

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

**T.A NO.414 OF 2009
(WRIT PETITION (C) NO. 3241 OF 1998)**

Lt Col R.K Rudra **....Appellant**

Versus

Union of India and Others **....Respondents**

For the Petitioner : Mr.K.S Bhati, Advocate

For the Respondents : Mr. Anil Gautam, Advocate

C O R A M:

**HON'BLE MR. JUSTICE A.K MATHUR, CHAIRPERSON
HON'BLE LT. GEN. S.S DHILLON, MEMBER (A)**

**J U D G M E N T
18th May 2011**

1. This petition has been filed under Article 226 of the Constitution of India and is to be treated as an appeal under Sections 14 and 15 of the Armed Forces Tribunal Act 2007. The appellant is aggrieved against the General Court Martial (GCM)

conducted between 6.2.1996 and 25.3.1996, whereby the appellant was sentenced to be dismissed from service. He, therefore, seeks quashing of the GCM proceedings. The appellant is also aggrieved by the fact that he has been denied his pensionary and other retiral benefits and seeks to quash the show cause notice dated 11.4.1997 and the subsequent action of the respondents, by which they forfeited his entire pensionary benefits because of his dismissal by the GCM.

2. The appellant joined the Indian Air Force as an Airman in 1962 and served with the Air Force till 31.10.1969 when he was selected for short service commission in the Army and underwent training at the Officers' Training School, Chennai from 1.11.1969 to 5.9.1970. On 6.9.1970, the appellant was granted short service commission as a Lieutenant in the Army Service Corps, which was subsequently converted to permanent commission, after serving for five years. The appellant served from 1970 to 1994 as a commissioned officer in the Indian Army and passed various promotion examinations, attended various courses and served in several ASC units and rendered satisfactory service with a clean

record. The appellant served in the 1965 and 1971 Indo-Pak Wars and had an unblemished record of service till the incident of this GCM.

3. In March 1992, the appellant was posted as Officer Commanding, 469 Company ASC (Supply), which was located at Alwar in Rajasthan. From March 1992 to March 1994, he performed his duties to the satisfaction of his superiors and nothing adverse was noted by any officer regarding his performance. His unit was responsible for procuring and supplying all kinds of dry and fresh rations to the Army units located in its jurisdiction. On 1.4.1994, a new meat contract was concluded by Sub Area Commander (SAC), Jaipur. This contract had earlier been concluded during the preceding years by HQ Southern Command and it was for the first time that this contract was concluded by the SAC at Jaipur. The meat contract had been awarded to M/s. Sumit Supplier Company at Alwar. It was contended that normally for this kind of contract, there were initial difficulties and it takes some time for the situation to stabilise. On 7.4.1994, instructions were also issued by Station HQ, Alwar that slaughtering of the

animals in the butchery would be done in the presence of the Duty Officer/Garrison Field Officer (GFO), Alwar on a rotational basis.

4. Counsel for the appellant stated that on the intervening night of 8/9.4.1994, the GFO, Capt. S.K Rai, went to the butchery to witness the slaughtering of animals at approximately 2300 hours and found a Matador vehicle in the butchery, in which three dead animals were kept. While the GFO was still at the butchery, a civil Maruti car arrived, in which ten more dead animals were kept. These dead animals were presumably brought to be handed over to the butchery for supply to the Army units. But this supply could not be executed because of the intervention of the GFO. The GFO, Capt. Rai, spoke to the appellant on telephone at approximately 2330 hours and informed him about the dead animals, which had reached the butchery and the appellant immediately rushed to the spot and assured Capt. Rai that he would take necessary action against the contractor and suggested that under the circumstances, it would be proper to bury these dead animals. It was argued by the appellant that on the instructions of Capt. Rai, the dead animals were thereafter

buried. The next day, i.e. on 9.4.1994, the appellant, along with the GFO, informed the Station Staff Officer (SSO) of Station HQ, Alwar about the incident. Subsequently on 12.4.1994, the SSO, Lt. Col. Harpreet Singh, called the GFO to his office and secured a full report from him regarding the incident of 8/9.4.1994. A Court of Inquiry was ordered by the officiating Station Commander on 13.4.1994 to inquire into the circumstances under which these dead animals were found on the premises of the ASC Butchery, Alwar. It was argued that consequent to this incident, the SAC, Jaipur, Brig. Bahl called the appellant to his office and counselled/warned him that if the situation did not improve, disciplinary action would be taken against him. Counsel for the appellant argued that such warning by the SAC tantamounted to condonation of the lapse and his subsequent trial by the court martial for the same offence amounted to double jeopardy and he had made the "plea in Bar" during the GCM, which was rejected by the court.

