IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

T.A NO. 343 OF 2010
(WRIT PETITION (CIVIL) NO. 5957 OF 2002)

WG. CDR. AJIT SINGH .. APPELLANT

V.

UNION OF INDIA AND OTHERS .. RESPONDENTS

ADVOCATES

M/S. K. RAMESH & ARCHANA FOR APPELLANT
M/S. A.K BHARDWAJ & JAGRITI SINGH FOR RESPONDENTS

CORAM

HON'BLE MR. JUSTICE S.S KULSHRESTHA, MEMBER
HON'BLE LT. GEN. S.S DHILLON, MEMBER

J U D G M E N T
01.09.2010

1. Challenge in this petition, which was filed before the Delhi High Court under Article 226 of the Constitution of India, is directed against the order dated 9.9.1999 passed by the General Court Martial (GCM), whereby

reversing its earlier order, held the petitioner (Wg. Cdr. Ajit Singh) guilty under Section 62(a) of the Air Force Act, 1950 (the Act, for brevity) of having destroyed an aircraft belonging to the Government of India without reasonable excuse and sentenced him to (i) forfeit service for three months for the purpose of increased pay and pension; and (ii) severe reprimand.

2. On formation of this Tribunal, the above writ petition has been transferred for disposal. Under Section 15 of the Armed Forces Tribunal Act 2007, appeal lies against any order, decision, finding or sentence passed by a Court Martial or any matter connected therewith or incidental thereto. Therefore, by virtue of Section 15, this Tribunal has full appellate power against the order of the Court Martial like a Court of Appeal. Since, in this case, the petitioner challenged the conviction by Court Martial by filing a writ petition, which has been remitted to this Tribunal, the same has been converted into an appeal under Section 15.

3. The facts leading to the case in a nutshell are: In 1979, the appellant was commissioned in the flying cadre of the Indian Air Force. The appellant is a qualified officer within his sphere of activities and recipient of several awards. During the year 1996, a mid air collision occurred at the local flying area of Air Force Station, Adampur. The appellant's aircraft was

damaged and he had to eject. A court of inquiry was ordered into the alleged accident. After completing the summary of evidence, a General Court Martial was convened, wherein the appellant was held "not guilty" of the following charges, for which he was tried:

FIRST CHARGE
Section 62(a) AF Act, 1950

WITHOUT REASONABLE EXCUSE DESTROYING AN AIRCRAFT BELONGING TO THE GOVERNMENT

in that he,

on 26 Dec 95, being the captain of MIG-23 aircraft No.MS-3270, while flying as bouncer to Bismark formation in the local flying area of 8 Wg, AF, without reasonable excuse, having no visual contact, attempted to climb through the declared level of Bismark-II, leading to mid air collision with MIG-23 aircraft No. SK-436 being flown by then Sqn Ldr G Chand (16214) F(P) of 224 Sqn, AF, resulting in crash of both the said aircraft belonging to the Government, causing loss to the extent of Rs.9,74,40,674/- (Rupees nine crore seventy four lakhs forty thousand six hundred and seventy four only).

SECOND CHARGE
Section 62(d) AF Act, 1950

NEGLECT IN FLYING AIRCRAFT CAUSING LOSS OF LIFE

In that he,

On 26 Dec 95, while negligently flying aircraft as stated in the particulars of the first charge, caused the death of Miss Monica, aged about 5 years and Master Shiv Kumar, aged about 9 months, children of Shri Santokh Raj, residents of village Pensara, Tehsil Garhshankar, Distt Hoshiarpur, Punjab, due to the fall of the crashed aircraft.

THIRD CHARGE
Section 62(d) AF Act, 1950.

NEGLECT IN FLYING AIRCRAFT CAUSING BODILY INJURY TO A PERSON

in that he,

On 26 Dec 95, while negligently flying aircraft as stated in the particulars of the first charge, caused bodily injuries to Smt Maya Devi, aged 35 years, W/o Shri Hardial, resident of Village Pensara, Tehsil Garhshankar, Distt Hoshiarpur, Punjab, on her both lower limbs and left arm, due to the fall of the crashed aircraft.

Subsequently, on 8.9.2000, the GCM re-assembled pursuant to the orders of the then Air Officer Commanding in Chief, Western Air Command for reconsidering the findings and sentence. Next day, i.e. on 9.9.2000, the GCM revoked its earlier findings and held the appellant guilty of Charge No.1 and not guilty of Charge Nos. 2 and 3. The appellant was awarded the sentence of forfeiture of three months of service for the purpose of pay and pension

and to be severely reprimanded. On 16.10.2000, a petition was filed by the appellant before the confirming authority to review the findings and sentence of the GCM. On 24.11.1999, a statutory petition was filed by the appellant under Section 161(2) of the Act to the Chief of Air Staff (COAS), which was rejected. On 16.11.2000, the appellant submitted a representation to the Central Government under Section 162 of the Act, which was rejected. Hence the present appeal.

