IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

T.A NO. 693 OF 2009
(W.P (C) NO. 2935 OF 2001)

ASHOK KUMAR RANA
(FORMERLY CAPTAIN, 7 JAT REGIMENT)
B-9, AWHO, PAWAN NAGAR
CIDCO, NASIK – 422009.

THROUGH: M/S. DEEPAK BHATTACHARYA & K. RAMESH, ADVOCATES

... APPELLANT

1. UNION OF INDIA THROUGH SECRETARY
MINISTRY OF DEFENCE, SOUTH BLOCK
CENTRAL SECRETARIAT,
NEW DELHI – 110 011.

2. CHIEF OF ARMY STAFF
ARMY HEADQUARTERS,
SOUTH BLOCK,
CENTRAL SECRETARIAT, NEW DELHI-110 011.

THROUGH: MR. R. BALASUBRAMANIAM, ADVOCATE WITH LT. COL. NAVEEN SHARMA

... RESPONDENTS

CONNECTED WITH

T.A NO. 695 OF 2009
(W.P (C) NO. 7909 OF 2001)

GNR. STOREHAND (GD) BANARSI LAL

VS.

UNION OF INDIA

T.A NO. 717 OF 2009
(W.P (C) NO. 7908 OF 2001)

GNR. SAT PAL

VS.

UNION OF INDIA

.

T.A NO. 720 OF 2009
(W.P (C) NO. 2934 OF 2001)

RANBIR SINGH RATHAUR

VS.

UNION OF INDIA

T.A NO. 727 OF 2009
(W.P (C) NO. 1919 OF 2001)

EX. CAPT. SEWA RAM NAGIAL

VS.

UNION OF INDIA

T.A NO. 738 OF 2009
(W.P (C) NO. 1752 OF 2002)

GNR. HARI SINGH

VS.

UNION OF INDIA

T.A NO. 765 OF 2009
(W.P (C) NO. 1754 OF 2002)

GNR. MILKHI RAM

VS.

UNION OF INDIA

CORAM

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

COMMON JUDGMENT
26.07.2010

1. In all these appeals, common questions of law and facts are involved and hence they are disposed of by this common judgment. However, in T.A No. 738 of 2009, the findings of the General Court Martial were not challenged before the High Court under writ jurisdiction. In all other appeals, writ petitions were filed and they were dismissed. In all these cases, the preliminary question with regard to the maintainability of these cases is to be considered, at the admission stage.

2. The appellant in T.A No. 693 of 2009 seeks to direct the respondents to compensate him for having been falsely implicated in an offence under Section 69 of the Army Act read with Section 3(1)(c) of the Official Secrets Act, 1923 and thereby convicting him to undergo rigorous imprisonment for a period of 14 years. According to the appellant, he was not afforded fair opportunity and the GCM arbitrarily held him guilty of the aforesaid charge. The findings caused humiliation and irreparable harm to his reputation. His family members also suffered extreme poverty. In such circumstances, he wants to be compensated for the grave and serious damage, loss and harm to his body, mind, career, property, reputation and dignity by gross violation of his fundamental legal and other statutory rights. The basis of the fresh cause of action for moving this petition has also been highlighted as being based on the judgment of the Delhi High Court in W.P (C) No. 4082 of 1995 filed by other accused persons placed in identical circumstances. Since similar reliefs are sought in all other appeals also, we do not consider it is necessary to reiterate these again.

3. The petitions are resisted by the respondents contending, inter alia, that the appellants in T.A Nos. 693, 695, 717, 720, 727 and 765 of 2009 have already challenged the findings of the GCM before the Jammu & Kashmir and the Delhi High Courts and so fresh writ petitions are not maintainable as they are barred by the principle of res judicata. The judgment dated 21.12.2000 in W.P (C) No. 4082 of 1995 (Ashok Kumar Rana v. Union of India) was challenged before the Supreme Court in Civil Appeal Nos.2949-2950 of 2001 (Union of India and others v. Ranbir Singh Rathaur and others). The Supreme Court allowed the said appeal and the case was remanded to the High Court to decide the maintainability of the writ petition. The Delhi High Court re-heard W.P (C) No. 4082 of 1995 and in effect, the judgment dated 21.12.2000 became non est. Further, the Delhi High Court also re-heard W.P (C) No. 3063 of 1995 and dismissed the same by judgment dated 20.12.2007. Since the judgment of the Delhi High Court in W.P (C) No. 4082 of 1995 dated 21.12.2000 no longer survives, the present appeals would automatically fail. Furthermore, the other writ petition – W.P (C)

No. 1752 of 2002 (T.A No. 738 of 2009 Ex. Gnr. Hari Singh) was also filed after about 24 years and there was inordinate delay in filing the writ petition. Such delay could not be explained and on the ground of inordinate delay, that writ petition is also not maintainable.

