

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

T.A. No. 362 of 2009

Writ Petition (Civil) No. 1774 of 1999

Ex. Cpl. Mahesh Kumar

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. S.C. Tomar, 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

29.05.2012

S.S.Dhillon, Member:

1. The Petitioner seeks quashing of the District Court Martial (DCM) proceedings held from 22nd January to 16th May 1997 by which he was sentenced to ten months' rigorous imprisonment, reduction in ranks and dismissal from service. He seeks to be reinstated in service with all consequential benefits. This petition was filed in the Hon'ble Delhi High Court on 26th March 1999 and was transferred to this Tribunal after its formation in September 2009.

2. The petitioner joined the Indian Air Force as a Trade Craftsman in the Indian Air Force Police on 29th December 1986. Over a period of time he was promoted to Corporal on 29th December 1991. His problems arose from the

year 1994 onwards when he was posted at 23 Equipment Depot (ED) at Air Force Station, Awadi. The functional environment including his superior officers at 23 ED was not conducive to efficient functioning and he was harassed from time to time. In 1995, the Petitioner was referred to the psychiatrist at Air Force Command Hospital, Bangalore on AFMS-10. This referral was nothing but harassment and he remained in the psychiatric ward for about 20 days after which he was discharged being normal. The Petitioner was again referred to the psychiatrist at Military Hospital, Madras on AFMS-10 but he was again declared fit by the psychiatrist. The Petitioner argued that he was under tremendous stress and strain which was an outcome of the unfavourable environment created by the authorities. The Petitioner even submitted an application for an interview with the Chief of Air Staff which was denied to him. During this period he was constantly tried summarily for minor offences and awarded punishments.

3. In January 1995 the petitioner was attached to No. 2 P & S (U) Delhi for republic day parade duty. There were a number of Air Force personnel deployed for similar duties. As a rule all these personnel after performing their duties used to be given off day. There were no orders or instructions for off duty personnel and they were only required during their rehearsals. 15th January 1995 was a Sunday and the Petitioner took an off day on that day. However, he was present in the Unit and was not absent without leave as charged by the authorities.

4. The Petitioner later applied for leave from 5th December 1995 to 3rd January 1996 on compassionate ground as his brother had met with an

accident. Since his leave was recommended by his Section Commander, the only thing that remained for him was to collect his form IAFF (P3) and book himself out from the guard room. Being in a fix because of his brother's accident he did not collect his IAFF(P3) form. Because of domestic problems he could not report back on due day i.e. on 3rd January 1996 but reported for duty on 13th January 1996. However he was surprised to learn that he was charged for being absent from 5th December 1995 till 13th January 1996, meaning thereby that even his period of leave from 5th December 1995 till 13th January 1996 had been construed as absent without leave.

5. The petitioner argued that a small altercation on the evening of 26th May 1996 had been split into three different charges merely to give a grim picture of the Petitioner. The main perpetrator of this incident was Cpl. N. Kumar who was alongwith the Petitioner the entire evening. However because of bias and arbitrariness of the authorities, the Petitioner has been punished very severely by DCM whereas Cpl. N. Kumar has been disposed of summarily by the award of 'severe reprimand'. It was also argued that Charge No. 5 for not wearing a helmet while travelling as a pillion rider on 1st November 1995 was a very frivolous charge which at best should have been dealt with by a rebuke let alone being tried summarily. Reverting to the incident of 26th May 1996, the Petitioner argued that he along with Cpl. N. Kumar and Cpl. Munde went to see a movie at the Air Force cinema hall located inside the Air Force camp at Awadi (Madras). Cpl. N. Kumar got down from the scooter and it was he who pushed the watchman on duty at the entrance gate and entered the complex. The Petitioner had not been stopped by the watchman since Cpl. N.Kumar had gone ahead of him and had already

