

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH  
NEW DELHI

**T.A NO. 690 OF 2009**  
**(WRIT PETITION (C) NO. 5513 OF 2001)**

NO.14356661 F EX. HAV. SURENDER SINGH  
EX-33 MEDIUM REGIMENT  
P.O – MISRI, TEHSIL – CHARKHI DADRI  
DISTRICT – BHIWANI (HARYANA).

THROUGH : MR. G.K SHARMA, ADVOCATE

...PETITIONER

VERSUS

1. UNION OF INDIA THROUGH THE SECRETARY,  
MINISTRY OF DEFENCE, SOUTH BLOCK,  
NEW DELHI – 110 011.
2. CHIEF OF THE ARMY STAFF,  
ARMY HEADQUARTERS, SOUTH BLOCK,  
NEW DELHI – 110 011.
3. GENERAL OFFICER COMMANDING  
MAHARASHTRA AND GUJARAT AREA, MUMBAI
4. COMMANDING OFFICER  
STATION WORKSHOP, EME, COLABA,  
MUMBAI – 400 005.
5. OFFICER-IN-CHARGE,  
ARTILLERY RECORDS, NASIK ROAD CAMP-422 102.

6. CHIEF CDA (PENSIONS)  
DRAUPADI GHAT, ALLAHABAD-211 001.

THROUGH: LT. COL. NAVEEN SHARMA

...RESPONDENTS

CORAM :

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

JUDGMENT

28.04.2010

1. The petitioner is aggrieved by the fact that while he retired with due respect and honour on 31.12.1996, thereafter, almost three years after his retirement, in October 1999, he was attached under Army Act Section 123 and court martialled. Therefore, this petition filed by him seeks to quash the proceedings of the Summary Court Martial (in short, SCM) of 25.10.1999 awarding him various punishments as well as the Ministry of Defence's order of 3.10.2000 rejecting his statutory petition. In addition to quashing these two impugned orders, the petitioner also seeks to be reinstated in the rank of Havildar, which was held by him on the date of his retirement i.e. 31.12.1996.

Lastly, he also seeks restoration of service pension with interest and all other consequential benefits arising after 1.1.1997.

2. Learned counsel for the petitioner pleaded that the petitioner had an impeccable record from the time of his enrolment on 3.3.1981 till the time of his retirement on 31.12.1996. On this date,, the petitioner was granted the status of ex serviceman with full pensionary benefits which he availed for two years and ten months i.e. upto October 1999. Without any reason and most arbitrarily, the petitioner was attached under the provisions of Army Act Section 123 and tried by SCM by Commanding Officer of Station Workshop EME, Colaba, Bombay on three charges under Army Act Section 52(f). Despite the fact that the SCM was conducted most illegally and without any evidence, he was unjustly found guilty of all three charges and was sentenced to be reduced to ranks and dismissed from service. Immediately thereafter, on 20.12.1999, the petitioner submitted a petition under the provisions of the Army Act Section 164(2) against the perverse findings and the award given to him by the SCM to the Central Government. After almost ten months, he was given a very curt, brief and non-speaking order by letter dated 3.10.2000 rejecting his petition without assigning any reason, whatsoever. Such non speaking orders display non application of mind and are arbitrary and illegal.

3. During his service tenure, the petitioner was posted to Artillery Centre, Nasik Road Camp from April 1993 till May 1996, i.e. for a period of a little over three years. During this period, from August 1995 onwards, in addition to his other duties, he was ordered by Lt Col I.R Gophane to take over the additional charge of Enrolment Clerk, as a stop gap arrangement. As a disciplined soldier, he obeyed his senior officer and took over the additional charge as Enrolment Clerk. His task was to type the written material given to him by the Head Clerk and on completion, submit such typed effort to the Head Clerk for onward submission to the officer i.e. Lt Col IR Gophane. The petitioner pleads that he had no further concern with the other documents relating to recruitment nor had he any contact or involvement either with the recruits or with the recruiting process. Such recruitment was conducted by a Board of Officers and only typing work was assigned by the Board of Officers to various clerks. On 1.11.1995, the petitioner was relieved of this additional responsibility of Enrolment Clerk because the new incumbent was posted in. On 18.5.1996, the petitioner left the Artillery Centre, Nasik Road Camp on permanent posting and reported to his new unit, i.e. 33 Medium Regiment, from where he retired on 31.12.1996.

