

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

T.A. No. 334 of 2009

Writ Petition (Civil) No. 3226 of 1994

Capt. Paramjeet Singh

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. G.K. Sharma, 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

06.01.2012

S.S.Dhillon, Member:

1. This petition was filed by the Petitioner in July 1993 in the Delhi High Court which was transferred to this Tribunal after the formation of this Tribunal. Petitioner sought directions to set aside the GCM proceedings by which he was cashiered and sentenced to 30 months' imprisonment and to reinstate him in service with all consequential benefits.

2. The Petitioner was commissioned on 25th August 1984 as a short service officer in the Army Supply Corps ('ASC') and on 7th October 1989 was posted to Supply Depot, Ambala. Shortly thereafter i.e. on 14th February 1990 the CBI raided the butchery and although there was no specific allegation against the Petitioner, merely to appease the CBI the Army conducted disciplinary proceedings against the Petitioner. Court of Inquiry was held from 21st March to 24th April 1990 wherein Army Rule 180 was not applied against

him and neither was he given an opportunity to cross examine witnesses. This illegality was enough to set aside the GCM proceedings. On 7th July 1992 the Summary of Evidence commenced followed by recording of additional Summary of Evidence and during this period four separate charge sheets were served to him. The first charge sheet was served on 15th July 1992, the second was served on 1st December 1992, the third was served on 5th December 1992 and the final charge sheet was served on 12th January 1993. Serving these four charge sheets in this short period of time showed that there was no case against him and Army authorities were desperately trying to apportion some blame on him in whatever manner they could. Serving these four charge sheets prejudiced him in the fact that he was unaware as to what were the specific charges for which he was presumed guilty. Also, merely serving the charge sheets was inadequate because this was not combined with the hearing under Army Rule 22 which was a mandatory procedure before any disciplinary action could be taken. The final charge sheet of 12th January 1993 on the basis of which he was tried by the GCM is extracted below:

“CHARGE SHEET

The accused, SS-31856M Captain Paramjeet Singh Malhotra of 526 ASC Battalion, attached to 27 Company ASC (Supply) Type ‘G’, an officer holding a short Service Commission in the Regular Army, is charged with:-

<u>First Charge</u> <u>Army Act</u> <u>Sec 57 (a)</u>	In a book signed by him being privy to the making of a false statement, <p style="text-align: center;">In that he,</p> At Ambala Cantonment, while supervising officer, 27 Company ASC (Supply) Type
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	<p>'G' Butchery, signed in token of correctness an entry dated 30 January 1990, in the Green weight/Dry weight Register of Butchery, showing 195 animals slaughtered on that day with their green weight reflected, knowing fully well the said entry to be false.</p>
<p><u>Second Charge</u> <u>Army Act</u> Sec 63</p>	<p>An omission prejudicial to good order and military discipline</p> <p>In that he,</p> <p>at Ambala Cantonment, on 13 February 1990, while supervising officer, 27 Company ASC (Supply) Type 'G' Butchery improperly omitted to carry out the branding of 70 animals after ante-mortem examination, contrary to para 5(b) of Standard Operating Procedure for Butchery Group, Supply Depot ASC Ambala Cantt, dated 09 May 1988, as amended.</p>
<p><u>Third Charge</u> <u>Army Act</u> Sec 63</p>	<p>An omission prejudicial to good order and military discipline</p> <p>In that he,</p> <p>at Ambala Cantonment, on 14 February 1990, while performing the duties of supervising officer, 27 Company ASC (Supply) Type 'G' Butchery improperly failed to ensure that representatives of units sign for the quantity of items collected by them, contrary to para 5(j) of Standard Operating Procedure for Butchery Group Supply Depot ASC, Ambala Cantt, dated 09 May 1988, as amended.</p>

