

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

T.A. No. 307 of 2009
Writ Petition (Civil) No. 3501 of 1996

Lt Col S. Kapoor (Since deceased)
Through: LRs

.....Petitioners

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. Virender Kumar, Advocate.
For respondents: Mr. Ajai Bhalla, Advocate.

AND

T.A. No. 250 of 2009
Writ Petition (Civil) No. 1399 of 1996

Paramjit Singh (Since deceased)
Through: LRs

.....Petitioners

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. Amar Pal, Advocate.
For respondents: Mr. Ajai Bhalla, 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
03.01.2012

S.S.Dhillon, Member:

1. The issues involved in Lt. Col. S. Kapoor v. Union of India & Ors. (TA No. 307 of 2009) and Paramjit Singh v. Union of India & Ors. (TA No.250 of 2009) arise from a joint trial of these two petitioners and the facts are common in these two cases. Petitioner in TA No. 307 of 2009 Lt. Col. S.Kapoor died on 21st October 1997 and the Petitioner in TA No. 250 of 2009

TA Nos. 307 & 250 of 2009

Sub. Paramjit Singh died on 24th December 2010. Their legal representatives were placed on record. Because of the common facts and circumstances in these two cases they are being disposed of by a common judgment. Both Petitioners have prayed that the findings and sentence of the GCM be set aside and all consequential benefits accrue to them. The charge against both Petitioners is as under:

"CHARGE SHEET"

The accused no. 1, IC-13848L Lt.Col. Santosh Kappor of Composite Food Laboratory, Army Service Corps, Bombay, an officer holding a permanent commission in the Regular Army and accused no. 2, JC-182745N Nb/Sub Clerk (Store) Paramjit Singh of 529 ASC Batallion, both attached 259 Company ASC (suplly) Type 'G' are charged with:-

Army Act Section 52 (f)
Read with
Section 34 of the IPC

Such an offence as is mentioned in Clause (f) of Section 52 of the Army Act with intent to defraud.

in that they together,

at Jammu, between 29 April 90 and 31 Oct 90, while being contract Operating Officer and bulk inspecting officer respectively in respect of Accepted Tenders (contracts) No. J-13022/3/162/90 PUR III dated 26 Mar 90 intent to defraud, operated the said contracts by accepting from M/s Jammu and Kashmir Co-operative Marketing Federation 637 Metric Tons of DAL ARHAR of lower specification than ASC specification No. 44A as prescribed in said contracts."

2. In TA No. 307 of 2009, Lt. Col. S. Kapoor has confined his petition to the release of his pension, gratuity and leave encashment allowances. The Petitioner was commissioned on 11th December 1962 as a Technical Officer in the Indian Army's Food Inspection Organisation which at that point of time

was an independent cadre of the Army Supply Corps (ASC). During the course of service, the Petitioner worked honestly and sincerely and secured his timely promotions. He was promoted as a Lt. Col. on 6th April 1981 and was charged for the offence on 17th April 1993. The GCM was convened on 20th April 1993 wherein he was found guilty and sentenced to be dismissed from service on 23rd September 1993. The sentence was illegally ordered to be revised by the confirming authority and on 21st October 1993, the GCM reconvened and in a very arbitrary and adhoc manner enhanced the sentence to cashiering and five months' rigorous imprisonment. The sentence was confirmed by the confirming authority on 23rd October 1993. The Petitioner however argued that the sentence had not been promulgated, hence in the absence of such promulgation the proceedings of the GCM were incomplete. The present petition was filed in the Hon'ble Delhi High Court in September 1996 and after the formation of this Tribunal it was transferred for adjudication.

3. The Petitioner urged that he had been the Commanding Officer of various composite food laboratories and food inspection units and these units which functioned under him had unrestricted powers to exercise quality control on all food supplies including that received from the ASC. Maj. Gen. Gorakh Nath initiated a proposal to merge his organisation with the ASC. The Petitioner opposed the proposal and consequently fell into the bad books of Maj. Gen. Gorakh Nath. When Maj. Gen. Gorakh Nath, on promotion, became the Director General Supplies and Transport, he openly became vindictive against the Petitioner and arbitrarily framed him in this case.

