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

TA NO. 382/2010

IN WP (CIVIL) NO. 8775/2007 OF THE HIGH COURT OF DELHI

**NARESH KUMAR BHATI NO. 14416501 (DMT)
S/O SH. UDAI VEER SINGH
R/O VILL. 7 POST OFFICE- WAIR
TEHSIL SIKANDERABAD
DISTT. BULANDSHAHAR (UP).**

THROUGH SH. KUNWAR S M KHAN

.....APPELLANT

VS.

**1. UNION OF INDIA AND OTHERS
THROUGH DEFENCE SECRETARY
MINISTRY OF DEFENCE
GOVT. OF INDIA,
NEW DELHI – 110 001.**

**2. THE CHIEF OF ARMY STAFF
ARMY HEADQUARTERS
NEW DELHI – 110 001.**

**3. THE COMMANDING OFFICER
218, MEDIUM REGIMENT,
PIN 926218
C/O 56 APO.**

THROUGH : LT. COL. NAVEEN SHARMA

..... RESPONDENTS

CORAM :

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

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JUDGMENT :

01-10-2010 :

1. This Petition challenges the Summary Court Martial (SCM) proceedings of 4th May 2007 wherein the petitioner was held guilty for three offences Under Army Act Section 64 (e) and was sentenced to be reduced to the Ranks, to suffer imprisonment for three months and to be dismissed from service. On formation of this tribunal, the above writ petition has been transferred for disposal. Under section 15 of the Armed Tribunal Act 2007, appeal lies against any order, decision, finding or sentenced passed by a court martial or any matter connected therewith or incidental thereto. Since, in this case, the petitioner challenged the conviction by court martial by filing writ petition which has been remitted to this Tribunal, the same has been converted into an appeal under Section 15.

2. Counsel for the appellant stated that the petitioner was enrolled in the Army in the year 1995 as a Driver and have been performing his duties diligently and with the full confidence and trust of his Senior Officers. It so transpired that three persons namely Gyan Singh S/o Sh. Bhagirath Singh R/o village Marupur, Ramesh Chand S/o Sh. Visheshwar Nath R/o Village Alohar and Dharam Pal Singh S/o Sh. Prabhu Ram R/o Village Jaipur, all belonging to District Yamuna Nagar

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filed a complaint against him. These three persons were having business relations with the father and father-in-law of the appellant in that they were selling and purchasing buffalos. In this process, due to some business transaction the father and father-in-law of the appellant lodged a complaint on 1st July 2006 against these three persons for misappropriation and cheating with the police station Aurangabad Distt. Bulandshahar. A copy of this complaint was also given to SSP, Bulandshahar, DIG Meerut and CO 218 Medium Regiment. Subsequently, Sh. Jai Prakash, father-in-law of the appellant attempted to file a FIR under Section 156 (3) of the Cr.P.C. against the above persons in the court of the Judicial Magistrate of Bulandshahar. However, the same was not allowed due to territorial jurisdiction. Thereafter, Sh. Jai Prakash preferred criminal revision which was pending in the court of ADG, Bulandshahar. It was alleged by the respondents that the appellant had received a sum of Rs.32,000/-, Rs.58,000/- and Rs.95,000/- from these three individuals out of which he had paid back Rs.1,58,000/-. It was also alleged that on 27-9-2006 when the appellant went to Amabla Cantt to return an additional Rs.7,000/- he was apprehended by personnel of Headquarter Recruiting Zone.

3. On the basis of recovery of Rs.7,000/- from the appellant, the CO ordered investigation into the case and the appellants signatures were obtained on some printed documents on 23rd December, 2006. However,

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neither the purpose of signatures nor copy of the statements of these three complainants was given to him and he was unaware of whatever proceedings took place on 22nd and 23rd December, 2006. Subsequently, it transpired that on these two dates supposedly the summary of evidence was recorded, however the appellant was unaware of any such proceedings. Subsequently also the CO obtained the signatures of the appellant on some printed and blank papers but he was not informed of any charges against him and nor was he informed about the purpose of such signatures. A written appeal was also made by the appellant's wife to the local President of the Army Wives Welfare Association. Being unaware of what was happening in his matter, the appellant on 18th march and 31st March 2007 requested his CO to supply the copies of the summary of evidence and other such documents that may be held against him. However, no such action was taken by his CO until 26th April, 2007 when he was issued with the chargesheet and informed that he was be tried by SCM on 4th May, 2007. Apprehending bias on the part of his CO he issued a legal notice to them on 1st May, 2007, but, it had no effect and he was tried by SCM on 4th May, 2007 and sentenced to be reduced to the Ranks, to Suffer Rigorous Imprisonment for 3 months and to be dismissed from service. Petitions were put in by his wife as well as by his father in the month of May 2007 however there was no response to these petitions.

