

TA NO. 380 OF 2009

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

**TA NO. 380 OF 2009**  
**(WRIT PETITION (CIVIL) NO.6085 OF 2007)**

**COL. H.S YADAV (RETD), S/O. SHRI BADLU RAM  
R/O. HOUSE NO. 47/17A  
GURGAON - 122001.**

**THROUGH : MS. JYOTI SINGH, ADVOCATE**

**...APPELLANT**

**VERSUS**

- 1. UNION OF INDIA THROUGH SECRETARY,  
MINISTRY OF DEFENCE, SOUTH BLOCK,  
NEW DELHI-110 011.**
- 2. CHIEF OF ARMY STAFF,  
INTEGRATED HQ OF MOD (ARMY)  
SOUTH BLOCK, NEW DELHI-110 011.**
- 3. ADJUTANT GENERAL,  
DV BRANCH,  
INTEGRATED HQ OF MOD (ARMY)  
SENA BHAVAN, NEW DELHI - 110001.**
- 4. GENERAL OFFICER COMMANDING  
HEADQUARTER DELHI AREA  
DELHI CANTT. - 10.**
- 5. COMMANDANT 11 GORKHA RIFLES,  
REGIMENTAL CENTRE  
C/O 56 APO.**

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6. COMMANDANT CENTRAL  
ORDNANCE DEPOT, DELHI CANTT. – 10.

THROUGH : LT COL NAVEEN SHARMA

...RESPONDENTS

CORAM :

HON'BLE SH. S.S.KULSHRESTHA, MEMBER  
HON'BLE SH. S.S.DHILLON, MEMBER

JUDGMENT

09.04.2010

1. This writ petition has been filed by the petitioner to quash the show cause notice dated 26th July 2007 as well as the Army HQ letter of 9th August 2007, whereby the respondents seek to invoke Section 123 of the Army Act to attach the petitioner with the Army, even after his retirement, in order to pursue disciplinary action against him. The petitioner seeks a direction to the respondents to withhold the disciplinary proceedings, if any, against him.

2. Having been commissioned in the Army Education Corps on 10<sup>th</sup> June 1978 and having served for 29 years, on the eve of his retirement



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on 31<sup>st</sup> July 2007, the respondents have chosen to harass the petitioner by issuing him a show cause notice on very flimsy and unsustainable grounds and also to attach him with the Army, so that disciplinary action could be taken against him. The petitioner, during his unblemished service of 29 years, has served in various prestigious appointments in the Education Field which include five years as an Assessor in Service Selection Board, another five years as an Instructor at the Indian military Academy, Dehradun and for three years as an Instructor at the College of Military Engineering at Pune.

3. The petitioner contends that the present incident stems from his move on temporary duty from Lucknow to Delhi on 11 Sept. 2006, wherein he was detailed for cipher courier. At this point of time, the petitioner was posted at Lucknow. Along with one JCO and two NCOs, the petitioner reached New Delhi Railway Station at 1100 hours on 11<sup>th</sup> September 2006 and thereafter deposited the cipher boxes with the Army HQs, ensured the safe custody of the arms and ammunitions of his party at the Army HQ Kote and proceeded to his house in Gurgaon. The next day, i.e. 12<sup>th</sup> September 2006, the petitioner reached the Army HQ Camp at 0830

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hours under his own arrangements and that approximately at 0930 hours he, accompanied by his escort party of one JCO and two NCOs went in a military vehicle to Sena Bhavan to collect the fresh cipher documents. Enroute, they transited through HQ 35 Infantry Brigade where the petitioner met Col. Naresh Yadav, who, at that point of time, was officiating as Deputy Commander of the Brigade, in addition to his own duties as Officer Commanding the GL Section. Thereafter, they proceeded to the cipher centre of Army HQs and collected the cipher documents. The petitioner states that he remained in the cipher centre till 1700 hours and in the interregnum period, he had only sent his escort party to the Army HQ Camp to have their meals and bring their weapons. However, the petitioner continued to remain at the cipher centre. At 1700 hours, they proceeded to the Railway Station and moved to Lucknow with the cipher documents.

