

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

**TA/302/09  
Writ Petition (C) no.5629/2008**

**MAJOR M.C.JHA  
MCTE-MHOW  
M.P.**

**THROUGH : MAJOR K. RAMESH, ADVOCATE**

**...PETITIONER**

**VERSUS**

- 1. UNION OF INDIA  
THROUGH SECRETARY  
MINISTRY OF DEFENCE  
NEW DELHI-110 011.**
- 2. CHIEF OF ARMY STAFF  
THROUGH ADJUTANT GENERAL (ADG DV)  
ARMY HEADQUARTERS  
NEW DELHI-110 011.**
- 3. THE GOC-IN-C  
HQ CENTRAL COMMAND  
LUCKNOW CANTT, U.P.**

**THROUGH : DR. ASHWANI BHARDWAJ, ADVOCATE**

**...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 : 22.03.2010**

**1. This petition has been brought for quashing the order of the Chief of Army Staff dated 17.04.2008 whereby passed the Censure order of ‘Severe Displeasure’ (Recordable) as being illegal and arbitrary, not substantiated by any evidence on record. Simultaneously prayer has also been made to issue appropriate directions to the authorities concerned to promote him to the rank of Lieutenant Colonel (Time Scale) with effect from 13.06.2006 (on completion of 13 years of service by law) with ante dated seniority, service and pay and allowances with its arrears thereof. It is contended by the petitioner that on 01.07.2003, school bus of Imperial Academy, Indore was set on fire near Golf View Quarters Mhow and in that incident Sh. Dalip Singh Solanki S/o. Bheru Lal Solanki, Driver of the bus sustained burn injuries. Station Head Quarter Mhow vide Convening Order dated 03.07.2003 set up the Court of Inquiry to investigate the circumstances under which Major Mithilesh Chandra Jha (who is herein the petitioner) had allegedly set fire to the school bus. On the basis of Court of enquiry, disciplinary action was initiated against the petitioner for illegally stopping the bus of Imperial Academy at about 0700 hours on 01.07.2003 near Golf View Quarters, Mhow on Nation**

Highway (AB Road) and sprinkling petrol inside the bus and setting it to fire. The petitioner was tried by the General Court Martial (GCM) on two charges viz. (i) for attempting to murder after sprinkling petrol on one Sh.Dalip Singh Solanki and igniting the fire (ii) committing mischief for setting the school bus on fire. The petitioner was tried by General Court Martial (GCM) which found him 'not guilty' on both the charges. The findings of the General Court Martial (GCM) appeared to be unexpected by the confirming authority who changed the Judge Advocate and ordered revision/reconsidering of the findings and sentence. The Court Martial re-assembled and after due evaluation of all the evidence on record again returned the finding of acquittal on both the charges. The proceedings again went to the Confirming Authority who in violation of the arrangement under section 153 of Army Act instead of confirming those findings, illegally and improperly awarded censure of 'Severe Displeasure' (Recordable). Such awarding of punishment was even otherwise not proper for the offence attempt to murder, if conceived by him.

**2.** It is next contended that the General Court Martial (GCM) found no evidence against the petitioner to fix his culpability on the aforesaid two charges. The superior authority could not have withheld

confirmation in the given circumstances when on remand again that finding of acquittal was returned by General Court Martial (GCM). The Army Authorities are well within their powers to take administrative action before confirmation but such powers could be resorted under section 19 of the Army Act R/w. Army Rule 14 only where the materials on record including the evidence justify such action. There was no evidence on record or any relevant material available on which action can be sustained. Other grounds of his suffering with serious ailments have also been referred which is no longer relevant for the purposes of disposal of this petition as the petitioner has already been posted to the place desired by him.

**3.** This petition is resisted on behalf of respondents contending that in the Court of Enquiry, involvement of the petitioner was found for committing mischief by sprinkling petrol at the school bus resultantly causing damage to the bus and burn injuries to the Driver. The petitioner was tried by the General Court Martial (GCM) for the two charges. The General Court Martial (GCM) on 11.02.2005 found the petitioner to be 'not guilty' for both the charges. Again, pursuant to the revision orders passed by the GOC HQ MB Area dated 24.05.2005, the General Court Martial (GCM) re-assembled on 26.05.2005 and again found no evidence

worth credence to find the petitioner guilty for both the offences for which he was charged. The matter was again referred to the GOC HQ MB Area for promulgation of the order. The authority did not confirm the General Court Martial (GCM) findings and took up the action u/s.19 of the Army Act R/w. Army Rule 14 after serving Show Cause Notice to the petitioner. The impugned order of 'Severe Displeasure' (Recordable) was on the basis of Show Cause Notice given to the respondent and after considering his reply and other materials.