entered the complex. Thereafter the Petitioner had politely requested the Manager Shri Ramachandran to give them tickets for the next show. In the meantime, Flying Officer Reddy came to the scene and started shouting at the Petitioner and asked him and Cpl. Mahesh and Cpl. Munde to get out of the cinema hall. Flying Officer Reddy told the Manager to take the Petitioner's particulars and the Petitioner went into the office of the Manager wherein he asked the Manager "Does he not know me". Petitioner argued that he and Cpl. Mahesh had given their particulars to Flying Officer Reddy as desired by him but later on he kept insisting that he wanted the Petitioner to be placed under close arrest. When the Petitioner asked Flying Officer Reddy as to why they were being placed under close arrest as they had not committed any crime or endangered life of anyone, he asked them to go to the guard room. Petitioner contended that it was Cpl. N. Kumar who had told the Flying Officer Reddy that "do whatever you want". When the Orderly Officer came to the scene and asked the Petitioner and Cpl. N. Kumar to get into the vehicle, it was Cpl. N. Kumar who told the Orderly Officer that they would go to the main guard room on their own to which the Orderly Officer agreed. When the Petitioner was told that he was to be placed under close arrest, he asked Flying Officer Reddy and Sqn. Ldr. Srinivasan, who was the Duty Officer, as to why he had been placed under close arrest. Flying Officer Reddy told the Orderly Officer and the Guard Commander to use force for putting the petitioner and Cpl. Mahesh under close arrest. At this point of time it was Cpl. N. Kumar who replied that that "we are not under close arrest and do whatever you want".

6. On 25th June 1996 there was preparatory work in progress for inspection of AOC-in-C. At about 0930 hours the Petitioner saw Lascar Thangaraj using some paint which he had kept for his own personal use and when he asked Lascar Thangaraj whether he had taken his paint, the Lascar started arguing with the Petitioner in Tamil and charged towards him. In the process Lascar Thangaraj was abusing the Petitioner in Tamil and he only retaliated by hitting him back. There were two other Lascars who also joined him and started fighting with the Petitioner. It was Sgt. U.S. Singh and Cpl. Yadav who came to the spot and separated the two.

7. Learned counsel for the petitioner argued that as per the conduct sheet of the Petitioner he was summarily tried for some offences on 26th March 1995, 30th March 1995 and 2nd May 1995. However there was no reference to any act of indiscipline or omission by him for the period January/February 1995. It was to be assumed that the authorities were aware of the offences committed by the petitioner in January/February 1995 and only trying him for the charges in March, April and May 1995 it was presumed that the authorities had condoned those offences. Learned counsel argued that Air Force Rule 61 defines condonation and in this matter the four charges for absence without leave in the month of January and February 1995 therefore stood condoned. Furthermore the fourth charge showed him as being absent without leave from 1300 hours on 27th January 1995 till 0800 hours on 24th February 1995. However, he has also been charged for being absent without leave from 0730 hours on 24th February 1995 till 1010 hours on 26th March 1995. Therefore it was inexplicable as to how one absence period could finish at 0800 hours on 24th February 1995 and another absence period could start

from 0730 hours on 24th February 1995. This becomes all the more confusing because one charge had been levied by 2 P&S (Unit), Delhi whereas the other charge had been levied by 23 ED at Awadi. This displayed the confusion in the minds of the Respondents and their bias. Learned counsel referred to the fifth charge in the DCM of travelling on a scooter without helmet and reiterated that this was a very minor offence for which the maximum punishment could be a rebuke. Cpl. Babu who was actually driving the scooter was also without a helmet and was merely given a 'reprimand' whereas, for an offence which was more minor, the Petitioner was tried by a DCM.

8. Petitioner also argued that there had been legal infirmities in his trial. He had been denied the services of a counsel and he had not been given some documents which he needed for his defence. Because of these reasons he had been handicapped in his defence.

