

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

T.A. No. 421 of 2010

Writ Petition (Civil) No. 1135 of 2008

Ex. Sub. Ram Mehar Singh

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. S.M. Dalal, Advocate.  
For respondents: Mr. Ajai Bhalla, Advocate.

CORAM:

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

HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

J U D G M E N T

07.02.2012

S.S.Dhillon, Member:

1. The Petitioner by this petition seeks directions to set aside the findings and sentence of the General Court Martial (GCM) of 5<sup>th</sup> October 2006 whereby he was dismissed from service. He also seeks setting aside of the Central Government's order of 30<sup>th</sup> August 2007 upholding the verdict of the GCM.

2. The Petitioner was enrolled in the Army on 24<sup>th</sup> October 1978 and posted to 13<sup>th</sup> Mechanised Infantry Battalion (18 RAJPUT). The Petitioner was an excellent soldier and over a career of 28 years unblemished and distinguished service, he rose to the rank of Subedar and on 26<sup>th</sup> January 2006 was given the unique honour of being awarded the rank of Hony. Lt.

This was a very unique honour achieved by very few in the Armed Forces. Not only this, the Petitioner was also eligible thereafter for grant of the Hony. rank of Capt. which is even a greater distinction. The Petitioner went on to enumerate the many achievements and successes of his life including postings in the far flung area of Jammu & Kashmir as well as the award of many medals to him.

3. The incident under reference occurred in April 2006 when the Petitioner was performing duties of Officiating Senior JCO (Charlie Company) of his Battalion. On the evening of 18<sup>th</sup> April 2006 during the night parade when the entire unit was busy in preparations for various inspections of Senior Officers, there was an allegation made against him by Sepoy A.K. Gautam that the Petitioner had attempted to sexually assault him. This came as an utter shock to the Petitioner when he was informed about this by Hav. Kharat and Hav. Bihari because there had been no such incident at all. To the contrary the Petitioner's Sahayak Sepoy Prakash had served him dinner on the evening of 18<sup>th</sup> April 2006 after which the Petitioner had gone to sleep. On 19<sup>th</sup> April 2006 when confronted by Sub. Maj. S.N. Pandey about the allegations made against him by Sepoy A.K. Gautam, the petitioner categorically denied the allegations as false and mischievous. The Petitioner took the same stand when confronted by his Commanding Officer on the same day. The Commanding Officer ordered medical examination of the Petitioner since Sepoy A.K. Gautam had alleged that he had made a sharp cut with a blade on the penis of the Petitioner and accordingly on 20<sup>th</sup> April 2006 pursuant to the order, the Petitioner went to the unit MI Room for medical examination by Maj. A.K. Singh who was the unit Medical Officer.

The medical examination was followed by a Court of Inquiry and a summary of evidence which resulted in a GCM being ordered against the Petitioner wherein two charges as mentioned below were preferred against him:

**"CHARGE SHEET"**

The accused Number JC-418999F Subedar & Honorary Lietutenant Ram Mehar Singh of 13<sup>th</sup> Battalion The Mechanised Infantry Regiment (18 RAJPUT) is charged with: -

<u>First Charge</u> <u>Army Act</u> Sec 46 (a)	Disgraceful conduct of an indecent kind  In that he,  at Suratgarh, on the intervening night of 18 and 19 April 2006, having sat on the chest of Number 14928756H Sepoy Arun Kumar Gautam of the same Regiment, tried to force his penis into the mouth of said OR.
<u>Second Charge</u> <u>Army Act</u> Section 63	An Act prejudicial to good order and military discipline,  In that he,  at Suratgarh, between 30 March 2006 and 18 April 2006, improperly told Number 14928756H Sepoy Arun Kumar Gautam of the same Regiment, "Teri shakal to ladki jaisi hai. Agar tu ladki hota to main tujh par das baar chadta" or words to that effect.