5. On 23.4.1994, Brig. Bahl made a surprise visit to the Alwar Butchery and stated that he found water oozing from the

carcasses which were to be supplied to the troops. He ordered a freeze on the issue of meat and after lunch, when he visited the butchery, he found substantive loss of weight in the carcasses and rejected the meat for issue to the troops. It was pleaded that the meat that was rejected was the meat which had been stored in the boxes and not the meat which was hanging from the hooks in the butchery. Considering the high day time temperatures at that time of the year at Alwar, it was natural that the meat, which was kept in the box, would putrefy and would be unfit for human consumption and he cannot be blamed for this lapse. It was further argued that no proper weighing of these animals was done and neither was any competent veterinary doctor summoned to testify about the state of the meat and it was purely a layman's judgment which the SAC made. Based on these incidents, a Court of Inquiry was ordered and consequently, disciplinary action was initiated, including recording of summary of evidence, which finally resulted in six charges being framed against the appellant as under:

FIRST CHARGE

Army Act Section 52(f) read with Section 34 of the Indian Penal Code (against all the accused persons)

SUCH AN OFFENCE AS IS MENTIONED IN CLAUSE (f) OF SECTION 52 OF THE ARMY ACT WITH INTENT TO DEFRAUD

in that they together,

at Alwar, on 23 Apr 94, with intent to defraud issued contaminated meat, dribbling with water, to the following units for consumption by the troops:-

(a)	167 Field Regiment	-	38 Kgs
(b)	HQs 18 Artillery Brigade		
	Camp	-	30 Kgs
(c)	6/11 Gorkha Rifles	-	135 Kgs
(d)	1900 Medium Regiment	-	58 Kgs

SECOND CHARGE

Army Act Section 69 (against Accused No.1 only)

COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, CAUSING DISAPPEARANCE OF EVIDENCE OF OFFENCE CONTRARY TO SECTION 201 OF THE INDIAN PENAL CODE

in that he,

at Alwar, on the night intervening 08 and 09 Apr 94, knowing that M/s Sumit Supplier Company, Alwar, the meat contractor, had sent dead animals for issue as troops rations, caused 13 dead animals to be buried with intention of screening the said meat contractor from legal punishment.

THIRD CHARGE

Army Act Section 69 (against Accused No.1 only)

AN OMISSION PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE

in that he,

at Alwar, on 08 Apr 94, while commanding 469 Company Army Service Corps (Supply) Type 'A' being the contract operating officer for meat dressed, failed to ensure that adequate stock of reserve animals was maintained in the butchery of the said company as per Para 3(a) of Special Condition for the supply of meat dressed consequently only 13 animals were held in the reserve in the said butchery on the day.

FOURTH CHARGE

Army Act Section 63 (against Accused No.1 only)

AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE

in that he,

at Alwar, on 09 Apr 94, while commanding 469 Company Army Service Corps (Supply) Type 'A' and responsible for over all control of the operation of unit butchery improperly issued 137 Kgs of unset meat for consumption of troops.

SEVENTH CHARGE

Army Act Section 63 (against Accused No.1 only)

**AN OMISSION PREJUDICIAL TO GOOD ORDER AND
MILITARY DISCIPLINE**

in that he,

at Alwar, on 23 Apr 94, while commanding 469 Company Army Service Corps (Supply) Type 'A', being the contract operating officer for meat dressed, improperly failed to ensure that adequate stock of reserve animals was maintained in the butchery of the said company as per Para 3(a) of Special Condition for the supply of meat dressed, in consequence of which no animals were branded and segregated 12 hours before the slaughter timings.

