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

TA/203/2009  
IN W.P.C. No. 3107/96

**COL AJIT KUMAR (RETD)  
B-8, SECTOR-30  
NOIDA (U.P.)**

**THROUGH : SH. C.P.SINGH, ADVOCATE**

**...PETITIONER**

**VERSUS**

- 1. UNION OF INDIA  
THROUGH SECRETARY  
MINISTRY OF DEFENCE  
DHQ PO, NEW DELHI-110 011.**
- 2. CHIEF OF ARMY STAFF  
ARMY HEADQUARTERS  
DHQ PO, NEW DELHI-110 011.**
- 3. GENERAL OFFICER COMMAND-IN-CHIEF  
CENTRAL COMMAND  
LUCKNOW CANTT.**
- 4. GENERAL OFFICER COMMANDING  
I CORPS  
C/O. 56 APO**
- 5. COMMANDER  
50 INDEPENDENT PARACHUTE BRIGADE  
C/O. 56 APO**
- 6. CONTROLLER GENERAL OF DEFENCE ACCOUNTS  
R.K.PURAM, NEW DELHI.**

**THROUGH : LT COL NAVEEN SHARMA**

**...RESPONDENTS**

**CORAM :**

**HON'BLE SH. S.S.KULSHRESTHA, MEMBER**  
**HON'BLE SH. S.S.DHILLON, MEMBER**

**J U D G M E N T**

**DATED : 04.12.2009**

1. This petition has been brought for quashing the GCM proceedings and also for punishment awarded for making forfeiture of ten years service for the purposes of pension. It is submitted that the petitioner when he was working in the capacity of Commandant 3 Reserve Petroleum Depot (3 RPD), Mathura was removed from his Command and attached to HQ I Corps Artillery Brigade on 13.03.1993 without any inquiry by GOC-in-C Central Command. Thereafter his attachment was also changed to HQ 50 (Indep.) Para Brigade located at Agra. The petitioner attained the age of superannuation on 30.03.1993 and soon thereafter i.e. on 01.07.1993 he was arrested and taken into custody under Army Act Section 123 for progressing disciplinary case at Agra. He was served with Charge Sheet and the convening order for GCM was also passed on 23.09.1993. There was no basis for forcing the petitioner to face GCM proceedings. He was purposely put to face ten fake charges. Respondents except on two counts could not establish those charges against him. He was exonerated by the GCM on charge nos.2, 3,

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4, 5, 6, 8, 9 and 10. Even the culpability of the petitioner for remaining two charges i.e charge nos.1 and 7 by any stretch of imagination or on the basis of evidence cannot be established but without any justified and justifiable reasons those two were held proved against the petitioner by the GCM. Even the Charge Sheet on the basis of which trial of the petitioner commenced was not signed by the competent authority. There was grossly insufficient evidence to frame charges against the petitioner. The constitution of the GCM is also said to be improper as two members of GCM were of the rank inferior to the petitioner. As regards to both the charges, it is submitted that the material evidence which could thrash out the reality was purposely withheld. There were virtually 3250 Barrels (SP US) available for auction on 07.01.1992 and the charge 'that the 1000 barrels which were put to auction were not available in the depot' is far from truth. Apart from it, the petitioner ensured all the compliance of rules and regulations before putting Barrels in auction. The auction was conducted by Government Auctioner and it was supervised by Lt Col J.P.Singh. Those auction proceedings were also attended throughout by nominee of HQ U.P. Area of HQ Central Command. There was no element of "to be done to be fraud". Those auction proceeding remained transparent and in no way the accusations can be attributed against the petitioner. As regards to the seventh charge so found to have been established against the petitioner, it is said that the allegations are barren



of substance. Whatever the medical reimbursement bills were cleared for payment, the petitioner was not under obligation for counter sign those bills and to forward them for medical reimbursement. They were to be signed by Lt Col J.P.Singh. As per authorisation, they were passed by Station HQ Agra. The genuineness of those bills was also ascertainable from statement of Doctors and also from the prescription of the Medical officers. Those bills were duly audited by CGM Agra and were found to be not forged. Further there are no such allegations that the petitioner himself had withdrawn any of the amount on so called fake bills or was instrumental for the other employees to get medical reimbursement on fake bills.

