

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

T.A. No. 422 of 2009

Writ Petition (Civil) No. 15 of 1999

Lt. Col. Rajinder Singh

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. S.M. Dalal, Advocate.

For respondents: Mr. Ankur Chhibber, 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
19.04.2012

S.S.Dhillon, Member:

1. This petition has been filed by the Petitioner seeking quashing of the General Court Martial (GCM) proceedings held from 20th February 1996 to 14th April 1996 and to quash the sentence awarded by this GCM whereby he was sentenced to 9 years loss of seniority for the purpose of pension. The Petitioner seeks release of the arrears of pension and gratuity so illegally deducted on the basis of this perverse order of the GCM.

2. The Petitioner joined the Indian Army as a Sepoy on 14th August 1962 and by virtue of his good conduct and, professional excellence he was commissioned as a regular officer in the Indian Army on 9th June 1968. Over a period of time he rose to the rank of Lt. Col. In 1992, during the period of the so-called incident for which he was court-martialled, he was serving as Second in Command and Accounts Officer of 515 ASC Battalion which at that

time was located at Amritsar. The primary grievance of the Petitioner was that the complete omissions and commissions for which he was tried, found guilty and sentenced, were the doings of his Commanding Officer, Col. Hoshiar Singh who alone was managing the cultivation of the farm land held by the Unit. To get an insight into the case, it would be pertinent to extract the charges for which the Petitioner was tried:

“CHARGE SHEET

The Accused, IC-19556Y Lieutenant Colonel Rajender Singh, 5171 ASC Bn (Mechanical Transport) attached to HQ 15 Artillery Brigade, an officer holding a permanent commission in the Regular Army, is charged with:-

<u>Army Act</u> Sec 57(a)	<p>In an account book of the contents of which it was his duty to ascertain the accuracy, being privy to the making of a fraudulent statement,</p> <p style="text-align: center;">In that he,</p> <p>at Amritsar, between 12 April 92 and 08 Sep 93, in the capacity of accounts officer, in the Unit Farm account book, contents of which it was his duty to ascertain the accuracy, was privy to the making of entries of income and expenditure based on the board proceedings dated 25 May 92, well knowing the said entries to be false.</p>
<u>Army Act</u> Section 57(a)	<p>In an account book of the contents of which it was his duty to ascertain the accuracy, being privy to the making of a fraudulent statement,</p> <p style="text-align: center;">In that he,</p> <p>at Amritsar, between 12 April 92 and 08</p>

	<p>Sep 93, in the capacity of Accounts Officer, in the Unit Farm Account Book, contents of which it was his duty to ascertain the accuracy, was privy to the making of entries of income and expenditure based on the board proceedings dated 25 Sep 92, well knowing the said entries to be false.</p>
<p><u>Army Act</u> Sec 57(a)</p>	<p>In an account book of the contents of which it was his duty to ascertain the accuracy, being privy to the making of a fraudulent statement,</p> <p style="padding-left: 40px;">In that he,</p> <p>at Amritsar, between 12 April 92 and 08 Sep 93, in the capacity of accounts officer, in the Unit Farm account book, contents of which it was his duty to ascertain the accuracy, was privy to the making of entries of income and expenditure based on the board proceedings dated 20 May 93, well knowing the said entries to be false.</p>
<p><u>Army Act</u> Sec 57(a)</p>	<p>In an account book of the contents of which it was his duty to ascertain the accuracy, being privy to the making of a fraudulent statement,</p> <p style="padding-left: 40px;">In that he,</p> <p>at Amritsar, between 12 April 92 and 08 Sep 93, in the capacity of accounts officer, in the Unit Farm Account Book, contents of which it was his duty to ascertain the accuracy, was privy to the making of entries of income and expenditure based on the board proceedings dated 22 May</p>

	93, well knowing the said entries to be false.
<u>Army Act</u> Sec 63	An act prejudicial to good order and military discipline In that he, at Amritsar, during Mar 93, in his capacity as the Accounts Officer, 515 ASC Bn, improperly allowed transfer of Rs.15,000/- from Regimental Fund Account to Unit Farm Account, contrary to Para 17 of SAO 9/S/76 which stipulates that Regimental Funds are not to make advances or loans to each other.
<u>Army Act</u> Sec 63	An omission prejudicial to good order and military discipline, In that he, at Amritsar, between 12 April 92 and 08 Sep 93, in his capacity as the accounts officer 515 ASC Bn, improperly omitted to ensure that daily proceeds of the unit CSD are deposited in the Battalion Treasure Chest the same day contrary to Para 8 of 'Standing Orders for Unit CSD Canteen' which stipulates that 'Sales proceeds cash will be deposited daily in the evening after the closing of the canteen in the Battalion Treasure Chest and receipt obtained from Bn Cashier/Accounts Officer.

