

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

**TA/491/10
(Writ Petition (C) no.6034/2007)**

**NK SATENDRA SINGH
ARMY NO.3188755P
S/O. SH. DHARA SINGH
VILLAGE & P.O.SARURPUR KALAN
DISTRICT BAGHPAT (UP)
UNIT-4 JAT REGT. C/O.56 APO**

THROUGH : SH. D.S.KAUNTAE, ADVOCATE

...APPELLANT

VERSUS

- 1. UNION OF INDIA
THROUGH THE SECRETARY
GOVT. OF INDIA
MINISTRY OF DEFENCE
SOUTH BLOCK
NEW DELHI-110 011.**
- 2. THE CHIEF OF ARMY STAFF
ARMY HEADQUARTER
NEW DELHI-110 011.**
- 3. COMMANDING OFFICER
4 JAT REGT.
C/O 56 APO**
- 4. BRIGADE COMMANDER
181 MOUNTAIN BDE
C/O 99 APO**

**THROUGH : SH. ANIL GAUTAM, ADVOCATE ASSISTED
BY LT COL NAVEEN SHARMA.**

...RESPONDENTS

CORAM :

**HON'BLE SH. S.S.KULSHRESTHA, MEMBER
HON'BLE SH. S.S.DHILLON, MEMBER**

J U D G M E N T

DATE : 08th April, 2010

1. Writ of Certiorari was brought before Delhi High Court for setting aside the orders dated 03.01.2006 passed by Summary Court Martial (SCM), dated 08.06.2007 passed by the Chief of Army Staff, Show Cause Notice dated 15.07.2007 and also the order dated 01.08.2007. This petition has been received from Delhi High Court by way of transfer because of the enforcement of Armed Forces Tribunal Act, 2007. The basic contentions from the side of the petitioner are that he was enrolled in the Army as a Soldier (General Duty) on 24.10.1995 and after successfully completing his basic military training he was posted to 4 JAT Regiment. The petitioner discharged his duties efficiently to the satisfaction of the superior authorities. He was also a good sportsman and was appointed as a Lance Naik on 08.05.2003. The petitioner was subsequently promoted to the rank of Substantive Naik on 18.01.2005. While he was serving in Assam on 20.09.2005 he was detailed to take part in an operation launched by the Unit, to which the petitioner belonged. The petitioner also participated in the successful operation and for that he was assured by the Commanding Officer to submit the recommendations for conferring of a gallantry award, which was not done. Later on the petitioner came to know that his Commanding Officer was not interested to forward his name and other ineligible persons were recommended for such award. Feeling dissatisfied from such act or omission on the part of Commanding Officer, the petitioner decided to report the matter to the Chief of Army Staff for which he was well entitled under Rule 7 of the Defence Service Regulation read with

Section 26(5) of the Army Act. To substantiate his complaint he wanted to adduce evidence but respondent no.4 did not allow. For making such complaint, tentative charge sheet was made against the petitioner on 25.12.2005 for making false accusations subject to the Army Act. The petitioner filed objections but was punished in the Summary Court Martial. The petitioner filed Writ Petition (C) no.9577/2006 in Delhi High Court but that was subsequently dismissed as withdrawn as the petitioner was advised to make statutory representation under section 164(2) of the Army Act.

2. On 07/12-06-2006, the petitioner made the complaint with regard to his manhandling by Sub Maj Pusa Ram [respondent no.5 (ii)] of 4 JAT Regiment in furtherance of common intention of Col. Rajesh Tyagi [respondent no.5 (i)]. On this complaint made to the Chief of Army Staff and Commander 181 Mountain Brigade, he was again charged for making false accusations. He was also punished as against those charges. The petitioner challenged this order in Writ Petition (C) No.910/2007 and it was dismissed as withdrawn vide courts order dated 12.03.2007. On the basis of unsubstantiated four red ink entries under Rule 13 (3)(iii)(v) of the Army Rule a notice was given to the petitioner on 15.07.2007. In the notice following punishments awarded to the petitioner were highlighted:

- (a) **Awarded 28 days RI and 14 days Pay Fine under AA Sec 39 (a) on 03 Aug 1999 for absenting himself without leave.**

