

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.

T.A.No.298 of 2009

[Arising out of WP(C)No. 2215/1997 of Delhi High Court]

D.K.Sawhney ...Petitioner

Versus

UOI & Anr. ...Respondents

AMENDED MEMO OF PARTIES

1. Major D.K. Sawhney (Died)

Legal representatives

2. Smt. Poonam Sawhney

3. Shri Nikhil Sawhney

4. Ms. Neha Sawhney

.....Petitioners

Versus

UOI & Anr.

For the Petitioner :

Maj. Gen (Retd.) S.K. Sanan, Advocate

For the Respondents:

Col.(Retd.) R .Balasubramanian

C O R A M:

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

HON'BLE LT.GEN. M.L.NAIDU, ADMINISTRATIVE MEMBER

JUDGEMENT

1. This Writ Petition has been transferred from Delhi High Court.
2. Petitioner by this petition has prayed that by appropriate writ or directions the court martial proceedings, finding and sentence may be quashed and petitioner be reinstated & all consequential benefits be released to petitioner.
3. The petitioner was Engineering Graduate and was commissioned into the Corps of Electrical and Mechanical Engineering (EME) on 16.12.1978. He was commissioned after undergoing training at IMA, Dehradun and had a unblemished record of 19 years. It is alleged that because of his unblemished record, he was approved for promotion for the rank of Lt. Colonel by selection on 10.3.1995.
4. That in January, 1994, petitioner was posted to HQ Director General, Assam Rifles, Shillong as JAD (EME), where he joined his duties on 15.1.1994. The main duty of the petitioner was to act as an Advisor to the Director General and staff on EME matters. He was further to ensure that the quality jobs were done economically pertaining to vehicles, weapons and

equipment and to obtain approval from DG./DDG through Director (Admn.) regarding procurement of spares and repair proposals, besides other duties in DG AR Standing Instructions issued in 1993. The petitioner was the only EME officer at HQ DG AR. Another EME Officer located at the station was OC 21 Field Workshop located at Shilling. 21 Field Workshop was a small unit with a separate establishment. It worked under 2 Workshop Assam Rifles located at Serchip, about 240 kms away by road. It was not provided anywhere as to who would officiate as OC 21 Field Workshop when the actual incumbent proceeded on leave. As per practice, it had become customary for JAD(EME) to work and officiate as OC 21 Field Workshop whenever the latter proceeded on leave or any other duty. This was being done without any formal handing/taking over of charge. Since there was only one OC of 21 Field Workshop and JCO could not officiate, therefore, he worked under the close supervision of JAD (EME). This practice was followed right from 1989 even in earlier 33 Field Workshop which has been replaced by 21 Field Workshop in 1993.

5. That for the local purchase of stores required by 21 Field Workshop, a Board of Officers was detailed for each quarter by OC AMTO wherein OC 21 Field Workshop was always detailed as a Presiding Officer with the JCO as one of the Member. During the absence of OC 21 Field Workshop on leave or otherwise, no amendment to the Board such constituted was ever published and as a matter of practice and custom, JAD(EM) functioned as Presiding Officer of the Board. This was mainly because the JCO could not exercise any financial powers or sign any financial document as presiding officer. Capt. N. Rajagopal was posted as OC 21 Field Workshop during the relevant time. He proceeded on leave from 6.2.95 to 27.2.95. As per practice, the petitioner worked as officiating OC of 21 Field Workshop with the knowledge of all concerned senior officers. In a conference held on 13.2.1995, the petitioner was instructed by DDG AR to get all the buses repaired for presentable look before the close of the financial year and it was also emphasized that all the available funds were to be gainfully utilized and not surrendered. On 15.2.1995, Director(Admn.) ordered the petitioner to work out

and place the orders for spares. The petitioner undertook this task and completed the whole process within short time. Petitioner contacted the firms at Guwahati and some representatives were also called to HQ DG AR to check the conditions of the buses & the jobs to be done and the give estimates thereafter. This was done by the representatives of the firms in the presence of the Director (Admn.) and the petitioner including representatives of the concerned units. Therefore, petitioner put up a note to DDG AR on 17.2.1995 through DD(EME) and Director (Admn.) regarding the cost of repairs and modifications. The minutes were approved by DDG AR and he expressed the appreciation of the work undertaken by the petitioner. The petitioner accordingly opened the quotations and signed the documents as officiating OC or as OC 21 Field Workshop. Petitioner also persuaded firms to give discounts on purchases.

