

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.

T.A.No.670 of 2009
(W.P.(C)244 of 2009)

Rattan Chand & Anr.

...Petitioner

Versus

Union of India & Ors.

...Respondent

For the Petitioner : Shri D.S.Kaunte, Advocate

For the Respondents: Shri Ajai Bhalla, Advocate

C O R A M:

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

HON'BLE LT.GEN. Z.U.SHAH, MEMBER (A)

JUDGMENT

28.2.2012

BY CHAIRPERSON:

1. Petitioner by this writ petition has prayed that the order dated 27.5.2007 & 4.8.2008 may be quashed and respondent be directed to take both the petitioners back in service with all consequential benefits.

2. It is a joint petition filed by both the petitioners who were charged for committing an assault on PW-3 Col. VS Yadava.
3. Both these petitioners were enrolled in the Indian Army i.e. on 28.10.1980 and 20.12.1992 and they were promoted to the rank of Havildar during the course of time. The petitioner was awarded with the General Officer Commanding-in-Chief Commendation Award on the eve of Republic Day. It is alleged that both the petitioners were serving in the Officer Commanding of Field Security Section and Respondent No.7 Col. V.S.Yadav, Officer Commanding Field Security Section had developed a bias attitude and malafides against petitioner No.1 and acted in a revengeful manner and issued warning on 25.5.2005 to petitioner No.1 . Similarly, he developed a bias against petitioner No.2 and he was also given performance counselling and warning. It is alleged that Respondent No.7 was also involved in various nefarious acts of misappropriation of Govt. Funds and misuse of men and material. Both the

petitioners, along with the one Sepoy M.Masilan approached Respondent No.8 Brig. Gajinder Nigam, Dy. General Officer Commanding in his office and lodged a written complaint in the form of questionnaire/certain points reporting the nefarious activities and various acts of dishonesty and misappropriation of public funds by Respondent No.7 seeking a proper inquiry and investigation against him. No such inquiry however was initiated by the Respondent No.8. On the contrary he was asked for his comments. It is alleged that Respondent No.8 was also hand in glove with Respondent No.7. Both the petitioners were said to have chased by Respondent No.7 on the instigation of Respondent No.8 to catch hold and implicate them in a disciplinary offence at the first available opportunity but both the petitioners performed their duties without giving any chance to the said respondents in an exemplary manner. It is alleged that Respondent No.7 turned revengeful against both the petitioners. It is further alleged that Respondent No.7, after speaking telephonically with the Medical Officer in

MI Room, levelled false allegations against petitioners along with the Sepoy M.Masilan that they assaulted him in his office on issue of asking leave from the said officer by briefcase and punches and accordingly implicated both the petitioners by levelling a false charge under section 40(a) of the Army Act on 19.8.2006 which according to them was incorrect and untrue. On account of this assault by all the three persons on Respondent No.7 Officer Commanding V.S.Yadava, they were chargesheeted. The Court of Inquiry was held and then Summary of Evidence and ultimately a Court Martial was convened against all the three persons for assaulting Respondent No.7 Col. Yadava. The following charge was framed against all the three accused persons:

**Army Act
Sec 40(a)**

USING CRIMINAL FORCE TO HIS SUPERIOR OFFICER

In that he,

At field, On 19 Aug 06 between 0930h and 0945h used criminal force to physically assault IC-35752H Col.(TS) Yadava, his OC, while he was in execution of his office.

4. A Court martial was held against both these petitioners and third Sepoy who had not filed a petition before us

and they were tried by the Court Martial. The prosecution examined as many as 21 witnesses and defence examined 2 witnesses.

5. The whole prosecution story has been unfolded by PW-3 Col.V.S.Yadava who was a victim of the assault by these persons.

