

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

**T.A NO. 283 OF 2009  
(W.P (CIVIL) NO. 571 OF 1997)**

**HAV. CLK. JUGBIR SINGH, S/O. SHRI JAG DEO SINGH,  
R/O. V 7 PO PREM NAGAR,  
DIST. BHIWANI, HARYANA.**

**THROUGH: MR. VINOD KUMAR**

**.. PETITIONER**

**VERSUS**

- 1. UNION OF INDIA  
THROUGH SECRETARY, MINISTRY OF DEFENCE,  
SOUTH BLOCK, NEW DELHI.**
- 2. CHIEF OF ARMY STAFF,  
ARMY HEAD QUARTERS, SOUTH BLOCK,  
DELHI HEAD QUARTERS, NEW DELHI.**
- 3. GENERAL OFFICER COMMANDING-IN-CHIEF,  
SOUTHERN COMMAND,  
POONA.**
- 4. COMMANDING OFFICER,  
2, TRAINING REGIMENT ARTY CENTRE,  
NASIK.**

**THROUGH: MR.AAKASH D. PRATAP**

**.. RESPONDENTS**

**CORAM**

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

JUDGMENT

NOVEMBER 17, 2009

1. This petition has been brought for quashing the order dated 15<sup>th</sup> November 1993, whereby the appellant was convicted for the offence punishable under Section 52(f) of the Army Act (the Act, for brevity) on two counts viz. (i) asking for bribe for arranging transfer of 14485295 Hav. Clk. Hem Singh; and (ii) receiving money for ensuring transfer of 1433084A Hav. Clk. R.P Sharma. It is stated that in Court Martial proceedings, only on the basis of conjectures and surmises, the appellant was held guilty for the offences indicated above. There is not even an iota of evidence to prove that at any point of time, money was demanded by the appellant. There was no occasion for him to manage postings/transfers as he was not in such a capacity. Moreover, there was only the statement of a single and isolated witness on Charge No.1 and there was no corroboration from the material evidence and some of the communication made by the relation of PW 1 was also referred to in the statement of one of the witnesses. But that document was not brought on record. With regard to Charge No. 2, it is said that there are material contradictions between the testimonies of

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the witnesses relied upon by the prosecution and link of the evidence is missing. Under such circumstances, it is stated, the appellant should not be held liable as the charge has not been established on the basis of evidence and so the evidence, which was rejected by the Court Martial with regard to Charge No.3, would not stand for scrutiny even for Charge Nos. 1 and 2.

2. The petition is resisted by the Union of India and emphasis has been laid on the fact that the appellant was having good relations with Lt. Col. Jagdish, who was the Commanding Officer and dealing with administrative matters, including transfer of subordinate ranks, and on that basis, demand was made. Even from his conduct and other correspondence, it would appear that he was somehow managing other posting/transfer orders. It is also stated that there is corroboration to the allegations made in the complaint from the letter written by PW 1 Hav. Clk. Hem Singh to one of his relations. This itself would show in what manner the appellant was involved in corrupt practices.

3. Firstly, we take up Charge No.1, viz. demanding money from Hav. Clk. Hem Singh. This charge itself refers to the period of about 5 months during which the conversations appeared to have taken place.

From the pleadings, it appears that the incident related to the period from 1<sup>st</sup> July 1992 to 30<sup>th</sup> November 1992, when the demand for Rs.2500/- was made by the appellant. Argument was made by learned counsel for the appellant that even the prosecution was not sure as to when the demand for money was made. This is to be read in the context of the statement of PW 1. It would show that he had some relation who desired a posting. But that had nothing to do with his official duties and communication if at all had taken place that could not be considered as proof. It is also stated by referring to the statement of PW 1 that it was in the month of October 1992 the appellant told him to manage Rs.2500/- for his posting. This itself would show that the period from June to September had wrongly been taken into account for Charge No.1. At the most, the incident referred to and clarified by PW 1 would relate to the month of October 1992. It is further stated that there is nothing on record to corroborate that part of the statement of PW 1, Hav. Clk. Hem Singh, as to whether he had brought this to the notice of any one, and that person was not examined by the prosecution.

4. Secondly, it was contended that there appears to be a reference with regard to PW 1 Hav. Clk. Hem Singh himself writing to his

relation Dharamvir Singh, who was Subedar at the relevant time, to make arrangement for Rs.3000/- so that his posting could be managed. It appears from the statement of PW 3, Lt. Col. B.S Tatia, that whatever was written by Dharamvir Singh to PW 1 Hav. Clk. Hem Singh was intercepted and the wordings would prove that some malpractices were being made in regard to posting. On that basis, a Court of Inquiry was conducted. In the letter, which was written by Dharamvir Singh to PW 1, the following recitals appear to have been made:

“Your letter of 6<sup>th</sup> I received today i.e. 12<sup>th</sup> and could know every thing. Bhai Sahib, three is too much. I can pay upto two. You speak and if he agreed within two then get my work done”.

