

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

T.A NOS. 447 OF 2009 & 538 OF 2010  
(WRIT PETITION (C) NOS.3067 of 1998 & 18315 OF 2006)

COL SHEKHAR SINGH

...APPELLANT

VERSUS

UNION OF INDIA AND OTHERS

...RESPONDENTS

ADVOCATES

M/S. ANIL SRIVASTAVA & AMIT KUMAR FOR THE APPELLANT  
MR. ANKUR CHIBBER  
WITH  
COL. ARUN SHARMA FOR THE RESPONDENTS

CORAM :

HON'BLE MR. JUSTICE S.S.KULSHRESTHA, MEMBER  
HON'BLE LT. GEN. S.S DHILLON, MEMBER

COMMON JUDGMENT

24.5.2011

1. The petitioner filed Writ Petition (C) Nos. 3067 of 1998 and 18315 of 2006 before the Delhi High Court. In W.P (C) No. 3067 of 1998, the challenge was against Attachment Order No. C/06270/SC/160/AG.DV-2 dated 11.6.1998 and the order initiating Court of Inquiry. During the pendency of W.P (C) No. 3067 of 1998,

General Court martial proceedings were held against the petitioner and he was found guilty of the charge under Army Act Section 52(f), against which he filed W.P (C) No. 18315 of 2006. Both the writ petitions were transferred to this Tribunal and are being disposed of treating them as appeals under Section 15 of the Armed Forces Tribunal Act 2007.

2. It is graciously submitted by learned counsel for the appellant that T.A No. 447 of 2009 (W.P (C) No. 3067 of 1998) has become infructuous since final decision has been taken by the GCM. T.A No. 447 of 2009 is, therefore, not pressed and is accordingly dismissed. What remains to be considered is T.A No. 538 of 2010 (Writ Petition (C) No. 18315 of 2006).

3. It is stated that the entire findings of the GCM are contrary to the evidence on record and are pre-conceived. The findings suffer from non-compliance of the statutory provisions. The trial is barred by limitation under Army Act Section 122. The charge against the appellant is mainly dependent upon the report of the Technical Officer who was associated with the Court of Inquiry. The Technical Officer found no irregularity in the supply orders and the supply orders were found to have been in accordance with the prescribed norms. He was not

examined in the course of trial to bring out the truth. The Board of Inquiry gave its report surreptitiously (?) in April 1997 (Appendix T), which did not bear the signature of the Technical Officer. No reason to withhold the Egg Contractor, a material witness, was shown. No irregularity or financial loss was detected by the audit party. Counsel for the appellant has submitted that the appellant is a war disabled officer, who sustained mine blast injuries in the Indo-Pak War 1971 and his right leg below the knee had to be amputated. Despite this, he served the nation. He was posted as Commandant of Supply Depot at Trimulgherry, Secunderabad and was in overall charge of supplying perishable items to the units (at Dindigal 13 units and at Golconda 47 units). The supply of perishable articles to the depots was made by Army Service Corps (ASC) contractors on the basis of the agreements entered into between the Union of India and the contractors. While non perishable items are to be supplied from Central Stores, perishable items such as food products, meat, vegetables, fruits, etc. are to be supplied by the contractors. Based on the complaints regarding unsatisfactory supply of eggs from Secunderabad during the period November 1996 to February 1997, Col Q desired to ensure a free and fair inquiry into the matter.



4. The appellant joined the Army in 1971 as Second Lieutenant. When he was Commandant of Supply Depot at Trimulgherry, a complaint was made against him by Andhra Sub Area Col. Q regarding unsatisfactory supply of eggs during the period from November 1996 to November 1997. A Board of officers, including a technical expert from outside the area, was constituted to inquire into the allegations. In April 1997, the Board gave its report, which stated that the troops were not deprived of meat group rations and all essential egg eaters had been supplied with eggs throughout the year despite the constraints explained. A Court of Inquiry was constituted under Army Rule 180 on 16.5.1997. Based on the report given by the Court of Inquiry, summary of evidence was recorded and a tentative charge sheet was issued to the appellant. Thereafter on 8.6.2001, a charge sheet was issued to the appellant. It reads:

**FIRST CHARGE**

**Section 63 of the Army Act**

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

In that he,

At Secunderabad between November 1996 to February 1997 while being Commandant of 60 Coy ASC (Sup) Type G,

improperly omitted to effectively manage the supplies of meat group of ration.

