IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH

NEW DELHI

T.A NOS. 136 AND 140 OF 2009

T.A NO. 136 OF 2009
(WRIT PETITION (C) NO. 180 OF 1995)

BALWINDER SINGH
EX NO. 14496920W (GD), SON OF KULWANT SINGH
C/O. BIKRAMAJIT NAYAR
ADVOCATE
6/3 SOUTH PATEL NAGAR, NEW DELHI.

THROUGH: MR. KARAN CHAUHAN, ADVOCATE

…PETITIONER

VERSUS

1. UNION OF INDIA
THROUGH ITS SECRETARY,
MINISTRY OF DEFENCE, NEW DELHI

2. CHIEF OF ARMY STAFF,
ARMY HEADQUARTERS, DHQ P.O
NEW DELHI-110 001.

THROUGH: MS. JYOTI SINGH, ADVOCATE
LT. COL. NAVEEN SHARMA

…RESPONDENTS

T.A NO. 140 OF 2009
(WRIT PETITION (C) NO.1119 OF 2009)

BALWINDER SINGH
EX NO. 14498365M (GD), SON OF TARSEM SINGH
C/O. BIKRAMAJIT NAYAR, ADVOCATE
6/3 SOUTH PATEL NAGAR, NEW DELHI.

THROUGH: MR. KARAN CHAUHAN, ADVOCATE

…PETITIONER

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LT. COL. NAVEEN SHARMA

…RESPONJDENTS

CORAM :

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

COMMON JUDGMENT
08.01.2010

1. Both these cases arise from identical set of circumstances/ offences and the same judgment given by GCM involving identical questions of law. Even during the GCM, both the accused were tried jointly. Counsel on both sides prayed that the cases be clubbed together, which was granted on 18.11.2009. Hence this common judgment.

2. Both the petitioners seek quashing of the order of GCM dated 11.11.1992 held at 22 Field Regiment sentencing the petitioners to ten years of rigorous imprisonment and dismissal from service. They also request quashing the pre-confirmation order under Section 164(1)

and the post confirmation order under Section 164(2) and that they be reinstated in service with continuity of service with all attendant salary and benefits.

3. It would be appropriate to briefly enumerate the facts of the case before getting to the contentions of both parties. Both the petitioners had a good record of service before February 1992. Consequent to one month's out-station duty in January 1992, when both the petitioners reported back to the unit, they were expecting to be sent on leave. But, ironically, they were subjected to continued work with no respite. They, therefore, deserted the service on 2.2.1992 from the unit lines at Pattan (close to Srinagar) and were apprehended by civil police at Lakhanpur Barrier by Jammu & Kashmir Police on 3.2.1992. This Barrier is approximately 400 km. away from the unit of the petitioners. The petitioners while deserting also illegally took with them their personal weapons i.e. Rifles 7.62 SLR along with cartridges.

They were tried by a GCM and sentenced to 10 years rigorous imprisonment and dismissal.

4. Against this backdrop, the petitioners contend that after their exhaustive guard duties at the Anti National Cell at Srinagar during the month of January 1992, both of them expected to be sent on a spell of leave. They had personal problems at home and had been receiving depressing letters from their families. On return to the unit at Pattan, they hoped that they would get some respite to attend to the families. However, even before they could unpack their baggage and bedding, they were detailed for various tasks which kept them busy throughout the day and to compound their problems, they were even detailed for night duty. They have indicated that Nb. Sub. Jetha Singh and BHM Kartar Singh were very harsh on them. Under these circumstances and because of the shabby and unfair treatment meted out to them by these individuals, they felt disheartened and disgruntled and took a

decision to desert. Having deserted with weapons and ammunition, a general alert for their apprehension was immediately sent out by the authorities. However, they were able to travel approximately 400 kms. to Lakhanpur, where they were finally apprehended by the J & K police on 3.2.1992. The grounds on which the petitioners are aggrieved are given at the succeeding paragraphs.

5. They contend that compliance of Army Rules 23 and 24 has not been done. Whereas, the summary of evidence, in both the cases, was recorded separately by Maj. Mohan Nair. They found it surprising that the statements of the witnesses are identically common and verbatim. Therefore, Maj. Mohan Nair has not recorded separate summary of evidence. They also state that while the General Officer Commanding, 28 Infantry Division took a decision after 05.10.1992 to try the petitioners by GCM, their Commanding Officer warned them to be ready for a Court Martial on 17.9.1992 itself. Therefore, the action

under Army Rule 24 by the Commanding Officer had been concluded before 17.9.1992 itself. This should have been done only after the decision is taken to try the accused by GCM and should not have been done "without remanding the accused for trial by a Court Martial", which is one of the three options open to the Commanding Officer under Army Rule 34. Therefore, this warning under Army Rule 34 is premature.