6. That Capt. N. Rajagopal rejoined from leave and local purchases documents were put up to him for his signatures. He, however, refused to sign despite the petitioner having apprised him of the

documents and the requirement under which this work has been done. It was stated by the Capt. N. Rajagopal that the process has been done in his absence, so he is not under obligation to sign. Meanwhile petitioner was posted out. Since the JCO who was another member of the Board could not sign the financial documents, and the officer who had reported to relieve Capt. N. Rajagopal, could not do so since he had not yet taken over the charge, the documents were sent to the petitioner for his signatures. The petitioner endorsed his signatures accordingly after verbal orders from Director (Admn.). It is alleged that the administrative heads were fully aware that it was not possible to obtain such a store purchases from DGS&D rates as that would take 2 to 3 years but job was required to be completed within month's time, therefore, he adopted a short process which is permissible under prior approval of CFA as laid down in DGS&D letter dated 3.1.1995. It is alleged that all the orders were placed after obtaining approval of CFA. It is also alleged that all the stores were duly received and checked by the members of the Board including the petitioner, for quality and quantity before

being taken on charge. Some of the spares did not meet the quality and, therefore, due to variations in model they were returned to the dealers for replacement.

7. It is alleged that there were two modes available to the department in given paucity of time, either to accept all the parts to be replaced subsequently or to surrender the funds. In view of the given situation, petitioner on receipt of verbal instructions from the DDG AR and Director (Admn.) accepted the spares and wrote to the establishment branch that while forwarding the bills of the dealers that cheques/drafts in favour of the dealers should either be forwarded to the petitioner or payment would be made to the firms only on confirmation from the petitioner. It is alleged that payments were actually made to the firms on satisfactory completion of all transactions. The petitioner proceeded on leave from 8.4.1995 to 15.4.1995 which was extended upto 23.4.1995. It is alleged that all buses, on completion of jobs were checked as per supply orders. Some of the buses were checked by Director (Admn.) and other senior officers. All the Unit Commanders were informed not to undertake painting or other work as the buses

were earmarked for repairs. No Unit Commander ever objected to dispatch of their buses as they themselves were fully aware of the directions. Therefore, it is submitted by petitioner that no irregularities or financial loss was caused to the department. All transactions were made on approval and directions of the superiors but unfortunately petitioner is being unnecessarily hauled up for the court martial on account of such purchases. It is alleged that on account of annoyance of the OC AMTO whole action was initiated and now inspired to fix the responsibility on the petitioner.

8. A Court of Inquiry was ordered to investigate the circumstances under which the orders were places and payments made. In fact, this Court of Inquiry was not appointed to investigate the matter but to pin down the petitioner. It is alleged that this Court of Inquiry was held in complete violation of Army Rule 180. He alleged that he was neither permitted to appear throughout the enquiry nor was he permitted to cross examine the witnesses or to lead his own witnesses. On finding of this Court of Inquiry, petitioner was attached to No.1 Construction Company. On

20.11.1995, the petitioner was informed that this attachment had been done for the purposes of recording of summary of evidence against him. It is alleged that CO exercised his legal power and decision is already been taken to communicate to the petitioner that Summary of Evidence was to be recorded against him. Ultimately, the hearing of the charge took place on 23.11.1995 and tentative chargesheet was drawn against him. The summary of evidence was recorded from 24.11.1995 to 15.12.1995. The summary of evidence was placed before the CO and he while exercising his power under rule 24 opined that charges nos.1 to 4 and 8 as given in tentative chargesheet are not sustainable by the evidence and therefore, he dismissed the same. He further opined that charges nos. 5, 6 and 7 were due to dual control of HQ DG AR and as such are trivial in nature due to procedural lapses. He accordingly opined that petitioner either be admonished or be disposed of summarily. This opinion was given by CO on 19.12.1995.

