

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.

T.A.No. 490 of 2009

[arising out of WP (C) NO. 617 of 2006 of Delhi High Court]

Sh. Ramesh Chand

...Petitioners

Versus

Union of India & Ors.

...Respondents

For the Petitioner : Sh. Gyanendra Singh, Advocate.

For the Respondents: Dr. Ashwani Bhardwaj, Advocate.

C O R A M:

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

HON'BLE LT.GEN. M.L.NAIDU, ADMINISTRATIVE MEMBER

JUDGMENT

1. Petitioner by this Writ Petition has challenged the order of Court Martial dated 6th December, 2003 as well as the order dated 17th November, 2003, whereby the respondent

had rejected the pre-confirmation petition of the petitioner. Likewise, the order dated 30th May, 2005, whereby the petition of the petitioner was rejected by the respondent.

2. Petitioner was enrolled in the Corps of Engineers. Since then the petitioner had been serving with his best ability and entire satisfaction of the senior officers. Petitioner was due to retire on 1st March, 2003 from service, therefore, he built a house at Meerut in Civil Area for settlement after retirement.
3. On 1st August, 2002 SHO Mahendra Singh Yadav along with police party consisting three Sub-Inspectors and five constables raided the house of the petitioner. After taking key of almirah from petitioner's pocket opened the

almirah and from there one CMP, 315 bore country made Pistol, 02 live cartridges of the same bore and explosives were recovered from there. One polythene packet was also seized containing incriminating material along with seven barrels of kerosene oil from the house of the petitioner.

4. On 1st August, 2002 FIR was registered and, thereafter, petitioner was handed over to Army. Petitioner was sent for Court Martial and the General Court Martial tried the petitioner on the following charges, which reads as under:

First Charge Army Act Sec 69	COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, POSSESSION OF A FIRE ARM IN CONTRAVENTION OF SECTION 3(1) OF THE ARMS ACT, 1959, CONTRARY TO SECTION 25 (1-B)(a) OF THE ARMS ACT, 1959 in that he, on 01 August 2002, at House No. 805 Sheikh Pura Road, Multan Nagar, Meerut
---	---

	<p>was found to be in possession of a country made pistol (0.315 bore) without a valid licence.</p>
<p>Second Charge Army Act Sec 69</p>	<p>COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, POSSESSION OF AMMUNITION IN CONTRAVENTION OF SECTION 3(1) OF THE ARMS ACT, 1959, CONTRARY TO SECTION 25 (1-B)(a) OF THE ARMS ACT, 1959</p> <p>in that he,</p> <p>on 01 August 2002, at House No 805 Sheikh Pura Road, Multan Nagar, Meerut was found to be in possession of 02 live cartridges (0.315 bore) without a valid licence.</p>
<p>Third Charge Army Act Sec 69</p>	<p>COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, POSSESSION OF EXPLOSIVE SUBSTANCE UNDER SUCH CIRCUMSTANCES AS TO GIVE RISE TO A REASONABLE SUSPICION THAT HE DOES NOT HAVE IT IN HIS POSSESSION FOR A LAWFUL OBJECT, CONTRARY TO SECTION 5 OF EXPLOSIVE SUBSTANCES ACT, 1908.</p> <p>in that he,</p> <p>on 01 August 2002, at House No 805 Sheikh Pura Road, Multan Nagar, Meerut</p>

was found to be in possession of the following serviceable explosive substances under such circumstances as to give rise to a reasonable suspicion that he did not have the said explosive substances in his possession for a lawful object:-

<u>Ser</u> <u>No</u>	<u>AMK</u> <u>No</u>	<u>Item</u>	<u>Qty</u>	<u>Lot</u> <u>No</u>
(a)	821	GC Primer	02	A-7842
(b)	823	Primer CE 35 GR MK II	03	Not known
(c)	840	Detonator No 27	07	Not known
(d)	841	Detonator No 33 Electric	05	Not known
(e)	831	Cord Detonating 'A'	11 Ft.	-do-
(f)	833	Safety Fuze No 11	13.5 Ft.	-do-
(g)	828	PEK-1 Cartridges	10	-do-

5. After completion of the Court Martial Proceedings, petitioner was sentenced to suffer rigorous imprisonment

for two years and six months and to be dismissed from service.

6. On 26th September, 2003 the petitioner, aggrieved by the findings as well as sentence of General Court Martial, submitted a pre-confirmation petition under Sections 164(1) and 165 of the Army Act to the General Officer Commanding. The General Officer Commanding, vide order dated 17th November, 2003, rejected the pre-confirmation petition of the petitioner.
7. On 16th March, 2004, the petitioner submitted a petition under Sections 164(2) and 165 of the Army Act to the Govt. Of India, Ministry of Defence and Chief of Army Staff raising number of pleas against the order passed by the General Officer Commanding. The petitioner also

approached the Delhi High Court by filing a Writ Petition as the pending appeal of the petitioner was not disposed of by the respondents and the petitioner was languishing in the Agra jail. Thereafter, Delhi High Court passed the order directing the Government to dispose of the petition. On 7th June, 2005 that petition was also dismissed.

