

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

**TA/266/09
Writ Petition (C) no.6577/2003**

**LT COL P.AHLUWALIA
NO.IC-39167 A
D-4, SECOND FLOOR
DEFENCE COLONY
NEW DELHI.**

THROUGH : SH. S.S.PANDEY, ADVOCATE

...APPELLANT

VERSUS

- 1. UNION OF INDIA
THROUGH SECRETARY TO THE
GOVERNMENT OF INDIA
MINISTRY OF DEFENCE
NEW DELHI.**
- 2. THE COAS
ARMY HEADQUARTERS
SOUTH BLOCK
NEW DELHI.**
- 3. THE GOC
HEADQUARTER DELHI AREA
DELHI CANTT
NEW DELHI.**

**4. THE GOC-IN-C
HEADQUARTERS WESTERN COMMAND
CHANDIMANDIR.**

**5. THE COMMANDING OFFICER
STATION WORKSHOP EME TYPE J
DELHI CANTT.**

**THROUGH : SH. A.K. BHARDWAJ AND MS. JAGRITI SINGH,
ADVOCATES ASSISTED BY 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
DATE : 15.03.2010**

1. This petition has been received from Delhi High Court on transfer and has been treated as an Appeal under Section 15 of Armed Forces Tribunal Act. The prayer in this appeal is confined for quashing the GCM proceedings and also the findings of the guilt including that of sentence awarded to the appellant. Simultaneously, the orders passed by the GOC-in-C, Headquarters Western Command, Chandimandir whereby confirming the sentence so awarded to the appellant has also been challenged. It is also prayed by the appellant that

the respondents be directed to place him in the original seniority with all consequential benefits of promotion, pension etc. It is contended by the appellant that he has falsely been framed in this case when he was used as decoy for arranging the trap against Naik Balwinder Singh. On his own initiative as a complaint of the demand of bribe was made but the GCM resorted to surmises and conjectures apart from the fact that the entire proceedings vitiated against the appellant who was the trap witness but the charges of giving bribe was framed ignoring the fact of the appellant was being the witness of Trap. There was not the slightest basis of the conviction of the appellant.

2. To the contrary from the side of respondents it is submitted that the appellant not only managed bribe to Naik Balwinder Singh but also obliged him by offering three bottles of liquor so as to get some favour for the destruction of the medical documents where his medical category was down graded. There was ample evidence to establish the charges for offering three bottles of liquor for having favour from Naik Balwinder Singh. He achieved his object by getting those documents destroyed. He alone was the beneficiary of such destruction of the documents. As regards the charge of offering bribe for which he made the complaint and he stood as a decoy the benefit of doubt had already

been given to him and the charge was found to have not been established. The appellant cannot on the basis of the non establishment of the charge of bribe claim parity so far as the other offence of offering three bottles of liquor are concerned. It is also said that the charges are also established on the basis of offending circumstances.

3. In order to appreciate the salient points involved in this case it shall be useful to make the brief narration of the facts. The appellant was commissioned in the Corps of Engineers in the year 1980 as a Permanent Regular Commissioned Officer. He was promoted to the rank of Lt Col on 01.01.1988 and because of his service profile and grading he was approved for the rank of Col. vide MS Branch letter no.36510/Engrs/2/MS5 dated 07.01.2000. On 05.08.1999, he was admitted to Base Hospital Delhi Cantt for treatment of dysentery where he was also found having mild hypertension. On 30.08.1999, a Medical Classification Board was held and he was placed in Medical Category S₁H₁A₁P₂(T-24) E₁ and he was discharged from the hospital. He was also given copy of the “Disability Restrictions of Medical Classification: Officers” dated 30.08.1999. The appellant visited the office of Naik Balwinder Singh twice or thrice about last week of August 1999 and first week of Sept., 1999 as was communicated by Nb.Sub R. Kumaraswami.