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4. It was strongly argued by the appellant that he had been falsely implicated by the authorities on the basis of the fabricated and concocted complaint given by these three individuals. The business matter between these three individuals and the appellant's father and father in law has impacted on the appellant he was made a scape goat whereby Army authorities proceeded to take disciplinary action him. The appellant was aggrieved by the fact that his valuable right of hearing Under Army Rule 22 was withheld, that the SCM finished within a period of 1 hr. 25 min. which was inadequate to complete the deliberations which were necessary and that at the time of the SCM he was not afforded opportunity to speak and his signatures were taken on blank and printed pages. It was also strongly urged that the petitioner never accepted his guilt and had never given his consent to the plea of guilty. This can be ascertain from the fact that his signatures do not appear on the original record of the SCM but on a page which has been annexed to the proceedings. Lastly, it was stated that no legal counsel was provided at any stage to the appellant which was gross violation of his valuable rights.

5. The brief facts of the case are that the three complainants namely Gyan Singh, Ramesh Chand and Dharam Pal Singh allegedly paid money to the appellant for enrolment of their wards in the recruitment process at Kurukshetra. When their wards failed to get recruited in the

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rally they approached the appellant and asked him to return their money. When they felt that they were not being returned their complete money they informed the Army authorities who laid a trap wherein the appellant was caught red handed at Ambala while returning Rs.7,000/-. Thereafter investigations commenced and the appellant was charged with three offences as under.

CHARGE SHEET

The accused No. 14416501N Nk(DMT) Naresh Kumar Bhati, 218 Medium Regiment is charged with :-

First Charge

Army Act
Section 64 (e)

OBTAINING FOR HIMSELF A GRATIFICATION AS A MOTIVE FOR PROCURING THE ENROLMENT OF A PERSON.

in that he,

at Ambala Cantonment, on 14 July 2006 directly obtained for himself a sum of Rs.40,000/- (Rupees forty thousand only) from Sh. Gyan Singh, as a motive for procuring the enrolment of Sh. Sanjeev Kumar, Son of Said Sh. Gyan Singh.

Second Charge

Army Act
Section 64 (e)

OBTAINING FOR HIMSELF A GRATIFICATION AS A MOTIVE FOR PROCURING THE ENROLMENT OF A PERSON.

in that he,

at Ambala Cantonment, on 24 July 2006 directly obtained for himself a sum of Rs.70,000/- (Rupees seventy thousand only) from Sh. Ramesh Chand, as a motive for procuring the enrolment of Sh. Sanjeev Kumar, Son of Said Sh. Ramesh Chand.

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Third Charge

Army Act *OBTAINING FOR HIMSELF A GRATIFICATION AS A MOTIVE*
Section 64 (e) *FOR PROCURING THE ENROLMENT OF A PERSON.*

in that he,

at Ambala Cantonment, on 14 August 2006 to 16 August 2006 directly obtained for himself a sum of Rs.95,000/- (Rupees ninety five thousand only) from Sh. Dharapal Singh, as a motive for procuring the enrolment of Sh. Manoj Kumar, son of Said Sh. Dharampal Singh.

6. From the side of the respondents it was strongly argued that the appellant had accepted a sum of Rs.2,35,000/- from these three civilians for getting their wards enrolled in the Army at the recruiting rally in Kurukshetra between July and August, 2006. The appellant was apprehended by the Army Authorities at Ambala Cantonment bus stand on 27-9-2006 while handing over Rs.7,000/- to these civilians. The appellant was a bad hat and had been punished on three earlier occasions in his service. In the present case a proper Summary of Evidence was recorded on 23rd December, 2006 wherein five witnesses were examined. Sh. Gyan Singh S/o Sh. Bhagirath Singh (PW-1) has stated that on 7th July, 2006 he had gone to get his son recruited in Army at Kurukshetra where he came in contact with the appellant, who promised to help him and gave his telephone number to PW-1. A meeting was organized on 14th July 2006 wherein the appellant demanded Rs.70,000/- to get his

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son recruited. The witness went on to state that he also informed Sh. Ramesh Chand (PW-2) about his arrangement with the appellant and Sh. Ramesh Chand also met the appellant on 20th, 24th and 27th July, 2006 wherein Rs.14,000/- and Rs.30,000/- were paid by him to the appellant. When the son of PW-1 did not get enrolled in the Army the witness was agitated and searched out the resident of the appellant and being informed that the appellant was on leave in Bulandshahar, he went to his house, at Bulandshahar, along with PW-2 and demanded his money back. The appellant paid back Rs.32,000/- on the spot and promised to pay the balance amount after returning from leave. Thereafter on 3rd September, 2006 the appellant paid back Rs.17,000/- and approximately a week thereafter he paid back another Rs.9,000/-. On 26th September, 2006 the witness reported this matter to the Col. Nair who was the Recruiting officer at Ambala and a trap was laid wherein the appellant was caught handing over Rs.7,000/- to these three individuals. PW-2 Sh. Ramesh Chand s/o of Sh. Visheshwar Nath had also certified the same fact. i.e. on being inform by Sh. Gyan Singh (PW-1) about his arrangements with the appellant for recruitment purposes, he met the appellant on 20th July, 2006 and thereafter paid him Rs.40,000/- on 24th July, 2006 and Rs.30,000/- on 22nd July, 2006. His story is also similar to that of PW-1 wherein after their wards failed to get selected in the Army they went together to the appellant's house to get their money. This witness was