9. The Respondents have filed a reply and have drawn our attention to the 12 charges for which the Petitioner was tried which are appended below:

"CHARGE SHEET"

The Accused, 704365-A Cpl Mahesh Kumar IAF/P of 23 ED, Air Force, an airman of the regular Air Force, is charged with:-

<u>First Charge</u> <u>Section 39(a)</u> <u>AF Act, 1950</u>	Absenting himself without leave In that he, at No. 2 P & S Unit, Air Force, absented himself without leave from 0730 hours on 11 th January 1995 till 0800 hours on 12 th January 1995.
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<u>Second Charge</u> <u>Section 39(a)</u> <u>AF Act, 1950</u>	Absenting himself without leave In that he, at No. 2 P & S Unit, Air Force, absented himself without leave from 0730 hours on 15 th January 1995 till 0800 hours on 17 th January 1995.
<u>Third Charge</u> <u>Section 39(a)</u> <u>AF Act, 1950</u>	Absenting himself without leave In that he, at No. 2 P & S Unit, Air Force, absented himself without leave from 0700 hours on 19 th January 1995 till 0500 hours on 23 rd January 1995.
<u>Fourth Charge</u> <u>Section 39(a)</u> <u>AF Act, 1950</u>	Absenting himself without leave In that he, at No. 2 P & S Unit, Air Force, absented himself without leave from 1300 hours on 27 th January 1995 till 0800 hours on 24 th February 1995.
<u>Fifth Charge</u> <u>Section 65</u> <u>AF Act, 1950</u>	An omission prejudicial to good order and Air Force discipline In that he, at 23 ED, Air Force, on 1 st November 1995, improperly travelled as a pillion rider on a two wheeler without wearing helmet.
<u>Sixth Charge</u> <u>Section 39(a)</u> <u>AF Act, 1950</u>	Absenting himself without leave In that he, at 23 ED, Air Force, absented himself without leave from 5 th December 1995 till he surrendered himself to 628523 K Cpl Bhadauriya IS IAF/P at Main Guard Room on 13 th January 1996.
<u>Seventh Charge</u> <u>Section 65 AF</u> <u>Act, 1950</u>	An act prejudicial to good order and Air Force discipline In that he, at 23 Ex, Air Force on 26 th May 1996 at about 2100 hours improperly entered the Station Cinema Hall when stopped by Shri J. Ravi Kumar, watchman.

<u>Eighth Charge</u> <u>Section 40(c)</u> <u>AF Act, 1950</u>	<p>Using insubordinate language to his superior officer</p> <p>In that he,</p> <p>at 23 ED, Air Force on 26th May 1996 at about 2115 hours when asked by Flying Officer V.K. Reddy (21640) Lgs to state his particulars replied, “Don’t you know me, if not, you will know me” or words to that effect.</p>
<u>Ninth Charge</u> <u>Section 40(c)</u> <u>AF Act, 1950</u>	<p>Using insubordinate language to his superior officer</p> <p>In that he,</p> <p>at 23 ED, Air Force on 26th May 1996 at about 2215 hours when told by Sqn Ldr P. Srinivasan (17249) Edn, that he was under close arrest, replied, “I am not under close arrest, you do whatever you want” or words to that effect.</p>
<u>Tenth Charge</u> <u>Section 41(2)</u> <u>AF Act, 1950</u>	<p>Disobeying a lawful command given by his superior officer</p> <p>In that he,</p> <p>at 23 ED, Air Force, on 26th May 1996 when ordered by Flying Officer V.K. Reddy (21640) Lgs of the same Unit to get inside the vehicle of Orderly Officer, did not do so.</p>
<u>Eleventh Charge</u> <u>Section 71AF</u> <u>Act, 1950</u>	<p>Committing a civil offence, that is to say, using criminal force to a person on grave and sudden provocation given by that person, punishable under Section 358 of the Indian Penal Code, 1860.</p> <p>In that he,</p> <p>at 23 ED, Air Force, on 25th June 1996 at about 1000 hours while in conversation with Shri Thangaraj, pass No. XY 5229, Lascar, hit the said lascar on grave and sudden provocation given by the said Lascar.</p>

<u>Twelfth</u> <u>Charge</u> <u>Section 65 AF</u> <u>Act, 1950</u>	An act prejudicial to good order and Air Force discipline In that he, at 23 ED, Air Force, on 29 th June 1996 at about 0800 hours while on duty improperly wore civilian clothes.
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10. Learned counsel stated that of the 12 charges, the Petitioner had been found not guilty of Charge Nos. 3, 7 and 12 and guilty of the remaining 9 charges and had been sentenced 10 months' rigorous imprisonment, to be reduced to the ranks and to be dismissed from service.

