

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

**TA NO. 523 of 2009**  
**(WRIT PETITION (C) NO. 1938 of 1998)**

**KAILASH CHANDRA**

**...APPELLANT**

**VERSUS**

**UNION OF INDIA AND OTHERS**

**...RESPONDENTS**

**ADVOCATES**

MR. RAJIV SHARMA FOR THE APPELLANT

MR. JAGAT SINGH  
WITH  
LT. COL. NAVEEN SHRMA FOR THE RESPONDENTS

**CORAM :**

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

**J U D G M E N T**  
**09.12.2010**

1. This petition has been preferred against the Summary Court Martial finding and sentence of 31.8.1995, wherein the appellant was sentenced to rigorous

imprisonment for three months and to be dismissed from service. On formation of this Tribunal, the writ petition was transferred and is being disposed of by this judgment treating it as an appeal under Section 15 of the Armed Forces Tribunal Act 2007.

2. Before getting into the versions of both parties, it would only be appropriate to briefly recapitulate the facts and circumstances of the case. The appellant was enrolled in the Rajput Regiment on 3.2.1988. On the night of 11/12.8.1995, while on guard duty, he had a heated altercation with Second Lt. I.V Raghu of his unit, for which necessary investigation and disciplinary action was taken, which culminated in the SCM of 31.8.1995, wherein he was awarded three months rigorous imprisonment and dismissal from service, for three charges as under:

**ARMY ACT  
SECTION 36(C)**

**LEAVING HIS POST WITHOUT ORDERS FROM  
HIS SUPERIOR OFFICER.**

in that he,

at unit loc, between 0045h and 0130h on 12 Aug 95, when on sentry duty at Delhi Cantt quitted his post without orders from his superior officer and was found sleeping by duty officer IC-5308 2P 2Lt IV Raghu.

**ARMY ACT  
SECTION 65**

**ATTEMPTING TO ASSAULT A SUPERIOR OFFICER**

in that he,

at Delhi Cantt on 12 Aug 95 at about 0100h, attempted to assault IC-5308 2P 2Lt IV Raghu, who was checking the guard as duty officer of the unit for the week ending 12 Aug 95.

**ARMY ACT  
SECTION 40(b)**

**USING THREATENING LANGUAGE TO HIS SUPERIOR OFFICER**

in that he,

at unit loc on 12 Aug 95, used threatening language to his superior officer IC-5308 2P 2Lt IV Raghu of the same unit and said, "abhi paltan teen salli Dilli Main rahegi. Main tumhe dekh lunga, main bhi marunga aur tumhe bhi nahi chhodunga", and words to that effect.

3. Thereafter, General Officer Commanding in Chief, Western Command, while processing the petition of the appellant, set aside the finding of the SCM on the 1<sup>st</sup> and 2<sup>nd</sup> charge and substituted the finding on the third charge, thereby of the three charges levelled against him, he was held guilty of only the third charge under Army Act Section 40(b) with the change that the words instead of "**abhi paltan teen sall Dilli Main rahegi. Main tumhe dekh lunga, main bhi marunga our tumhe bhi nahi chhodunga**" should be read only as "**main tumhe dekh lunga, main bhi marunga our tumhe bhi nahi chhodunga**". The GOC-in-C Western Command also remitted the sentence of dismissal with the direction that the appellant be deemed to be discharged from the date his dismissal took effect. Therefore, in essence, the appellant was held guilty only of Charge No. 3, that too with substituted wording and the sentence of rigorous imprisonment having been served out, the second punishment of dismissal was converted into discharge.

4. It was argued by counsel for the appellant that dismissal was not a punishment as listed in Army Act Section 71, wherein the punishments which are awardable by a court martial are listed. Therefore, for the GOC-in-C to award him this punishment was illegal and in actual fact, considering that the main charges against him had been dropped, he should have been reinstated in service with backwages and other pecuniary benefits. The appellant has stated that on the relevant evening, i.e. night of 11/12.8.1995, when he was on guard duty, they were found sleeping by the Battalion Duty Officer, 2Lt. I.V Raghu. He alongwith the other guard members apologised to the officer, but the officer, in a very heated and stubborn manner, abused the appellant and this, therefore, tantamounted to ill-treatment of a subordinate and the appellant replied back that the officer had no authority to use vulgar and foul language against subordinates. This resulted in a heated discussion and the consequent charges levelled against the appellant. It was also argued by the

appellant that Army Rule 22, i.e. the initial hearing of charge, was not complied with in his case and neither was he provided any "friend of the accused" to assist him in his defence. It was argued that only one prosecution witness, 2Lt. Raghu, who was the complainant and an interested party, was produced during the court martial and based on his sole testimony; the appellant was convicted and sentenced. It was alleged that the appellant has been the victim of the circumstances and had been punished on account of false complaint made by 2Lt. Raghu, who had been commissioned barely a few days before this incident and was still not tuned to practical functioning in the Army. Counsel for the appellant went on to state that he was not permitted to make any statement at the SCM and nor was he permitted to produce any defence witnesses.

