

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.

T.A.No. 162 of 2009

[Arising out of WP(C)No. 1003 of 1996 of Delhi High Court]

Ex-Sub Major A.R.Paul (Retd.

...Petitioner

Versus

Union of India & Others

...Respondent

For the Petitioner : Shri Jose Chiramal, Advocate

For the Respondents: M^{rs}. Mohan Kumar, Advocate

C O R A M:

HON'BLE MR. JUSTICE A.K.MATHUR, CHAIRPERSON

HON'BLE LT.GEN. M.L.NAIDU, MEMBER (A)

JUDGMENT

1. The petition was filed in the Hon'ble Delhi High Court on 8th March, 1996. It was transferred to the Armed Forces Tribunal on 30th October, 2009. The petitioner vide this

petition seeks quashing of the finding and sentence of the General Court Marshal concluded on 3rd February, 1992 and the confirmation order by the authority dated 16th March, 1993. Award suitable compensation commensurate with the facts of the case.

2. Facts of the case are that the petitioner was enrolled in the Army on 14th July, 1961 as a Sepoy Clerk. The petitioner had an excellent and a blotless record. He rose to the rank of Subedar Major. He was also recommended for the President's award for Honorary Commission.
3. In August, 1991, the petitioner was performing the duties of Subedar Major at the Command Hospital at Udhampur as the JCO incharge of Ration Store for which additional charge was assigned to him from 11th April, 1991. Capt. S.K.Singh was the Company Commander who was officiating as the Quarter Master incharge of all stores.
4. The petitioner as JCO incharge of stores had supervising control over the following stores:-

- (a) Perishable Food Items. Company Quarter Master Hawaldar US Singh was the Store keeper
- (b) Dry Food Items- Store Keeper Technical Hawaldar Lalchand was the Store Keeper.
- (c) Cloth and Toiletries- Store Keeper Technical Hawaldar Karnail Singh was the Store Keeper.

5. On 8th August, 1991 at 0840 h, Capt. S.K.Singh, Company Commander and Officiating Quarter Master is stated to have recovered at the behest of N.K. Ambulance Assistant Jagdeo Singh certain items during surprise checking at the Dhobi Ghat of the Command Hospital from Washerman JP Venkanna.
6. It was alleged that the items were belonging to the petitioner and were kept at the Dhobi Ghat at his behest. A court of Inquiry was ordered. The petitioner alleges that the items were belonging to Capt. S.K.Singh, as he was incharge of all stores and in order to conceal his misdeamour the petitioner was falsely implicated.
7. Summary of Evidence was recorded on 21 August, 1991. Eight witnesses were examined and a chargesheet was

served to the petitioner on 8th January, 1992. A GCM was ordered. The GCM concluded its proceedings on 3rd February, 1992. The petitioner was found guilty and sentenced to be dismissed from service.

8. The petitioner being aggrieved by the findings and sentence of the GCM, preferred a pre-confirmation petition. The authority confirmed the findings of the GCM but commuted the sentence to forfeiture of seven years of service for computation of pension.
9. The post confirmation petition was rejected by the authorities on 1st March, 1993.
10. The Learned Counsel of the petitioner argued that there was no proof of the items recovered from the Dhobi Ghat belonged to the petitioner. The witnesses have stated that the petitioner handed over the bundles to NK Washerman JP Venkanna (PW1) and Civilian Washerman Kishan Pal (PW2) and told them to keep the same at the Dhobi Ghat. There was no other witness to this event.

