

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

1.

**TA No.319/2009*****Subedar Prem Singh******.....Petitioner******Versus******Union of India & Ors.******.....Respondents*****CORAM:*****HON'BLE Mr. JUSTICE SUNIL HALI MEMBER (J).******HON'BLE AIR MARSHAL J.N. BURMA (A)*****JUDGEMENT****01-10-2013**

1. Subedar Prem Singh filed WP No. 3644 of 1997 before the Delhi High Court challenging the General Court Martial proceedings dated 25.05.1988, whereby he was guilty of having committed an offence under Section 64(e) of the Army Act, 1950 and sentenced to be dismissed from service. Subsequently, the case was transferred to this Tribunal under Section 15 of the Armed Forces Tribunal Act, to be treated as an appeal.

2. The brief facts of the case are ; that the petitioner was initially recruited as a soldier in the Indian Army. The petitioner served the respondents with all sincerity and integrity and was promoted to the rank of Subedar on

05.02.1983. The petitioner was posted to Headquarter Recruiting Zone, Shillong to perform the duties of Assistant Recruiting Officer with effect from 28.12.1985. As per the petitioner, he had refused to enrol the recruits based on recommendations of one Nb Sub BN Roy and Major GS Mann as the candidates recommended by them were not fit for the Army. Hence, Major G.S.Mann and Nb Sub BN Roy were annoyed with the petitioner and threatened to implicate him in a false case. That in pursuance of their objective, Major Mann in a conspiracy with Nb Sub BN Roy, on 06.02.1987, illegally made out a case of trap against the petitioner with the allegation that the petitioner had demanded Rs.4000/- for enrolling Shri Ajit Deka from Shri BN Roy, who had introduced himself as Anil Kumar before the petitioner. The petitioner states that despite his refusal, Nb Sub BN Roy hurriedly planted the said money in the bed room of the petitioner. On the basis of the trap, a charge sheet was issued against the petitioner on 18.02.1988 and the petitioner was Court Martialed between 28.4.1988 and 28.5.1988 under Section 64(e) of the Army Act and sentenced for dismissal from service. The petitioner being aggrieved by the order of dismissal, submitted a revision petition to the Chief of Army Staff under Section 164 of the Army Act. The revision petition was rejected. The petitioner contends that the revision petition was rejected without due application of mind in violation of the law laid down by the Hon'ble Supreme Court in the case of SN Mukherjee Vs. Union of India (AIR 1990 SC P 1984). During the Court Martial, the petitioner had been

denied the permission to summon defence witnesses as well as the right to cross examine. Having no other alternative the petitioner had filed a Writ Petition before the High Court of Himachal Pradesh which was dismissed on territorial jurisdiction. Subsequently, a Writ Petition before the High Court of Delhi which was referred to the Armed Forces Tribunal in accordance with Section 34 of Armed Forces Tribunal Act.

3. The petitioner has prayed for quashing the order of sentence and dismissal from service dated 25.05.1988, its oral confirmation on 14.09.1988 and the order of rejection of the Revision Petition on 23.03.1989.

4. The respondents in their counter affidavit have stated that in order to combat corruption in recruitment, Headquarters Eastern Command had issued instruction in June 1986 for carrying out special check. Accordingly, Headquarters 101 Area tasked Major GS Mann of No.5 Detachment Eastern Command Liaison Unit to keep the staff of recruiting organization at Shillong under surveillance and report any incident of corruption. JC-119767 W Sub Prem Singh of Headquarters Recruiting Zone Shillong was kept under surveillance along with other staff. During February 1987, Sub Prem Singh was caught allegedly accepting Rs.4000/- as bribe from Nb Sub BN Roy of No.5 Detachment Eastern Command Liaison unit who had presented himself to Sub Prem Singh under the cover name of Shri Anil Kumar of Labana,

Shillong. Sub Prem Singh was arrested on 06.02.1987. A Court of Inquiry was ordered by Station Headquarters to investigate into the matter. COI proceedings were finalised and submitted to higher authorities. GOC 101 Area while giving his remarks on the COI proceedings on 11.04.1987, directed that disciplinary action be initiated against the JCO for accepting the bribe. A Summary of Evidence was recorded and subsequently Sub Prem Singh was tried by General Court Martial convened on 28.04.1988 at F Composite Signal Regiment.

5. The GCM having examined the necessary evidence and analyzing prosecution and defence versions awarded the punishment of dismissal from service to Sub Prem Singh which was confirmed by higher military authorities. The JCO had submitted a revision petition on 23.03.1989 to the Chief of the Army Staff for quashing the proceedings of the General Court Martial and his reinstatement in the service. The same was rejected by the Chief of the Army Staff after due consideration and communicated vide Army Headquarters Letter No. C/1369/DV-3 dated 24.03.1989.

6. The court perused the proceedings of the General Court Martial. The petitioner was charged under Section 64(e) of the Army Act. The charge sheet is reproduced below:

"The accused, JC-119767 W Sub(Substantive) Prem Singh of Headquarters Recruiting Zone, Shillong attached 'F' Composite Signal Regiment, is charged with:  
 "OBTAINING FOR HIMSELF A GRATIFICATION AS A MOTIVE FOR PROCURING THE ENROLMENT OF A PERSON in that he at Shillong, on 06.02.1987, while performing the duties of Assistant Recruiting Officer in HQ Recruiting Zone, Shillong obtained Rs.4000/- (Rupees Four Thousand only) from JC-140324 Nb Sub BN Roy alias Anil Kumar of Det Eastern Command Liaison Unit, a gratification as a motive for processing the enrolment of Ajit Dekha in the Army."