On 13.09.1999 at about 1000 hours Naik Balwinder Singh was contacted by Naib Subedar Didar Singh (PW2) of Army HQ LU and requested him that medical documents of Lt Col P.Ahluwalia (accused) be given to him by hand. Thereafter Naik Balwinder Singh was asked to come to the house of Naib Subedar Didar Singh (PW2) on 14.09.1999 around 1900 hours where sweet packet was offered to him by Naib Subedar Didar Singh (PW2) and when he was leaving three bottles of liquor in polythene packed was also kept in his vehicle. On 21.09.1999 at around 1800 hours he was also persuaded by PW2 to accept bribe for helping to the accused. On the basis of the evidence appearing against the accused in the Summary of Evidence, the following charges were framed against him on 08.08.2002:

First Charge
Army Act
Section 45

**BEING AN OFFICER BEHAVING
IN A MATTER UNBECOMING HIS
POSITION AND THE CHARACTER
EXPECTED OF HIM,**

**in that he,
at Delhi Cantt, between 23 Sep 1999
and 25 Sept 1999, improperly gave a
gratification of Rs.5,000/- (Rupees Five
Thousand only) to No.13979042F Naik
(Clerk) Balwinder Singh of
Headquarters Delhi Area (Medical
Branch), as a motive for destruction of
his (accused's) Medical Board
proceedings(AFMSF-15), placing him
in low medical category.**

Second Charge
Army Act
Section 45

**BEING AN OFFICER BEHAVING
IN A MATTER UNBECOMING HIS
POSITION AND THE CHARACTER
EXPECTED OF HIM,**

**in that he,
at Delhi Cantt, on 14 Sep 1999, caused
to be supplied two bottles of whisky
and one bottle of rum to Naik (Clerk)
Balwinder Singh as aforesated in the
first charge, a gratification as a motive
for destruction of his (accused's)
Medical Board proceedings(AFMSF-
15), placing him in low medical
category.**

4. Prosecution in the support of this case examined PW1 Nk Clk Balwinder Singh who stated that he was posted in the Medical Branch of HQ Delhi Area in the rank of Nk Clerk from June 1998 to 05.08.2002 and was assigned the task of M-1, M-2 & M-4 Sections of the medical branch, Headquarters Delhi Area by Naib Subedar (Clerk) R. Kumaraswamy who was to retire in near future. He communicated with regard to the visit of the accused Lt Col P Ahluwalia in the office twice or thrice. In that context Naib Subedar Didar Singh (PW2) also contacted him on 13.09.1999 at around 1000 hours and told that he had come to collect medical documents of the accused. He was communicated that documents were confidential and Lt Col Ahluwalia may be apprised to contact DDMS, Headquarters Delhi Area, for that purpose. However, Naib Subedar Didar Singh (PW2) expressed his interest in the accused as

he remained posted with him in Bhuj and on 14.09.1999 at 1900 hours he arranged meeting at his house where the accused/appellant was also introduced with him. Naib Subedar Didar Singh (PW2) offered him packet of sweets conveying that accused has already been approved for the rank of Col and his help was solicited. Naib Subedar Didar Singh (PW2) for sometime left the house then the accused apprised him with a problem that he was downgraded in his medical category for hypertension and told that he alone could help him. Thereafter no conversation had taken place between them. When he was leaving, Naib Subedar Didar Singh (PW2) came in and left polythene containing liquor though he resisted because sweets had already been given for sharing the happiness of appellant/petitioner as he was approved for the post of Col. The witness further stated that Naib Subedar Didar Singh (PW2) contacted him on 21.09.1999 at around 1800 hours for accepting gratification of Rs.10,000/- which would be shared equally by both of them. Naib Subedar Didar Singh (PW2) who was at the relevant time attached with the Intelligence Department. He was also acquainted with Col P. Ahluwalia because of his past posting there at Bhuj. In the third week of September, 1999 the accused came to the office of the Unit and called the witness at Gopinath Bazar, Delhi Cantt and asked him to bring his medical board documents from Medical Branch of the Headquarters Delhi area by hand as his promotion board might take place and it would take time if the same was

sent by post. The witness told him to take medical documents himself to which he replied that he was in hurry. On 14.09.1999 around 0930 hours Nk Clk Balwinder Singh came at his residence who was introduced by him with accused/appellant. The accused did not ask anything about his medical documents from PW1 Nk Clk Balwinder Singh except mentioning that he was admitted in the Base Hospital recently. When PW1 Nk Clk Balwinder Singh was offered sweet packet and when he was leaving one packet containing liquor bottles was also kept by him in his scooter. The accused also persuaded PW1 Naik Clerk Balwinder Singh and told "*Balwinder yeh to rakh le, teri aur koi requirement ho to Nb Didar Singh sahib ko bata dena.*" Prosecution further examined Sub Clerk R. Babu whose statement is confined on the point that Medical-5 Section which deals with all kinds of the medical boards of officers including periodic medical board, promotion medical board, classification/re-classification medical board and re-survey medical board. These all the boards are held at the Base Hospital, Delhi Cantt and when any Medical Board proceedings are received at Medical Branch of Headquarters Delhi Area, firstly the entry of the same is made in the incoming dak diary register after putting the official stamp on it. Thereafter it is sent to the dealing clerk. After processing/scrutinising, the report is submitted to the DADH for technical evaluation who on his turn gives his recommendations whether or not the same can be approved by