4. The first issue raised by the Petitioner was that in the charge sheet the place of signing had been shown as 'field' whereas he was serving in Jammu which was not a field area. Since offences received higher punishment in field area vis-a-vis peace stations, he had been prejudiced by wrongly showing the place of occurrence of offence as 'Field', instead of 'Jammu'. Such illegality in the charge sheet based on which the GCM found him guilty was therefore bad in law. Learned counsel for the Petitioner also argued that Brigadier Prakash Gokaran who had convened the GCM did not have the warrant to convene such GCM. It was also argued that such warrant has to be mandated for a specific officer and cannot be a generalised warrant which permitted an official to overstep his authority. Petitioner also argued that the charge sheet had been signed on the same day, and on the same typewriter, by his Commanding Officer as well as by Brigadier Prakash Gokaran who convened the GCM. This displayed undue haste and lack of application of mind while convening the GCM. Learned counsel for the Petitioner drew our attention to Sections 109 and 111 of the Army Act wherein the authority for convening a GCM has been defined.

5. Petitioner next strongly contested the fact that the confirming authority has no power to enhance the sentence and in this regard referred to Section 158 (2) of the Army Act which reads as under:

"158. Power of confirming authority to mitigate, remit or commute sentences.-(1) Subject to such restrictions, reservations or conditions as may be contained in any warrant issued under section 154 or section 155 and to the provision of sub-section (2), a confirming authority may, when confirming the sentence of a court-martial, mitigate or remit the

punishment thereby awarded, or commute that punishment for any punishment or punishment lower in the scale laid down in section 71.

(2) A sentence of transportation shall not be commuted for a sentence of imprisonment for a term exceeding the term of transportation awarded by the court."

Therefore, since the confirming authority did not have the power to enhance the sentence, his sentence stood at dismissal and not cashiering combined with five months' rigorous imprisonment. Petitioner also argued that he had already been in military custody for 158 days prior to his sentencing. Accordingly, since the imprisonment period of five months' had already been served in military custody, therefore, there was no occasion for him to be handed over to the Superintendent, District Jail, Udhampur for serving his sentence. This act by the Respondents of sending him to civil jail notwithstanding the fact that he had already served 158 days in military custody was indicative of bias and malafide of the Respondents. Learned counsel for the Petitioner also argued that since the Petitioner had been commissioned by the President of India, such commission, consequent to cashiering, can only be taken away by the President and none other. In support thereof learned counsel referred to **State of M.P. v. Shantabhai (Smt) & Ors.1995 Supp (2) SCC 28**. Since the GCM proceedings had not been confirmed by the President of India, it could not have been implemented and, therefore, the imprisonment awarded to him had no legal basis.

6. Learned counsel for the Petitioner also urged that since the GCM has not taken away his pensionary and other retiral allowance, he applied on 5th January 1994 for his pension, gratuity and leave encashment which was due to him. The Respondents replied in a very arbitrary manner that his case for pension and other allowances was being progressed with the Ministry of Defence and that this was dependent on the discretion of the President vide Pension Regulations for Army (Part-1), 1961. Thereafter Petitioner carried out exhaustive correspondence with the Respondents resulting in his provident fund being released to him on 18th April 1994. Despite the release of the provident fund, the Respondents issued him a show cause notice after three months i.e. on 18th July 1994 wherein under Regulation 16 of the Pension Regulations for Army (Part-1), 1961 he was asked to show cause as to why retiral and other benefits should not be forfeited. The Petitioner gave an exhaustive reply on 18th August 1994, wherein he brought out the various irregularities committed during the GCM but the Respondents did not see reasons and on 7th June 1995 the Government informed him of the forfeiture of all his retiral allowances which was contrary to the law laid down by the Hon'ble Supreme Court and had thus caused him double jeopardy.