Sd/-(CP Shouran)

COI. Commanding Officer  
 'F' Composite Signal Regiment

dated 18.02.1988

7. Prosecution produced five witnesses and the defence two witnesses before the Court Martial
  
8. IC-29071 K Major GS Mann of 5 Eastern Command Liaison Unit was the first witness for the prosecution. PW1 states that in July 1986 he was called by the then GOC Major General HC Pathak and Col A Ajit Datta and told that Command Headquarters had asked to investigate whether there was any corruption going on in the recruitment of candidates at BRO, Shillong. PW1 assigned the investigation to Nb Sub BN Roy who had reported to him on 12/14 August 1986. Nb Sub BN Roy was given the cover name as Shri Anil Kumar. After about 4-5 days, Nb Sub BN Roy told PW1 that he had gone around the garrison ground where recruitment takes place of the ZRO/BRO but was unable to find out anything. He requested that the details of residences of the

recruiting staff be given to him. Nb Sub Roy was provided with the addresses of the recruiting staff by PW1 with a caution that the matter was not to be disclosed to anybody. PW1 further goes on to state that he did not give him the exact addresses 'as I wanted him only to find out who was staying where. This I had done in order to prevent his mind from being prejudiced'. Nb Sub Roy came back to PW1 After 6-7 days informing him that he had seen a tout indulging in such activities around DCO-5 which was JCO's accommodation. PW1 states he found out that DCO5 was occupied by Sub Prem Singh of ARO/BRO. He states that Nb Sub B.N. Roy tried to befriend Sub Prem Singh by his cover name of Shri Anil Kumar and find out if he was indulging in any corrupt practices. During September 1986 Nb Sub BN Roy met Sub Prem Singh at his residence twice introducing himself as Anil Kumar and also told him that he used to visit the JCO staying in the house earlier and used to get candidates recruited with the help of ZRO/BRO staff and whatever money he got from them was shared by them. Nb Sub Roy also told PW1 that Sub Prem Singh had agreed to help him in getting his candidates recruited for an amount of Rs.4000/- for each candidate. PW1 further states that the petitioner had advised Nb Sub. B.N. Roy to get papers of candidates from Nowgong District. PW1 directed his No.1 team ex ECLU located at Narangi to procure the documents of candidates for recruitment from Nowgong district. Around 20.01.1987 documents of four candidates "came from" No.1 team. The petitioner rejected two documents and accepted two. On 29.1.1987 PW1 told

Nb Sub Roy to tell the petitioner to visit his house. Within a day or two Rs.4000/- was collected by the staff detailed by PW1 from 101 area officially. On 02.02.1987 Nb Sub Roy visited the house of Sub Prem Singh. However, no money transaction took place. on 02.02.1987, PW1 was called at the Area Headquarters and was told by the GOC that he should hurry up the case since it had already taken more than seven months. As per PW1, the petitioner had told Nb Sub BN Roy that the recruitment was on 09.02.1987 and he will recruit his candidates either at Nowgong or locally. Nb Sub BN Roy told PW 1 that the petitioner had fixed the time for bringing the money and the documents at around 1500 Hours on 06.02.1987. PW1 went to Col A and requested to arrange for an independent witness to be present to effect the arrest by CMP personnel. On 06.02.1987 PW1 noted down the machine numbers of all the currency notes which in all were 30 of 100 Rupee denomination and 100 of Rs.10 denomination. PW2 then tied up the drill with Nb Sub NB Roy and staff to be followed at the site i.e. at the residence of the petitioner that day.

9. At about 1430 Hours Nb Sub BN Roy left the office of PW1 with the money and tape recorder to execute the trap. At around 1500 hours PW 1 saw "his" two NCOs rushing towards the house of the petitioner followed by the CMP personnel. PW1 saw the petitioner being brought by his NCOs and CMP personnel alongwith Nb Sub BN Roy. At that moment they were near the outer gate of house of the petitioner. When PW 1 went nearer to them the petitioner

told him, "*Sahab Sab Kuch aap ke hath main hai, aap mujhe bacha lo*" or words to that effect. PW1 told the petitioner not to worry but to tell them as to where the money was. The petitioner took Nb Sub BN Roy and Hav Ramchandar inside his house in the first bed room. He himself went inside the inner bed room alone and came back with a bundle of currency notes wrapped in a paper and handed over the same to PW1. PW1 removed the paper and showed his signatures on the currency notes to Nb Sub Ram Bhaj of CMP and handed over the currency to him there only. PW1 then briefed Offg. Col A, Maj Mullick and the petitioner was taken to 101 Area Provost Unit on instructions of Offg Col A. Before September 1986 PW1 had met the petitioner on two or three occasions since he was also from the Artillery and their meeting was casual and not official. On 09.12.2007 the petitioner told PW1 that his brother-in-law had committed suicide on 17.10.1987. He also told PW1 that in case he was marched up to the GOC and the GOC promises not to try him by Court Martial he was ready to accept his mistake and plead guilty. This conversation was recorded by PW1.

10. During cross examination PW1 states that Nb Sub BN Roy had not told him that he had seen the tout coming out of the house of the petitioner but that he had seen him around that house. PW1 had not personally seen Nb Sub BN Roy handing over the money to the accused. He could neither confirm nor deny whether the money was thrown/planted in the house of the accused or

handed over to him by Nb Sub BN Roy. Under the trap laid for the accused PW1 wanted only one candidate to be recruited. He believed Nb Sub BN Roy on whatever he briefed him about his conversation with the accused as he had no other means to verify its veracity. The documents of candidates were procured by his No.1 Team and were seen by him. The documents had since been returned from where they were procured and hence were not available as evidence. The petitioner had met PW1 on 3-4 occasions prior to 09.12.1987. The petitioner had told PW1 about his mental condition. During their meetings the petitioner told PW1 that he was undergoing a lot of mental tension for the last eight to ten months. There had been a number of problems at home and so he wanted to visit PW1 and show letters to him and tell him about his difficulties and problems. During the recording of the Summary of Evidence PW1 had told the petitioner that in case he accepted his mistake then something could be done.

11. JC-140324 H Nb Sub Roy of Def Eastern Command Liaison unit (5 ECLU) was the second witness for the prosecution. PW2 came on posting to Shillong on 12.08.1986. His Commanding Officer Maj GS Mann had tasked him to find out any malpractices or corruption in recruitment at BRO. He visited BRO, ZRO, Area and Garrison Ground to see whether there was any malpractice or corruption. During the task, he found 2-3 suspicious looking persons around but was not successful in his task. He projected his difficulty

