

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

**T.A NO. 528 of 2009  
(WRIT PETITION (CIVIL) NO. 7451 of 2007)**

**Ex. FLG. OFFICER SUBHASH PANDEY .....APPELLANT**

**V.**

**UNION OF INDIA AND OTHERS ...RESPONDENTS**

**ADVOCATES**

**APPELLANT IN PERSON**

**Ms. JYOTI SINGH, SENIOR ADVOCATE With Ms. TINU  
BAJWA, ADVOCATE  
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**

**01.04.2011**

1. This writ petition has been filed by the appellant under Articles 226 and 227 of the Constitution in the Hon'ble Delhi High Court. On creation of this Tribunal, the writ petition was transferred and is being dealt with under Section 15 of the

Armed Forces Tribunal Act. Earlier the appellant had moved the Hon'ble High Court of Judicature Allahabad, Lucknow Bench by filing Writ Petition No. 653 (SB)/2006 which was dismissed on 22<sup>nd</sup> November 2006 for want of jurisdiction. This order was assailed in the Hon'ble Supreme Court vide SLP (C) No. 432/2006 which was also dismissed.

2. The appellant is aggrieved against the illegal and arbitrary order of the General Court Martial ('GCM') held between 13<sup>th</sup> November 2000 and 11<sup>th</sup> January 2001 which sentenced him to be dismissed from service. The appellant was enrolled in the Indian Air Force ('IAF') on 26<sup>th</sup> July 1985 and was subsequently commissioned as a Gazetted Officer in the administrative branch on 17<sup>th</sup> December 1994 in the rank of Pilot Officer. He was promoted to Flying Officer on 17<sup>th</sup> December 1996. Grant of such gazetted commission to personnel below the officer rank is a unique and rare distinction and the appellant was one such individual who was granted commission while serving as a Corporal in the IAF. The incident which led to the GCM occurred while serving with No. 1 Base Repair Depot ('BRD') when the appellant was sent

to attend Junior Command Course Serial 189 at the Air Force Administrative College, Coimbatore which was conducted in November/December 1989. The appellant was sharing a room with Flt. Lt. D. Chakraborty. His roommate and the other officers who were directly commissioned had a feeling of superiority and ill-will against the appellant who had risen from the subordinate ranks and very disdainfully referred to such officers as 'Rankers'. Consequently, they always looked for an opportunity to harass and humiliate the appellant. On 27<sup>th</sup> December 1998, almost at the fag end of the Course, one gold ring of Flt. Lt. R.K. Kakkar was reportedly stolen and a rumour was spread that it had been stolen by the appellant. The appellant was deeply hurt with such baseless rumours and allegations and requested the Commanding Officer to hold a Court of Inquiry. The appellant was blamed for this theft as well as another theft and the authorities proceeded to take disciplinary action against him, which culminated in the Court Martial finding him guilty of Charge Nos. 1 and 3 and sentencing him to be dismissed from service. The Charges that were levelled against him are as given below:

**FIRST CHARGE**  
**AF ACT SECTION 52(A)**

**COMMITTING THEFT OF PROPERTY TO A  
PERSON SUBJECT TO AF LAW**

in that he,

At Air Force Administrative College, Coimbatore,  
on or around 20 Dec. 98 committed theft of Ray  
Ban Sunglasses, belonging to Flying Officer S.K.  
Shivrain (23510) F(P).

**SECOND CHARGE**  
**AF ACT SECTION 65 (ALTERNATIVE TO THE  
FIRST CHARGE)**

**AN ACT PREJUDICIAL TO GOOD ORDER AND  
AIR FORCE DISCIPLINE**

in that he,

at Air Force Administrative College, Coimbatore,  
on 01 Jan. 99 was found in improper possession  
of Ray Ban Sunglasses, belonging to Flying  
Officer S.K. Shivrain (23510) F (P).

**THIRD CHARGE**  
**AF ACT SECTION 52(A)**

**COMMITTING THEFT OF PROPERTY  
BELONGING TO A PERSON SUBJECT TO AF  
LAW**

in that he,

At Air Force Administrative College, Coimbatore, on 27 Dec. 98, committed theft of a gold ring belonging to Flight Lieutenant R.K. Kakkar (23008) Adm/FC.”