PW-3 Col. V.S. Yadava has deposed that-

'On 19.8.2006 at about 0920 hrs along with my Sahayak Sepoy Kishan who had accompanied me in the vehicle with my breakfast moved towards my office. When we reached the tri-junction about 25m-30m away from my residence, I saw Hav. Debnath of my section walking briskly from the side of the camp cook house and family lines. On being enquired he said that he was coming to my residence to fetch my winter clothing as I had told him to collect it by that days evening. Then I informed him that I was also proceeding there so he can get into the vehicle. Within 4-5 minutes of my leaving the residence I reached the office where I was received by Accused No.1 Sub. Rattan Chand and runner Sepoy Vikas Gurung. Sepoy Vikas Gurung took my briefcase and placed it on the peg table in the office near the office table. I told my Sahayak to stand in the corner in the office since accused No.1 would be coming for his 'daily Ok report', which was the normal procedure as part of the daily routine. But on 19.8.2006, this routine was not followed and dak was placed on my table. I waited for the accused no.1 to come and give the report, since he did not turn up, he started perusing the dak kept on the table. I then rang the office bell to call the Head Clerk Havildar Thakur to clarify an issue that I had observed in one of the letters and also to find out as to why was the dak placed on the table even before the 'OK report' of the Senior Junior Commissioned Officer i.e. accused No.1. My office runner Sepoy Gurung did not turned up. However, Sepoy BL Bhai came in and I told him to send Sepoy Gurung who replied that Sepoy Gurung is not there. Then I asked him to send the clerk. Then I was told by Sepoy BL Bhai that clerk is not available. Then I left the dak and finished my breakfast. After my breakfast, I again started perusing the dak when I observed an unusual leave application put up to me by accused

no.2 Havildar Govind Singh. I did not write my remark on it since it was not stamped with the first sight dak and I also wanted to discuss about it with clerk. I saw the watch that it was already more than 0930 hrs and since the Sahayak was getting late for the working for which all Sahayaks to officers were detailed during the office hours, I told him to leave along with the empty utensils. When the Sahayak left, the accused No.1 came and after saluting me gave the previous 24 hours report. After giving his report in an unusual manner he mentioned only about the occurrence at the main gate and gave no details of the happenings in the Field Security Section. He turned and proceeded to leave. Suddenly accused No.1 turned back and asked me "why are you not sending me on leave." I replied, "We have already spoken twice on this matter that we still don't have adequate man power as only two Non-Commissioned Officers are available and there is a requirement of three Non-Commissioned Officers and your presence fulfils in carrying out the duties of the third Non-Commissioned Officer" I also told him that "Out of the two Non-Commissioned Officers, Havildar Debnath's posting is long due and the records of the intelligence Corps had already sent the movement order of him for dispatching the Non-Commissioned Officer by 21.8.2006. Within 2-3 days some Non-Commissioned Officers will be arriving from leave and then you can proceed on leave." When I refused to allow the accused No.1 to send him on leave, accused No.1 said "Accha to main Mehta Saab ko bata doonga" and saying so when he was about to leave, he suddenly stopped and said "pehle to tumehein dekhte hain phir Mehta Saab ko batate hain". Then he quickly moved two steps, turned and called out for Havildar Govind Singh. Havildar Govind Singh immediately entered and pointing a finger at me said "Tu mera Officer Commanding hain, tu mujhe chutti kaise nahin dega abhi dekhta hoon" and saying so he speedily advanced towards me. The accused No.2 first tried to get hold of me from the side of the office table where the telephone was kept, when he could not reach me he again came in front of the table and after extending himself on the table he caught hold of me by my collar. I pushed him back and told him "Govind Singh behave yourself". I looked at the accused No.1 and told him "Subedar Sab aap ise rokhte kyon nahin ho". However, accused No.1 only smiled and came near the computer table on my right side where there was the telephone. Accused No.1 moved on the left side. As I was looking at accused no.2, accused No.1 from the other side came and hit me in the area between the right shoulder and the neck below the head. The accused No.2 then came from the left side and pushed my chair. The chair went and hit the computer table and my hand hit the base of the monitor. The chair got fully tilted. The accused no.1