to his OC and requested him to tell him the general areas where the recruiting staff was staying. After that PW2 kept a strict surveillance of these areas. One day he saw one person whom he had also noticed earlier moving suspiciously, outside the quarter No.DCO-5. He immediately reported this to Major GS Mann, PW-1. During September 1986, PW2, was given a cover name of Anil Kumar (for laying of the trap) by his Officer Commanding. After entering his home, PW2 asked the petitioner whether Singhji was present. When the petitioner asked as to "which Singhji" PW2 told that Singhji was the person who stayed in the house whom he used to visit earlier. The petitioner told PW2 that Singhji had since been posted out and asked him the purpose of his visit. PW2 told the petitioner that he had come to get his candidates recruited and Singhji used to help him. PW2 visited the house of the petitioner again in the evening after 4-5 days. The petitioner asked PW2 about candidates willing for recruitment. PW-2 told the petitioner that they kept on coming to him and that he had also got some enrolled through Singhji. The petitioner told him to collect the documents of the candidates and meet him and he would see the papers and then PW2 did as he was told. PW2 then asked him about the '*Hisab kitab*' for recruitment. The petitioner after a little thought told PW2 that it would be Rs.4000/- per candidate. PW1 then told the petitioner that Rs.4000/- was too much. PW2 replied that it was not too much as from this amount after sharing with others, nothing was left with him. During the first week of October, 1986, the accused met PW2 in Bara Bazar

and enquired as to why he had not visited him. After 3-4 days, PW2 went to him at his house with two 'normal' papers which PW2 had taken from some person who had come for recruitment to the BRO/ZRO office. PW2 had asked them to hand over the papers to him in case they were interested in recruitment. PW2 showed the papers which the petitioner rejected after seeing them and asked to get the documents of other candidates. The petitioner then told PW2 to get the documents of other candidates especially from Nowgong district, as in case they could not be recruited there, they could be adjusted when the petitioner went on tour. The petitioner told PW2 that he would even try to adjust the local candidates. He told PW2 to show the documents of the candidates before bringing them to him.

12. PW2 reported this discussion to his OC. His OC i.e. PW1 contacted his No.1 team, briefed them and asked them to procure the papers. PW1 also told PW2 not to take any action as he was going on annual leave but to keep a watch. PW2 met the petitioner on three occasions during October, November and first week of January 1987 in Bara Bazar. On 27.01.1987 Major G.S.Mann (PW1) handed-over PW2 documents of three candidates of Nowgong district. PW2 went to the house of the petitioner alongwith the documents on 28.01.1987 in the evening. The petitioner examined the documents of all the three candidates and selected only two out of them. The names of these two candidates were Ajit Deka and Susheel Kumar Sharma.

The petitioner told PW2 that the original admit card in respect of Sushil Kumar Sharma was required. In respect of Ajit Deka, he was over-age by two years. The petitioner asked PW2 either to amend the admit card or obtain a fresh admit card. The documents of the third candidate were rejected by the petitioner as the mark sheet had some amendments. The petitioner asked PW2 to come next day at Gari khana between 4 and 4.30 PM where he would tell him what was to be done next. PW2 went to Gari khana on 29.01.1987 about 4.30 PM but the petitioner was not there. He then went to the house of the petitioner. The petitioner then examined the papers of the two candidates again in detail. He told PW2 that for Ajit Deka the admit card had to be amended. For the other candidate he told PW2 to get the original admit card. On being asked as to when these candidates should be brought, the petitioner told PW2 to bring them to the ground on 07.02.1987. But before that, the documents should be shown to him again. After that PW2 asked the petitioner about the money, he told him to take the money and keep it with him only.

13. The money, as the petitioner told him, was to be given to him when he asked for it. PW2 then told the petitioner that for Ajit Deka he had brought only Rs.4000/- out of which some may be spent in getting a new admit card or getting it amended. So the amount should be accordingly reduced. The accused agreed to reduce Rs.100/-. The conversation between the petitioner and the PW2 was recorded by PW2. The cassette had been produced before

the Presiding Officer of the Court of Inquiry. After recording, the cassette and the tape recorder had been handed over to PW1. The Court Martial had found the cassette inadmissible in evidence.

14. On 30.01.1987 PW2 went to the house of the petitioner. He was not there. On 31.01.1987, PW2 met the petitioner at Bara Bazar. The petitioner wanted PW2 to show him his house. PW2 went to the house of the petitioner on 02.02.1987 evening and told him that he had asked the boys to come prepared with money and documents on 06.02.1987. PW2 then asked the petitioner whether he should take the complete amount or only half. The petitioner asked him if he had other candidates. PW2 told him there two graduates from Lavang area. The petitioner said that he would like only those candidates who could come that day and go the next day. When PW2 asked the petitioner about money, he asked PW2 to collect it and keep it with him till he asked for it. The conversation on 02.02.1987 had been recorded by PW2. The cassette was handed over to PW1. PW2 briefed PW1 that the petitioner was pressing to see his house.

15. Major GS Mann (PW1) arranged for a house in Lavang. PW2 went to the house of the petitioner on 05.02.1987. He met the petitioner with a cover story that that his father-in-law was very serious and might expire any time. His wife had left for Kolkata and he also had to go. PW2 asked the petitioner to take the money and the documents of the candidates as he had to go. The

petitioner told him to collect the papers and the money from the candidates and leave it with him. For this he fixed the date and time as between 2-3 P.M. on 06.02.1987 at his house. This information was passed by PW2 to his OC (PW1) on 05.02.1987 only. On 06.02.1987 Maj Mann arranged for the money. He briefed PW2 as to what he had to do. He also briefed other NCOs of his unit and the personnel from the Provost unit. The CMP personnel were in civil dress. The money amounting to 4000/- which was in 30x100 rupees notes and 100x10 rupee notes were handed over to PW2. PW1 has signed on four Hundred Rupee (denomination) notes and about six notes of Rupees Ten. These signatures were shown to PW2 also at the time of handing it over to him. On 06.02.1987, around 1430 PW2 left for the house of the petitioner with Rs.4000/- and documents of four candidates.