7. Respondents argued that the Petitioner had not touched upon the merits of the GCM but merely some legal issues with regard to the charge sheet, revision of sentence, his illegal imprisonment in civil jail and the non-grant of pensionary and other retiral benefits. Respondents argued that there was no illegality in the charge sheet being signed by the Commanding Officer and Commander 71 sub area (the convening authority for the GCM) on the same date, since both these units are located in the same station this was

done as a matter of routine. However due application of mind with regard to the convening of the GCM was ordered been done on conclusion of the summary of evidence in September 1992. The matter had been referred to DJAG for legal opinion and only thereafter the GCM was ordered on 17th April 1993 and by so doing they have not committed any illegality. The place of signing of the charge sheet by the Commanding Officer and Brigadier Prakash Gokaran has been shown as 'Field' because the station in which these two units were located has been classified as a 'Field' area. By doing so, no prejudice has been caused to the Petitioner. It was also vehemently denied by the Respondents that merely because charge sheet was signed at field, he would be given an enhanced sentence! The offences which are punishable more severely on active service are contained in Section 36 of the Army Act and do not in any manner relate to the offence for which both the Petitioners were charged. These Petitioners were charged under Section 52(f) of the Army Act and there was no substance in the fact that merely signing the charge sheet as 'Field' had in any way prejudiced the Petitioners.

8. Referring to the authority of Brigadier Prakash Gokaran, Commander 71 Sub Area to convene the GCM, Respondents clarified that the officer was holding an A-one warrant in accordance with Section 109 of the Army Act and was, therefore, empowered to convene a GCM. It was also clarified that after confirmation of the proceedings on 23rd October 1993, the proceedings had been promulgated on 25th October 1993 and such record was attached with the proceedings which have been placed on record.

9. Learned counsel for the Respondents argued that Section 158 of the Army Act gives powers to the confirming authority to mitigate, remit or commute any sentence, however, power to revise the findings or sentence is given to the confirming authority under Section 160 of the Act and there was no illegality which had been committed by the confirming authority by ordering such revision of sentence. The confirming authority can asked the GCM to reconvene for reconsideration of the sentence in accordance with Section 160 of the Army Act and this was exactly what had been done. When the GCM reconvened on 21st October 1993 for revision both the Petitioners had been given full opportunity in accordance with law to address the Court and there was no illegality in such revision. With regard to the confirmation of the GCM proceedings, such power is contained in Section 154 of the Army Act which reads as under:

"154. Power to confirm findings and sentence of general court-martial.-The findings and sentences of general courts-martial may be confirmed by the Central Government, or by any officer empowered in this behalf by warrant of the Central Government."

10. In accordance with Section 154 of the Army Act the confirming authority had the power to confirm the GCM proceedings and there is no statute or authority that the Petitioner had been able to show by which only the President is empowered to confirm the GCM proceedings. The Army Act is a creation of Parliament and the confirming authority as given in Section 154 of the Army Act is the competent authority to confirm the GCM proceedings.

11. Learned counsel for the Respondents argued that while the Petitioner has mentioned that he was sent to the Superintendent, District Jail, Udhampur on 25th October 1993, he has not mentioned the fact that the Petitioner was not imprisoned, but was released from custody forthwith by the jail authorities and that he did not undergo any civil imprisonment whatsoever. Form-B i.e. warrant which was signed by his Commanding Officer Col. Balbir Singh clearly stated that the accused had been in custody for 158 days during the trial and is entitled to have that period set off from the rigorous imprisonment of five months awarded by the GCM in view of Section 169A of the Army Act. Accordingly sending him to the district jail was a mere formality and he was released the same day by the jail authorities after taking into account the period of imprisonment already served. This was clearly endorsed by the jail authorities on the Form-B under which they were sent to the District Jail, Udhampur.