4. Learned counsel for the Petitioner mentioned that the GCM held the Petitioner guilty of only the first charge and urged that there were great inconsistencies and contradictions in the statement of PW-1 i.e. Sepoy A.K. Gautam who was the complainant in the instant case. He drew our attention



to various instances during cross-examination wherein when the witness was confronted by his earlier statement in the Court of Inquiry, he stated that his statement in the Court of Inquiry had been incorrectly recorded. There were approximately eight such instances during cross-examination where the contradiction to his earlier statement has been established by the defence counsel. It was therefore evident that the witness had been continuously improving on his testimony and had been tutored and, therefore, his statement should be disregarded.

5. Learned counsel for the Petitioner also urged that with regard to the factual information also there was great variation in the testimony of the witness especially with regard to presence of cooler and television in the room and about whether the lights were switched on or off and also whether the complainant i.e. Sepoy A.K. Gautam had performed the duties of Sahayak to the Petitioner as Sepoy Prakash was in actual fact the Sahayak of the Petitioner. All in all learned counsel attempted to discredit the testimony of the complainant i.e. Sepoy A.K. Gautam. It was also argued that the complainant i.e. Sepoy Gautam was using his personal phone as an STD and earning money from such use of his phone which was admonished by the Petitioner as also the fact the complainant had beaten Sepoy Gajender Singh and had extorted Rs.2,000/- from him for the loss of his mobile phone. Learned counsel also argued that the complainant had reported 10 days late from his leave and had also refused a legitimate order for change of his company and was also rude to a mess boy. It was also argued that the complainant had accepted the fact that he wishes to teach a lesson to the Petitioner and this fact had been admitted by him during the cross-

examination in the GCM proceedings. Therefore, since the complainant knew that the Petitioner would take strict disciplinary actions against him for these irregularities he has framed the Petitioner with these false and mischievous charges.

6. Learned counsel also drew our attention to the testimony of PW-10 i.e. Maj. A.K. Singh the RMO who had done the medical examination of the Petitioner and argued that the witness had expanded on his statement given earlier in the Court of Inquiry and the summary of evidence. In fact the statement of the witness has grossly improved during the GCM and the same facts should have been stated earlier in the Court of Inquiry and summary of evidence. It was also argued that the photographs of the penis could not be accepted as evidence since the photographer who took the photographs had not been produced as a witness during the GCM.

7. Learned counsel for the Petitioner strongly argued that no such incident has taken place on the intervening night of 18<sup>th</sup>/19<sup>th</sup> April 2006 because Sub. Gulab Singh shared the living accommodation with the Petitioner and although there was a partition, the distance between the two beds was barely 8 to 10 feet. Therefore if there had been any such incident in the room, Sub. Gulab Singh would certainly have woken up and would have raised an alarm. Learned counsel also urged that the complainant had not put up any fight and neither did he have any bruises, abrasions or injuries on his neck or face or lips which clearly indicated that there was no resistance and that the entire episode was a figment of his imagination.

8. Learned counsel for the Respondents urged that of the two charges, the GCM had found the Petitioner guilty of the first charge and not guilty of the second charge and, therefore, he would be focussing his argument on the first charge i.e. the incident of the intervening night of 18<sup>th</sup>/19<sup>th</sup> April 2006 when the Petitioner had tried to sexually assault Sepoy A.K. Gautam. To prove this charge there were two material witnesses i.e. the complainant himself Sepoy A.K. Gautam who in his testimony had clearly indicated that during the sexual assault he had made a vertical incision of a few Cms. on the penis of the Petitioner and the testimony of the medical officer (PW-10) who had ascertained such injury during his medical examination of the Petitioner on 20<sup>th</sup> April 2006. Accordingly learned counsel for the Respondents took us to the testimony of the complainant Sepoy A.K. Gautam (PW-1) who has testified that on 18<sup>th</sup> April 2006 there was night training after which he and Sepoy Prakash went to the room of the Petitioner to serve him dinner. After dinner the Petitioner called the witness into the room and attempted to sexually harass him. The witness resisted and in order to save himself told the Petitioner that if this was what he wanted then he should go and have a shower and come back and that on his return the Petitioner tried to insert his penis into the mouth of the witness which was resisted by him and the witness made a vertical incision on the penis of the witness. After making this incision the Petitioner stated that he would report the matter to the Company Commander and to the CO and left the room. The first person he met outside the room was Sepoy Jogender Singh, who was on sentry duty outside the JCO Mess, and he informed him of the incident and told him that he wanted Sepoy Jogender Singh as a witness. The incident was thereafter reported to Hav. Tirath who called Subedar Ram Pal the Platoon Commander. Sub. Ram