11. Learned counsel responded by saying that the first four charges referred to an absence in the months of January and February 1995 which took place when the petitioner was attached to No. 2 P&S(U) Air Force for Republic Day parade duty. During this period he had been absent without leave on four occasions. However when he went back to his Unit i.e. 23 ED at Awadi the Commanding Officer there was not aware of the complete details of his absence while attached with No. 2 P&S(U) Air Force. Therefore he had tried the Petitioner summarily for various other offences in March, May and July 1995 and in May and December 1996. However the cases of offence for absence without leave committed by the Petitioner in January and February 1995 while doing duties with 2 P&S(U) Air Force, New Delhi were intimated to Commanding Officer 23 ED on 3rd May 1995 and 31st August 1995. Accordingly the Commanding Officer heard the charge against the Petitioner and ordered for recording of the Summary of Evidence which was done between 19th January 1996 and 10th September 1996. Therefore the contention of the Petitioner that the offence of January and February 1995

had been condoned was misplaced. CO of 23ED could only have proceeded to deal with the offences when the previous Unit provided the required details. In the interim since the Petitioner committed other acts of indiscipline he tried him for these offences, and the earlier offences were tried later. There had been no illegality in the action of the Commanding Officer and there had been no injustice or prejudice caused to the Petitioner. The charges are not time barred in terms of Section 121 of the Air Force Act, therefore, this plea by the Petitioner was misplaced.

12. Referring to the fourth charge wherein there had been an overlap of timing in the two charges on 24th February 1995 i.e. Charge No. 4 showed him absent without leave till 0800 hours on 24th February 1995, whereas he was also absent from 0730 hours on 24th February 1995 till 1010 hours on 26th March 1995. Learned counsel explained this overlap of 30 minutes by accepting that this had been a mistake and was primarily on account of the fact that Charge No. 4 had been initiated by No.2 P & S (U) Air Force, New Delhi whereas the offence for the absence from 24th February 1995 till 26th March 1995 had been done by his parent Unit i.e. 23 ED. This bonafide error had arisen because he was absent from 2 P&S(U) Delhi till 24th February 1995 morning and this Unit had given him a movement order to report to his parent Unit 23 ED on 24th February 1995 where he failed to report, so both the Units had to show him as absent on 24th February 1995 as he was transiting from one Unit to another and this overlap of 30 minutes was nothing more than a minor clerical error which has not caused him any prejudice. Referring to Charge No. 5 about not wearing a helmet as pillion rider on a scooter, learned counsel stated that he accepted that it was a minor offence

and had been included in the DCM because at that point in time this offence was also pending against him. However, it was accepted that this was a trivial offence. Referring to the sixth charge of absence without leave from 5th December 1995 to 13th January 1996, learned counsel for the Respondents stated that mere submission of an application for leave from 5th December 1995 to 2nd January 1996 did not mean that the leave was approved by the approving authority. While, Petitioner may have applied for leave for this period such leave application of the petitioner was not approved by his Commanding Officer and the onus of proceeding on leave after approval of the leave by the competent authority rests on the Petitioner. The Petitioner cannot presume that merely because he has applied for leave and same was recommended by his Section Commander, it has been approved by the sanctioning authority. He had to ensure that his leave had been actually sanctioned and only then proceed on leave, which he failed to do. Therefore in view of the fact that his leave was not granted from 5th December 1995 till 2nd January 1996, he was tried for being absent for this full period from 5th December 1995 till 13th January 1996 and there was no illegality in such charge. The Petitioner proceeded on leave without his leave being approved or sanctioned on 5th December 1995 and continued to be so absent till 13th January 1996.

