

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

T.A NO. 503 OF 2009
(WRIT PETITION (C) NO. 772 OF 2004)

BEANT SINGH

...APPELLANT

VERSUS

UNION OF INDIA AND ORS.

...RESPONDENTS

ADVOCATES

M/S. K. RAMESH & ARCHANA FOR THE APPELLANT
MR. V. SIVA SUBRAMANIAN
WITH
LT. COL. NAVEEN SHARMA 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
02.05.2011

1. In this writ petition under Article 226 of the Constitution of India filed before the Delhi High Court, the petitioner challenged the General Court Martial proceedings, whereby he was held guilty of having committed the offence under Section 52(f) on nine counts for placing supply orders with intent to defraud, in contravention to the SOP issued by the CWE, Agra and sentenced to (i) undergo rigorous

imprisonment for one year and (ii) to be cashiered. On formation of this Tribunal, the said writ petition was transferred to this Bench and treated it as an appeal under Section 15 of the Armed Forces Tribunal Act, 2007.

2. At the outset, learned counsel for the appellant has submitted that the appellant was falsely roped into the charges for supposedly having violated the Standard Operating Procedures (SOP) dated 26.6.1996 putting ban by the Chief Engineer, Lucknow Zone. Admittedly, the ban was lifted from 7.4.1998. The allegation of having unauthorisedly placed supply orders in violation to the SOP or the ban took place while the appellant was the GE (East) at Agra. For the sake of arguments, even if he was not authorised to place supply orders, it would only be an action beyond authority, that too not with "intent to defraud". Furthermore, the findings of the court martial were without appreciating the evidence on record. The court martial was in violation of the principles of natural justice, in that the appellant was not provided a defending officer of his choice thereby violating Army Rule 95, denied the opportunity of being represented by a counsel of his choice in terms of Army Rule 97 and denied the mandatory "fair trial" as envisaged under Article 21 of the Constitution of India.

Though it was categorically asserted by prosecution counsel, in his opening address at page 10 of the proceedings and in para 6 (page 246) of the closing address that the appellant violated the SOP issued by CE Lucknow Zone putting ban on the powers of the CE, it would not be construed to be in existence as a different standard was adopted when GE, West (Mr. S.K Thakle) issued 18 supply orders, which were also against the SOP. Further, the prosecution, till the end of the trial, was not sure about the SOP which was allegedly defied by the appellant, while issuing supply orders. PW2 Paul Raj Singh, PW 3 Hira Lal, PW 4 Brig Ashok Kumar Nagpal and PW 5 MS Rautela have stated about the violation of the SOP issued by Chief Engineer, Lucknow Zone putting ban on issuing supply orders but not clearly deposed as to the details of the SOP violated by the appellant. Neither the CWE objected to nor was there any audit objection with regard to the supply orders made during 20.8.1986 and 8.1.1987. It was only the perception that there was a ban imposed by CE Lucknow. The appellant had not placed Supply Order No.3000/SO/13/E3. Therefore, Charge No.1 itself would not stand.

3. On the other hand, learned counsel for the respondents has submitted that the appellant was not competent to do so and had

acted beyond jurisdiction for procurement of government stores at his own discretion unless duly approved by CE, Lucknow Zone. The appellant manipulated the laid down instructions in the SOP in such a manner so as to place supply orders for procurement of stores on DGS&D rate contract without the approval of the competent authority. Regarding the supply order dated 6.3.1998, the appellant was aware that he was not authorised to place such supply orders, yet But supply orders were placed by him with intent to defraud. The appellant was provided full opportunity to defend his case. No objection, whatsoever, was made by him with regard to the appointment of the defending officer.

