

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.

TA No.318 / 09
(Writ Petition(Civil) No.3358 of 1997)

Ex Col Padmanabhan Ervamannatil

...Petitioner

Versus

Union of India & others

...Respondents

For the Petitioner : Sh. Rajinder Kumar, Advocate

For the Respondents: Sh. Ajai Bhalla, Advocate

C O R A M:

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

HON'BLE LT.GEN. S.S.DHILLON, MEMBER

JUDGMENT
19.07.2011

Justice A.K.Mathur, Chairperson

1. Petitioner by this writ petition has challenged the order of punishment of the GCM dated 20th June, 1994. He has also prayed that order dated 26.8.1996 u/s 164(2) of the Army Act 1950, whereby petitioner's post confirmation petition was rejected be quashed. He has also prayed that the

order of the Court Martial and the confirmation may be quashed.

2. Brief facts which are necessary for disposal of this petition are that Petitioner was commissioned in the Indian Army on 24.4.1966 and eventually became a Colonel on 7.12.1990 and he was due to retire on 30.9.1993. The court martial proceedings were initiated against him from 07 March to 20 June, 1994 at Misamari. Petitioner on his promotion to the rank of Colonel on 7.12.1990 took over Command of 32 EME Bn (Tpt) at Misamari and he did a commendable job. During August, 1993, Capt P.N.Chaudhary was the Quarter Master (QM), Sub N.D. Dhawle, JCO Quarter Master(JQM), Hav. I.S. Chaprana and NK Vethchalam were the Ration NCOs. These persons were responsible for day to day demand and supply of ration to the unit personnel. It is alleged that Capt P.N. Chaudhary (QM) used to place fortnightly ration demand with Field Supply Depot(FSD),Misamari on the basis of anticipated

strength of unit and actual consumption of the same was certified by an administrative check, which used to be signed by Capt P.N. Chaudhary and countersigned by the petitioner in good faith. Monthly stock taking board used to be held for checking of ground and ledger balance of the ration every month under the orders of the petitioner, ever since the petitioner assumed command of the unit. It is alleged that no discrepancy or surplus ration was ever reported by any monthly stock taking board to the petitioner or higher authorities. In July, 1992, the petitioner implemented a Standing Operating Procedure (SOP) to be followed in the unit for demand, supply and accounting of rations for the unit. However, Capt P.N. Chaudhary never used to follow the standing operating procedure. He would give inflated feeding strength so that ration became surplus. This surplus ration used to be sold by Capt P.N. Chaudhary in connivance with Sub. N.D. Dhawle(JQM), Hav. I.S. Chaprana and NK Vethchalam and the sale proceeds used to be shared

by them. On 14.8.1993, on the instructions of Capt P.N. Chaudhary; Sub. N.D. Dhawle, Hav. I.S. Chaprana & NK Vethchalam got some surplus ration loaded in a 3 Ton vehicle and delivered the same at the house of Shri Sunil Bhattacharji of GE, Misamari. The ration thus sold was seized on 15.8.1993 in a raid by the CMP/police who recovered this surplus ration from the house of Shri Sunil Bhattacharji. The ration recovered was 22 Tins of Ghee, 07 Bags of Dal, 02 Bags of Rice, 08 Bags of Atta and 01 Full Tea Chest of Tea leaves. Consequently, a Staff Court of Inquiry was ordered by Station Headquarters, Misamari vide convening order no.250/1/A/PC dated 24.8.1993, to inquire into the circumstances under which Military rations were allegedly delivered by a vehicle of 32 EME Bn (Tpt) to the Quarter of Shri Sunil Bhattacharji, employee of GE, Misamari on 15.8.93. Lt. Col. S.B. Pansare was the Presiding Officer of the Court of Inquiry and Major R.K. Singh & Capt S.S. Sengar were its members.

3. The petitioner was on annual leave at Secunderabad from 13 Aug to 11 Sept, 1993 and on coming to know about the said incident, he cut short his leave and joined the unit. It is further alleged that Capt P.N. Chaudhary (QM) and Sub N.D. Dhawle (JQM) to save their skin, put the entire blame on the petitioner and deposed during the Court of Inquiry that they had been selling the surplus ration at the behest of the petitioner since he was retiring from service next month, on superannuation. It is alleged that on account of these nasty aspersions cast on the petitioner by Capt Chaudhary and Sub Dhawle, his character and military reputation was affected. It is alleged that administrative check of ration after countersignature of the petitioner used to be checked by Station Board of officers every month, who verified the correctness of the same. It is alleged that he was blamed by the Court of Inquiry on conjectures and surmises based on the statement of Capt Chaudhary, Sub Dhawle, Hav. Chaprana and NK Vethchalam. On conclusion of the Court of Inquiry