2. In order to appreciate the points of this case it shall be useful to refer a brief narration of facts. The petitioner was commissioned in Indian Army in Army Service Corps (ASC) on 30.06.1963 and retired from service on 30.06.1993. He had unblemished service career but when he was posted at Ferozpur (Punjab) as Officer Commanding (OC) Supply Depot, Major Gen Y.N.Sharma was General Officer Commanding (GOC) 7 Infantry Division. He used to make illegal demands for which the petitioner could not oblige him for that Major Gen Y.N.Sharma was any how annoyed with the petitioner. He was in the look out of fixing the

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petitioner in one or the other case. Major Gen Y.N.Sharma became GOC-in-C Central Command and he on his first visit to Mathura expressed his annoyance against the petitioner. There was strong rivalry among the civilian labour unions and were bitterly divided on caste lines. Maj J.P.Singh was the Administrative Officer of the 3 RPD during 1991-1993. His brother was also a Civilian Clerk and member of one Union and so Maj J.P.Singh himself earned the hostility of rival union group. Certain pseudonym complaints against 3 RPD were made wherein allegations were also attributed against Maj J.P.Singh. On that complaint Major Gen Y.N.Sharma to settle his discord attached the petitioner with another Unit and got him tried by Court Martial and convicted. As many as ten charges were framed against the petitioner, out of them eight charges were found to have not been established and only on two charges he was found guilty and was sentenced. Those two charges reads as under:

***First Charge : The accused Shri Ajit Kumar formerly IC-15361w Col Ajit Kumar of 3 Reserve Petroleum Depot ASC, Mathura, now attached to HQ 50 (Independent) Parachute Brigade, and liable to trial by Court Martial under Section 123 of the Army Act, 1950, is charged with:***

***SUCH AN OFFENCE AS IS MENTIONED IN  
CLAUSE (f) OF SECTION 52 OF THE ARMY ACT,  
WITH INTENT TO DEFRAUD,***

in that he,

at Mathura, on 07 Jan 92, while performing the duties of Commandant, 3 Reserve Petroleum Depot ASC, Mathura, with intent to defraud, auctioned one thousand barrels 200 litres Standard Pattern Unserviceable (SP US) to Varindavan Metals, 804, Chippi Gali, Varindavan, when such quantity was not available in the said Depot for auction.

**Seventh Charge : AN OMISSION PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE**

in that he,

at Mathura, while performing the duties of Commandant, 3 Reserve Petroleum Depot ASC, Mathura, FROM 01 Mar 91 to 13 Mar 93, improperly omitted to exercise proper supervision and control over submission of medical reimbursement bills amounting to Rs.1,58,109/- (Rupees one lac fifty eight thousand one hundred nine only), to the Office of the Area Account Office, CDA Central Command, Agra, of civilian employees of the said Depot, resulting in false and unauthorised bill in respect of the following employees:-

Ser No.	No.	Trade and Name
(a)	37	Shri Jagannath
(b)	38	Shri Nabi Hussain
(c)	10965	Shri Munna Lal
(d)	6424799	FED K Benjamin
(e)	6602056	LHF SN Tiwari



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<i>(f)</i>	<i>6406876</i>	<i>LDC Pratap Singh</i>
<i>(g)</i>	<i>6406852</i>	<i>Shri Rajendra Singh Jamwal</i>
<i>(h)</i>	<i>33</i>	<i>Shri Durga Prasad</i>
<i>(j)</i>	<i>62</i>	<i>Shri Banke Lal</i>
<i>(k)</i>	<i>45</i>	<i>Shri Ali Hussain</i>
<i>(l)</i>	<i>14</i>	<i>Shri Babu Lal</i>
<i>(m)</i>	<i>52</i>	<i>Shri Bau Dayal</i>
<i>(n)</i>	<i>59</i>	<i>Shri Bachoo Singh</i>
<i>(o)</i>	<i>50</i>	<i>Shri Babu Singh</i>
<i>(p)</i>	<i>13</i>	<i>Shri Ved Ram</i>
<i>(q)</i>	<i>70</i>	<i>Shri Nawal Singh</i>
<i>(r)</i>	<i>81</i>	<i>Shri Har Prasad</i>

3. It is said that even if entire evidence adduced by the prosecution is accepted to be true on its face value, the petitioner had not caused any loss to the State by putting 1000 Barrels for auction and there was no complaint from the side of the auction purchaser pointing out any deficiency in the number of barrels. As regards the Medical reimbursement bills the petitioner was not required to verify each and every medical bill. It was the duty of the other officers. Further even bills were not sanctioned by the petitioner for payment. He being the Commanding Officer was duty bound to have sanctioned the lump sum amount in the appropriate head for meeting out medical bills. It is further said that the respondents have purposely withheld the encashment of the leave and full gratuity of the petitioner with out any reason.