4. Counsel for the appellant has contended that the GCM, after taking into consideration all the materials and the evidence on record, both oral and documentary, found that the prosecution could not establish any of the charges levelled against the appellant and acquitted him thereof. But, subsequently, under the garb of powers under Section 159 of the Act, the confirming authority, arbitrarily and without making correct appreciation of the evidence, remanded the matter to the GCM for reconsideration making certain observations. The GCM, swayed by the observations made by the confirming authority, altered its earlier findings by a laconic order, which is against all canons of justice. Furthermore, the subsequent findings were not based on any new evidence, but with the very same evidence adduced earlier, it held the appellant guilty of Charge No.1. Even if the evidence

adduced by the prosecution is taken on its face value, it would not make out any case against the appellant. If the GCM wanted to alter its earlier findings, it should have been supported by reasons.

5. The appeal is resisted by the respondents contending, inter alia, that the claim of the appellant of not being responsible for the accident is without any evidence. On the other hand, the evidence adduced by the prosecution proved the negligence on the part of the appellant. On 26.12.1995, the appellant was flying as bouncer to Bismark formation carrying out two ac LLT mission in the local flying area. During the flight, he met with a mid air collision with Bismark 2, a MiG 23 aircraft flown by then Sqn Ldr G. Chand, which resulted in the crash of both the aircraft. Due to the fall of debris of the crashed aircraft and in the fire that followed, two children died and one woman sustained serious injuries. Based on the findings of court of inquiry and summary of evidence, the appellant was tried for three charges under Sections 62(a) and (d). The appellant pleaded not guilty to all the charges. The GCM found him not guilty of all the charges. But, the confirming authority viz. AOC-in-C HQ WAC, IAF, having found that the findings of the GCM were against the weight of evidence, ordered revision of the findings under Section 159 of the Act read with Rule 77 of the

Air Force Rules, 1969. The GCM, on the basis of the observations made by the confirming authority, revoked its earlier findings and held the appellant guilty of Charge No.1 while exonerating him of Charge Nos. 2 and 3. The aforesaid findings were confirmed by the CAS on 14.10.1999.

6. The first and foremost argument advanced by the counsel for the appellant is that when the matter was remitted to the GCM by the confirming authority, it ought to have taken additional evidence and to have considered the reply of the appellant. On the very same evidence, which were evaluated by them to be insufficient to hold the appellant guilty of all the three charges, how and on what basis the GCM found the appellant guilty of Charge No.1. This would indicate that the subsequent decision was taken by the GCM on the basis of the observations made by the confirming authority while remitting the matter. In other words, the GCM was swayed by the observations made by the confirming authority.

7. It is an admitted fact that the GCM initially was of the view that the three charges levelled against the appellant had not been proved. As the order of the GCM required confirmation, the same was sent to the confirming authority, which, after referring to the statements of the witnesses, remitted the matter to the GCM by stating that these aspects of

the case had not been considered properly. However, it was made clear by the confirming authority at the outset that the observations made by him should not in any way interfere with the discretion of the members of the GCM while passing orders on reconsideration of the matter. On 8.9.1999, when the matter came up for reconsideration, the GCM marked the order of the C-in-C WAC as Exhibit 'AD' and on being asked whether he would like to address the Court, the appellant sought time. The next day, i.e. on 9.9.1999, when the GCM re-assembled, the defending officer handed over Exhibit 'AF' written reply signed by the Judge Advocate. But, without taking into account the reply and the evidence, the GCM made a laconic order revising its earlier findings, which reads:

> "**The Court having attentively considered the observations of the confirming authority, and the whole of the proceedings:**
>
> **does now revoke its findings and finds that the accused is not guilty of the second and third charge but is guilty of the first charge**."

In the facts of the present case, we do not understand why the revisional authority highlighted some of the statements of the witnesses and failed to indicate certain features of the case, including the statements of other

witnesses, which were required to be considered by the members constituting the GCM. Though the appellant was afforded an opportunity to address the GCM and pursuant thereto a written note was submitted by him, the GCM failed to give a reasoned order. To the contrary, the GCM noted in the so called finding that it considered the observations of the confirming authority. From this, it would be clear that the GCM was swayed by the observations made by the confirming authority while remitting the matter.

