

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

T.A NO. 537 OF 2009
(WRIT PETITION (CIVIL) NO. 6698 OF 1999)

LT. COL. G.R VERMA, S/O RADHESHYAM VERMA
EX COLONEL ARMY IC 24479 K
R/O VILLAGE AND POST LEKODA
TEHSIL AND DISTRICT UJJAIN, M.P

THROUGH: M/S. K. RAMESH & ARCHANA, ADVOCATES

... APPELLANT

1. UNION OF INDIA THROUGH SECRETARY
MINISTRY OF DEFENCE (SOUTH BLOCK)
NEW DELHI.
2. CHIEF OF ARMY STAFF
INDIAN ARMY, SENA BHAWAN
NEW DELHI
3. GENERAL COURT MARTIAL
THROUGH PRESIDING OFFICER, IC 30800n
COL. AJIT KUMAR NAGRANI
86 ARMOURED REGIMENT
RANCHI, BIHAR.

4. GENERAL OFFICER
COMMANDING-IN-CHIEF
SOUTHERN COMMAND, POONA-1, MAHARASHTRA

THROUGH: DR. ASHWINI BHARDWAJ, ADVOCATE

... RESPONDENTS

CORAM

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

JUDGMENT

06.07.2010

1. Lt. Col. G.R Verma, the appellant herein, challenges the General Court Martial proceedings, whereby he was held guilty of five charges under Section 63 of the Army Act and sentenced to be dismissed from service. Consequently, authorities forfeited 50% of his pension.

2. The facts of the case, as set out by the appellant, in a nutshell are: The appellant joined the Army on 9.10.1963 and completed 30 years of service till his dismissal from service. In 1993, when the appellant was posted at 500(I) Composite Platoon ASC at

Ranchi, a bank robbery was committed, allegedly involving Sepoy S.G Yadav of his unit, who managed to escape from Army custody on 31.3.1993. At that point of time, Hav K.A Terdal was posted on guard duty of Sepoy S.G Yadav by Col. JPS Suri, the then Commanding Officer of his unit. After the escape of Sepoy Yadav, the Commanding Officer directed charge sheet to be issued to the guard on duty. Accordingly, the appellant issued a charge sheet against K.A Terdal, who was the guard on duty. However, the said guard was acquitted stating that he was only an escort for the protection of the Commanding Officer and was not on guard duty to ensure custody of Sepoy Yadav. On acquittal of the said guard, a charge sheet was issued to the appellant, which contained the following charges:

FIRST CHARGE

Army Act Section 52(f)

SUCH AN OFFENCE AS IF MENTIONED IN CLAUSE (f) OF SECTION 52 OF THE ARMY ACT WITH INTENT TO CAUSE WRONGFUL GAIN TO HIMSELF

in that he,

At Ranchi, between 20 Jan 93 and 15 Mar 93, with intent to cause wrongful gain to himself, obtained a two wheeler scooter (LML Vespa Make) for Rs.2,500/- through No. 13894414-K Sep SG Yadav of 523 ASC Battalion, having reasons to believe the same to be a stolen property.

SECOND CHARGE

Army Act Section 63

AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

At Ranchi, on 15 May 93, being the Company Commander of 'A' Company, 523 ASC Battalion, improperly preferred a false charge against No.13846221-M Hav KA Terdal of the said Company as per the details contained in Appendix 'A' to this charge sheet, for the purpose of summary trial of the said NCO, having reasons to believe the said charge to be false.

THIRD CHARGE

Army Act Section 63

AN ACT PREJUDICIAL TO GOOD ORDER AND DISCIPLINE,

in that he,

At Ranchi, between 15 May 93 and 04 Nov 93 being the Company Commander of 'A' Company 523 ASC Battalion, improperly caused tampering of the personal (pay) book (IAB-64) of No. 13896221-K Hav KA Terdal of the same Company by making JC-197416-N Sub/Clk GPG Pillai of the said Company to block the pay book entries bearing serial numbers 115 to 118 and rewriting the said entries on a fresh additional page with different serial numbers.

FOURTH CHARGE

Army Act Section 63

AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

At Ranchi, between 15 May 93 and 02 Nov 93, being the Company Commander of 'A' Company 523 ASC Battalion, improperly and intentionally withheld publication of 'DO Part II' Order in respect of the summary punishment awarded to No. 13846221-M Hav KA Tardal of the said Company on 15 May 93.