3. The GCM held him guilty of the first four charges, all under Section 57A of the Army Act, and not guilty of the fifth and sixth charge under Section 63 of the Army Act.

4. The Petitioner contended that there was some 25 acres of surplus land with his Unit which was being tilled by contract farmers. This tilling of the land was done on the orders of the Commanding Officer Col. Hoshiar Singh who alone used to detail the Members for the Board to take stock of the expenses and income and it was he alone who was responsible for the entire financial transactions. The start point in the present case is that when Col. Hoshiar Singh was proceeding on posting, the next Commanding Officer Lt. Col. Kartar Singh, raised certain observations to the higher authority with regard to certain illegal activities being undertaken in the Unit and the authorities convened a Court of Inquiry to look into the allegations made by Lt. Col. Kartar Singh. Be that as it may, the Petitioner had already handed over charge of accounts to Lt. Col. Shiv Dev Singh and proceeded on posting on 8th September 1993. He handed over the charge correctly and without any observations, in accordance with the procedure for accounts. Thereafter the accounts were maintained by Lt. Col. Shiv Dev Singh who has himself conducted similar board proceedings for which the Petitioner was tried and found guilty. The Petitioner argued that it was the Commanding Officer who himself dealt with the farmers to whom the land had been given on contract and it was he alone who was getting the board proceedings and minutes sheet prepared and signed by the concerned officers, who were simply putting their signatures on the various entries under the orders of the Commanding Officer. The officers were informed by the Commanding Officer that this was the regular practice being followed since long, and even by his predecessor, and that this was done under the orders of the Commanding Officer and that other Units were also following the same practice. Learned counsel for the Petitioner argued that the complete management of the farm was handled by

the Commanding Officer and this was testified even by the contract farmers themselves who had cultivated the land from December 1989 to April 1994. Sh. Nazar Singh (PW-4) had been cultivating 25 acres of the Unit land from December 1989 to April 1994 both under Col. Hoshier Singh and his predecessor Col. Kutty. He has stated that the contract was given to him by the Commanding Officer Col. Hoshier Singh. Similarly, Sh. Ajit Singh (PW-7) has stated that he was given an additional 25 acres of land from May 1992 till April 1994 by Col. Hoshier Singh and that he had dealt with the Commanding Officer all through. The Petitioner stated that after his transfer he was served with three charge sheets and the final charge sheet was dated 15th February 1996 which merely altered the initial charge. The reason for giving him three charge sheets are inexplicable and shows that the authorities were determined to fix him in whatever manner they could. This was indicative of a bias and prejudice against him. The Petitioner stated that during his period all the accounts were regularly audited by a board detailed by the Commanding Officer and, therefore, at this stage to say that there was any irregularities in the accounts does not stand to logic. Petitioner has also argued that during the period of the trial he was kept in close custody/confinement for a period of two months which is equal to simple imprisonment. This was besides the punishment awarded by the GCM of 9 years loss for pensionable service. This second punishment of two months imprisonment amounted to double jeopardy.

5. Learned counsel for the Petitioner argued that there was gross violation of Army Rule 180 whereby the Court of Inquiry did not permit the Petitioner to be present throughout and neither was he given an opportunity to

cross-examine the witnesses or to produce any witness. Therefore in view of the fact that there was gross violation of Army Rule 180 the entire proceedings need to be set aside. The Respondents have all along acted in an arbitrary and discriminatory manner unmindful of the Army Act and Army Rules. Even earlier during the hearing under Army Rule 22, out of 13 witnesses who deposed during the court-martial only 3 witnesses were made available to him during the hearing. Such hearing was an empty formality which finished in mere 20 minutes. During the GCM, the Petitioner had objected to be tried by the Presiding Officer and other Members of the court-martial on the ground that the Members were dealing in similar farm activities and this objection was overruled by the Court and they proceeded to try him. The Petitioner had also raised a plea in Bar during his trial in that the authorities had proceeded against him more than three years after the commission of the offence, which was in violation of Section 122 of the Army Act.