9. The charges nos. 1 to 4 and 8 are automatically dismissed by CO and remaining charges no.5, 6 & 7 also stood dismissed by

implication as these were viewed to be trivial nature. Despite this an additional summary of evidence was recorded from 17.1.1996 to 1.2.1996 and matter was again put up before CO under Army Rule 24 and CO vide his order dated 7.2.1996 again maintained his opinion and decided to dismiss charges nos. 1 to 4 and 8. The charges nos. from 5 to 7 were again ordered to be dealt with administratively. According to the petitioner, P-2 were the recommendations of the CO and P-3 was referred to as opinion and remarks by the CO and as such charges stood dismissed and it was not to be proceeded further. But this was not the end of woes. The authorities did not reconcile themselves with this and then directed additional summary of evidence on 13.4.1996 to 24.5.1996. And again CO stuck to his position by expressing his opinion by dated 8.5.1996 which are annexed as P-4.

10. Since the authorities were adamant, they took the action to revoke the attachment of the petitioner from No.1 Construction Company and ordered him to be attached to 19 Assam Rifles which was located at Serchip. This place was in a remote corner of Mizoram, not connected with rail from shillong. It takes 2 to 3

days to reach from Shillong to Serchip and there is no other mode of communication. In this manner, his CO changed because of he was transfer to Sirchip and he never applied his mind or heard the witnesses and signed the chargesheet of the petitioner on asking of his superiors on 21.9.1996 containing 9 charges. This was endorsed for trial by GCM by Respondent no.3 on 26.9.1996 and ultimately, petitioner was brought to trial before General Court Martial. Trial started from October, 1996 and concluded on 9.3.1997 finding the petitioner not guilty of charges 1st, 4th and 6th, but guilty of 2nd, 3rd, 5th, 7th, 8th and 9th. The petitioner was dismissed from the service. It is alleged that petitioner raised all pleas before the Court Martial proceedings as well as time of pre-confirmation petition, however, petitioner sentence was confirmed.

11. Therefore, petitioner was driven to file this petition at Delhi High Court. The petition was entertained by the High Court and an interim order was passed on 29.5.2007 that confirmation proceedings will go and no final order shall be passed till the next date, however, this order was subsequently vacated and the final

order was passed. Therefore, the petitioner has to amend the petition for challenging the final order. Thereafter, on formation of this Tribunal, this case was transferred to this bench. During the course of pendency of the matter, petitioner died, therefore, his legal representatives were brought on record.

12. A detailed reply was filed by the respondent denying all grounds raised by the petitioner in his petition.
13. So far as factual part is concerned about posting and other facts were not disputed by the respondents. However, respondent submitted in their written that the petitioner committed a financial irregularities, therefore, a Court of Inquiry was instituted to find out the truth in the matter about the said transactions and not with a view to make out a case against the petitioner. Therefore, conduct of Court of Inquiry was correct and it was not necessary to summon the petitioner as nothing was against him at that stage. But during the course of Court of Inquiry, the facts came to light which pin down the petitioner's omissions and commissions and thereafter the summary of evidence was recorded and on the basis of summary of evidence, petitioner

was charged. With regard to the finding of the CO, it is alleged that the CO referred the case to the higher authorities with his recommendations only and the observations of the CO for dropping the charges 1st, 2nd, 4th & 8th were only recommendatory and its prerogative of the superior authority to take appropriate decision in the matter. Therefore, it did not amount to dropping of the charges. It is also pointed that CO has himself come during the GCM as a defence witness and said that at no stage he dismissed the charges contained in the tentative chargesheet. It is also submitted that CO of the 19 Assam Rifles had also come as witness i.e. Col. Ashok Singh Shringheria and has deposed that after the attachment of the delinquent to his unit, the draft chargesheet, summaries of evidence and connected documents and case files received from HQ DGAR and before signing the final chargesheet, he perused the summaries of evidence and satisfied himself that a prima facie case existed against the petitioner. He also admitted that petitioner was attached to 19 Assam Rifles and posted at Serchip.

