

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

**T.A. 674 OF 2009
Writ Petition (Civil) No. 6120 of 2000**

IN THE MATTER OF:

SGT MOHANTI BK **.....Applicant**

Through : Mr. Manoj Kumar Das, counsel for the applicant

Versus

The Union of India and others **.....Respondents**

Through : Mr. Ajai Bhalla, Advocate for the respondents

CORAM:

HON'BLE MR JUSTICE S. S. KULSHRESTHA, MEMBER,

HON'BLE LT GEN Z.U.SHAH, MEMBER

JUDGMENT

Date: 19 May 2011

1. The appellant had filed WPC 6120/00 in the Hon'ble Delhi High Court. The same was transferred to this Tribunal on 21 Oct,2009. The appellant has appealed against the findings, conviction and sentence of DCM which commenced on 27 March 1996 and prayed that the same be quashed and he be reinstated in service.

2. The appellant was enrolled in the IAF on 10 Dec 1979 and was subsequently promoted to Sgt on 1Feb 1990. While serving at 1 Wg IAF the appellant states that he brought several irregularities to the notice of the superiors who, for this reason, became inimical towards him. The appellant on 2nd Nov 1995 submitted a redressal of grievances (ROG) and requested for his immediate discharge from the IAF.

3. The appellant states that while he was serving in 2202 Sqn, Air Commodore R D Limaye took over as Station Cdr No. 1 Wg on 26 Sept 1995. The appellant states that he was detailed to perform guard duty on 20 Dec 1995. He states that this was an unauthorised duty since officers and Sgts were exempted from performing the same. A summary of evidence was ordered against him and the appellant states that subsequently a Distt. Court Martial (DCM) was convened on 27 March 1996 and he was tried on the following charges :

**First Charges
Section 41 (1)
AF Act 1950**

**DISOBEYING, SUCH MANNER AS
TO SHOW WILFUL DEFIANCE OF
AUTHORITY, A LAWFUL COMMAND
GIVEN PERSONALLY BY HIS
SUPERIOR OFFICER IN THE
EXECUTION OF HIS OFFICE**

In that he,

**At Srinagar, on 20 Dec 95, when ordered by 273143 K JWO
BR Verma ACH/GD, UWO of 2202 Sqn AF vide 2202 Sq. AF service Note
No 22025/202/1 Org dated 19 December 1995 to guard the AF assets
deployed at Tech Flt' of the Sqn from 1630 h on 20 Dec. 95 to 0800 h
on 21 Dec 95 refused the said duty in writing stating inter-alia that it
was below dignity of this rank and did not perform the said duty.**

**Second Charges
Section 41 (1)
AF Act. 1950**

**DISOBEYING, SUCH MANNER AS
TO SHOW WILFUL DEFIANCE OF
AUTHORITY, A LAWFUL COMMAND
GIVEN PERSONALLY BY HIS
SUPERIOR OFFICER IN THE
EXECUTION OF THIS OFFICE**

In that he,

**At Srinagar, on 23 Jan 96 when ordered by Fit Lt Ashok Kumar
(19662-S) A (L) offg. Adjutant of 2202 Sq. AF vide service Note No
22025/201/1 Org dated 23 Jan 1996 to guard the AF assets deployed at
'Tech Flt' of the Sqn from 1700 h on 23 Jan 96 to 0830 h on 24 Jan 96
refused the said duty in writing stating inter-alia that it was below
dignity of his rank and did not perform the said duty.**

4. The appellant pleaded not guilty. The appellant was sentenced on
10 April 1996 and was awarded RI for 1 year (subsequently remitted to 6

months RI by AOC-in-C on 13 May 1996), reduced to ranks and dismissed from service.

5. The appellant maintains that Sgts are not required to perform guard duties and during the DCM PW1, JW S C Naar, PW2 – Flight Lt Ashok Kumar and had both stated that Sgts were never put on guard duty.

6. The appellant also states that a retired officer was made available as a Defence Counsel and the JAG was also biased against him. Therefore, the Court Martial was illegal and should be set aside.

7. In the counter affidavit the respondents had stated that the applicant was serving in J & K where the security situation warranted enhanced number of guards. There was no illegality in detailing Sgts for guard duty as the provision for the same exist in Air force Regulations 1964. It was therefore decided that the number of guards was to be increased and to cater for the additional man power Sgts, also, were to be put on duty (Exhibit 'O' page 122) DCM proceedings). The appellant since he felt so strongly against performing guard duties, submitted an application for voluntary discharge. The same was not acceded to because there was no valid reason for the same.

8. The appellant was detailed twice in writing for guard duty (Exhibit 'N' of DCM proceedings page 120). The appellant refused to perform guard duty on both occasions. In view of this disobedience of orders the AOC-in-C

Western Air Command ordered his trial by DCM on 19 March 1996. The applicant submitted an application (Page 95) that during the DCM he did not want to avail the services of a Defending Officer but would like to be represented by a Civil Lawyer, at his own expense. In view of his request a retired officer, legally qualified was made available to him as his defence counsel.

9. The appellant was tried by DCM which commenced on 27 March 1996 and the appellant pleaded “not guilty”. The appellant was sentenced on 10 April 1996 and awarded the following punishment

- a. to suffer RI for 1 year RI (Subsequently remitted to 6 months RI)
- b. to be dismissed from service
- c. to be reduced to the ranks.

10. We have perused the DCM proceedings. The appellant pleaded “not guilty” to both the charges. He was represented by a Retired Officer as his Defence Counsel. PW1 – JW S C Naar during his cross examination stated that the Stn Cdr Air Commodore R D Limaye had addressed all senior NCOs on 1 Wg Air Force with regard to performing of duties by Sgts. Barring one Sgt everyone accepted guard duty. PW1 had stated that he himself had never done guard duty but the condition at Air Force Stn Srinagar was not like other Air Force Stations since militancy and terrorist activities were a major threat.

PW2 Flight Lt Ashok Kumar stated that he had put in 7 & half year service and during his tenure he had not seen Sgts being put on guard duty. He had however, detailed Sgts on guard duty after publication of station standing order no. IW/C1501/1/P-1 dt 25 Oct 1995 on the subject. PW3 JWO B R Verma in his statement stated that he had seen Sgts performing guard duty at Barrack Pore in 1965.

11. We note that there is a normal practice, in the Air Force, that Sgts are not detailed on guard duty, however, the security situation at Airforce Station Srinagar was critical. The Stn Cdr had to find additional personnel for guard duties. He therefore, interacted with the Sgts and convinced them of the requirement for the same. Station standing order IW/C1501/1/P-1 dt 25 Oct 1995 was subsequently published. The need for detailing Sgts on guard duties at Airforce Station Srinagar was an operational requirement and there was no illegality in detailing the appellant for guard duty. The appellant refused to obey orders on two occasions in writing and his trial by DCM was in order. We therefore, uphold the findings and conviction of the DCM. However, we find that the quantum of sentence was excessive and disproportionate. Ordinarily, we would have set aside the sentence and sent the matter back to the SCM or the Authority for passing of the order of sentence afresh in accordance with law and also consistent to the nature of

the offence, that would further lengthen the life of litigation. In view of the time already lost, we deem it proper to convert the sentence of dismissal from service into discharge from the date of dismissal. He shall be entitled to all the pensionary benefits as per Rules.

**Z. U. SHAH
(MEMBER)**

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