EIGHTH CHARGE

Army Act Section 63 (against Accused No.1 only)

**AN OMISSION PREJUDICIAL TO GOOD ORDER AND
MILITARY DISCIPLINE**

in that he,

at Alwar, while commanding 469 Company Army Service Corps (Supply) Type 'A', improperly failed to ensure correct maintenance of the following documents for the animals slaughtered on the night intervening 23 and 24 Apr 94:-

- (a) Meat Inspection Register
- (b) Green Weight/Dry Weight Register.

The appellant was found "guilty" of the 1st, 2nd, 3rd and 8th charges and "not guilty" of the 4th and 7th charges.

6. It was urged by the appellant that he was not aware of the dead animals being brought to the butchery by the contractor and immediately on being informed by Capt Rai, GFO, he had taken necessary action as required, in that he assisted the GFO in the investigation and the dead animals were buried under the instructions of the GFO. The appellant had participated in the inquiry and had even personally gone to report the matter to the SSO the next day on 9.4.1994. Referring to the surprise visit of the SAC on 23.4.1994, it was urged by the appellant that the observations of the SAC were merely that of a layman and the meat was not checked by the veterinary doctor who alone was competent to state about the condition of the meat. The meat was not weighed and it was merely an inference that was drawn between the first and second visits of the SAC and that the weight had decreased because the water had dried.

7. It was also argued by counsel for the appellant that the GCM had erred in accepting Col. A.K Chaudhary (PW 4) as an expert witness because the individual was neither a medical officer nor a veterinary officer and as such the opinion expressed by him

could not be admissible as that of an expert witness under Section 45 of the Indian Evidence Act. This plea had been taken during the GCM and was rejected by the Court. The appellant went on to argue that although the crux of the matter was the 13 dead animals that had been brought to the butchery, no civilian, who was instrumental in bringing the dead animals, including the drivers of the Matador and the Maruti car had been examined either in the Court of Inquiry, or the summary of evidence or during the GCM. This had prejudiced the defence of the appellant and in the absence of the testimony of such witnesses; the charge of bringing dead animals to the butchery could not be sustained. The appellant also urged that the sentence of dismissal awarded for such supervisory lapse was excessive, especially when the two other co-accused, who were directly dealing with the butchery, were given a loss of seniority of five and two years respectively. Lastly, it was argued that non-payment of pensionary benefits to the appellant was miscarriage of justice as he had already been dismissed and denying him pension was against the tenets of

natural justice, especially since in his entire 33 years of service, he had maintained a very clean record barring this one incident.

8. Counsel for the respondents stated that the appellant was tried for six charges and held guilty of Charge Nos. 1 to 3 and 8 and not guilty of Charge Nos. 4 and 7. The GCM was conducted between 6.2.1996 and 25.3.1996 and was confirmed on 11.9.1996 and promulgated on 4.10.1996. The entire proceedings had been done in accordance with law and there were no irregularities, whatsoever, during the trial. At the commencement of the trial, the appellant had put in a plea along with accused 2 and 3 that a separate trial should be held since the evidence of accused 2 and 3 would be material for the appellant. This plea was preferred under Army Rule 35(4), wherein it was emphasised that no notice of the intention to try the accused persons together had been given. Army Rule 35(4) reads as under:

“35. Joint trial of several accused persons.—(1)

.....

(2)

(3)

(4) In the cases mentioned above, notice of the intention to try the accused persons together shall be given to each of the accused at the time of his being informed of the charges, and any accused person may claim, either by notice to the authority convening the court or, when arraigned before the court, by notice to the court, that he or some other accused be tried separately on one or more of the charges included in the charge-sheet, on the ground that the evidence of one or more of the other accused persons proposed to be tried together with him, will be material to his defence, or that otherwise he would be prejudiced or embarrassed in his defence. The convening authority or court, if satisfied that the evidence will be material or that the accused may be prejudiced or embarrassed in his defence as aforesaid, and if the nature of the charge admits of this, shall allow the claim, and such accused person, or, as the case may be, the other accused person or persons whose separate trial has been claimed, shall be tried separately. Where any such claim has been made and disallowed by the authority convening the court, or by the court, the disallowance of such claim will not be a ground for refusing confirmation of the finding or sentence unless, in the opinion of the confirming authority, substantial miscarriage of justice has occurred by reason of the disallowance of such claim."