13. Referring to the 8th, 9th and 10th charges, learned counsel stated that the Petitioner himself was an Indian Air Force police man and was expected to be more disciplined since he was an instrument by which the Air Force ensures discipline. His behaviour during the evening of 26th may 1996 had been most unlike that of a serving air man let alone of an Air Force police

man. The testimony of the watchman Sh. J. Ravi Kumar, Flying Officer V.K. Reddy and Sqn. Ldr. P. Srinivasan clearly indicates that the Petitioner was guilty for the offences as charged. With reference to the 11th charge of committing a civil offence i.e. using criminal force on a person, learned counsel argued that the fact of the matter had not only been proved by Lascar Thangaraj himself but also by Sgt. U.S. Singh and Cpl. Yadav who have both been examined at the DCM and their testimony corroborated the statement of Lascar Thangaraj.

14. Prosecution produced 19 witnesses to prove the 12 charges against the Petitioner. Sgt. K. Kumar (PW-1) was performing the duties of Senior NCO Incharge of the Air Force Police at No.2 P&S (U) Air Force, New Delhi. He has testified that the Petitioner was attached to his Unit for Republic Day parade duty and that during his attachment, the petitioner absented himself from duty on four different occasions i.e. from 0730 hours on 11th January to 0800 hours on 12th January 1995, from 0730 hours on 15th January to 0800 hours on 17th January 1995, from 0700 hours on 19th January to 0500 hours on 23rd January 1995 and from 1300 hours on 27th January 1995 to 0800 hours on 24th February 1995. He has further testified that the Petitioner's Unit i.e. 23 ED was informed about all these four absences and that he raised a charge sheet against the Petitioner. He has admitted that he had not produced the IAFF (P-15) for the first and second charges during the recording of the Summary of Evidence. However, he has produced these documents for all the four charges during the Court Martial. He has also stated that he did not inform the Petitioner about the charges. PW-2 was Warrant Officer V.K. Sathyan who was working as Assistant Adjutant of 23 ED

i.e. the Unit of the Petitioner has testified to the facts that the Petitioner was absent from 5th January 1995 till 13th January 1996 without leave. Sqn. Ldr. K.R. Sharma (PW-3) was the Administrative Officer of 23 ED and was the Officer who had found the petitioner riding as a pillion rider without wearing a helmet. Cpl. P.S. Babu (PW-4) was the individual who was riding the scooter on which the Petitioner was sitting without wearing a helmet and has also testified that the Petitioner was not wearing a helmet on that day. Sgt. S.C.Dey (PW-5) has also testified to the same fact about the Petitioner riding a scooter without wearing a helmet. Sqn. Ldr. A. Sreedharan (PW-6) is a witness to the 12th charge wherein the Petitioner was found in civil dress for which he was held not guilty and, therefore, his testimony is not of any relevance in this matter. Sgt. N.B.Singh (PW-7) has also testified about the facts of the 12th charge for which Petitioner was held not guilty and is therefore of no relevance at this stage. Shri J. Ravi Kumar (PW-8) was the watchman at the cinema hall who was allegedly pushed by the petitioner which forms the substance of Charge No. 7 for which the petitioner was held not guilty and, therefore, his testimony also is of no relevance. Shri P.R. Ramachandran (PW-9) was the Manager of Narendra Cinema Hall which was apparently in the Air Force Station at Awadi. He has testified to the fact that on 26th May 1996 at approximately 2100 hours the watchman Shri J. Ravi Kumar came to his office and informed him that three persons had pushed the gate and forcibly entered the theatre premises. These three persons including the Petitioner came to the manager and they were in an angry mood and asked for tickets for the second show. The witness informed them that they had to wait as the first show was still on. In the meantime the Officer Incharge of the cinema hall, Flying Officer V.K. Reddy who was watching the