**SECOND CHARGE**

**Section 52(f) of the Army Act**

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

in that he,

At Secunderabad between November 1996 to February 1997 while being Commandant 60 ASC (Sup) Type G with intent to cause wrongly gain to the egg contractor Shri Ch. Shankarnarayan did not carry out local purchase at risk and expense to the contractor during the failure of the supplies as stipulated in the contract.

**THIRD CHARGE**

**Section 63 of the Army Act**

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

in that he,

at Secunderabad between November 1996 and February 1997 while being Commandant of 60 Coy ASC (Sup) Type G, improperly committed to ensure proper maintenance of documents with regard to meat group of ration.

**FOURTH CHARGE**

**Section 52(f) of the Army Act**

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

in that he,

at Secunderabad between November 1996 and February 1997 while being the Commandant of 60 Coy ASC (Sup) Type G with intent to defraud knowingly allowed destruction of essential documents pertaining to supplies of meat group of items with a view to destroy incriminating evidence against himself.

**FIFTH CHARGE**

**Section 52(f) of the Army Act**

**SUCH AN OFFENCE AS IS MENTIONED IN CLAUSE (f) OF SECTION 52 OF THE ARMY ACT INTENT TO CAUSE WRONGFUL GAIN TO A PERSON**

in that he,

at Secunderabad between November 1996 and February 1997 while being the Commandant of 60 Coy ASC (Sup) Type G, overlooked the cost difference of the three meat group of items viz. egg, meat dressed and chicken, with intent to cause wrongful gain to Shri CH Shankarnarayan, the Egg Contractor.

The GCM found the appellant guilty of the charges under Army Act Section 52(f) and sentenced him to be dismissed from service. Since both his pre and post confirmation petitions were rejected, he has come up in appeal.

5. Counsel for the appellant has contended that the conviction and sentence awarded by the GCM were illegal mainly for the reasons that:



(a) the trial by GCM was barred by limitation under Army Act Section 122;

(b) the findings of the Court of Inquiry and the GCM were mainly based on the findings of the Technical Officer, who categorically stated that the supplies were as per the prescribed norms and there was no additional burden or expense incurred in the supply of meat group items.

(c) the one and the only charge against the appellant was that the Government incurred financial loss on account of the failure of the egg contractor to supply eggs to the butcheries. Therefore, his evidence would have turned out to be the crucial one, had he been examined, which course was not adopted at all, for reasons best known to the authorities.

(d) either in the Court of Inquiry or in the summary of evidence, financial loss was not established and even on the date of framing of charge, the authorities were not sure about the actual financial loss.

(e) no irregularity was detected by the audit and this fact was admitted by the Comptroller of Defence Account during the GCM proceedings.

(f) the GCM was swayed upon by irrelevant considerations while fixing culpability of the appellant.

(g) supply of perishable articles was made by registered Army Service Corps contractors on the basis of the contract entered into between the contractors and the authorities. In this case, the contract was concluded by the GOC-in-Chief, Southern Command, Pune. Altogether, there were 37 contracts. Supply Depot, Trimulgherry was in charge of the supply of perishable articles to the units at Dindigal, Golconda and Trimulgherry.

(h) the Board submitted its report in April 1997. Subsequently, Appendix D was added by the Presiding Officer, which did not have the signature of the Technical Officer.

6. The respondents, on the other hand, have sought to support their actions contending, inter alia, that the appellant while being the Commandant of 60 Coy ASC (Supply) was found responsible for mismanagement of supplies of meat group of rations; wrongly advising the competent authorities and the units alike to tide over the impasse of short supply of eggs; not carrying out local purchase at risk and expense to contractors during failure of supplies being the only authority option available to him; improper documentation with regard to meat group of rations; with intent to defraud, allowing destruction of essential documents pertaining to the supply of meat group of items;



causing loss to the State by overlooking the cost difference of three meat group of items viz. eggs, meat dressed and chicken; and benefitting directly or indirectly to the Eggs Contractor. The offence against the appellant came to the knowledge of the competent authority to initiate action on 14.10.1997. However, the proceedings could not be initiated between 14.7.1998 and 16.11.1999 due to the stay granted by the Delhi High Court and barring said period, the proceedings were well within the period of limitation, as laid down in Army Rules 122 and 123. All procedural formalities like hearing under Army Rule 22 and providing the appellant a legally qualified defending officer were adhered to. The evidence in the case supported the prosecution version. Despite cross examination, the testimony of the prosecution witnesses remained unchallenged. The sentence awarded was commensurate with the gravity of the charge against the appellant.

