

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

TA NO. 385 OF 2010
(WRIT PETITION (CIVIL) NO. 9229 OF 2007)

SEP MANOJ KUMAR

...APPELLANT

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

ADVOCATES

**D.S KAUNTAE FOR THE APPELLANT
MR. AJAI BHALLA FOR THE RESPONDENTS**

CORAM

**HON'BLE SH. S.S.KULSHRESTHA, MEMBER
HON'BLE SH. Z.U SHAH, MEMBER**

J U D G M E N T
29.3.2011

1. The petitioner filed W.P (C) No. 9229 of 2007 before the Delhi High Court challenging the Summary Court Martial (SCM) proceedings dated 30.3.2007, whereby he was found guilty of having committed an offence under Army Act Section 52(b) and sentenced to be dismissed from service. The writ petition stood transferred to this

Tribunal and treated to be an appeal under Section 15 of the Armed Forces Tribunal Act 2007.

2. The facts giving rise to this appeal in a nutshell are: The appellant was enrolled in the Army on 1.10.1998 and he had joined 4 JAT as Driver. Subsequently, with effect from 17.12.2001, he served in HQ 65 Inf Bde (on ERE) as Driver and on 10.12.2004, on completion of ERE tenure, he was transferred back to 4 JAT. In November 2005, he was sent to VD Panagarh for collection of Army bus BA No.05P01700E and remained posted with 502 ASC Bn as Driver till 10.5.2006. On 3.6.2006, a complaint was reported against the appellant of having fudged and shown 6000 kms. extra in the car diary. An investigation was conducted, wherein the appellant was found to have illegally sold FOL to unauthorised sources. Based on such finding, a tentative charge sheet was issued to the appellant on 26.6.2006. Summary of evidence was recorded. Thereafter on 26.3.2007, the appellant was served with a charge sheet, which reads as under:

**Army Act
Section 52(b)**

**DISHONESTLY MISAPPROPRIATING PROPERTY BELONGING
TO THE GOVERNMENT**

in that he,

at field, between 20 February 2006 and 10 May 2006, while being the driver of Army Bus vehicle BA No. 05P 017001E att with 'B' Company 502 Army Service Corps battalion dishonestly misappropriated 2412 (two thousand four hundred twelve only) liters of diesel, the property of the Government, valued Rs. 76460.40 (Rupees seventy six thousand four hundred sixty and paise forty only).

On pleading not guilty to the charge, he was tried by the SCM. It found the appellant guilty of having committed the offence under Army Act Section 52(b) and he was dismissed from service. His pre and post confirmation petitions ended in dismissal. Hence the present appeal.

3. Learned counsel for the appellant has submitted that the entire prosecution story is a concocted one and the entire proceedings against him are vitiated. Though other personnel also involved in the alleged incident, no action was taken against them and the appellant was made a scape goat on trumped up charges. No mandatory requirements were adhered to, thereby violating Army Rule 180. The alleged confessional statement was obtained from the appellant under coercion and threat. Therefore, the finding of the SCM based on such confessional statement is inadmissible in evidence. Further, a fair and full opportunity was not provided to the appellant, thereby violating Army Rule 22.

4. On the other hand, learned counsel for the respondents has pointed out that adequate opportunity was afforded to the appellant to defend his case and the appellant chose not to cross examine any of the prosecution witnesses. All procedural formalities were followed as per Army Rules and the allegation of the appellant that his confession statement was obtained under coercion is a creation of the appellant only to get the sympathy of the court. Further, with regard to the attachment of the appellant for trial by the CO, this Tribunal had already decided the issue by order dated 3.9.2009 and this issue is no longer res integra.

5. In support of its case, the prosecution examined PW 1 Nk Tejvir Singh, Mechanical Transport Platoon of 4 JAT, who has stated that on 10.5.2006, he was sent to 502 Army Service Corps Bn to relieve the appellant, who was driver of Army Bus bearing registration number BA 05P017001E. The vehicle was being used for station convoy duty for the purpose of ferrying Army personnel between Tinsukiya Railway Station and HQs 2 Mtn Div. On 11.5.2006, in the course of taking over the duties of Army Bus Driver, he examined the vehicle and the car diary. Discrepancies were found in the car diary, viz. the vehicle had shown over-mileage, quantity of fuel drawn was not commensurate to the

mileage run by the vehicle and the car diary was not signed by any officer or the person using it. PW 2 Lt Col Viru Pakshaiah, PW 3 Sep/MT Gafar Shaikhlal Shaikh and PW 4 Hav/MT Mukti Pada Dey have also supported the prosecution version. Though PW 5 Nb Sub Jagdeo Ram, PW 6 Nb Sub Krishan Kumar, PW 7 Sep/MT Anup Kumar Biswas, PW 8 Sep/MT Manjunath, PW 9 Nk/MT Radhakrishna Yadav, PW 10 Craftsman Rambir and PW 11 Capt Ashish Sajgotra admitted of having heard about the misappropriation committed by the appellant, they, however, denied having any direct knowledge with regard to the alleged misappropriation. The appellant cross examined only PWs 3 and 4 and the evidence of other witnesses remained unchallenged.

6. It is an undisputed fact that none of these witnesses were cross examined by the appellant and, therefore, remained unchallenged. Further, the car diary produced by the prosecution proved the misappropriation lending support to the prosecution version. Further, the appellant admitted his guilt, the consequence of which was explained to him in view of Army Rule 115(2). It corroborated the prosecution version. Reference may be made to the decision of the apex Court reported in **Dharnidhar v. State of Uttar Pradesh and others** (2010(7) SCC 759).

7. Placing reliance on the confessional statement made by the appellant to PW 11 Capt Ashish Sajgotra, wherein the appellant had given the details of the incident. It appears to be voluntary. As already stated, there is no dispute with regard to the guilt as the appellant has already admitted having committed the crime. Such voluntary statement can be relied upon (see **Sansar Chand v. State of Rajasthan** (2010(10) SCC 604). However, it was vehemently contended by learned counsel for the appellant that much force cannot be given to such voluntary statement, when the same was obtained under coercion. From the statement of PW 11 Capt Ashish Sajgotra, it is clear that the appellant gave the statement voluntarily. Therefore, we do not find any force in the contention raised by learned counsel for the appellant that the voluntary statement allegedly given by the appellant cannot have any significance.

8. Viewed in this light, we do not find any merit in the appeal. It is dismissed.

(Z.U SHAH)
MEMBER

(S.S KULSHRESTHA)
MEMBER