5. It was also argued that the findings on the third charge were illegally substituted to deny reinstatement of the appellant in service and that the substituted findings are not supported by evidence. It was reiterated that the

dismissal from service is not a punishment contained in the hierarchy of punishment as listed in Army Act Section 71 or Section 40(b). Therefore, that illegal punishment needs to be set aside and the appellant be reinstated in service with all consequential benefits.

6. Counsel for the respondents stated that the appellant was a habitual offender and was not amenable to military discipline. He had been punished thrice earlier in his short service of seven years, all three times by three different Commanding Officers. Therefore, the attitude and indiscipline of the appellant was evident well before this incident of 11/12.8.1995. The three offences, for which he was tried and punished, are as given below:

<b>Date</b>	<b>Offence</b>	<b>Punishment</b>	<b>Commandant</b>
<b>93</b>	<b>AA Sec.41(1) disobedience of lawful command</b>	<b>28 days imprisonment in military custody 14 days detention in military custody</b>	<b>Commandant 22 Est Commando Force</b>

93	AA Sec. 39(b) without sufficient cause overstaying leave granted to him.	21 days imprisonment in military custody	CO 27 Rajput
94	AA Sec.39(a) absenting himself without leave	3 days imprisonment in military custody	-do- Delhi Cantt

7. It was also argued that during the SCM held on 31.8.1995, two witnesses were produced. 2Lt. I.V Raghu (PW 1) has stated that he was present in the office of the Adjutant when the appellant not only refused to go to the Quarter Guard, but also thumped the table of the Adjutant thrice and said: "**Paltan yahan par teen saal rahegi aur main tum sab ko dekh lunga**". Capt. S. Shukla (PW 2), Adjutant, 27 Rajput has also testified to the fact that he ordered the appellant to be taken to the Quarter Guard, after hearing which the appellant thumped his table thrice and said: "**Paltan yahan abhi yahan par teen saal rahegi aur main tum ko sabko dekh lunga**". Therefore, the two commissioned officers have certified to the very insubordinate, threatening and derogatory language used by the appellant. It was also argued that the GOC-in-C had set



aside the first two charges and the consequent punishment merely on technical reasons since the witnesses, who testified to those facts, had not appeared before the SCM. However, the fact of the matter was that the offences had been committed by the appellant. An individual of the nature of the appellant was an extremely bad influence on the rest of his colleagues in the Army and could not be trusted in any adverse/operational situations. The GOC-in-C had already remitted the sentence of dismissal to discharge so as to enable him to get the benefit of gratuity and other benefits, as would be entitled to him on discharge. No further reduction in the quantum of sentence was warranted. Counsel for the respondents also stated that a hearing under Army Rule 22 had been complied with and also that a "friend of the accused", Second Lt. B.S Nagi, was appointed to render all assistance to the appellant to prepare his defence and at no point of time has the appellant raised any objection in the performance of duties by Second Lt. B.S Nagi. With regard to the incident of 11/12.8.1995, it was

urged that since the charges arising out of this incident had been set aside by the GOC-in-C, there was no necessity to go into details of the appellant's heated discussion with 2Lt. IV Raghu. The officer, 2Lt IV Raghu was not an interested party as far as Charge No.3 is concerned and his testimony is specific and unbiased. Counsel for the respondents also argued that the original record of the SCM shows that the appellant participated fully in the SCM proceedings of 31.8.1995, in fact he pleaded "not guilty" and a full-fledged trial took place. He, therefore, cannot state at this stage that he did not participate in the trial. It was also urged that the appellant had on an earlier occasion also been punished for 'disobeying in such a manner as to show a wilful defiance of authority', wherein he was summarily awarded 28 days imprisonment and 14 days detention. The appellant was not amenable to good discipline and was a bad example to his colleagues.

8. On a careful consideration of the evidence and the points raised by the learned counsel, it would be clear that

the appellant was offensive and threatening. He was the cause of the whole trouble. Such conduct attributed to the appellant in setting the alleged scene is unnatural and eccentric. Then the question that arises for consideration in this case is: if the defence version is not held to be fully established by balance of probabilities and they are not sufficient pointers in evidence, what would probably be the truth which leaks out from the statements of some of the witnesses themselves? They have indicated the bellicose and threatening attitude of the appellant while he was thumping the table. In this situation, we do not find any justified reason to interfere with the findings recorded by the SCM holding the appellant guilty of such threatening gestures.

9. As regards the punishment of discharge from service, it was clarified by counsel for the respondents that such punishment of discharge had not been awarded *ab-initio* by the SCM, therefore, to contest it on the grounds that it was not listed in AA Sec. 71 was illogical. The sentence of dismissal given by the SCM was converted to

discharge by the GOC-in-C, Western Command, who exercised his powers under AA Sec. 164(2). Such mitigation was done on a petition filed by the appellant to the COAS and was dare to give relief to the appellant as it would enable him to get gratuity as well as entitle him to apply for employment with civil authorities.

9. In view of the aforesaid discussions, we do not find any merit in this appeal. In the result, it is dismissed.

**(S.S DHILLON)**  
**MEMBER**

**(S.S KULSHRESTHA)**  
**MEMBER**