7. The first and foremost point raised by learned counsel for the appellant is that the GCM is barred by limitation. The matter related to the period from 1.1.1997 to 28.2.1997. Though the competent authority got to know about alleged incident as early as on 14.10.1997, it drew the court martial proceedings only on 4.7.2001. In this way, the GCM is barred by limitation as contained in Army Act Section 122. There

is no dispute with regard to the fact that the alleged incident came to the notice of the competent authority on 14.10.1997 and that the appellant obtained stay order from the Delhi High Court on 14.7.1998, which continued till 16.11.1999. The delay, according to learned counsel for the respondents, was only on account of the continuance of the stay order, which prevented the competent authorities from initiating disciplinary proceedings against the appellant. If the period of stay is excluded, the disciplinary proceedings against the appellant were well within the time.

8.           Going through the rival contentions of learned counsel for the parties, it is the admitted position that the appellant had obtained a stay order from the High Court. The period of limitation must be computed excluding the period when the appellant approached the High Court and obtained the stay order. Reliance may be placed on the decisions reported in **Bailamma alias Doddabailamma and others v. Poonaprajna House Building Co-operative Society and others** (2006(2) SCC 416), **Yusufbhai Noormohmed Nendoliya v. State of Gujarat and another** (1991(4) SCC 531 and **R. Kolandaivelu v. Government of Tamil Nadu and another** (2010(2) SCC 97).

9. Counsel for the appellant has submitted that the recommendation of the Court of Inquiry and the GCM were based mainly on the findings of the Technical Officer, who had categorically stated that the supplies were as per the prescribed norms and no additional expense was incurred in the supply of meat items. Furthermore, the audit party too did not notice any irregularity in the supply of meat items. No financial loss was detected. In other words, the GCM was swayed upon by irrelevant considerations and merely on inferences; the culpability of the appellant was fixed. Before we proceed to discuss the evidence on the charge under Army Act Section 52(f), for which the appellant was held guilty, it may be mentioned that it is the settled canon of criminal jurisprudence that conviction cannot be founded on the basis of inference. The offences must be proved against the accused beyond reasonable doubt, either by direct or even by circumstantial evidence, if each link of the chain of events is established pointing the guilt of the accused. The prosecution has to adduce cogent and convincing evidence in this regard. Reliance may be placed on the decision reported in **Paramjeet Singh @ Pamma v. State of Uttarakhand** (JT 2010(10) SC 260), wherein the apex Court held thus:



"11. A criminal trial is not a fairy tale wherein one is free to give flight to one's imagination and fantasy. Crime is an event in real life and is the product of an interplay between different human emotions. In arriving at a conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case, in the final analysis, would have to depend upon its own facts. The court must bear in mind that "human nature is too willing, when faced with brutal crimes, to spin stories out of strong suspicions." Though an offence may be gruesome and revolt the human conscience, an accused can be convicted only on legal evidence and not on surmises and conjecture. The law does not permit the court to punish the accused on the basis of a moral conviction or suspicion alone. "The burden of proof in a criminal trial never shifts and it is always the burden of the prosecution to prove its case beyond reasonable doubt on the basis of acceptable evidence." In fact, it is a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof required, since a higher degree of assurance is required to convict the accused. The fact that the offence was committed in a very cruel and revolting manner may in itself be a reason for scrutinizing the evidence more closely, lest the shocking nature of the crime induce an instinctive reaction against

dispassionate judicial scrutiny of the facts and law (vide *Kashmira Singh v. State of Madhya Pradesh* (AIR 1952 SC 159); *State of Punjab v. Jagir Singh Baljit Singh & Anr.* (AIR 1973 SC 2407); *Shankarlal Gyarsilal Dixit v. State of Maharashtra* (AIR 1981 SC 765); *Mousam Singha Roy & Ors. v. State of West Bengal* (JT 2003(7) SC 176) : 2003(12) SCC 377); and *Aloke Nath Dutta & Ors. v. State of West Bengal* (2007(12) SCC 230)).