16. At the house of the petitioner he saw the petitioner and a lady, whom he presumed to be his wife, sitting outside the house in the lawn. The petitioner on seeing PW2, took him inside the drawing room PW2 showed him the papers and told the petitioner that he had briefed the candidates. Susheel Kumar had not come but he would come the next day. The petitioner objected to the amendments in the age in the Admit Card of the Ajit Deka. But PW2 told the petitioner that since fresh original certificate could not be obtained the amendments had been made. The petitioner agreed and said that he could adjust with that certificate only. PW2 also showed him the documents of two

graduates which he approved but said that the enrolment of the graduates was a long drawn procedure and would take a lot of time. Then PW2 took out the money and handed-it over to the petitioner. The petitioner asked PW2 whether it was for one candidate only. When he confirmed that it was for one candidate only, the petitioner asked him whether it was counted and was full Rs.4000/-. PW2 told him that it was full Rs.4000/- and in case he wanted to count, he could do so. The petitioner took the money from PW2 and excused himself for a few seconds. He went to the inside room and came out after a few seconds. PW2 identified the money during the Court Martial. The money when handed-over to the petitioner was neither tagged nor stitched. The money was wrapped in a white ruled paper of a normal copy book with a black rubber band on it. The amendment of age in the admit card of Ajit Deka was done by PW2 to satisfy the petitioner. On 06.02.1987, the conversation between PW2 and the petitioner was also tape recorded on the same tape on which PW2 had recorded the conversation on 02.02.1987 (rejected as inadmissible evidence by the Court Martial). When the petitioner came out of the house to the lawn to see PW2 off, PW2 immediately gave the pre-arranged signal which was to take out his handkerchief from the pocket and wipe the face. PW2 also told the petitioner to stay wherever he was. Seeing his signal the NCO from his unit rushed towards the accused to cover him. The NCOs were Hav/Clk Talukdar and Hav Kannan. PW2 asked them about the whereabouts of the CMP personnel. Immediately, the CMP personnel and

his OC, Major GS Mann also came there. The lady who was sitting outside tried to go inside the house but PW2 stopped her from going inside. When Major GS Mann (PW1) alongwith the CMP personnel came there, he asked the accused as to where the money was. The petitioner took Major GS Mann(PW1), CMP personnel (PW2 following) to the first bedroom of the house. Major GS Mann (PW1) again asked the petitioner as to where the money was. The petitioner went inside the second bedroom alone and brought the money which PW2 had handed-over to the petitioner. Petitioner gave the money to PW1 who immediately opened it and showed his signature on the currency notes to the CMP personnel and handed over the money to them. The whole conversation upto this stage was tape recorded by PW2 on a cassette. PW2 handed over the cassette to PW1 the same day. (The cassette after due examination was declared as inadmissible evidence by the Court Martial). The petitioner was then brought to the unit office in the staff car in which Maj GS Mann, CMP personnel and PW2 also travelled. Some officer from 'A' Branch of 101 Area also came there after some time and the petitioner was taken away by the CMP personnel in the car.

17. During cross examination PW2 states that he had never been specifically told by OC Major GS Mann to keep surveillance over the house of the accused and to find out whether he indulged in corrupt practices. When confronted with the fact that during the Summary of Evidence he had stated that, "I came

to know from my source (witness declines to divulge the source) that some JCO of recruiting branch who stays at Quarter No.DCO5 indulges in malpractices in connection with enrolment of candidates' and the statement during the Court Martial that he had seen a suspicious looking man around DCO-5 of which he had reported to Maj GS Mann (PW1), he claimed that both the statements were true and he did not know why the same had not been recorded during the Summary of Evidence. Once again when confronted with the fact that he had stated during the Court Martial that the petitioner had told him that he would charge Rs.4000/- for enrolment of each candidate, when he had not stated any such thing during the Summary of Evidence (SOE), PW2 states he does not know the reasons for not recording of the same during SOE but he had definitely stated that while giving his statement. Subsequently PW2 states that he did not remember whether he had stated this fact before the officer recording Summary of Evidence. However, it was incorrect to say that PW2 was making that statement for the first time after having been tutored by someone. PW2 had stated in his statement at the SOE that on 28.01.1987 at about 06.30 AM he went to the petitioner's residence and showed him the paper of four candidates. That may have been a mistake on his part but the fact which he has stated at the Court Martial that he had taken the documents of three candidates was correct. PW2 had not mentioned reduction of Rs.100/- towards expenditure in getting certificates in the SOE. On 06.02.1987 when PW2 had gone to the house of the accused with the

money and the documents, they were sitting in the drawing room of his house. The petitioner, when he came out to see PW2 on 06.02.1987, he was not caught hold of by the NCO's of the liaison unit but only covered. It was also not true that the petitioner was held by the NCOs even before he gave the signal. The signal was that he was to take out his handkerchief from the pocket and wipe his face. When Major GS Mann (PW1) had asked the petitioner as to where the money was, he showed no hesitation or said anything but took them inside the house. The petitioner went inside the second bedroom and brought the money which PW2 had handed-over to him. On all occasions whenever PW2 met the petitioner in his house no other person was present. On 06.02.1987 when PW2 handed over the money to the petitioner there was no third person was present in the drawing room. The original documents of Ajit Deka and Susheel Kumar Sharma had been returned to them and he could not produce them at the Court Martial. Major GS Mann (PW1) had told PW2 that he should carry out his task and try to complete it soon. It was incorrect to say that because PW1 had asked PW2 to complete the task soon. On 06.02.1987, PW2 went to the house of the petitioner with the money and although he did not take it, PW2 threw it in his room to get him caught. It was incorrect to say that whatever he had stated was false and had been made up in order to get the petitioner fixed; that the petitioner had never asked for money but PW2 had thrown it in his house in order to get him arrested to make this case successful and spoil the career of

the accused. It was correct to say that the task had been assigned to PW2 by PW1 and PW2 was interested in successfully completing the same.

18. No.7427259N Hav/Clk G Talukdar of 5 Det Eastern Command Liaison Unit (5ECLU) was the third witness for the prosecution. On 06.02.1987 during office hours Maj GS Mann (PW1) had briefed PW3 that he had to go with PW2 around 1430 hours to DGO-5 where he was going for a special task. PW1 also told him that he had to cover Nb Sub BN Roy (petitioner) in case he gave the signal by taking out his handkerchief and wiping his forehead. In case no signal was given then they were not supposed to go in. On 06.02.1987, around 1430 hours, PW3 and Hav Kannial went to DGO-5 with PW2. Petitioner was walking 10-15 yards in front of them. At the location, PW3 and Hav Kannial sat under a truck from where they could have easily see the signal from PW2. After about 20-25 minutes, PW2 alongwith the petitioner came out of the house. After coming about 2-3 yards in the lawn from the entrance door, PW2 gave the signal by wiping his forehead with his handkerchief. PW3 and Hav Kannial immediately ran towards them and covered PW2 and the petitioner. After about two seconds, two personnel from the CMP also reached there. They then started taking the petitioner towards PW1 who had by that time come inside the gate of the house. When PW1 came, the petitioner requested him to save him as everything was in his hand. PW1 then asked the petitioner to tell him as to where the money was. After

that PW1, the petitioner, 2 CMP personnel and PW2 went inside the house. Before going inside, PW1 instructed PW3 to return to unit. Accordingly PW3 and Hav Kannial came back to the unit. The CMP personnel were dressed in civvies.