4. In order to appreciate the points raised by learned counsel for the parties, it would be useful to make a brief narration of the facts. In February 1971, Gnr. Sarwan Dass was cultivated by Pakistan Intelligence. In 1972, Capt. Ghalwat and Gnr. Sarwan Dass crossed the international border. In 1973, Capt. Ghalwat and Gnr. Sarwan Dass were posted in Babina (MP). In 1974, Gnr. Aya Singh was cultivated by Gnr. Sarwan Dass for Pak Intelligence. Capt. Nagial was then cultivated by Aya Singh for Pak Intelligence. In 1975, for the first time, the espionage racket came to be noticed. Aya Singh and Sarwan Dass were arrested. In 1976-77, pursuant to the investigation, three more jawans were arrested. They corroborated

the involvement of Sarwan Dass. Sarwan Dass and Aya Singh, on further interrogation, disclosed the names of Capt. Ghalwat and Capt. Nagial. In 1976-77, Capt. Ghalwat and Capt. Nagial were tried by GCM and convicted. Ghalwat was cashiered and given 14 years rigorous imprisonment. Nagial was given 7 years rigorous imprisonment and was also cashiered. In additional 12 jawans were tried and were given rigorous imprisonments and were dismissed from service. Later in 1978, it was discovered that Aya Singh was holding back certain relevant information relating to espionage activities under certain alleged threat and pressure. Wife of Aya Singh was killed. Reeling under the shock of these circumstances, he made further disclosure, wherein he named Capt. Rathaur and Capt. A.K Rana and he disclosed that he was receiving threats that if he made any disclosure, his wife would be killed. Accordingly in 1978, Capt. Rathaur and Capt. A.K Rana were interrogated. As a result, 42 Army personnel, including 19 officers, 4 JCOs and 19 other ranks, were arrested. The appellants were tried and convicted by the GCM for their alleged involvement in the espionage racket. A batch of

writ petitions was filed before the Delhi High Court by certain dismissed personnel, who were involved in the espionage racket, and the Delhi High Court dismissed the same on 14.2.2006. The relevant portion of the order of the Delhi High Court reads as under:

> **"Accordingly we declare that the proceedings initiated against the petitioners in the two writ petitions are void in law and the orders passed against the other officers, the appellants in L.P.As are vitiated being without any material and being camouflage. Having dropped the idea not to conclude Court Martial proceedings knowing fully well that the officers were likely to be acquitted, without producing relevant record before the concerned authority orders of termination were passed flouting all norms. The appellants in the LPAs and the petitions in the two writ petitions are entitled to all the consequential benefits. We also hereby declare that the orders passed against the appellants in the LPAs are void in law and the conviction and sentence by the GOMs against the writ petitioners are void in law. Consequently, the judgment of the learned single Judge which are set aside and the writ petitions in those are allowed and the Latent Patent Appeals stand allowed and the two writ petitions also stand allowed All the writ petitions stand allowed to the above extent indicated and other reliefs prayed for cannot be considered by this Court and it is for the law**

makers to attend to the same. There shall be no order as to costs.

The respondents shall grant consequential reliefs to all the officers including all monetary benefits within a period of four months from today."

On the basis of the said order, these writ petitions were filed. However, it is to be noted that the order dated 21.12.2000 passed in W.P (C) No. 3063 of 1995 is still under consideration before the Supreme Court. Civil Appeal Nos. 2951-57 of 2001 were de-linked from the batch of appeals and were decided by order dated 14.12.2006 remitting the cases back to the Delhi High Court. Thereafter, the Delhi High Court decided those cases on 20.12.2007. That order is also under challenge before the Supreme Court. The fact remains that the decision of the Delhi High Court dated 21.12.2000 in the batch of cases (W.P (C) No. 4082 of 1995 and other connected cases) is under challenge before the Supreme Court.

5. The material question that needs to be considered is, whether, on the basis of the decision of the Delhi High Court in W.P (C) No. 4082 of 1995 dated 21.12.2000, the appellants would get a fresh cause of action, when their writ petitions have already been dismissed by the Jammu & Kashmir and the Delhi High Courts?