8. Relying on the decision of the apex Court in **Union of India and others** v. **Capt. A.P Bajpai** (1998(4) SCC 245), it was submitted by counsel for the respondents that the confirming authority was well within its authority to have recorded reasons which required reconsideration afresh, but that would not be construed to mean that the GCM would be swayed by such observations, especially when it was made clear that such observations were not in the nature of causing any interference. In **Capt. Bajpai's case** (supra), the GCM held the appellant therein guilty after revoking its earlier findings. We notice that the findings recorded in **Capt. Bajpai's case** (supra) were not based on the observations made by the confirming authority, as in the present case. In an identical matter, in **Ex. Lt. Jagdish Pal Singh** v. **Union of India and others** (AIR 1999 SC 1578), the apex Court refused to interfere

with the order of the GCM holding that it was a reasoned order. In the present case, the GCM failed to give a reasoned order and no reference was even made in the order about written note submitted by the appellant. It is the settled legal position that the conclusions arrived at or the order passed by the Court must be seen to be logical and tenable within the framework of the law and it should not incur and justify on the basis of the observations of the confirming authority. It is essential to keep the legal reasoning to arrive at legitimate conclusion. In this regard, it would be appropriate if the provisions of Section 159 of the Act and Rule 77 of the Air Force Rules are referred to. They read:

> **Section 159 of the Air Force Act**
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> **Revision of finding or sentence**.—(1) Any finding or sentence of a court-martial may be once revised by order of the confirming authority and on such revision, the court, if so directed by the confirming authority, may take additional evidence.
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> (2) The court, on revision, shall consist of the same officers as were present when the original decision was passed, unless any of those officers are unavoidably absent.
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> (3) In case of such unavoidable absence the cause there of shall be duly certified in the proceedings, and the court shall proceed with revision, provided that, if a general court-martial, it shall consists of five officers, or, if a summary general or district court-martial, of three officers.

Rule 77 of the Air Force Rules

Revision.—(1) Where the finding or sentence is sent back for revision under section 159, the court shall re-assemble in open Court, the revision order shall be read and if the court is directed to take fresh evidence, such evidence shall also be taken in open Court. The Court shall then deliberate on its findings in closed Court.

(2) Where the finding is sent back for revision and the court does not adhere to its former finding, it shall revoke the finding and sentence, and record a new finding, and if such new finding involves a sentence, pass sentence afresh.

(3) Where the sentence alone is sent back for revision, the court shall not revise the findings.

(3A) The accused shall, if he so desires, be allowed to address the court before the court closes for deliberating on its findings or the sentence.

(4) After revision, the presiding officer shall date and sign the decision of the court, and the proceedings, upon being signed by the judge advocate, if any, shall be at once transmitted for confirmation.

A combined reading of the aforesaid provisions would make it clear that court-martial is under obligation to record a new finding if it does not adher to its earlier finding. In this case, no deliberation appears to have been made on the statements of the witnesses and on the written notes made by the appellant. Therefore, there is no basis for arriving at the new finding except

the observation made by the confirming authority. No reasons were assigned in support of the inference drawn. To the contrary, it appears that the altered finding is based on the observations of the confirming authority, which means the GCM has not independently exercised its jurisdiction. Merely altering the finding and holding the appellant guilty of Charge No.1 without giving any reason whatsoever is not legally sustainable. It is trite that the judicial order must be supported by reasons. Thus the GCM was under obligation to give its reasons while altering the finding and exercise of judicial powers by a judicial forum is to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration of justice delivery system to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requirement of principles of natural justice. In the present case, as has already been stated, it is not clear as to why the GCM altered its earlier findings and what were the factors or evidence persuaded the GCM for altering its findings. As held by the apex Court, “reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, it becomes lifeless. Reasons substitute subjectivity by objectivity. Absence of reasons renders the order indefensible/unsustainable particularly

when the order is subject to further challenge before a higher forum (vide **Raj Kishore Jha** v. **State of Bihar and others** – AIR 2003 SC 4664; **Vishnu Dev Sharma** v. **State of U.P and others** – 2008(3) SCC 172; **Steel Authority of India Ltd** v. **Sales Tax Officer, Rourkela I Circle and others** – 2008(9) SCC 407; **State of Uttaranchal and another** v. **Sunil Kumar Singh Negi** – AIR 2008 SC 2026; **UPSRTC** v. **Jagdish Prasad Gupta** – AIR 2009 SC 2328; **Ram Phal** v. **State of Haryana and others** – 2009(3) SCC 258; **Mohammed Yusuf** v. **Raij Mohammed and others** – 2009(3) SCC 513; and **State of H.P** v. **Sada Ram and another** – 2009(4) SCC 422). The GCM has not given any reason to arrive at the conclusion and also for rejecting the reply given by the appellant after the remittance of the case to the GCM.

9. The impugned order, besides being cryptic, suffers from the basic infirmity of non-application of mind and non-speaking order in law. This ground need not detain us any further as even in other cases where non-speaking orders were passed, the apex Court set them aside.

10. In view of the aforesaid discussions, we are constrained to set aside the impugned order and remand the matter to the GCM for hearing the case from the stage it was remitted by the confirming authority. The GCM shall, however, be at liberty to take additional evidence and to afford

audience to both the parties, if considered necessary, and to decide the case in accordance with law.

11. Since this case pertains to the year 1999 and there remains a possibility of availability of all the Members of the original GCM, the competent authority may substitute the members in the existing GCM, if not available or re-constitute GCM for the purpose.

(S.S DHILLON)
MEMBER

(S.S KULSHRESTHA)
MEMBER