The GCM heard the arguments of counsel for accused 1 to 3 as well as the Prosecutor and the advice of the Judge Advocate. The GCM decided to allow the plea of the defence counsel for having separate trial of all the three accused persons. Thereafter, counsel for the appellant raised two objections under Army Rules 51 and

53 regarding general jurisdiction of the court and plea in Bar of trial. While hearing and dismissing the plea of general jurisdiction of the Court, detailed legal arguments with regard to plea in Bar were heard, wherein the provisions of Army Rule 53(2) were heard at length. After hearing the arguments, the GCM overruled the plea of “plea in Bar” and proceeded with the trial.

9. Arguing on the merits of the case, counsel for the respondents rebutted the arguments of the appellant by stating that the appellant was the Officer Commanding of the Supply Depot, Alwar and had approximately 33 years of pre and post commission service and he could not equate himself with Accused No. 2 (Sub Dadwal) and Accused No. 3 (Hav Bhagwan Singh) for purposes of parity of punishment. The appellant, as Officer Commanding, had far greater and direct responsibility with regard to the functioning of the butchery. The respondents also urged that it was implausible that dead animals could be brought to the butchery without the tacit approval of the appellant and such action by the contractor would not have taken place without his knowledge. However, it was urged that the specific charge that has

been framed against the appellant for this incident was not that the contractor brought these 13 dead animals to the ASC butchery, but that he “committed a civil offence, that is to say, causing disappearance of evidence of offence contrary to section 201 of the Indian Penal Code (Charge No. 2)”. Therefore, the charge is not that the dead animals were brought to the butchery, but that he was responsible to have these animals buried. This was fully established from the evidence of Capt. Rai, wherein he categorically stated that the carcasses of 13 dead animals were buried due to the pressure of the appellant. It was urged that the appellant had a direct involvement in the burial of these carcasses and for him to blame the GFO Capt Rai was unsubstantiated because the GFO had only a supplementary role to play, in that he was only to supervise the slaughtering of the animals. In any case, the actions of the GFO do not absolve the appellant of his responsibilities and duties, which were well known to him because of his vast experience of 23 years’ service with the ASC.

10. With regard to the surprise visit of Brig. Bahl, SAC, Jaipur, it was argued that no special knowledge was required to

make observation such as water oozing from the carcasses. The plea made by the appellant that no veterinary officer was called was because there was no military veterinary officer at Alwar and neither were any samples required to be taken. The essence of the charge is that he issued contaminated meat dripping with water, therefore, there was no necessity to weigh the meat and the putrefaction of the meat was evident from the putrid smell that was emanating from the meat.

11. The respondents argued that the issue of declaring PW 4 Col A.K Chaudhary an expert witness was debated at length before the GCM in accordance with Section 45 of the Indian Evidence Act. After hearing both sides as well as the advice of the Judge Advocate, the GCM permitted the witness to be declared as an expert witness. In any case, as was argued by the respondents that even an expert witness could be countered by producing another expert witness by the appellant. Furthermore, the GCM is not bound to go by the opinion of the expert witness and has to deliberate upon the totality of the circumstances before coming to any conclusion. In any case, in his capacity as an expert witness,

Col. A.K Chaudhary has testified on procedural aspects of functioning of ASC butcheries in general.

12. With regard to non-examination of the civilians as pleaded by the appellant, counsel for the respondents stated that no useful purpose would have been served by calling them as prosecution witnesses. These witnesses were not examined at any stage since they were not material to the charges framed against the appellant. Furthermore, there was no bar against the appellant calling them as defence witnesses and no such plea has been made by the appellant during the course of trial. In any case, the appellant has been unable to show as to what prejudice has been caused to him by non-examination of these witnesses. Counsel for the respondents urged that contrary to the claims of the appellant, strict action had been taken by the respondents against the contractor and that he was black listed from bidding for any contracts from the subsequent years because abrogating the current contract would have resulted in financial loss to the State.

