

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

T.A. No.395 of 2010

W.P.(C) No.7676 of 1999 of Delhi High Court

PG Antony

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner:

Sh. C.K. Shashi, Advocate

For respondents:

Sh. Ankur Chibber and Sh. Shashi Mohan,
Advocates

CORAM:

Hon'ble Mr. Justice A.K. Mathur, Chairperson

Hon'ble Lt. Gen. S.S. Dhillon, Member

ORDER

20.05.2011

1. The appellant has sought quashing of the Summary Court Martial order of 15.01.1993 wherein he was dismissed from service.
2. The appellant was serving with the Territorial Army as a clerk. He was posted to 982 Railway Operating Company Engineers (TA) located at Muzaffarpur in Bihar when this incident occurred. The specific allegation was that the appellant on 16.01.1990 having received Rs.40,000/- for disbursing

AFPP Fund to his company personnel, did not do so and with an intent to cause wrongful gain to himself and retained the said amount for his own use. He was warned for trial on 16.12.1992 on which date he was given a charge sheet as well as a copy of the summary of evidence. The appellant contends that as discernible from the summary of evidence on 16.01.1990 Lt. Col. P.S. Vimal was detailed to make payment to the company and only the acquittance rolls were prepared by the appellant. Although a sum of Rs.1,46,000/- was disbursed the total payment as reflected in the acquittance rolls shows that a sum of Rs.1,86,000/- had been paid. Presumably a sum of Rs.40,000/- additional had been paid. It was alleged that the appellant had prefixed the figure of '1' in the accounts of 40 entries in 4 acquittance rolls. Thereby the 3 figure payment which was done to the soldiers was converted to 4 figures and the appellant, thus, retained Rs.40,000/-. The appellant pleaded "not guilty" to the charge and a total of 6 witnesses were examined by the Summary Court Martial which was conducted between 01.01.1993 to 15.01.1993.

3. The appellant urged that he was a Naik Clerk at that point of time and was not entitled/empowered to handle cash. This was the responsibility of the paying officer, who had collected the amount and affixed his signatures on the acquittance rolls. The appellant argued that he was competent only to prepare acquittance rolls at the instance of the paying officer and that specific provision that this extent were contained in the Field Imprest Payment

Instructions, which governed the procedure for distribution of money. Similarly, the amount which is paid is to be entered in the paying officer's own handwriting and, therefore, the appellant cannot be blamed for any irregularity on the part of the paying officer.

4. Counsel for the appellant also urged that the appellant had sought 14 defence witnesses in his trial and none of these witnesses was made available to him. In the absence of such witnesses, it was impossible for him to put across his defence and, therefore, he was prejudiced to that extent. This was rebutted by counsel for the respondents by stating that during the Summary Court Martial proceedings when the defence witnesses had not come, the appellant declined to bring any defence witnesses. A specific endorsement to this effect was there in the record of the Summary Court Martial proceedings. Moreover, 4 of these 14 witnesses i.e. Lt. Col. P.S. Vimal, Sub. I. Subramaniam, Nk Abhilash Pandey and Nk Radhey Shyam, who were essential witnesses, had been produced as prosecution witnesses. Therefore, for him to agitate this issue, at this point of time, was irrelevant.

5. Counsel for the respondents urged that the specific charge against the appellant was framed, which reads as under:

"CHARGE SHEET"

The accused, No.1367984K Spr/Clk PG Antony of
982 Rly Op Coy Engrs (TA) (972 Rly Engr Regt (TA),

a person enrolled in the Regular Army and subject to the Army Act, is charged with: -

SUCH AN OFFENCE AS IS MENTIONED IN CAUSE (F) OF SECTION 52 OF THE ARMY ACT WITH INTENT TO CAUSE WRONGFUL GAIN TO A PERSON,

Army Act
Section 52(f)

In that he,

at Muzaffarpur, on 16 Jan 90, having received from JC-94542A Sub Jaj KE Haridass of the same Regt, a sum of Rs.40,000/- (Rupees forty thousand only) for disbursing AFPP Fund to his Company personnel did not do so but with intent to cause wrongful gain to himself retained the said amount for own use.

Sd/-
(S.M. Desai)

Place: Muzaffarpur
Date: 16 Dec. 92

Offg Commanding Officer
972 Rly Engr Regt (TA)"

6. To prove this charge a total of 6 prosecution witnesses were examined. Sub. Clerk I. Subramaniam (PW-1) was the accounts clerk of 972 Railway Engineer Regiment (TA) during the time of this incident. He has testified to the fact that on 17.01.1990 the appellant, who was performing the duties of 982 Railway Operating Company Head Clerk had submitted the acquittance rolls to him and that the total amount written in each acquittance rolls was written in the handwriting of the appellant and not of the Paying

Officer Lt. Col. P.S. Vimal. The witness went on to state that he was familiar with the handwriting of the appellant and that Rs.40,000/- additional, which had been shown in the acquittance rolls, was actually meant for payment to soldiers from their AFPP fund. Although the appellant cross-examined the witness he has not preferred any question about the crucial aspect of the summary in each acquittance rolls being in the appellant's own handwriting. Capt. Narendra Kumar (PW-2) was the second-in-command of 982 Railway Operating Company. He has testified to the fact that he was aware of some embezzlement of Rs.40,000/- which had occurred on 16.01.1990 and that the appellant was held guilty for such embezzlement and that the appellant had agreed to return the complete amount. The witness produced the letters written by the appellant requesting for returning of the money in instalments and such letters were dated 09.01.1991, 21.02.1991, 07.08.1991, 13.03.1992, 18.03.1992 and 01.07.1992. In cross-examination the witness has stated that in the appellant's letter of 09.01.1991 he had made a request that "from the embezzled amount a part of payment Rs.8600/- may please be recovered from by AFPP fund account." The appellant accepted having written such letter. Nk Radhey Shyam (PW-3), also of 982 Railway Operating Company Engineers, had stated that on 16.01.1990 although he was paid Rs.900 by Lt. Col. Vimal, the Paying Officer, the entry in the acquittance roll was subsequently shown as Rs.1900/-. He was cross-examined by the appellant. Similar is the situation of Nk Shivdas Singh (PW-4) and Nk Abhilash Pandey

(PW-5) both of 982 Railway Operating Company, who had given identical statement as PW-3 that they had been debited additional amounts of Rs.1,000/- in their pay slip after they had received their salary. Both these witnesses were also cross-examined by the appellant. Lt. Col. P.S. Vimal (PW-6) was the paying officer, who has stated that the appellant was assisting him in making the payment on 16.01.1990. He has also stated that the appellant brought the cash which was to be disbursed. The witness went on to state that the appellant informed him that Rs.40,000/- had been set aside for payment to permanent staff and that this amount of Rs.40,000/- had been kept by the appellant in his almirah. The witness stated that he had made payments in the range of Rs.900/- to Rs.950/- and that he had tallied the amount of the acquittance rolls in the evening. This total had been calculated by the appellant earlier and he found it to be correct. The witness also stated that in the final acquittance rolls the signature that appeared was his, but the handwriting in which the total had been shown was not his and that it was written by the appellant. This witness also was extensively cross-examined by the appellant. The appellant also made an extensive statement at the conclusion of the testimony of the prosecution witnesses, but he has been unable to explain or deny the allegation that the handwriting on the acquittance rolls was not his.

7. From the above, we do not find any reason to interfere with the findings and sentence of the Summary Court Martial. Accordingly, the appeal is dismissed with no orders to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi.
May 20, 2011.