No doubt, these lines indicate that some corrupt practices were adopted. But emphasis has been laid by learned counsel for the petitioner to contend that these lines would not in any way represent as an evidence against the appellant for the reason that: (i) this letter was not written by Dharamvir Singh to the appellant; (ii) it was written to PW 1 Hav. Clk. Hem Singh, who was stated to have been involved in such illegal activities; and

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(iii) this evidence was given by PW 3 Lt. Col. B.S Tatia, on the basis of an endorsement as 'Certified True Copy'. Such statement, on the basis of certified true copy, cannot be accepted to be evidence unless the procedure for bringing on record secondary evidence is adopted, in view of Section 62 of the Evidence Act. In this regard, it may be mentioned that the letter, which was allegedly written by Dharamvir Singh to PW 1 Hem Singh, extract of which has been quoted in the statement of PW 3 Lt. Col. Tatia, cannot be read as evidence. That would not be read as evidence because such statement was given on the basis of 'certified true copy' and unless the original is brought on record, secondary evidence cannot be admissible. If that part of the extract of the letter is accepted to be true, it would fix responsibility of PW 1 Hem Singh. The testimony of PW 1 does not find corroboration from the materials on record. Emphasis has also been laid by learned counsel for the appellant that the testimony of the complainant alone is not sufficient to have the appellant held guilty. Reliance has been made on the decision in **Jaswant Singh v. State of Punjab** (AIR 1973 SC 707), wherein it was held that "in a bribery case, the complainant is an interested witness and his evidence must be considered

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with great caution and it can be accepted when it is corroborated in material particulars by other evidence adduced by the prosecution”.

5. Coming to the second charge, which related to the period from 1<sup>st</sup> July 1992 to 30<sup>th</sup> November 1992, we find that there is variation with regard to the date. The prosecution has to prove whether such demand of money was made by the appellant himself. In this context, there is the testimony of PW 2 Hav. Clk. Sharma. He made narration as to how he was persuaded by the appellant to get comfortable posting. It could be verified from his conduct and the fact that he was close to Lt. Col. Jagdish Chand. In this context, he agreed to part with Rs.2500/- to the appellant for getting a convenient posting at Mathura. It is stated that the testimony of PW 2 Hav. Sharma cannot be relied upon because, from his statement, it is clear that the appellant was not pulling well with this witness. The witness himself was annoyed because of his misdemeanor and also not attending to duties properly. When he was asked, it was told by him that he was annoyed with the petitioner for his insubordination and not attending to duties in time. The petitioner responded that he was doing all under the guidance of superior officers. Not only this, PW 2 was instrumental in him to shift out of his quarter. However, this part of his

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evidence relating to bad relationship with the appellant was tried to be mitigated by saying that subsequently he came close to him. Under such circumstances, again relying upon the decision in **Jaswant Singh's case** (supra), emphasis has been laid that his sole testimony needs to be corroborated. In this regard, the statement of PW 2 Sharma was also referred to show that he did not hand over the amount of Rs.2500/- to the appellant. It is not discernible from the statement of Hav.Clk. Ramdhan (PW 6) as to for what purpose this amount was handed over to him. He stated that he did not give this amount to the appellant, but passed it on to PW 7 Hav. Clk. Balraj Singh. Hav. Balraj Singh, as a witness, emphatically denied such transactions having taken place and stated that there was no occasion to hand over money to the appellant.

6. However, from the side of the prosecution, it was urged that from the statements of the witnesses, it was clear that the appellant himself, when he was asked by PW 2 Hav. Clk. Sharma and PW 6 Hav. Clk. Ramdhan, had admitted to have received the amount of Rs.2500/-. Such part of evidence would not be sufficient to fix culpability on the appellant when he had not pleaded guilty and this would not otherwise be construed to be a confessional statement of this witness.



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7. Having regard to the facts and circumstances of the case, both the charges against the appellant could not be established. The impugned order is not sustainable. It is set aside. The appellant shall be deemed to be in service from the date of the dismissal order and the period rendered by him in service, including the period till he was due to retire, ~~xxx~~ would be taken into account for his pensionary benefits.

**(S.S DHILLON)**  
**MEMBER**

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

**PRONOUNCED IN OPEN COURT**  
**ON 17<sup>TH</sup> NOVEMBER 2009**