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also present on 26th September, 2006 at the bus stand when the trap was laid by the Army officials. Sh Dharam Pal Singh (PW-3) has also stated similar facts, that he was asked by the appellant to pay Rs.1 lac for the enrolment of his son and he paid Rs.40,000/- on 14th August and Rs.55,000/- on 15th August, 2006 in the presence of Sh. Ramesh Chand (PW-2). On return of Sh. Gyan Singh and Sh. Ramesh Chand from Bulandshahar with Rs.32,000/- , he was informed that the appellant has promised to pay back the rest of the amount shortly. This witness was also present on 27th September, 2006 during the trap. Hav. M K Singh (PW-4) was posted at Headquarter Recruiting Zone Ambala since May 2005. He was ordered by Col. Nair on 27th September, 2006 to accompany Hav. Rajput Pratap Singh and CMP representative. At approximately 1245 hrs. they caught the appellant red handed while returning Rs.7,000/- to these three civilians. Hav. Rajput Pratap Singh (PW-5) has stated that in accordance with Col. Nair's orders he alongwith Hav. M K Singh and Corps of Military Police Representative L/Nk Kailash Bhaskar carried out the trap at approximately 1 p.m. when they caught the appellant red handed while handing over Rs.7,000/- to these three individuals. After due caution in terms of Army Rule 23 (3), the appellant was asked whether he wish to make any statement, he has given a comprehensive statement wherein he has admitted to taking money on the following occasions.

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1. Rs.15,000/- from Sh. Gyan Singh
2. Rs.40,000/- from Sh. Ramesh Singh
3. Rs.17,000/- from Sh. Gyan Singh
4. Rs.18,000/- from Sh. Ramesh Singh
5. Rs.40,000/- from Sh. Dharam Pal
6. Rs.55,000/- from Sh. Dharam Pal.

He has also specifically admitted to taking of Rs.1,88,000/- from these three civilians Rs.35,000/- from Sh. Gyan Singh Rs.58,000/0 from Sh. Ramesh Chand and Rs. 95,000/- from Sh. Dharam Pal.

8. Considering the preponderance of evidence at the summary of evidence, the respondents stated that it was only logical therefore that the appellant pleaded guilty during the summary court martial. The mere fact that the appellant has not signed on the original record of the SCM proceedings but has signed the certificate under Army Rule 115 (2) on a paper appended to the proceedings does not vitiate the proceedings of the SCM. The circumstances have to be looked at in totality and not in isolation. There are adequate inculpatory circumstances to prove the guilt of the appellant and a mere technicality can not be ground for exonerating the appellant. It was also argued that at the summary of evidence the appellant has appended his signatures at six places i.e. below the statement of all the five witnesses and also in acknowledgement of his own statement. Therefore for him at this stage to plead that he was unaware of what proceedings transpired on 22nd and 23rd December, 2006 is a gross and blatant lie. Further more the

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presence of the appellant at the summary of evidence has also been established by the independent witness who has testified to his presence.

9. The aspect about the business rivalry being the cause of making the appellant a scape goat was vehemently contested by counsel for the respondents. The so called complaint which was lodged on 1st July 2006 was actually a mere application which has been sent by the father of the appellant to the CO 218 Medium Regiment with a copy to the various police authorities. While it has been signed on 1st July 2006 it was stated that this application was back dated and infact was only sent after the trap on the 27th September, 2006. Even the so called FIR was lodged only on 20th March, 2008 i.e. well after this incident. Further more, at no stage i.e. during the initial hearing under Army Rule 22 or at the summary of evidence or during the SCM has the appellant stated anywhere that he was falsely implicated in this case by these complainants? To the contrary he has not even put any question to them during the recording of summary of evidence wherein he was afforded full and adequate opportunities to cross examine these three civilians. It was also argued that the appellant has failed to produce any written evidence / documents pertaining to any litigations between these three complainants and his father and father in law. Therefore this contention about business rivalry needs to be dismissed as a mere after thought.

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11. With regard to the other issues, respondents argued that all necessary papers i.e. summary of evidence and chargesheet were given to the appellant on 26th April, 2007 while the trial was conducted on 4th May 2007 thereby giving him more the mandatory 96 hrs. notice. It was also urged that one hour twenty minutes was more then adequate time for the SCM to conclude the proceedings especially when the appellant had pleaded guilty. Maj. A Leo Rao was detailed as friend of the accused and at no stage did the appellant put in any request for hiring a defence counsel which was his prerogative. The initial hearing under Army Rule 22 was held on 9th November, 2006. All in all it was strongly urged that the trial was conducted in accordance with the provisions of Army Act and Rules and the appellant was given fair and adequate opportunity to defend himself.

12. In view of the above we do not find any need to interefare in the findings of the impugned summary court martial. Accordingly the appeal is dismissed.

S.S.DHILLON
(MEMBER)

S.S.KULSHRESTHA
(MEMBER)

PRONOUNCED IN THE OPEN COURT
TODAY ON DATE 1st October, 2010