

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

**TA NO. 290 OF 2009
(WRIT PETITION (C) NO. 1903 OF 1997)**

**JC 175000W EX. SUB.GANPAT RAM
SON OF SHRI KANA RAM
RESIDENT OF VILLAGE BHANPURA
P.O BIROL VIA. JHAJJAR
DISTRICT JHUNJNU, RAJASTHAN.**

THROUGH: MR. S.M DALAL, ADVOCATE

... PETITIONER

VERSUS

- 1. UNION OF INDIA
THROUGH THE SECRETARY OF DEFENCE
SOUTH BLOCK, NEW DELHI-110011**
- 2. CHIEF OF THE ARMY STAFF
ARMY HEADQUARTERS, NEW DELHI-110011**
- 3. DIRECTOR GENERAL OF INFANTRY (INF-6)
ARMY HEADQUARTERS
DHQ P.O., NEW DELHI- 110 0011.**
- 4. GENERAL OFFICER COMMANDING-IN-CHIEF
SOUTHERN COMMAND
PUNE-1.**

5. GENERAL OFFICER COMMANDING
54 INFANTRY DIVISION
CARE OF 56 APO.
6. COLONEL GIRENDRA SINGH
COMMANDING OFFICER
18 GRENADIERS C/O 56 APO.
7. COMMANDING OFFICER
11 BIHAR, C/O. 56 APO
8. COMMANDING OFFICER
7 PARA, C/O 56, APO
9. OFFICER-IN-CHARGE
RECORDS OF THE GRENADIERS
JABALPUR.
10. CONTROLLER OF DEFENCE ACCOUNTS (PENSIONS)
DROPADI KUND
ALLAHABAD (U.P)

THROUGH: MR. C.M KHANNA, ADVOCATE

... RESPONDENTS

CORAM:

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

JUDGMENT

30TH NOVEMBER 2009

1. The challenge is directed against the Court Martial proceedings, whereby the appellant was held guilty for the offence punishable under Section 63 of the Army Act for having illegally and

unauthorisedly possessed 34 live cartridges and 19 empty cartridges. He was sentenced to undergo rigorous imprisonment for one year and six months, further dismissed from service and forfeiting seven years service for the purpose of pension. The period of sentence was subsequently remitted to the period already undergone.

2. It is contended that the appellant was falsely implicated in the case because of personal animosity. The entire evidence was concocted to fasten culpability on the appellant. The material witnesses were purposely withheld by the prosecution to deny benefit to the appellant. Even the GCM was swayed upon by irrelevant considerations while holding the appellant guilty of the offences. The prosecution itself is not clear on the point of the number of items recovered. Even the material witness (PW 9), Lt. Col. V.B Singh had stated in unequivocal terms that he did not see the accused in the room where the search was carried out till he left the room. Other witnesses had also made similar statements that the search was made in the absence of the appellant. Moreover, his signature was not obtained on the search memo. It is stated that even if the evidence adduced by the prosecution witnesses is accepted as true, it would not prove the guilt against the appellant.

3. The petition has been resisted by the respondents and it is contended, inter alia, that the recovery was made from the box belonging to the accused. There can be no occasion for the witnesses to have the appellant unnecessarily involved in the case. Even if the search was not made in the presence of the appellant, it would not relieve him from the offence of illegally possessing ammunitions. Reliance has also been made on the decisions reported in **Jagdish Rai v. State of Bihar** (1972 SCC (Cri) 489) and **Sunder Singh v. State of U.P** (AIR 1956 SC 411)

4. In order to facilitate the disposal of this case, a brief resume of the facts is necessary. The petitioner was enrolled in Infantry Branch of the Army in the year 1968. He is said to have served the Force with dedication and had been rewarded several medals and chest colours. The petitioner was expecting promotion as Subedar Major when he had been falsely implicated in the case. It is alleged that the petitioner was found in illegal possession of a large number of ammunition (40 live cartridges and 14 empty cartridges).