4. In order to appreciate the rival contentions raised by learned counsel for the parties, it would be useful to give a brief narration of the facts. On 6.3.1995, the appellant was posted as Garrison Engineer (Project) at Agra. In September 1997, GE, Agra was bifurcated into two divisions – GE (East) and GE (West) and the appellant was given the charge of GE (East). The CWE, Agra, under whom the appellant's unit was functioning, had issued local instructions laying down certain restrictions on GEs from procuring stores through DGS&D rate contract. On 26.6.1996, CWE, Agra issued

an SOP laying down the procedure for procurement of stores. Subsequently, CE, Lucknow Zone issued certain policy instructions on 22.8.1997, 19.9.1997 and 29.9.1997 imposing instructions on CWEs, GEs and AGEs from procuring stores through DGS&D rate contract. On account of such restrictions, the appellant did not and could not procure any stores. This restriction materially affected the functioning of his unit. In February 1998, AGEs working under the appellant apprised him of procuring essential stores, which the appellant discussed with the CWE, who asked him to prepare a supply order for sending it for the counter signature of CE. The supply order dated 6.3.1998 was accordingly got prepared and sent to CWE, who did not agree to send it to CE. Subsequently, having noticed that the restrictions imposed affected the normal functioning of some units in another station, the Army Commander took action to withdraw the restrictions enabling the GEs to procure stores through DGS&D rate contract as per the requirement. On 7.4.1998 Signal No.7600 was issued removing the restrictions placed by the CE Lucknow on placing supply orders on DGS&D rate contract by CWEs, GEs and AGEs. Thereupon, the appellant, in his capacity as GE, placed 11 supply orders on DGS&D rate contract. This was objected to by CWE, who had

earlier allowed the appellant to proceed with placing supply orders. On removal of restrictions, GEs, Mathura, Agra and GE(P) also procured stores from DGS&D rate contract, which were not objected to by the CWE or by any other authority. On objection, the appellant cancelled the supply orders. On 15.8.1998, he was issued a movement order. Thereafter, he was attached to 509 Army Base Workshop for the purpose of disciplinary action.

The appellant was served with a charge sheet, which reads as under:

FIRST CHARGE
Army Act Sec. 52(f)

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

in that he,

at Agra, on 06 Mar 1998, while Garrison Engineer (East), Agra Cantt, well knowing that he was not authorised to place such supply orders for procurement of stores, with intent to defraud, surreptitiously placed Supply Order No. 3004/SO/13/E3, to M/s Modern Industrial Enterprises, New Delhi:-

Ser No	Items	Qty	Rate Rs.	Amount Rs
(a)	Electrical Ceiling Fan 1200 mm	2218 Nos	638.00	1415084.00
(b)	Speed Regulator	2218 Nos	36.00	79848.00

(c)	Suitable Capacitor for fan	1000 Nos	17.50	17500.00
			Total	1512432.00

SECOND CHARGE
Army Act Sec. 52(f)

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

in that he,

on 21 Apr 1998, at the place and holding appointment as aforestated in the First Charge, well knowing that he was not authorised to place supply orders for procurement of stores, with intent to defraud, surreptitiously placed Supply Order No. 3004/SO/14/E3, to M/s. Raj Electricals, Delhi:

Ser No	Items	Qty	Rate Rs.	Amount Rs
(a)	Capacitor for Improvement of Power factor			
	(i) 14 KVAR	02 Nos		100000.00 (Appx)
	(ii) 25 KVAR	02 Nos		
	(iii) 35 KVAR	02 Nos		
	(iv) 55 KVAR	02 Nos		
	(v) 65 KVAR	02 Nos		
	(vi) 70 KVAR	03 Nos		
	(vii) 100 KVAR	04 Nos		
			Total	100000.00

THIRD CHARGE
Army Act Sec. 52(f)

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

in that he,

on 21 Apr 1998, at the place and holding appointment as aforestated in the First Charge, well knowing that he was not authorised to place supply orders for procurement of stores, with intent to defraud, surreptitiously placed Supply Order No. 3004/SO/15/E3 to M/s. Ravi Cable Industries, Delhi:

