

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

O.A NO. 133 OF 2010

EX MAJ YR SHARMA

.. APPELLANT

V.

UNION OF INDIA AND OTHERS

... RESPONDENTS

ADVOCATES

**MR. KESHAV KAUSHIK FOR THE APPELLANT
MS. JAGRITI SINGH 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
24.05.2011**

1. The challenge in this O.A is directed against the General Court Martial proceedings, whereby the applicant was held guilty of having committed the offences under Army Act Sections 52(f) and 63 and sentenced him to be cashiered.

2. The facts giving rise to this O.A in a nutshell are: The applicant joined the Army in 1976 as SKT other rank in Army Medical Corps (AMC). On 30.1.2002, he was posted as Company Instructor in AMC Centre and School, Lucknow, which imparts training to recruits and persons selected for SL commission. On establishment of AMC Centre and School, one officer of the rank of Lieutenant Colonel (now Colonel) is authorised as Quarter Master (QM) who is responsible for the day to day supply of rations, clothes, etc. Lt Col T. Kishan was the QM at the material time, i.e. from 1.4.2001 to 28.2.2003. Considering the workload, the Commandant used to divert two officers posted on other jobs to assist the Central Quarter Master (CQM) but basic responsibility and control and accountability remained with him. The appellant was diverted from his duties by posting him as Company Instructor viz. QM (Clothing) on 16.2.2002. Besides the applicant, another officer was diverted as QM (Rations & MES). To distinguish, the Lieutenant Colonel posted on the establishment was known as CQM. CQM put directly under his functional control, inter alia, SKT Hav Dharminder Singh and a JCO known as JQM, who used to control and issue instructions directly to them. On 1.7.2003, LAO, Lucknow raised

certain objections regarding tampering of issue vouchers pertaining to issues made during the period June 2001 and November 2001 to May 2002. On the basis of audit objection, a unit level Court of Inquiry was ordered to investigate into the alleged lapses. HQ AMC Centre and School reported about the losses suffered in QM Clothing Section to HQ Central Command, vide its report dated 10.10.2003. Thereafter, on 23.10.2003, HQ AMC Centre & School reported identity of the offenders, including that of the appellant. On 30.3.2007, the appellant was tried by the GCM for 21 charges under Army Act Sections 52(f) and 63. It found the appellant partially guilty of Charge Nos. 4, 5 and 6 and guilty of Charge Nos. 7, 9, 11 and 14 to 19 and sentenced him to be cashiered. Both the pre and post statutory petitions filed by the appellant were rejected. Hence this O.A.

3. Counsel for the appellant has contended that the trial by the GCM is vitiated for lack of jurisdiction, as the court martial was held after three years from the commission of the alleged offence. The trial by the GCM commenced on 30.3.2007 and the period of limitation viz. three years, as per Army Section 122(1)(c) expired on 23.10.2006. The findings of the GCM and that of the statutory

authorities were not based on evidence, but only on assumption of facts, which neither existed nor admissible in evidence. Moreover, on Charge Nos. 5, 7, 14 and 15, the appellant was found guilty of not taking charge on the ground that his alleged or forged signatures were seen on the vouchers. It is trite that there will be error of fact when authority is prompted by mistaken belief in the existence of a non-existing fact or circumstance. The SKT Hav and JQM worked directly under the control and instructions of the CQM, Lt Col T Kishan. If the appellant was deputed to assist the CQM, he cannot be held liable on the supposition that SKT Hav ought to have worked directly under the appellant when he actually acted under direct control of CQM. The appellant was denied the principles of natural justice during the investigation stage. At no point of time, the appellant was apprised of any of the directions or instructions of the CQM. As per the procedure modified by Lt Col Kishan, SKT Hav used to collect stores from Central Ordnance Depot, Kanpur (COD) and reported directly to SQM, took instructions, opened packets, made entries in the relevant registers/ledgers, and issued stores to authorised persons as and when required. There were a lot of complaints to the LAO, Regional Office,

Lucknow regarding tampering in the issue vouchers pertaining to issues made during the period from June 2001 to November 2001, which were noticed by the audit party also.