Pal told the witness that if he would report the matter to anybody he will have him court martialled within three days. The witness then asked Hav. Tirath to call the Senior JCO of the Company, Sub. Devender Singh. On arrival of Subedar Devender Singh he narrated the entire incident to him. The witness went on to state that he felt that the matter may be hushed up and decided to report the matter to the higher authorities lest he be implicated in a false case. Accordingly the witness rang up the unit Adjutant Capt. Siddharth Lama and informed him about the incident and also went to the residence of the Sub. Maj. S.N. Pandey and informed him. The next relevant witness is the Regimental Medical Officer, Maj. A.K.Singh. The Medical Officer has testified that on 19<sup>th</sup> April 2006 he received a telephone call from the Adjutant Siddharth Lama that an incident had taken place and that he should examine the individual concerned to confirm whether there was any injury on the penis of the individual and that the individual would report to the unit MI room on 20<sup>th</sup> April 2006 at 8 O' clock. The witness identified the Petitioner as the one he medically examined on 20<sup>th</sup> April 2006 for the vertical incision on the penis. The witness examined the Petitioner and found an incision wound over dorsum of his penis about 3-4 cm in length, 1 cm deep and 1 cm wide and the wound was approximately one day old and there was secretion and discharge collected at the bed of the wound. On seeing the severity of the wound, the witness told the Petitioner that for early healing of the wound, it would require stitches which can be done only at the Military Hospital. The Petitioner refused to go to the Military Hospital stating that the wound would heal in its own time. In the meanwhile, Lt. Abhay Sharma and Capt. Siddharth Lama expressed their desire to take photographs of the wound for showing it to the Commanding Officer. Accordingly with the express verbal permission of the

Petitioner, photographs were taken in the presence of the witness by Lt. Abhay. Learned counsel for the Respondents urged that from these two photographs it was abundantly clear that there was an incision on the penis of the Petitioner. The aspect of producing the officer who had taken the photographs as a witness was irrelevant since the photographs had been taken in the presence of the Medical Officer who has testified to this effect. Furthermore, in the photograph, the face of the Petitioner himself is visible and therefore no great validation was required to be done. PW-2 was Captain Siddharth Lama who was the unit Adjutant who has confirmed that the complainant, Sepoy Gautam, rang him up at 0300 hours on 19<sup>th</sup> April 2006 and reported the incident to him and that he had asked the complainant to come to the office at 0700 hours next morning. This witness was also present during the medical examination by the Regimental Medical Officer and has also testified to the same facts. Sub. Gulab Singh of Charlie Company (PW-3) was the individual who was sharing the accommodation with the Petitioner. His testimony is important from the fact of attempting to understand that why he did not wake up when the incident occurred on the intervening night of 18<sup>th</sup>/19<sup>th</sup> April 2006. The witness has testified that he had undergone a major surgical operation in 2005 on his chest, face and head and that steel plates had been fixed on the left side of his face. Accordingly on return from duty on the night of 18<sup>th</sup> April 2006 he had drifted off to sleep and was unaware of what had happened in close proximity of his bed. Sepoy Prakash Singh (PW-4) was the Sahayak who along with the complainant was detailed to look after the JCOs of Charlie Company. He has testified to the effect that after serving dinner to the Petitioner on 18<sup>th</sup> April 2006 he and Sepoy Gautam came out of the room and that he asked Sepoy Gautam to accompany him out of the JCO