Ser No	Items	Qty	Rate Rs.	Amount Rs
(a)	PVC Insulated cable with Aluminium Conductor Single Core Sheathed (Weather Proof)			
	(i) 2.5 sq mm	50 Coils	143.00	7150.00
	(ii) 4.0 sq mm	50 Coils	232.00	11600.00
	(iii) 6.0 sq mm	30 Coils	283.00	8490.00
	(iv) 10.0 sq mm	30 Coils	468.00	14040.00
(b)	PVC Insulated Fable with Aluminium Twine Core Flat (Weather Proof)			
	(i) 2.5 sq mm	60 Coils	293.00	17580.00
	(ii) 4.0 sq mm	60 Coils	426.00	25560.00
	(iii) 6.0 sq mm	40 Coils	551.00	22040.00
	(iv) 10.0 sq mm	40 Coils	873.00	34920.00
			Total	141380.00

FOURTH CHARGE
Army Act Sec. 52(f)

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

in that he,

on 13 May 1998, at the place and holding appointment as aforestated in the First Charge, well knowing that he was not authorised to place supply orders for procurement of stores, with intent to defraud, surreptitiously placed Supply Order No. 3004/SO/16/E3 to M/s. Kumar Industries (MSD), Delhi:

Ser No	Items	Qty	Rate Rs.	Amount Rs
(a)	Sty auto elect storage water heater			
	(i) 25 Litres	10 Nos	2170.00	21700.00
	(ii) 50 Litres	10 Nos	2760.00	27600.00
(b)	Heating Unit			
	(i) 1500 Watt	200 Nos	115.00	23000.00
	(ii) 2000 Watt	200 Nos	125.00	25000.00
	(iii) Thermostat	200 Nos	59.00	11800.00
			Total	109100.00

FIFTH CHARGE

Army Act Sec. 52(f)

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

in that he,

on 18 May 1998, at the place and holding appointment as aforestated in the First Charge, well knowing that he was not authorised to place supply orders for procurement of stores, with intent to defraud, surreptitiously placed

Supply Order No. 3004/SO/17/E3 to M/s KS Valves Fogings, Jalandhar City:

Ser No	Items	Qty	Rate Rs.	Amount Rs
(i)	Nickel Chromium plated cast brass fancy pillar tap 15 mm	20 Nos	550.00	11000.00
(ii)	-do- fancy wall tap assy 15 mm	50 Nos	550.00	27500.00
(iii)	-do- waste fittings for wash basins and slinks 32 mm	100 Nos	62.50	6250.00
(iv)	-do- 50 mm	100 Nos	85.00	8500.00
			Total	109100.00

SIXTH CHARGE
Army Act Sec. 52(f)

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

in that he,

on 18 May 1998, at the place and holding appointment as aforesaid in the First Charge, well knowing that he was not authorised to place supply orders for procurement of stores, with intent to defraud, surreptitiously placed Supply Order No. 3004/SO/18/E3 to M/s. Kukreja Transformers Manufacturing Co, Delhi:

Ser No	Items	Qty	Rate Rs.	Amount Rs
(i)	Indep electronic ballast for 36 & 40 watt fluorescent tubular lamp	1000 Nos	435.00	435000.00
			Total	435000.00

TENTH CHARGE
Army Act Sec. 52(f)

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

in that he,

on 24 Jun 1998, at the place and holding appointment as aforestated in the First Charge, well knowing that he was not authorised to place supply orders for procurement of stores, with intent to defraud, surreptitiously placed Supply Order No. 3004/SO/22/E3 to M/s. Surya Roshni Ltd, New Delhi:

Ser No	Items	Qty	Rate Rs.	Amount Rs
(i)	Single Capped Compact fluorescent lamp 11 watts	210 Nos	360.00	75600.00
(ii)	-do- 15 watts	410 Nos	370.00	151700.00
			Total	227300.00

ELEVENTH CHARGE
Army Act Sec. 52(f)

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

in that he,

on 24 Jun 1998, at the place and holding appointment as aforestated in the First Charge, well knowing that he was not authorised to place supply orders for procurement of stores, with intent to defraud, surreptitiously placed