13. The respondents also argued that the sentence of dismissal given to the appellant was judicious and appropriate

since he was the Contract Operating Officer and had far greater responsibility than the other accused. Referring to the denial of pension to the appellant, the respondents argued that in accordance with Regulation 16(a) of the Army Pension Regulations, a notice was issued to the appellant on 30.5.1997 to show cause why his pension should not be forfeited. His reply was taken into consideration while arriving at a decision, which was communicated to him on 19.6.1998 that his pension would be forfeited. Pension Regulation 16(a) is extracted below:

“16(a). When an officer who has to his credit the minimum period of qualifying service required to earn a pension, is cashiered or dismissed or removed from the service, his/her pension, may, at the discretion of the President, be either forfeited or be granted at a rate not exceeding that for which he/she would have otherwise qualified, had he/she retired on the same date.”

14. A total of twenty witnesses were examined by the prosecution during the trial. Lt. Col. Harpreet Singh (PW 1) was performing the duties of Station Staff Officer, Alwar when the incident occurred. He has testified to the effect that on 9.4.1994,

at approximately 1030h, the appellant accompanied by GFO Capt SK Rai had come to his office and reported the matter of dead animals in the Matador vehicle and Maruti car in the premises of the butchery on the night of 8/9.4.1994. After the initial report, he called the GFO again to his office on 12.4.1994 and ascertained further details of the incident from him. Thereafter, Lt Col Harpreet Singh reported the matter to the officiating Station Commander, Alwar, Col. C.P James, who ordered him to convene a Court of Inquiry into the incident. The witness accepts the fact that he did not ascertain the exact location where the carcasses were buried and neither was any effort made to retrieve the dead animals. He has also confirmed that no FIR was lodged with the police regarding this incident.

15. Maj SK Rai (PW 2) was the GFO during the relevant time. He has testified to the fact that on the night of 8.4.1994 at 2215h, when he entered the butchery as part of his duty, Sep NK Sharma shouted "GFO Saab aagaya hai", thereby supposedly alerting the other persons in the butchery. He spoke to Hav SP Singh, who was the NCO in charge of the butchery. At that point of

time, the lights in the butchery suddenly went off as if the main switch had been switched off. At the same time, a vehicle came inside the butchery and on enquiry, he ascertained that it had brought sheep for the butchery. The witness asked the driver of the vehicle, a 407 Tata Matador civil truck, to open the tail door of the vehicle. The GFO then saw that there were total 13 sheep, of which three had already been slaughtered, i.e. they were without head and intestines and preserved in ice and salt. Three other sheep were looking sick and on enquiry from the driver of the vehicle, he was informed that the contractor had sent it for supply to the butchery at Alwar. Shortly thereafter, a Maruti car also entered the butchery complex at approximately 2230h and when the witness asked the driver as to what he was carrying, the response was that he was carrying meat for the butchery. At the same time, somebody from the rear shouted "*Yeh checking wale sahib hain, theek sae jawab dena*". When the witness looked inside the vehicle with the help of a torch, he saw ten dead sheep preserved in salt and ice. He shouted for Hav S.P Sigh to come, but there was no response. The driver of the Maruti car also confirmed

to the witness that these dead animals were for supply to the Army butchery at Alwar. The witness asked the four civilian persons to give their statements, which they declined stating that they were illiterate. The witness took both the vehicles to his unit i.e. 54 Medium Regiment. From there he rang up SSO, but receiving no reply, rang up the appellant, who informed him that he was coming to the site. The appellant came within a few minutes in his own private car and inspected the civil vehicles. On finding the dead animals inside the vehicles, the appellant told him that this has been done by the contractor and that he would take aggressive action against him. The appellant supposedly told the GFO that "you are young in service and inexperienced" and that the appellant would take strict action against the contractor and have him black listed. He also informed the GFO that since the incident had occurred in the butchery, he (the appellant) was responsible for informing the SSO and the Station Commander. The appellant also told the GFO that the contractor and others being civilians would take him to a court of law and that nobody would be there to help him out. The appellant then told the GFO

that he (the appellant) was a heart patient and on medication and that he was already socially segregated and was about to be posted out from the station and that he did not want any more problems and that they should bury the animals. Thereafter, the animals were buried at the insistence of the appellant. The witness has also stated about reporting the matter to the SSO Lt Col Harpreet Singh (PW 1).