first show, came out of the cinema hall and enquired about the problem to which the witness informed him about the behaviour of these three persons. The Petitioner spoke to Flying Officer V.K. Reddy in a high tone and the witness asked the Petitioner whether he knew as to whom he was talking to. He did so because Flying Officer V.K. Reddy was in civil dress and the witness thought that the Petitioner may not know that the person he is speaking to is an Officer. Therefore the witness told the Petitioner that the individual was Flying Officer V.K. Reddy to which the Petitioner replied that "you know me well, tell your officer". By that time some more people had come from inside the cinema hall to the place of incident. Flying Officer V.K. Reddy asked these three persons about their identity and they refused to give their particulars and it was only after Flying Officer V.K. Reddy asked them for their particulars again that they gave their particulars. Thereafter Flying Officer V.K. Reddy contacted the Orderly Officer on telephone and asked him to come with the vehicle to the cinema hall and to take these three persons to the guard room. Thereafter the Orderly Officer, Warrant Officer Kalsi came and took these three persons away. The witness has also testified that the Petitioner had created some nuisance on earlier occasions also in the cinema hall. He has also confirmed that when the Petitioner spoke these words "you know me well, tell your officer" Flying Officer V.K. Reddy was standing only one foot away from the Petitioner. Flying Officer V.K. Reddy (PW-10) has stated that he was the Officer Incharge of the Narendra Cinema Hall. On 26th may 1996 at approximately 2110 hours when he was watching the first show he heard some loud arguments and commotion in the lobby of the cinema hall and came outside and enquired as what was happening. He saw the Manager Mr. P.R. Ramachandran and Petitioner involved in an argument in a

loud tone. On enquiry from the Manager Mr. Ramachandran, he was told that the Petitioner along with Cpl. Kumar and Cpl. Munde had entered the theatre forcibly by pushing aside the watchman and were asking for tickets for the second show which would only be available after the first show is over. These three persons were refusing to go out. When the officers spoke to the Petitioner, the Petitioner asked Flying Officer V.K. Reddy as to who was he to tell him to go out and what authority the Officer has to tell him to go out. To this the manager informed the Petitioner that the individual to whom the Petitioner was talking was Flying Officer V.K. Reddy who was the Officer Incharge of the theatre. After this the witness again asked the accused to go out to which the Petitioner refused. The witness has also corroborated the fact that the Petitioner refused to give his particulars and told the manager who was sitting beside the witness "don't you know me who I am, tell your Officer about me", in a threatening tone. Thereafter the Orderly Officer, Warrant Officer Kalsi came to the cinema hall with Cpl. James of the Indian Air Force police. The Petitioner argued that the Orderly Officer refused to go with him and said that he would come to the main guard room after the second show is over. After that the Orderly Officer escorted the Petitioner out from the cinema hall complex after which the witness informed the Duty Officer about the incident and asked him to come to the cinema hall. At approximately 2250 hours the Duty Officer Sqn. Ldr. P. Srinivasan came to the theatre and witness narrated the incident to him. Thereafter when the witness went to the main guard room even then the Petitioner remained with the Orderly Officer and refused to be placed under close arrest. When the Duty Officer informed the accused that he was under close arrest, the accused again refused and said "I am not under close arrest, do whatever you

