

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

T.A. No. 476/2009

[W.P. (C) No. 385/98 of Delhi High Court]

Manphool Singh

.....Petitioner

Versus

Union of India & Others

.....Respondents

For petitioner: Col. (Retd.) G.K. Sharma, Advocate with
Sh.Rajeev Sharma, Advocate.

For respondents: Sh.Mohan Kumar, Advocate with Capt Alifa
Akbar.

CORAM:

**HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.
HON'BLE LT. GEN. M.L. NAIDU, MEMBER.**

**ORDER
25.05.2010**

1. The present petition has been transferred from
Hon'ble Delhi High Court to this Tribunal on its formation.

2. Petitioner by this petition has prayed that respondents
may be directed to produce the complete original records of the

case including those listed in the accompanying application under section 151 CPC praying for summoning of documents. It is also prayed that orders dated 13.11.1997 passed by the Senior Records Officer, Rajputana Rifles Delhi Cantt. withholding pensionary benefits of the petitioner may be quashed and respondents may be directed to refund him such benefits already paid to him. It is also prayed that proceedings of Summary General Court Martial (in short SGCM) be set aside being illegal and unjust.

3. Brief facts which are necessary for the disposal of present petition are that petitioner was enrolled in the Rajputana Rifles on 09.06.1979 and he was retired on 30.06.1996 after rendering 17 years and 21 days for service, therefore, he was entitled to pensionary benefits as per Regulation 113(b) of Pension Regulation for Army, 1961 but unfortunately an event took place on 11.08.1995 in which he was involved in some shooting accident. Section 123 of Army Act, 1950 was invoked and he was tried by SGCM and SGCM found him guilty and convicted him for 7 years rigorous imprisonment and dismissal

from service. Consequent to that his pension and gratuity has been forfeited though his pension papers were prepared and a Pension Payment Order (in short PPO) was issued to him and in pursuance to that PPO, part of pension and gratuity was released to him but unfortunately due to conviction order passed by the SCGM in August, 1996, his pension and gratuity was stopped and recovery therefrom was also ordered. Hence, petitioner filed the present petition before the Hon'ble Delhi High Court challenging the cancellation of his pension as well as the conviction order passed by the SGCM. The petition was transferred to this Tribunal on its formation for final disposal.

4. We have heard learned counsels for parties and pursued the record.

5. Learned counsel for petitioner has taken us to SGCM proceedings and tried to submit that finding recorded by the SGCM is not correct.

6. We have gone through the statement of PW5 Rifleman Rakam Singh, the victim as well as the statements of PW2 Subedar Sarup Singh and other eye witnesses to the incident.

7. PW5 who was a victim deposed that petitioner after consuming liquor, scuffled with him and took a gun and shot him and he sustained wounds in both legs. This version has been supported by other eye witnesses also.

8. Learned counsel for petitioner after taking us to the evidence of eye witnesses, tried to persuade us that it was an accidental fire and not an intended fire. We are not satisfied with this submission of learned counsel of petitioner after going the statement of PW5 who was victim and other eye witnesses. The petitioner picked up the gun and shot the victim which injured his legs which is apparent from the evidence and as such the conviction of petitioner cannot said to be wrong and illegal. **Consequently, we do not find any ground to interfere in the**

findings given by the SGCM. Therefore, we confirm the conviction of petitioner.

9. It is next submitted by learned counsel for petitioner that petitioner had put in 17 years and 21 days of service and he was also released pension but due to punishment given by SGCM, his pension and gratuity has been stopped.

10. It is unfortunate that petitioner after completing full tenure in Army had to face this situation in which he was convicted by the SGCM.

11. Learned counsel for petitioner submits that even in the cases of conviction, the President has power to condone and grant the pension on mercy petition filed under Regulation 113(a) that *in exceptional cases the President can grant service pension or gratuity at the rate not exceeding that for which he would have otherwise qualified had he been discharged on the same date.*

12. Learned counsel for petitioner submitted that he presented the mercy petition way back in the year 1997 and he does not know the fate of that petition whether it was disposed by respondents or not.

13. Respondents in their reply did not throw much light on the fact that whether the mercy petition was disposed or not.

14. However, that mercy petition is of the year 1997 and ought to we know that it might have been lost or it has not been dealt with at all. Be that as it may, petitioner may file fresh mercy petition again within one month and respondents may consider the said mercy petition sympathetically as per Regulation 113(a) because petitioner has completed full tenure of service and due to some unfortunate event, his pension and gratuity is stopped.

15. The petition is disposed of. We uphold the conviction order passed by the SGCM and petitioner may file a fresh mercy petition before the President within 1 month and respondents may

consider the same sympathetically and dispose of the said mercy petition, if filed by petitioner, within 3 months. No costs.

16. The amount of pension and gratuity which has already released to petitioner shall not be recovered from him.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
May 25, 2010.