6. In order to appreciate the jurisdictional aspect, it would be relevant to discuss the meaning of the expression "cause of action". In **Rajiv Modi** v. **Sanjay Jain and others** (2009(13) SCC 241), the apex Court has held that the 'cause of action' is a fundamental element to confer jurisdiction upon any Court which has to be proved by the plaintiff to support his right to a judgement of the Court. In ***Halsbury's Laws of England*** (4^{th} Edn.), it has been stated as follows:

> **"Cause of action has been defined as meaning simply a factual situation, the existence of which entitles one person to obtain from the court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to**

succeed, and every fact which a defendant would have a right to traverse. 'Cause of action' has also been taken to mean that a particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject-matter of grievance founding the action, not merely the technical cause of action."

7. As has already been referred to above, the GCM proceedings were challenged before the Jammu & Kashmir and the Delhi High Courts and these were dismissed. Under such circumstances, there cannot be a fresh writ petition on the same cause of action. Instead of filing a fresh writ petition, at the most, the appellants could have moved an application for rectification of the mistake before the respective High Courts. In **Triveniben** v. **State of Gujarat** (1989(1) SCC 678), the apex Court observed as under:

"It is well settled now that a judgment of court can never be challenged under Article 14 or 21 and therefore the judgment of the court awarding the

sentence of death is not open to challenge as violating Article 14 or Article 21 as has been laid down by this Court in *Naresh Shridhar Mirajkar* v. *State of Maharashtra* and also in *A.R Antulay* v. *R.S Nayak (1988(2) SCC 602),* the only jurisdiction which could be sought to be exercised by a prisoner for infringement of his rights can be to challenge the subsequent events after the final judicial verdict is pronounced and it is because of this that on the ground of long or inordinate delay a condemned prisoner could approach this Court and that is what has consistently been held by this Court. But it will not be open to this Court in exercise of jurisdiction under Article 32 to go behind or to examine the final verdict reached by a competent court convicting and sentencing the condemned prisoner and even while considering the circumstances in order to reach a conclusion as to whether the inordinate delay coupled with subsequent circumstances could be held to be sufficient for coming to a conclusion that execution of the sentence of death will not be just and proper."

The same view was reiterated by the apex Court in **Krishna Swami** v. **Union of India and others** (1992(4) SCC 605), **Mohd. Aslam** v. **Union of India** (1996(2) SCC 749), **Khoday Distilleries Ltd and another** v. **Registrar General, Supreme Court of India** (1996(3) SCC 114), **Gurbachan Singh and another** v. **Union of India and another**

(1996(3) SCC 117), **Babu Singh Bains and others** v. **Union of India and others** (1996(6) SCC 565) and **P. Ashokan** v. **Union of India and another** (1998(3) SCC 56).

8. It has next been strenuously argued by counsel for the appellants that the decision given by the Delhi High Court in W.P (C) No. 4082 of 1995 is the basis wherein all material aspects were discussed and though the appellants lost their case under writ jurisdiction from other High Courts, they cannot be discriminated and their cases should be revived. For the purpose of reviving the earlier decisions, as has been stated above, it is for the High Courts to decide by taking appropriate applications and this Tribunal cannot exercise such jurisdiction to set aside the earlier decision given by the High Courts. This Tribunal cannot issue a writ to another High Court nor can one Bench of the High Court issue a writ to a different Bench of the same High Court. The application for re-visiting the judgment should be filed before the same Court which

finally adjudicated in those petitions. For reviewing or re-visiting the decisions, certain aspects are to be taken into account viz. (i) whether, in the interest of public good or for any other valid and compulsive reasons, it is necessary that the earlier decision should be revived?; (ii) whether, on the earlier occasion, any patent aspect on the question remained unnoticed or the attention of the Court could not be drawn to any relevant and material statutory provision or was any previous decision bearing on the point not noticed?; (iii) what was the impact of the error in the previous decision?; and (iv) would the revival of the earlier decision lead to public inconvenience, hardship or mischief?

9. In **Keshav Mills Co. Ltd** v. **Commissioner of Income Tax** (AIR 1965 SC 1636), these and other considerations were propounded to be kept in mind when the Court is called to exercise its jurisdiction to revise the earlier decisions. We do not find any justified reason warranting revival of the decisions given in the writ

petitions by the Jammu & Kashmir and the Delhi High Courts. Further, in **Keshav Mills case** (supra), a caution was sounded to the effect that the frequent exercise of power to revise the earlier decisions may incidentally lead to making the law uncertain and introduce confusion which must be avoided. Nothing could be pointed out on behalf of the appellants that the earlier decisions were clearly erroneous.