19. During cross examination when PW3 was shown his statement made in SOE "on 06.02.1987 at about 9.00 AM my OC Major GS Mann briefed me and Hav Kannial of my unit, regarding arrest of Sub Prem Singh of HQ Recruiting Zone, Shillong at the latter's residence", he states, "I had never stated this and I do not know as to how it has been recorded in my statement". PW3 states that he had also been briefed by Nb Sub BN Roy (PW2) regarding the signal and how they were to cover the petitioner. The petitioner had not asked PW3 to arrest the petitioner. When shown his statement "He had already briefed us regarding our dashing to the house and subsequent arrest of Sub Prem Singh on a pre-arranged signal (wiping of mouth with a handkerchief given by him", PW states, "The word arrest I had not said in my statement. I do not know how it has been recorded in the SOE". When shown his statement in the SOE where in to a question by the petitioner "where did you arrest me", he had answered "outside your house in the lawn", PW3 states that he did not remember having stated such a thing.

20. JG 138293(P) Sub Ram Bhaj of 101 Area Provost Unit was the fourth witness for the prosecution. On 06.02.1987, PW4 was instructed by his

Sub Major to go to 5 ECLU at 1400 hrs and meet Major GS Mann (PW1) along with Hav Ram Chander. He was told to go in civvies. PW1 briefed him at about 1430 hrs that he and Hav Ram Chander had to follow 2 NCOs of 5 ECLU, Hav Talukdar and Hav Kannial and go whenever they went. PW4 was told to help them in case required. After sometime PW4 started following the 2 NCOs of 5 ECLU keeping a distance of approximately 40 yards. The two NCOs sat under a truck out of the two parked near a house near LAO's office, about 10 yards away. PW4 and Hav Ram Chander also sat down on a culvert near Adm. Block of MH at a distance of 30-40 yards. After about 5-10 minutes, the two NCOs rushed towards the house. PW4 followed them as per instructions. PW1, who had also come in his car and was loitering on the road, followed him. The house was occupied by the petitioner. When he reached there, the petitioner was covered from the sides by the two NCOs and was followed by Nb Sub Roy (PW2) whose name he came to know there only. PW1 reached and asked the petitioner about the money which PW2 had given him. The petitioner told him that the money was inside. The petitioner then took PW1 inside the house. The two NCOs of 5 ECLU, PW2, Hav Ram Chander and PW4 went inside the bedroom where the daughter of the accused was lying on a bed. The petitioner then entered the other bed room linked by a door and after some time returned with the money which he handed over to PW1. PW1 gave the money to PW4 and showed him his signature on a few currency notes where he had signed earlier. After that

PW4, Hav Ram Chander, PW2, PW1, one NCOS of 5 ECLU and the petitioner returned to the office of ECLU in the staff car of PW1. In all the money was Rs.4000/- with 30x100 Rupees Notes and 100x10 Rupee Notes. The money when handed over by the petitioner was wrapped in a paper of a copy book and a black rubber band was put over it. The money was kept by PW4. After returning to the office, PW4 counted the money himself and compared the machine numbers with the list prepared by PW1 in his note book which was with him and found them to be correct. PW4 prepared a fresh list of numbers of the currency notes and kept with him. PW1 also got an office file and showed PW4 his signatures. When PW4 compared the same with the signatures on the currency notes, they were found to be similar. After some time Major Mullick of HQ 101 Area came. After 2-3 minutes, PW1 asked PW4 if he had prepared a list of the machine numbers of the notes. PW4 said that he had, PW1 dropped PW4, the petitioner and Hav Ram Chander at the unit in his staff car. PW1 also told him that he would get instructions on what was to be done to the petitioner. At about 1730 hrs, Sub JG Laxman Rao of F Composite Signal Regiment came to his unit and PW4 handed over the petitioner to him. At about 1800 hours PW4 was called by Lt Col Jagtar Singh. Lt Col Jagtar Singh checked the money as per the list prepared by PW4 and handed over the money to him along with the list. On cross-examination PW4 states that when PW1 came near the petitioner and asked him about the

money, there was no hesitation shown by the petitioner. The petitioner had only said the money was inside.

21. No. 7767721 K Hav (MP) Ram Chander of 101 Area Provost Unit was the fifth witness for the prosecution. On 06.02.1987, PW5 and Sub Ram Bhaj were instructed by their Sub Major to report to PW1 at about 1400 hours. He briefed them. PW1 showed them two personnel of his unit and told them to follow them at a distance of 30-40 yards. One more person was behind the two which they later came to know was Nb Sub Roy of 5 ECLU. PW5 entered the gate of the house of the petitioner and stood in front of them. At that time PW1 came inside the gate. Nb Sub B.N.Roy (PW2) told PW5 to see that no one either went inside or came out of the house. After some time PW1, Sub Ram Bhaj and the petitioner came there and PW1 asked the petitioner to bring the money. The petitioner went inside the room alone linked with the room they were standing and within a few seconds returned with the money wrapped in a paper and handed it over to Major GS Mann (PW1). PW1 pointed out to Sub Bhaj his signatures in a few notes. The money was then counted by Sub Ram Bhaj. PW5 was standing near him. The money in all was Rs.4000/- with 30 x 100 Rupee notes and 100 x 10 rupee notes. PW5 had seen the signature of PW1 on the currency notes. PW1 later showed his signature on the notes which tallied with those in the notes. PW1 also gave them a note book in which he had earlier noted down the machine numbers of

the currency notes. These numbers were compared with the machine numbers of the notes which the petitioner had handed-over and found them to be the same. During cross-examination, PW5 states that he had not seen PW4 handing over the money to the accused. PW5 could neither deny or confirm the suggestion that the money was not handed-over to the accused by PW2 but thrown in his house. He also did not know the purpose for which the money was handed over to the accused or thrown in his house. PW5 emphasized that he had never stated in any of his prior statements that the petitioner was held from both sides by his arms by two persons of liaison unit. When confronted with the statement made during the 'Court of Inquiry. "There we saw Sub Prem Singh having been taken out from his house by holding both arms by the two persons of liaison unit who had gone inside earlier", PW5 states he did not know how this statement had come to be recorded ! Once again during questioning in the COI, PW5 had stated "initially when he was first time brought out from his house he was held from his both arms by the persons of liaison unit". One being confronted with the contradiction with his statement made during the Court Martial, PW5 states that he had only stated that the two persons were walking "*Aazoo Bazoo*" (on each side) of the petitioner. He did not know how this word was translated by the COI.