6. The petitioners have also pleaded that they were not given mandatory notice that they would be tried jointly. Therefore, the provisions of Army Rule 35 had not been complied with. Had such a notice of intention been issued and if the accused were explained their rights under Army Rules 95 and 96, they would have opted for separate trials and could have examined each other in their defence. It was also stated that although both the accused have been charged separately

under Section 38(1), desertion is not an offence which could be committed jointly and from this angle also, the joint trial is unfair.

7. The petitioners have also dwelt on the issue of denial of right of defence to them. On 18.9.1992 itself, undertaking was taken from them that they have no particular preference of any officer for their defence and anyone would be acceptable to them. They were also made to give an undertaking that they would require no witnesses in their favour. They were also surprised, when the GCM assembled on 30.10.1992, to learn that while law qualified officer, Col. S.N Lele, had been appointed as the Prosecutor, for their defence Maj. Karan Singh Seni, who was not legally qualified, had been detailed to defend them both. This so called defending officer was not capable of defending the accused with regard to their rights nor was he conversant with the various provisions of law. That is why they could not claim separate trial under Army Rule 35 neither could they object to the officers sitting on

the Court Martial under Army Rule 39 and neither could they have defending officers/counsel of their choice under Para 479 of DSR. Their contention is that since they were charged under Army Act 38(1), they could even have suffered capital punishment and, therefore, they should have been given a defending counsel. Maj. Karan Singh was neither available to them during the 96 hour before trial nor was he competent to advise them to prepare their defence.

8. The petitioners have stated that the Court was biased against them and that the provisions of Army Rule 78, which gave the responsibility of the presiding officer to ensure administration of justice, had been violated. The Court has consistently attempted to fill the lacuna left by either party by bringing forth evidence which should have been examined by the prosecution or the defence and not by the Court. The Court also resorted to recall witnesses so as to fill in the gap left by the prosecution which caused prejudice to the defence of the

accused. They state that although the Court is empowered to call or recall any witnesses at any time before finding was reached until the provisions of Army Rule 143(4), yet both the sides having closed their evidence, it was not fair for the Court to have re-examined witnesses. The bias of the Court was apparent and has prejudiced the petitioners.

9. The prosecution has failed to produce adequate evidence to establish the charges. The accused were serving on 2.2.1992 while they have been shown as having deserted on that day and they were not apprehended by civil police at Lakhanpur on 3.2.1992. But the truth is that the petitioners had gone to the police to ask them the location of Sujanpur, a place near Pathankot, where they wanted to go. They have contested the fact that they were not on active service as has been shown in the first and second charges. The definition of 'active service' as given in Section 3(1) does not include their area as active service. They contend that mere production of Central Government

SRO No.17-E dated 5.9.1977 declaring J & K to be an active service area does not establish the conditions spelt out in Army Act Section 3. Therefore, their punishment of 10 years RI is applicable only when they are on active service which they were not and, therefore, they should only have been given 7 years imprisonment for an offence under Section 38(1) of the Army Act. The prosecution has also not been able to prove the absence of the accused from the unit line since their detailment for duty on 2.2.1992. No unit order for February 1992 has been produced to show their detailment as sentries. Hence the absence of the accused on 02.02.1992 has not been established beyond a shadow of doubt.

10. The petitioners state that they were not apprehended by the civil police at Lakhanpur, but they only went up to the police at Lakhanpur to ask the directions for Sujanpur and sought help of the police to get a vehicle to go to that place. They contend that the only

witness examined on the point of apprehension by J & K police was Constable Satpal Sharma of J & K police, who was also not able to produce the message which he had received for intercepting these two individuals who had run away with the arms and ammunitions. Furthermore, S.I Mahadeep Singh Jaiswal, who was the post in charge was not even examined as the prosecution witness to corroborate the apprehension by the police. They had offered no resistance and if the police had not intercepted them, the accused would have reported to the Artillery Unit at Sujanpur and, therefore, the aspect of 'apprehension' is not sustainable. They also contend that desertion meant never to return to service which they never intended to do. So, there was never an attempt on their part to desert. It was only this bad management at the lower level which compelled them to take matters into their own hands. When they were apprehended at Lakhanpur they were dressed in uniform and were not concealing themselves and offered no resistance despite the fact that they had weapons. The