16. Maj Gen Y Bahl (then Brigadier) (PW 3) has stated that he was telephonically informed by Station Commander, Alwar some time in early April 1994 about the incident of dead animals having been smuggled into the butchery of Supply Depot, Alwar. He directed the Staff Officer Col AK Chaudhary, Deputy Director (Supply and Transport) (DDST) of the Sub Area to get an explanation from the appellant and also to summon him to his office. When the appellant went to the office of PW 3, he could not give any reasonable explanation about the incident and the appellant's answers were evasive. PW 3 counselled and warned the appellant to improve matters or else he would be compelled to take action against him. Thereafter, on 23.4.1994, at

approximately 0300h, he along with Col. Chaudhary made a surprise visit to the butchery at Alwar. He has testified that water was profusely oozing from the carcasses and there were no documents available except a few loose sheets. The witness ordered that no unit should be issued meat until further orders. On questioning the appellant, who was fumbling for words, the witness observed that the documentation was improper and incomplete. The witness questioned the appellant as to how he had approved substandard meat from which water was oozing, for which the appellant had no answer. This witness has stated that he had personally pressed some parts of the carcasses and again water was oozing. He also gave one or two incisions in these carcasses and water was seen flowing from the incisions. He had then instructed the units not to collect meat till the meat had been set in accordance with ASC Regulations. The witness has confirmed that the contract for the meat at Alwar had been concluded by him since it was within his jurisdiction as SAC. He also testified to the fact that the appellant was the Contract Operating Officer. The witness has stated that he was informed about the loss of weight

which was substantial but the exact quantity of loss of weight he could not recollect. The witness also confirmed that he rejected the meat on that particular day. He stated that earlier complaints had also been received against the Supply Depot at Alwar both orally and in writing.

17. Col A.K Chaudhary (PW 4) was the DDST of Sub Area, Jaipur and was responsible to oversee the supply and transport commitments within his jurisdiction. He has testified to the fact that on 13.4.1994, he received a complaint from SSO that certain dead carcasses had been brought to the butchery at Alwar on the intervening night of 8/9.4.1994 and that this complaint had been given to him in writing. He has testified to the same facts as PW 3 Brig Bahl, about visiting the supply depot at Alwar on a surprise visit on 23.4.1994. During the visit to the butchery by him and PW 3, the appellant was not present initially at the butchery and arrived later. The witness confirmed that he asked the JCO in charge of the butchery to show him the relevant registers, which could not be produced by the JCO or by the appellant. He has also testified to the fact that the carcasses which were hanging in the

butchery were weighed and dripping with water and that the meat had not set. Moreover, this meat which was dripping with water had already been stamped as passed "fit". The SAC (PW 3) directed that a Court of Inquiry be held as to why this unset meat was issued to the troops. The appellant was called to the butchery and on arrival, he was asked about the registers which were required to be maintained in the butchery. He was informed that these registers were in the supply depot in connection with the Court of Inquiry which was in progress. On being queried by the witness as to why unset meat was issued to troops, the appellant replied that the slaughter was late and, therefore, the meat was unset. At the same time, the officers of the Court of Inquiry arrived and PW 3, Brig Bahl, instructed them to weigh the carcasses and investigate further related aspects. The witness has testified in great length on the requirements of maintaining reserve animals in the butchery and on the procedure for selection of animals for slaughter. He has also stated that when a veterinary officer is not present in the butchery, the same function could be done by the OC Supply Depot in the absence of the veterinary officer. He has explained

the complete process of animals being inspected i.e. ante mortem inspection as to how they are declared fit and branded and how they are to be segregated 12 hours before the slaughter. The entire process of slaughtering and setting of the meat was elaborated by the witness in his capacity as an expert witness. He has also stated that to avoid dead animals being mixed with live animals, the bringing of dead animals into the butchery premises by the contractor is prohibited.