SEVENTH CHARGE
Army Act Sec. 52(f)

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

in that he,

on 18 May 1998, at the place and holding appointment as aforestated in the First Charge, well knowing that he was not authorised to place supply orders for procurement of stores, with intent to defraud, surreptitiously placed Supply Order No. 3004/SO/19/E3 to M/s. Avin Light Industries Pvt Ltd, Delhi:

Ser No	Items	Qty	Rate Rs.	Amount Rs
	Evaporative Air Cooler (Desert Cooler)			
(i)	4000 Cum/hr	20 Nos	3285.00	65700.00
(ii)	5000 Cum/hr	05 Nos	3670.00	18350.00
(iii)	6000 Cum/hr	10 Nos	3974.00	39740.00
			Total	123790.00

EIGHTH CHARGE
Army Act Sec. 52(f)

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

in that he,

on 04 Jun 1998, at the place and holding appointment as aforestated in the First Charge, well knowing that he was not authorised to place supply orders for procurement of

stores, with intent to defraud, surreptitiously placed Supply Order No. 3004/SO/20/E3 to M/s. Raj Electricals, Delhi:

Ser No	Items	Qty	Rate Rs.	Amount Rs
(a)	Capacitor for Improvement for Power factor			
	(i) 14 KVAR	01 No	-	100000.00
	(ii) 25 KVAR	01 No		(Appx)
	(iii) 35 KVAR	01 No		
	(iv) 55 KVAR	02 Nos		
	(v) 65 KVAR	02 Nos		
	(vi) 70 KVAR	05 Nos		
	(vii) 100 KVAR	02 Nos		
			Total	100000.00

NINTH CHARGE

Army Act Sec. 52(f)

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

in that he,

on 20 Jun 1998, at the place and holding appointment as aforestated in the First Charge, well knowing that he was not authorised to place supply orders for procurement of stores, with intent to defraud, surreptitiously placed Supply Order No. 3004/SO/21/E3 to M/s. Modern Industrial Enterprises, New Delhi:

Ser No	Items	Qty	Rate Rs.	Amount Rs
(a)	Electrical Ceiling Fan 1200 mm sweep	269 Nos	836.00	224884.00
(b)	Speed Regulator	269 Nos	80.00	21520.00
			Total	246404.00

Supply Order No. 3004/SO/23/E3 to M/s. Tawi Engineering Works, Jammu:

Ser No	Items	Qty	Rate Rs.	Amount Rs
(i)	Cast brass screwed bib taps 15 mm	300 Nos	76.00	22800.00
(ii)	-do- stop valves 15 mm	300 Nos	76.00	22800.00
(iii)	-do- float valves 15 mm	800 Nos	92.50	74000.00
(iv)	-do- float valves 20 mm	500 Nos	155.00	77500.00
(v)	Nickel Chromium plated cast brass pillar tap 15 mm	200 Nos	160.50	32100.00
(vi)	-do- fancy pillar tap 15 mm	200 Nos	144.50	28800.00
(vii)	-do- bib tap 15 mm	200 Nos	136.00	27200.00
(viii)	-do- fancy stop valves 15 mm	200 Nos	136.00	27200.00
			Total	435000.00

TWELFTH CHARGE
Army Act Sec. 41(2)

DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER

in that he,

at Agra, on or about 15 Aug 1998, having been ordered by the Chief Engineer, Lucknow Zone vide signal Number 0-7783 dated 30 July 1998, not to move on posting even after completion of handing over, proceeded to place of posting.