4. This petition was resisted by the respondents that the petitioner was tried by the GCM on ten charges. He was afforded full opportunity to present his case. After evaluation of the evidence GCM held him guilty for two charges and awarded punishments for the forfeiture of his ten years service for the purposes of pension. Other allegations were also contested and it is said that there was ample evidence before the GCM for establishing guilt against the petitioner. Further on the point of sentence it is also said to be inconsonance with the gravity of offence established against the petitioner.

5. As has already been mentioned that the petitioner was held guilty by the GCM on two charges. First charge relates to period (01-01-1992) when the petitioner was posted as Commandant 3 Reserved Petroleum Depot, Mathura and he with intend to defraud, auctioned 1000 Barrels 200 litres Trade Pattern Unserviceable (TP US) to Vrindavan Metals, Vrindavan when virtually such number of empty barrels were not available in the Depot. This would mean that the allegation against the petitioner was confined only on the point that lesser number of barrels were in the stock but with the intention to defraud referred barrels to be 1000 in numbers. This charge itself is appearing to be amazing as to in



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what form and to whom the petitioner cheated. A note of this fact may be taken that petitioner throughout contended that the number of barrels was much more in the Depot than what were put to auction. There were about 3250 barrels and there was no complaint from the side of the auction purchaser that on physical verification the barrels were found lesser in number. The purchaser who could be best witness was not examined and not any such representation was brought which could substitute the allegations against the petitioner. Here the State was not in any way put to loss. There is also no such evidence on record to show that he had forged certain documents for the fulfilment of his design to defraud the Government.

6. In this regard, intrinsic value of the evidence adduced by the prosecution has to be evaluated. PW2 No.6364747K Hav.(Clerk Store) Jeet Singh who was posted at the relevant time at 3 RPD stated that he was performing the duty of NCO incharge. There were already 750 barrels there at the auction site and on 07.01.1992, he shifted further 200 to 250 barrels to that site. The bid was also for 1000 barrels and the auction bidders participated in those proceedings. The witness reiterated the same in his re-examination. PW6 IC-32341Y Lt Col J.P.Singh who was also posted as the Administrative Officer incharge of bulk depot and

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was attached with 1 Corps Arty Bde. He also stated that on 07.01.1992 the petitioner asked about the quantity available in the depot for public auction on the same day. He checked from the ledger and informed the quantity of the stores available as (a) Barrel 200 Ltrs TP US 3272 (b) Barrel 200 Ltrs SP US 3250 (c) Jerrycans 20 Lts US 14530. Not only this he further reiterated that 1000 barrels of SP US was kept in two lots of 500 each. In those barrels, other 58 barrels which were declared scrap were also mixed. From these prosecuting witnesses it is evident that the barrels 1000 nos. was put to auction. However, it was tried to be conveyed that the said numbers could be attained by including 58 barrels which were declared as scrap and segregated. From such testimony of witnesses it can safely be inferred that 1000 barrels in numbers were there at auction site and some may be unusable. On the basis of physical display of the barrels at the site nobody appears to have been defrauded if the broken/scrapped barrels were also included and shown at the site. As has already been mentioned that the auction purchaser has not made any complaint. The charge no.1 for showing enhanced numbers of barrels to be put for auction, when they were not at the site or they were short in numbers, fails.

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7. Next we come to the charge wherein the petitioner was accused for not exercising proper supervision and control over the reimbursement of medical bills amounting to Rs.1,58,109/- (Rupees one lac fifty eight thousand one hundred nine only) of the civilian employees of the Depot, resultantly causing payment on fake bills. It is contended by the petitioner that he was not required to counter sign the medical reimbursement bills. It was to be processed from different desk to whom powers were delegated. The authenticity of the bills was to be checked on the basis of the medical prescriptions by the concerned officer. He was not the sanctioning authority of each and every medical reimbursement bill. It He was simply making allocation of the funds for the purpose. It may also be noted that there are no such allegation against the petitioner that at any point of time he was benefited from such medical reimbursement bills and he was instrumental for obtaining those medical bills from the labour/employees. From the charge it appears that he was to exercise his effective control and supervision over the Medical reimbursement bills. To ascertain as to whether the petitioner had committed any omission in discharging of his supervising function or omitted to exercise his proper control certain factors are to be kept in mind which may include (i) the work program of his department; (ii) the nature of contribution expected of him; (iii) the extent of responsibility and accountability of the discharge of his diverse duties and functions;