Quarters but he did not do so. In fact Sepoy Gautam told him to leave and that he would come later. This witness has testified to the effect that he was the Sahayak of all the Subedars of Charlie Company which included the Petitioner. Sepoy Jogender Singh (PW-5) was on sentry duty at the JCOs Mess from midnight to 0200 hours on 19<sup>th</sup> April 2006 i.e. on the intervening night of 18<sup>th</sup>/19<sup>th</sup> April 2006 and at approximately 0100 hours Sepoy A.K. Gautam had come from the JCOs Mess side and had enquired about the time and the name of the witness and told him about the incident and stated that he was going to report the matter and, therefore, he should be prepared to be a witness in that case. This witness has testified that he found the complainant i.e. Sepoy Gautam to be in normal mental frame of mind and that his clothes were not torn. Nb. Sub. S.K. Kharat was at that point of time a Hav. and performing duties of Company Hav. Maj. of Charlie Company in April 2006. At 0110 hours on 19<sup>th</sup> April 2006 Sepoy Babu Singh Rathore informed the witness that Sepoy A.K. Gautam has slashed the penis of the Petitioner with a blade. Thereafter they went to meet Sepoy A.K. Gautam and asked him as to what had happened and were informed by him that the Petitioner "Mujse Galat Kam Karwa Rahey They" and that he had slashed the penis of the Petitioner. The witness thereafter went to the room of the Petitioner to enquire from him about the incident and woke up the Petitioner and enquired from him. They also told the Petitioner that Sepoy A.K. Gautam was highly agitated and was saying that since it was a question of his honour and reputation he would be reporting the matter to the CO. When he had met Sepoy A.K. Gautam, the latter was thumping his chest and in a loud voice claiming that he had slashed the penis of the Petitioner, and while saying so he has exhibited his palm showing blood marks on it. Hav. Bihari Lal (PW-7)

has testified to the same facts as PW-6. Sub. Devender Singh (PW-8) was the Senior JCO to whom the report was made and his version was also akin to that of the other witnesses. Sub. Maj (Hony. Lt.) S.N. Pandey was the Sub. Maj. of 13<sup>th</sup> Mechanised Infantry Battalion and has stated that at approximately 0315 hours on 19<sup>th</sup> April 2006 Sepoy A.K. Gautam had come to his house and complained to him regarding the alleged incident that had taken place in the room of the Petitioner. He has confirmed that Sepoy A.K. Gautam had told him that he had slashed the penis of the Petitioner. Sub. Ram Pal Singh (PW-11) has primarily testified about the complaint made to him about the incident by Sepoy A.K. Gautam and the fact that the witness and Sepoy A.K. Gautam had served together in 5 Rastriya Rifles Battalion wherein there had been an act of indiscipline by Sepoy A.K. Gautam.

9. Learned counsel for the Respondents urged that mere contradictions in the testimony of PW-1, Sepoy A.K. Gautam the complainant, cannot be a ground to set aside his testimony. This was a very emotional matter and considering the fact that all the evidence in the GCM had been recorded on oath there was no ground to disbelieve the testimony of PW-1, especially since it had been corroborated by the RMO Maj. A.K. Singh (PW-10). It had been clearly established that the complainant had told everybody after the incident that he had slashed the penis of the Petitioner. The other incidents of so-called indiscipline against the complainant about the use of mobile phone as an STD, misbehaviour with the mess boy supposedly extorting Rs.2,000/- from Sepoy Gajender etc., had no relevance to the issue at hand which stands established beyond any reasonable doubt. The aspect of why Sub. Gulab Singh who was sharing the accommodation with the Petitioner did not

wake up during the incident had also been explained by the fact that Sub. Gulab Singh had just undergone major surgery on his face, neck and chest and, therefore, was sick and resting at that point of time.

10. Considering the above testimonies, we find no ground to interfere with the findings and sentence of the GCM. Accordingly, the petition is dismissed with no order as to costs.

**A.K. MATHUR**  
(Chairperson)

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

**New Delhi**  
**February 07, 2012**  
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