

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

**T.A.No.686 of 2009
(W.P.(C) 1145 of 2001)**

Ex.Cpl Singh A.K.Singh

...Petitioner

Versus

Union of India & Ors.

...Respondent

For the Petitioner : Shri S.K.Tyagi, Advocate

For the Respondents: Mr. Ajai Bhalla, Advocate

C O R A M:

HON'BLE MR. JUSTICE A.K.MATHUR, CHAIRPERSON

HON'BLE LT.GEN. S.S.DHILLON, MEMBER (A)

**JUDGMENT
(19.04.2012)**

BY CHAIRPERSON:

1. Petitioner by this writ petition has prayed to issue a writ of certiorari quashing Annexures P-1 to P-4 and to reinstate the petitioner in service with continuity of service and

back wages w.e.f. the date of dismissal of the petitioner from the service.

2. Petitioner joined service on 10.10.1984 in the Indian Air Force after passing the necessary training in February, 1986 in Wpn Tech Trade in Group II. He was classified leading Aircraftman in Gp II in March, 1987 and was promoted to the rank of Corporal in Gp I in June 1991 and Acting Paid Sgt on 1.6.1995. He passed his examination for promotion to the next higher rank i.e. JWO in May, 1997. During his service career he did Graduation (Honours in Economics) from Pune University. He has put in 14 years of service. He was charged with two charges as given below:

First Charge USING CRIMINAL FORCE TO A PERSON SUBJECT TO
Section 40(a) THE AIR FORCE ACT, 1950 BEING HIS SUPERIOR OFFICER
Air Force Act,

In that he,

At Bhuj on 23.12.1997 in the demonstration held by the wives of airmen outside the SubGuard Room of AF Stn Bhuj, used criminal force to Sqn Ldr (now Wg Cdr) MN Saxena (14737) Adm his superior officer by hitting him on his head.

Second Charge AN ACT PREJUDICIAL TO GOOD ORDER AND AIR FORCE
Section 65 DISCIPLINE
Air Force Act,

In that he,

At Bhuj on 23.12.1997 improperly misbehaved with Sqn Ldr (Now Wg Cdr) MN Saxena Adm, his superior officer, by hitting him on his head.

3. On the basis of above two charges he was sent to face District Court Martial (DCM). It is alleged that prior to the conduct of the DCM an oral hearing of charges was conducted by the Commanding Officer for the petitioner on 5.2.1998. On 7.2.1998, original Summary of evidence was recorded and it is alleged that none of the prosecution witnesses produced any evidence against the petitioner. Then from 11.2.1998 to 16.2.1998, an additional Summary of Evidence was recorded against the petitioner. In that, number of policemen of Air Force and NCsE were examined. For the first time during the additional Summary of Evidence, they alleged that they saw the petitioner hitting Sqn Ldr (now Wg Cdr) M.N.Saxena on 23.12.1997. On 11.4.1998, the Commanding Officer of the petitioner prepared a chargesheet against the petitioner for his trial by DCM. On the same day i.e. 11.4.1998, the Convening authority for DCM directed, in writing, that petitioner is to be tried

by District Court Martial. DCM assembled on 14.4.1998 for trying the petitioner. Petitioner pleaded non-guilty before the DCM and prosecution in order to establish the charge against the petitioner examined eight witnesses and some documents were also placed. The DCM found the petitioner guilty and he was sentenced to be reduced to the ranks and dismissed from the service and to undergo two months detention. Petitioner filed a statutory petition against the finding the sentence of the DCM to the competent authorities and same was dismissed. Aggrieved by the findings and sentence of DCM and rejection of the petition, the petitioner filed a writ petition in Hon'ble Delhi High Court W.P(C) No.1145/2001. This is how this case has been transferred from the Hon'ble Delhi High Court to this Tribunal after its formation.

4. A reply has been filed by the Respondents contesting the writ petition. Petitioner has challenged the conduct of the DCM. Counsel for the petitioner has raised number of issues during the conduct of the DCM i.e (1) one Anant Ram was not produced, (2) Documents were not supplied

to him and (3) no identification parade was held. The convening order was bad as the chargesheet was not supplied to him. Also the incident took place on 23.12.1997 and the name of the accused was disclosed only on 5.2.1998. He has also argued that charges were vague.