(iv) the extent and nature of freedom and limitations imposed on him in the discharge of his duties; (v) the extent of the powers vested in him; (vi) the extent of his dependence on superior or subordinate for the exercise of his powers; (vii) the need to coordinate with other department etc. The evidence adduced by the prosecution in regard of this charge may also be taken into consideration. PW25 Dr.K.K.Aggarwal, CMS, Additional Director, District Hospital, Mathura stated that when he was performing the duties of CMS in the month of July 1991, OPD functioned from 0800 hours to 1400 hours. OPD slips were issued upto 1330 hours, however, in the emergency the patients were given treatment even after OPD hours. It was further clarified by him that as per practice form no.103 was filled by patient and verified by doctor. He further stated that Dr. M.L.Gupta and Dr.S.K.Majumdar were posted at Mathura about four years back. Dr.O.P.Aggarwal was also posted between July 1992 to July 1993. He identified the signatures of the Doctors on OPD Slips and also on the cash memos which were verified by them. On the basis of such reports the bills were sanctioned by appropriate authority and no fault can be attributed against the petitioner. The petitioner did not come into picture so far as the scrutiny of medical bills were concerned. That sanction of lumpsum amount by the petitioner being the Commanding Officer was dependent upon the indenting so placed by the concerned officer.

8. It may be mentioned that where on the basis of the fake bills reimbursement had been got, it would be viewed with all seriousness and court may take strict view if the offence is made by public servant but only because bills were paid it cannot be said to be fake. The prosecution cannot be permitted to indict anyone on the basis of supposition. It is not sufficient to arrive to the conclusion that the subordinate officers who dealt with the files for medical bills reimbursement at one point of time, would be part of the conspiracy thereof for managing false bills. The petitioner was not at any point of time involved in the process of dealing the matters and files of each individual for reimbursement of medical bills. In this back drop it is useful to mention that the Doctrine "full faith and credit" applied to the act done or performed is apposite in faithful discharge of duties to elongate public purpose and to be in accordance with the procedure prescribed. It is now the settled legal position that the hierarchical responsibility for decision is their in built discipline. But the Head of the Department/Designate officer is ultimately responsible and accountable to the court for the result of action done or decision taken. Through out it has come in evidence that bills were to be processed and sanctioned by the Junior Officer and there was no such responsibility fastened on the petitioner for making the scrutiny of the bills. Moreover

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the petitioner in the GCM Proceedings had also clarified it to be somebody else's responsibility for processing the medical reimbursement bills for payment but since the Doctors have also verified the genuineness of those bills there could be no reason for the petitioner to have taken the pain of disciplinary action against those officers who had sanctioned those bills. Seventh charge is also not established.

9. From the pleadings it appears that the petitioner was deprived of his command on 14.03.1993 and attached to 1 Corps Arty Bde without any material evidence against him. In the meantime the petitioner retired and was arrested soon after his retirement and was locked up in dark room in Officers Mess. He remained in custody for about 180 days in a cell. He continued to suffer agony and humiliation. Even his encashment of leave/gratuity was withheld by the respondents. He was permitted to suffer untold miseries and could not provide treatment to his wife suffering with Cancer. In the circumstances, exemplary cost is also prayed together with the compound interest @12% on leave encashment and gratuity so withheld by the respondents.



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10. Having regard to the facts and circumstances of the case and also evaluating the evidence against the petitioner both the charges could not be established against him and to the contrary the culpability of the petitioner in these two charges after terminating other eight charges was illegally determined. **The impugned order for the forfeiture of ten years service for the purposes of pension is not sustainable.**

**ORDER**

11. The petition is allowed. The impugned order making forfeiture of ten years service of the petitioner for the purposes of pensionary benefits is set aside with Special cost of Rs.50,000/- (Rupees Fifty Thousand) to be paid by the respondents to the petitioner. The pension of the petitioner shall be re-determined within the period of eight weeks. The respondents are further directed to release the amount of gratuity and encashment of leave with compound interest @6% p.a. from the date it was due to be payable to the petitioner.

Sd/-

**S.S.DHILLON**  
(Member)

Sd/-

**S.S.KULSHRESHTA**  
(Member)

**Announced in open court  
today on date 04.12.2009**