11. He further argued that the items were not stolen as all the stores which were checked by a Special Board of Officers had their stocks complete as per the ledger charge. As such it could not have come from the ration stores for which the petitioner was incharge in a supervisory capacity.
12. The Learned Counsel strenuously argued that Capt. S.K.Singh who was the officiating Quarter Master was responsible for all stores and thus responsible for all items. In order to conceal his shortcomings he has implicated the petitioner. The malafide on his part was evident when he got himself nominated as the member of the Court of Inquiry which was constituted to investigate into the incident and also to comment on the existing system of accounting of expendable stores, as also to suggest remedial measures. This latter tasking for the Court of Inquiry was cancelled. Capt S.K.Singh was also dropped as a member of the Court of Inquiry.
13. He submitted that the cost of recovered items was Rs.1542.62p only. The petitioner had 31 years of

unblemished service and therefore the sentence of dismissal subsequently reduced to loss of seven years of service for pension is rather harsh. Besides, the GCM pronounced the petitioner guilty without assigning any reason. The judgement was not supported by reasons thus violating the laws of natural justice. He quoted Supreme Court Judgement (1990) 4 SCC 594, in which their Lordship held- “

“Administrative Law- Natural justice – Recording of reasons – Authority exercising quasi-judicial function must record reasons for its decisional review – Reasons should be clear and explicit though may not be elaborate – This is one of the embodied rules of natural justice – Requirement is greater at original stage but at appellate or revisional stage while affirming the original decision such authority need not give separate reasons if it agrees with the reasons in the impugned order – Rule inoperative where statute dispenses with the requirement expressly or by necessary implication”.

14. The Learned Counsel of the respondents stated that consequent to the Judgement of the Hon'ble Supreme Court(1990) 4 SCC 594, the Government of India amended

the Army Rule 1952 by incorporating Rule 62(1) in 1993 which reads as under:

"(1) The finding on every charge upon which the accused in arraigned shall be recorded and, except as provided in these rules, shall be recorded as finding of "Guilty" or of "Not Guilty". After recording the finding on each charge, the court shall give brief reasons in support thereof. The judge advocate or, if these is none, the presiding officer shall record or cause to be recorded such brief reasons in the proceedings. The above record shall be signed and dated by presiding officer and the judge advocate, if any.

15. Subsequent to this amendment, all GCM findings are supported by reasoned findings. This case was concluded on 3rd February, 1992 and, therefore, pre-dated the amendment to the Army Rule, 1952. As such, the findings were not infirm in the eyes of law.
16. He further drew an attention to the statement of PW6 and PW8, which stated that the items were taken by the petitioner from the store for perishable items and also that all items bore the markings to suggest that they were 'For Defence Forces' thus confirming that they were from the various stores and were Government property.

17. We heard both the parties at length and also perused the records. As regards, the requirement of giving reasoned findings, amendment to the Army Rule 1952 was carried out vide Notification of 6th December, 1993. Although the Hon'ble Supreme Court Order is dated-28th August, 1990, change of procedure could not have been adopted by the GCM till such time the Army Rules was amended by Rule 62(1). The GCM concluded and announced its findings and sentence on 3rd February, 1992, as per the Army Rule in vogue which was before the amendment to the Army Rules, 1952 in 1993. Hence, it cannot be construed as against the laws of natural justice and hence illegal.
18. Regarding the petitioner allegedly having taken the seized items from the stores for which he was incharge albeit each store had a separate store keeper, PW6 was emphatic that the items were taken from his store by the petitioner, despite his protests. He further stated that he saw the items being packed in a white hospital bed-sheet and after half an hour saw PW2 take the same bundle to Dhobi Ghat.

19. The items were Government property has been proved by the markings verified by the Court as also the statement of PW8, who had prepared the list after seizing the items. As such, it is conclusively proved that the items recovered were government property.
20. While confirming the award of the finding and sentence, the confirming authority has perhaps taken into account the length of service and the past record of the petitioner thus reducing the sentence from dismissal to forfeiture of seven years of service for pension.
21. In view of the foregoing, we are not inclined to interfere in the matter. The petition is dismissed. No ~~orders~~ to cost.

[Justice A.K. Mathur]
Chairperson

[Lt. Genl. ML Naidu]
Member (A)

New Delhi
29th September, 2010