Summary of evidence was recorded. On pleading not guilty to the charges, the appellant was put to trial by the court martial. He was

found guilty of all the charges except Charge No.9, wherein he was found guilty only to the following varied figures and words:

Ser No	Item	Qty	Rate Rs	Amount
(i)	Electric Ceiling Fan 1200 mm sweep	269 Nos	836.00	2,24,884.00
(ii)	Speed Regulator	269 Nos	80.00	21,520.00
				<u>2,46,404.00</u>

shall read as

Ser No	Item	Qty	Rate Rs	Amount
(i)	Electric Ceiling Fan 1200 mm sweep	269 Nos + Excise duty @ 13%	663.00	1,71,084.00 22,240.92 <u>1,93,324.92</u>
(ii)	Speed Regulator	269 Nos + Excise duty @ 18%	80.00	21,520.00 3,873.60 <u>25,393.60</u>
			Total amount + CST @ 4% Freight charges	2,18,718.52 <u>8,748.74</u>
			Total	2,27,467.26 994.00 <u>2,28,461.26</u>

He was sentenced to undergo rigorous imprisonment for one year and to be cashiered. Both his pre and post confirmation petitions ended in rejection. Hence this appeal.

5. The first and foremost argument advanced by learned counsel for the appellant is that Charge Nos. 1 to 11 are vague. In all the charges, it was alleged that the appellant was not "authorised to place supply orders for the procurement of stores". But none of the charges mentions as to which SOP the appellant had violated while placing supply orders. The CWE Agra, under whom the unit of the appellant was functioning, had issued certain restrictions on GEs from procuring stores on DGS&D rate contract. On 26.6.1996, CWE, Agra issued an SOP laying down procedure for procuring stores, as per which stores could be procured only after obtaining orders from CE in terms of MES Regulations. Subsequently, the CE, Lucknow issued instructions on 22.8.1997, 21.9.1997 and 29.9.1997 imposing restrictions on CWEs, GEs and AGEs from procuring stores on DGS&D rate contract. Since there was restriction, the appellant, whenever he got requirements from AGEs, used to project such demands to the CWE and CWE sent such demands to CE. Accordingly, he prepared the supply order dated 6.3.1998 and sent it to CWE. The GOC-in-C, Central Command, on coming to know about the difficulties faced by the units on account of the imposing of the ban/restrictions, directed the CE to lift the ban. Therefore, there was no ban/restriction when the

appellant placed supply orders. However, from the side of the respondents, it has been stated that the appellant was well aware that he had flouted the SOP dated 26.6.1996. This was borne out by the fact that when action was proposed against him, he had withdrawn the supply orders.

6. The object of framing of the charge is to enable an accused to have a clear idea of what he is being tried for and of the essential facts that he has to meet. An accused is entitled to know with certainty and accuracy the exact nature of the charge against him and unless he has such knowledge, his defence would be prejudiced. Unless the appellant satisfies the Court that there has been failure of justice from non-framing of charge under a particular penal provision or some prejudice has been caused to him, conviction under such provision of law is sustainable (see **Amar Singh v. State of Haryana** – (1974(3) SCC 81). Further, in **Sanichar Sahni v. State of Bihar** (2009(7) SCC 198), the apex Court, while considering the issue, placed reliance upon its various judgments, particularly in **Topandas v. State of Bombay** (AIR 1956 SC 33), **Willie (William) Slaney v. State of M.P** (AIR 1956 SC 116), **Fakhruddin v. State of M.P** (AIR 1967 SC 1326), **State of A.P v. Thakkidiram Reddy** (1998(6) SCC 554), **Ramji Singh v. State of**

Bihar (2001(9) SCC 528) and Gurpreet Singh v. State of Punjab (2005(12) SCC 615) and came to the following conclusion:

"27. Therefore, unless the convict is able to establish that defect in framing the charges has caused real prejudice to him and that he was not informed as to what was the real case against him and that he could not defend himself properly, no interference is required on mere technicalities. Conviction order in fact is to be tested on the touchstone of prejudice theory."