4. The petitioner accepts that before his retirement, his Commanding Officer did inform him regarding the receipt of official

correspondence from Artillery Centre, Nasik Road Camp pertaining to the convening of the Court of Inquiry relating to recruitment for the duration when the petitioner was posted at the Artillery Centre. The petitioner appeared as a witness before the said Court of Inquiry as well as the subsequent Court of Inquiry, which was presided over by an officer of the rank of Brigadier but it also did not progress and was subsequently abandoned. Thereafter, a third Court of Inquiry, presided over by Maj. Gen Deepak Verma, was convened in March 1997, before which also the petitioner appeared and gave his statement as a witness. All along, he has co-operated with all the Courts of Inquiry that were held and he has never attempted to hide facts.

5. From March 1997 till May 1999, he continued to enjoy his retirement life but in May 1999, the petitioner was taken into military custody and placed under close arrest and attached to Station Workshop, EME, Colaba, Bombay for disciplinary proceedings. A summary of evidence was recorded from 11<sup>th</sup> June to 12<sup>th</sup> July 1999. The petitioner pleads that in the Court of Inquiry conducted in March 1997, Army Rule 180 was not applied, which is contrary to the Act and it prejudiced the petitioner gravely. Even the hearing under Army Rule 22 and the subsequent summary of evidence were grossly illegal as his Commanding Officer was CO 33 Medium Regiment and

not the CO of the Station Workshop, EME, Colaba, Bombay. Both the Court of Inquiry and the Summary of Evidence did not prima facie disclose any case against the petitioner and that the Commanding Officer was duty bound to dismiss the charge under Army Rule 22(2), but to the contrary, the respondents proceeded to initiate a charge sheet and tried him by SCM.

6. On 11.10.1999, a charge sheet containing three charges under Army Act Section 52(f) “with intend to defraud” in relation to the recruitment of persons named therein was served to the petitioner. A week thereafter, the petitioner was illegally tried by the SCM from 18<sup>th</sup> to 25<sup>th</sup> October, wherein he pleaded not guilty. But, without any evidence, whatsoever, he was found guilty of all the three charges based on very sketchy and flimsy evidence of three prosecution witnesses and he was found guilty and awarded the subsequent sentence. The trial by SCM lacked jurisdiction and was not permissible under Section 116 of Army Act, whereby he could only be tried by his Commanding Officer, who was Commanding Officer, 33 Medium Regiment. This fact is clearly appended as Note 5 to Section 120 of the Army Act, wherein it states that “a NCO or a Sepoy cannot be attached to another unit for the purpose of his trial by SCM except as provided in Regulations for the Army Para 381”. The petitioner also pleads that all the three charges, as given in the charge sheet, were time barred under the provision of Section

122 of Army Act, because the offences alleged to have been committed by him were between August to November 1995, whereas the trial by SCM commenced in October 1999 i.e. after the expiry of three years of limitation, as envisaged in Section 122.

7. Counsel for the petitioner made a strong plea that there was no evidence on record pertaining to any of the three charges as contained in the charge sheet, on which the petitioner could be convicted by the SCM. The first witnesses for the prosecution, Lt Col V Subramaniam (PW 1), was merely a formal witness for production of documents. Neither did he identify the petitioner nor give any evidence either in relation to any of the charges nor the documents so produced. PW 2, Lt Col AK Shukla, is also a very casual witness who has stated that he was not concerned with first charge and regarding Charges 2 and 3, the medical examination so conducted had been done by Captain Rajiv Singhal. PW 3, Lt Col IR Gophane, deposed that as a prosecution witness, he did not wish to make any statement before the words “competent authority” was made known to him. The petitioner was definite that none of these witnesses for the prosecution had given any evidence pertaining to any intention of the petitioner to defraud nor have they deposed any evidence to implicate him on these charges. Therefore, the finding of guilty was perverse and not sustainable.

8. The petitioner has also made a strong plea that pursuant to the cancellation of the original pension payment orders in October 1999, he was directed by the respondents to deposit the entire amount of pension received by him, inclusive of DCRG and commuted pension, back to the Government of India along with interest. Immense pressure was put on him and the local police had also visited his residence in order to effect such recovery. The petitioner having no other option and belonging to a respectable family, paid the entire amount of Rs 2,77,012/- to the Government, which even included interest on such pension/terminal benefits. The petitioner had been made a scape-goat for no reason and deserves all consequential benefits and reinstatement.