**4.** The material point arises for consideration is as to how far disciplinary action/administrative action u/s.19 of the Army Act R/w. Army Rule 14 was permissible on the same evidence which was evaluated by the General Court Martial (GCM) two times and found to be deficient, to fix the culpability of the petitioner for attempt to murder and for causing mischief by sprinkling petrol on the school bus. In such admitted situation when two times findings of acquittal were returned by the General Court Martial (GCM), what were the factors before the authorities for taking administrative action u/s.19 of the Army Act R/w. Army Rule 14. It shall be useful to extract the Show Cause Notice dated 20.04.2007 relevant to the extent as under:

*AND WHEREAS, the entire record is indicative of your culpability for the following acts:-*

- (a) That you improperly stopped the bus of Imperial Academy at about 0700 hrs on 01 Jul 2003 near Golf View Quarters, Mhow on AB Road.*
- (b) that you, at Mhow, on 01 July 2003, set Shri Dilip Singh Solanki son of Shri Bhure Lal Solanki on fire, after sprinkling petrol over him, resulting in grade-1 burn injuries to him.*
- (c) That you, by setting on fire, the School Bus registered no. MP 09 K 3225 belonging to Imperial Academy, Indore caused damage to the said vehicle.*

*AND WHEREAS, a careful and holistic analysis of the evidence contained in the General Court Martial Proceedings in your respect reveals that there is cogent and reliable evidence on record against you which establishes your blameworthiness in respect of both the charges on which you have been declared 'Not Guilty' by the General Court Martial against the weight of evidence. As such, the findings of 'Not Guilty' arrived at by the court in respect of both the charges are perverse being against the weight of evidence and therefore could not be confirmed.*

*AND WHEREAS, your further trial under the provisions of Army Act Section 160 read with Army Rule 68 is impracticable. However, in view of the clinching evidence available on record, it is well established that these acts were committed by you. The above facts were placed*

*before and carefully considered by the Chief of the Army Staff.*

5. The Show Cause Notice itself refers the background persuading the authority to resort to the provisions of Section 19 of Army Act. It was also mentioned in the Show Cause Notice that the petitioner was acquitted for both the charges when the General Court Martial assembled two times but the findings of General Court Martial were adjudged by the administrative authority to be perverse as having ignored the clinching evidence available on record. There is no dispute on the point that the COAS under Section 19 of Army Act R/w. Army Rule 14 is competent to initiate administrative action before confirmation of the GCM proceedings. In that regard reliance may also be placed on the case of *Union of India Vs. H.S.Sandhu (2001) 5 SCC pg.593*, wherein the following view was enunciated by the apex court:

*The delinquent officer cannot be allowed to escape the consequences of his misconduct solely because court-martial proceedings have been adjudged illegal or unjust for the second time. The power under section 19 read with Rule 14 shall be available to be exercised in such a case though in an individual case the exercise of power may be vitiated as an abuse of power. The option to have a delinquent officer and sentence having been returned for or against the delinquent officer by the Court Martial for*

*the second time, on just and legal trial, ordinarily such finding and sentence should be acceptable so as to be confirmed.*

6. But the main question which needs thoughtful consideration is as to how far the authority concerned on its own assumption can proceed to indict an individual in an administrative enquiry, despite the fact that whatever complaint was before it was found to have been unsubstantiated in the General Court Martial (GCM) and when there was no other evidence before the authority, therefore, it was no longer open to him to initiate administrative action. Under Section 19 of the Army Act he may take administrative action but for that purpose, the authority concerned should have referred certain exceptions and circumstances/ evidence as appearing against the petitioner. These circumstances such as (a) where the finding recorded by General Court Martial (GCM) for acquittal of the petitioner was based on incomplete record or; (b) on improper appreciation of the evidence or; (c) finding/order which was recorded by the General Court Martial (GCM) was manifestly absurd, unjust, perverse or; (d) where new facts which could not with reasonable diligence has been brought on record in GCM proceedings.



7. It is contended by the learned counsel for the petitioner that in the Show Cause Notice there is no inkling that the finding of acquittal recorded by General Court Martial (GCM) was manifestly absurd, unjust and is based on improper appreciation of evidence. Merely on suspicion, the petitioner was punished arbitrarily by way of 'Severe Displeasure' (recordable). Before the General Court Martial (GCM), there is no convincing testimony of the eye witnesses to show that the petitioner had sprinkled petrol on School Bus.