4. The appeal was resisted by the respondents contending, inter alia, that the appellant, in the capacity of QM, was accountable for the proper maintenance of the stock and the registers. During the period from 11.5.2002 to 16.1.2003, with intent to defraud, he authenticated issuance of 50 sets of recruit clothing kits amounting to Rs.2,39,697.90 when such kits were not virtually issued. Again from 12.4.2002 to 24.7.2003, he did not take care to make necessary entries in the registers against the vouchers, which caused loss to the tune of Rs.31,240/-. Again, during the period from 9.5.2002 to 24.7.2003, with intent to defraud, he did not take action to credit the stores received from COD, Kanpur against the vouchers in the ledger, thereby causing loss to the tune of Rs.2,92,240/-. From 21.6.2002 to 24.7.2003, he did not take any action to credit the stores causing loss to the tune of Rs.9,55,952/-. Again from 14.2.2003 to 24.7.2003, he did not credit stores received from COD, Kanpur resultantly causing loss to the tune of Rs.2,39,000/- and Rs. 2,90,000/- respectively. The appellant being

QM was entrusted with the task of maintenance and issue of stores and he made fraudulent entries in the registers, in connivance with the other accused persons. There is ample evidence on record to prove the case against the appellant. It was stated that the GCM found the appellant guilty of the charges based on evidence. The prosecution had not withheld any material witnesses, as alleged by the appellant. It would be wrong to say that the appellant had no accountability as regards maintenance of records.

5. Before addressing on the merits of the appeal, learned counsel for the appellant contended that though the incident had taken place in the year 2002, it came to the notice of the respondents only on 1.7.2003, when the LAO, Lucknow raised objections regarding tampering of issue vouchers pertaining to issues made during the period June 2001 and November 2001 to May 2002. After audit objection, the court martial was convened only on 23.9.2005. It is, therefore, barred by limitation under Army Act Section 122. In this regard, the letter dated 10.10.2003 sent by HQ Centre and School, Lucknow to HQs Central Command (DV Branch), Lucknow-2 was referred to stating that by the time financial irregularities in

maintenance of stock had been noticed, the same was brought to the notice of the Comdt AMC Centre & School, Lucknow vide LAO Lucknow Letter No.RAO/MES/Audit Objs 4/01 to 3/02 AMC dated 1.7.2003. A request was also made therein to make a preliminary investigation. In this letter, Army Act Section 122 was also referred to. It does not contain the name of the appellant though involvements of retd/posted out officers were shown. Again as per the letter dated 23.10.2003, the embezzlement of Rs.51,40,395/- was highlighted and a request was made to initiate court of inquiry to investigate into the loss caused to the Government. From the letter dated 1.10.2003 produced along with the rejoinder affidavit, further action in accordance with Para 903 of the Regulation for the Army 1987 was sought to be taken. The relevant portion of the said letter reads thus:

“13. As the financial loss caused to the state due to irregular accounting of clothing stores is amounting to Rs.51,40,395/- (Rupees fifty one lac forty thousand three hundred ninety five only) and other agencies like COD Kanpur is also involved, the present C of I will not be the right agency to investigate the issue in details. As such this C of I cannot be concluded in the absence of NTR 16368M Lt Col (Rtd) T Kishan. Further action may please be taken in accordance with para 903, Regulation for the Army 1987.”

A Court of Inquiry was ordered on 19.11.2004, which concluded on 23.9.2005. In the COI, involvement of the appellant was found. From the date of knowledge, the period of limitation is to be ascertained, in view of Army Act Section 122(b). The date was specified in each charge. It was contended that the respondents cannot artificially create a cut off date for the purpose of Army Act Section 122. It is obvious from the record that correspondence was made earlier from different quarters for initiating COI. On 23.9.2005, the GOC-in-C ordered convening COI. The said date, i.e. 23.9.2005, should be construed to be the relevant date, in view of Army Act Section 122(b). The trial by GCM is, therefore, not barred by limitation.

6. It has next been argued by learned counsel for the appellant that though the prosecution could not establish the charges against the appellant, the GCM found him guilty. Charge No.4, wherein the appellant was found partially guilty, reads as under:

FOURTH 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 Lucknow, between 11 May 02 to 16 January 03, which came to the knowledge of the authority competent to initiate action on 23 September 2005, while holding the appointment as mentioned in the first charge, with intent to defraud, certified the initial issue summaries, effecting issues of 50 sets of Recruit Clothing Kit Items amounting to Rs.2,39,697.90 (Rupees two lacs thirty nine thousand six hundred ninety seven and ninety paise only) in respect of 50 Recruits as mentioned in column (b) of Annexure III attached hereto, who had already been issued a set of Recruit Clothing Kit items between 06 April 02 and 27 December 02, well knowing that the said recruits had not actually been issued the set of Recruit Clothing Kit Items on the date as mentioned against each in column (d), thereby causing wrongful loss to the Government.