4. A letter was sent by HQ 22 Infantry Division to the unit of the petitioner on 29<sup>th</sup> Sept. 2006, informing them that a case of fraudulent use of Railway warrant had come to light wherein the warrant bearing No. 01CC53900 had been scanned and issued under the seal of Deputy





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Commander, 35 Infantry Brigade GS (Education) and that the name of Col H S Yadav (the petitioner) figured in the complaint. The petitioner was called upon by his CO to explain his case with regard to the use of the fraudulent warrant. The petitioner gave a written statement stating that he had no knowledge regarding the use/misuse of the Railway warrant. The petitioner also clarified that while his wife's name i.e. Mrs. Saroj Yadav, was mentioned in the warrant, he had nothing to do with this and in actual fact, his wife had never travelled on the said warrant or on the said date and had performed the journey on 30.9.2006 on Form D No.02DD569885 issued by 11 Gorkha Rifle Regimental Centre. After his CO, who was the Commandant of Gorkha Rifle Regimental Centre, satisfied himself that nothing wrong had been found against the petitioner he accordingly replied to HQ 22 Division on 11.10.2006.

5. The issue continued to linger on and a few months short of his retirement, a Court of Inquiry was convened on 11.11.2006 by HQ Delhi Area to go into the circumstances of issue of the fraudulent warrant. The petitioner was called as a witness before the Court of Inquiry on 14.12.2006.

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While the petitioner reached Delhi on 14.12.2006, he did not participate in the Court of Inquiry. He wrote a letter to the Presiding Officer of the Court of Inquiry asking for various documents and clarifying that he would only attend the Court of Inquiry after these documents were given to him. The Presiding Officer of the Court of Inquiry on 15.12.2006 clarified verbally and in writing to the petitioner that he (the Presiding Officer) was not obliged to give any documents to the petitioner and that the petitioner should make himself available to the Court of Inquiry and in fact, he should attend the recording of statement of all witnesses since Army Rule 180 was being applied. However, the petitioner persisted with the stand that he would not attend the Court of Inquiry proceedings in the absence of the documents demanded by him. The Court of Inquiry re-assembled on 9.1.2007 for recording additional statements and in this inquiry, the petitioner was examined as Witness No. 1. During this recording, the petitioner clearly brought out that on 12<sup>th</sup> September 2006 he was in Sena Bhavan between 1010 and 1700 hours in the Cipher Centre and this could be verified from the Entry/Exit Register of the Sena Bhavan. He contends that such entry/exit register being a confidential document could not be produced by the petitioner. The



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petitioner also stated in the Court of Inquiry that the original warrant was intact in the warrant book and was in the safe custody of the custodian i.e. Col Naresh Yadav, who had clearly stated that the warrant book in which this warrant was contained had not been tampered with. Col Naresh Yadav had also stated that he had kept the keys of the cupboard in his personal custody and that he was personally issuing warrants and that he had never handed over the keys to anybody else. On conclusion of this Court of Inquiry, of which no copy was given to the petitioner, the petitioner presumed that he had clarified the situation and the case had been closed. However, on 7.5.2007, the petitioner was again called to Delhi wherein he was attached to Ordnance Depot, Delhi and his CO carried out the hearing of charge under Army Rule 22. The petitioner contends that even this hearing was a sham and no witnesses were called and it was a mere formality which the Commandant, COD indulged in. On completion of the hearing, a tentative charge sheet was prepared on the same day, wherein the petitioner was charge sheeted under Section 52(f) of the Army Act with allegedly procuring a Railway ticket costing Rs.2780/- by producing a forged Railway warrant with an intend to defraud.