In the case on hand, there is ample evidence on record to show that the appellant had placed 11 supply orders, out of which five were cancelled and stores against six supply orders were received till 13.10.1998, details of which had been given by PW 3 Hira Lal. The details of the supply orders which were cancelled are:

(a)	3004/SO/13/E3 dated 06 Mar 98	Rs. 15.12 lakhs
(b)	3004/SO/22/E3 dated 24 Jun 98	Rs. 2.27 lakhs
(c)	3004/SO/14/E3 dated 21 Apr 98	Rs. 2.00 lakhs
(d)	3004/SO/17/E3 dated 18 May 98	Rs. 0.55 lakhs
(e)	3004/SO/23/E3 dated 24 Jun 98	Rs. 3.12 lakhs
		Rs. 23.06 lakhs

Further, the details of the supply orders, against which stores were received as per the DGS&D rate contracts, are:

(a)	3004/SO/15/E3 dated 21 Apr 98	Rs. 1.60 lakhs
(b)	3004/SO/16/E3 dated 13 May 98	Rs. 1.25 lakhs
(c)	3004/SO/18/E3 dated 18 May 98	Rs. 5.00 lakhs
(d)	3004/SO/19/E3 dated 18 May 98	Rs. 1.40 lakhs
(e)	3004/SO/20/E3 dated 04 Jun 98	Rs. 3.00 lakhs

(f)	3004/SO/21/E3 dated 20 Jun 98	Rs. 2.10 lakhs
		Rs. 14.35 lakhs

A perusal of the above would show that the appellant was in no way prejudiced by the omission or mentioning the SOP which put restrictions on the powers to place supply orders.

7. It has next been contended that the prosecution utterly failed to bring home the charge against the appellant and merely on conjectures and surmises, he was held guilty. It shall be relevant to mention that the prosecution has examined as many as eight witnesses. PW 1 Maj AP Rai, the successor of the appellant, was apprised by the then CWE Agra PW 3 Hira Lal about the irregularities in respect of the supply orders placed by the appellant and also by PW 2 Paul Raj Singh, based on which a departmental enquiry was ordered by him. It was further stated by this witness that altogether 11 supply orders were placed by the appellant (Exhibit "O"), out of which stores were obtained on six supply orders and the remaining supply orders were cancelled, having found that the supply orders were against the SOP imposing ban on CEs in purchase of stores. The evidence of this witness, so far as placing supply orders were concerned, remained

unimpeached. PW 2 Paul Raj Singh has stated that he was officer in charge of E3 Section and responsible for procurement of all types of stores required by GEs under CWE, Agra. He has stated that at the time of taking charge, the appellant handed over a yellow colour folder to him, based on which it was clarified by him that out of 11 supply orders, five were cancelled and in six, stores were received. PW 2 has also stated that it was his duty to co-ordinate with GEs, Chief Engineer and all other agencies about matters pertaining to the stores. On 23.7.1998, he received a letter written by AGE (E/M) (East), Agra informing that a large quantity of stores had been received against DGS&D rate contract. He verified the veracity of the information from the appellant, who informed him that supply orders were placed by him. When he reported the matter to CWE, Agra, he directed PW 2 to make a surprise check of all the supply orders placed by GE (East), Agra from 1.1.1998 to 23.7.1998, vide his Letter No. C-3010/59/E3 dated 24.7.1998. In the surprise check, irregularities in respect of supply orders placed by the appellant were detected. Though the testimony of this witness could not be assailed with regard to placing supply orders, it was clarified by him that certain supply orders were cancelled by the appellant, which exactly is the prosecution version. It

was categorically stated that GE had full financial powers to place supply orders on DGS&D rate, which were restricted by CWE as per MES Regulations 1968. He proved the SOP dated 26.6.1996, vide Ext. "X" issued by CWE putting restrictions on the powers of GE, the relevant portion of which reads as under:

ON PROCUREMENT OF STORES FOR MAINTENANCE AND MINOR WORKS

1. General

XX XX	XX XX	XX XX
XX XX	XX XX	XX XX

2. Responsibility for Procurement

(a) Chief Engineer Lucknow Zone

XX XX	XX XX	XX XX
XX XX	XX XX	XX XX

(b) C W E

(i) All the stores required in the area for maintenance and minor works other than those falling within the responsibility of Chief Engineer Lucknow Zone will be procured by CWE for all the GEs in the area.