9. Counsel for the respondents urged that it was a case of deliberate fraud in that the accused was an Enrolment Clerk from August to November 1995, wherein he has allegedly “with intend to defraud” committed certain deliberate acts with the illegal and mischievous intention, to facilitate ineligible personnel to be recruited in the Indian Army. The three charges, which were levelled against him, were: such an action as is mentioned in clause (f) of Section 52 of the Army Act, with intend to defraud”. The essence of the charges is:



FIRST CHARGE

Army Act Section 52(f)

SUCH AN OFFENCE AS IS MENTIONED IN CLAUSE OF SECTION 52 OF THE ARMY ACT, WITH INTENT TO DEFRAUD.

in that he,

at Nasik Road Camp, between 20 Aug 95 and 15 Sep 95, which came to knowledge of the authority competent to initiate action on 17 Mar 97, while working as enrolment clerk at Artillery Centre, Nasik Road Camp, with intend to defraud, prepared 'Rahdari Certificate' in respect of the following candidates showing that they had been enrolled in the Army, knowing well that they were not selected for enrolment by the Recruitment Board hence not eligible for enrolment :-

- |     |  |    |    |
|-----|--|----|----|
| (a) | Index No 2207 (new Gnr) Hawa Singh Yadav |    |    |
| (b) | xx                                       | xx | xx |
|     | xx                                       | xx | xx |
| (m) | Index No 1097 (now Gnr) Devendra Singh   |    |    |

SECOND CHARGE

Army Act Section 52(f)

SUCH AN OFFENCE AS IS MENTIONED IN CLAUSE (f) OF SECTION 52 OF THE ARMY ACT, WITH INTENT TO DEFRAUD.

in that he,

at Nasik Road Camp, between 01 Oct 95 and 05 Nov 95, which came to knowledge of the authority competent to initiate action on 17 Mar 97, while working as enrolment clerk at Artillery Centre, Nasik Road Camp, with intend to defraud, prepared fresh Recruitment Inspection Cards (RICs) in respect of the candidates listed at Annexure to this charge sheet for their medical examination by the Recruiting Medical Officer knowing well that they had already been declared medically unfit for recruitment and thereby not eligible for fresh medical examination,

THIRD CHARGE

Army Act Section 52(f)

SUCH AN OFFENCE AS IS MENTIONED IN CLAUSE (f) OF SECTION 52 OF THE ARMY ACT, WITH INTENT TO DEFRAUD,

in that he,

at Nasik Road Camp, between 01 Oct 95 and 15 Nov 95, which came to knowledge of the authority, competent to initiate action on 17 Mar 97, while working as enrolment clerk at Artillery Centre, Nasik Road Camp, with intend to defraud, prepared Recruitment Inspection Cards (RICs) in respect of the following candidates for their medical examination by the Recruiting Medical Officer of the said centre so that they

may be enrolled in Army, knowing well that they had not been selected for recruitment by the Recruitment Board and thereby not eligible to be sent for medical examination:-

- (a) Index No. 1897 (now Gnr) Udai Bhan
- (b) Index No. 3241 (now Gnr) Krishna Chandra Tiwari

7. Counsel for respondents argued that it was not such an open and shut case as was attempted to be made out by the petitioner. With regard to the fact that the SCM was barred by limitation of time as the malpractices had occurred in 1995 whereas the trial took place in 1999, counsel for the respondents clarified that while such malpractices may have taken place in 1995, they were only brought to the notice of the competent authority on 17.3.1997 on conclusion of the Court of Inquiry and, therefore, there was no limitation since the disciplinary proceedings commenced within three years thereafter. Similarly, the other aspect of the Commanding Officer, Station Workshop, Colaba, Bombay being the Commanding Officer of the petitioner. It was clarified that after being the petitioner was recalled out of retirement, attached under the authority of HQ Maharashtra and Gujarat area Letter No. 402609/Arty/A(2)(i) dated 09 Nov 1997 for disciplinary action to Station Workshop EME, Colaba, Bombay, which was perfectly legitimate and also in accordance with the provisions of Para 381 of the Regulations for the Army 1987 (Revised Edition) Army Act Section 7 and Army Rule 189 as well as Army Orders 89 of 1981. The Commanding Officer, Station Workshop,

Colaba was empowered to initiate disciplinary action against the petitioner. The other legal aspect, which was raised by the petitioner with regard to the application of Army Act Section 123 was also perfectly legitimate as he could be recalled by invoking Section 123 within a period of three years after retirement, which was done in this case. All in all, there is no illegality in his recall or his attachment with the Commanding Officer, Station Workshop, EME for all purposes, including hearing of Charge under Army Rule 22, recording of summary of evidence and the subsequent trial by SCM.