It is contended that the appellant was not responsible to maintain registers and issue the recruit kits. It was the duty of the security personnel and they used to make entries in the registers and send for signatures.

7. Before appreciating the evidence on record, it shall be useful to refer to Section I(ii) General Principles – for physical verification of the stores and the duties of the QM (SKT) and the JCMM (Clothing) vide Ext. 524. It is clear from Ext. 524 that the appellant was

obliged to ensure that the Government stores demanded were received and accounted for as per the extant orders/instructions.

8. The charge against the appellant is that he, with intent to defraud, authenticated entries with regard to issuance of 50 sets of recruit clothing kit items amounting to Rs.2,39,697.90 when actually they were not issued. The details of the kits are shown below:

Ser No	Army Number, Rank & Name of Recruit	Date of first issue as per the summary	Date of second issue as per the summary	Cost of set of clothing kit items
(a)	(b)	(c)	(d)	(e)
1	15414870H Rect/GD K Ramahia	06 May 02	11 May 02	4310.75
2	15414676W Rect/Ck KV Vinodhan	13 Apr 02	22 Jun 02	4497.75
3	15414642A Rect/GD NN Tiwari	06 Apr 02	22 Jun 02	4497.75
4	15414821 Rect/NA Pawan Dnyaneshwar	06 May 02	22 Jun 02	4497.75
5	15414832 Rect/GD Sudhakar C	06 May 02	22 Jun 02	4497.75
6	15414847 Rect/GD Awdhesh Kumar	06 May 02	22 Jun 02	4497.75
7	15415862W Rect/GD Arun Kumar	16 Dec 02	16 Jan 03	4868.60

8	15415862W Rect/NA Santosh Kumar Singh	16 Dec 02	16 Jan 03	4868.60
9	15415864F Rect/GD Vineet Kumar	16 Dec 02	16 Jan 03	4868.60
10	15415865K Rect/GD Gurmeet Singh	16 Dec 02	16 Jan 03	4868.60
11	15415866M Rect/GD Pradeep Kumar	16 Dec 02	16 Jan 03	4868.60
12	15415867P Rect/GD Mukesh Kumar	16 Dec 02	16 Jan 03	4868.60
13	15415868X Rect/NA Vijay Kr Gurjar	16 Dec 02	16 Jan 03	4868.60
14	15415869A rect/GD Karpagaraj K	16 Dec 02	16 Jan 03	4868.60
15	15415872A Rect/WM Yogender Singh	16 Dec 02	16 Jan 03	4868.60
16	15415874L Rect/GD Sangram Singh	16 Dec 02	16 Jan 03	4868.60
17	15415875N Rect/GD Arun Kr Kushwaha	16 Dec 02	16 Jan 03	4868.60
18	15415876W Rect/GD Mani Ram	16 Dec 02	16 Jan 03	4868.60
19	15415880Y Rect/GD Mohamad Imran	16 Dec 02	16 Jan 03	4868.60
20	15415883N Rect/GD Mukhtar Ahmed	16 Dec 02	16 Jan 03	4868.60
21	15415884P Rect/GD Rajender Kr Mouriya	16 Dec 02	16 Jan 03	4868.60
22	15415885X Rect/GD Vijay Bahadur Singh	16 Dec 02	16 Jan 03	4868.60

23	15415886A Rect/GD Sushil Kumar	16 Dec 02	16 Jan 03	4868.60
24	15415887H Rect/GD Pawan Kr Yadav	16 Dec 02	16 Jan 03	4868.60
25	15415888L Rect/GD Ganesh Kumar	16 Dec 02	16 Jan 03	4868.60
26	15415889N Rect/GD ACS Singh	16 Dec 02	16 Jan 03	4868.60
27	15415870P Rect/GD RBP Reddy	20 Dec 02	16 Jan 03	4868.60
28	15415871X Rect/GD Ramji Pal	20 Dec 02	16 Jan 03	4868.60
29	15415873H Rect/GD Pradeep Kumar	20 Dec 02	16 Jan 03	4808.60
30	15415877 Rect/GD Avnesh Dubey	20 Dec 02	16 Jan 03	4808.60
31	15415878F Rect/GD Sanjesh Kumar	20 Dec 02	16 Jan 03	4808.60
32	15415879K Rect/WM Jayveer Singh	20 Dec 02	16 Jan 03	4808.60
33	15415881F Rect/GD Narender Kumar	20 Dec 02	16 Jan 03	4808.60
34	15415882K Rect/GD Upendar Bahadur Singh	20 Dec 02	16 Jan 03	4808.60
35	15415890H Rect/GD Banti	24 Dec 02	16 Jan 03	4808.60
36	15415892N Rect/GD Hem Raj	24 Dec 02	16 Jan 03	4808.60
37	15415893W Rect/GD Sunil Kumar	24 Dec 02	16 Jan 03	4808.60