12. Referring to the pension, Respondents argued that under Regulation 16 of the Pension Regulations for the Army (Part-1), 1961 "an individual who is dismissed under the Army Act is not eligible for pension and gratuity in respect of previous service". This has been upheld by the Hon'ble Supreme Court in the case of **Union of India & Others v. Subedar Ram Narain & Others (1998) 8 SCC 52**. Accordingly it was at the pleasure of the President that pension could be granted or denied and the Respondents had gone about it legally by issuing him a show cause notice on 18th July 1994 and on receipt of his reply on 18th August 1994, the authorities had applied their mind for a period of over nine months, at the end of which his pension and other retiral benefits were forfeited. Such forfeiture of retiral benefits was in

accordance with the Army Act and the Rules and Regulations and no illegality had been committed.

13. In the case of Sub. Paramjit Singh (TA No. 250 of 2009), learned counsel for the Petitioner drew our attention to the testimony of PW-1 wherein the witness has stated that "107 bags of dal Arhar were in good condition and 35 bags were badly damaged being wet due to rain". It was, therefore, argued that the dal Arhar which had been tested and found unfit, was not because of the poor quality of the dal but because it had been damaged due to rain. Since this was the only issue on merit which was raised by learned counsel for the Petitioner, Respondents drew our attention to the evidence of PW-6 Maj. S.B.A Zaidi and PW-21 Maj. T.S. Sobti. PW-6 Maj. S.B.A. Zaidi has produced ASC specification No. 44-A which gives out the specifications for dal that is accepted by the Armed Forces. He also produced 32 exhibits of the analysis reports in respect of the depot, control and samples of dal Arhar which were received from various supply depots and the reports bearing the identification mark of the sample and the name of the depot from where such stocks were received. These documents were enclosed with the GCM proceedings as exhibit 'GGGG' and were duly considered by the GCM in their deliberations. PW-21 Maj. T.S. Sobti has also testified to the effect that the dal Arhar received from Composite Food Laboratory, Jammu was defective. It was also brought out by the Respondents that the wet dal had been excluded from the charge. Accordingly the findings of the GCM were modified as under:

"The court find that accused No.1 IC-13848L Lt Col Santosh Kapoor of Composite Food Laboratory, Army Service Corps, Bombay, attached to 259

Company ASC (Supply) type 'G' is guilty of the charge with the variation that figures and words "29 Apr 90 and 31 Oct 90" and "637 Metric Tons" shall read as "23 Apr 90 and 12 July 90" and "275.02 Metric Tons" respectively in the particulars of the charge."

14. Therefore the Petitioner was not held guilty for the 637 metric tons as specified in the charge sheet but for 275.052 metric tons which were duly tested in the laboratories. Respondents also pointed out and placed on record the duties of the Bulk Inspecting Inspector which was the appointment that was held by Sub. Paramjit Singh at the time of the offence. It was also stated that out of the 133 lots of dal Arhar from the defective sample 130 lots were inspected by Sub. Paramjit Singh in his capacity as Bulk Inspecting Inspector of CFL, Jammu. It was also argued that M/s. JAKFED which was the contracting agency paid Rs.3.37 lakhs on account of defective quality of this dal Arhar, thereby accepting the fact that the dal supplied by them had been inferior in quality. Learned counsel for the Petitioner argued that the GCM had not given any reason as to why it arrived at the findings of guilty which was a pre-requisite in accordance with Rule 62(1) of Army Rules. Respondents argued that Rule 62(1) of the Army Rules was introduced on 6th December 1993 whereas the GCM was concluded on 25th October 1993. Therefore, in accordance with Rules and Regulations prevalent at that point of time there was no requirement for the GCM to give any reason as to why it arrived at these findings. Learned counsel for the Respondents also indicated that the decision in the cases of **S.N. Mukherjee v. Union of India (1990) 4 SCC 594**, **State of M.P. v. Shantabhai (Smt) & Ors. 1995 Supp (2) SCC 28**

and **Indian Ex-Services League and Ors v. Union of India (1991) 2 SCC 104** as referred to by the Petitioner did not have any relevance in this case.

15. Keeping in view the above and the fact that the charges had not been contested on merits and that the common intention had been adequately proved during the GCM proceedings and that no illegality had been committed during the trial or in denial of retiral benefits to the Petitioners, we do not find any need to intervene in this matter. Accordingly, both the petitions are dismissed with no order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
January 03, 2012
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