22. IC 11854A Col AK Malhotra of HR Recruiting Zone, Shillong was the first witness for the defence. On 03.07.1986 Col KN Rai SM had reported to

DW1 that a few candidates had been induced to pay Rs.2000/- each to a tout named Rabinder Deka, for their recruitment. The tout was identified by the candidates as a spectator. He was apprehended and handed over to the local police. The FIR was lodged by the petitioner. From the date of his arrival June, 1986 till the date of the incident involving the petitioner, DW1 had not found anything against the petitioner to doubt his character and integrity. In addition to performing his recruiting duties, the petitioner performed other duties also. He was a hardworking JCO. DW1 was quite satisfied with his performance. The procedure followed for enrolment in the organization during 1986-87 was that firstly, scrutiny of the candidates i.e. checking of their documents and eligibility as per educational qualifications and physical measurements was done. All this was carried out by the Recruiting staff. After this, the physical efficiency test followed by a written test, medical test and preparation of merit list etc. During all this, the independent member took an active part. **The procedure had been devised to prevent any malpractice in the recruitment. Under this procedure, it was not possible for any one individual member to get any undeserving candidate enrolled unless the complete board had connived.** During cross-examination of DW1, he states that it was incorrect to say that whatever he had stated about the character of the petitioner the incident was at the behest of the petitioner who was a subordinate in the unit when the incident took place. DW1

emphasized that it was the duty of DW1 to know his men and he had stated whatever he knew about the petitioner till the date of the incident.

23. JC-135715 K Sub GS Haroria of 6 Garhwal Rifles was the second witness for the defence. During March 1986, DW2 and the petitioner were going to Bara Bazar. On the way, the petitioner was approached by a boy who asked him if had come on posting recently. The petitioner replied in the affirmative. The boy then suggested to the petitioner to get a few candidates enrolled and he would think about the petitioner. The boy told the petitioner about taking money for recruiting the candidates. The petitioner did not agree and a fight ensued. The petitioner then gave a slap to the boy. DW2 stopped the accused as it was not good to pick up a fight in the bazaar. During cross examination DW2 stated that it was not true to say that he being a friend of the accused used to share money with him which he got after getting the candidates enrolled and had made this statement at his request.

24. We have heard the learned counsel for the parties and have perused the record.

25. The petitioner stands charged under section 64(e) of the Army Act which is as under:

“OBTAINING FOR HIMSELF A GRATIFICATION AS A  
MOTIVE FOR PROCURING THE ENROLMENT OF A  
PERSON in that he at Shillong, on 06.02.1987, while  
performing the duties of Assistant Recruiting Officer in

HQ Recruiting Zone, Shillong obtained Rs.4000/- (Rupees Four Thousand only) from JC-140324 Nb Sub BN Roy alias Anil Kumar of Detachment Eastern Command Liaison Unit, a gratification as a motive for processing the enrolment of Ajit Deka in the Army."

Sd/-

(CP Shouran)

COI Commanding Officer

'F' Composite Signal Regiment

dated 18.02.1988

26. The charge reveals that the petitioner had obtained a gratification as a motive for procuring enrolment of one Mr. Ajit Deka in the army for which an amount of Rs.4,000/- was obtained by him from Nb. Sub. B.N.Roy@ Anil Kumar, Detachment Eastern Command. He has been tried by the Court Martial. He was convicted and sentenced to be dismissed from service

27. Before proceeding in the matter it is important to note that the petitioner was working in Headquarter Recruiting Zone, 101 area. One Maj GS Mann initiated an inquiry to find out if any malpractices or corruption were taking place in recruitment at BRO. One Nb Sub. B.N. Roy was assigned to find out any incident of corruption in the recruitment of candidates. It was a secret operation allotted by PW-1 to find out any activities in the process of making recruitment. It was during this secret inquiry being undertaken by the witness, that he entered the house of the petitioner, asked about one Singhji who was predecessor of the petitioner and was residing in the house in which he used to visit earlier. PW-2 presented himself as Anil Kumar who sought recruitment of two persons namely Ajit Deka and Susheel Kumar. They were

all fictitious persons and it was a trap laid by the officer of the area to catch the persons involved in the corruption. We are confronted with the issue as to whether in absence of the complainant, could the respondents have laid a trap which can be said to be an legitimate trap. The other aspect of the matter is that in order to convict a person whether necessary ingredients of the trap had been complied with or not.

28. Firstly we will deal with the issue as to whether necessary ingredients of the trap have been complied with or not. Before appreciating this question it is settled preposition of law that following three ingredients are to be complied with:

- a) demand
- b) acceptance
- c) recovery of tainted money.

29. In this behalf it is important to mention that there is only one witness to the demand ie PW-2 Nb Sub. B.N.Roy. In his testimony he has stated that while conducting the inquiry he zeroed on the petitioner by offering a bribe of Rs.4,000/- for procuring appointment of two candidates Suseel Kumar and Ajit Deka. The crux of the statement is that he approached the petitioner with a request that his two candidates may be appointed for which an amount of Rs.4,000/- per candidate was settled. Two objections are stated to have been raised by the petitioner regarding these two candidates. One with respect to

the candidate Susheel Kumar for original I card to be obtained and in respect of Ajit Deka fresh card was to be obtained from the University. Petitioner is stated to have told him to collect the money from the candidates on his behalf. It is on 06.02.1987 complainant went to the house of the petitioner and found his wife sitting in the lawn. Witness went inside the house in the drawing room of the petitioner who accepted the documents given by the complainant. After receiving the documents, the money was given by the witness to the petitioner which he kept in the bed room attached to the drawing room. After handing over the money, the witness gave a signal to the trapping party.

