

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

**O.A. No. 55 of 2011**

**Ex. Sep. Ranjeet Kumar**

**.....Petitioner**

**Versus**

**Union of India & Ors.**

**.....Respondents**

**For petitioner:** Mr. Rajiv Manglik, Advocate.

**For respondents:** Ms. Barkha Babbar, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.**

**HON'BLE LT. GEN. S.S.DHILLON, MEMBER.**

**J U D G M E N T**

**27.02.2012**

**S.S.Dhillon, Member:**

1. This petition has been filed against the finding and sentence of Summary Court Martial (SCM) of 22<sup>nd</sup> October 2007, wherein the Petitioner was held guilty and sentenced to be dismissed from service and to undergo six months' rigorous imprisonment. The Petitioner also seeks quashing of the order dated 13<sup>th</sup> September 2008, whereby his petition under Section 164(2) of the Army Act was rejected by the Chief of Army Staff.

2. The brief facts that are necessary for appreciating the case are that the Petitioner was enrolled in the Indian Army on 28<sup>th</sup> February 1995 and on 13<sup>th</sup> May 2005 he was posted to 25 Rashtriya Rifles in Jammu & Kashmir. On 22<sup>nd</sup> February 2006, two militants were killed by his unit. The Petitioner protested that the personal belongings of the militants such as money, weapon and ammunition were being taken away by various officers of his

company and objected accordingly. As a consequence of his outspokenness his superiors were annoyed with him and have falsely implicated him in this case by which he was dismissed and suffered rigorous imprisonment. The Petitioner argued that he proceeded on part of annual leave on 13<sup>th</sup> March 2006, before which his entire luggage was checked, both in the unit and at Jammu railway station. The Petitioner reached home on 14<sup>th</sup> March 2006, however, the same day he received a telephone call from his Commanding Officer i.e. CO 25 RR, that he had carried a weapon with him and that he should rejoin the unit. The Petitioner told his CO over the telephone that he had kept the weapon in the unit location and the same day itself, as instructed by his Commanding officer, he left his hometown to report back to his unit. He reached Jammu on 15<sup>th</sup> March 2006 where Lt. Col. K.K. Sharma and two soldiers of his unit were present and the next day they reached his company location. On reaching his company, Maj. P.K. Singh summoned the Petitioner and threatened him stating that 'Do as I say or else you will be encountered' and made him sign many blank pages. Petitioner also submitted that Maj. P.K. Singh told him that a weapon had been found on searching his bag. On 27<sup>th</sup> April 2006, the Petitioner was attached to 27 RR for disciplinary actions under the authority of Army Order 7/2000. The summary of evidence was recorded on 6<sup>th</sup> May 2006 and the SCM was finally held on 22<sup>nd</sup> October 2007. The charge for which he was found guilty is as given below:

**“CHARGE SHEET**

The Accused Number 6487953P Sepoy (Mechanical Transport) Ranjeet Kumar of 25 Rashtriya Rifles (Madras) attached with 27 Rashtriya Rifles, is charged with:-

<u>Army Act</u> Sec 69	Committing a civil offence, that is to say
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	<p>dishonestly receiving stolen property contrary to Section 411 of the Ranbir Penal Code,</p> <p>In that he,</p> <p>at field, on 12<sup>th</sup> March 2006, received and retained one rifle AK-47 (Butt No. 202 Registered No. TK 4681) belonging to No. 15776475W Gunner (DS) Patil Sattappa Maruti, knowing the same to be a stolen property, stolen by Shri Shabir Ahmed, son of Lal Hussain resident of Gonthal.</p>
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3. The first and foremost contention of the Petitioner was that according to the attachment order of 20<sup>th</sup> April 2006, he had been attached to 27 RR under the provisions of Army Order 7/2000, however, his attachment is not covered under this Army Order thereby rendering his attachment illegal. It was further submitted that Army Order 7/2000 specifically prohibits the attachment for trial by SCM. Learned counsel for the Petitioner drew our attention to paragraph 7 of the Army Order which reads as under:

“7. Where attachment is visualised in progressing disciplinary/vigilance cases under the Army Act, including the cases which have been taken over from the Civil (Criminal) Courts for trial under the said Act, the procedure outlined in Para 3 above will be invoked by the competent authorities as specified therein. During attachment the individuals will continue to be held against the strength and appointment of the parent unit and no replacement will be made until completion of the disciplinary proceedings. This power, however, shall not be exercised merely to change the command with a view

to secure award of enhanced punishment/penalty e.g. for a trial by Summary Court Martial.”

