

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

**T.A NO. 474 OF 2010
(WRIT PETITION (C) NO. 10164 OF 2009)**

LANCE NAIK ANUP SINGH, ARMY NO. 4079899X
S/O. SHRI DILBAGH SINGH
VUKKAGE & POST SISAR, DIST. ROHTAK
STATE: HARYANA

THROUGH: MR. D.S KAUNTAE, ADVOCATE

.. PETITIONER

VS.

1. UNION OF INDIA THROUGH ITS SECRETARY
GOVT. OF INDIA, MINISTRY OF DEFENCE, SOUTH BLOCK,
NEW DELHI – 110 011.
2. THE CHIEF OF ARMY STAFF,
ARMY HEADQUARTERS, NEW DELHI-110 011.
3. COMMANDING OFFICER
4 JAT JAT REGIMENT, C/O 56 APO.
4. OIC RECORDS
JAT REGIMENTAL CENTRE, BAREILLY.

THROUGH: LT. COL. NAVEEN SHARMA

.. RESPONDENTS

CORAM

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

JUDGMENT

29.3.2010

1. Challenge in this petition is directed against the order dated 9.4.2008 of the Summary Court Martial, whereby the petitioner was found guilty for the offence under Section 52(a) of the Army Act and sentenced to be dismissed from service.

2. Mr. Kauntae, learned counsel for the petitioner, has submitted that the petitioner was falsely implicated in the case. The procedures under the Army Rules were not adhered to by the respondents in this case while arriving at the conclusion. The evidence is not sufficient to fix the culpability of the petitioner. Moreover, the petitioner has not pleaded guilty. The SCM proceedings would show that the petitioner refused to sign the plea of guilt recorded by the SCM. In such a situation, the plea of guilt ipso facto would not have relevance and the certificate under Army Rule 115(2) does not in any way support the prosecution case when the petitioner specifically pleaded not guilty. Therefore, the finding of guilt was based on conjectures and surmises. The petitioner was not even afforded an opportunity to defend himself properly.

3. The petition is resisted by the respondents contending, inter alia, that the recovery of the stolen articles was made in the presence of witnesses. The petitioner has not chosen to cross examine the witnesses. Moreover, though the petitioner had pleaded guilty, he refused to put his signature on such statement. The extra-judicial confession made by the petitioner to PW 3 would confirm the plea of guilt. The petitioner had given the confession statement in writing. Under such circumstances, the endorsement made by the SCM cannot be doubted and the petitioner cannot take a contrary stand.

4. In order to appreciate the points agitated by the parties, it shall be useful if a brief narration of the facts is made. The petitioner was enrolled in the Army on 6.7.1998 and after successful completion of military training, he was posted under the third respondent. Alleging theft of the property belonging to Col. Kanwal Kumar, the petitioner was charge sheeted for the offence under Section 52(a) of the Army Act. By order dated 19.1.2008, recording of summary of evidence was ordered. The petitioner was tried by the Summary Court Martial on 9.4.2008. Finding the petitioner guilty, he was sentenced to be dismissed from service. The petitioner filed a statutory

complaint dated 23.6.2008, the outcome of which was not informed to the petitioner till he approached the Delhi High Court by filing W.P No. 118 of 2009.

5. After drawing proceedings under Army Rule 22, summary of evidence was recorded. PW 1 (Naik Sheodan Ram) has referred about the duty book showing the persons who were posted as Sentries. The name of the petitioner was stated to have been shown in the duty book at the relevant time. PW 2 (Col. Kanwal Kumar) is the complainant, the inverter and the battery belonging to him were allegedly stolen by the petitioner. He had a suspicion that the petitioner might have stolen the articles. Later he is stated to have been told by the Commanding Officer that the inverter and the battery were recovered from the residence of the petitioner. PW 3 (Subedar Major Pusa Ram), before whom the petitioner is stated to have confessed about the theft, is the person who effected recovery of the stolen articles from the house of the petitioner. PW 4 (CHM (RP) Likha Ram) is a witness to the recovery of the stolen articles from the house of the petitioner.

6. From the SCM proceedings it appears that there is the statement of the petitioner-accused pleading guilty, but it does not bear his signature. It seems that after understanding the repercussions of pleading guilt, he declined to sign it. The plea of guilt was made in the presence of a number of witnesses. But the fact remains that he declined to sign the plea of guilt alleged to have been made by him. Therefore, the material question that is raised by counsel for the petitioner is that the plea of guilt without the maker's signature would only convey that he had not pleaded guilty and that the SCM proceeded with the proceedings arbitrarily.

7. As mentioned, the fact remained that the plea of guilt was not signed by the petitioner. In such a situation, in our view, two possibilities or views are there. Firstly, suspicion arises regarding the plea of guilt and secondly, after understanding the implications of Rule 115(2), though accepting his guilt, the petitioner declined to sign it. It is a settled legal position that when two views are possible, the one which is in favour of the petitioner should be taken into consideration. In such a situation, a full-fledged trial should have been resorted to by the SCM. Non adherence of the procedural requirement, when the petitioner was not prepared to sign the plea of guilt, resulted in unfair trial. When such legal infirmity and illegality

are apparent, the respondents cannot insist on the irregularities so perpetuated (see **Ekta Shakti Foundation v. Government of NCT of Delhi** - AIR 2006 SC 2609).

8. Under Army Rules 23 and 24, the summary of evidence can be accepted as evidence only in the event where the accused pleads guilty. If the plea of guilt is not there, that part of the statement would have no evidentiary value and can only be treated as part of the statement. When the petitioner refused to sign the plea of guilt, it is stated that the SCM was swayed by irrelevant consideration by accepting that part of the evidence. It is contended that the SCM cannot ignore or overlook the provisions of Army Rule 23 and in that situation, the final conclusion must be as per law.

9. It has next been pointed out by the respondents that there is the confessional statement of the petitioner. The so called extra judicial confession cannot be considered when the entire trial has been vitiated because of the non-adherence to the rules by putting the accused to complete trial after framing charges against him. The plea of confession has been recorded by the SCM. Such plea has only corroborative value and it

becomes relevant only when there is a full-fledged trial. In such a situation, the impugned order is not sustainable.

10. The petition is allowed. The impugned order of the SCM is set aside. The petitioner shall be reinstated in service within three months. The respondents are at liberty to initiate SCM proceedings from the stage of recording of the plea of guilty/not guilty of the accused and the evidence recorded by the SCM under Army Rule 23 shall remain intact and the present Commanding Officer shall be the competent authority for passing of the convening orders in that regard. The petitioner shall not be entitled to backwages, which would depend upon the final outcome of the case.

(S.S DHILLON)
MEMBER

(S.S KULSHRESTHA)
MEMBER