<p><u>Fourth Charge</u> <u>Army Act</u> Sec 52 (f)</p>	<p>Such an offence as is mentioned in Clause (f) of Section 52 of the Army Act with intent to defraud</p> <p>In that he,</p> <p>at Ambala Cantonment, on 14 February 1990, while performing the duties of supervising officer, 27 Company ASC (Supply) Type 'G' Butchery, with intent to defraud, caused the issue of meat to the Army units dribbling with water and containing inedible offals like udder, heart, spleen and infected liver which resulted less issue of authorised quantity of meat.</p>
<p><u>Fifth Charge</u> <u>Army Act</u> Sec 63 (Alternative to fourth charge)</p>	<p>An act prejudicial to good order and military discipline</p> <p>In that he,</p> <p>at Ambala Cantonment, on 14 February 1990, while performing the duties of supervising officer, 27 Company ASC (Supply) Type 'G' Butchery improperly caused the issue of meat to Army Units dribbling with water and containing inedible offals like udder, heart, spleen and infected liver, contrary to para 561 of ASC Training Volume II read with para 86 of special conditions of the Contract Deed for the period from 01 May 1989 to 31 Marc 1990 entered into between the President of India, and M/s Rajan Malik & Co J-219 Saket New Delhi, contractors and thereby less meat in quantity than their authorisation was issued.</p>

3. The GCM was conducted from 27th January 1993 to 4th June 1993 wherein he was held guilty of the first, third and fourth charge and sentenced to 30 months' imprisonment and cashiering from service. The Chief of Army Staff remitted the unexpired portion of the imprisonment, by which time the Petitioner had already served approximately 10 months in custody.

4. The argument propounded by the petitioner was that when he was posted to Supply Depot, Ambala his primary duty was that of "Administrative Officer" and not as of "Supervising Officer Incharge of Butchery (SOIC)". Moreover, being the junior most officer in the unit he was given 9 additional appointments and on 1st December 1989 he was also appointed as "SOIC Butchery", despite his vehement protest that he was not in a position to look after these 10 additional appointments that have been loaded on him in addition to his basic and primary function as Administrative Officer of the supply depot. Petitioner argued that there was a full time JCO Incharge of the Butchery and his duties as given in the standard operating procedure of the supply depot are given below:

"Duties of JCO IC Butchery

6. His specific duties are as under:-

(a) He is responsible for the smooth functioning of the butchery under the orders of SO.

(b) He will ensure that highest standard of cleanliness is maintained in the butchery.

(c) He will ensure that reserve stock of animals is maintained by the contractor at all times.

(d) He will ensure that strict security is observed as regards the segregation pen, hanging room, disposal of rejected meat by the VO and disposal of dead and rejected animals.

(e) He will supervise the slaughter of all animals as per procedure laid down in the orders from time to time. He will be personally responsible to ensure that only Jhatka meat is being issue unless otherwise demanded by a unit.

(f) He will be responsible to observe the slaughtering animals. He will ensure that only branded and segregated animals are slaughtered and will be present throughout the slaughtering times. He will ensure that no water is injected in the carcasses by contractor. He will ensure that the green weight is taken and minimum 5 hrs. setting time is allowed.

(g) He will ensure that books and records maintained in the butchery are kept up to date all times.

(h) He will be responsible to supervise the issue of meat to troops and ensure that correct quantity as per their demand is issued and receipt of the same is obtained.

(j) He will ensure that proper duties are allotted to other NCOs and Sepoy detailed to assist him.

(k) He will ensure that from the time of slaughtering to the time of issue, the butchery will be properly guarded and NCOs/Sepoy will sleep at night in the butchery.

(l) He will be responsible for proper setting of meat in that he will see that the butchers do not use water for any other purpose except for the cleaning of carcasses.

(m) He will ensure that the meat is properly set before the post-mortem is carried out by VO and will be responsible for retail issue to units.”

5. From the above charter of duties of JCO Incharge Butchery it is evident that it was the JCO who was actually controlling all functions of the butchery and Petitioner’s task was merely to “oversee” such functions. The JCO Incharge Butchery also had two Non-Commissioned Officers (‘NCOs’) who stayed in the butchery premises to assist him in his functioning. It was this JCO and the two NCOs who were responsible for receipt of animals, segregation, branding, slaughter and issue of meat as well as making entries in the register. Furthermore, after slaughter the meat was inspected by the Veterinary Officer who was posted to the supply depot and the Petitioner had no role to play in branding the meat for issue. The duties of the Veterinary Officer as given in the standard operating procedure (‘SOP’) of the supply depot are extracted below:

“Duties of VO

9. VO will be responsible for antemortem and post-mortem inspection. His advice as a rule will be accepted unless there are other reasons. He will ensure that only good and hygienic meat is issued to troops. In doing so he will ensure:

(a) That offals which are not edible are removed.