14. There is no denial of the fact that the place was in the remote corner but it was denied that it was not properly connected and petitioner could not have an adequate opportunity to defend himself.
15. Learned Counsel for the petitioner has submitted that petitioner was served with 9 charges out of that he was found guilty for 6 charges. It is submitted that so far as charges for 7 and 8 are concerned, there is no evidence before summary of evidence, so far as charges no.1st , 4th & 6th are concerned he has already been exonerated by court martial. Therefore, it is alleged that petitioner was only found guilty for the charges no.2nd, 3rd, 5 & 9. For this learned counsel for the petitioner submitted after taking through the evidence that petitioner was given oral instructions and he has obtained a sanctioned before the payment is made. Therefore, the petitioner has done in the obedience to the directions given by the higher authorities. It is also pointed out that petitioner has already requested the authorities to designate him as a OC of the 21 Field Workshop and in that support, he has produced a notesheet to show that he has apprised higher

authorities and higher authorities has asked him to proceed and those administrative formalities will be looked after. He also pointed out that all has been done in compliance with directions given by the higher authorities and there is no reason to find petitioner guilty of the charges as he had acted by the administrative command given by the superior authorities & if he had not complied with, he would have been found guilty of insubordination. He has complied with the directions given by the authorities orally and endorsement by them shows that all the charges which had been brought against the petitioner are frivolous and they are not substantiated. He has also made a grievance of violation of rule 180 that he was not given opportunity to present throughout the court of inquiry nor he was allowed to lead evidence or cross-examine the witnesses. He has also alleged that under rule 22 when the OC has twice recommended that no case is made out, therefore, he stands discharged and only for a minor omission he recommended that an administrative action may be taken that shows that he stands acquitted of all the charges. He also submitted that the OC 19

Rifles has not applied his mind properly as he received the chargesheet from the HQ and blindly signed it. He also pointed out that his work place was at Serchip which is godforsaken place and he had no opportunity to defend himself properly. No lawyer was prepared to appear for, therefore, he had no legal assistance. It is alleged that it was not a fair trial.

16. As against, learned counsel for the respondent has submitted that the petitioner is guilty of omissions and commissions and proper summary of evidence was recorded and OC 19 Assam Rifles applied his mind and rightly charge sheeted the petitioner. He also contested that it is wrong to say that there is no evidence in summary of evidence pertaining to charges 7 & 8, therefore, petitioner stood discharge under rule 37 of Army Rules. Likewise, he contested that it was not required to give him opportunity under rule 180 as it was only a fact finding mission and character/Military reputation of petitioner was not challenged. He also submitted that OC 19 Assam Rifles applied his mind and on the basis of that the petitioner was charged. It also submitted that OC was not the final authority to decide that what charges

are to be made out and what are not to be made out and whatever he said was commendatory, therefore, it does not amount to exoneration of the petitioner from all the charges and consequently he supported the findings of the court martial.

17. In order to appreciate all the contentions raised by the petitioner and respondent, it will be relevant to first examine that what were the charges. The 9 charges which were framed in the petition reads as under:

- (1) *Such an offence as is mentioned in clause (f) Section 52 of the Army Act with intent to cause wrongful gain to a person -Army Act Sec 52 (f)*
- (2) *In a certificate signed by him knowingly making a false statement - Army Act Sec 57(a)*
- (3) *An omission prejudicial to good order and military discipline - Army Act Sec 63*
- (4) *An omission prejudicial to good order and military discipline – Army Act Sec 63*
- (5) *An omission prejudicial to good order and military discipline - Army Act Sec 63*
- (6) *An omission prejudicial to good order and military discipline - Army Act Sec 63*
- (7) *An omission prejudicial to good order and military discipline - Army Act Sec 63*

(8) *An omission prejudicial to good order and military discipline Army Act Sec 63*

18. The Learned Counsel for petitioner challenged the convening of the court martial. The learned counsel submitted that the Director General AR is not competent to convene court martial.

Firstly, this argument was never raised by the petitioner before the court martial proceedings, therefore, he is precluded from raising this question on conclusion of this trial. However, by virtue of section 4, the Assam Rifles are covered by the provisions of the Army Act and Rules of Army. Hence, the Director General, Assam Rifles has been issued with the A-1 warrant by the Chief of Army Staff, and empowering DG to convene GCM and the petitioner was attached to the said purposes to 19 Assam Rifles under DG AR. Thus, this objection raised by the petitioner has no substance and the same is over ruled.