3. The appellant argued that he was innocent and had an unblemished record prior to the alleged incident. His innocence can be proved from the fact that he himself, in writing, had demanded that the Commanding Officer hold a Court of Inquiry into the incident but his request was not acceded to by the competent authorities. Learned counsel for the appellant urged that the entire incident was fabricated. On the intervening night of 31<sup>st</sup> December 1998 and 1<sup>st</sup> January 1999 four officers namely Flt. Lt. Kakkar, Sqn. Ldr. Bhatt, Flt. Lt. Alam and Flt. Lt. Mehta after consuming alcohol woke up the appellant and exhibiting utter disregard to law, manhandled him whereby he suffered injuries all over his body. In the process, these four officers extracted two extra judicial confessional statements from the appellant under threat and duress. The appellant reported sick and the medical officer {Flt. Lt. Kayastha (PW-1)} recorded his injuries

as well as his statement that he had been hit by some of his colleagues.

4. It was argued that the appellant was denied the statutory opportunity of hearing of Charge under Air Force Rules 24(1) and that the order for recording the summary of evidence was passed by an authority who was not competent to pass such order. This lack of jurisdiction continued even during the stage of the GCM wherein the order convening the GCM was passed by an authority who was not competent to pass such order. It was also argued that no FIR had been lodged and neither had any formal complaint been made of any theft and in any case both the sun glasses and the gold ring were subsequently recovered. Therefore, there was no ground on which cognizance could have been taken of the incidents, let alone proceed with the trial of the accused. The gold ring of Flt. Lt. Kakkar was recovered on 27<sup>th</sup> December 1998 and accordingly this case should have been treated as closed. It was, therefore, sheer mischief and indiscipline on the part of the four officers to have entered his room in an intoxicated state on the intervening night of 31<sup>st</sup> December

1998 and 1<sup>st</sup> January 1999 and thereafter manhandled him and extracted such confessional statements from him. Such gross indiscipline and high handedness was evident from the fact that in this intervening night these four officers without any order or authority from the Station Commander carried out a search of his room and allegedly recovered the sun glasses and other items. No questions have been asked by the authorities as to what prompted these four officers to interrogate the appellant and manhandle him mercilessly and neither has any disciplinary action been taken against these officers.

5. Learned counsel for the appellant also brought out that the charge sheet was not served 96 hours before the commencement of trial which was a mandatory provision under para 740 of the Defence Services Regulations for the Air Force. It was also submitted that not calling the witnesses despite repeated communications or request to the GCM was a gross illegality and the Trial Judge Advocate was biased and his aim was to secure a conviction against the appellant. In any case to award such a severe punishment of dismissal

from service for such a minor offence was shockingly disproportionate and harsh.

6. The brief facts of the case are that the appellant while on the posted strength of BRD at Kanpur was sent for Junior Commander Course Serial 189 at the Air Force Administrative College, Coimbatore which was held from November 1998 to 2<sup>nd</sup> January 1999. During the course there were some instances of theft which were reported by Flying Officer S.K. Shivrain who lost his Ray Ban glasses and an expensive bottle of after shave costing Rs.1100/- on 20<sup>th</sup> December 1998. Flt. Lt. R.K. Kakkar lost his gold ring on 27<sup>th</sup> December 1998 and Flying Officer Devadasu lost Rs.800/- in cash and a T-shirt on 19<sup>th</sup>/20<sup>th</sup> December 1998. The matter was investigated by the authorities and the Ray Ban glasses were recovered from the custody of the appellant, while the gold ring was recovered from a place indicated by the appellant. It, therefore, appeared to the authorities that the appellant was involved in the commission of these thefts. Accordingly, the Commanding Officer i.e. CO 1 BRD Kanpur, was informed about the entire incident. Disciplinary

proceedings commenced which resulted in the Court Martial sentencing the appellant to be dismissed from service. The appellant preferred pre-confirmation and post-confirmation petitions which were duly considered by the competent authorities and rejected.