motive given by the prosecution for desertion being the sale of arms and ammunition to the terrorist is totally false and they made no such statement to anybody. They also say that this aspect of committing theft of property under Arms Act Section 52 is indefensible because the weapons were issued to them for their use and therefore they were within their right to move with the weapons in the terrorist infested State of J & K. They state that they were not allowed to deposit their weapons in the Kote when they came back on duty and, therefore, they were forced to keep the weapons with them for safeguard. They have also touched upon the aspect of humanitarian ground and the fact that the punishment awarded was too severe and without jurisdiction and that not being on active service as defined under Army Act Section 3(1), the maximum punishment that should have been meted out to them was 7 years or less and should not have been ten years.

11. The respondents have vehemently stated that both the petitioners deserted service under a well thought out and planned

strategy taking advantage of the opportunity afforded by the area to desert with arms and ammunitions under the cover of darkness. Their link with terrorist organisations was investigated and clearly established during interrogation at HQ Northern Command, HQ 15 Infantry Division, HQ Western Command and HQ 15 Corps. The investigations, pre-trial procedure and the Court Martial itself were conducted as per law and laid down procedures and that there has been no aberration. They have been correctly sentenced to suffer R.I for 10 years and to be dismissed from service. However, GOC 28 Infantry Division remitted the sentence of Sep. Balwinder (14496920W) by one year and the Chief of Army Staff while dismissing the petition granted further remission of two years to him, thereby making it a total remission of three years and gave the other sepoy Balwinder (No.14498365M) remission of three years. They were thus to suffer R.I for 7 years and dismissal from service. Furthermore, 347 days period in Military custody awaiting trial was also set off from the period of rigorous imprisonment awarded to

them. There is no merit in the petition and that it is based on misplaced facts and concocted issues.

12. Regarding summary of evidence, since Maj. Nair conducted both the summaries of evidence in continuous sittings with the same witnesses who were from the same background, their expression of a common incident followed a set pattern. Since the incident referred to was the same and the act had been committed by both of them in a similar manner, the scope for variation was extremely limited. The witnesses gave their statements in Hindi and Punjabi which had been duly recorded in English by the Recording Officer as provided in Army Rule 23(4) and that there is no infringement on this count. The warning order given by the Commanding Officer, 22 Field Regiment should not be taken as pre-empting the decision of the GCM by the convening authority but is indicative of the fair opportunity given to the accused so that they could prepare their defence and also call for defence

witnesses. Early warning was necessary as the unit was deployed in a remote area of J & K and therefore the accused would require time to prepare their defence. This was only a preliminary warning and necessitated by the internal security situations. This was done to benefit the petitioners and not to prejudice them in any case. Army Rule 22 has been complied with and the petitioners given full opportunity to cross examine the witnesses. The summary of evidence under Army Rule 23 was duly conducted and application for GCM was sent to the convening authority. Any advance notice was only done to facilitate the petitioners and is not in contravention of any stated law. Both the petitioners were heard independently by the Court about the charges for which they were being tried and they were explained the provisions of Army Rules 33(7), 95 and 96. The trial was held correctly as it was for an offence purportedly committed by them collectively. There was no miscarriage of justice or violation of any rules in this regard.

13. While Maj. Sehni had been appointed as the defending officer of the accused, all efforts were made to provide a civil advocate for the accused in view of the charges under Army Act Section 38(1). The accused were also asked to intimate the names of witnesses they would like to produce in their defence in accordance with Army Rule 59. Civil counsel in that remote area J & K could not be obtained and neither could the petitioners arrange for any on their own behalf. The impartiality and judiciousness of the system is apparent from the fact that after the GCM convened it observed the necessity for legally qualified defending officer for the accused and accordingly it adjourned for suitable period to enable the authorities to find a legally qualified officer to defend the accused. Accordingly, Col. Sahu, a law qualified officer, was detailed by the convening authority as defending officer throughout the trial.

14. SRO No. 17E of 5.9.1997 has been issued by the competent authority declaring the area of Pattan as active service and such exercise of due authority cannot be questioned by the petitioners. Such declaration of active service is necessary for various concessions to be applicable for troops deployed in such areas and is not meant only for legal purposes. Hence the SRO issued by the competent authority keeping the specific requirement of the area is valid and unquestionable.