38	15415894Y Rect/GD Somvir	24 Dec 02	16 Jan 03	4808.60
39	15415895F Rect/GD Baljit Singh	24 Dec 02	16 Jan 03	4808.60
40	15415891L Rect/GD SK Verma	24 Dec 02	16 Jan 03	4808.60
41	15415896 Rect/Gd Anupam Mandal	27 Dec 02	16 Jan 03	4808.60
42	15415897M Rect/NA Ravishankar Ankur	27 Dec 02	16 Jan 03	4808.60
43	15415898P Rect/NA Rajesh Kumar	27 Dec 02	16 Jan 03	4808.60
44	15415899X Rect/NA SKM Prasad	27 Dec 02	16 Jan 03	4808.60
45	15415900F Rect/GD Bodar Parvin Kr Bhai	27 Dec 02	16 Jan 03	4808.60
46	15415901 Rect/GD Ninama Nilesh Kumar	27 Dec 02	16 Jan 03	4808.60
47	15415903P Rect/GD NGKN Bhai	27 Dec 02	16 Jan 03	4808.60
48	15415904K Rect/GD NGKL Bhai	27 Dec 02	16 Jan 03	4808.60
49	15415905A Rect/GD Bubadaja Jagu	27 Dec 02	16 Jan 03	4808.60
50	15415906H Rect/GD ADKN Bhai	27 Dec 02	16 Jan 03	4808.60
			Total	2,39,697.90

The entries with regard to the issue of these kits were made in the relevant register and it admittedly borne the signature of the appellant. The GCM, after evaluating the evidence adduced from the side of the prosecution, found the charge to have been partially proved and with regard to 42 recruits, non-issuance of the kits was established and for the rest, the evidence was found insufficient to hold the appellant guilty of the charge.

9. In support of its case, the prosecution has examined, inter alia, Rect/GD K.V Lakshmana Rao (PW 7), who categorically narrated with regard to non-issue of kits, reference of which finds place in Ext. 377. Though he denied his signature at Sl. No. 23 in Column 57, he admitted of having been issued one initial recruit kit, for which he put his signature in Ext. 377. Similar are the statements of PW 11 Rect/GD K. Ramayya, PW 12 Rect/Cook K.V Vinodan, PW 14 Rect/GD Arun Kumar, PW 16 Rect/GD Gurmeet Singh, PW 17 Rect/GD Pradeep Kumar, PW 18 Rect/GD Karpagaraj, PW 21 Rect/GD N.N Tiwari, PW 22 Rect/GD Avedesh Kumar, PW 23 Rect Yogender Singh, PW 24 Rect/GD Sangram Singh, PW 42 Rect NA Vijay Singh Gurjar, PW 59 Rect/NA Pawan, Dyanesh, PW 60 Rect/NA Santosh Kumar Singh, PW 61 Rect

Nitosh Kumar Singh and 68 Rect/CD Sudhakar,. Such statements get fortified by Exts. 379, 380, 381, 383, 384, 391, 392, 393, 394, 424, 429, 430,492, etc. Identical are the statements of PW 13 Rect/GD Narender Kumar, Rect/GD RBP Reddy, PW 26 Rect/GD Pradeep Kumar, etc. The testimony of these witnesses remained unchallenged and there appears to be no reason to discredit their testimony. The appellant has not been able to prove animosity to frame the appellant unnecessarily. In these circumstances, their testimonies are worth credence.

