

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

TA No.483 of 2009
WP (C)547/98)

Lt.Col. Rameshwar Bhatt (Deceased) ...Petitioner
(Through LRs)

Versus

Union of India & others ...Respondents

For the Petitioner : Mr. P.D.P.Deo & Ms. Monica Nagi, Advocate

For the Respondents: Mr. R.Balasubramanian, ASG

C O R A M:

HON'BLE MR. JUSTICE A.K.MATHUR, CHAIRPERSON
HON'BLE LT.GEN.S.S.DHILLON, ADMINISTRATIVE MEMBER

JUDGMENT
(30.5.2012)

BY CHAIRPERSON:

1. Petitioner has already expired and an application to this effect has been filed by MA no. 98 of 2012 for deleting his name and substituting the name of his wife Mrs. Bhanu Bhatt and son Vivek Bhatt. Ordered accordingly and the

name of the petitioner may be deleted and in the place of that, names of his wife and son may be substituted.

2. Petitioner by this petition has prayed that proceedings of Court Martial held at Ramgarh after retirement of the petitioner from 6.4.1996 to 30.5.1996 may be quashed and respondents may be directed to restore his loss of seniority by 8 years for the purposes of pension. It is also prayed in the interest of justice that petitioner may be compensated for keeping him under close arrest after his retirement from 31.12.1995 to 04.10.1996.
3. The petitioner joined the National Defence Academy Khadakvasala in 1959 after meeting all the parameters laid down by the Govt. of India from time to time. He completed the training at NDA and IMA, Dehradun and was commissioned in the rank of 2 Lt. in the Army Service Corps on 11.12.1962. During his service career he got due promotions on time upto rank of Lt.Colonel(Selection Grade) on the basis of merit. During the relevant time, petitioner was posted as a Trainee and Method Officer with the respondent No.3. He found lack of transparency

in the administration of the centre in every field. Brig Rajpal was Commandant of the ASC Centre (N). The petitioner being a straight forward, honest, loyal and dedicated officer wanted to bring the facts of dishonesty to the notice of his superior officers under the provisions of DSR Para 317, which reads as follows-

"317. Obligation to bring Dishonesty to Notice

It is the obligatory duty of every person in military employ to bring at once to the notice of his immediate superior, or the next superior where the immediate superior officer is involved, any case of dishonest, fraud or infringement of orders that may come to his knowledge."

4. It is alleged that he apprised Commandant Brig. Rajpal, as duty bound, that lot of serious administrative and financial irregularities are taking place in the centre including serious lapses in the "Recruitment Procedure". This upright appraisal was taken in an adverse manner resulting in the respondent harbouring malafide intentions against the petitioner. Respondent was on the look-out for an opportunity to fix the petitioner in order to teach him a lesson once for all. Petitioner scribbled few points as a reference for final discussion with the Commandant

and gave the notes to his Staff Officer Capt. P.C.Singh to put up draft for approval before taking the same to the Commandant. However, this scribbled draft was handed over to Sub Maj. K.P.Sahi to be kept under custody for handing over on the next day. The JCO in order to find favour with the Commandant Brig. Rajpal, showed these papers to him. The Commandant after reading the same handed over the papers back to Sub. Maj. K.P. Sahi to keep in his custody and not to return the same to the petitioner. Petitioner thereafter was directed by Brig. Rajpal by a movement order to proceed to Punjab Regiment Centre, Ramgarh. Petitioner was a patient of hypertension, diabetes maltitus and seizure. While travelling in the train, he got an attack of seizure, therefore, he reached Kolkata instead of getting down at Ranchi/Ramgarh. He was treated by a civil doctor at Kolkata and thereafter he came back to Ramgarh, which delayed his arrival at Ramgarh as per the movement order. Therefore, the petitioner was charged for following two charges:

(a) First Charge AA Sec 39 (c)

*absenting himself without Leave,
in that he,*

at Gaya, on 16 Mar 95, while proceeding on temporary duty to the Punjab Regimental Centre, Ramgarh, absented himself without leave from 16 Mar.95 to 21 Mar 95.

(b) Second Charge AA Sec 63

*An Act prejudicial to Good order and Military Discipline
in that he,*

at Gaya, on 10 Mar. 95, while performing the duties of training and method officer, ASC Centre (North) Gaya, improperly handed over a manuscript letter written by him, purporting to be an anonymous complaint containing several allegations of financial and other irregularities against Brig. Rajpal, Commandant the said Centre, his superior officer to Capt. P.C.Singh, his subordinate for getting it typed from local market in a stealthy manner.

5. It is alleged that so far as second charge is concerned, no cause of action has arisen as the letter in question was not dispatched to any person. The Court of Inquiry was held against the petitioner and it is alleged that he was not given proper opportunity to cross-examine the witnesses nor any documents were given to him relating to the serious financial irregularities and thereby Brig.Rajpal was shielded and the petitioner was unnecessarily implicated in a disciplinary enquiry. Thereafter, court martial was ordered on the basis of court of enquiry and during the court martial, 13

witnesses were examined by the prosecution and petitioner was not granted facility of a defending officer as demanded by him to defend him and he was given the assistance of Major Manoj Tiwari who according to the petitioner was not a competent person.

6. The court martial found the petitioner guilty of both the charges and accordingly petitioner was punished with a loss of 8 years seniority for the purposes of pension.
7. The grievance of the petitioner was that he was not given proper opportunity to defend himself u/s 180 as well as during the court martial and he has also alleged that he retired on 31.12.1995 and section 123 was invoked and he was kept in close arrest during the period w.e.f.31.12.95 to 4.10.1996. The General Court Martial commenced on 6.4.1996 and concluded on 30.5.1996, but he was kept on attachment with the Punjab Regimental, Ramgarh till 4.10.1996 when the proceedings of the General Court Martial were promulgated and section 123 was revoked by Brig. Sidhu Sarabjeet Singh, the Commandant.

