

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

T.A NO. 454 OF 2009
(WRIT PETITION (C) NO. 1384 OF 1999)

EX RFN SATBIR SINGH

...APPELLANT

VERSUS

UNION OF INDIA AND OTHERS

...RESPONDENTS

ADVOCATES

MR. S.R KALKAL
FOR THE APPELLANT

M/S. ANIL SRIVASTAVA
WITH
MR. AMIT KUMAR & CAPT. SUNIL THAKUR
FOR THE RESPONDENTS

CORAM :

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

J U D G M E N T
24.2.2011

1. Challenge in this writ petition is directed against the court martial proceedings, whereby he was found guilty of the

offences under Army Act Sections 48 and 63 and sentenced to be dismissed from service. On formation of this Tribunal, the writ petition was transferred to this Bench and is being disposed of by this judgment, treating it as an appeal.

2. The appellant was enrolled as a Sepoy in 1985 and on completion of his training; was posted to 3rd Battallion, Rajputana Rifles. Till his dismissal from service on 28.1.1995, he has been serving with utmost dedication and sincerity and for no rhyme or reason he had been dismissed from service for some offences which he did not commit. A brief background to the case is that 27.3.1994 was a holiday on account of Holi festival. Therefore, it is an admitted position that liquor was issued to jawans to celebrate the festival and also that the appellant was not on duty at the time when he was supposed to have committed such offences. In the afternoon of that fateful day, the appellant supposedly committed three offences, for which he was subsequently charged as under:

CHARGE NO.1
ARMY ACT SECTION 48

INTOXICATION

in that he,
at field, on 27 Mar 94 was found intoxication, at
1630h

CHARGE NO.2
ARMY ACT SECTION 63
AN ACT PREJUDICIAL TO GOOD ORDER AND
MILITARY DISCIPLINE,

in that he,

at 1630h on 27 Mar 94, visited village Kupup thereby
violating the Battalion Routine Order No.158/93.

CHARGE NO.3
ARMY ACT SECTION 46(a)

DISGRACEFUL CONDUCT OF UNNATURAL KIND

in that he,

at field, on 27 Mar 94, tried to have carnal intercourse
with a dog (against the nature).

Counsel for the appellant made a very vehement plea that the
entire incident, investigation, recording of evidence and Summary
Court Martial was a fabricated and illegal process to dismiss him at
the behest of some senior officers. Counsel brought out the
following legal infirmities in the entire process:

(a) With reference to the charge sheet, for the first offence, i.e. intoxication, he was supposed to have been intoxicated at 1630h, whereas the second charge, i.e. visiting Village Kupup to procure liquor, is supposed to have been committed at the same time i.e. 1630h, while the third charge i.e. disgraceful conduct of an unnatural kind is supposed to have been committed at 1600h after being totally drunk. The timings are most inconsistent and have been put there without any application of mind and are indicative of the casual manner in which the authorities have proceeded. In fact, PWs 1 and 2 in their testimony in the summary of evidence have stated that at 1600h, he is supposed to have been 'caught' by Nb Sub Paul in a compromising position while committing an act of an unnatural kind with a dog. This inconsistency leads to obvious conclusion of arbitrariness and mala fides.

(b) The second charge specifically states that the appellant violated Battalion Routine Order No.158 of 1993. However, this order has not been exhibited anywhere or at any occasion, either during the initial hearing under AR 22 or at the recording of summary of evidence or at the trial.

(c) The SCM proceedings themselves are suspect as the CO decides not to proceed with the third charge merely because the appellant had pleaded not guilty to this charge and had pleaded guilty to the first two charges. It was not for him to drop the charge where he pleaded not guilty and to accept the plea of guilty and sentence him on these two charges. Also, from the record of the court martial, it is evident that the endorsement by the CO "the court decided not to proceed with the third charge" has been appended at a later date since it is written in a different size and ink.