6. Learned counsel for the Petitioner also pointed out that the Petitioner had been discriminated against because officers who were similarly situated had been let off with an award of displeasure or censure, but in the case of the Petitioner he has been equated with the Commanding Officer who alone was tried by a GCM and given 10 years loss of seniority for pension. On the one hand, the other officers who had committed an offence similar to that committed by him were only awarded censure/severe whereas the entire crime i.e. the Commanding Officer, Col. Hoshiar Singh had got 10 years of loss of seniority for pension. The Petitioner who should have been in the bunch of officers to receive administrative displeasure/censure was equated

at par with his Commanding Officer and given 9 years loss of seniority. This was a very harsh punishment considering that the Petitioner had not actually indulged in any activity which was unknown to the Commanding Officer. There had been no technical loss to the Respondents or any technical gain to the Petitioner who like the other officers of his Unit and had merely acted as per the orders of the Commanding Officer. Therefore, his punishment should have been the same as meted out to Capt. NBS Riar and Lt. Col. Shiv Dev Singh who both were given a 'displeasure'. Learned counsel for the Petitioner argued that the Petitioner had retired after 33 years and 8 months of service with an excellent conduct other than the incident for which he was court-martialled. This 9 years loss of seniority for pension has affected not only the Petitioner's monetary pension to the extent of Rs.2,000/- per month for life but also his gratuity and other emoluments. Therefore, this punishment requires to be set aside and he be given an administrative censure/displeasure commensurate with his offence.

7. A reply has been filed by the Respondents who have argued that the Petitioner had concealed in his petition various facts of omission for which he was solely responsible and accountable. There had been misrepresentation of the facts regarding the farm land being cultivated by civilian farmers on contract basis and in actual fact, there had been misappropriation of funds, including the Petitioner, out of the same contract. The Petitioner was party to fabricating false bills pertaining to the said land in order to siphon off money for himself and the Commanding Officer.

8. Learned counsel for the Respondents stated that the Petitioner had objected to all the Members of the GCM on the ground that they have vested interest in the case because they were all in some manner concerned with the cultivation of farm land in their Units. The Petitioner was also apprehensive that the Members of the GCM had earlier tried the case of Col. Hoshiar Singh, in which a judgment was passed by the Court and, therefore, the Members may not be able to adopt a different posture and his interest may be crucified. Responding to this objection, learned counsel stated that each Member of the GCM had responded to this objection by the Petitioner and each Member's reply had been considered by the remaining Members of the Court in accordance with the Army Act and Rules and, therefore, no illegality had been committed in the composition of the GCM. Learned counsel went on to argue that there was no substance in the plea in Bar as raised by the petitioner in that the authorities had proceeded against him within three years of the offence coming to the notice of the authorities which was only on the conclusion of the Court of Inquiry. The competent authority had taken cognizance of the misdoings only on completion of the Court of Inquiry and, therefore, the three years' limitation started from the date when cognizance of the offence was taken and not from the date when the offence was committed. Accordingly both these legal issues have no substance.

9. The Petitioner as Second-In-Command and as Unit Accounts Officer was responsible and fully accountable for the various acts with regard to the farm land. The contracting of the Army land with civilian farmers was against the orders and it was for him to be an upright and honest officer in accordance with the Government instructions on the subject. He had withheld vital facts

regarding the handling and accounting of the cash during the Board proceedings and he has also been held guilty of depositing Rs.17,000/- in his personal capacity. Regarding the Court of Inquiry in which the Petitioner had pleaded that Army Rule 180 had not been applied, learned counsel for the Respondents argued that the parameters for the Court of Inquiry were to investigate into the objections raised by Lt. Col. Kartar Singh 21C 515 ASC Battalion against Col. Hoshiar Singh during handing and taking over charge of CO. Therefore this Court of Inquiry was not investigating into the acts of omission and commission by the Petitioner but was required to go into the allegations against the Commanding Officer. It was only after the conclusion of the Court of Inquiry that the Petitioner's role in the entire episode became evident. Therefore, at the Summary of Evidence he was given full opportunity to be present, to hear the witnesses, cross-examine them and to produce witnesses in his defence and to make a statement in his defence. This opportunity was again given to him at the GCM and it was on the basis of the GCM that the authorities have found him guilty and sentenced him accordingly. The hearing under Army Rule 22 had been held and the three witnesses who were present were able to provide adequate evidence of the misconduct of the Petitioner, and it was only subsequently during the investigations stage that several relevant witnesses came to light and were included in the GCM.