4. The specific embargo as urged by learned counsel for the Petitioner was that he could not have been attached for trial by a SCM as mentioned in the last sentence of this paragraph. It was also argued that note 5 of Section 116 of the Army Act stipulates that the circumstances under which the Commanding Officer of a different unit may hold a trial by SCM of a person subject to the Army Act are contained in Regulation for the Army Para 381, and his case did not fall in this category. It was also urged that note 2 of Section 120 of the Army Act stipulates that where the Commanding Officer of an accused is giving material evidence for the prosecution, thereby rendering him ineligible of conducting the SCM, he should apply for a District Court Martial (DCM) so as to secure an impartial trial. Learned counsel urged that this had been further amplified in Para 431 of Regulations for the Army which mandates that all trials for Loss of Arms will be by DCM. Para 431 is extracted below:

“431. Trial for Loss of Arms.-Every NCO or man who loses any arm, whether Government property or private if borne in the unit's arms register, or ammunition thereof will be tried by District Court Martial unless sanction to dispense with the trial is obtained from the division/area commander. In the case of a unit which is isolated, the division/area commander may order trial by Summary Court Martial.”

Learned counsel for the Petitioner, therefore, urged that the Petitioner should not have been tried by a SCM, since the Commanding Officer of the Petitioner was to be called as a witness against him, and that he should have been tried by DCM where he would have received an appropriate and adequate opportunity to defend himself.

5. Learned counsel for the Respondents argued that he would like to address this issue of attachment with 27 RR before proceeding with the other arguments of the Petitioner. Section 116 of the Army Act enumerates the powers of a SCM and is as extracted below:

“116. Summary court-martial.-(1) A summary court-martial may be held by the commanding officer of any corps, department or detachment of the regular Army, and he shall alone constitute the court.

(2) The proceedings shall be attended throughout by two other persons who shall be officers or junior commissioned officers or one of either, and who shall not as such be sworn or affirmed.

6. Section 120(2) of the Army Act is the main provision which is relevant to this particular issue and clearly stipulates that for any offence to be tried under Section 69 of the Army Act, reference was required to be made to an officer empowered to convene a DCM, and only then could the Commanding Officer try any accused. Section 120(2) is as extracted below:

“120(2) When there is no grave reason for immediate action and reference can without detriment to discipline be made to the officer empowered to convene a district court martial or on active service a summary general court martial for the trial of the

alleged offender, an officer holding a summary court martial shall not try without such reference any offence punishable under any of the Sections 34, 37 and 69, or any offence against the officer holding the court.”

7. It was submitted that in the instant case since the Commanding Officer of the Petitioner was to be a witness against the Petitioner and it would not have been feasible for him to conduct the SCM. To ensure that proper justice and fair trial was given to the petitioner, and that he was afforded full opportunity to defend himself, it was necessary to attach the Petitioner to another unit and also have the entire proceedings conducted by an independent CO. Accordingly the matter was referred to GOC, Counter Insurgency Force (Romeo), who was the authority empowered to convene a DCM, and he in his capacity as the competent authority has directed that the trial be carried out by SCM by Commanding Officer 27 Rashtriya Rifles. Arguing on the issue of Army Order 7 of 2000, learned counsel for the Respondents stated that the essence of the last sentence of the paragraph was not to debar any trial by a SCM but to ensure that there should be no change of command with a view to secure award of enhanced punishment/penalty. This sentence reads as such “This power, however, shall not be exercised merely to change the command with a view to secure award of enhanced punishment/penalty e.g. for a trial by Summary Court Martial.” A harmonious construction of this provision implies that attachment to another unit should not be for the purpose of securing an enhanced punishment/penalty. Respondents also argued that the notes to Section 116 and 120 of the Army Act as urged by the Petitioner were not part of the

statute. These notes have been included for administrative convenience of Army officers and do not have the force of law. In any case, note 5 of Section 116 of the Army Act permits attachment of individuals who are deserters but does not debar attachment on other grounds/eventualities as enumerated in Army Order 7 of 2000. Furthermore note 2 of Section 120 of the Army Act merely states that the CO should “apply for a DCM” and in the instant case he has applied to GOC CI (F) Romeo who is the competent authority to convene a DCM who has decided that the trial should be conducted by an SCM and not DCM. Para 381 of the Army Regulations lay down eventualities under which persons deserting the Army could be tried by SCM by CO of other units. However, it does not debar attachment of soldiers to other units for processing disciplinary cases as enumerated in Army Order 7/2000. Para 431 of the Army Regulations deal with trial of individuals by DCM in case of loss of weapon, whereas in this case the charge was for dishonestly receiving stolen property under Section 411 of Ranbir Penal Code. All in all, no prejudice has been caused to the Petitioner by his trial by CO 27 RR as CO 25 RR could not have conducted his trial keeping in view the principles of natural justice and law. The competent authority who could convene a DCM, has ordered trial by an SCM and there is nothing illegal or malafide in such decision. Learned counsel for the Respondents also urged that in the case of the Petitioner he had pleaded guilty and had accepted the charge that had been framed against him, therefore, there would not have been any substantial difference to the final outcome, even if the trial has been conducted by the DCM.