30. The trap party entered the house of the petitioner and asked him to hand over the money. The petitioner is stated to have gone inside the bed room to collect the money. From the aforementioned deposition what clearly emerges is that money was handed over to the petitioner by PW-2, Anil Kumar (B.N.Roy), which is stated to have been kept in the bed room by the petitioner. On being asked to hand over the money he goes into the bed room and brought the same wrapped in a paper. The only person witness to the acceptance of the money is PW-2, Anil Kumar (B.N.Roy). It is admitted that notes were not treated with phenolphthalein powder. Admittedly, there is no independent witness who has corroborated the demand and acceptance of tainted money by the petitioner. In cases of such nature it is necessary that an independent corroboration would not mean that every detail of what the

witness of the raiding party has said has to be corroborated by an independent witness. All that is required is that there must be some additional evidence, rendering it probable that the story of the interested witness is true and it is reasonably safe to act upon it. In this case following things are required to be examined with respect to the character and the trustworthiness of the witnesses:

- a) That in absence of a genuine complainant, PW-2 acts as a decoy by claiming himself to be one Anil Kumar;
- b) That rowing inquiry was conducted by the Officer-in-charge of the unit to find out any malpractice which were under way for recruitments. It is in the back drop of this fact that the character and reliability of the witness has to be judged as being a partisan witness;
- c) That in absence of independent witness to any demand and acceptance, is it safe to rely upon the sole testimony of the witness who apparently is a partisan witness interested in the success of the trap.

31. It may be necessary for Investigating Officers to lay a trap in order to detect corruption in the society by offering money to the public servant. The rule of evidence treats the evidence of a complainant as an accomplice. If they are not treated as accomplice, they are to be treated as partisan witness who are interested in the success of the case. Their evidence must be tested in the same way as other interested evidence is tested by the application of diverse consideration which may vary from case to case. The court may even look for independent corroboration before convicting the accused persons. Even in respect of evidence of an accomplice, there must be some additional

evidence, rendering it probable that the story of the accomplice is true and that it is reasonably safe to act upon it. Corroboration need not be direct evidence that the accused committed the crime, it is sufficient even though it is merely circumstantial evidence which connects him to the crime.

32. Applying the same principle in the present case, what is clearly forthcoming is that the complainant, who is PW-2 managed the trap by pretending to be one Anil Kumar, who seeks enrolment of two persons in the Army. The bribe money is also managed by the respondents which has been handed over to the petitioner. Even though, arranging a trap like the one for detecting corruption can not be castigated but the fact remains that in order to establish the credibility and genuineness of the trap, it is necessary that the evidence of PW-2 who is a partisan witness needs corroboration more particularly on material facts namely demand and acceptance of tainted money. We do not find any such corroboration forth coming in the trial. The whole investigation has been conducted in an opaque manner. Conviction has to be an exercise by the court more particularly when the person on whose behalf the money is supposed to have been given to the petitioner does not exist. So the role of PW-2 is only as a partisan witness whose testimony can not be accepted at its face value. Therefore, it becomes necessary that his evidence on material facts is required to be corroborated by independent witness. Uncorroborated evidence of accomplice is admissible in

law, but it has long been a rule of practice , which has virtually become equivalent to a rule of law, that the Judge must warn the jury of the danger of convicting a prisoner on the uncorroborated testimony of an accomplice. The rule of practice is that the Army Authorities are to prevent the crime being committed but it is not part of their business to provide the instruments of the offence. It is the duty of the court while detecting cases of corruption and securing conviction, in such cases admissible evidence given in a case must be judged on its own merits with due regard to all the circumstances of the case. Demand and acceptance of tainted money in such a circumstances can not be accepted solely only on the basis of the witness who is partisan and interested witness unless same is corroborated.

33. In **AIR 1992 SC 665, Som Parkash Vs. State of Punjab**, following observation has been made by the Hon'ble Supreme Court:

"We agree with the learned counsel for the appellant that in the face of the finding that the witnesses who formed part of the raiding party were not independent and the evidence regarding handing over money to the appellant being unbelievable, the conviction of the appellant cannot be sustained. The guilt of the appellant has not been proved beyond reasonable doubt and as such the benefit must go to him."

In AIR 1956 sc 643(651), **The State of Bihar Vs. Baswan Singh**, Hon'ble Supreme Court has observed as under:

For the aforesaid reasons, we think that the learned Judge of the High Court did not correctly appreciate the effect of the

decision in Rao Shiv Bahadur Singh's case (2) and he was in error in thinking that the decision laid down any inflexible rule that the evidence of the witnesses of the raiding party must be discarded in the absence of any independent corroboration. The correct rule is this: if any of the witnesses are accomplices who are *particeps criminis* in respect of the actual crime charged, their evidence must be treated as the evidence of accomplices is treated; if they are not accomplices but are partisan or interested witnesses, who are concerned in the success of the trap, their evidence must be tested in the same way as other interested evidence is tested by the application of diverse considerations which must vary from case to case, and in a proper case, the Court may even look for independent corroboration before convicting the accused person. If a Magistrate puts himself in the position of a partisan or interested witness, he cannot claim any higher status and must be treated as any other interested witness".

34. While analyzing the import of the judgment clearly appears that there is no distinction between partisan or interested witness and accomplice. The Court is well within its right to look for independent corroboration before convicting the accused person.

35. In the present case, as already discussed herein in *supra* that the evidence of PW-2, Anil Kumar is of a partisan witness or interested witness as he was interested in the success of the trap looking to the facts of the case. It was on the instructions of his officer, PW-2 has managed this trap and by presenting himself as one Anil Kumar, who was interested in the enrolment of non existing complainant Ajit Deka. He has put himself in the position of a partisan /interested witness, as such his evidence has to be treated as any

other interested witness. In this particular case corroboration of his evidence by independent witness becomes necessary.

36. From the above mentioned facts in terms of the principle laid down (supra), there is no independent witness to the demand and acceptance. The petitioner has been convicted solely on the statement of PW-2, Anil Kumar. As already stated herein above supra statement of PW-2 Anil Kumar can not be reliable and in absence of any independent corroboration the same can not be accepted. Since there is no independent witness to the demand and acceptance, statement of PW-2 Anil Kumar (who was B.N.Roy) can not be relied upon.