the petitioner was attached to HQ 21 Mtn Arty Bde for initiation of disciplinary action, on the directions of HQ Eastern Command. Thereafter, Army authorities invoked the provisions of Army Act Section 123 as the petitioner was due to retire on 30.9.1993. Thereafter, petitioner was placed under close arrest w.e.f. 30.9.1993 and a sham exercise of hearing of charge under Army Rule 22 was done. A summary of evidence was recorded by Brig. OPS Bhatia and during the recording of the summary of evidence, 10 prosecution witnesses were examined and after close scrutiny of the Summary of evidence proceedings, a GCM was convened against the petitioner. In the GCM, Capt Chaudhary, Sub Dhawle, Hav Chaprana and NK Vethchalam were examined along with other witnesses. The court martial proceedings were initiated against him and 5 charges were framed against the petitioner. Of these, charge Nos.1, 3 & 5 were proved against the accused and he was punished by cashiering from service and to suffer rigorous imprisonment for six

months and forfeit past 10 years service for the purposes of pension. The GCM was confirmed by GOC-in-C Eastern Command with modification in the forfeiture of past service which was reduced from 10 yrs to 7 yrs. Petitioner after exhausting all remedies approached Hon'ble Delhi High Court by filing this writ petition challenging court martial proceedings and the punishment thereof.

4. The writ petition was contested by the respondent by filing a detailed reply, meeting all the arguments given by the petitioner and it was also pointed out in their reply that along with the petitioner other persons Capt Chaudhary, Sub Dhawle and others involved in the misdealing were also appropriately punished by holding necessary enquiry against them.
5. The case has been transferred from the Delhi High Court to this tribunal after its formation.
6. Learned Counsel for the petitioner raised number of points namely that the trial is vitiated as respondent has failed to adequately prove the charge of overdrawing ration. He has also submitted that

there were contradictions in the statement of witnesses i.e.PW-1 Capt P.N.Chaudhary, PW-3 Subedar N.D. Dhawle and PW-5 NK Vethchalam. It was also pointed out that the charges were not properly framed as the incident was of a period of more than one year and one composite charge should have been framed. It was also pointed out that prosecution could produce documents only for 7 months between 1992 to 1993, and for rest of the period prosecution has not produced any document. There was also no proof of inflation in administrative check for complete period of the charge. It was also pointed out that inflation theory was propounded by Capt Chaudhary and none else. As against this learned counsel for the respondent has relied on the findings on each charge by the prosecution.

7. We have heard learned counsel for the parties and perused the record. Learned Counsel for the petitioner emphasised that since the charges were not properly framed as the incident is of over one year, therefore, there should have been one charge

instead of spreading into alternative charges. In that connection learned counsel submitted that as per Army Rule the charges should contain necessary facts. He has also invited our attention to section 212 of the CRPC & Rule 30 of Army Rules 1950. So far as the framing of the charges is concerned, whether it should be one composite charge or alternative charge, the question is of prejudice. The evidence has been led by the prosecution and petitioner has understood the charge. Therefore, there is no violation in framing the alternative charges. The charges were specific and contained the relevant allegations therein. The charges read as under:

First Charge - AA Sec 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 Misamari between June, 1991 and July, 1993, while Commanding Officer 32 EME Bn (Tpt), with intent to defraud, certified and signed the monthly adm checks of the unit (except for the month of May 1992) as correct, well knowing that the figures reflected in the said adm checks relating to consumption of dry rations in respect of JCOs/OR, were far excessive than the relative figures of rations consumed based on the corresponding parade state, thereby causing such excessive dry rations to be charged off and consequential loss to the Government.

Second Charge - AA Sec 63 (Alternative to the first charge)
An act prejudicial to good order and military discipline

in that he,

at Misamari, between June 91 and July 93, while Commanding Officer 32 EME Bn (Tpt) improperly certified and signed the monthly adm checks of the unit (except for the month of May 92) as correct, without ensuring that the figures reflected in the adm checks relating to consumption of dry rations in respect of JCOs/OR were in conformity with figures of the rations consumed based on the corresponding parade state, thereby causing such excessive dry rations to be charged off and consequential loss to the Government.

Third Charge - AA Sec 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 Misamari, between June 91 and July 93, while Commanding Officer 32 EME Bn (Tpt), with intent to defraud, allowed the creation of surplus dry ration in the unit and authorized disposal thereof by SL-3706A Capt P.N. Chaudhary, Quartermaster and subordinate 'Q' Staff.

Fourth Charge - AA Sec 63 (Alternative to the Third charge)
An act prejudicial to good order and military discipline

in that he,

at Misamari, between June 91 and July 93, while Commanding Officer 32 EME Bn (Tpt), through neglect allowed the creation of surplus dry rations in the unit and unauthorized disposal thereof by SL-3706A Capt P.N. Chaudhary, Quartermaster and subordinate 'Q' Staff.