5. All these objections are of not much consequence. The basic thing one has to approach is what is the case put up by the prosecution against the accused and whether there is sufficient evidence to convict the accused for commission of the crime or not. The first and foremost question is whether prosecution has successfully substantiated the case or not.
6. So far as Sqn Ldr (now Wg Cdr) M.N.Saxena who has come in the witness box as PW-1, has deposed that on 23.12.1997, he was posted at Air Force Station, Bhuj. In the morning of 23.12.1997, there was a demonstration of ladies of the Air Force personnel outside the Sub-Guard room. They blocked the Sub-Guard Room gate and State High Way and were not permitting the air force personnel

to enter the air force gate. Gradually Air Forces personnel who were not permitted to enter starting accumulating at the sub-guard room and a large crowd gathered there and the traffic on high way was jammed. At that time, District Administration i.e.SDM and DSP, Mr. Gondia, also arrived. He tried to persuade them to vacate the highway but they did not listen. In the mean time, AVM Dhillon and few other officers also came. They were also prevented from entering the camp. All his efforts to get the high way cleared were in vain. At about 11 'O' clock the crowd started pelting stones and shouting at the civil police. At that time, he requested the ladies to open the gate so that he could go out and stop the airmen. When the ladies realised that the violence was increasing they opened the gate and the witness rushed out onto the highway and took along with him five Air Force policemen. The protesting airmen were also pelting stones. He tried to stop them by forming a human chain. For some time the advance of the protestors was checked by him and his staff. In the meanwhile a group of ladies came running

from the opposite direction towards him and he got sandwiched between the protesting Air Force personnel and the ladies. In this melee somebody hit him on his head, on the right side of his temple, near his right eye and he became unconscious. After some time he regained consciousness and was given a glass of water and he remained in the vicinity of the sub guard room till 1300 hrs after which he went to SSQ. He further deposed that he reported the matter the same day to the Station Commander, but he did not name the person who hit him on his head. He has also admitted that he had opportunity to write in the register that he was hit but he did not write. A FIR was also filed and he has signed the investigation report of the police. He has also deposed that when he asked Station Commander whether he should arrest the person or not, he told him not to do so as it will aggravate the situation as passions were already running high. He has also deposed that initially the crowd was peaceful, thereafter they resorted to pelting stones. He has also denied that he was hit by some stone

and also admitted that he had not seen the person who had hit him. He has also deposed that Corporal M.P.Singh was at arms distance from him and Corporal Pradeep Kumar was behind him.

7. Therefore, so far as this witness PW-1 Sqn Ldr (now Wg Cdr) M.N.Saxena is concerned he has not identified the accused as the person who has hit him.

8. Another eyewitness has been examined by the prosecution i.e. PW-2 Cpl NP Singh who has also deposed about the incident of 23.12.1997. He deposed that at that time when Sqn Ldr (now Wg Cdr) M.N.Saxena rushed outside the gate along with Cpl Pradeep Kumar, he also joined them. After that they made a human chain by holding each other's hand and tried to control the mob. After some time the ladies group rushed from the tropo gate side and they were gheroad by the ladies and the mob. At the same time JWO Jai Narayan who was in front of the mob shouted "Maro Sale Ko". After this Sgt. AK Singh who was wearing a civil shirt with full sleeves and a half sleeves civil sweater hit Sqn Ldr (now Wg Cdr)

M.N.Saxena with both his hands on the right side of his right eye. He identified Sgt. AK Singh in the open Court. As a result of this blow, Sqn Ldr (now Wg Cdr) M.N.Saxena fell down and became unconscious. But somehow, Cpl Kumar, Cpl Kafeel, Cpl K.N.Sharma, Cpl Mithelesh Kumar and he managed to bring him inside, upto the subguard room. His right eye was fully red and area around it was swollen. He also admitted that Sqn Ldr (now Wg Cdr) M.N.Saxena was not hit by a stone. He deposed that after taking Sqn Ldr (now Wg Cdr) M.N.Saxena into the guard room, he did not make any entry in the book regarding this incident of Sqn Ldr (now Wg Cdr) M.N.Saxena falling unconscious. He also deposed that he did not consider it necessary to enter it into the book as it had already come to the knowledge of the Station Commander. He has also admitted that he did not tell the Station Commander about this incident ie when the Station Commander became aware of this injury caused to Sqn Ldr (now Wg Cdr) M.N.Saxena. He has deposed that there were approx. 200 to 300 persons at

the protest rally. He has also admitted that he appeared before Gp. Capt. Danda as a witness.