8. A reply has been filed by the respondents and respondents contested the allegations levelled by the petitioner. Respondents in their reply have pointed out that this is not the first instance when petitioner has to face the court martial, he has been tried and sentenced by GCM thrice as under:-

- (a)
 - (i) *forfeiture of seniority of the rank of three years and four months*
 - (ii) *To be severely reprimanded*
- (b) *GCM held at HQ 80 Inf Hde on 17 Jul 86*
 - (i) *Forfeiture of seniority of rank to take rank and precedence as if his appointment as substantive Lt. Col. Bore the date 22.2.1986*
 - (ii) *To be severely reprimanded.*
- (c) *GCM held on 17 Dec 87*
 - (i) *to take rank and precedence as if his appointment to the rank of Substantive Lt. Col bore dt-29.11.1986*
 - (ii) *and severely reprimanded.*

9. It is alleged that petitioner also filed a writ petition in the Patna High Court as CWJC No.3277 of 1995 but same was dismissed on 7.3.1996 being premature. It is alleged that section 123 of Army Act was invoked against the petitioner since he retired on 31.12.95 and he was placed

under close arrest u/s123 and was released from military custody on 30.5.1996 after sentence was pronounced by GCM. Respondents denied the allegations that he was kept in military custody till 4.10.1996. The respondents in their reply have pointed out that the court of inquiry, summary of evidence & GCM proceedings were produced during the course of hearing. Accordingly, they produced the record before us and copy was given to the counsel for the petitioner also. It is alleged that full opportunity was given to the petitioner to cross examine all witnesses produced before the court martial. It is also pointed out that all the documents and relevant investigation report were produced during the court martial and respondent produced all the witnesses who were cross examined by the petitioner extensively. Respondent supported the findings of the court martial that petitioner is guilty of defying the movement order and instead of reporting to Ramgarh he went to Kolkata and reported after four days after attending court cases pending in the civil City Court. They also alleged that petitioner indulged in sending this

kind of anonymous complaint not only to the superior officer but also the President of India and Prime Minister, therefore he has been rightly found guilty for charge no.2.

10. We have heard learned counsel for the parties and perused the record. Learned counsel for the petitioner submitted that attachment of the petitioner was illegal and the whole enquiry have been initiated malafidely by the respondent Brig. Rajpal and he was not given proper opportunity to defend himself. Learned Counsel for the respondent has pointed out that there is no challenge to the attachment in the petition and he also submitted that all the relevant papers were given to the petitioner and he was given opportunity to defend himself through Major Tiwari.
11. So far as first charge is concerned, the first charge is self evident that petitioner was given a movement order to report to Ramgarh but instead of reaching Ramgarh i.e. Punjab Regimental Centre he went to Kolkata and reported after some days to the Ramgarh on the pretext

that he had an attack of seizure and therefore, he could not get down at Ramgarh and reached Kolkata. After treatment when he was fit to travel he went to Ramgarh. The contention of the petitioner appears to be absolutely far fetched. We fail to understand that in the case of seizure how can a man reach Kolkata. Even if he reached Kolkata, then too he should have got himself examined by the military doctor instead of civil doctor and obtained a proper certificate of his ailment. But it appears that he did not do so and obtained a certificate from a civil doctor, despite the fact that he was on duty. Since he was on duty and if he fell sick and by chance he had reached Kolkata, then he should have obtained a proper medical certificate from the military doctor. On the contrary it appears that he infact had some litigation pending in Kolkata, he attended the same and thereafter he went to Ramgarh. Therefore, this certificate was not accepted by the court martial authorities. Hence, he has been rightly found guilty for charge no.1 by the court martial authorities.

12. So far as the second charge is concerned, he wrote certain complaints against the Commanding Officer and wanted to forward it to the Hon'ble President of India and Defence Minister, though he could not succeed in sending such an anonymous complaint. As per the evidence of Sub.Major Sahi and Capt. P.C.Singh these papers on which he scribbled certain allegations against the commandant could not be sent by him anonymously. This activity of the petitioner of indulging in sending such complaints to the authorities higher than as given in Regulations for Army 317 was not at all warranted. If he was a whistleblower then he should have acted in a manner as provided in DSR 317, and irregularities if there were any, should have been reported to superior authority or even higher superior authority but he has no business to communicate such kind of communication in an anonymous manner to the President of India or to the Defence Minister. This is seriously in violation of discipline and good order to which he is bound to adhere.

Therefore, the second charge against the petitioner is also well established.

13. Petitioner has made allegations against Brig. Rajpal who has filed a counter affidavit and has denied all those allegations of malafide levelled against him. The counter affidavit filed by Brig. Rajpal speaks eloquently about the conduct of the petitioner and he has said that he has no malice against the petitioner. This appears to be so because when he was sent to the Punjab Regiment, Ramgarh/Ranchi he should have reported to Ranchi instead of going to Kolkata and he has no business to send such kind of anonymous complaint against his own Commandant instead of resorting to proper channel. Therefore, the allegations against Brig. Rajpal does not hold good.
14. Petitioner has already expired and petition is being prosecuted by his legal heir. Looking into the previous conduct of the petitioner, that he has not been a very disciplined officer and he has been indulging in all kinds of

activities which does not make him out to be a disciplined officer therefore, we are not inclined to interfere or reduce the sentence awarded by the court martial authorities and confirmed by the competent authority. Hence, as a result of above discussion we don't find any merit in this petition and the same is dismissed.

15. No orders to costs.

[Justice A.K. Mathur]
Chairperson

[Lt. Genl. SS Dhillon]
Member (A)

New Delhi
30th May, 2012