FIFTH CHARGE

Army Act Section 63

AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

At Ranchi, between 04 Jan 94 and 22 Apr 94, when examined as a witness before a Court of Inquiry, stated that delay in publication of DO Part II Order in respect of the summary punishment awarded to No. 13846221-M Hav KA Tardal of 523 ASC Battalion on 15 May 93 was a result of slip up on part of the dealing staff, or words to that effect, which statement, as he well knew, was false.

SIXTH CHARGE

Army Act Section 63

AN ACT PREJUDICIAL TO GOOD ORDER

in that he,

at Ranchi, between 04 Jan 94 and 22 Apr 94, when examined as a witness in a Court of Inquiry, stated that Col JPS Suri, the then Commanding Officer, 523 ASC Battalion, never gave him any instructions not to publish the DO Part II Order in respect of the summary punishment of 'severe reprimand' awarded to No. 13846221-M Hav KA Terdal of 523 ASC Battalion, or words to that effect, which statement, as he well knew, was false.

The GCM found the appellant not guilty of Charge No.1 and to have committed the offences under Charge Nos. 2 to 6 and sentenced him to be dismissed from service. The post confirmation petition submitted by the appellant was also rejected.

3. Counsel for the appellant has submitted that the entire case was fabricated and the GCM had found the appellant guilty of Charge Nos 2 to 6 based on no convincing evidence. The appellant had only carried out the instruction of his superior officers which is clear from the documentary evidence. That apart, the Commanding Officer recorded the plea of guilt and found substance in the allegations against Hav. Terdal, who was found guilty and

reprimanded for the lapses on his part in performing the duties as a guard. Subsequently, the punishment imposed on him was reviewed by the GOC. If his punishment could not be sustained, no culpability could be fixed on the part of the appellant. The entire evidence adduced in the case was sufficient to prove the involvement of his Commanding Officer, Col. JPS Suri, who concocted the entire issue to save his skin and the appellant was wrongly tried for the charges. The punishment of dismissal from service is disproportionate to the gravity of offence alleged to have been committed by the appellant.

4. The appeal is resisted by the respondents contending, inter alia, that the findings of the GCM were on the basis of the evidence adduced before it. The case against the appellant was prima facie established by a Court of Inquiry. The appellant was given adequate opportunity under Army Rule 23 to defend his case. The evidence clearly proved that Hav. Terdal was not on escort duty on Sep Yadav on 31.3.1993, but was detailed as a Guard to protect Col. JPS Suri. Further, there was evidence on record to show that

Hav. Terdal was assured that he would be protected if he takes full responsibility for the escape of Sepoy Yadav. On the basis of the said assurance, he pleaded guilty. The appellant intentionally withheld publication of DO Part II Order in respect of the summary punishment of severe reprimand awarded to Hav. Terdal. All these would show the active involvement of the appellant in the conspiracy for which charges were framed against him.

5. It is to be noted that the GCM, after sifting the evidence, found the appellant not guilty of Charge No.1 and for rest of the charges, his culpability was found established. The second charge relates to the framing of a charge against Hav Terdal knowing it to be false. Charge No.3 pertains to the conviction of Hav. Terdal on the basis of the false charges framed by the appellant. The other charges, with regard to intentional withholding of publication of "Daily Order Part II" in respect of the summary punishment awarded to Hav. Terdal, also flow from Charge No.2. In this context, the entire evidence adduced against the appellant was taken up for scrutiny.