who was standing near the computer held the monitor and prevented it from falling. As I was about to get up from the chair, the accused No.2 picked up my briefcase and hit me on my forehead. I pushed the accused No.2 and tried to move out of the enclosed space where I was between the office table and almirah on the left. When I tried to come in the free space, accused No.1 came in front of me and hit me on my face and chest and pushed me back to the same enclosed space and towards accused no.2. In the meanwhile, accused no.2 had regained his balance and coming on my side with the support of holding my one leg he caught me from behind by my waist and he hit me with his right fists. In the meanwhile, accused No.1 was already panting. He went near the door and from inside called for the accused no.3 and accused no.1 himself stood inside the office near the door. Accused No.3 was entering in a normal manner but accused no.1 ordered him, "Jaldi Karo" and he himself followed him. In the meanwhile, I had freed myself from accused no.2 and reached the window when accused No.1 and accused No.3 came in and pushed me towards the corner in the direction of accused No.2 towards the map wall. Accused No.2 gave me a couple of blows in the right side of my chest. Accused No.1 and Accused no.3 also started hitting me. The accused no.1 then suddenly went outside the office and stood near the door and kept on giving directions in a low tone to accused No.2 and No.3. Accused No.3 kept pushing me towards the chair in the corner and Accused No.2 kept on hitting me. Initially Accused No.1 said to Accused No.2 "Govind Singh chhodna nahin maaro". The accused No.2 picked up the spectacle case that is 'material exhibit No.ME1' and made a action to hit me with it but the upper portion of it opened and felled down and he left the spectacle case at that. Accused No.2 then picked up the file and with an action of tearing it and said "hamari report karega abhi batata hoon". He opened the file and then without tearing it left the same at that. Sensing a danger to my life I got up to run away, when accused no.2 picked up the larger portion of the spectacle case and hit me in the ribs. I shouted for help when accused No.2 was hitting me and accused no.3 was holding me. I shouted "TA TA" twice or thrice for the Territorial Army Guard. Thereafter, I jerked everyone and ran out of the office. I could not see anyone at the Field Security Section reception. At the main gate the Territorial Army guard was not there. Even the Light Machine Gun Post No.29 did not respond and there was no civilian on the road. The small gate meant for the pedestrian was also latched. Then I went directly to the General Officer Commanding Major Gen. N.K.Singh after taking permission from his ADC, reported the matter. The General Officer Commanding asked me who were the people involved and I told him the names of the

accused person No.1, No.2 and No.3. The General Officer Commanding passed necessary directions to the Deputy General Officer Commanding Brigadier Gajendra Nigam to hold a Court of Inquiry and the subsequent proceedings. I was then sent to the Deputy General Officer Commanding's office. After 20 minutes or so the Deputy General Officer Commanding came and told me wait in the office of the Colonel Administration where I was all alone. After about 5-10 minutes Colonel RK Chowdhary, Commanding Officer Signal Regiment came and then DAAG (Kilo Force) Lt. Colonel R.K.Bura also arrived. Lt.Col. P.K.Bura asked me as to who all were involved in the quarrel with me and I told him the names of the three accused. I was then sent to the Medical Inspection Room where I was examined by Lt.Col.K.K. Sharma who administered me the medical aid and care. Certain exhibits were also produced like shirt, trousers, spectacles etc.'

6. This witness was cross-examined at length but he stick to his contention. This witness has been supported by testimony of PW-5 Lt. Col. PK Bura, PW-8 Capt. Sashank Pandey, ADC to GOC and PW-13, Lt.Col. K.K.Sharma who examined the victim and PW-15 Brigadier Gajendra Nigam, Dy. General Officer Commanding.

PW-15 Brig. Gajendra Nigam, Dy.General Commanding has deposed that-

'On 19th August, 2006, I came to the office at 0900 hrs and on reaching there I saw Col. Yadava, Officer Commanding Field Security Section standing in front of the General Officer Commanding. Col. Yadava appeared to be deshelled, disoriented and visibly shaken. He had a bleeding kind of mark on the bridge of the nose. His one side of the shirt was not tucked in and button of his shirt was either broken or was open. He was dressed in civil clothes. I asked Col.Yadava to sit in my office. When I came to my office from the office of the General Officer Commanding, I saw Col.I Yadava still waiting outside in front of my office. I tried to find out from Col. Yadava as to what had happened. He could not narrate to me coherently since his voice was totally choked and he was completely shaken up. I tried to calm him down and called for

the Subedar Major and the DAAG, Lt. Col. Bura. I told them to make Col. Yadava sit in the office of Colonel Administration and if need be call for the Medical Officer from the Aviation. Then I told Lt. Col. Bura to go and find out the details as to what had happened at the Field Security Section and to get all the persons of Field Security Section along. Three accused persons were brought to the office along with the Subedar Major, they feigned total ignorance as to nothing had happened. The witness uses the hindi word 'anibhigyata'. A feedback was given by Lt. Col. Bura telephonically and further instructions were passed to him subsequently. Lt. Col. Bura gave me report that all the weapons are under control. I gave instructions to seal the office till the arrival of the investigating body so that whatever necessary evidence the said investigating body desired they could gather it and the same does not get tempered and I was informed that office was sealed.'