18. Maj. Rajesh Kumar (PW 5), who was the GFO from 17.4.1994 to 24.4.1994, has stated that on the evening of 22.4.1994 at approximately 2200h, he received a message that he was required to supervise the slaughter of the animals in the butchery. Accordingly, the witness reached the butchery at 2330h and accorded permission to Sub Dadwal to commence the slaughter. He was present during the complete beheading and slaughter of the animals which was completed by 0130h on 23.4.1994. Thereafter, he left the butchery only to return at 0715h on 23.4.1994 to supervise the issue of meat to the units. He has stated that Sub Dadwal and the appellant were present in the

butchery at that time and they were checking the meat. He saw the appellant making certain cuts on the hung carcasses to remove certain portions of the meat. The appellant told the witness that these were diseased portions of the meat and will not be issued. Thereafter, the witness returned to his office. He has also testified to the fact that he saw water dripping from the hung carcasses.

19. Col S.S Rana (PW 6) was posted with 6 Rajput at the time of the incident on 23.4.1994. During the surprise visit of SAC, Jaipur, he was officiating as SSO. He has stated that when he entered the butchery on 23.4.1994, he observed that 4 to 5 meat boxes were kept inside the room and that water was dripping from the carcasses of some of the animals that had been slaughtered. He has also stated that the Court of Inquiry, which was earlier ordered into this incident, was cancelled because Army Rule 180 was not complied with and that a fresh Court of Inquiry was ordered in October 1994, wherein all the mandatory procedures were complied with. Sub Shyam Kumar Rai (PW 7) was posted with 6/11 Gorkha Rifles at Alwar on 23.4.1994 when the SAC Jaipur made the surprise visit to Alwar butchery. On that day, the witness

collected meat for his unit in the morning and while collecting the meat at approximately 0830h, he saw blood and water oozing from the carcasses that were hanging in the butchery. He has stated that in the register he has entered the remark that the quality of meat was "satisfactory". He went on to state that the quality of the meat issued on 23.4.1994 to him for his unit was satisfactory and that the meat was cooked and there were no complaints. Nb Sub Sohan Lal (PW 8) was posted with 167 Field Regiment on 23.4.1994 and had gone to collect meat from the butchery. On that date, he could not collect meat since the SAC rejected all the meat. DMT Ram Karan (PW 9) was the driver of the One Ton vehicle used by the GFO, Capt. Rai, on 8.4.1994 during his visit to the butchery. He has testified to the same facts as Capt Rai. Hav Rajbir Singh (PW 10) was posted with 54 Medium Regiment on 8.4.1994 and was the Guard Commander at the unit gate on that day and has testified to the fact that at approximately 2300h, Capt Rai, came to the gate along with two civil vehicles, i.e. a Tata 407 truck and a Maruti car. He was informed by Capt Rai that there were some dead animals in the Tata vehicle and he asked the

witness to keep a watch over this. Nk Shiv Chand (PW 11) was also posted with 54 Medium Regiment on 8/9.4.1994 and was the Guard Second in Command at the unit gate. He has stated that he saw 10 dead and skinned animals preserved in ice in the Maruti car and 13 sheep, of which three were dead in the Tata 407 truck. He was instructed to select a spot for digging a ditch and after he selected such a spot, three civilians dug a pit at that spot. This process was complete by 0430h on 9.4.1994. Col. Girendra Singh (PW 12) was Deputy Commander, 45 Infantry Brigade during the time of the incident and had recorded the summary of evidence against the appellant in May 1995. He has produced the statement of the appellant comprising of 15 pages as recorded by him. Opr Manohar Lal (PW 13) also of 54 Medium regiment, who was on duty on the intervening night of 8/9.4.1994 at the unit gate, has testified to the same facts of Tata 407 vehicle and Maruti car coming to the unit gate in which there were some dead animals. Shri Pyare Lal (PW 14), a civilian employee in the butchery at Alwar, was one of the persons who dug the ditch in which the dead animals were buried. Hav/Surveyor Tula Ram (PW 15), who