7. Respondents submitted that the appellant was tried by a duly constituted GCM which followed due procedure during the trial. The appellant was afforded full opportunity to defend himself and in fact for most of the trial, the appellant even engaged a civil defence counsel. Learned counsel for the respondents argued that there was no question of any disrespect or prejudice against officers who have risen from the subordinate ranks. To the contrary, utmost respect and courtesy was extended to them and nowhere in the entire proceedings has the appellant been able to indicate one specific instance by any officer wherein derogatory remarks or such discourtesy has been shown to the appellant. During the Court Martial a total of 8 witnesses were examined who more than adequately proved the charges. Flt. Lt. S. Kayastha (PW-1) was the Medical Officer on duty who examined the

appellant at 1800 hours on 1<sup>st</sup> January 1999. The appellant told him that he had sustained injuries about a few hours back and he mentioned that some of his colleagues had hit him. The doctor (PW 1) examined the appellant and found that **“all his vital parameters like BP, Pulse, respiratory rate were within normal limits. There was no sign of any grievous injury. However, he had many superficial and minor injuries like one boggy swelling on right temporal area of the scalp, contusion on both malar area, contusion on both pinna, small cut on right side of upper and lower lips, contusion of right index finger, contusion of both scapular area and swelling of right knee. The accused also complained of pain in the abdomen.”** The doctor (PW 1) also stated that the type of injury marks did not suggest use of any rod or any hard material and that the injuries could have been inflicted within the last 24 hours. Flt. Lt. R.K. Kakkar (PW-2) was the officer who had lost the gold ring which was the substance of the third charge. Wing Cdr. P.J. Singh (PW-3) was the Station Duty Officer on 27<sup>th</sup> December and was asked to enquire into the incident of the missing gold ring. He has testified that appellant was frequently changing his

statement and that the appellant had admitted going to Flt. Lt. Kakkar's room. The witness mentioned to the appellant that in case he had the gold ring with him, he should return it otherwise the matter may turn serious. The appellant suggested that the ring could have been thrown outwards and pointed out towards a grassy patch near P-11 Block. The time being approximately 2000 hours the witness commenced a search of the area as indicated by the appellant. Flt. Lt. Alam also accompanied them during the search. The appellant led the way to the spot which the appellant had earlier indicated. At approximately the same spot as indicated by the appellant, Flt. Lt. Alam recovered the gold ring and all three of them went back and reported the matter to the Station Commander Flt. Lt. Naved Alam (PW-4). This witness was sharing a room with Flt. Lt. Kakkar who had lost the gold ring and had testified to the effect that the appellant entered their room on 27<sup>th</sup> December. Their room was partitioned and he (the appellant) had entered the portion where Flt. Lt. Kakkar was staying. At that point of time, Flt. Lt. Kakkar was not present in his room. The witness states that he saw the appellant going through Flt. Lt. Kakkar's papers on the table and on the bed and he also

heard the sound of the opening of a drawer of the table of Flt. Lt. Kakkar. When he entered the portion of Flt. Lt. Kakkar's room, he saw the appellant closing the table drawer of Flt. Lt. Kakkar. Thereafter when Flt. Lt. Kakkar entered the room he informed him about the visit by the appellant and Flt. Lt. Kakkar started searching his room. When he asked Flt. Lt. Kakkar as to why he was doing so, he replied that he had kept his gold ring in the table drawer but now it was not there. The witness and Flt. Lt. Kakkar searched the entire room to see whether they could recover the gold ring but they could not. Accordingly, a report was made to the Station Commander. The witness stated that the appellant had remained in Flt. Lt. Kakkar's room and was reading his assignments. The witness was also present when the search was carried and has stated that the appellant led the search party all along. Within a few minutes, they saw the gold ring which was recovered. The witness also stated that on the intervening night of 31<sup>st</sup> December 1998 and 1<sup>st</sup> January 1999, he alongwith Flt. Lt. Bhatt, Flt. Lt. Mehta and Flt. Lt. Kakkar had gone to the room of the appellant which was also shared by Flt. Lt. Chakraborty. They had gone there to wish the appellant and Flt. Lt.

Chakraborty a happy new year. Flt. Lt. Kakkar had asked the accused as to why he had stolen his ring to which the appellant has stated "galti ho gai maf kar do". Thereafter he had written the two confessional statements voluntarily. The two voluntary statements are **"by mistake I had stolen the ring of Flt. Lt. R.K.Kakkar on 27<sup>th</sup> December 1998 at 1620hours from his room' and 'I had stolen the sun glasses of Flying Officer Shivrain from his room on 31<sup>st</sup> December 1998". This confession is without any pressure and with free will. This act was unintentional and I will however not repeat in future."** Sqn. Ldr. C.S. Bhatt (PW-5) has also testified to the same facts as PW-4. In addition, he has stated that in his presence Wing Cdr. Parmeshwaran showed the confessional statements to the appellant and asked him as to whether he had written those confessions and will abide by them to which the appellant had agreed. Flt. Lt. K. D. Rao (PW-6) has stated that on the intervening night of 31<sup>st</sup> December 1998 and 1<sup>st</sup> January 1999 he entered the room of the appellant wherein about eight to ten officers were present and he heard the appellant saying "galti se maine Kakkar Sir ki ring chori kar li thi." and appellant