PW-5 Lt. Col. Bura of Headquarter Counter Insurgency Force (Kilo) Force deposed that -

'On 19.8.2006, I was posted in HQ Counter Insurgency (Kilo) Force at the appointment of DAAG. Between 1000 hrs to 1030 hrs when I was working in my office the Deputy General Officer Commanding Brigadier Gajendra Nigam came to my office and said that Officer Commanding Field Security Section Colonel Yadava has been manhandled by few personnel of Field Security Section. I was ordered by Deputy General Officer Commanding to get these persons to the office of the Subedar Major. I walked to the office of the Corps of Military Police and along with Naib Subedar Gop and Havildar Multani came to the Field Security Section Office area. I saw some persons sitting in the veranda. I asked them if they had any arguments or altercation with the Officer Commanding Field Security Section or anyone of you is aware of any such incident. They all said that they don't know anything. I went back to the Field Security Section Office Area along with the Corps Military Police Personnel and when I mentioned the above names these persons came forward and asked, what is the matter I told them that I have been told to get you all three to the office of the Subedar Major. When all the three accused persons were taken to Subedar Major's Office, they asked me "what is the matter", I replied "you will come to know shortly". Then I went to the Office of Field Security Section to lock the office of the Officer Commanding. The other material was seized by the Investigating Agency.'

PW-8 Capt. Sashank Pandey of 1/3 Gorkha Rifles deposed that-

'He was posted as ADC to the General Officer Commanding and on 19.8.2006 he was performing the same duty and came along with the General Officer Commanding at 0900 hrs to the Office. Around 0940 hrs and 0945 hrs, Col. VS Yadava came to the office and told me that he wanted to meet the General Officer Commanding. He was in civil dress when I shook hands with him, his hands were shivering and he was sweating. His right side of the shirt of Col. Yadava was out and his dress was disarranged and not in order. He had a cut on the bridge of the nose. I told him that the General Officer Commanding has to go on a sortie and I was also to accompany him and that it will not be possible to meet the General Officer Commanding now. But Col. Yadava insisted and I spoke to the GOC on the telephone who reluctantly permitted and told me to send him in. After 10-15 minutes, the GOC came out of the office and I accompanied him to the Operational Reece sortie. He said that there was a cut on the bridge but blood was not oozing out. He further deposed that he came to know the names of the accused persons.'

PW-13 is a doctor Lt. Col. KK Sharma and he deposed that-

'On the relevant date he was posted in the 663 Army Aviation Sqn(R&O) and on 19.8.2006 he was on duty and about 1030 hrs, Col. Yadava came to the squadron Medical Inspection Room along with Sepoy R.K. Chowdhary. He was not cheerful and in a disturbed and tensed mood. He then narrated the complete story. He told me that "A Junior Commissioned Officer, Havildar and Sepoy had assaulted and hit him at around 0930 to 0940 hrs and I have suffered these injuries." I could see the swelling on his forehead which was about one centimetre in diameter and the other injuries i.e. (a) a contusion on the forehead 1 centimetre in diameter; (b) Bruise and laceration of 1 centimetre on the bridge of the nose; (c) Bruise and laceration on the frontal aspect of the right elbow; (d) Abrasion and laceration on the backside of the right wrist; and (e) Blunt trauma with suspected fracture on the right lower chest. After examining the Col. Yadava I checked other vital parameters and the injuries were not serious. I prepared a detailed report (Exhibit-35).'

7. This is the relevant evidence which has been introduced along with the other evidence of the prosecution, but

other evidence that of the other NCOs and JCOs did not support the prosecution version and they tried to support the defence of the accused that he was on the duty at the relevant point of time. Defence has also produced two witnesses Col. Mehta (DW-1) and one Subhash Yadav (DW-2), both these witnesses were not eye witness to the incident but they only gave the credibility of the accused persons. In this connection the argument was also raised that one more witness Lt.Col. Piyush Berry was cited but he was not examined, but records shows that in the proceedings petitioner gave up the examination of Lt.Col. Berry. Certain other witnesses were also produced by the prosecution but their evidence does not have much relevance as they did not support the version of the prosecution and rather tried to be more supportive of the accused persons. The trial commenced on 9.4.2007 and concluded on 27.5.2007.

10. Learned Counsel for the petitioner has tried to point out the contradiction in the various statements of the witnesses vis-a-vis prosecution witnesses and tried to

show that the entire story of the prosecution is fabricated. He tried to seek the support of the witnesses who were on the duty and deposed that no such incident occurred and all the accused were on their duty at the relevant point of time. Learned Counsel also submitted that there is non-compliance of Rule 22, 23 & 24 that during the Court of Inquiry he was not given the proper opportunity. He has also pointed out that he was not given a Defence Counsel of his choice and a person who appeared on behalf of defence was not authorised by the petitioners. He has also pointed out that certain provisions of the Evidence Act and Cr.PC were completely disregarded. So far as the non-compliance of Rule 22, 23 & 24 are concerned, suffice it to say that when the Court martial had already been convened and all the witnesses had been examined therefore nothing turns on the so called non-compliance of the Rule 22, 23 & 24. However, on the contrary, learned Counsel for the respondent has pointed out that at the relevant time, accused were given full opportunity. They have been given all the documents which are necessary