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6. The authorities further proceeded to record the Summary of Evidence under Army Rule 23 and during such recording, the petitioner cross examined the witnesses and clearly brought out through evidence that in fact the petitioner was not the person who had gone to the Railway Station and misused the warrant. The proceedings of the Summary of Evidence amply clarified that the petitioner could not be blamed. No copy of the Summary of Evidence has been given to the petitioner till date. The petitioner alleges that realizing that he was not blame worthy, the respondents suddenly changed their mind about pursuing with the disciplinary proceedings, and instead decided to initiate administrative action against the petitioner. Accordingly, a show cause notice was issued to the petitioner on 26.7.2007 to show cause as to why administrative action should not be initiated against him. In response, the very next day itself, i.e. 28.7.2007, the petitioner submitted an interim reply to the show cause notice pointing out that the Summary of Evidence, in which he had been found innocent, was not referred to in the show cause notice and that only the Court of Inquiry proceedings had been referred to in the SCN. He termed





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this as grossly illegal and asked for a copy of the Summary of Evidence. The petitioner retired on 31.7.2007 and no action, either disciplinary or administrative, was taken against him. However, on 9.8.2007, the respondents illegally issued an attachment order under Section 123 of the Army Act, by virtue of which the respondents are now seeking to place the petitioner in Military custody and try him by Court Martial. The petitioner pleaded that this change of track, i.e. from administrative to disciplinary proceedings, was not permitted by Army Rules and Regulations and drew the attention of the Court to the Army HQ policy letter of 11.5.1993, the relevant portion of which is extracted below:

"2. In a recent case the issue of initiating disciplinary/administrative proceedings against an officer has brought out certain legal lacunae.

3. To make the essence of the legal requirement more transparent, it is clarified that once the competent authority after having applied his mind to the full facts of the case decides to initiate administrative action and such action has commenced, trying the officer summarily or by court martial for the same offence subsequently is inequitable. In this case the summary of evidence was recorded and the competent authority having known all the facts of the case decided to issue a show cause notice to the officer. The officer replied to the show cause notice



thereby disclosing his defence to the charges contained in the show cause notice. At this stage to revert to disciplinary action is not only unjustified but also legally unsustainable.

4. However, the legal requirement outlines above does not in any way impose restrictions on the discretionary power of the competent authority or to choose an administrative mode of action, instead of a disciplinary mode initially contemplated against the accused, in for some reason or the other competent authority feels that the process of disciplinary action is contemplated initially by way of trial by court martial or summary trial is found to be inexpedient or impracticable.

5. It is once again emphasized that initiating disciplinary action after issue of a show cause notice for administrative action is not only legally unsustainable but also undermines the principles of natural justice and fair play. You are therefore requested to bring the contents of this letter to the notice of all concerned for compliance."

7. While the circumstances and back drop of the case have been adequately explained by the petitioner, the moot issue is, whether on 12.9.2006, the petitioner was actually in the Cipher Centre from 1010 hours to 1700 hours or whether he had during this period exchanged the counterfeit Railway warrant and carried out other such related activities?



8. Learned counsel for the respondents commenced his arguments by stating that the petitioner had in actual fact served in HQ 35 Infantry Brigade in Delhi for a period of three years from April 2003 to April 2006 and was very conversant with the modalities and functioning of this HQ. The petitioner moved to Lucknow only in May 2006 and this incident occurred in September 2006, within a short span of four months after leaving the HQ. Therefore, it was quite feasible that he had planned this complete operation even before he left HQ 35 Infantry Brigade. The fact of the matter was that on 12<sup>th</sup> September he had been seen outside the Cipher Centre between 0900 and 1700 hours by the following persons:

(a) Col. Naresh Yadav, Deputy Commander met the petitioner in the morning of 12<sup>th</sup> September at approximately 0930 hours. Thereafter he met him in the afternoon when he had specifically sent a person to call the petitioner. He had also met him again in the evening after the petitioner returned from Col. Sachdeva's house;



(b) Col. Naresh Yadav, Deputy Comander had sent an NCO to the Central School, Opposite the Naval Officers' Mess, Varuna to meet Mrs. Saroj Yadav, wife of the petitioner and request her to send the petitioner to him. On return, this NCO informed Col. Yadav that he had in actual fact met the petitioner in the school and had personally conveyed to him that Col. Yadav wanted to meet him;

(c) Warrant Officer Naresh Meena, who was working in the Army Railway Reservation Centre and who had actually exchanged the counterfeit warrant for a ticket, has categorically stated that the petitioner was in uniform and he was therefore able to read his name plate and recognize the petitioner. According to Warrant Officer Meena, the individual exchanged the warrant at approximately 0900 hours on the morning of 12<sup>th</sup> September. Thereafter, again at 1215 hours the same day he met the petitioner outside the office of Lt. Col. Rajesh Sachdeva when he