(b) That the meat or the carcasses which is unfit for human consumption is removed.

(c) He will ensure that the rejected meat/carcasses are destroyed either by burning or by deep burying in his presence.

(d) He will ensure that meat inspected by him is properly set and no water is dripping from the carcasses. He will bring to the notice of SO butchery and officers, if any, water is found in the carcasses so that remedial measures can be taken.

(e) He will ensure that VO stamp has been put on each and every carcass including the portion of carcasses after he had carried out the post-mortem exam. (see separate page attached).”

6. The Petitioner used to periodically inspect the documents and initial the various entries after these had been signed by the JCOs. It was the JCO of the butchery who used to issue the meat after it was passed fit for consumption by the Veterinary Officer. The Petitioner also pleaded that this was his first opportunity to work in a butchery and he had not prior experience of its functioning and, therefore, he relied heavily on the JCOs and the NCOs to perform the day to day functioning of the butchery.

7. Petitioner further argued that the entire raid by the Central Bureau of Investigation (‘CBI’) was stage managed by one Shri Om Prakash who was the earlier meat contractor and because he was unable to obtain the contract

for the current year he sought revenge on the hierarchy of the supply depot and implicated them in a false and fabricated case. Shri Om Prakash had filed civil suits in a local court against the Commanding Officer of the supply depot and it was this individual who managed to get the CBI to raid the butchery premises so that he could procure the contract from 1st April 1990. This was evident from the fact that when the CBI raiding party entered the premises on 14th February 1990, Shri Om Prakash accompanied the raiding party and even supplied the weighing machine and other accessories to the CBI team to weigh the meat. The spring balance and other weighing machines supplied by Shri Om Prakash to the CBI team had been tampered with resulting in the meat being under weight. It was also argued that the other officers who were involved with the functioning of the supply depot had not been punished and it was the Petitioner solely, being the junior most officer who had been victimised and punished by the Army in a very arbitrary and illegal manner. Learned counsel for the Petitioner argued that during the GCM proceedings there were various illegalities that were committed. Primarily the Judge Advocate General ('JAG') was prejudiced against the Petitioner and the Petitioner had even put up an application to the court that the JAG should be changed. However, this was not done. On 24th March 1993, the GCM functioned over night from 1600 hours to 0400 hours on 25th march 1993 which was contrary to Army Rule 81 and showed the undue haste with which the Respondents wanted to pinpoint the blame on the Petitioner and punish him. During the GCM proceedings the Petitioner and his counsel were not permitted to ask the questions they wanted to and many witnesses were tutored. Learned counsel for the Petitioner argued that all in all, the Petitioner had been denied a fair trial by the GCM.

8. With regard to his first charge the primary arguments of the Petitioner was that 195 animals had been slaughtered on 30th/31st January in two lots i.e. 155 animals in one occasion and 40 animals on another occasion, however, a single entry of 195 animals had been done by the NCO and this did not make any material difference to the fact that 195 animals had actually been slaughtered. The second argument propounded by the Petitioner was that the green weight/dry weight registers were not auditable documents and were used only for functional purposes and, therefore, great reliance cannot be placed on these two registers. Learned counsel for the Petitioner drew our attention to the statement of the Petitioner during the GCM proceedings wherein he has said “on 31st January 1990, 155 animals and 40 animals had been slaughtered in two lots, however, one combined entry in this regard was made by the NCO, Incharge of the Butchery, Hav. D.C. Prasad. Since 195 animals had in fact been slaughtered for supply of meat on 31st January 1990 making one entry in regard to green weight cannot be termed as false.” Learned counsel also drew our attention to exhibit ‘T’ of the GCM wherein the green/dry weight register entry for 195 animals was clearly visible. In addition, learned counsel drew our attention to exhibit ‘V’ which was the receipt voucher of the meat issued on 30th/31st January 1990 which again showed that 195 animals had been slaughtered. In addition, exhibit ‘II’ which is the daily summary of butchery as on 31st January 1990 a total of 2140 Kgs. of meat had been issued to the various units as mentioned in the exhibits. PW-13 Hav. D.N. Prasad has also testified that the entry in the green weight register used to be made either by the JCO or by him. With reference to the third charge i.e. failure to ensure that representatives of units signed for the quality of items collected by them, the Petitioner argued that the duties of the

