

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

**TA/272/09  
(Writ Petition (C) no. 129/1997)**

**MAHABIR YADAV NO.6376573F  
SON OF SH. JAI RAM  
VILLAGE SURAKHPUR  
P.O.GURIANI, TEH. KOSLI  
DISTT. REWARI (HARYANA)**

**THROUGH : SH. RANBIR YADAV, ADVOCATE**

**...PETITIONER**

**VERSUS**

- 1. UNION OF INDIA  
THROUGH ITS SECRETARY  
MINISTRY OF DEFENCE  
NEW DELHI-110 011.**
- 2. THE CHIEF OF ARMY STAFF  
SENA BHAWAN, SOUTH BLOCK  
NEW DELHI.**
- 3. OFFICER COMMANDING  
54 COY ASC (SUPPLY)  
TYPE C JABALPUR (M.P.) 482001**
- 4. OFFICER COMMANDING CENTRAL  
ORDINANCE DEPOT, JABALPUR  
(M.P.) 482001**
- 5. STATION COMMANDER  
STATION HEAD QUARTER  
JABALPUR (M.P.) 482001**

**THROUGH : SH. ANKUR CHHIBER, ADVOCATE**  
**MAJOR AJEEN**

**...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 : 27.01.2010**

1. This petition has been brought for quashing the order dated 12.08.1989 passed by the respondents whereby he was held guilty for the offences under section 52 (b) and was sentenced to reduction in rank and imprisonment for two months and as a consequence of which was dismissed from service. It is alleged that the finding of guilt against the petitioner was recorded merely on conjectures and surmises and whatever the evidence was recorded that does not inspire confidence. Moreover other senior officers were involved in the misappropriation of petrol and whatever supplies were made by him in the capacity of In-charge of supply depot that was under the instruction of senior officers. When this matter of alleged unauthorised issuance of petrol came to light, he was persuaded to accept the plea of guilt to protect those senior officers. Moreover assurance was also given to him by them that he would be leniently dealt with in the event he confessed his guilt. It has further been

submitted that no opportunity was afforded to the petitioner to cross examine the witnesses and whatever the plea of guilt was recorded that was under threat and coercion. Though in the course of arguments it was submitted that he was just the in-charge and one Subedar Dashrath was looking after the depot and the stocks and he alone had the dominion over the petrol depot.

2. Petition has been resisted by the respondents contending that petitioner was entrusted with the stock at the depot and he was also responsible for managing proper records. He forged certain documents so as to regularise the issuance of 400 litres of 70 Mt. Gas to S.K.Maruti of College of Material Management, Jabalpur. No gate voucher was prepared for the said issue. On 08.09.1987, those two barrels of 70 MT Gas were recovered by field security from Quarter no.11/3 of Hav/Clk (GD) Jayi NS. In the court of inquiry, the petitioner was found to have been involved in such misappropriation of Petrol. Petitioner was tried by Summary Court Martial. At the time of recording of the evidence, he did not prefer to cross examine any of the witness and further he pleaded guilty before the Court Martial. Consequently after going through the entire material evidence, including the forgery made in the registers, the culpability of the petitioner was established and he was punished and was

thus convicted under section 52 (b). He was also sentenced as has been referred above. It is also said that there could be no reason on the part of the respondents to have compelled the petitioner to admit his guilt.

3. The first and the foremost point raised from the side of the petitioner is that he was not afforded any assistance at the time of the SCM though from the materials on record, it appears that Ram Kishan GD Clerk was attached as the friend of accused. It has also been contended that no opportunity to cross examine the witness recorded at the time of the Summary of Evidence was afforded to him. In this regard it shall be useful to mention that petitioner has admitted his guilt before SCM. Now at this stage to aver that under threat his guilt was recorded would be of no use. Since the petitioner has averred that under threat his plea of guilt was taken, the law on the point is clear that one who asserts certain facts has to prove them. There is no evidence on record to controvert the correctness in the entry of plea of guilt. We are afraid that we cannot launch into an inquiry to know as to what transpired before the SCM. It is simply not done. Matters of judicial record are unquestionable. They are not open to doubt. Reliance may be placed in the case of *Ex-Constable Ram Vir Singh Vs. Union of India & Others* (2009) 3 SCC page 97.

4. It is argued from the side of the petitioner that even if the entire evidence which was adduced from the side of Union of India is accepted on its face value, no offence is made out. Emphasis has been made that whatever the statement was given by Nk/Clk (Control) Maruti SK, it is clear that he did not make payment to the petitioner. That money was for the petrol which was unauthorisedly issued by the petitioner who was entrusted with the affairs of the depot and was having domain over the government property. It was for him to keep the proper account of petrol. He committed breach of trust by forging the documents. It will be construed that for oblique reasons he issued petrol to Nk/Clk Maruti S.K.

5. Prosecution examined Nk/Clk (Control) Maruti SK of College of Material Management, Jabalpur who stated that on 31.12.1984 he was posted to CMM and assigned duties of NCO In-charge POL of CMM from 04.07.1987 to 25.07.1987 temporarily. During that period he came into close contact with the petitioner NK Mahabir. He asked him to give some petrol on payment basis. He made assurance that the same could be made available but @Rs.4/- per litre. On 07.09.1987 he arranged Rs.1600/- and made payment to the Driver as directed by NK Mahabir. He managed to shift 70 MT Gas in two barrels and unloaded at the

quarter of Hav Jyai NS of Depot Regt (1 STC). PW2 Sepoy Driver (MT) M Upadhyay who transported these two barrels as per the instructions of the petitioner corroborated the prosecution version and told the same were dropped by him at the family quarter of Hav Jayi NS. His testimony also remained uncontroverted. PW3 Nb/Sub Nanoo Ram of College of Material Management (CMM) Jabalpur who was the In-charge of vehicles and to fix the duties for their movements, stated that on 08.09.1987 Sep/ DVR (MT) M Upadhyay (PW2) was detailed to go to CMM Amn Wing to take the recruits to COD for training. He approached him and told that Nk Maurti SK desired to bring some stores in that vehicle from COD or from some place. He declined to accord permission and told that PW2 is already late for which the duties were assigned to him. Thereafter he came to know that the truck for which Sepoy M Upadhyay was detailed for duty, was caught by FS Section doing some illegal transportation. From such evidence culpability of the accused is established. Such evidence is sufficient to arrive at the conclusion that the petitioner dealing with the petrol at the relevant time, was under obligation to maintain proper account of the petrol, unauthorised sold 400 ltrs. Petrol to S.K.Maruti.

**6.** The petitioner being the armed personnel/public servant, his duties were involving great responsibility to keep effective control over Government property/public petrol entrusted to him. High morality was expected from the petitioner who was supposed to discharge his duties honestly. **From the materials and evidence on record, it is evident that petitioner made embezzlement of 400 Litres of Petrol and sold the same for consideration. There is no justified cause to interfere with the impugned order. Petition is dismissed.**

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

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

**PRONOUNCED IN OPEN COURT**  
**ON 27<sup>TH</sup> JANUARY, 2010**