(Warrant Officer Meena) was coming out of Sachdeva's office and the petitioner was possibly going into the office;

(d) At 1330 hours on 12<sup>th</sup> September, Sep. Clk. Ganesh Kumar, also on the staff of the Railway Reservation Centre of the Army at Delhi Cantt., telephoned Warrant Officer Meena that Col. Hari Singh had come to him and had wanted the warrant to be returned to him. It is, therefore, apparent that at 1330 hours, Sep. Clk. Ganesh Kumar had met the petitioner in the Reservation Centre;

(e) Lt. Col. Rajesh Sachdeva, AQ MG (OPS and Maint), HQ, Delhi Area has categorically stated that the petitioner came to his office between 1230 hours and 1300 hours on 12<sup>th</sup> September 2006. Lt. Col. Sachdeva also states that in the evening at 1800 hours, his Sahayak called up to inform him that the petitioner wished to speak to Col. Sachdeva on phone and in actual fact, immediately thereafter, the petitioner spoke to Lt. Col. Sachdeva

from Lt. Col. Sachdeva's residential phone thereby making it apparent that the petitioner was in Lt. Col. Sachdeva's house at that time.

(f) A perusal of the Cipher Centre Entry/Exit book also does not inspire any confidence with regard to the contention of the petitioner. The petitioner's entry in the register is at Sl. No.29 for that particular day whereby he is purported to be in the Cipher Centre from 0954 till 1840 hours that day. However, it is noticed that Sl.Nos. 1 to 28 are in ascending order of time from 0825 till 1235 and suddenly thereafter, the petitioner makes an entry at 0954 hours. Not only is this inexplicable but his continued stay from 0954 to 1840 hours is also contrary to the normal practice since collection of cipher documents does not take so long.

In any case, the respondents contended that the petitioner himself has mentioned in the writ petition that he left the Cipher Centre at 1700 hours, whereas the entry is upto 1840 hours. Therefore, all that the petitioner was



now attempting was to fudge the book and create confusion. It was also brought to the attention of the Court that the figures of entry and exit timing at Sl. No. 29 had been clearly over-written.

9. The respondents stressed upon the fact that the petitioner was the beneficiary of the use of the warrant and after exchanging it for a ticket on the morning of 12<sup>th</sup> September 2006, after he got to know that he had been caught out, he spent the entire day in attempting to convince the reservation staff to return his warrant and also in requesting officers to let him off the hook.

10. With regard to the participation of the petitioner in the Court of Inquiry, the respondents were vehement in the fact that the petitioner could not hide behind the shelters of a few documents without which he would not attend the proceedings of the Court of Inquiry. It was not for the Presiding Officer of the Court of Inquiry to provide him these documents and neither has the petitioner been able to show any authority/Rules or Regulations whereby the respondents or the Presiding Officer of the Court of

Inquiry was duty bound to provide these documents to the petitioner. It was also contended by the respondents that the Army HQ Letter dated 11<sup>th</sup> May 1993 is a guideline issued by the Army HQs and did not have the binding of a law or statute. It was for the authorities to proceed to take disciplinary or administrative action as considered appropriate by them. Therefore, they were well within their rights to proceed with the disciplinary action after recording the summary of evidence.

11. Considering the above facts, it does appear that there was an attempt to fraudulently use a Railway warrant costing the Government of India a sum of Rs.2780/- for a journey from New Delhi to Lucknow. There is ample evidence to support the view point of the respondents that prima facie there is a case against the petitioner. It is a well settled principle of law that the Tribunal/Court may quash a proceeding, inter alia, in the event the allegations made in the complaint/show cause notice, even if they are taken at their face value and accepted in their entirety, do not disclose commission of an offence. The allegation made against the petitioner makes out, prima facie, an offence. We, therefore, do not see any reason to stay the

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proceedings at this stage. The respondents are at liberty to proceed to take action as deemed fit. The petition is dismissed.

(S.S DHILLON)  
MEMBER

(S.S KULSHRESTHA)  
MEMBER