10. It is relevant to note that in his statement under Army Rule 58, which is *para materia* to Section 313 of the Code of Criminal Procedure, the appellant has not disputed the correctness of the statements made by these witnesses. However, his reply was confined to the fact that since the SKT and JCO QM (Clothing) were under obligation as per the standing procedure Jan 2000 and standing orders of AMC Centre & School only to make issue of the kits and the appellant, after issuing the certificate, had only to put his signature on the relevant registers. In this regard, referring to Ext. 524, it was pointed out that the appellant had to ensure only the issuance of the kits in his presence. It was the duty of the SKT and the JCM. A perusal

of the charter of duties would make it clear that the QM was personally made responsible for correct demand, receipt, issue and accounting of clothing of the recruits and other personnel. The appellant omitted to do it, but authenticated the correctness of the entries made in the registers by putting his signature. A large number of kits were issued and the appellant fabricated the entries. This showed his connivance with the other SKT and JQM. It was his responsibility to ensure proper distribution of the kits. His signature in the register would imply that he had acted in connivance with the other officers in making false entries. The appellant is also vicariously liable under Section 34 of the Indian Penal Code. He being the QM was answerable to the entries fraudulently said to have been made by his subordinates. The essence of vicarious liability is undoubtedly the common intention. The common intention implies pre-arranged plan and acting in concert with other persons to the pre-arranged plan. When on different dates a large number of recruits were shown to have received the second kit, this would imply his consent. In **Ramaswami Ayyangar and others v. State of Tamil Nadu** (1976(3) SCC 779), the apex Court has observed that the essence of Section 34 IPC is

simultaneously consensus of the minds of the persons participating in the criminal acts to bring about a particular intention. It is true that to attract Section 34 IPC, no overt act is needed on the part of the accused if he shares common intention in respect of the criminal act which may be done by any one of the accused sharing such intention. The signature of the appellant in the relevant register itself would imply his sharing of common intention. It is equally true that it may not be possible in his case to have direct evidence of common intention and it may have to be inferred from the facts and circumstances of the case.

11. In **Dani Singh and others v. State of Bihar** (2004(13) SCC 203), the apex Court has observed as under:

“20. ‘Common intention’ implies prearranged plan and acting in concert pursuant to the prearranged plan. Under this section a preconcert in the sense of a distinct previous plan is not necessary to be proved. The common intention to bring about a particular result may well develop on the spot as between a number of persons, with reference to the facts of the case and circumstances of the situation. Though common intention may develop on the spot, it must, however, be anterior in point of time to the commission of offence showing a prearranged plan and prior concert (see *Krishna Govind*

Patil v. State of Maharashtra (AIR 1963 SC 1413)). In *Amrik Singh v. State of Punjab* (1972(4) SCC(N) 42) it has been held that common intention presupposes prior concert. Care must be taken not to confuse same or similar intention with common intention; the partition which divides their bonds is often very thin, nevertheless, the distinction is real and substantial, and if overlooked, will result in miscarriage of justice. To constitute common intention, it is necessary that intention of each one of them be known to the rest of them and shared by them. Undoubtedly, it is a difficult thing to prove even the intention of an individual and, therefore, it is all the more difficult to show the common intention of a group of persons. But however difficult may be the task, the prosecution must lead evidence of facts, circumstances and conduct of the accused from which their common intention can be safely gathered. In *Maqsoodan v. State of U.P* (1983(1) SCC 218) it was observed that prosecution must lead evidence from which the common intention of the accused can be safely gathered. In most cases it has to be inferred from the act, conduct or other relevant circumstances of the case in hand. The totality of the circumstances must be taken into consideration in arriving at a conclusion whether the accused had a common intention to commit offence for which they can be convicted. The facts and circumstances of cases vary and each case has to be decided keeping in view the facts involved. Whether an act is in furtherance of the common intention is an incident of fact and not of law. In *Bhaba Nanda Sarma v. State of Assam* (1977(4) SCC 396) it was observed that prosecution must prove facts to justify an inference that all participants of the acts had shared a common intention to commit the criminal act which was

finally committed by one or more of the participants. Mere presence of a person at the time of commission of an offence by his confederates is not, in itself sufficient to bring his case within the purview of Section 34, unless community of design is proved against him (see *Malkhan Singh v. State of U.P* (1975(3) SCC 311). In the Oxford English Dictionary, the word “furtherance” is defined as “action of helping forward”. Adopting this definition, Russell says that “it indicates some kind of aid or assistance producing an effect in future” and adds that any act may be regarded as done in furtherance of the ultimate felony if it is a step intentionally taken, for the purpose of effecting that felony (Russell on Crime, 12th Edn., Vol. I, pp. 487 and 488). In *Shankarlal Kacharabhai v. State of Gujarat* (AIR 1965 SC 1260) this Court has interpreted the word ‘furtherance’ as ‘advancement or promotion’.”