- (b) **Awarded 28 days RI under AA Sec 63 on 25 Oct 99 for an act prejudicial to good order and military discipline.**
- (c) **To be reduced to the ranks and 57 days RI under AA Sec 63 on 03 Jan 06 for an act prejudicial to good order and military discipline and AA Sec 56 (a) for making a false accusation against a person subject to the Army Act knowing that such accusation is false.**
- (d) **Awarded Severe Reprimand and 14 days pay fine under AA Sec 63 on 17 Mar 07 for an act prejudicial to good order and military discipline.**
- (e) **Deprived of appt of L/NK and 14 days pay fine under AA Sec 42 (e) on 09 Apr 07 for using insubordinate language to superior officer.**

3. The petitioner was also asked to give his reply to the Show Cause Notice. The petitioner in response to Show Cause Notice gave his reply on 24.07.2007 where he made it clear that he served with the Army with all sincerity and devotion and his work was also appreciated by his superiors. Because of personal prejudice he was dismissed from service. Some of the actions were taken by the Commanding Officer and Superiors for the reason that the petitioner went to High Court for the redressal of his grievance. Because of this annoyance the respondents made up their mind to give him one more red ink entry thereby rendering him liable to dismissal on administrative grounds. In that regard reference has also been made to earlier

Show Cause Notice dated 07.03.2007 wherein he was questioned with regard to his filing a Writ in Delhi High Court. This Show Cause Notice has been referred for the purposes of showing annoyance on the part of the respondents for the petitioner going to Delhi High Court for ventilating his grievances. In that context, he also gave reply to the impugned Show Cause notice wherein he highlighted that the last two red ink entries referring about the punishment No.4 was not taken in correct perspective. As a matter of fact the petitioner was deputed for football tournament/team. After getting some time from the playground he got opportunity to talk to his family members as his child was sick. In the meantime Coy Commander came and took notice of his talking on the phone at Parade time. The 5th charge pertained to his approaching Delhi High Court for the redressal of his grievance against the Show Cause Notice and the Brigade Commander was under obligation to take into consideration all these replies given by the appellant in response to the Show Cause Notice but he passed order which reads as under:-

No.3188755P Sep Satendra Singh of 4 JAT has incurred five red ink entries in a span of 11 years 09 months and 03 days of service (upto 27 July 07) and as such is a habitual offender. Having considered his reply to Show Cause Notice, I direct No.3188755P Sep Satendra Singh of 4 JAT be discharged from Army Service under the provisions of Army Headquarters letter no.A/13210/159/AG/PS2(c) dated 28 Dec 1988, 41776/48/AG/DV-1 (P) dated 07 April 2004 and Army Rule 13 (3) item III (v).

4. It shall not be off the point to mention that there are four red entries in the Annual Confidential Record. At the same time the guidelines as formulated vide letter no.A/13210/159/AG/PS2(c) dated 28.12.1988, 41776/48/AG/ DV-1 (P) dated 07 April 2004 and Army Rule 13 (3) item III (v) would not automatically make the authority entitled to take action against the individual as was held in the case of *Surinder Singh Sihag Vs. Union of India reported in 100 (2002) DLT 705*. The fact remains that when the Show cause Notice was given to the petitioner, its reply ought to have been considered by the authority. In all fairness and justice the petitioner was entitled to know the reasons which persuaded the authority to reject his reply to the Show Cause Notice. In the impugned order no reasons have been assigned. The authority must record the reasons in support of order it makes, which is basic rule of natural justice.

5. We find the order of the authorities is practically unreasoned. It is certainly not the way a reply to the Show Cause Notice was to be disposed of. There is absolutely no discussion as to why the conclusion had been arrived at while rejecting the grounds taken by the petitioner. No basis has been indicated as to why that reply has no relevance. It may also be mentioned that reasons introduce clarity in an order. On plainest consideration of justice, the authority ought to have set forth its reason, however briefly, in its order as indicative of an application of mind; all the more when its order is amenable to further

avenue of challenge. The absence of reasons has rendered the impugned order of the authority to be not sustainable. Reliance may be placed in the case of *Secretary and Curator Victoria Memorial Hall Vs. Howrah Gangtantrik Nagrik Samiti 2010 S.C.1285*.

6. In view of the aforesaid we are of the view that impugned order made by Brig Commander on 30.07.2007 is not sustainable and is set aside. Respondent no.4 (present incumbent) is directed to pass reasoned order within two months. The petitioner shall be at liberty to file fresh petition, if any cause of action accrues to him.

S.S.DHILLON
(Member)

S.S.KULSHRESTHA
(Member)

PRONOUNCED IN THE OPEN COURT
ON 08TH APRIL, 2010