6. The first and the foremost argument put forth by counsel for the appellant is that Charge No.2, if read in totality, would not make out an offence against the appellant. If it is assumed that the appellant, in the capacity as Company Commander, had framed incorrect charges, no culpability could be fastened on him as it was for the CO who is the legal authority to approve it or not. From the reading of Charge No.1, it appears that the appellant improperly framed false charge against Hav. Terdal. Framing of 'false charge' against Hav. Terdal is to be read in the context of the available materials before the appellant. From the evidence on record, including the order detailing guard duty, it appears that Hav. Terdal was detailed for protection duty. The word 'protection' does not find place in the order and further, the order does not mention for whose protection Hav. Terdal was detailed. However, it is pointed out by counsel for the appellant that the word 'protection' was used to mean that he was put to guard Sepoy Yadav, who was involved in the bank robbery. To the contrary, from the side of the respondents, much thrust has been made that

‘protection’ was given to Col. Suri and the Hav. Terdal had nothing to do with the protection of Sepoy Yadav. The vague expression ‘protection’, which is used in the detailment order of Hav. Terdal, could not, at the stage of framing of charge, be confined to mean that he was detailed for the protection of Col. Suri. Whatever be the position, if charge is framed on the basis of the vague order, particularly when Sepoy Yadav had escaped from the room of the Commanding Officer, that would not even remotely fix culpability of the appellant, who has only drafted the charges and it was for the CO to approve it.

7. As regards framing of charges is concerned, prima facie satisfaction of the person preparing the draft charge as in the case of the appellant was necessary and if Sepoy Yadav had escaped from the room of the Commanding Officer when Hav. Terdal was on protection duty, it can be said to be sufficient for the substantive satisfaction of the appellant. In **State of Maharashtra and others v. Som Nath Thapa and others** (1996(4) SCC 659), the apex Court explained the meaning of the word ‘presume’ referring to the

dictionary meaning of the said word and held that on the basis of the materials on record, Court has to complete the prima facie conclusion of the commission of the offence. The observations of the apex Court read:

“31. Let us note the meaning of the word ‘presume’. In *Black’s Law Dictionary* it has been defined to mean ‘to believe or accept upon probable evidence’. In *Shorter Oxford English Dictionary* it has been mentioned that in law ‘presume’ means ‘to take as proved until evidence to the contrary is forthcoming’, *Stroud’s Legal Dictionary* has quoted in this context a certain judgment according to which ‘A presumption is a *probable* consequence drawn from facts (either certain, or proved by direct testimony) as to the truth of a fact alleged’. In *Law Lexicon* by P. Ramanath Aiyer the same quotation finds place at p. 1007 of 1987 Edn.

32. The aforesaid shows that if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused *might have* committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused *has* committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be

gone into; the materials brought on record by the prosecution has to be accepted as true at that stage.”

For the prima facie satisfaction, detailment of Hav. Terdal itself was sufficient. There is no allegation against the appellant that he manipulated materials to falsely prosecute Hav. Terdal, who was detailed for protection duty. The charge was approved by the Commanding Officer and the accused was tried by the CO and on the basis of the plea of guilt, he was sentenced to be severely reprimanded. The CO cannot shift the blame onto his subordinate (the petitioner).

8. There are no allegations against the appellant that he framed charges against Hav. Terdal with mala fide intention and vengeance. In this connection the statements of PW 4 Hav. Terdal, PW 5 Sub. Clk. GPS Pillai, PW 7 Ex Sub Govind Singh, DW 2 Col. BJS Gill and DW 6 L/Nk. Vasudevan were referred to. All the witnesses have given almost identical statements. The other witnesses examined by the prosecution also corroborated the evidence of PW

4 (Terdal). If those statements are accepted on its face value, it would appear that Sepoy Yadav was involved in the bank robbery and escaped from the room of Col. Suri. As regards conspiracy is concerned, there is nothing in the charges to show that the appellant was instrumental or participated in the conspiracy to implicate Hav. Terdal. However, it is argued from the side of the respondents that there is ample evidence with regard to the execution of the plan by the appellant and other officers and that is sufficient to prove the conspiracy. As has been mentioned above, the appellant had only drafted the charge sheet against Hav. Terdal and it was sent for the approval of the Commanding Officer, who ordered trial of Hav. Terdal, wherein he confessed his guilt. Under such circumstances, even if the framing of the charge is considered to be evidence, no culpability could be fixed on the part of the appellant.

9. It may be mentioned that if the appellant persuaded Hav. Terdal to plead guilty before the Commanding Officer for the charges levelled against him, he would also be considered to be part of that

conspiracy. This witness had taken undue advantage and pleaded guilty on the basis of the assurance without involving himself in the conspiracy. The statement of such an accomplice will have no evidentiary value. It has next been contended that framing of the charge and other subsequent actions were illegal and, therefore, the appellant was rightly held guilty for Charge Nos. 3 to 6.