SOIC butchery are clearly given in the SOP of the supply depot and it was not his responsibility to get these vouchers signed from the units. In any case the issue vouchers for that day have been exhibited during the GCM proceedings from exhibit W to W-9 wherein the receipt by the units is clearly visible, hence there is no substance in this charge. The Commanding Officer, Col. Gopalaswamy (PW-7) has also testified that “green weight/dry weight register is not auditable and accountable document. This register is maintained for official aspect. The green weight is taken immediately after slaughter but before hanging the carcasses. Green weight/dry weight help the Supervising Officer butchery to plan and decide the number of animals to be slaughtered to meet the demand for meat in future”.

9. With reference to the fourth and last charge for which he was held guilty, learned counsel for the Petitioner referred to the testimony of PW-7 Col. Gopalaswamy, Commanding Officer, Supply Depot who has stated that on 13th February i.e. one day before the raid, the petitioner was on casual leave. Therefore the Petitioner could not be held responsible for any act of omission or commission immediately on joining as there was no premeditated action on his part. The witness also testified that he did not notice any dribbling of water in the butchery. PW-11, Sub. G.L. Kalra has also testified that since the carcasses were dirty they needed extensive washing which resulted in the carcasses being wet and this was further pointed out by the fact that there was no electricity in the butchery that night. Therefore it was inevitable that the carcasses would need more time to set. Because of lack of electricity and the fact that it was being washed, the Commanding Officer (PW-7) had ordered that meat should remain hanging for at least one more

hour to enable it to set before issuing to troops. Col. Mohanty (PW-2) who accompanied the CBI team has testified that “during random check carried out by giving incision I did not notice any injected water in any of the carcasses.” Learned counsel for the Petitioner summed up his argument by saying that for this particular charge there was no evidence to prove that the carcasses were in fact wet and dripping and furthermore all the actions which resulted in this deficiency were attributable to the Veterinary Officer/JCO/Incharge of the butchery and that the Petitioner had no role to play whatsoever.

10. Respondents contested the arguments of the Petitioner. The pre-GCM issues were first addressed by the counsel wherein it was argued that the Court of Inquiry which was convened was broad based and was merely a fact finding enquiry not directed at any specific individual. The Court of Inquiry merely established a prima facie case against the Petitioner after which during the recording of the Summary of Evidence full opportunity was given to the Petitioner under Rules 22 and 25 of the Army Rules to put across his defence. Therefore there was no bias or prejudice against the Petitioner by not applying Rule 180 of Army Rule during the course of inquiry and since Rules 22, 23 and 25 of Army Rules have been observed during the recording of the Summary of Evidence, there had been no prejudice against the Petitioner. These issues had been raised by the Petitioner during the GCM proceedings and had been disposed of by the GCM on merit after due application of mind. Furthermore, it was argued that at this point of time such irregularities do not have any bearing since the Petitioner was tried and convicted on the basis of the GCM and not on the Court of Inquiry or Summary of Evidence proceedings. Full opportunity had been given to the Petitioner during the