12. In *Sarwan Singh Rattan Singh v. State of Punjab* (AIR 1957 SC 637), this Court observed:

“Considered as a whole the prosecution story may be true; but between ‘may be true’ and ‘must be true’ there is inevitably a long distance to travel and the whole of this distance must be covered by legal, reliable and unimpeachable evidence (before an accused can be convicted).”

13. Thus, the law on the point may be summarised to the effect that in a criminal trial involving a serious offence of a brutal nature, the court should be wary of the fact that it is human instinct to react adversely to the commission of the offence and make an effort to see that such an instinctive reaction does not prejudice the accused in any way. In a case where the offence alleged to have been committed is a serious one, the prosecution must provide greater assurance to the court that its case has been proved beyond reasonable doubt.”

In the matter before us, taking into account the seriousness of the charges framed against the appellant, we feel that strict proof is required. The allegation against the appellant is that while commanding 60 Coy ASC (Sup) Type G he being Contract Operating Officer, purchased meat in lieu of eggs, with intent to cause wrongful loss to the State and to cause wrongful gain to the egg contractor, without carrying out local purchase at the risk and expense of the contractor. The charge of supplying meat and chicken in lieu of eggs is inter-connected with that of not resorting to local purchase at the risk and expense of the contractor. Counsel for the appellant points out that it is incomprehensible to blame the appellant when the prosecution failed to prove that the contractor did not supply eggs as per the demand. Further, there is no material on record to show that the appellant purchased meat and chicken in lieu of eggs on the failure of the contractor to supply eggs. To the contrary, the meat and chicken were purchased according to the demand of the units, which has no connection with the short supply of eggs by the contractor. When the purchase of meat and chicken was in accordance with the demand, sustaining loss to the State would not arise. Before blaming the



appellant of not resorting to the local purchase of meat and chicken at the risk and expenses of the contractor, it was obligatory on the part of the prosecution to establish that the demand of the eggs was not fulfilled by the contractor. In this situation, the questions that arise for consideration are:

(i) was there any demand for eggs from the units to make local purchase on the contractor failed to supply?

(ii) was there any necessity to resort to local purchase at the risk and expense of the contractor?

(iii) when there was demand for meat and chicken from the units, whether the contractor could be found fault with?

(iv) whether the appellant can be held responsible for making local purchase of meat and chicken in lieu of eggs?

In this regard, the functions and the responsibilities of the Supply Depot, Trimulgheri are to be noted. (1) Supply Depot, Trimulgheri had 52 drawing units excluding Air Force and operated 18 contracts, which were concluded by the higher authorities; (2) two butcheries were being managed under the control of OIC – (a) Trimulgheri Butcheries with 49 drawing units was located at a distance of 8 kms. From the main

depot; and (b) supply point Golconda Butchery with 13 units, located at a distance of 38 kms. from the main depot.

10. Then the next question would arise as to what was the practice then existed with regard to placing demands by the units? It has come out from the evidence of PW 3 Sub Harbhajan Singh, who was JCO in charge of Trimulghery Butchery, that demands from the units used to be received on a form, duly signed by respective Quarter Masters. On receipt of such demands, they were consolidated and after signature by OIC Butchery, orders used to be placed on the contractor. PW 3 has further stated that if the complete demand of eggs, as placed on the contractor, used to be received, then the OIC Butchery and the appellant used to be informed and the requirement of the units issued to them on ration invoice IAFS-1555. All such ration invoices then used to be kept in a file and entry made in the Unit Distribution register. If complete demand was not met by the contractor, then report used to be made to the OIC and the appellant. PW 10 Sub/SKT Vasudevan also gave an identical statement with regard to the procedure of making demand of the items from the units. It was reiterated by him that the units used to place demands for eggs on the demand form signed by the respective Quarter Masters. The consolidated demands duly signed