15. There has never been any bias in the approach of the Court Martial members (Court) against the petitioners. It is the responsibility of the Court to bring out the truth in order to deliver justice and the Court has the right to intervene at any stage of the trial to elicit the truth in accordance with Army Rule 76. Any gap in the testimony of witnesses or in the entire case could be raised by the Court. The efforts made to obtain information on these aspects are relevant to the case.

Recalling of witness is permitted vide Army Rule 143 and this was purely to assist the Court in reaching a judicious and logical conclusion. The mental element of bias was necessary to be established on the appellant by cogent evidence.

16. Counsel for the petitioner vehemently argued that before the commencement of the Court Martial proceedings, the respondents failed to ensure mandatory compliance of Army Rules 22 to 24. Such non-compliance invalidated the investigation. Further, as against both the accused, evidence was to be recorded separately. This was not done and a verbatim reproduction has been made violating the provisions of Army Rule 23. Suffice it to say that Maj. Nair was assigned the duty to record statement of the witnesses. He, after affording opportunity to the accused, proceeded to record the statement of the witnesses under Army Rule 23. The statements made in Hindi and in Punjabi were recorded in English as per Army Rule 23(4). Adequate

opportunity was given to both the accused for preparing their case. Charges against the accused under Rule 22(1) were read over and the accused were afforded opportunity to cross examine the witnesses. Thereafter, under Army Rule 22(3)(c)(i), the Commanding Officer ordered for recording of summary of evidence. From the records, it appears that full opportunity was afforded to both the accused to cross examine the witnesses. Counsel for the petitioners has not been able to point out any violation in that regard. Though there is no inkling for not following the procedure contained in Army Rules 22 to 24, it is not going to materially affect as the accused had exhaustively participated in the trial. Irregularities emanating from non-compliance would not vitiate the order convening the Court Martial. The procedure prescribed under Army Rules 22 to 24 is a stage anterior to trial by Court Martial. It is the decision of the Court Martial which would result in deprivation of liberty and not the order to record summary of evidence or convene Court Martial. Reliance can be had in the decision reported in **Lt. Col.**

Prithi Pal Singh Bedi v. **Union of India and others** (AIR 1982 SC 1413) and **Union of India and others** v. **A. Hussain** (AIR 1998 SC 577). It has further been contended that before proceeding to make the trial of the accused, it was obligatory on the part of the Court Martial to give notice to the accused. Joint trial of both the accused can be conducted since allegations against both the accused were established. Any number of accused persons can be charged jointly and tried together for an offence committed by them collectively, as provided under Army Rule 35. Both the petitioners had concerted to run away with weapons and they were apprehended at one place in identical circumstances. Therefore, to afford fair opportunity to both the accused, identical evidence was taken on record. It appears from the charges framed against the accused in both the cases that they were tried jointly. From the facts and also from the summary of evidence, it is apparent that the nature of offence and common meeting of minds before desertion were established. In such a situation, for the purpose of recording

evidence and disposal of the case, both the accused were charge sheeted and tried jointly. The charge sheet itself would amount to notice to the accused with regard to their joint trial. Amalgamation of both the cases is permissible under Army Rule 35, which reads as under:

> ***35. <u>Joint trial of several accused persons</u> (1) Any number of accused persons may be charged jointly and tried together for an offence averred to have been committed by them collectively.***
>
> ***(2) Any number of accused persons, although not charged jointly, may be tried together for an offence averred to have been committed by one or more of them and to have been abetted by the other or others.***
>
> ***(3) Where the accused are so charged under sub-rules (1) and (2), any one or more of them may at the same time be charged with and tried for any other offence averred to have been committed individually or collectively, provided that all the said offences are***

based on the same facts, or form or are part of a series of offences of the same or similar character.

(4) In the cases mentioned above, notice of the intention to try the accused persons together shall be given to each of the accused at the time of his being informed of the charges, and any accused person may claim, either by notice to the authority convening the court or, when arraigned before the court, by notice to the court, that he or some other accused be tried separately on one or more of the charges included in the charge-sheet, on the ground that the evidence of one or more of the other accused persons to be tried together with him, will be material to his defence, or that otherwise he would be prejudiced or embarrassed in his defence. The convening authority or court, if satisfied that the evidence will be material or that the accused may be prejudiced or embarrassed in his defence as aforesaid, and if the nature of the charge admits of this, shall allow the claim, and such accused person, or, as the case may be, the other accused person or persons whose separate trial has been

claimed, shall be tried separately. Where any such claim has been made and disallowed by the authority convening the court, or by the court, the disallowance of such claim will not be a ground for refusing confirmation of the finding or sentence unless, in the opinion of the confirming authority, substantial miscarriage of justice has occurred by reason of the disallowance of such claim.