(ii) All the stores required to be procured through DGS&D Rate contract for use for any purpose by the GEs in the area not covered in para 2(a) above will also be procured.

(iii) All job orders costing above 25,000/- will be placed by CWE. Job works costing above Rs.10,000/- but below 25,000/- will be sent to this HQ by GEs along with comparative statement and original quotation for according permission. No job work costing above Rs.10,000/- will be placed by GE without obtaining permission from this HQ.

(c) GEs

(i) GEs will be permitted to procure meagre stores requirements for 15 days in terms of para 4 of Chief Engineer Central Command Lucknow Letter No.965001/1/1208/E5 dt. 03 Aug 93 provided these stores were demanded by GEs for procurement in CDS (I) Agra, and the demand was submitted by them within the time frame laid down in these instructions. The permission for such procurement will be given by this HQ after the NAC, has been received by the sub-division from CDS (I) based on the contingencies of each case.

(ii) CEs will place orders for job works upto Rs.10,000/- by themselves and upto Rs.25,000/- after getting permission from this HQ.

3.	XX XX	XX XX	XX XX
	XX XX	XX XX	XX XX

8. It was submitted from the side of the appellant that the CWE had no authority to restrict the financial powers of the GE in procurement of stores. The authorisation to place supply orders on DGS&D Rate Contract was conferred vide Table "B" of the Regulations for the Military Engineer Services 1968 (RMES). E-in-C, CELZ, CWE and

GE are "direct demanding officers". However, Note (2) appended to the said Table provided for restriction of the normal powers of an officer. Note (2) is extracted below:

"The normal powers of an officer may be restricted by his immediate MES superior. But in such cases, a report must be made to the CE in the case of GEs and to the E-in-C in the case of CWE."

Such powers were restricted vide SOP dated 26.6.1996 vide Ext. X. We do not find any illegality or irregularity in putting such restrictions. Counsel for the appellant has pointed out that while putting restriction, the CE Lucknow Zone was not apprised of the situation and after about six months, the restriction was approved by him. The appellant, who was under the command of CWE, cannot question the validity of the restriction merely on the ground that formal sanction was not obtained from CE. The appellant cannot have any grievance if the approval of the CE was not obtained in time by CWE on the SOP dated 26.6.1996. So far as the effect of not taking approval before the issuance of the SOP dated 26.6.1996 (though it was subsequently taken) is concerned, no prejudice, whatsoever, was caused to him. The appellant could not plead or substantiate that non approval of the CE before issuing the SOP was deliberate to take the appellant on task.

Non taking of approval before issuing the SOP cannot ipso facto be a ground to vitiate the proceedings.

9. In support of its case, the prosecution has examined PW 3 Hira Lal, Superintending Engineer, who was CWE at the relevant time i.e. from 13.6.1996 to 23.1.1999. It was categorically stated by him that during his tenure as CWE, Agra, the procurement of stores under DGS&D rate contract was done by CE Lucknow Zone for cement and steel being major items and there were certain more items like ceiling fans, air conditioners, desert coolers and the like being procured by CE Lucknow Zone and the rest of the items were being procured by CWE, Agra. This was done on the basis of the instructions received from higher authorities. The SOP dated 26.6.1996 was framed in line with various policy letters and instructions from higher authorities. During cross examination, it has come out in evidence that in the past, instances of placing supply orders contrary to the SOP were brought to his notice and action was taken against the concerned. PW 4 Brig Ashok Kumar Nagpal has supported the prosecution version by stating about the restrictions imposed vide Exts. V and YY. PW 5 MS Rautela, PW 6 Dil Bag Alam, PW 7 Suraj Mal and PW 8 M.K Pal have also

supported the prosecution version. We do not find any reason to disbelieve their testimony.