GCM to cross-examine witnesses and to put across his defence in the manner he considered appropriate and there had been no denial of rights to the Petitioner. Referring to the four charge sheets that had been served on the Petitioner, learned counsel for the Respondents clarified that the first charge sheet of 15th July 1992 was a tentative charge sheet given to the Petitioner before recording the Summary of Evidence, the charge sheet of 1st December 1992 was to be given to the Petitioner before recording the additional Summary of Evidence but since the Petitioner was sick the charge sheet was given on 5th December 1992 when he actually presented himself. Furthermore, both these charge sheets of 1st and 5th December were draft charge sheets. The final charge sheet of 12th January 1993 was the one on which he was court-martialled. Learned counsel for the Respondents argued that the plea of jurisdiction under Rule 51 of Army Rules raised by the defence during the GCM was rejected on merits. All the issues now raised i.e. irregularities in the Court of Inquiry, Summary of Evidence and charge sheets etc. were covered therein and rejected after due application of mind. In any case the Petitioner was tried and sentenced on the basis of the GCM proceedings wherein all opportunities were given to him to present his case and the GCM was conducted in a transparent, judicious and impartial manner. Learned counsel for the Respondents also clarified that the other two officers posted at that point of time in the butchery i.e. Col. B. Gopalaswamy, the Commanding Officer and Lt. Col. G.S. Srivastava, the Veterinary Officer were also tried and convicted by the GCM and, therefore, it was improper of the Petitioner to say that he was the sole victim of this raid. In addition to these officers, disciplinary actions were taken against the JCOs and NCOs also. Therefore, there was not victimisation of the Petitioner. Lastly it was stated

that the so-called application against the JAG, by the Petitioner during the trial had been considered by the GCM and rejected on merit.

11. Respondents further argued that in a minor unit like the Supply Depot wherein only three officers are posted, the various responsibilities are equally distributed amongst them and the so-called additional responsibilities given to the Petitioner were very minor duties which are being blown out of proportion. In any case, prior to the raid on 14th February 1990 at no point of time has the Petitioner made any representation to his Commanding Officer either in writing or verbally, that these duties were too onerous and that he could not attend to them. In any case, the crux of the matter was that he was present in the butchery during the slaughter/issue of meat and was therefore responsible for the illegalities that occurred during this period. The duties of the SOIC butchery which were issued much before the arrival of the Petitioner in the Depot are as extracted below:

“Duties of SO Butchery

5. SO Butchery will be responsible for the proper and efficient functioning of the butchery.

He will:-

(a) Be responsible for passing goat and sheep and maintaining the reserve stock of animals at all times.

(b) Ensure that proper branding of animals is carried out without any cruelty to the animals and the branding so done lasts till the carcass is passed fit by the VO.

(c) Be personally responsible for the books and records showing reserve stock and animals passed.

The records must be complete and up to date at all

times and signed by him duly completed in all respects.

(d) Visit butchery during slaughter hours at least once a week.

(e) Ensure that the butchery surroundings are kept scrupulously clean.

(f) Ensure that branding irons are kept in sealed box in quarter guard and take the same whenever required for branding the animals.

(g) Ensure that branding irons are not left over with anybody in the butchery. He will also ensure that weight and measures are calibrated periodically by the workshop.

(h) He will ensure that the quality of meat always confirms to ASC specifications and no deviation from these specifications will be allowed. In doing so he will ensure that the contractor does not use unfair means such as use of water except for cleaning of carcasses.

(j) He will be present in the butchery throughout the issue time and will ensure that units got their entitlements. He will also ensure that every unit rep signs for the qty and quality of the items being following documents meant in the butchery for its correctness and will be responsible to put up the same to Comdt once a month:-

(i) Unit retain invoice (IAFS-1555).

(ii) Units distribution register.

- (iii) Units central ledger of stocks and sups.
- (iv) Monthly CRV's.
- (v) Weight scales testing Register.
- (vi) GFO and Complaint register.
- (vii) Animals branding register and rejection register.
- (viii) VO's inspection register.
- (ix) Daily LP Issue register.
- (x) Civ passes register."

12. It is, therefore, evident that the SOIC butchery had a very important role to play in the day to day functioning of the butchery and he could not palm off his responsibilities on his subordinate JCOs/NCOs.

13. Referring to the role of Shri Om Prakash, Respondents argued that this so-called role of Shri Om Prakash was a mere figment of imagination and the individual was not present during the raid. The CBI team i.e. PW-6 Sh. P.D. Meena, DSP, CBI has clearly stated that the meat was weighed on the weighing machine of the butchery and that no weighing machines were given by Shri Om Prakash. The raid that was conducted by the CBI team was with full concurrence and assistance of the higher military authorities which is evident from the fact that two expert Army officers i.e. a Veterinary Officer and a Supply Specialist were detailed to assist the CBI team. Therefore the raid had the approval of the military authorities.