The second objection raised by the petitioner was that during Court of Inquiry under Rule 180, he was not permitted to appear

on all the proceedings and he was not given opportunity either to cross-examine the witnesses or to lead any evidence, therefore, the conduct of the whole court of inquiry was without jurisdiction and consequently the charge sheet based on that court of inquiry is also without jurisdiction. In this connection, learned counsel invited our attention to a decision of Supreme Court in the cases of :

(i) Major G.S. Sodhi Versus Union of India (1991 2 SCC 382)

(ii) UOI & Ors. Vs. Major A.Hussain (1998) 1 SCC 537

(iii) Maj.Gen. Inderjit Kumar Vs. UOI & Ors. (1997) 9 SCC 1

- *Decision given by Punjab & Haryana High Court in the case of G.S. Sandhu (Lt.Col.) Vs. UOI & Ors. 2002(2) SLR 120*
- *decision given by High Court in case of Lt. Gen. S.K.Dahiya Vs UOI & Ors. (Mil LJ 2007 Del 151)*
- *decision given by AFT, Principal Bench in the case of Major SS Chiller Vs. Union of India & Ors.(TA 246 of 2009).*

As against this, the learned counsel for the respondent submitted that the Court of inquiry was not against the petitioner as such, it was in nature of investigation to find out the so called placing of orders of spare parts and supplies of the repairs of the transport fleet. The petitioner's reputation or his character was not

impeached directly, therefore, there was no occasion to call the petitioner to attend personally or to permit him to give an opportunity to cross examine the witnesses. He appeared as a witness and after close of the court of inquiry, a tentative charge sheet was issued to the petitioner on the basis of summary of evidence and during summary of evidence petitioner had the full opportunity to cross-examine the witnesses and as such no prejudice has been caused to the petitioner.

19 After bestowing our best of the consideration to the submissions from both the sides, we are of the opinion that since in this Court of inquiry petitioner's reputation or character was not at all under doubt and it was a fact finding inquiry, therefore, it was not necessary to permit the petitioner to appear on day to day basis before the court of inquiry or to permit him to lead any evidence or to permit him to cross-examination of the witnesses. This was a fact finding mission.

20 In the cases which have been decided and referred to above clearly shows that, as and when the reputation and his character

of officer is under challenge, then he has right to be present throughout and he can be permitted to cross-examine the witnesses or he can be permitted to lead an evidence. But there was no such situation at that stage, it was only a fact finding mission, therefore, petitioner was not required to give any permission to cross-examine the witnesses or permit him to lead any evidence. All the cases which have been referred to above by the petitioner and by the learned counsel for respondent clearly shows that those are the cases in which the character and reputation of the incumbent was under challenge. Therefore, an opportunity was given to cross-examine the witnesses and lead an evidence. In the present case, the character or reputation of the incumbent was not directly under issue in the Court of inquiry, therefore, it was not necessary for to give the petitioner an opportunity to cross examine the witnesses or lead any evidence. Hence, this objection also has no legs to stand. Consequently, we overrule the same.

21. Learned counsel for petitioner submitted that so far as the charge nos.7 and 8 are concerned, they have been framed against the

petitioner when there was no evidence available in the summary of the evidence. Learned Counsel submitted that since there was no evidence against the petitioner, therefore, the framing of these charges were totally without jurisdiction. In this connection, learned counsel invited our attention to Rule 37 of the Army Rules which says that “there should be some evidence justifying the trial on those charges, and if it is not satisfied then incumbent can be released or refer the case to the superior authority”. In this connection, learned counsel for the petitioner has also submitted that twice or thrice the Commanding Officer of the petitioner recommended that charge nos. 1 to 4 and 8 are not made out on the basis of the evidence and only charge nos. 6 and 7 are made out but they are of trivial nature, therefore, they should not be taken into consideration or a administrative warning be issued.