Fifth Charge - AA Sec 63

An omission prejudicial to good order and military discipline

in that he,

at Misamari, between June 91 and July 93, while Commanding Officer 32 EME Bn (Tpt) improperly omitted to discharge his responsibility of correctly accounting and stock taking of dry rations, as laid down vide para 37(g) of Regulations for the Army, 1987.

8. The above charges clearly indicate that the petitioner was the Commanding Officer of 32 EME Bn (Tpt) and there was a drawal of surplus ration and same was

sold unauthorisedly. Charge Nos. 1, 3 & 5 have been proved. Charge No.1 clearly states that when he was Commanding officer at Misamari of 32 EME Bn (Tpt), he defrauded the government as he certified and signed the monthly adm checks of the unit as correct, knowingly fully well that the figures reflected in the said adm. checks relating to consumption of dry rations, were excessive than the ration consumed, based on the corresponding parade state, and it caused loss to the government. The second charge which was proved is charge No.3 which states that between June, 1991 and July, 1993 he allowed the creation of surplus dry ration in the unit and unauthorisedly disposed off through Capt Chaudhary and subordinate quarter master staff. The third charge which was proved is charge No.5 which states that between June, 1991 and July, 1993 while Commanding Officer 32 EME Bn. (Tpt), improperly omitted to discharge his responsibility of correctly accounting and stock taking of dry rations, as laid down vide para 37 (g) of Regulations for the

Army 1987. Therefore, each charge though apparently appearing to be overlapping, contains a subtle distinction. Secondly, even if all these charges were clubbed together then it could have been an elaborate composite charge. Therefore, in order to have a specific charge which is understandable, if three charges have been framed it has not caused any prejudice to the accused. The basic question is whether any prejudice has been caused to the accused in this trial. By spreading one charge into three charges thereby making it more explicit, would not suggest that accused has been prejudiced in any manner. More so, such argument is also not tenable in view of Section 464 of the Cr.PC which says that if there is any omission in framing the charge or if there is any error in the charge, then it is for the court to decide if such deficiency/irregularity in the charge has occasioned a failure of justice. Then alone it can be interfered with and in case it is found to be so, then Court of appeal can reframe the charge and direct a new trial.

Section 465 also states that any finding or sentence can only be reversed if there is a failure of justice. Therefore, in the present case, by making the charge more elaborate, instead of making one composite charge, and framing the charge for convenience into three charges cannot be said to have occasioned failure of justice, therefore, we overrule this argument of the learned counsel for the petitioner.

9. We have perused the statements of PW-1, 3, 4 and 6. In order to appreciate the controversy, we may dilate here briefly on the case of the prosecution through the statement of witnesses, which will throw light on the subject as to in what manner the accused and other persons subordinates to him conspired to inflate the quantity of ration in excess of what was actually required for consumption by troops.
10. PW-1 Capt P.N. Chaudhary, who was Quarter Master has deposed that during his tenure as Quarter Master, twice a month ration demand used to be placed with the FSD, Misamari on the basis of

anticipated strength. On one day ration strength, the demand used to be send to FSD for 15 days. He admitted that inflation in the ration consumption during his tenure was for an average surplus of 600 to 2400 personnel per month. From early 1991 the inflation in ration consumption was made. Till December, 1990 the Commanding Officer was Col. NR Potluri, and on 07.12.1990 the accused became Commanding Officer. The accused ordered inflation in ration strength. The witness brought to the knowledge of the accused some deficiencies in the Battalion Ration Store, on which the accused told him as to what type of Quarter Master he was and ordered him to inflate the ration strength since they were on field system of accounting. The accused had told the witness that excess ration would be sold and he directed him to inflate the ration consumption. All such orders by the accused used to be given orally. PW-1 resisted these illegal orders stating that he cannot inflate the ration consumption, whereupon the accused threatened him that he will spoil his

ACR. He also deposed that the disposal of surplus ration was in the knowledge of the accused and his own subordinate staff i.e. Sub. ND Dhawle, JQM, Ration NCOs Hav I.S. Chaprana and Naik Vethchalam and RG Salunke. The surplus ration used to be sold with payment ration by JQM and Ration NCOs and the money received as sale of the surplus ration was given to the accused. He admitted that a total sum of Rs.1 lakh was given to the accused from time to time, as a result of the sale of the surplus ration during his tenure as the quarter master. He has also deposed that some quantity of surplus ration used to be sent to the house of the accused and some quantity used to be sold by the JQM. He also deposed that all items of surplus ration like rice, Atta, Sugar, Ghee, Dal etc used to be sent to the house of the accused and a Note Book used to be maintained by the Ration NCO about such delivery. A large number of documents have been filed to show the inflation of the ration. Approximately 20,000 documents were produced to show the

modus operandi and some of the documents were proved, i.e. Exhibits 'O' and 'P' which bears the signature of the accused and of the Adm Cdt. Proceeds from excessive ration sold were received by him. The details are given in the statement of the accused by producing the chart as to how the strength was inflated in various months. Petitioner has also deposed that PW-3, Sub ND Dhawle, also pointed out the inflation to the accused and he was snubbed.