by OIC Butchery were placed 48 hours in advance. The same procedures were narrated by PW 2 Col Satya Narayan Singh as well. The contractor was thus under obligation to ensure supply as per the demands placed to him. On his failure to do so, the authorities were free to resort to local purchase at the risk and expenses of the contractor, as is stated in the appendix to the letter dated 27.9.1995. It is evident from Ext. CT that eggs used to be supplied by the contractor at 0900 hrs at the supply point. Further, meat was to be delivered at the butchery at 0700 hrs, which is evident from Ext. CS. The dressed meat was passed by the veterinary officer and these items were issued to the units on Form IAFS 1555 and the units used to give a certificate with regard to the quantity and quality if any of the items was supplied in lieu of the items demanded reflected in IAFS 1555 form. In the context of such prevalent practice of making demand and supply of the items, learned counsel for the appellant has pointed out that as per the instructions demands were to be made by the units in the ratio of 4:2:1. i.e. four days meat, two days chicken and one day egg. PW 2 Col Satya Narain Singh has made it clear that for the contract period 1996-1997, the supply was in the ratio of 4:2:1 i.e. meat eaters were issued meat on four days, fowl on two days and eggs for one day and for the egg eaters, they were



issued eggs for all seven days. When demands were received from the units, after compilation, orders were placed to the contractor and the copies were kept in the contractor demand file. It was stated by the witness that as the demand file for the period from 12.10.1996 to 21.3.1997 was missing, the details regarding the demands made to the contractor and the items he failed to supply could not be ascertained. In the absence of the demand file, no adverse inference can be drawn against the appellant. To the contrary, the appellant can claim in the absence of that demand file, true position cannot be ascertained. The demand file itself is a material document and its non-availability would cause prejudice to the appellant.

11. PW 5 Maj Jyoti Dhawan, while serving 60 Coy ASC (Sup) Trimulgherry from June 1996 to August 1997 and during January-February 1997, was holding the appointment of OIC Supply Point, Golconda. It was stated by her that Butchery Golconda was part of Supply Point, but these two units were about 1 to 1½ kms. away. Eggs were distributed to units from Supply Point gate, whereas meat, fowls and fish were distributed from the butchery. The appellant used to visit the butchery nearly on all issue days, which were about 4-5 days a week and he used to come to the supply point atleast twice a week. During

October 1996, there used to be some short supply of eggs, but the situation was manageable as the remaining eggs used to be provided in a day or two. From November 1996, the situation started deteriorating and in Jan-Feb 1997, it was very bad. In the first week of March 1997, a local purchase at the risk and expense of the contractor had to be carried out, whereafter the situation of supply of eggs by the contractor improved and then there was no short supply of eggs to the units. The demand of eggs from units used to be received on demand forms. There was an old demand register available but was not being maintained since June 1996. Once the demands were received from the units, these were compiled and then a consolidated demand placed on the contractor. The demands were required to be received from units 72 hours in advance but certain units at times used to give late demands, including at the last minute. The contractor was to be given the demand 48 hours in advance but on certain occasions either when they were not in a position to get in touch with him or he did not come to the butchery, the demand used to get delayed. In such eventualities, they used to send telegram to him or contact him telephonically or get in touch with the appellant for him to do something in this regard. The witness has further stated that in case less quantity of eggs than

demanded was supplied by the contractor, then as per the instructions of the appellant, the quantity supplied by the contractor used to be stated on the contractor's demand form as the quantity demanded from him. The appellant is stated to have been told that since documents were seen during visits by MGASC, DDST, etc, the documents should not show the disparity between demand and supply. On receipt of less quantity of eggs, fresh demand form used to be prepared and the earlier demand form used to be removed from the file and replaced with the fresh form. It was further clarified by her that there were about 12 units dependent on Supply Point, Golconda, the major unit being Arty Centre, Hyderabad. Since eggs demanded by Arty Centre, Hyderabad were not being met in full, the Centre was repeating its demands, including the previous balances not provided. From the statement of this witness (PW 5), it is clear that supply of eggs was not ensured by the contractor. This fact is further substantiated from the fact that several letters/telegrams, evidenced by Exts. W, X, Y, Z, AA, AB, AC, AD, AE, CV, CW, CY, CZ, DA, DC, DF, DH, DI, DK, GH, HH, HI, HJ, HK, HL, HM and HN, were sent to the egg contractor during January/February 1997 pointing out his failure to supply eggs and to provide the same within the specified time, failing which he was warned



that local purchases at the risk and expenses would be carried out. Some of the letters/telegrams were sent by the appellant (Exts. U, V, AA and AB).

