

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

**T.A NO. 475 OF 2009  
(WRIT PETITION (CIVIL) NO.144 OF 1988)**

**EX NK JAWAR SINGH CHAUHAN**

**...APPELLANT**

**V.**

**UNION OF INDIA AND OTHERS**

**...RESPONDENTS**

**ADVOCATES**

**MR. VIJAY SHARMA FOR THE APPELLANT**

**MR. AJAI BHALLA**

**WITH**

**COL. AHLUWALIA 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**

**24.02.2011**

1. The appellant had filed W.P (C) No. 144 of 1988 before the Delhi High Court challenging the Summary Court Martial (SCM)

proceedings of 27.2.1987, whereby he was held guilty of an offence under Army Act Section 45 and sentenced to be dismissed from service. The writ petition was transferred to this Tribunal after its formation and is being disposed of by this judgment treating it as an appeal under Section 15 of the Armed Forces Tribunal Act 2007.

2. The first and foremost grievance of the appellant is that he did not have a copy of the proceedings of the SCM or of the summary of evidence. Counsel for the appellant has strongly contested the plea of guilt as recorded in the SCM. In actual fact, he had never pleaded guilty during the summary of evidence or the court martial. Even the mandatory certificate under Army Rule 115(2) has not been signed by him and, therefore, to try him as having pleaded guilty, when in actual fact he had pleaded "not guilty", is perverse and goes against the very tenets of natural justice. The appellant argued that not only does he not have a copy of the SCM proceedings, but he does not have a copy of the summary of evidence either. The appellant had stated during the summary of evidence that he had not hit the recruit Dev Singh on his hands and feet as was alleged and, therefore, in the absence of

the records of the SCM or the summary of evidence, his appeal should be allowed.

3. Counsel for the appellant further argued that the SCM was held on 27.2.1987, after which the appellant preferred an appeal to the Garhwal Rifle Centre Commandant at Lansdowne on 11.4.1987 followed by another representation on 13.7.1987. Both these representations were rejected. Thereafter, he preferred an appeal under Army Act Section 164(2) to the concerned authorities, to which he received no reply. The last reply he received was a non-speaking order of 16.10.1987 by his Centre Commandant rejecting his application. Within a short period of three months, the appellant filed the present writ petition before the Delhi High Court on 19.1.1988 and there has been no delay whatsoever on his part. This is in consonance with his plea all along that he is not guilty of the offence, for which he was charged. Keeping this in mind, it is absolutely inexplicable as how the respondents at this stage have stated that they have destroyed the original records.

4. The appellant went on to give brief facts of the case, in that on 8.2.1987, he was entrusted with the Discipline and



Administration of Recruits in a particular barrack and after the lights out report, he found that recruit Dev Singh was missing from his bed. He questioned Dev Singh as to why he was missing from his bed and on being given baseless lies, he told Dev Singh not to lie to him. Recruit Dev Singh got into an argument with the appellant, which annoyed the appellant and in the heat of the moment, the appellant slapped recruit Dev Singh once. This one slap has been projected by Dev Singh as being hit with a rifle sling on his hands and feet. The appellant contested the proportionality of the sentence as to whether a mere slap to an ill-disciplined recruit actually warranted his dismissal. There has to be some proportionality between the offence and the punishment and in this case, even if assuming that he had slapped the recruit once, it certainly did not warrant such a harsh sentence, especially when he had an excellent record of service, was an Instructor posted at the centre and tasked with the onerous responsibility of disciplining the recruits. The appellant also urged that he had put in 12 years and 128 days of meritorious service and to dismiss him in such high handed manner was uncalled for.

5. It was also argued by the appellant that there was no hearing under Army Rule 22 and that he was deprived of the opportunity of placing the correct facts before his Commanding Officer at the appropriate time. The appellant also stated that there was non compliance of Army Rules 22, 115(2), 116 and 54, which deprived him of a just and fair trial. All along, the appellant was vehement in the fact that he was not provided with the copy of the SCM proceedings. Counsel for the appellant summarised his case by stating that in the absence of any records, especially the crucial records of the SCM and summary of evidence proceedings, as well as the documents of initial hearing under Army Rule 22, the law of the land warranted that the appellant be absolved of all charges and he be given the arrears of salary as well as pension as admissible to him from the date that he was entitled.

6. The brief facts of the case are that: On 8.2.1987, the appellant was posted as Instructor in Garhwal Rifles Regimental Centre at Landsdowne (Uttar Pradesh), wherein it was his responsibility, along with other instructors, to train the recruits of the Garhwal Regiment. Each Instructor had a small group of recruits

to look after and on 27.2.1987, when the appellant found recruit Dev Singh not in his bed at the time of lights out, he had a search conducted for him and when the recruit came before him, there was an altercation and during such altercation, since the recruit spoke in an indisciplined manner, possibly the appellant slapped him once. However, the charge that was drawn up against the appellant is as given below:

**ARMY ACT SECTION 47**

**USING CRIMINAL FORCE TO A PERSON SUBJECT TO THE ARMY ACT BEING HIS SUBORDINATE IN RANK**

in that he,

at LANSLOWNE, ON 07 Feb 87, at about 2230 hours, while in 'D' Company Lines struck No 37878 Recruit Dev Singh a recruit of the same company with a rifle sling, hands and feet.

7. Counsel for the respondents admitted that the original records of the court martial proceedings as well as the connected documents such as summary of evidence and the initial hearing under Army Rule 22 had been destroyed by the concerned department. Adequate opportunity was given to the parties between 2.2.2010 and 10.1.2011 to reconstruct the records from



whatever documents were held by both the parties. However, since neither party has any record or copy of the proceedings of the court martial or summary of evidence or hearing under Army Rule 22, they were unable to take any plea with regard to the facts of the case or what specific evidence was produced to convict the appellant.

8. In the absence of any records or evidence of the court martial, we have no hesitation in setting aside the proceedings, including the sentence of dismissal. The appellant shall be deemed to be in service till he completes 15 years service. He will be entitled to backwages from the date of his dismissal (27.2.1987) to the date he completes minimum pensionable service of 15 years, after which he will be entitled to pension in the rank of Naik, in accordance with rules. No order on costs. The petition is accordingly allowed.

**(S.S DHILLON)**  
**MEMBER**

**(S.S KULSHRESTHA)**  
**MEMBER**