9. There is another eye witness PW-3 Sgt. K.M.Sharma. He has more or less supported the evidence of PW-2 Cpl NP Singh and has deposed that somebody from the mob shouted "maro salo ko". Then he saw Sgt. A.K.Singh hit Sqn Ldr (now Wg Cdr) M.N.Saxena with both hands from behind and he identified the accused present in the Court. He has also deposed that Sqn Ldr (now Wg Cdr) M.N.Saxena suffered eye injury. He further deposed that he appeared before the Station Commander during the charge trial and told Station Commander that the accused had hit Sqn Ldr (now Wg Cdr) M.N.Saxena and also told him what type of clothes the accused was wearing.
10. The prosecution also examined Anwar Ali Mohammed (PW4), who was a police constable and was doing videography. He deposed that the windscreen of the vehicles of the DSP and SDM were broken. He could not name the person who had hit Sqn Ldr (now Wg Cdr) M.N.Saxena.

11. Another prosecution witness PW-5 M Kanwar has deposed that he received video cassettes from 36 Wg AF and produced the same in the DCM. He deposed that on the relevant date Sqn Ldr (now Wg Cdr) M.N.Saxena and other IAF personnel tried to restrain the public by holding each others hands in the form of a human chain. After some time a person in civil dress came from the KV side and hit Sqn Ldr (now Wg Cdr) M.N.Saxena. He recognised the person when he was shown the photos and video clippings and deposed that the accused, after hitting Sqn Ldr (now Wg Cdr) M.N.Saxena, mixed up with the crowd and disappeared. He deposed that though he did not see the face of the person who hit Sqn Ldr (now Wg Cdr) M.N.Saxena, he could recognise him by his clothes. He was there in one of the photographs which were shown to him to identify the accused.
12. PW-6 Pramod Kumar was also on duty on the relevant day along with Sqn Ldr (now Wg Cdr) M.N.Saxena who was part of the human chain. He deposed that he was in front of the mob and Sgt. A.K.Singh who was in civil dress,

wearing half sleeves sweater and full sleeve shirt, hit Sqn Ldr (now Wg Cdr) M.N.Saxena with both his hands from the rear. He tried to catch the accused but he could not succeed due to the mob and he saw Sqn Ldr (now Wg Cdr) M.N.Saxena fall on the road and with the help of other policemen he brought him to the guard room. His eye was swollen and he was shedding tears. He further deposed that when Sqn Ldr (now Wg Cdr) M.N.Saxena regained consciousness he told him that Sgt. A.K.Singh has hit him but Sqn Ldr (now Wg Cdr) M.N.Saxena did not ask him to write it in the occurrence book or arrest the individual.

13. The summary of evidence which has been reproduced above clearly indicates that on account of the fact that the situation was very volatile, therefore, it was not thought advisable to arrest the accused at that point of time. PW-1 talked to the Commandant to effect the arrest but he advised him not to arrest the accused at this moment because it will unnecessarily aggravate the situation. Therefore, it was thought advisable to let tempers cool

down. The accused was identified on 23.12.1997 and action was initiated on 5.2.1998, therefore, the delay caused in arrest of the accused is not fatal in this case. Learned Counsel has also pointed out that no identification parade was held. So far as the identification of the accused is concerned, the accused was known to all the service personnel, therefore, the identification would not have been of any avail in the present case. The accused has been identified in the Court and that is sufficient. The identification parade is normally used as corroborative piece of evidence but in this case the accused was known to everybody. So far as the convening of the DCM is concerned, all records were prepared by Anant Ram as he was asked to prepare the chargesheet in pursuance of the convening of the DCM. It is not necessary to have produced Anant Ram as a witness as he was doing a clerical job in preparation of the chargesheet. Therefore, non producing of Anant Ram is not fatal to the case. So far as the appreciation of the witnesses are concerned, suffice it to say that PW-2 Cpl N.P.Singh, PW-3

K.N.Sharma and PW-7 Pramod Kumar, were present at the site of the incident and they formed a human chain, therefore, their presence is natural & they are fully reliable witnesses.

14. The reading of the statements of these eye witnesses leaves no manner of doubt that identification of the accused was well established and well known to the persons as he belongs to the same station and was known to all of them. Therefore, we do not find any contradiction or vagueness or discrepancy in the statements of these witnesses. So far as establishing of the guilt of the petitioner is concerned, the petitioner was also examined and he was given full opportunity to defend himself in the trial and he also cross-examined all the witnesses, therefore no prejudice has been caused to the petitioner. The charges are specific and they are not vague as urged by the counsel for the petitioner. Hence we are satisfied that the prosecution has established the guilt of the accused beyond any reasonable doubt.

15. In these circumstances, we do not find any merit in this case and accordingly it is dismissed.
16. No order as to costs.

[Justice A.K. Mathur]
Chairperson

(Lt. Gen. SS Dhillon]
Member (A)

New Delhi
19th April, 2012