10. Being Second-In-Command of 515 ASC Battalion, the Petitioner was hand in glove with the Commanding Officer in the misdoings prevalent in the Unit. The contention of the Petitioner regarding him being discriminated in the award of punishment in comparison to other officers involved has no

substance because the authorities perceived his role in the misdoing to be of a far larger dimension than the other officers. Moreover, the punishment awarded to him was done by the GCM which after full deliberations and consideration of facts brought before them had decided on the sentence and there had been no illegality or any malafide in this action. The findings and sentence were fair, just, on the basis of the merits of the case and were passed with the intention of meeting the ends of justice.

11. We have heard learned counsel for both the parties at length and perused the record. A total of 15 witnesses were examined by the GCM. Lt. Col. Kartar Singh (PW-1) was the Officer who was to take over the duties of Commanding Officer and was the complainant who initially raised all the objections on the basis of which the Court of Inquiry was convened. The substance of the allegation raised by the witness was that the Unit was getting farm land cultivated by two civilians Shri Ajit Singh and Shri Nazar Singh. According to the procedure the farm land could only be tilled by troop labour and could not be sublet. The witness testified that he was subsequently told that the contract was given to these two civilians and they were required to pay Rs.40,000/- each after harvesting the wheat crop in the year 1993-94. The witness had met Shri Ajit Singh who was one of the farmers who was cultivating the farm land. The witness had also pointed out that since the land was on contract basis and given to civilian farmers, there was no necessity for the Unit to be incurring any expenditure on the maintenance and upkeep of the farm land. He also noticed that the columnar cash account books were pasted and there were quite a few cutting and it had not been maintained correctly which gave an impression that all was not well. Accordingly he

raised all these issues with the Commanding Officer when he was taking over charge from him. The Board proceedings, which formed the substance of the charge against the Petitioner has also been produced by this witness.

12. Sub. Maj. (Retd.) Rajinder Singh (PW-2) was performing the duty of Sub. Maj. from May 1991 to June 1993. He has confirmed that in 1991 the Unit had 25 acres of land and in 1992 they were allotted another 25 acres of land for tilling. He has stated that the land had been let out for cultivation to civilians and that since he was Incharge of the Regiment Treasure Chest, these two civilians i.e. Sh. Ajit Singh and Sh. Nazar Singh used to deposit the contract money with him. He has also testified that the procedure which was followed in the Battalion was that false Board proceedings used to be prepared showing various expenditure incurred in the cultivation of the land. Accordingly these civilians used to pay that money to him. Based on these fake Board proceedings showing expenditures on the farm, the cheques used to be issued to either Shri Ajit Singh or Sh. Nazar Singh who then encashed the cheques and deposited the same amount with him. This was in accordance with the directions of the Commanding Officer and during his tenure in May 1993, he received Rs. 57,000/- from these two civilians. He has also testified that in order to show that the Unit was getting the farm land cultivated by troop labour in accordance with the Rules, false Board proceedings would be prepared to show the various expenditure incurred on cultivating the farm land. He has categorically stated that he was aware that the procedure being followed in the Battalion was wrong and unlawful and he even suggested to the CO on this account, but the CO had told him that same procedure is being followed from earlier times and by all Units. Sub. Maj

(Retd.) Subh Ram (PW-3) served in 515 ASC Battalion from 20th June 1993 till July 1995. He has also testified that when he took over charge of the Regimental Treasure Chest, he had been handed over an amount of Rs. 57,700/- relating to the farm land which has been deposited by the two civilians to whom the land had been sublet. He had met these two civilians who appraised him of the procedure they were following to pay back the Unit. Shri Nazar Singh (PW-4) was one of the farmers to whom 515 ASC Battalion had sublet 25 acres of agricultural land for cultivation, which he cultivated from December 1989 till April 1994. Initially, he was paying Rs.12,000/- to the unit for each harvest but this kept increasing to Rs.20,000/- then Rs.25,000/- then Rs. 30,000/- and finally Rs. 40,000. The witness has stated that he used to incur all the expenses relating to the cultivation of the said land. However, from time to time the Accounts Clerk of the Unit used to give him a cheque which he used to encash and return the money in cash to the Unit. This procedure had been going on for quite some time and he never questioned this procedure since he was only concerned with the money that he had to pay after every harvest. Lt. Col. (TS) Shiv Dev Singh (PW-5) was the witness who belonged to the same Unit as the Petitioner and he reported to the Unit on 20th June 1993. He used to perform the duties of Accounts Officer whenever the Petitioner went on leave. He also took over the duties of farm officer from the Petitioner on 8th October 1993. The witness has stated that there was a difference in the accounting between what was on ground and what was being done on paper. When he took over as the Farm Officer, the procedure was to make fictitious Board proceedings. This was basically done to cover up the transactions concerning the contract amount in the ledgers. These fictitious Board proceedings were made to show that the land was