10. From the materials on record, it is evident that despite the restriction imposed by CWE Agra vide SOP dated 26.6.1996, the appellant had placed 11 supply orders, out of which six supply orders were subsequently cancelled. Thus, there was clear breach of the SOP issued by CWE. The appellant cannot take advantage simply because the CWE had not sought approval of CE.

11. DW 1 Sushil Kumar could not lend support to the defence version. Even in the statement recorded under Army Rule 58, the appellant admitted of having placed supply orders between 29.9.1997 and 7.4.1998 when there was ban to place supply orders. The vague reply of the appellant with regard to Ext. X also lent support to the prosecution version. Reliance may be placed on the decisions in **Narain Singh v. State of Punjab** (1964(1) Cri LJ 730) and **State of Maharashtra v. Sukhdev Singh and another** (1992(3) SCC 700), wherein it was held that the statement of the accused can be taken into consideration in the course of trial and that the statement of the accused under Section 313 of the Code of Criminal Procedure can be

the sole basis for conviction. The statement of the appellant under Army Act Section 58 does not demolish the prosecution version.

12. It has further been argued by learned counsel for the appellant that non-mentioning of the SOP dated 26.6.1996 in the charges was for the obvious reason that the said SOP was not in vogue when the appellant had placed supply orders. Further, no objection, whatsoever, was made by CWE when the appellant placed the supply orders, which is clear from the statement of PW 4 Brig Ashok Kumar Nagpal. It was stated by PW 4 that the GE (West), Agra had placed supply orders on DGS&D rate contract worth Rs.10.75 lakhs contrary to Para 2(b) of CWE, Agra SOP dated 26.6.1996, which is evident from the letter dated 12.12.1997 sent by CWE, Agra to the then GE (West), Agra (Mr. Thakle). His statement would show that the supply orders made by GE (West) were approved. In spite of such action, GE West was given only a minor penalty and on the other hand, the appellant was harshly dealt with by sentencing him to undergo rigorous imprisonment for one year and to be cashiered. In this backdrop, it is stated that in identically placed circumstances, GE (W) was favoured by awarding minor punishment and the appellant was given severe punishment. Mitigating circumstances being similar, the appellant also

should have been awarded only a minor punishment as was done in the case of GE (W).

13. While awarding sentence, the GCM should have taken into account the mitigating circumstances viz. (i) the SOP dated 26.6.1996 was not strictly adhered to by GE (W); (ii) only a minor punishment was awarded to GE (W), who had also violated the SOP; (iii) in the facts and circumstances of the case, when CWE had lifted all restrictions imposed on the power of making supply orders, the appellant placed supply orders; and (iv) on objection, the appellant cancelled the supply orders. The apex Court In **Bachan Singh v. State of Punjab** (1980(2) SCC 684) held that the mitigating circumstances were held to be relevant circumstances to which great weight in the determination of sentence was required to be given. It further observed thus:

“209. There are numerous other circumstances justifying the passing of the lighter sentence; as there are countervailing circumstances of aggravation. ‘We cannot obviously feed into a judicial computer all such situations since they are astrological imponderables in an imperfect and undulating society.’ Nonetheless, it cannot be overemphasised that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction by the courts in accord with the sentencing policy writ large in Section 354(3).”

In the given circumstances, a lighter punishment would have served the purpose, more particularly when GE (W), who was also found guilty of the same charge, was given only a minor punishment. Contradictory standards/yardstick and lack of coherence was found writ large in the consideration adopted by GCM in the evaluation of evidence, wherein certain issues were unduly magnified and serious lapses were shown on his part while awarding severe sentence. No explanation, whatsoever, was given for adopting a discriminative treatment while awarding sentence. In view of the aforesaid discussion, the sentence awarded to the appellant needs to be modified.

14. In the result, the appeal is partly allowed on the point of sentence. The case is remanded to respondents 1 and 2 to reconsider the mitigating circumstances, including the sentence awarded to GE(W) Agra, while awarding the sentence.

(S.S DHILLON)
MEMBER

(S.S KULSHRESTHA)
MEMBER