the competent authority. In September 1999, Headquarters Delhi Area, medical branch had received re-classification Medical Board proceedings in respect of Lt Col P.Ahluwalia in the normal channel of correspondence. The said proceedings were forwarded on 06.09.1999 and the same were received by the medical branch of Headquarters Delhi Areas on 09.09.1999. M-5 Section is the custodian of the said documents of the accused.

5. Prosecution further examined PW4 Major Kalker Singh who is the Intelligence Officer. On 15.09.1999, he was apprised by Naib Subedar Didar Singh that at about 0800 hours on 13.09.1999 the accused met him outside the Unit gate on the main road. He was asked to collect his medical papers. He was thereafter informed by Naib Subedar Didar Singh that how the meeting had taken place at his residence in between the accused/appellant and Naik Balwinder Singh and sweets and packet of liquor were offered to him. There Naib Subedar Didar Singh expressed that the accused desires to meet him. There is the complaint of demand of bribe by Naik Balwinder Singh which was communicated by the accused to the witness. He gave dicta phone to the accused for having all the dialogue from Naik Balwinder Singh recorded so that necessary action may be taken. The accused was also used as a witness to offer the money

so as to facilitate the trap of Naik Balwinder Singh. PW5 Hav (Clerk) Arun Kumar stated about the visit of the accused/appellant in the office having dialogue with Naik Balwinder Singh. Identical is the statement of PW10 Naib Subedar R.Kumaraswamy. PW7 Lt Col Indu Bhushan Sareen is also a formal witness who however clarified that medical classification board proceedings of P.Ahluwalia were processed and approved by DDMS on 17.09.99. PW8 Naib Subedar DG Rao also stated that Lt Col P. Ahluwalia used to visit Naib Subedar Didar Singh. PW9 Major M. Indrabalan has also produced the letter for casting schedule of Selection Board no.3 which was circulated for the information of all Command Headquarters and the officers concerned.

6. The accused/appellant pleaded 'not guilty' and in his defence submitted his statement in writing vide Ex.LL wherein it was clarified by him that on 05.08.1999 he was admitted to Base Hospital for treatment of dysentery. There it was detected that he was suffering with mild hypertension. On the basis of report on 30.08.1999 the Medical Classification Board was held which downgraded his category. He was also given copy showing "Disability Restrictions of Medical Classification: Officers". However in that copy his IC number was incorrectly shown as 'IC-39667 P' in place of "IC-391167 A" and for that

he instructed to have the correction before finalising his medical categorization. In the first/second week of September 1999 he received a call from Naib Subedar Didar Singh requesting him to come to his house. He apprised him about his hospitalisation and down grading of the Medical Classification. Naib Subedar Didar Singh (PW2) offered him assistance as and when needed. On 14.09.1999, he visited the house of Naib Subedar Didar Singh (PW2) and was introduced with Naik Balwinder Singh of Headquarters Delhi area, Medical Branch. On 22.09.1999 in the evening he received telephonic message from Naib Subedar Didar Singh (PW2) that his medical proceedings have been approved but dispatch had been withheld by Naik Balwinder Singh who was making demand for Rs.10,000/-. He simply asked for the copy of the Board proceedings for which he was officially entitled. He made complaint to PW4 Major Kalker Singh (Intelligence Officer) about the demand of money by Nb Clerk Balwinder Singh. He also submitted that there was no occasion for the appellant to have got the medical report destroyed and offered bribe/bottles of the liquor to PW1 Naib Clerk Balwinder Singh.