5. Prosecution examined 9 witnesses. PW 1 (IC 48210X Capt Rajiv Kumar of 18 GRENADIERS) stated that whatever ammunition was recovered,

it was published in the Battalion Routine Orders and that during tenure at Sri Lanka, the accused was on the strength of B Coy and was there with 18 GRENADIERS. PW 2 M. Maruti Rao (Sub Inspector, Intelligence, AP Hyderabad) stated that he along with his colleague, Tulsi Das, befriended with Jaipal Sharma, who took them to the house of the accused and the accused agreed to sell ammunition to them through Jaipal Sharma. His colleague Tulsi Das went to buy about 150 rounds of ammunition from the accused at his residence and brought it to the shop of Jaipal Sharma, where he inspected the rounds and that they were rounds of Rifle 7.62 mm SLR and AK-47. As regards the charge, the accused was held not guilty and that evidence was insufficient to fasten culpability of the accused for that offence. PW 3 (IC 83270P Maj. M.C Pant) stated that he was instructed from BM HQs 76 Infantry Brigade to go to 4 Assam locations to record the confessional statement of the accused. The confession was recorded by PW 4 Nb. Sub. B.B Sharma. PW 5 (Maj. A. Varma) has stated that on 20th January 1995, a sealed box containing ammunition was handed over to him by Maj. S.K Dahiya of 4 Assam on a voucher and he asked him to take it on charge. PW 5 broke the seal, opened the box and took it on charge after tallying it with the voucher (This part of his statement is after the recovery of the ammunition from the possession of the accused). PW 6 (Maj. P. Ganguly of

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23 ABOD, Surranassi), a qualified Ammunition and Armament Technical Officer, had given expert opinion about the ammunition, both live and empty cartridges. PW 7 (Maj. Alok Bhatnagar of 4 Assam) had stated that it was in his presence the box belonging to the accused was opened and both live and empty cartridges were recovered from the box. PW 8 (Maj. S.K Dahiya of 4 Assam) had stated that at the time of search, the accused was not present. PW 9 (Lt. Col. V.B Singh (Rtd)), who was instructed to take accused with his belongings to 4 Assam location and hand him over to the duty officer, stated that because of heavy rains, he got drenched up and he was walking in the verandah of the main office to keep himself warm and, therefore, he had no knowledge as to what happened in the room and where the accused was. The witnesses supported the defence version that the petitioner was falsely implicated in the case.

6. Before proceeding to appreciate the points raised by counsel for the parties, it may be mentioned that the accused was charged for two offences. The GCM, after going through the evidence on record, in particular Charges 1 and 2, held that the confessional statement of the accused was recorded while he was in custody and, therefore, such confessional statement was not read in evidence. The GCM, after giving cogent reasons

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with regard to the rejection of the confessional statement, exonerated the petitioner so far as Charge No.1 is concerned. For the second charge, though discrepancies were noticed in the number of both live and empty cartridges alleged to have been illegally possessed by the petitioner, GCM preferred to give him the benefit of doubt. But, ultimately, the GCM held him guilty of the offence punishable under Section 63 of the Army Act.

7. It has been urged by learned counsel for the petitioner that whatever be the evidence referred to and the discrepancy noticed, GCM found sufficient and cogent reasons to give him the benefit of doubt. Once that benefit of doubt is given to the petitioner, there could be no reason at all for the GCM to have had a somersault and held him guilty of the offence. In this regard, reference was made to the statements of the PWs 7 and 8, in whose presence the so called box of the petitioner was searched. It was deposed by them that the material objects could not be identified as belonging to the petitioner. Moreover, his signature on the search memo was not obtained. These witnesses had stated in categorical terms that at the time when search was made PW 9 Lt. Col. V.B Singh was also not present. From the statement of both PWs 7 and 8, it appears that the recovered articles were in the box and that when the material exhibits were

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produced before the GCM, there was shortage in the number of items. This was also observed by the GCM.

8. On the basis of the evidence and deficiency having been noticed, the GCM concluded that the seizure memo did not bear the signature of the petitioner and that the same was not made in his presence. Under such circumstances, the decision of the apex Court in Jagdish Rai's case (supra), relied on by counsel for the petitioner, is not applicable. Further, we do not find any substance in the second charge also. The evidence is not sufficient to fix culpability of the petitioner for the second charge.

9. In the result, the appeal is allowed. The impugned orders are set aside. The petitioner shall be deemed to be in service from the date of his dismissal till the date he attained the age of superannuation. For this period, he will be entitled for backwages and this period shall also be counted for pensionary benefits.

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

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