(d) The CO has erred with regard to the third charge, in that in the memorandum which he has signed after the court martial, he has specifically stated that one of the reasons for the harsh punishment accorded by him is that "it was also reported that he was trying to have carnal intercourse with dog, however, the penetration could not be proved. Therefore, it is a fit case for dismissal". It is inexplicable as to how after dropping the third charge the CO can still consider the third charge while giving such harsh punishment. It reinforces the apprehension that the SCM proceedings were a mere mockery. Not only this, in a letter written to the next of kin after the court martial on 28.1.1995, when the CO informs Smt. Sushila Devi, wife of the appellant, that her husband has been dismissed from service, for the following offences, he has included the third charge, i.e. Army Act Section 46(a) for disgraceful conduct of unnatural kind, in that he at field on

27.3.1994, tried to have carnal intercourse with a dog. If the third charge has been dropped, then how can the CO refer to it in the Memorandum of the SCM or inform the appellant's wife that he has been held guilty of this charge? This is a mockery of the judicial system, to say the least.

(e) The constantly changing witnesses is a matter of great concern, in that during the hearing under AR 22, the two witnesses who were examined were:

- (1) Nb Sub GR Paul
- (2) Hav RD Mohanta.

The witnesses examined during the summary of evidence are:

- (1) L/Nk Kesar Singh
- (2) L/Nk Subhan Ali
- (3) Neema Sherpa.

There is no commonality at all in any of the witnesses produced during AR 22 and summary of evidence. Not only this, on 28.1.1995, i.e. almost 10 months after

hearing of the charge under AR 22 on 30.3.1994, the CO is certifying that the following witnesses were examined during the hearing:-

- (1) GK Paul
- (2) Hav RD Mohanta
- (3) Maj A Rishi
- (4) Gurnail Singh
- (5) CHM Tulcharam
- (6) L/Nk Clk Soman AV

This is contrary to the record of the initial hearing wherein the record shows that only Nb Sub GK Paul and Hav RD Mahanta were examined. Thus it is evident that the entire evidence has been fabricated at the whims and fancies of the CO. The main witness in the entire incident was Nb Sub Paul, who was not examined during the summary of evidence.

(f) The other inconsistency in the SCM proceedings is that while the trial commenced at 1205h and concluded at 1230h, the promulgation has taken place at 1205h. This is grossly inconsistent and inexplicable and leads to the obvious conclusion that no trial has in

actual fact been held and the appellant was only marched up to his CO and the formalities completed in a very mechanical manner.

(g) The initial hearing under Army Rule 22 was conducted on 30.3.1994, but no tentative charge was given to the appellant or read out to him. The tentative charge sheet is required to be attached with the proceedings of Army Rule 22 hearing and has not been complied with, which indicates that the appellant was denied this important opportunity of putting forth his defence.

(h) The Commanding Officer ordered a summary of evidence to be recorded on 30.3.1994, but the summary of evidence was recorded on 6.1.1995, after a period of more than nine months, which has not been explained at any stage by the Commanding Officer.

(i) No medical examination has been done by the authorities to ascertain whether the appellant was intoxicated or not. Only reference is that they had “consumed liquor” which is very different from being “intoxicated”. No JCO or officer has stated to the fact that the appellant was intoxicated.

(j) The “friend of the accused” 2nd Lt. Shailesh Kumar was thrust on the appellant and was not an officer of his choice.

3. Counsel for the respondents had no real justification for the various legal inconsistencies that were brought out by the respondents, which leads to a very definite conclusion that the entire proceedings of the SCM are a sham and have been completed after a period of almost nine months after the incident, in a most illegal and injudicious manner.

4. We, therefore, have no hesitation in setting aside the proceedings of the SCM. The appellant shall be deemed to be in service till such time that he earns pensionable service, after which

he will be entitled to pension in accordance with the Rules. No order on backwages. The appeal is allowed to this extent.

(S.S DHILLON)
MEMBER

(S.S KULSHRESTHA)
MEMBER