8. Under such circumstances, the suspicion of the authority however strong cannot be allowed to take the place of proof. So, therefore, the Tribunal has to judge watchfully and ensure that the conjectures and suspicions do not take place of legal proof. [See ***Ravinder Singh Vs. State of Himachal Pradesh AIR 2010 SCC Pg.199 (Para-12)***]. The question remains as to what is the evidence which was found by the COAS for administratively punishing the petitioner. It has also been submitted by the learned counsel for the petitioner that even no attempt was made by the authority concerned to see additional evidence so as to hold the petitioner guilty for his misconduct for which he was punished. However, from the side of the respondents it is contended that the acquittal was recorded by the General Court Martial (GCM) on misconception of law and findings were patently absurd, unjust and

perverse and even the appreciation of the evidence was also not properly made. In that regard the Revision Order was also referred giving reference to the statement of the witnesses which may be summed up as under:

From the evidence it is established that the accused was present at Mhow at the fateful day.....Statement of Sh. Ramesh Mishra and Sheetu Luthra (PW7 and PW12 respectively) have not been contradicted.....there was telephone conversation between the accused, PW7 and PW12 on the issue of non clearance of the salary dues of Mrs. Illa Phatak (wife of the petitioner) by the school authorities where she was working as a teacher..... the accused have threatened them that if the payments are not cleared they would face the consequences within 24 hours. Dilip Singh PW8 gave the statement before the Police authorities and the Court of Inquiry and also in the Summary of Evidence that the accused entered in the said bus and sprinkled petrol. Identical statement was given by Sh. Mukesh Chauhan PW11.....such circumstantial evidence was not taken into consideration.....moreover the inference was not drawn from the testimony of the witness who turned hostile.

**9.** There is no dispute on the point that the General Court Martial (GCM) proceedings were not set aside by the GOC-in-C nor the findings were confirmed but the inevitable result would remain that whatever the evidence was recorded on oath that would continue to be evidence in this case against the petitioner. It shall not become non-est merely because the findings were not confirmed by the authorities. Under such circumstances that evidence was also evaluated.

**10.** PW1 Sh. Sanjay Mishra remained confined that his two sons were studying in Imperial Academy, Khandwa Road, Indore. On 01.07.2003 at about 0730 hours his wife received message that school bus had been set on fire. He was subsequently told that his children had reached safe at the house. He reached at the place of occurrence and thereafter took the driver and cleaner for medical aid. He also saw the burn injuries sustained by the Driver. He is not an eye witness of the incident. Further there is no reference that the accused committed that mischief. PW2 Aman Mishra is a child witness studied in 7<sup>th</sup> Class and he was capable to understand the question. He made it clear that one “Uncle” came on a motorcycle and entered into the school bus and told something to the Driver and started abusing and beating the driver. He was having a plastic bag with a bottle of petrol which he sprinkled in the bus and set it

on fire. He recollected that “Uncle” who sprinkled petrol did not resemble with the accused. This witness could not fix the identity of the accused. PW3 Amrit Singh who was also the student in Class XI stated that the person sitting in the court was not the person who had committed that mischief. Identical is the statement of PW4 Aviral Pandey who is also the student and also travelling in that bus. The material witness Sh.Dilip Singh Solanki PW8 who was the Driver of the bus made the narration of the incident and told that one person boarded the bus and sprinkled petrol but he could not identify that person. This witness was also cross examined with his earlier statement for which exquisite reason had been given that he was made to sign on blank papers and that statement identifying the accused was not given by him. There is no evidence of the eye witness showing the involvement of the accused. However certain other witnesses namely, PW5 Sh.Dhruv Kumar Tiwari who was working as a Manager in that School, PW6 Sh. Sushil Kotwale who was at that time Estate Officer, Indore were examined who however, remained confined with regard to the altercations which had taken place between the accused and the College Management for clearing the salary dues of the wife of accused otherwise they had to face dire consequences. This is said to be the circumstance appearing against the accused. As has already been mentioned that against the accused such circumstances of altercation or giving challenge would not be sufficient. There must be a chain of

evidence so as to lead to reasonable ground consistent with the innocence of the accused. There is nothing to show from that evidence that in the given circumstances of the case when the accused was insisting for the clearance of salary dues of his wife, with in all human probabilities the act must be done by him. The various links and the chain are incomplete. From such circumstances alone conclusion of the guilt cannot be drawn. Reliance may be placed on *Aftab Ansari Vs. State of Uttranchal (2010) 2 SCC page 583*.

**11. In view of the aforesaid discussion, the impugned order for censuring the petitioner by way of ‘severe displeasure’ (recordable) is not legally sustainable. The appeal is allowed and the impugned order is set aside.**

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

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

**PRONOUNCED IN OPEN COURT**  
**ON 22<sup>nd</sup> MARCH, 2010**