8. The aspect of malpractice in recruitment was investigated by a Court of Inquiry, wherein the role of the petitioner also came to light. The petitioner performed the duties of Recruitment Clerk of Artillery Centre, Nasik Road Camp during which he was responsible to prepare all relevant documents pertaining to candidates selected by the Enrolment Board of Officers. The petitioner prepared Rahdari (Enrolment) certificates in respect of those candidates who were not included in the select list and also prepared fresh recruit inspection cards for medical examination in respect of those candidates who were already declared medically unfit. The preparation of such Rahdari certificate and recruit inspection cards was done with an intend to defraud and thereby acted dishonestly contrary to military discipline. His

duties with regard to enrolment of recruits between August 1995 and May 1996 were as under:

- |     |                  |   |
|-----|------------------|---|
| (a) | Aug 95 to Oct 95 | Enrolment Clerk   |
| (b) | Nov 95 to Jan 96 | Recruitment documentation of Branch Recruiting offices candidates |
| (c) | Feb 96 to Mar 96 | Enrolment Clerk   |
| (d) | Apr 96 to May 96 | Recruitment documentation   |

9. During the SCM, the three witnesses had given adequate testimony to prove the charges beyond any doubt. Lt Col. V. Subramaniam (PW 1) produced the following documents in original pertaining to the charges:

“First Charge

UHQ Enrolment Board Proceedings of July 1995

Second Charge

- (a) Medical Register
- (b) RICs in respect of the candidates listed at Annexure to the Second Charge.

Third Charge

- (a) UHQ Enrolment Board Proceedings of Sep 95
- (b) RICs in respect of the candidates listed at Third Charge”.

The Court examined these documents and endorsed its observations pertaining to the charges thereon. Thereafter, the petitioner was given

adequate opportunity to cross examine the witness, which he did. PW 2 was Lt Col A.K Shukla, who gave a brief testimony that he was the Senior Medical Officer, Artillery Centre, Nasik Road Camp from July 1994 till October 1999 and that the medical examination in respect of charges 2 and 3 was conducted by Capt Rajiv Singhal. This witness also was cross examined by the petitioner. PW 3 Lt Col IR Gophane, who, while not making any meaningful statement, was cross examined extensively by the petitioner with regard to petitioner's duties with effect from July 1995 to October 1995 as well as the preparation of recruit inspection cards and Rahdari certificates. On completion of the testimony of the three prosecution witnesses, a statement was given by the accused wherein he admitted the fact that he was performing the duties of Enrolment Clerk for the given period and that he had prepared the documents as ordered by the Commanding Officer, Lt Col IR Gophane. He contends that he had only done his routine job and maintained military discipline by obeying the orders of his superior officer. The respondents contended that if any wrongful act had been committed and fraudulent documents were prepared based on the orders of his superior officers, then it was the bounden duty of the petitioner to bring these facts to the knowledge of his superior, which he failed to do. Therefore, he has committed an offence of a grave nature and cannot hide behind the curtain of obeying the orders of his superior. After examining the witnesses and the statement by the accused,

various questions were asked by the Court to the accused under Army Rule 118, which pertained to the preparation of fresh recruit inspection cards as well as Rahdari certificates. The SCM was apparently convinced that the charges against the accused have been adequately proved beyond any shadow of doubt.

10. From the contending arguments, it is apparent that there was no illegality in the proceedings of the SCM. The trial was not barred by limitation and the CO Station Workshop EME, Colaba, Mumbai was legally appointed as the petitioner's CO. He was given adequate opportunity to prepare his defence, cross examine witnesses and make a statement in his defence. The evidence produced at the SCM was adequate to convict the petitioner of the charges framed against him. We do not see any reason to intervene. The petition is dismissed.

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

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