17. Army Rule 35 gives discretion to the Court to amalgamate cases. Only requirement is to satisfy itself that the accused would not be prejudicially affected and it would be expedient to amalgamate cases. No prejudice has been pointed out by counsel for the petitioners. It is not a case where the 'plea of guilt' or confession of the maker would be read against the other. Here, it has been submitted by counsel for the respondents that there was single conspiracy and so rightly the GCM proceeded to amalgamate both the cases so far as the recording of evidence is concerned. As has already been mentioned,

the charge sheet itself would ensure compliance of notice to the petitioners. They have not made any objection at that stage. In **Lalu Prasad v. State of Bihar (2000(3) Pat LJR 357**), it was held at paragraphs 28, 30, 31 and 32 as follows:

> ***28. The fact that separate cases have been registered and are being investigated separately and also the fact that this Court during investigation while considering the question as to whether remand in one case will mean the remand in all other cases, has held that some of the cases form different transactions, are not decisive to the question involved in the case. This Court made observations during the course of investigation while deciding the question of remand only. The separate investigation by itself is not decisive of the fact that all the cases are separate. It is only after investigation that the question has to be decided as to whether they are part of the same transaction or not. Similarly, the fact that the accused persons in both the cases are not common is also not an important fact as even in***

the cases of single transaction, different offences are committed by different sets of the accused persons. The relevant question that was to be considered by the trial court was whether the series of the acts committed by the accused persons forming different offences at different times and at different places were with a view to fulfil one common purpose and there was a community of criminal intent so as to form a single transaction or different offences were committed independently with a view to fulfil different purpose or object though there was similarity between the purpose and object in the cases. Even if the trial court would have found that the offences alleged to have been committed did not form one transaction, it should have also considered the cases of the petitioners in terms of the proviso to Section 223 of the Code whether it was expedient in the ends of justice to hold a joint trial on such prayer being made in writing by the accused persons. The trial court has also not made any effort to find out as to what is the view of the other accused persons

facing the trial. For all these reasons, the order passed by the trial court suffers from legal infirmity.

30. The next question is as to what order should be passed in this case after having came to the conclusion that the order passed by the Special Judge suffers from legal infirmity. Whether the matter is to be remanded for fresh consideration at this stage or some other direction is to be given taking into consideration the facts and circumstances of the case.

31. During the course of argument and in the written argument field on behalf of one set of the accused, it was submitted on behalf of the petitioner that the offences committed in these two cases and other cases are the part of the same transaction, but they have not given the details of other cases. In other cases either charge-sheets have been submitted or the same are still to be submitted. In that circumstance, this question cannot be decided

by taking into consideration the allegation made in these two cases only. If this question is decided only after taking into consideration the allegations in these two cases then that matter will not come to an end as this question will be re-agitated time and again by the petitioners and other accused persons as and when the other cases will be ripe for framing of the charges and the result would be that the trial will not proceed in any case.

32. Taking into consideration the peculiar facts and circumstances of the case arising out of the Animal Husbandry Scam, I am of the view that the said question is to be decided only when other cases are also ready and reach the stage of framing of the charges. At that stage, if a proper application is filed by the accused persons or by some of the accused persons, the trial court will consider the said question. While considering the question if some of the accused persons have not prayed for joint trial, then the trial court will also consider their stand in

the light of the legal positions indicated above. The trial court will also consider whether it will be possible or practicable to dispose of all the cases or some of the cases jointly or they should be tried separately. It is to be clarified that the paramount consideration should be the cause of justice."

We find that no prejudice has been caused to the accused-petitioner in this case.