22. Learned counsel for the petitioner supported this contention with reference to decision of the Supreme Court given in the case of *Raj Arora Vs. Union of India (AIR 2009 SC 1100)* and decision given by the coordinating bench of the Principal Bench in the

case of *Lt.Col. Jagmohan Singh Vs. Union of India & others* (TA No.442 of 2009)

23. As against learned counsel for the respondent submitted that the invoking of Rule 37 is totally misplaced. There is a sufficient evidence in the summary of evidence that petitioner has not followed the codal procedure for inviting the tenders and petitioner being the person who is dealing with day out and day in knows it too well that what the codal procedure means. The codal procedure means a proper regulated procedure has to be followed for inviting such tenders and that procedure has not been followed. Therefore, he has been found guilty. As such it is wrong to say that there was no evidence before the summary of evidence to prove the charge nos.6 & 7. So far as recommendation of CO is concerned that is simply recommendatory and he did not exonerate the petitioner. So much so the CO was produced by the defence in evidence and he has completely given go by and said that he has never exonerated the petitioner, but he only recommended to the higher

authorities that charges are not prima facie made out and some of the charges which are made out are of trivial nature.

24. It is true that under rule 37, if there is no evidence, then there is no gain saying that charges can be framed. If the evidence is not there, then there is no question of framing any charges whatsoever, but that is not the case here. It is admitted position that petitioner knew it very well that what is codal procedure. The codal procedure is whenever Govt. purchases are made certain financial requirement has to be followed like inviting proper tender & keeping in view DGS&D rates. He did not follow those norms. Therefore, he is guilty of charge nos.6 & 7 and he cannot seek exoneration on that account.
25. So far as the exoneration of the petitioner by the CO is concerned, sufficed it to say that CO is not the competent authority to exonerate the petitioner. CO himself has appeared in the witness box and admitted that this was his recommendation and it was not a case in which he has exonerated the petitioner fully. We have also read the three communications given by the

CO it does not fully exonerate the petitioner. It only says that no evidence is available and therefore the charges cannot be substantiated and he forwarded his recommendation to the higher authorities. No one can be better person than the CO himself who has written all the 3 communications to the higher authorities and has confessed in his evidence that it was only his recommendation and not full exoneration. Learned Counsel submitted that since recommendation of CO amounts to exoneration, therefore, he was acquitted under Rule 22 of the Army Rules, this amount to a bar under Rule 32(4). As already observed that recommendation of CO does not amount to exoneration, therefore, it is not acquittal of charges under Rule 22, therefore, the plea of bar under Rule 32(4) is not applicable. Hence, this argument of the learned counsel also has no substance, consequently to the same is dismissed. In this connection, learned counsel has invited our attention to decision of various decisions but none of them is applicable in facts & circumstances of this case.

26. So far as charge nos. 1, 4 and 6 are concerned, petitioner have already been exonerated, therefore, we did not pursue them. However, the Court Martial has found petitioner guilty on charge nos.2, 3, 5 & 9. So far as charge no.2 is concerned, the learned counsel for petitioner has invited our attention to testimony of DW-10 and statement of petitioner and submitted that the authorities has already sanctioned the amount that implies a financial sanction also and in this connection learned counsel has invited our attention to following decisions -

- (i) 2009 3 SCC (Cri) 977
- (ii) Vinayak Daultatrao Nalawade, Petitioner Vs. Core Commander & Ors. (1987 LAB I.C.862)
- (iii) G.S.Sandhu (Lt.Col) Vs. UOI & Ors.(2002(2) SLR 120
- (iv) Lt.Gen. S.K.Dahiya Vs. UOI & Ors.(Mil LJ 2007 Del 151)

27. On coming to the charge no.2 is concerned, the Court martial has found petitioner guilty after marshalling the relevant evidence and also gone through the notesheet and it found that administrative approval was accorded by the DDG Assam Rifles on 1.3.1995. However, accused has improperly and without sanction issued supply order on 20.2.1995 prior to getting administrative approval