37. With respect to the recovery of the tainted money, it has come in evidence that the money was handed over by PW-2 to the petitioner who is stated to have kept it in his bed room. Said money was brought out by the petitioner after the raiding party entered his house. Essential omission committed by the respondents is that the Notes were not treated with phenolphthalein powder so that the handling of such marked currency notes by the petitioner can be detected by chemical process so that the Court does not have to depend on oral evidence which is sometimes of a dubious character for the purpose of deciding the fate of the petitioner. All what has been done in the present case is that the Notes have been signed by head of the raiding party. Assuming that the Notes which were given by PW-2 were

the same, which were handed over to him by the head of the raiding officer, even then the petitioner can not be convicted of the offence as there is no independent corroboration regarding the demand and acceptance which are crucial for proving guilt against the accused. It may also be noted that under section 20 of the Prevention of Corruption Act, the onus shifts on the accused to prove that the tainted money accepted by him was not an illegal gratification. Before such presumption can be raised, it is necessary that the prosecution should have established by a reliable evidence that the accused had demanded the money which was accepted and recovered from him. The burden to prove it rests on the prosecution. If the prosecution fails to discharge its burden, no presumption can be raised. In the present case petitioner was not to discharge the burden as to how the money was recovered from him.

38. The second aspect of the matter is as to whether the present trap was legitimate or illegitimate. Every court has the inherent power and duty to prevent abuse of its process. This is a fundamental principle of the rule of law. By recourse to this principle courts ensure that executive agents of the State do not misuse the coercive, law enforcement functions of the courts and thereby oppress citizens of the State. It is simply not acceptable that the State through its agents should lure its citizens into committing acts forbidden by the law and then seek to prosecute them for doing so. That would be entrapment. That would be a misuse of State power, and an abuse of the process of the

courts. The judicial response to entrapment is based on the need to uphold the rule of law. A defendant is excused, not because he is less culpable, although he may be, but because the police have behaved improperly. The said crime is unacceptable and improper. To prosecute in such circumstances would be an affront to the public conscience. The State can justify the use of entrapment techniques to induce the commission of an offence only when the inducement is consistent with the ordinary temptations and stratagems that are likely to be encountered in the course of criminal activity. That may mean that some degree of deception, importunity and even threats on the part of the authorities may be acceptable. But once the State goes beyond the ordinary, it is likely to increase the incidence of crime by artificial means.

39. Lord Justice Goddard had highlighted this principle in '**Brannan and Peak (1947) 2All E.R.572** and observed as under:

unless authorized by an act of the Parliament, no trap can be laid by the police or the Magistracy to find out whether a man will commit an offence, and that persons trapping him like that that would be accomplices liable for punishment themselves. But I have held in several cases already that there are two types of traps "a legitimate trap" where the offence has already been born and is in its course, and "an illegitimate trap", where the offence has not yet been born and a temptation is offered to see whether an offence would be committed, succumbing to it or not. Thus, where the bribe has already been demanded from a man, and the man goes out offering to bring the money but goes to the police and the magistrate and bring them to witness the payment, it will be 'a legitimate trap', wholly laudable and admirable and

adopted in every civilized country without the least criticism by any honest man. But where a man has not demanded a bribe, he is only suspected to be in the habit of taking bribes and he is tempted with a bribe, just to see whether he would accept it or not and to trap him, if he accepts it will be "an illegitimate trap" and unless authorized by an Act of Parliament, it will be an offence on the part of the persons taking part in the trap, who with all the "accomplices" whose evidence will have to be corroborated by untainted evidence to a smaller or larger extent as the case may be, before a conviction can be held under a rule of Court, which has ripened almost into a rule of law.

40. In the light of the above mentioned principle, the present controversy is required to be solved. Following facts are not in dispute in the present case:

- a) Fictitious complainant who is represented through a fictitious name of Anil Kumar by Nb. Sub. B.N.Roy for procuring enrolment in the Army from the petitioner;
- b) That the trap amount of Rs.4,000/- has been arranged by the respondents and not by the genuine complainant, who in the present case should have been Mr. Ajit Deka;
- d) that the trap was laid by Major J.S.Mann only to detect the irregularities in the enrolment in the Army.

41. This issue was the subject matter of dispute in **AIR 1954 SC 322** entitled as **Rao Shiv Bahadur Singh & Anr. Vs. State of Vidhya Pradesh.**

Following observations are made by the apex court in the said judgment:

"It may be that the detection of corruption may sometimes call for the laying of traps, but there is no justification for the police authorities to bring about the taking of a bribe by supplying the bribe money to the giver where he has neither got it nor has the capacity to find it for himself. It is the duty of the police authorities to prevent crimes being committed.

It is not part of their business to provide the instruments of the offence. We cannot too strongly disapprove of the step which the police authorities took in this case in the matter of providing the sum of Rs.25,000/- to Nagindas who but for the police authorities thus coming to his aid would never have been able to bring the whole affair to its culmination. Not only did the police authorities thus become active parties in the matter of trapping the appellant No.1 they also provided a handy and an ostensibly independent witness in the person of Shanti Lal Ahuja, the Additional District Magistrate. Even though he was a member of the judiciary he lent his services to the police authorities and became a limb of the police as it were".

42. The import of the judgment clearly provides that the police has the abundant duty to detect and prevent crimes being committed. However, the investigation agency cannot be permitted to provide instruments of the offence ie tainted money which is supposed to have recovered from the petitioner.

43. Admittedly in the present case the trap money was provided by the respondents which is stated to have been recovered from the petitioner. The complainant Ajit Deka has not been examined and rightly so as there is no person by the name of Ajit Deka. In the absence of genuine complainant who would be beneficiary of the act of commission and omission committed by the petitioner and on whose behalf the amount was accepted by him, the respondents by entrapping the petitioner have become party to the crime. The amount is stated to have been obtained by the petitioner.

44. In view of the above discussion, the respondents have failed to prove the charge against the petitioner. As such the court martial proceedings

against the petitioner are quashed. However, the court in accordance with the powers vested in it vide Section 15(6) of the Act, finds the petitioner guilty under section 63 of the Army Act for not having brought to the notice of his superiors that he had been offered bribe by Mr. Anil Kumar @ Sub BN Roy for enrolment of candidates into the Army. In view of this, we remit the punishment of dismissal to severe reprimand. Since sixteen years have elapsed the petitioner was dismissed, he shall be deemed to have retired on the date he was to superannuate. All post retirement benefits due to him be paid to him with 12 % interest per annum, within three months. No order as to costs.

**(JUSTICE SUNIL HALI)**  
Judicial Member

**(AIR MARSHAL J.N.BURMA )**  
Administrative Member

New Delhi  
1<sup>st</sup> October, 2013  
brh