We are, therefore, of the view that the appellant had shared common intention and was a party to the criminal act causing loss to the Government. The charge with regard to fraudulently making entries in the issue register kit to 44 recruits was well established by the prosecution. It does not require any interference.

12. Charge Nos. 5, 6, 7, 9, 11, 14, 15, 16, 17, 18 and 19 are taken together. So far as Charge No. 5 is concerned, the appellant was tried for the offence under Army Act Section 52(f), in that he, between

12.4.2002 and 24.7.2003, with intent to defraud, did not take action to credit the stores issued by COD, Kanpur, details of which are given in Column (d) of Annexure IV, thereby causing loss to the Government to the tune of Rs.31,240/-. The sixth charge is under Army Act Section 63, which is an alternative charge to fifth charge. Charge No. 7 alleges that the appellant did not take action to credit the stores in the ledger, details of which are shown in Column (d) of Annexure VI, thereby causing loss to the Government to the tune of Rs.2,92,240/-. Charge No. 9 alleges that the appellant did not take action to credit the stores in the ledger, details of which are shown in Column (d) of Annexure VIII, causing loss to the Government to the tune of Rs.9,55,952/-. So far as Charge No. 11 is concerned, it also alleges that the appellant did not take action to credit the stores in the ledger, details of which are shown in Column (d) of Annexure X, thereby causing loss to the Government to the tune of Rs.2,39,000/-. Charge Nos. 14 to 19 allege that the appellant omitted to ensure that the stores, as mentioned in Annexures XII, XIII, XIV, XV, XVI, XVII and XVIII respectively, issued by COD, Kanpur against the vouchers are credited in the ledger, thereby causing loss to the Government.

13. The prove these charges, the prosecution has examined PW 2 Chote Lal Azad, PW 4 Lt Col N.S Negi, PW 5 Lt Col Thomas, PW 71 Nb Sub S.K Singh and PW 73 Lt Col S.N Pal. They categorically stated with regard to the vouchers issued by the appellant against the stores received from COD, Kanpur. They were categoric that the appellant had not taken steps to credit the stores in the ledger. But the appellant all along maintained the stand that all the documents were fabricated and some of the vouchers were not even put up before him and Lt Col. T. Kishan was the Central QM, who was performing the duties of QM (Clothing) also during the relevant time. All the stores were collected under the direct supervision of Lt Col Kishan. The appellant never inspected the stores nor was he given any report regarding the collection of stores. He got information from SKT and the JCO (QM) that the stores were verified by CQM and that he used to instruct the Store Keeper to credit issue vouchers on ledger charge. If any of the issue vouchers were not credited in the ledger by the SKT, the appellant cannot be made liable. As has been discussed earlier (with regard to Charge No. 4), the appellant was under obligation for the maintenance and issue of stores and credit the vouchers on the

concerned ledger, he being QM (Clothing). The appellant cannot put blame on his subordinates for such lapses. Therefore, the findings arrived at by the GCM on Charge No. 5 do not require any interference.

14. As against Charge No.7, out of 14 stores collected from COD, Kanpur, the appellant gave credit only to 8 vouchers, as is evident from Ext. 258 pertaining to Issue Voucher No. 600112 dated 28.3.2002 regarding Vest R/N F/S S/95 quantity 1000. To prove the charge, the prosecution has also relied upon Exts. 57, 129, 199, 271 and 282 and the statements of the witnesses referred to above. We do not find any reason to interfere with the findings arrived at by the GCM, so far as Charge No. 7 is concerned.