12. PW 2 Col Satya Narain Singh has stated that during the contract period 1996-97, there was short supply of eggs (75%) and there were complaints regarding such short supply. PW 3 Sub Harbhajan Singh has stated that in the month of January 1997, the supply of eggs was less than the quantity to be supplied by the contractor. Identical are the statements of PW 8 Col S.K Chhabra, PW 10 Sub/SKT K. Vasudevan and PW 11 Lt Col T.C Barala. A notice regarding short supply of 84915 eggs against the demand was given by the appellant to the contractor on 21.12.1996 vide Ext. V. Against the demand, the contractor supplied only 10000 eggs that day and it was stated by him that about 25000 eggs would be supplied in another two days. In this way, it appears that there was short supply of a large quantity of eggs and that back log continued to accumulate. Ext. V notice issued by the appellant does not get any support from the statement of Sub/SKT A.N Singh (DW 1) and Sub R.S Yadav (DW 3), whose statements were contrary to Ext. V. Further, the short supply of eggs is ascertainable from the message of February 1997, Exts. DX, EA

and IU and from the admission of the egg contractor, evidenced by Ext. AR. Therefore, there is convincing evidence with regard to the short supply of eggs by the contractor.

13. There were certain conditions precedent for resorting to local purchase at the risk and expense of the contractor. Therefore, before resorting to local purchase at the risk and expenses of the contractor, the conditions should be followed. From the evidence on record, it is clear that the appellant was convinced with regard to the short supply and for that reason; he had issued notice to the contractor. On examination of the totality of the facts in the case, the power of resorting to local purchase had to be exercised by the appellant and he failed to apply his mind thereby frustrating the contract. But this was not the charge against the appellant. So non-resorting to local purchase despite sufficient circumstances would not in any way lend support to the main charge that the appellant on failure of the egg contractor to supply eggs, with intent to cause wrongful loss to the State, caused local purchase of meat and chicken in lieu of eggs. In other words, the main charge that instead of ensuring local purchase of eggs at the risk and expenses of the egg contractor, the appellant made local purchase of meat and chicken in lieu of eggs, which resultantly caused loss to the

State to the tune of Rs.37,90,796, which was reduced to Rs.13,02,943/- by the GCM.

14. In support of its case, the prosecution has adduced oral and documentary evidence. The witnesses were categorical that the appellant had not resorted to local purchase when the contractor failed to supply eggs against the demand. But virtually there is no evidence to show that meat and chicken in lieu of eggs were supplied to the units. There is no dispute that as per the policy, demand for meat, chicken and eggs was to be made from the units keeping in view the ratio 4:2:1. In this regard, it would be relevant if we refer to the statement of PW 2 Col Satya Narain Singh, who was in charge of the Trimulghery Butchery. According to him, there were complaints regarding short supply of eggs as per the ratio. Despite short supply of eggs, the appellant had not resorted to local purchase at the risk and expense of the contractor. The appellant left on temporary duty on 21.2.1997 without handing over the charge of the Commandant, Supply Depot to PW 2 only to settle the back log of egg supply. During January-February 1997, only two book reports in respect of eggs on 23.1.1997 and 27.1.1997 were initiated for making local purchase at the risk and expense of the appellant and the back log continued to remain in balance. The



complaints with regard to non supply of eggs raised by JCO in charge and OIC Butcheries during the Officers/JCOs conference held between September 1996 and March 1997 were not permitted to be recorded in the minutes of the conference. PW 3 Nb Sub Harbhajan Singh also stated that the demand of eggs was not met by the contractor. Whenever the short supply of eggs was brought to the notice of the appellant, he used to tell the witness to replace the earlier demand placed to the contractor. It appears that whenever there was demand for eggs, the same was not projected, but it used to be replaced with the demand for meat and chicken. But his statement is silent that in lieu of eggs, meat and chicken were supplied to the units. PW 5 Maj Jyoti Dhawan has, however, categorically stated that the first 20 days in January 1997, Arty Centre, Hyderabad did not receive demand for eggs and there was short supply and that the appellant directed not to initiate book report in this regard. PW 7 Col Sukhjeet Singh has stated that in response to a log message sent by HQ Andhra Sub Area sometime during March 1997 regarding state of supply of eggs for last four months, reply had been received in ST Branch as well as Q Branch from the units. Some of the units had also made complaints having not received their complete entitlement. But his statement is silent about