18. It has next been pointed out by counsel for the petitioner that GCM was convened on 30.10.1992 and the warning for trial by GCM was issued to the petitioners on 17.9.1992 vide 22 Fd Regt Letter No. 307801/CF/BS/92/A (Annexures D and E of the petition). The accused were required to give the names of their defending officer and the witnesses who they intended to examine in defence. But, by force and coercion, the authorities had taken a commitment to the effect

that they would not ask for an opportunity to defend them and to examine the witnesses in defence. However, on 18.9.1992, a written undertaking was obtained in English vide Letter No.14498365/85/A. But the burden rests on the petitioners to rebut that it was obtained by undue influence and coercion. To the contrary, from the side of the respondents, it has been contended that due to inaccessibility of the area and prevailing internal security situations, the petitioners were asked well in advance whether they desired to get the assistance of any particular officer for their defence in terms of Army Rule 97(c) and having had nobody to be appointed, Col. K.S Sani was detailed as defending counsel. Opportunity was also afforded to the petitioners to provide the names of witnesses to be examined on their side in compliance with Army Rule 59. Counsel for the petitioner pointed out that it was the duty of the presiding officer of the GCM to see that fair trial is taken place and justice is administered. The accused were not afforded adequate opportunity and they were incapacitated because of

their ignorance and they could not cross examine the witnesses in the absence of a competent defending officer. Moreover, recalling of the witness during the course of proceedings was not permissible. Further, both the presiding officers, Col. S.C Sharma and Capt. N.N Satya, belonged to the same regiment to which the accused belonged and, therefore, they were not eligible to sit in Court Martial proceedings, in view of Army Rule 39(2)(d). This vice has resulted in miscarriage of justice. The element of vice was necessarily to be established by the accused by cogent evidence. Merely because the two presiding officers were from the same regiment, to which the accused belonged, would not be a ground to ascertain the vice against the accused. No evidence has been adduced in that respect. On the contrary, the GCM was justified in recalling the witnesses as per the law. It may be noted that recalling of witnesses does not vitiate the proceedings or would not attribute vice to the GCM. If it is rational and unaccompanied by consideration of personal interest, it would not vitiate the findings of

the Court Martial. Reliance can be had in the decision reported in **G.N Naik** v. **Goa University and others** (2002(1) SCC 712. We have gone through the Court Martial proceedings. The accused were afforded adequate opportunity to meet the charges made against them. Even the law qualified officer (Col. K.S Sani) was appointed as defending officer. It was within the discretion of the Court Martial to examine any of the witnesses. Army Rule 76 elicits the truth and no prejudice is said to have been caused to the accused.

19. The absence of the petitioners from the unit line on 2.2.1992 has been duly established by the witnesses from their statement and also from those of the petitioners. These records have been examined and found correct by the GCM. The contention of the petitioners that the arms and ammunitions were issued to them for their personal use and they could carry them with them wherever they went is a very naïve excuse. The arms and ammunitions of all soldiers

are issued to them for their bona fide use while in performance of duty and cannot be carried with them while deserting service. Arms and ammunitions cannot be taken outside the unit area without due authority and the petitioners were on a calculated and well planned mission to desert and sell their weapons to terrorists in Punjab. They have not made use of service transport while leaving the unit and they had no authorized leave of absence. That is why they avoided the army facilities. Their going to Sujanpur Artillery Brigade, 400 kms. away, with weapons and ammunitions without due authorization is a figment of imagination and can by no means be taken as any legitimate duty. The law discourages people from taking the law into their own hands, howsoever good and sound their plea may be.

20. Considering the above facts, we feel that the offence as purported to have been committed has actually been done in the manner as charged. Both the petitioners were not raw recruits who

were unable to withstand rigorous and strain of military service. They had approximately nine years of service and if for whatever reasons they felt aggrieved for any injustice meted out to them, they could have taken recourse to various remedial measures available to them from within the time tested command structure of the Army. We also have to consider that both the petitioners committed the offence jointly i.e. they planned the entire desertion to whatever end that they had in mind. Their scheme was put into operation jointly, they avoided the Army on the night of 2nd/3rd February 1992 and travelled approximately 400 km. with weapons and ammunitions without any authority, whatsoever. The offence committed was extremely grave keeping in view the discipline criteria of the Armed Forces, in fact, it is an offence for which even the death sentence could have been afforded. It has also been highlighted that the original punishment of ten years rigorous imprisonment had been reduced to seven years rigorous imprisonment

in response to such pre/post confirmation petitions and their other mercy pleas. To this end, justice appears to have been done.

21. In the above circumstances, we do not find any reason to interfere with the order of GCM dated 11.11.1992. Both the applications are dismissed.

(S.S DHILLON)
MEMBER

(S.S KULSHRESHTHA)
MEMBER

Pronounced in Open Court
on 8th January 2010