11. PW-3 Sub. ND Dhawle has deposed that he joined 32 Em Bn on 16.12.1991 and was given the duty of JQM. He deposed that PW-1 Capt P.N. Chaudhary used to give him monthly figures of inflation, saying that this was being done on the instructions of the accused. Accordingly he started attaching a slip giving details of inflation on the Battalion feeding strength, as inflated from that of the companies feeding strength. This gave the net total inflation for the information of Capt PN Chaudhary and the accused. On 14.8.1993, Capt PN Chaudhary called

Hav. I.S. Chaprana to dispose off the ration outside the unit. Hav. I.S. Chaprana informed him about the same and also said that this is being done on the instance of the accused. He was told that these are orders of the CO and they have to comply with it.

12. PW-4 Hav. I.S. Chaprana has also come in the witness box and supported the fact that surplus quantity of ration was being sold on the directions given by Capt P.N. Chaudhary, who in turn used to get directions from the accused. Though he initially resisted these orders, he ultimately complied. On 14.8.1993, at about 1200 hrs, Capt P.N. Chaudhary called him to his office and ordered him to take the surplus rations to an MES employees's quarter i.e. house of Bhattacharji, for which he issued a gate pass. He admitted that when he drove the vehicle containing the food stuff to the Quarter of the MES employee as directed by Capt Chaudhary, he was caught. He informed Capt Chaudhary that ration has been caught by the civil police. He was called at the house of Capt PN Chaudhary where JQM i.e Sub.

Dhawle and Capt Chaudhary told him not to tell the name of the accused petitioner as he is not in town.

13. PW-6 Nk Vethchalam was posted in 32 EME Battalion (Tpt) which he joined in January, 1991 when Col. E Padmanabhan was Commanding Officer and he reported to Capt P.N. Chaudhary, the Quarter Master. He deposed that surplus quantity of ration used to go to the house of accused. Some surplus ration used to be disposed off by selling it illegally as payment ration.
14. The accused has also examined three defence witnesses to certify about his bonafides and his good conduct from superior officers.
15. From perusal of statement of these four witnesses and some of the exhibits which have been produced, it leaves no doubt that the accused was being benefitted by inflating the ration strength and selling the excessive ration in the market and he used to draw the monetary benefit out of it as deposed by Capt P.N. Chaudhary to the extent of about 1 lakh. A brief summary of the evidence, which has been

reproduced above, leaves no manner of doubt about the conduct of the accused, that he being at the helm of affairs used to sign the admn check and used to ensure that excess ration is to be drawn and same excess ration is sold in the market. The complicity of the accused along with the Quarter Master is more than apparent. In view of this evidence it leaves no doubt that accused is guilty of indulging in drawing excess ration than what was required for consumption of the unit, and selling them in the market and getting benefit out of it. Therefore, the accused is guilty of causing wrongful loss to the state and was an act which is highly unbecoming of an army officer.

16. Learned Counsel has also made grievance about the Judge Advocate being biased at pre-trial stage and the Judge Advocate was changed but he did not raise any objection about the Judge Advocate during the trial. Therefore, this grievance of the petitioner that the Judge Advocate was biased and has caused prejudice to his case cannot be heard now at this

point of time. Therefore, this objection of the accused at this belated stage has no relevance. In this connection reference may be made to the decision of the Apex Court in the case of ***Union of India Versus S.P.S. Rajkumar & others*** [2007 6 SCC 407).

17. Learned Counsel has also raised some arguments that order of court martial is not a speaking order. We have gone through the order of the court martial and we are satisfied that there is proper application of the mind and order passed by the court martial authorities cannot be said to be non-speaking order. It is true that non-speaking order is against the judicial discipline but after having gone through the order and appreciating the evidence we are satisfied that the GCM order cannot be said to be a non-speaking order.
18. In view of the above discussion, we are satisfied that the court martial proceeding has been correctly conducted and same has been confirmed by the respondent and we don't find any ground to interfere

in the findings and sentence and consequently, the petition is dismissed. No order as to costs.

[Justice A.K. Mathur]
Chairperson

[Lt. Genl. SS Dhillon]
Member (A)

New Delhi
19th July, 2011