7. It is said whatever the evidence has been adduced it is grossly deficient. In the given circumstances, the finding of guilt recorded

by GCM will have to be examined afresh on merits since the GCM altogether failed to undertake the exercise of scrutinising and making assessment of evidence. There is no denial of the fact that the accused/appellant was approved for promotion to the post of Col in the Army but he was admitted in Base Hospital on 05.08.1999 and his medical category was down graded for certain period. Allegations are that he was making all possible efforts to take those documents so that they will not come in his way for promotion. He approached to Naib Subedar Didar Singh (PW2) for help and thereafter a meeting was also arranged at the house of Naib Subedar Didar Singh (PW2) where he was introduced with PW1 Nk Clk Balwinder Singh. It is an admitted fact as it is clear from the statement of PW4 Major Kalker Singh that on 23.09.1999 the accused met him (Intelligence Officer) and apprised him that Nk Clk Balwinder Singh is asking for gratification. He was asked to have the statement of Nk Clk Balwinder Singh on the dicta phone, the trap was arranged and now in this background the accused/appellant was prosecuted for both the charges. Even for offering bribe forgetting that he was the witness/decoy on the part of the prosecution for managing the successful trap. However he was acquitted for charge no.1 by giving the benefit of doubt and not on the ground that he himself was the witness of the trap. In this regard it may be mentioned that both the charges against the accused/appellant are inconsistent to each other. Charge no.1 pertains to his capacity of the

witness though was tried on that count. In the second charge which had nothing to do with the trap but the accused was tried for offering liquor to Nk Clk Balwinder Singh for seeking his favour. In the circumstances when the two charges are altogether different in the different capacities of the accused, by such misjoinder the entire trial stood vitiated. Though illegality has not been defined in the Army Act nor in Code of Criminal Procedure, illegality could only mean the incurable illegality. Incurable because of prejudice or failure of justice. We cannot loose sight of the fact that charges are framed to give the accused notice of his acquiescence to stand as a witness of the trap. There was obviously the prejudice to the accused as to not make him understand as to why his culpability informing to the Intelligence Officer about demand of bribe by Nk Clk Balwinder Singh was prima facie ascertained for the purpose of framing Charge no.1. In such confusing state of affairs, the joining of both the charges lead to incurable illegality and for which the accused was prejudiced and trial is vitiated.

8. Prosecution examined two witnesses on fact namely Nk Clk Balwinder Singh and Naib Subedar Didar Singh. Both the witnesses stated that sweet packet was given to Nk Clk Balwinder Singh and when he was leaving the packet containing bottles of liquor was also kept in his scooter.

The contention has been raised by the learned counsel for the appellant that the statement of both these witnesses/approver being exculpatory in nature as they throughout stated about their non involvement in all such transaction of giving of three bottles of liquor, cannot be relied upon. PW2 Nk Clk Balwinder Singh stated that the three bottles of liquor were handed over by him at the behest of the accused. Such evidence of the accomplice cannot be read in evidence unless it gets corroboration. In support of such contention reliance may be place in the decision of (i) Ravinder Singh Vs. State of Haryana (1975) 3 SCC Pg.742; (ii) Chandan Vs.State of Rajasthan (1988) 1 SCC pg.696; (iii) Rampal Pithwa Rahidas Vs. State of Maharashtra (1994) Supp (2) SCC Pg.73 wherein it has been observed as under:

An approver is a most unworthy friend, if at all, and he, having bargained for his immunity, must prove his worthiness for creditability in court. This test is fulfilled, firstly, if the story he relates involves him in the crime and appears intrinsically to be a natural and probable catalogue of events that head taken place.....Secondly, once that hurdle is crossed, the story given by an approver so far as the accused on trial is concerned, must implicate him in such a manner as to give rise to a conclusion of guilt beyond reasonable doubt.

His evidence has been read by the counsel for the parties before us and his evidence clearly indicates that he attempted to suggest that he did nothing. Neither he stated that he participated in looting nor in injuring or attacking the deceased. Reading through his evidence clearly indicates that he has claimed to be a spectator at every moment but has not participated at any stage. Apart from it the initial story appears also to be absolutely unnatural as according to him, he did not know anyone of these accused persons but a month before the incident they took him into confidence and told him to join them. After reading the evidence of the witnesses as a whole apparently the impression created is that the version does not appear to be a natural version. In this view of the matter, in our opinion, the testimony is not such which inspires confidence.