10. In this context, it is necessary to define the word 'illegal', as is given in Section 43 of the Indian Penal Code, which reads:

“43. ‘Illegal’, ‘Legally bound to do’:- The word ‘illegal’ is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be ‘legally bound to do’ whatever it is illegal in him to omit.”

For proving illegality, three essential conditions are to be fulfilled viz. (i) **an action which is prohibited by law**; (ii) **an action which is a ground for civil action**; and (iii) **an action which is legally bound is omitted to do**. Here, in this case, the appellant, on the basis of

detailment of Hav. Terdal, proceeded to frame charge. The expression 'protection' needs to be interpreted and there appears to be no prohibition for the purpose of framing of the charge. At the same time, on the basis of the framing of the charge, there is nothing for civil action against the appellant. He was a subordinate officer and if the appellant had framed charges against Hav. Terdal on the basis of such direction by the superior officer, no illegality could be alleged against the action of the appellant.

11. It has next been argued by counsel for the respondents that there was mala fide intention on the part of the appellant in framing charges against Hav. Terdal. It may be mentioned that the person who alleges mala fide has to prove it. Here, it is said that the appellant obeyed the illegal orders which were given by the Commanding Officer. The mala fides on the part of the appellant could not be established. It shall be useful to rely on the decision of the apex Court in **E.P Royappa v. State of Tamil Nadu and another** (1974 (4) SCC 3), Paragraphs 91 and 92 of which read:

“91. Now, when we examine this contention we must bear in mind two important considerations. In the first place, we must make it clear, despite a very strenuous argument to the contrary, that we are not called upon to investigate into acts of maladministration by the political Government headed by the second respondent. It is not within our province to embark on a far-flung inquiry into acts of commission and omission charged against the second respondent in the administration of the affairs of Tamil Nadu. That is not the scope of the inquiry before us and we must decline to enter upon any such inquiry. It is one thing to say that the second respondent was guilty of misrule and another to say that he had malus animus against the petitioner which was the operative cause of the displacement of the petitioner from the post of Chief Secretary. We are concerned only with the latter limited issue, not with the former popular issue. We cannot permit the petitioner to side4 track the issue and escape the burden of establishing hostility and malus animus on the part of the second respondent by diverting our attention to incidents of suspicious exercise of executive power. That would be nothing short of drawing a red herring across the trail. The only question before us is whether the action taken by the respondents includes any component of mala fides; whether hostility and malus animus against the petitioner were the operational cause of the transfer of the petitioner from the post of Chief Secretary.

92. Secondly, we must not also overlook that the burden of establishing mala fides is very heavy on

the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. Here the petitioner, who was himself once the Chief Secretary, has flung a series of charges of oblique conduct against the Chief Minister. That is in itself a rather extraordinary and unusual occurrence and if these charges are true, they are bound to shake the confidence of the people in the political custodians of power in the State, and therefore, the anxiety of the Court should be all the greater to insist on a high degree of proof. In this context it may be noted that top administrators are often required to do acts which affect others adversely but which are necessary in the execution of their duties. These acts may lend themselves to misconstruction and suspicion as to the bona fides of their author when the full facts and surrounding circumstances are not known. The Court would, therefore, be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. Such is the judicial perspective in evaluating charge of unworthy conduct against ministers and other high authorities, not because of any special status which they are supposed to enjoy, nor because they are highly placed in social life or administrative set up – these considerations are wholly irrelevant in judicial approach – but because otherwise, functioning effectively would become difficult in a democracy. It is from this standpoint that we must

assess the merits of the allegations of mala fides made by the petitioner against the second respondent.”

This decision has been followed by the apex Court in **Jasbir Singh Chhabra and others v. State of Punjab and others** (2010(4) SCC 192 at page 209).

11. Having gone through the evidence on record, we are of the view that the prosecution failed to establish Charge Nos. 2 to 6 against the appellant. In the result, the appeal is allowed. The findings of the GCM are not sustainable. The impugned order of dismissal from service is set aside. The respondent shall consider restoration of the withheld pension of the appellant.

**S.S DHILLON
MEMBER**

**S.S KULSHRESTHA
MEMBER**