want". The witness asked the Orderly Officer to use force in case the accused refuses to go under close arrest. Hearing this, the accused along with Cpl. Kumar started walking out of the main gate and uttered "Behanchod, Ye Phittiwale Kya Karenge, Hum Bahut Dekha Hei, Hum Subko Theek Karoonga". Warrant Officer R.S. Kalsi (PW-11) was the Orderly Officer who received the call from Sgt. Vijay Kumar from the main guard room informing him that there was a quarrel in the cinema hall and that he should come there and look into it. On arrival there, he saw the Petitioner enquiring from Flying Officer V.K.Reddy as to why he had been placed under close arrest. The witness and Flying Officer V.K.Reddy asked the Petitioner to get inside the transport but the Petitioner refused to go in the transport and stated that he will go to the guard room on his own. On arrival at the guard room, the Petitioner and Cpl. Kumar refused to go inside the guard room and witness called the Guard Commander from the main guard room and asked him to take Petitioner and Cpl. Kumar under close arrest. The Guard Commander also asked these two people to get into the guard room but they refused to do so. Sqn. Ldr. P. Srinivasan (PW-12) was posted at 23 ED at the time of the incident and on 26th May 1996 he was the Duty Officer. He was informed at home by a telephone call that there was some problem at the cinema hall and he rang up Flying Officer V.K.Reddy who was the Incharge of the cinema hall who informed him about the nuisance that these three people were creating. Thereafter the witness went to the cinema hall and at approximately 2200 hours he reached the cinema hall. By this time, the petitioner and the other two persons had been sent to the main guard room and he along with Flying Officer V.K.Reddy went to the main guard room where they saw Petitioner and Cpl. N.Kumar. When Flying Officer V.K.Reddy told the Petitioner that he

was under close arrest for creating public nuisance and using insubordinate language to him at the cinema hall, the accused shouted back "I am not under close arrest and do whatever you want". The Petitioner pleaded as to why he was being placed under close arrest to which the witness told him that he was under close arrest and was in the guard room and he very well knew the reasons as to why he was there. The Petitioner continued to defy close custody and uttered "Behanchod, Ye Phittiwale Kya Karenghe, Hum Bahut Dekha Hei, Hum Subko Theek Karoonga". Shri Thangaraj (PW-13) was working as a Lascar with the Indian Air Force at 23 ED, Awadi at the time of the incident. On 25th June 1996 at approximately 0930 hours the Petitioner came up to him and told him to clean all the windows. The witness replied that he had been detailed to work outside and could not do this work of cleaning the windows. The Petitioner started abusing the witness in Hindi and the witness also replied back by abusing him in Tamil. Thereafter the accused caught the witness by his shirt and started hitting him. The witness also used his hands and shouted for help and Sgt. U.S. Singh and Cpl. Yadav came to his rescue. The witness has admitted that after the Petitioner hit him, he also had hit back to the Petitioner on his face. The witness has testified that the Petitioner had hit him first and that he was hit on the left side of his mouth consequent to which there was some bleeding from his mouth. Sgt. U.S. Singh (PW-14) posted at 23 ED has stated that on 25th June 1996 when he was close to the airmen billet he heard a loud noise from the Pandit Block. When he went to enquire, he saw the Petitioner hitting Lascar Shri Thangaraj. Cpl. R.K. Yadav (PW-15) was also posted at 23 ED on 25th June 1996. He has testified that on 25th June 1996 at approximately 1000 hours he heard some shouting noise and went towards the place from where the noise was

coming and he also saw Sgt. U.S.Singh (PW-14) coming towards the same place. When the witness reached the Pandit Block, he saw the Petitioner hitting Lascar Shri Thangaraj. Shri Rajarajan (PW-16) was also posted at 23 ED as a Lascar. He has testified that on 25th June 1996 he was working with Lascar Shri Thangaraj (PW-13) in front of the billet and the Petitioner came from the Pandit Block and got into an argument with Shri Thangaraj after which they started fighting. When he went to separate them, the Petitioner hit him also on the right leg. At that time the Second Incharge came and separated them. He has stated that some blood was coming from the side of the corners of the mouth of Shri Thangaraj. Shri Nanda Kumar (PW-17) was also posted as a Lascar along with Shri Thangaraj and Sh. Raja Rajan. He has also seen the Petitioner instructing Shri Thangaraj to clean the windows to which Shri Thangaraj replied that he had to work outside and could not clean the windows. Thereafter they started abusing each other. The Petitioner was standing on the verandha and Shri Thangaraj was standing on the ground and the Petitioner caught hold of the collar of Shri Thangaraj and pulled him up on the verandah and hit him two to three times. He also has seen blood coming out from the corners of the mouth of Shri Thangaraj. Shri Samavelu (PW-18) was also working as a civilian safaiwala in 23 ED. On 25th June 1996 at about 0930 hours he heard some loud noise and ran outside and saw the Petitioner hitting Shri Thangaraj and Sgt. U.S. Singh came and separated them. He has also testified that some blood was coming out from the lips of Shri Thangaraj. Sgt. Ranjan (PW-19) was on the posted strength of 23 ED and performing the duty of Guard Commander at 23 ED at the Air Force main guard room. At about 2215 hours the Orderly Officer came to him and told him that two persons are to be kept under close arrest and he