From all the attendant circumstances, we are satisfied that the approver is not a reliable witness; his arrest was intrinsically unnatural and his self confessed participation in the crime without taking any active part in it is unacceptable. The approver has claimed to be a spectator of every fact and of every moment but asserted that he did not participate in the assault at any stage and remained standing at a distance taking care of the clothes of some of the co-accused. His statement is almost of

an exculpatory nature. His statement as a whole does not inspire confidence. His story is not worthy of credence. We find ourselves unable to place any reliance on his untrustworthy and unreliable evidence.....”

9. All these cases deal with the question as to what extent a court can rely upon the evidence of an approver. Whether the evidence of an approver can be relied upon by a court would depend upon the facts and circumstances of the case. As has been indicated by Hon'ble Supreme Court that when heinous crime is committed in a manner leaving no clue or any trace is available for its detection, pardon is granted to one of the accused persons for apprehending other offenders and for production of the evidence which otherwise is unobtainable. The court held:

The dominant object is that the offenders of the heinous and grave offences do not go unpunished, the legislature in its wisdom considered it necessary to introduce Section 306 and confine its operation to cases mentioned in it. The object of Section 306 therefore is to allow pardon in case where heinous offence is alleged to have been committed by several persons so that with the aid of the evidence of the person granted pardon the offence may be brought home to the rest. The basis of the tender of pardon is not the extent of the culpability of the

person to whom pardon is granted, but the principle is to prevent the escape of the offenders from punishment in heinous offences for lack of evidence. There can therefore be no objection against tender of pardon to an accomplice simply because in his confession, he does not implicate him to the same extent as the other accused because all that Section 306 requires is that pardon may be tendered to any person believed to be involved directly or indirectly in or privy to an offence.

10. Bearing in mind the aforesaid and going through evidence of approvers we do not find any portion of statement inculpatory in this entire corruption matter. PW1 in his statement made it clear that when Naib Subedar Didar Singh (PW2) left his house for sometime even in his absence the accused did not ask him for doing any favour except saying that *he was admitted in the Base Hospital Delhi Cantt in the month of August 1999 for treatment of dysentery and had been down graded in his medical category for mild hypertension.* He further told that *whenever the nursing assistant used to check his Blood pressure, it was normal but when Lt Col B Kalra checked his blood pressure, it used to be on the higher side.* He also told that *it was he only, who could help him.* I told him that *as I had earlier said, I could not be of any help to him.* Thereafter started watching T.V. and the accused also kept on sitting

there. From such statement it is clear no such help of handing over papers or to destroying them was made by the accused/appellant. The packet containing liquor was also not handed over by him but on his behest Naib Subedar Didar Singh (PW2) kept it in his scooter. Whatever the favour was sought that was by Subedar Didar Singh (PW2) and who instigated Naik Balwinder Singh to accept gratification. To accept the packet of liquor could not alone be sufficient to fix the culpability of the accused/appellant. Particularly in the circumstances when such meeting at the house of Naik Balwinder Singh (PW2) was not part of that trap and even PW4 Major Kalker Singh was also not apprised with this meeting arranged by PW2 Naik Balwinder Singh who was also the accomplice of this offering of liquor at the behest of the accused/appellant. He was also charged but subsequently for the reasons best known to the prosecution charges against him were dropped. The peculiar circumstances of this case where the trap witness himself was tried for the first charge of offering bribe is the clear example of non application of mind. It is because of this reason by and large the citizen is somewhat reluctant to have the trap arranged even if the gratification is demanded by the government employee. There were numerous reasons for reluctance. He has to make number of visits to the office of Intelligence officer and to wait for number of officers. He has to communicate the officer and raiding authority and play the main role and while doing so he has to be away for

his job/work or avocation, he has to sacrifice his time in doing so. Thereafter he has to attend the court at the time of the trial on day to day basis. In this case prosecution has gone too far by asking him to stand trial for offering bribe.