8. Aggrieved against this order petitioner filed the present Writ Petition before Hon'ble Delhi High Court, which was transferred to this Tribunal, after its formation.
9. We have heard learned counsel for the parties and perused the record. Learned counsel for the petitioner has submitted that there are number of contradictions in statement of witnesses which renders the whole prosecution case improbable, secondly under the Explosive

Substances Act, 1908 no prior consent of the District Magistrate was taken therefore, conviction under Section 5 of Explosive Substances Act, 1908 cannot be sustained. Learned counsel for the petitioner also submitted that the punishment awarded in the present case is excessive.

10. As against this learned counsel for the respondent has supported the order of the Court Martial. The original proceedings of the Court Martial were placed before us. The prosecution examined as many as 21 witnesses and defence examined 1 witness and Captain Dhananjay Kumar was examined as a Court Witness.

11. **PW-11 Sub Inspector Mahesh Singh Yadav** has deposed that the information was received at the Police Station Transport Nagar at 1350 hrs. on telephone that on the

Bagpat Road after the flyover there is a house of an army person in which some arms and kerosene oil was stored. This report was recorded and, thereafter, the police party proceeded towards the house of the accused/petitioner. PW-11 also deposed that at the time when they reached the house of the accused and wanted to raid the house, PW-11 asked for some independent witnesses from neighbourhood to be present, but, they all refused and declined to become independent witnesses of the raid. Therefore, left with no choice, he put two constables each on the two exit doors of the house and he along with three Sub Inspectors got the door of the house opened. When the door was opened, petitioner/accused and his wife both were there and identified themselves. PW-11 told them about the raid and during the search of the house he found seven drums of kerosene oil and certain arms,

ammunition and explosive items from an almirah. Proper site plan was prepared and the kerosene oil drums were seized. PW-11 also deposed that arms and ammunition were kept in a cloth bag in almirah and they were identified by him as Exhibit ME-1 to ME-8. Accused stated to PW-11 that country made pistol and two cartridges were purchased by him while he was a student and for explosive items accused stated that he brought the items from the Army. Thereafter, a seizure memo was prepared and the accused was taken into custody. He explained the possession of the kerosene oil and produced the vouchers of the Army to show that they are the government property with him. Thereafter, the army authorities were informed and the accused was handed over the army authorities after obtaining necessary orders from the Magistrate. This version has been supported by

Sub-Inspector **PW-14 Sub Inspector Jitendra Kumar Singh** and other members of the raiding party **PW-20 Constable Harender Singh and PW-21 Constable Rakesh Kumar**. Prosecution also examined **Major DR Rahar (PW-6), Colonel AK Bhutani (PW-7) and Major Uttam Mukerji (PW-9)** to support the case of prosecution.

Explosive experts were also produced to show that these were the live cartridges and the country made pistol was serviceable condition. The explanation of the accused with regard to possession of the kerosene was justified by production of necessary vouchers and that has been supported by the testimony of other witnesses i.e. **PW-1, PW-2 and PW-3** that all of them were travelling in a vehicle but the vehicle could not negotiate the bridge, therefore, these kerosene oil barrels were entrusted to

the accused, whose house was nearby. Hence, no charge for possession of the kerosene oil was raised against the accused.

12. Prosecution, after proper examining of witnesses, brought the offence against the accused and after going through the testimony of the prosecution witnesses there is hardly any doubt about seizure of this country made pistol and a gun along with ammunition from the house of the accused, therefore, the conviction recorded by the Court Martial authorities cannot be interfered, as it is fully substantiated. Hence, the charge under Section 3 of the read with Section 25 of the Arms Act, 1959 is established, likewise, the charge number 2 of possessing of ammunition. However, charge number 3 with regard to the explosive substance is concerned, learned counsel for

the petitioner has submitted that for launching a prosecution against this offence permission of District Magistrate, as mentioned in Section 7 of the Explosives Substances Act, 1908, is required, but, no such permission seems to have been taken for launching prosecution against the possession of the explosive substance under Section 5 of the Explosives Substances Act, 1908. This contention appears to be correct as Section 7 very clearly says that the consent has to be obtained from the District Magistrate, but, no such consent was obtained from District Magistrate, even in reply also no satisfactory explanation has been provided. Consequently, so far as charge number 3, i.e. possessing of explosive substance is concerned, same cannot be sustained. However, prosecution has proved charge nos. 1 and 2, consequently we confirm the conviction and

sentence of the accused. There is no ground for us to interfere in the Court Martial proceedings except for Charge No. 3 and the same is dismissed. No order as to costs.

[Justice A.K. Mathur]
Chairperson

[Lt. Genl. ML Naidu]
Member (A)

New Delhi
16th April, 2010