having supplied meat/fowls in lieu of eggs. However, PW 8 Col Chhabra has made it clear that the appellant told him during a cocktail party that he had gone along with the Board for local purchase and the rates collected being very high, he had apprised the Sub Area Commander. The Commander, in turn, as was told to him by the appellant, had agreed to supply meat/fowls in lieu of eggs. This statement is not sufficient to prove that meat/fowls were supplied in lieu of eggs. PW 10 Sub Vasudevan also gave an identical statement and further testified that the earlier demands for eggs used to be destroyed by PW 5 Maj Jyoti Dhawan and he used to be asked to prepare fresh contractor's demand forms. Whatever it be, this also would not support the prosecution version that meat/fowls were supplied in lieu of eggs. PW 11 Lt Col T.C Barala and PW 12 Maj P.M Muthappa were also categorical in their statement that there was short supply of eggs. But nothing has come out from their statements to prove that in the event of short supply of eggs, the appellant supplied meat and chicken to the units causing loss to the Government.

15. It has next been submitted from the side of the respondents that when there was short supply of eggs, the consuming units might not have been left unfed and in its place meat/fowls might

have been issued to the units. It is submitted that on account of short supply of eggs, an inference should be drawn that in lieu of eggs, meat/fowls were issued to the units. On such inference, conviction of the accused cannot be founded. If there is no direct evidence, circumstantial evidence must be led which could satisfy the essentials of a complete chain relating to the offence. Reliance may be placed in the case of **Banarsi Dass v. State of Haryana** (JT 2010(3) SC 552, wherein it was held by the apex Court thus:

“10. It is a settled canon of criminal jurisprudence that the conviction of an accused cannot be founded on the basis of inference. The offence should be proved against the accused beyond reasonable doubt either by direct evidence or even by circumstantial evidence if each link of the chain of events is established pointing towards the guilt of the accused. The prosecution has to lead cogent evidence in that regard. So far as it satisfies the essentials of a complete chain duly supported by appropriate evidence. ....”

To the contrary, it was submitted from the side of the respondents that the appellant refused to cross examine PW 8 Col Chhabra with regard to the supply of meat/fowls in lieu of eggs. Further, he categorically denied that while working as OIC Butchery Trimulgherry he never issued meat/fowls in lieu of eggs as per the demand from the units. It has



come out from the evidence of PW 3 Nb Sub Harbhajan Singh, JCO in charge of Trimulgheri Butchery that on receipt of demands from the units for meat/fowls, the same were supplied to them. PW 7 Col Sukhjeet Singh has clarified in his statement (at page 363) that after receiving reports from units for the period from November 1996 to February 1997, he did not call for ration returns of units to verify the over/underdrawal of meat group rations.

16. With regard to supply of meat items by Golconda Butchery, it was stated by PW 5 Maj Jyoti Dhawan, OIC Golconda Butchery that meat/fowls dressed was issued to the units during Jan-Feb 1997 after receiving written demands from them. She has further stated that in IAFS 1555, she had not mentioned during Jan-Feb 1997 that meat/fowls dressed were issued in lieu of eggs. PW 11 Lt Col Barala also clarified that after Exts CL to CQ demands from Arty Centre for the period 20.1.1997 to 31.1.1997 and Exts BS to BZ invoices of items received for the same period, no in lieu demand of meat was made. It was further stated by him that there was no over/underdrawal of any meat group item nor was there any audit objection in respect of the returns. PW 6 Col. N.K Kakur has stated that after he took over as Centre QM with effect from 1.5.1997, he himself scored off the words "in lieu of eggs"

after checking from the records of Arty Centre. No explanation with regard to such deletion had been given by this witness. On a careful scrutiny of the evidence adduced by the prosecution, we are of the view there is nothing on record to establish that in lieu of eggs, meat/fowls were supplied to the units by the appellant, with intent to cause wrongful gain to the egg contractor.

17. In view of the aforesaid discussion, the appeal is allowed. The conviction and sentence awarded by the GCM are set aside. The appellant shall be deemed to have been released from service from the date of his dismissal and he would be entitled to all pecuniary and other pensionary benefits.

(S.S DHILLON)  
MEMBER

(S.S KULSHRESTHA)  
MEMBER