like copies of the convening order of the Court Martial, copy of the chargesheet, copy of the Summary of Evidence with annexures and they had full opportunity to cross-examine the witnesses which were produced. Learned Counsel also pointed out that so far as breach of principle of natural justice is concerned, petitioners themselves agreed for their own counsel Mr. Dinesh Bhatt and he invited our attention to page 214 of the Court Martial proceedings dated 13.4.2007. On that date, the petitioners agreed to have Sh.Dinesh Bhatt as their Defence Counsel. The petitioners could have at the relevant date insisted of not continuing with Shri Dinesh Bhatt. He could have made a request that their case may be represented by Advocate D.S.Kaunte, but there is no such request recorded in the proceedings of the Court Martial and Sh.Bhatt continued to conduct the cases on behalf of the petitioner. Therefore, this grievance at this belated stage is not tenable. The grievance with regard to non-supply of court proceedings and the Court of Inquiry and copies demanded by petitioner is belied by the

Learned Counsel for the Respondent who has produced before us the photocopy of the receipt which clearly states that the petitioner received one copy of chargesheet, convening order and Summary of Evidence along with the annexures and copy of the Court of Inquiry running into 127 pages and it bears the signatures of petitioner as token of receipt of these documents. Therefore, this argument of learned counsel of petitioner is bereft of any merit.

11. Now coming to the question whether on the basis of the evidence which has been produced by the prosecution, conviction of the accused persons can be sustained or not.
12. We have gone through the findings of the court martial proceedings and also gone through relevant evidence on the subject. First and foremost question is that why would PW-3 Col. VS Yadava unnecessarily rope in these accused persons. The grievance of the accused was that he did not sanction the leave because of the fact that the Junior Commissioned Officers were not available. This

seems to have annoyed the petitioner. PW-3 immediately reported the matter to the Commanding Officer and evidence of the PW-5 Lt.Col. Bhura and the PW-15 Brig. Nigam, and that of the PW-13 Lt.Col.(Dr)Sharma sufficiently corroborates the allegation of PW-3 that he was manhandled by these three accused persons. It is also established from the evidence of the prosecution witnesses that these persons were present at the relevant point of time though they did not support the prosecution version and they tried to be more supportive of their comrades i.e. other accused persons. It is more than apparent that soon after PW-3 was manhandled by the accused persons, he went to the office of GOC and met PW-5 Lt.Col.Bhura and PW-8 Capt. Pandey and PW-15 Brigadier Nigam and they found him in very dishelved condition and there was injury on his nose and other injuries received by him which was confirmed by Lt.Col.(Dr)Sharma. Lt.Col.(Dr)Sharma was specifically asked whether all these injuries could be self inflicted or not and he replied that these were not self inflicted

injuries. It is unlikely that PW-3 will get these injuries to implicate these accused persons for no rhyme and reason. The injuries received by PW-3 has been duly confirmed by Lt.Col.(Dr)Sharma on same day within one hour's time as the injuries were fresh and they were received by PW-3 as a result of assault by these three persons including two petitioners. There is no reason why the victim would try to unnecessarily rope in the persons who are not involved in the matter. It is a strange phenomenon that all the non-commissioned officers and NCOs who at the relevant time were present deposed that all the three accused persons were present in the premises at the relevant time but tried to shield them to show their comradeship. It is unfortunate that while PW-2 Col. Yadava has been subjected to assault by these accused persons, no one had come to his rescue despite his shouting for help. Therefore, he had no option but to rush out from his room and proceed to General Officer Commanding. The same has been corroborated by Col. Bhura, Capt. Sashank Pandey and Brig. Nigam and which is duly supported by

the testimony of Lt.Col.(Dr)Sharma who examined him immediately after he was brought to the hospital. This evidence clinches the guilt of the accused. Therefore, we are of the opinion that these persons have rightly been found guilty by the Court Martial authorities. Though they were punished with heavy corporal sentence which was reduced by the government on the petition filed by them to imprisonment already undergone and maintained their dismissal from service.

13. Hence, in view of above discussion, we don't find any reason to interfere in this writ petition and same is dismissed.

14. No order as to costs.

[Justice A.K. Mathur]
Chairperson

(Lt. Gen. ZU Shah]
Member (A)

New Delhi
28th February, 2012