fake domicile certificate obtained from unauthorised agents/sources.

14. Keeping in view the fact that there were no inconsistencies during the trial and neither has any aspect of the charge been rebutted by



counsel for the petitioner, we are of the view that there is no merit in the petition and it is dismissed.

**(LT. GEN. S.S DHILLON
MEMBER**

**(JUSTICE S.S KULSHRESHTHA)
MEMBER**

PRONOUNCED IN OPEN COURT
ON THIS THE 10th DECEMBER, 2009