15. As regards Charge No. 9, it was contended from the side of the prosecution that the items pertaining to 14 issue vouchers comprising of 127 packages of boot DMS collected from COD Kanpur on 21.6.2002 vide Ext. 74 gate pass and 251 packages were received on 16.7.2002 through a civil hired transport. The complete consignment comprising of 14 vouchers was entered in the package

opening register Ext. 312), but only 12 issue vouchers were taken on ledger charge. Further, the items pertaining to Issue Voucher No. 608501 dated 9.6.2002 boot DVS S/8L-401 (Ext. 61) and Issue Voucher No. 608528 dated 9.6.2002 boot DVS S/9m quantity 449 (Ext 62) were not taken on ledger charge though entered in Ext. 312. Further, there is also evidence substantiating that the stores pertaining to Issue Voucher No. 610880 dated 20.6.2002 (Ext. 63) were collected with stores pertaining to Issue Voucher No. 610879 dated 20.6.2002 (Ext. 63) as having been packed along with Issue Voucher No. 611163 dated 20.6.2002. Issue Voucher No. 610879 (Ext. 331) was cleared by the appellant vide Receipt Voucher No. R/Clo/154 dated 28.7.2002 (Ext. 331). The findings of the GCM so far as Charge No. 9 is concerned, do not require any interference.

16. As regards Charge No. 11, it is evident from the record that the stores collected pertaining to Issue Voucher Nos. 628324 dated 21.1.2003 (Ext. 348) and 628325 dated 21.1.2003 (Ext. 347), which have endorsement of Issue Voucher No. 628320 dated 21.1.2003 (Ext. 68) as having been packed together with. These issue vouchers (evidenced by Exts. 348 and 347) were cleared vide Receipt

Voucher Nos. RV/Clo/37 and RV/Clo/36 respectively on 15.2.2003. We, therefore, do not find any reason to interfere with the findings of the GCM on Charge No. 11 as well.

17. As regards Charge No. 14, it is to be noted that the appellant has disputed his signatures on RV Nos. RV/Clo/57 dated 13.4.2002 (Ext. 99), RV/Clo/58 dated 13.4.2002 (Ext. 100), RV/Clo/60 dated 13.4.2002 (Ext. 102) and RV/Clo/61 dated 13.4.2002 (Ext. 103). The GCM took the view that there was reasonable doubt regarding the genuineness of the signatures of the appellant on these RVs despite being identified by PW 5 Lt Col Thomas. These documents were not sent for comparison to any expert. We do not find any reason to take a different view. Therefore, we hold that Charge No. 14 is not established against the appellant. So is the position with regard to Charge No. 15 also. There is reasonable doubt with regard to the signatures of the appellant. The appellant is exonerated from Charge No. 15 also.

18. Charge No. 16 is substantiated from the documentary evidence viz. Exts. 42, 155, 270 and 302. On 6.6.2002, stores issued

vide 10 issue vouchers were collected from COD, Kanpur vide Ext. 155, but the stores pertaining to only 9 issue vouchers were entered in Ext. 302 and taken on ledger charge. The stores pertaining to Issue Voucher No. 605958 dated 2.3.2002 (Ext. 42) item vest woollen R/N, F/S, S/100 quantity-1200 were not taken on ledger charge. Charge No. 17 is also established from Ext. 75. It is seen that on 5.7.2002 stores issued vide 8 issue vouchers were collected from COD Kanpur, but were not entered on the package opening register nor was it taken on ledger charge. Both Charge Nos. 16 and 17 stand proved against the appellant and we do not find any reason to take a different view from the findings arrived at by the GCM.

19. As regards Charge No. 18, we find that the stores issued vide 4 issue vouchers were collected from COD, Kanpur, evidenced by Ext. 78. But the stores pertaining to 3 vouchers i.e. Issue Voucher Nos. 623324 dated 11.12.2002 (Ext. 64), 623333 dated 11.12.2002 (Ext. 65) and 623339 dated 11.12.2002 (Ext. 66) were not entered in the package opening register. They were not taken on ledger charge as well. With regard to Charge No. 19, we find that on 14.2.2003, stores issued vide 20 issue vouchers were collected from COD, Kanpur vide

Ext. 82. But no entry is seen made in the package opening register. The stores pertaining to Issue Voucher No. 627287 dated 11.1.2003 was also not entered on the package opening register nor taken on ledger charge. Charge Nos. 18 and 19 stand established. We do not find any reason to discard sworn statements of the witnesses and the documentary evidence relied upon by the prosecution.

20. In view of the aforesaid discussion, we find that the appellant is guilty of offences referred in Charge Nos. 4 to 7, 9, 11 and 16 to 19 and not guilty of the offences referred in Charge Nos. 14 and 15. The appeal is decided accordingly. The conviction and sentence of the appellant are maintained.

(S.S DHILLON)
MEMBER

(S.S KULSHRESTHA)
MEMBER