11. For appreciating the evidence of PW2 Naib Subedar Didar Singh the back ground of the case should not be forgotten. The position of this witness was that of the facilitator as he was requested by the accused and at occasions met PW1 Nk Clk Balwinder Singh for handing over medical papers. Apart from it the fact that both PW1/Nk Clk Balwinder Singh and PW2 Naib Sub Didar Singh both are in nature of accomplice. Their version prima facie is questionable. The corroboration in material particulars is necessary. Reliance may be place in the case of *Gulam Mahmood A. Malek Vs. State of Gujarat 1980 (Supp) SCC 684* wherein it was held that *where the complainant himself was in the nature of an accomplice and his story prima facie suspect for which corroboration in material particular is necessary.*

12. However it has been argued by the learned counsel for the respondents that Naib Subedar Didar Singh (PW2) was from the

Intelligence Department and whatever steps he had taken that was in the discharge of his official duty. He cannot be said to be an accomplice. As has already come in the statement of PW4 Major Kalker Singh that with regard to the arrangement of meeting at the residence of Naib Subedar Didar Singh (PW2) no such information was given to him which could connect that for arranging that meeting at his house there was approval from the Department. At his own Naib Subedar Didar Singh contacted at number of occasions to PW1 Nk Clk Balwinder Singh. He offered packet of liquor at the behest of appellant and persuaded PW1 Nk Clk Balwinder Singh to part with the medical report of the accused. Such undesirable activities on his part so as to help the accused and also asking PW1 Nk Clk Balwinder Singh to receive the gratification of Rs.10,000/- from the accused which could also be shared by both of them. Such evidence on the part of Naib Subedar Didar Singh (PW2) would not only assure that he was the facilitator/party in the commission of the crime and his capacity is that of an accomplice.

13. It has next been contended by the learned counsel for the respondents that Naib Subedar Didar Singh (PW2) is trustworthy and there is no need to seek corroboration. We are not ready to accept such statement when he himself is party in commission of crime. In the facts

and circumstances of this case, the GCM erred in accepting the testimony of both these witnesses without corroboration.

14. It has also been strenuously argued by the learned counsel for the respondents that there are ample of circumstances which lend support to the prosecution case. The facts and the circumstances of this case may be unhesitatingly accepted in evidence. The circumstances of this case would show that Naib Subedar Didar Singh (PW2) himself was the facilitator, he could not be called independent witness as he was always in fear of disciplinary action if he did not support the prosecution version. The circumstances of this case are more of peculiar character. The appellant was legally entitled for the medical report after confirmation as has come in evidence. What could be the reason for him to have got it destroyed, when it could also be collected from the Base Hospital. He himself made complaint for arranging trap. Further with regard to the circumstances the version of the Naib Subedar Didar Singh (PW2) was so self contradictory and would be hazardous to accept it. The essential link of the circumstantial evidence is also missing. Reliance may also be placed in the case of *Aftab Ahmad Anasari Vs.State of Uttranchal JT 2010 (1) Pg.424* wherein the principle was restricted by the apex court as under:

The circumstances proved should be such as to exclude every hypothesis except the one sought to be proved. But this does not mean that before the prosecution case succeeds in a case of circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever extravagant and fanciful it might be. There must be a chain of evidence so far complete as not to leave any reasonable ground for conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability, the act must have been done by the accused. Where the various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the Court. If the circumstances proved are consistent with the innocence of the accused, then the accused is entitled to the benefit of doubt. However, in applying this principle, distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to the proof of basis or primary facts, the Court has to judge the evidence and decide whether that evidence proves a particular fact or not and if that fact is proved, the question arises whether that fact leads to the inference of guilt of the accused person or not. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although there should be no missing links in the case, yet it is not essential that every one of the links must appear on the

surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences or presumptions, the Court must have regard to the common course of natural events, and to human conduct and their relations to the facts of the particular case.

15. The evidence on record is not completing the essential link of the circumstantial evidence and the witnesses examined by the prosecution did not lend any support to the prosecution case. The circumstances as referred in this case would not justify the court to act upon the uncorroborated testimony of accomplice. Both these witnesses are also not trustworthy. Even PW4 Major Kalker Singh did not lend support on the point of offering of three bottles of liquor by the accused/appellant to Naik Balwinder Singh. In view of above discussion, we do not find the testimony of PW1 Naik Balwinder Singh and PW2 Naib Subedar Didar Singh to be trustworthy. The trial of the accused otherwise vitiated because of mis joinder of charges as was prosecuted for offering bribe when he himself was instrumental for arranging trap. The finding of the guilt recorded by GCM is not sustainable.

16. The appeal is allowed. The orders of the GCM and also the confirmation order of the authority are set aside. The appellant shall be deemed to be in service from the date of his dismissal till he attains the age of superannuation and will be entitled for all back wages for interregnum period. He shall also be entitled for pensionary benefits.

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

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

**PRONOUNCED IN OPEN COURT
ON 15th MARCH, 2010**