10. Furthermore, counsel for the appellants pointed out that at the relevant time when the writ petitions were dismissed, the Armed Forces Tribunal Act 2007 was not in force and the High Courts have no jurisdiction to make re-appraisal of the evidence. In view of Section 15 of the Armed Forces Tribunal Act 2007, the Tribunal can make appraisal of the evidence. Since the rights of the appellants were adversely affected and as there was no such provision for making re-appraisal of the evidence, Section 25 of the Armed Forces Tribunal (Procedure) Rules 2007 gives unfettered

powers to this Tribunal to issue appropriate directions as may be necessary or expedient to prevent the abuse of process of the Court and to meet the ends of justice. Such powers cannot be exercised to recall the earlier decisions which were based on the law then in force. Moreover, when such a provision is there under Rule 25, as is well known, it is ordinarily prospective in nature. A right or power which was created for the first time under Rule 25 cannot be given retrospective effect. At this juncture, it is pointed out by counsel for the respondents that the Rules have only prospective effect. If that be so, the question of granting any benefit in favour of the appellants does not arise. As no retrospective effect to the Rules could be given for extending the benefits thereto to the appellants, the decisions given by the Jammu & Kashmir and the Delhi High Courts cannot be revived. Reliance may be placed on **Panchi Devi** v. **State of Rajasthan and others** (2009(2) SCC 589).

11. As regards judicial retrospectivity in Constitutional law, the Supreme Court in **Golak Nath** v. **State of Punjab** (AIR 1965 SC 1643) applied the doctrine of prospective overruling for the first time, in order to avoid chaos that a retrospective judgment would cause. The apex Court summarised the following concerns: (a) if Golak Nath's case (supra) were to apply retrospectively, it would introduce chaos; (b) in the extraordinary situation that was caused by this decision, the Courts had to evolve the doctrine which had its roots in reasons and precedents so that the past may be preserved and the future protected; and (c) the limits of retrospective effect should be left to the Courts having regard to the requirements of justice. In essence, the doctrine of prospective overruling has developed in order to avoid repercussions of a retrospective judgment under specific conditions. We do not find any justified reason to revive the earlier judgment in exercise of the powers under Rule 22 of the Armed Forces Tribunal (Procedure) Rules, 2008.

12. It has next been argued by learned counsel for the appellants that the effect emanating from the decisions given by the Jammu & Kashmir and the Delhi High Courts affected the appellants, as there was no appreciation of evidence and when the law in question happens to be criminal law, it requires a cautious consideration to see how the interpretative tools used by judges affect the life of a litigant in ways both seen and unseen. A reading of the judgments delivered by the Jammu & Kashmir and the Delhi High Courts brings to fore a picture that shows many grey areas resulting from adjudicatory function performed by the courts. As has been stated above, those decisions have become final and this Tribunal cannot look into the merits of those cases.

13. As regards T.A Nos. 738 of 2009, it may be mentioned that the appellant was convicted by the GCM in the year 1978. That decision has been challenged at a belated stage, for which no remedy can be availed by the appellant. Reference may be made to

some of the observations made by the apex Court in **Municipal Corporation of Greater Bombay** v. **Industrial Development Investment Co. Pvt. Ltd and others** (AIR 1997 SC 482), which read as under:

> **"If the interested person allows the grass to grow under his feet by allowing the acquisition proceedings to go on and reach its terminus in the award and possession is taken in furtherance thereof and vest in the State free from all encumbrances, the slumbered interested person would be told off the gates of the Court that his grievance should not be entertained when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications."**

Similar view has been reiterated in **State of Rajasthan and others** v. **D.R Laxmi and others** (JT 1996(9) SC 327) and **Northern Indian Glass Industries** v. **Jaswant Singh and others** (AIR 2003 SC 234) and **Haryana State Handloom & Handicrafts Corporation Ltd** v. **Jain School Society** (AIR 2004 SC 850).

14. In view of the aforesaid discussions, T.A Nos. 693, 695, 717, 720, 727 and 765 of 2009 are not maintainable and are dismissed as barred by the principles of res judicata. T.A Nos. 738 of 2009 is also not maintainable and is dismissed on the ground of laches.

(S.S DHILLON)
MEMBER

(S.S KULSHRESTHA)
MEMBER