

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

TA NO. 535 OF 2009
(WRIT PETITION (CIVIL) NO. 1996 OF 1998)

EX MAJ NARENDER PAL

...APPELLANT

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

ADVOCATES

**MR. MOHAN KUMAR FOR THE APPELLANT
MR. AJAI BHALLA FOR THE RESPONDENTS**

CORAM

**HON'BLE SH. S.S.KULSHRESTHA, MEMBER
HON'BLE SH. Z.U SHAH, MEMBER**

JUDGMENT

11.05.2011

1. The petitioner has filed W.P No. 1996 of 1998 before the Delhi High Court, which stands transferred to this Tribunal and is treated as appeal under Section 15 of the Armed Forces Tribunal Act 2007, challenging the General Court Martial (GCM) proceedings, whereby he was found guilty of having committed the offences under

Sections 69 and 63 of the Army Act (the Act, for brevity) and sentenced (i) to suffer rigorous imprisonment for six months; and (ii) to be cashiered, subject to confirmation. The confirming authority, while confirming the findings of the GCM, remitted the sentence to dismissal from service.

2. The facts giving rise to this appeal in a nutshell are that, the appellant was commissioned in the Indian Army as an officer on 9.6.1984. While in service, he has served in hazardous areas like HAA and participated in various operations in and outside the country. He is recipient of Sena Medal for the act of bravery and courage. In the year 1992, when the appellant was attending Intelligence Staff Officer Course at Military intelligent School, Pune, he pointed out the discrimination in allotment of accommodation and the supply of substandard rations to the student officers by Col. G.S Mann, who was responsible for the administrative arrangements of the school. On account of this, Col. Mann had a grudge against the appellant. Subsequently, the appellant was posted to 1/3 Team Central Command Liaison Unit, the Commanding Officer of which was Col. Mann. On 24.12.1994 and 25.12.1994, when the appellant was away

on leave, Col. Mann visited the office of the appellant and allegedly instructed his subordinate staff to keep the appellant under vigil and to monitor his movements. On 5.2.1995, at around 0800h, two staff members of the appellant observed a person (Niranjan Lal Sharma – PW 1) coming out of the house of the Subedar Major and on becoming suspicious, they followed him. He was brought to the office of the appellant for questioning. PW 1 Niranjan Lal left the appellant's office by about 1000h.

3. On 2.7.1996, the appellant was served with a charge sheet under Sections 69 and 63 of the Act, in that he was alleged to have wrongfully confined a civilian PW 1 Niranjan Lal Sharma in the office premises of 1/3 Detachment contrary to Section 342 of the Indian Penal Code (the Code, in short); voluntarily caused hurt to PW 1 Niranjan Lal Sharma by hitting him and kicking at his body; and possessed certain official/private letters. The appellant pleaded "not guilty" to the charges. Thereupon, he was put to trial by the GCM. The GCM found him guilty of both the charges and he was sentenced as aforesaid. The General Officer Commanding-in-Chief, Central

Command, while confirming the findings of the GCM, converted the sentence to "dismissal from service". Hence this appeal.

4. Learned counsel for the appellant has contended that the charges against the appellant are frivolous and concocted. The complaint against the appellant at the behest of Col. G.S Mann has not been proved. It is a case supported by no evidence. The appellant had not been provided a fair opportunity to defend his case, in violation of the Army Act and the Rules made thereunder. The GCM proceedings had been vitiated, because the appellant could not offer a plea of no case. The findings by the GCM are based on conjectures and surmises.

5. The appeal has been resisted by learned counsel for the respondents contending, inter alia, that the prosecution produced ample evidence to fix the culpability of the appellant. The appellant was afforded full opportunity as provided under the Army Act and the Rules and no prejudice, whatsoever, was caused to the appellant. There was cogent evidence, both oral and documentary, supporting the findings of the GCM and by no stretch of imagination, it could be termed as a case of no evidence.

6. At the time of arguments, counsel for the appellant has fairly submitted that his arguments would be confined only to the point of sentence. Drawing our attention to the sentence awarded, counsel for the appellant has pointed out that the sentence awarded is shockingly disproportionate to the gravity of the offence found against the appellant.

7. The appellant was held guilty of having committed the offence under Army Act Section 69 read with Section 342 of the Code and Army Act Section 63 read with Section 323 of the Code. Having gone through the findings arrived at by the GCM, we find force in the argument made by counsel for the appellant that the sentence of dismissal from service is shockingly disproportionate to the gravity of the offence committed by the appellant. The position was illuminatingly stated by the Apex Court in **Sevaka Perumal v. State of Tamil Nadu** (AIR 1991 SC 1463). While awarding sentence, due consideration to the facts and circumstances of each case are to be given. After giving due consideration to the facts and circumstances, for deciding the appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a

crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the Court. Such act of balancing is indeed a difficult task. No hard and fast rule or formula could possibly be laid down that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula, which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of crime, the discretionary judgment in the facts of each case, is the only way in which such judgment may be equitably distinguished. Further, while awarding sentence, the mitigating circumstances are also to be taken into account, as was held by the Apex Court in **Bachan Singh v. State of Punjab** (1980(2) SCC 684). The mitigating circumstances were held to be relevant circumstances to which great weight in the determination of sentence was required to be given. It was further observed by the Apex Court 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 this case, the following extenuating or mitigating circumstances which would justify a lesser sentence: (i) the appellant being posted at the Recruitment Centre was to see that fair recruitment had taken place and no undesirable elements roamed around the Recruitment Centre to exploit the candidates; (ii) when PW 1 Niranjan Lal Sharma was brought to his office, he was under obligation to make necessary interrogation. PW 1 is said to have suffered only minor injuries. That is why the offence under Section 323 was made against him; (iii) PW 1 Niranjan Lal Sharma would have had serious injuries if the appellant had beaten him up severely; (iv) there was no reference in the first information report with regard to any atrocious conduct from the side of the appellant. Even if the appellant had severely beaten up the victim, no culpability could be attributed to him; (v) the appellant had a brilliant career and had suffered bullet injuries; (vi) he was awarded

the gallantry award of Sena Medal for showing exceptional bravery and courage; and (vii) the offence does not affect the societal order.

8. The offence does not in any way affect the social order. Offences like atrocity, offences against women, misappropriation of public money, etc involve moral turpitude which has great impact on social order and public interest. Further, the charges against the appellant do not in any way run against the societal interest. In the given circumstances of the case, the sentence of dismissal from service is harsh and is not commensurate to the gravity of the offence.

9. In the given circumstances, while confirming the findings, the sentence of dismissal from service is modified and the appellant shall be deemed to have been released from service from the date he attained the pensionable service and he shall be entitled to all pensionary benefits with no back wages. The appeal is partly allowed accordingly.

(Z.U SHAH)
MEMBER

(S.S KULSHRESTHA)
MEMBER