maintained and that expenses were being incurred by the Unit whereas on ground the land had been given on contract. The entire expenditure was charged off on the basis of these false Board proceedings. He has referred to various Board proceedings and has stated that the Board proceedings were also fabricated by the Commanding Officer. The witness has stated that he was awarded a 'severe displeasure' by GOC 15 Infantry Division for making false entry on the Board proceedings on 30th September 1993 and 2nd October 1993. Maj. NBS Riar (PW-6) served in 515 ASC Battalion from 26th May 1991 to 22nd September 1993 in the rank of a Capt. and was performing the duties of Platoon Commander. He has stated that although he did not conduct any Board proceedings during his tenure but the Commanding Officer Col. Hoshiar Singh called him in his office and made him sign on the Board proceedings dated 25th May 1992. The Board proceedings had already been prepared and he was merely asked to sign. When he enquired the purpose of signing the said proceedings he was told that the farm land was on contract but to reflect the entries of income and expenditure in the ledger, this was the normal procedure which was being followed in the Unit. This witness has also stated that he too was awarded a 'severe displeasure' by GOC 15 Infantry Division for signing on the fictitious Board proceedings of May 1992. Shri Ajit Singh (PW-7) was the other farmer who was given land for cultivation by 515 ASC Battalion. This witness had also been given 25 acres of land for cultivation from May 1992 to March 1994. During this period Col. Hoshiar Singh was the Commanding Officer. The witness paid Rs. 17,000/- to the Unit in the first year and Rs. 40,000/- in the second year. These amounts were paid to Sub. Maj. Rajinder Singh and Sub. Maj. Subh Ram. He has stated that he incurred the entire expenditure relating to the cultivation of the

land himself. However, he was made to sign certain payment vouchers where he used to put his signatures and return the money to the Unit. Capt. Ashok Dahiya (PW-8) served with 515 ASC Battalion from December 1991 till June 1993. He had been detailed on two Boards as Presiding Officer relating to the farm land. He had actually not conducted any said Board but had merely signed the Board proceedings on the instructions of his Commanding Officer. He has stated that since he did not physically carry out any Board proceedings therefore he was not able to comment on the correctness of the Board and merely signed the proceedings in good faith on the instructions of his Commanding Officer. The witness has clarified that he signed this fictitious Board proceeding before the Petitioner who was the Accounts Officer and Farm Officer. Maj. Parminder Pal Singh (PW-9) had served with 515 ASC Battalion from September 1992 to August 1994. He had signed the fictitious Board proceedings of 30th September 1993 and 2nd October 1993. These Board proceedings were merely an empty formality concerning the farm land. He had not seen the convening order of these Board proceedings and neither did he peruse the contents of the above Board proceedings. This witness also states that he too was given a 'severe displeasure' by GOC 15 Infantry Division for signing fictitious Board proceedings. Nb. Sub. K. Ravinderan (PW-10) served in 515 ASC Battalion from March 1991 to May 1995. The testimony of this witness pertains to the charges for which the Petitioner was held not guilty. Col. Hoshiar Singh (PW-11) was tendered for cross-examination. However he made a plea that he should be exempted from examination in the interests of justice which was accepted by the Court and he was not subjected to examination. Nb. Sub. A.K. Sasmal (PW-12) served in 515 ASC Battalion from June 1993 till May 1995 when Col. Hoshiar

Singh was the Commanding Officer. His testimony also pertains to the charges for which the Petitioner was held not guilty and is therefore not relevant. Capt. Kuldeep Singh (PW-13) of 515 ASC Battalion also testified to the charges for which the Petitioner was not held guilty and, therefore, is not a relevant witness.

13. Having perused the record and heard the submissions of learned counsel for both parties, it is evident that fictitious and false Board proceedings which formed the essence of the first four charges for which the Petitioner was held guilty, have in actual fact been fabricated. There is ample evidence to show the misconduct of the Petitioner in the falsification of such Board proceedings. Furthermore the sentence of 9 years loss of seniority for pensionable service does not appear to be disproportionate or harsh.

14. Keeping in view the above, we do not find any need to interfere with the findings and sentence of the GCM. Accordingly, the petition is dismissed with no order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
April 19, 2012
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