8. Learned counsel for the Petitioner went on to argue that no Court of Inquiry had been held against him and he had not been present during the conduct of any such inquiry. If, at all, any such inquiry has been conducted it had been done on the basis of the blank pages that he was made to sign by Maj. P.K. Singh. This illegality of not holding any Court of Inquiry has been compounded by the fact that no hearing under Army Rule 22 was held, thereby in the absence of non-compliance of Rule 22 of the Army Rules and not holding of any Court of Inquiry, there was no case against him. It was also pointed out that even at the summary of evidence the statements of various witnesses were recorded but he was not afforded an opportunity to cross-examine them. A mere notation has been appended below the statement of each witness that “the accused declined to cross-examine the witness,” and his signatures have not been obtained below the testimony of the witnesses.

9. Learned counsel for the Petitioner also indicated that all along he has stated that the so-called weapon which was recovered had been hidden below the sand bag of the luggage vehicle of his unit and that he had not taken the weapon to his hometown. It was also argued that the Kote Register attached with the proceedings clearly shows that the weapon which he has supposedly obtained illegally did not bear the sequential dates and in actual fact till 16<sup>th</sup> March 2006 it was in the Kote itself. Learned counsel also argued that the main culprit i.e. civilian Shabir Ahmed, who has been mentioned in the charge sheet also, has been let off and no action has been taken against him.



10. A reply has been filed by the Respondents who strongly urged that these issues which are now being raised by the Petitioner would not stand legal scrutiny as the Petitioner has pleaded guilty during the SCM proceedings and has accepted the offence. However, it was argued that a Court of Inquiry had been held wherein the provisions of Army Rule 180 had been complied with and the petitioner had been given full opportunity to cross-examine each witness who appeared before the Court of Inquiry and his signature obtained against the statement of each such witness. We have heard learned counsel for the parties and perused the original record of the Court of Inquiry which has been placed before us, and note that the signature of the Petitioner appear below the testimony of the witnesses. Learned counsel for the Respondents urged that the contention of the Petitioner that he had been made to sign on some blank pages was a figment of imagination and was not possible because his signature appeared at different places on different pages and all this could not have been so meticulously fabricated. With reference to Army Rule 22, learned counsel for the Respondents argued that Army Rule 22 has a special provision that where a Court of Inquiry has been held with full compliance of Army Rule 180, then a hearing under Army Rule 22 was not necessary and could be dispensed with. In the case of the Petitioner since a Court of Inquiry with compliance of Army Rule 180 has been held, the Respondents have decided not to hold the hearing under Army Rule 22. With reference to the statement of the Petitioner that he had hidden the weapon below the sand bags of the luggage vehicle, learned counsel for the Respondents drew our attention to the Petitioner's own statement given at the summary of evidence that "I brought out the weapon and magazine from my baggage and handed it over to the Company Commander. It was the same

rifle AK-47 which was lost and was issued to No. 15776475W Gnr (DS) Patil Satapa Maruti.” In addition to his own statement PW-4 Maj. P.K. Singh his Company Commander, and PW-6 Col. P.S. Gothra, his Commanding Officer have both testified, in the presence of the Petitioner, that the weapon was recovered from the possession of the Petitioner and there has been no cross-examination whatsoever on this count. Therefore, this was a total lie which the Petitioner was indulging in to save his skin. Learned counsel for the Respondents also stated that at the summary of evidence the accused is not required to append his signature on the testimony of each witness and is only required to sign his own statement, which has been done in this case. However the complete proceedings have been attended throughout by an independent witness and his signature appeared below the testimony of each witness and also at the end of the proceedings. Furthermore, the officer conducting the summary of evidence has also certified full compliance of Army Rule 23. Therefore the record clearly shows that ample and adequate opportunity was given to the Petitioner to put across his defence and he has done so by making a statement at the summary of evidence. Learned counsel for the Respondents also argued that the Kote register need not necessarily be sequential in nature and would depend upon the date of withdrawal and deposit of a particular weapon. The contention of the Petitioner that Gnr (DS) Patil Satapa Maruti was supposedly on sentry duty with his weapon at the time when it was supposed to have been stolen by civilian Shabir and handed over to the Petitioner is incorrect because the testimony of Gnr (DS) Patil Satapa Maruti does not state any such fact. The statement as given by Gnr (DS) Patil Satapa Maruti is only that at 2045 hours on 12<sup>th</sup> March 2006 he found his rifle AK-47 missing from the lines and

despite exhaustive search he was unable to recover his weapon. Lastly, learned counsel for the Respondents stated that the action against civilian Shabir was not a matter of this petition and they had no knowledge as to what action has been taken against civilian Shabir.

11. We have perused the Court of Inquiry and the other documents placed before us and also given the best of consideration to the arguments of the learned counsel for the parties and are of the opinion that there was no illegality in the attachment of the Petitioner to 27 RR for disciplinary purposes since his own CO i.e. CO 25 RR was incapable of conducting the SCM since he was a witness. The matter was referred to the competent authority who could convene a DCM, who in his discretion has ordered trial by SCM. We do not find anything illegal in this action by the competent authority. Keeping in view the other arguments as above, we do not find any ground to interfere with the findings and sentence of the SCM. Accordingly, the petition is dismissed with no order as to costs.

**A.K. MATHUR  
(Chairperson)**

**S.S. DHILLON  
(Member)**

**New Delhi  
February 27, 2012  
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