accompanied the Orderly Officer to the main gate where he saw the Petitioner and Cpl. N. Kumar, Duty Officer Sqn. Ldr. Srinivasan and Flying Officer V.K. Reddy. Flying Officer V.K. Reddy ordered him to place the Petitioner under close arrest to which he ordered the Petitioner to go to the main guard room but he refused and went outside the main gate. The witness went to get some DSC guards to help him and in the meantime the Petitioner slipped away.

15. Learned counsel for the Respondents stated that the objection by the Petitioner against Flt. Lt. S. Kamra who was a member to the GCM was on very frivolous grounds i.e. Flt. Lt. Kamra belongs to the same batch as one of the prosecution witnesses i.e. Flying Officer V.K. Reddy. In accordance with the rules and procedures laid down in the Air Force Act, Flt. Lt. Kamra gave his response to that petition stating that although he was a batch mate to Flying Officer V.K. Reddy he had not discussed the case with him. Thereafter the Court had considered the petition after Flt. Lt. S. Kamra had withdrawn from the GCM and the Court decided to disallow the petition of the accused. Learned counsel went on to state that full legal support had been provided to the Petitioner and that there was no deficiency of any sort in providing legal assistance to the Petitioner to prepare his defence. Flt. Lt. T.N. Pandey who was an LL.B graduate was detailed as a Defence Officer of the Petitioner. At the commencement of the proceedings, the Petitioner had stated that he wants to engage a civil counsel and the DCM adjourned for a few days to permit him to do so. On re-convening, the Petitioner was unable to procure the services of any civil counsel and he was also permitted to make STD call to contact his counsel and all facilities had been provided to him to contact a counsel of his choice. When the Petitioner sought time to contact his counsel

in Delhi, the Court decided to grant an adjournment for three days after which when the Court reassembled, the petitioner submitted that he could not engage a defence counsel and wishes to continue with the Defence Officer. Even thereafter during the proceedings i.e. after examination of these witnesses when the petitioner requested for Sgt.S.Singh of 8 Base Repair Depot, Air Force to be appointed as a friend of the accused, this was also accepted and Sgt. S. Singh who was also an LL.B graduate was detailed as friend of the accused. Learned counsel for the Respondents stated that all necessary papers had been provided free of cost to the Petitioner and he was also granted sufficient time to prepare his defence. Even at the conclusion of the Court Martial, the Petitioner requested for adjournment for one day to procure some documents from his Unit. However, no such specific document was asked from the Unit as all the necessary documents had already been given to him prior to the Court Martial. Therefore when no specific document had been asked by the Petitioner and only a generalised statement had been made, the onus was on the Petitioner to state as to which document he wanted especially when the authorities had given him time to procure whatever document he wanted. This request was made by the petitioner on 29th January 1996 and on the night of 30th January 1996 the Petitioner escaped from custody and reported back only on 13th March 1995. Therefore, there was no deficiency on the part of the Respondents in providing legal assistance and supplying necessary documents to the Petitioner.

16. Keeping in view the fact that there was ample evidence to prove the guilt of the Petitioner and that he had not been denied any legal provision for defence and that there was no legal infirmity in the trial of the Petitioner, we

do not find any need to interfere with the findings and sentence of the DCM.
Accordingly the petition is dismissed with no order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
May 29, 2012
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