& secured the goods. Court Martial found after perusing the para-6 of the notesheet with reference to the evidence of Brig. D.N.Rao, PW-2, the then Director (Admn.) who has deposed that necessary financial concurrence and administrative approval of competent financial authority before undertaking any procurement action is required to be taken. Same is the evidence of PW-2 Commandant C.S. Soni. It is also alleged that the delinquent knew it very well aware that TATA and DCM spare parts can be procured at DGS&D rates Contract list and Commandant G.S. Soni has deposed that prior to this also they were procured through DGS&D rate contract. The contention of the defence was also rejected by the court martial authorities that the orders were issued on account of verbal approval of the DDG AR and the notesheet which has been relied by the accused, same does not corroborate or reflect that any such oral approval was obtained. In this connection, learned counsel for the petitioner has taken us to the necessary evidence and submitted that on 1.1.1995, DDG AR has granted the sanction. Learned counsel has emphasized statement of DW-10 and we have gone

through the statement of DW-10 and it does not advance the case of petitioner. He also deposed that he was supposed to go to Guwahati along with the supply order but he did not go to Guwahati and some other person was sent to Guwahati and he further deposed that delinquent told him that the supply orders are signed after getting the sanction. However, he did not go to Guwahati and somebody else was sent to Guwahati. The statement that delinquent told him that he has obtained a sanction that does not take the case of delinquent any far. There is no sanction issued. Though delinquent in his statement has said it times and again that he did it at the instance of the directions given by the DDG AR, be that, as it may, fact remains that the law requires that one should not have place the orders to the tune of lakhs without administrative approval. Government orders involving financial liability has to be according to the norms laid down in the financial rules and regulations bearing on the subject.

28. Similarly, with regard to charge no.3. Findings of the Court Martial is that goods were received on 23.3.1995 and same were

certified on 24.2.1995. The explanation of DW-10 was that some articles were not upto the mark were rejected, though they were received later on but the payment was made earlier. It is submitted that since the CO in his communication (exhibit 2-3) said that this charge was not substantiated, therefore, it was submitted by learned counsel for petitioner that he is to exonerated and on same evidence this charge should not have been framed as such there was a breach of principle of double jeopardy. This argument also does not appeal to us at all and it is a fact that as already mentioned above that the communication of the CO was only recommendatory in nature and it does not amount to exoneration. The CO himself has come in the witness box and submitted that it was a recommendatory in nature. More so, the perusal of both these communications clearly shows that it was recommendatory and as such just because CO had written favourably that does not mean that he stands exonerated from the charge. Whereas, as per the evidence which has been produced by the prosecution clearly shows that on the basis of evidence Capt. PS Negi, PW-1 and Storekeeper SKT Kochar

PW-4 that certificates was issued by the delinquent. Therefore, this charge also stand proved on the evidence from the record and from the evidence it is established that the goods were received on 29.3.1995 and before 4.4.1995, but certificate was issued on 24.2.1995, by the time goods have not been received in the stores. Therefore, we don't find any ground to interfere with finding of court martial authority of this charge.

29. With regard to charge no.5, from the evidence on record as well as statement of PW-2 & 9 that on 1.3.1995 Capt. Rajgopal was the OC, 21 Field Workshop and was present in the office and delinquent had no authority to issue the supply orders on 1.3.1995 as officiating OC of 21 Field Workshop. This charge is fully substantiated from the evidence of the Lt.Colonel Pathak PW-3, Capt. Rajgopal and from the exhibit QQQ that at the relevant time the incumbent Capt. Rajgopal had already joined and delinquent had no business to preside over the board meetings as officiating OC and issue the orders. Consequently, this charge also stands proved.

30. Similarly charge no.9, it is also established from the evidence of PW-2, 4 and 9 that he could not have presided over the board for local purchases and it is also admitted fact that no formal sanction was issued to him for presiding over the board (Codal formality).
31. Lastly, it was submitted that the petitioner did not get a full opportunity being posting at Silcher. In this connection it may be relevant to mention here that the petitioner filed a writ petition in the High Court of Guwahati in which a grievance was made by him of his place of posting at Silcher and non availability of necessary legal assistance for prosecuting this case. That petition was rejected by the learned single judge.
32. Therefore, the grievance of the petitioner that he did not get full opportunity is also does not hold good and secondly as per proceedings petitioner first appeared through a counsel, then he changed second counsel and then ultimately he was given legal assistance of the army personnel as demanded by him. But

thereafter he did not press the services of that officer. Hence this grievance is also unfounded.

Consequently, we do not find any merit in this petition and accordingly dismissed. No order as to costs.

[Justice A.K. Mathur]
Chairperson

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

New Delhi
21st September, 2010