14. With reference to the first charge i.e. of the slaughter of 195 animals on 30th January 1990, learned counsel for Respondents argued that on 28th January 1990 a total of 345 animals had been slaughtered and there was nil

balance of livestock for slaughter. On 30th January 1990 the contractor produced 165 animals out of which 10 were rejected and 155 animals were slaughtered. This is in the testimony of Lt. Col. G.S. Srivastava PW-10 as well as in Exhibits R & S. Accordingly when only 155 animals had been segregated for slaughter on 30th January 1990 it was not possible that 195 animals could have been slaughtered. Therefore the entry in the green weight and dry register (Exhibit P) which has been done by the Petitioner was false and the petitioner has authenticated this false statement in the official register knowing fully well that it was a false entry. It is an admitted position that on 30th January 1990 the Petitioner was performing duties of SOIC butchery and that the initials in the green weight and dry weight register on 30th January 1990 are of the Petitioner. Legally it therefore falls that since only 155 animals were slaughtered and not 195 animals, issue of 2397 Kg of meat was not feasible. It is in the testimony of Lt. Col. Srivastava (PW-10) that on 31st January 1990 he has conducted post-mortem examination of only 155 carcasses (Exhibit-S).

15. Referring to third charge, learned counsel for the Respondents drew our attention to the fact that at paragraph 5 (J-1) it is clearly mentioned that SOIC butchery i.e. the Petitioner is responsible to maintain the unit invoice (IAFS-1555). Invoice IAFS-1555 is a standard two page document which had entries regarding issue of all meat. The voucher referred to by the Petitioner at Exhibit W to W-9 is not IAFS-1555, as should have been done, but an adhoc form which was contrary to the Regulations of SOPs of the butchery. Hav. D.N. Prasad (PW-13) has testified that he had prepared invoice IAFS-1555 in the form of Exhibit W which was not in conformity with the standard

form as required by rules. A sample standard form of IAFS-1555 has been exhibited as Exhibit-OO. Consequently, the entries in Exhibits W to W-9 show only the authorisation of meat demanded by the units and does not reflect the quantities which have been actually issued to the troops. The Petitioner was present throughout when the meat was issued on 14th February 2012 and was aware that the form i.e. Exhibit W to W-9 which was passed off as IAFS-1555, was accordingly incorrect and contrary to all ASC Regulations and SOPs. Therefore he failed to ensure that the unit representatives signed for the quantity and quality of the items being received by them and he has been correctly found guilty of this charge.

16. Touching upon the fourth and last charge for which the Petitioner was held guilty i.e. causing issue of meat to the Army units dripping with water and containing offal like udders, spleen and infected liver, learned counsel for the Respondents drew our attention to the memo of the CBI team which was exhibited as Exhibit-X. This document has been signed by the CBI team i.e. Shri P.D. Meena, DSP CBI, Shri Ashwini Kumar, Inspector CBI, Shri P.D.S. Maan, Inspector CBI, Lt. Col. Mohanty the Veterinary Officer who assisted the CBI team, Maj. N.M. Mehta, Supply Specialist who assisted the CBI team as well as by the Petitioner and Lt. Col. G.S. Srivastava who was the Veterinary Officer of the butchery. This memo alongwith the testimony of Shri P.D. Meena (PW-6) clearly brings out that not only was the meat issued in lesser quantity, but undesirable offals were also issued alongwith the meat. This witness has also stated that no undesirable offals had been incinerated because when he inspected the incinerator at 1200 hours on 14th February 1990 he did not find any sign of fire or burnt meat in the incinerator.

17. We have perused the record of the GCM proceedings including the exhibits. It is an accepted position that notwithstanding the arguments put across by the Petitioner he was present in the butchery during the raid by the CBI team on 14th February 1990. The testimony of the CBI officials and the procedure adopted by them in the conduct of the raid proves beyond doubt that there was mismanagement in the butchery on that day. The GCM has been conducted in a transparent, fair and impartial manner and we do not find any necessity to interfere with the findings and sentence awarded by the GCM.

18. The petition is accordingly dismissed with no order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
January 06, 2012
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