was asked whether he was willing to give a confessional statement to which appellant agreed and thereafter he proceed to write down his confessional statement. Sqn. Ldr. D. Chakraborty (PW-7) was the roommate of the appellant who has also testified the same facts as PWs 5 and 6. From the evidence adduced by the prosecution and also from the surrounding circumstances, it appears that the confession was made by the appellant voluntarily. More value is to be attached to such confession as it is dependent on the reliability of the witnesses (officers) who give evidence. There is nothing on record to show that these witnesses were either biased or even remotely inimical to the appellant so as to bring out a motive of attributing an untruthful statement to the accused. Reliance may be placed on the decision in **Chattar Singh and another v. State of Haryana** (AIR 2009 SC 378), wherein the veracity of the witness, before whom the confession was made was considered to be a determinative factor for attaching value to the extra judicial confession. It reads:

“18. .... The value of evidence as to confession depends on the reliability of the witness who gives evidence. A confession can be relied upon and conviction can be founded thereon

if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. ....”

Flt. Lt. S.K. Shivrain (PW-8) who has testified that his Ray Ban glasses and an expensive bottle of after shave costing Rs.1100/- were missing from 20<sup>th</sup> December 1998 and he had reported the matter to the Security Officer, Wing Cdr. Parmeshwaran. He further testified that on the intervening night of 31<sup>st</sup> December 1998 and 1<sup>st</sup> January 1999 at approximately 0300 hours, Flt. Lt. Kakkar came to his room and informed him that he had found his Ray Ban glasses in the appellant's room. The witness accompanied Flt.Lt. Kakkar to the appellant's room where he identified the sun glasses as belonging to him. The appellant accepted that the sun glasses belong to the witness and that he had stolen it from his room.

8. Learned counsel for the respondents categorically stated that adequate evidence has been produced to confirm that it was the appellant who had carried out these thefts. He also argued that while the individual had some injuries no inference could be drawn as to how these injuries had been sustained and there was no evidence on record to suggest that he had been manhandled by the other officers. The inquiries were supposedly sustained at 0200 hours on 1<sup>st</sup> January and the appellant reported sick at 1800 hours, which itself shows how minor the injuries were. It was also urged that holding a Court of Inquiry was not mandatory under the Air Force Act, 1950 as it was merely a fact finding body which could be dispensed with. In this case, the Commanding Officer did not consider it necessary to hold a Court of Inquiry and in any case it has not prejudiced the appellant in any manner. The appellant has had the liberty during the recording of the summary of evidence as well as during the GCM, to hear the testimony of all the witnesses, to cross-examine them, to produce his defence witnesses and also to make any statement if he so chose to. There is no bias or vindictiveness or illegality in the entire proceedings which have

been conducted according to law. It was asserted that Air Force Rule 24 has been complied with and due procedure has been followed. After the hearing, the CO ordered summary of evidence to be recorded and the allegation of the appellant that Air Force Rule 24 was not complied with is an after thought and a baseless allegation. This is evident from the fact that this non-application of Air Force Rule 24 was not even referred to by the appellant during the Court Martial and has merely been added at this stage as an after thought to confuse the issue. The appellant has extensively cross-examined all the witnesses with regard to the allegations, including the allegation that he was beaten up but has failed to shake the testimony of any of the witnesses. The legal issues were also touched upon by stating that the GCM had been convened by the competent authority i.e. AOC-In-C, HQ Maintenance Command. The convening order was signed by the Staff Officer on his behalf which is permitted as per the Air Force Rules. The GCM was conducted fairly, impartially and in accordance with rules and procedures and principles of natural justice. Learned counsel for the respondents summed up his argument by stating that the appellant had been rightly

found guilty and that the sentence passed was in accordance with the gravity of the offence and in consonance with the provisions of the Air Force Act, 1950.

9. Considering the fact that adequate evidence was produced to confirm the guilt of the appellant, we do not find any reason to interfere with the proceedings, findings and sentence awarded by the GCM. Accordingly, the appeal is dismissed with no order as to costs.

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

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