was posted at Alwar on 23.4.1994, reached the butchery at approximately 0600h for collecting meat for his unit. When he was going out of the butchery, SAC and DDST arrived for a surprise visit and he was told to unload the meat and put it back in the butchery. He accordingly complied. Hav Umed Singh (PW 16), 1900 Medium Regiment has also testified to the same fact as PW 15. L/Nk Jagvir Singh (PW17), who belonged to the Military Police, was on duty at the gate of his unit at approximately 2230h on 8.4.1994 and has also stated that he checked the Tata 407 civil vehicle.

20. Hav (SST) SB Singh (PW 18), who belonged to Supply Depot, Alwar and was the NCO In-charge of the butchery, has stated about the authorised reserve of animals. He has testified to the fact that the authorised reserve of animals to be slaughtered has been shown as 80 since 1991. However, this was reduced to 60 on 14.5.1994. He has stated that the animals, which are found fit and passed for slaughter, are branded after ante-mortem examination and then kept in the contractor's "bara" (Pen). On 22.4.1994, the contractor had produced 34 animals, out of which 32 had been passed. He has also testified to the fact that he used

to maintain the documents of the butchery, but since these documents were kept in the main office at the supply depot where they had been taken for a Court of Inquiry, the necessary details used to be recorded by Sub Dadwal on a loose sheet of paper. He has also testified that on 22.4.1994 green weight of the 10 to 12 carcasses was not taken since the butchers said that it was time for them to take tea and go to the toilet. He has also stated that the veterinary officer used to come from Jaipur once or twice a month. Sub Clk (Store) R.K Dadwal (PW 19), who was the JCO in charge of the butchery and was one of the co accused, has testified to the fact that at approximately 2130h on 22.4.1994, they waited for the GFO to come so that the slaughter could commence. However, the GFO arrived at approximately midnight and it was only then that the animals could be segregated for slaughter. This slaughtering process was completed by 0130h. He also testified to the fact that the last 10-12 carcasses were not weighed since the butchers were tired and wanted to leave. He then went on to record the approximate green weight of this 10-12 carcasses. The witness went on to state that at approximately

0700h, the appellant visited the butchery and thereafter, Maj Rajesh Kumar, the GFO had also come to the butchery. The appellant enquired from Maj Rajesh Kumar as to why he had come late for supervising the slaughter on the preceding night. He has also stated that the carcasses, which had been hung, were in good condition and that no water was dripping. Sep N.K Sharma (PW 20) was posted with the Supply Depot, Alwar at that time on 23.4.1994 and has given the same details as the earlier witness about the slaughter and the entry of the civil vehicles into the butchery.

21. We have given our utmost consideration to the contending arguments put forth by both the parties. The legal issues of separate trial of the co-accused, plea in bar and declaring PW 4 Col. A.K Chaudhary as an expert witness had been raised by the appellant during the GCM which had dealt with these issues in an adequate and appropriate manner. Even the evidence of PW 4 Col A.K Chaudhary, who has been considered as an expert witness, has testified more on the procedural/technical aspects of butchery such as inspection/segregating/branding/ante-mortem inspection

of animals which are accepted facts. No specific prejudice, bias or mala fides has been alleged by the appellant. The testimony of the other witnesses also, by and large, remained intact. Being a Commissioned Officer in charge of the butchery, the appellant cannot seek parity with the other co-accused for the purpose of sentence and neither is the sentence so shockingly disproportionate as to necessitate interference by us. With regard to grant of pension to the appellant under Pension Regulation 16(4) of the Pension Regulations for the Army, it is the discretion of the President and due process was followed in this regard.

12. We, therefore, do not find any reason to interfere with the findings and sentence awarded by the GCM. Accordingly, the appeal is dismissed, with no order as to costs.

**(Justice A.K Mathur
Chairperson**

**(Lt Gen. S.S Dhillon)
Member (A)**

**New Delhi
18th May, 2011**