



- f) Location of 3 JAK LI Regimental Centre
- g) Strength and weapon deployed at Sidharwan Post.
- h) Location of roads, bridges, railway station, power houses and obstacle System .....

He was found guilty of both the charges and sentenced to suffer rigorous imprisonment for ten years and to be dismissed from service.

The trial and the sentence is challenged on the grounds that the SGCM was convened by the General Officer Commanding 26 Infantry Division who was not competent to do so under Section 112 of the Army Act as he did not have the powers to do so as he was not commanding forces in the field and the petitioner was not on active service. The petitioners plea under Army Rule 51 and 157 was rejected. It is then contended that the charges were not proved beyond reasonable doubt. The confessional statement said to have been made by the petitioner was not made and even if made was not admissible under Section 26 of the Evidence Act. The statement made by the petitioner before the SGCM is also denied and he is said to have only signed some papers the contents of which he did not know.

It is then stated that the petitioner had lost one live bullet on 07.12.1998 and as he was under pressure from his superiors to find the same, and while searching for it, he had lost direction and crossed over to Pakistan where he fell asleep and was apprehended by the Pakistani Rangers and put in Sialkot Jail. On being released he crossed back and while waiting for a bus for Jammu was apprehended by troops of Raj Rif. He had no intention to desert and desertion had not been proved.

The respondents had filed written statement and it is stated that vide Government of India Notification No 17E of 05.09.1977 issued in exercise of powers conferred vide Section 9 of the Army Act, all persons subject to the Army Act and serving in Jammu and Kashmir shall be deemed to be on active service. The convening of the SGCM by the General Officer Commanding 26 Infantry Division was in accordance with Section 112(b) of the Army Act. The petitioner was given a copy of the charge sheet well before the trial and he was at liberty to engage a counsel for defending his case which he did. He had made confessional statements to Army personnel while in custody of 4 Rajputana Rifles which was not a confession to a police officer and was not invalid under Section 26 of the Evidence Act. His statements were consistent and reliable. While in custody of the Pakistani Intelligence Agencies he had agreed to work for them. He was trained by them, given contact numbers and Rs 5000/- in Indian currency and helped to cross over back to India on the night of 20/21 Oct 1999 under firing from their side.

The petitioner appeared in person and stated that he had been framed only to save his superior Havildar Madan Lal for the loss of a bullet. He accepted that he had been detained in Pakistani custody and had agreed to work for them under pressure.

Heard the petitioner in person and the learned counsel for the respondents.

Perusal of Section 112 of the Army Act shows that an officer commanding the forces in the field on active service is empowered to convene a SGCM. The Government notification of 05.09.1977 empowers the general officer Commanding 26 Division to convene a SGCM. We find no irregularity in the same.

The original findings and reasons for the court to come to its conclusion had been filed as Annexure B (Pg 51). Perusal of the same shows that during the trial, ten witnesses were produced by the prosecution and the SGCM which conducted the trial found the petitioner guilty of both the charges and sentenced him on 05.05.2001 to suffer Rigorous Imprisonment for ten years and was dismissed from service.

As regards the first charge there was no dispute that on 10 Dec 98, the petitioner was deployed at BOP Sidharwan (Jammu and Kashmir) as part of Surveillance Detachment of 16 JAK LI. This fact is established from the evidence of Hav Madan Lal (PW-3) and Rifleman Pawan Kumar (PW-8), who were then deployed in the said detachment alongwith the accused at Sidharwan (J&K) and while serving at BOP Sidharwan was on active service.

The petitioner had voluntarily made a statement at summary of evidence recorded by Lt Col Gautam Pathak (PW-10) after due caution under Army Rule 23 (3) and signed the statement after it was read over to him in Hindi, as duly endorsed in Exhibit 'W'. The statement of the accused at summary of evidence (Exhibit W) was proved before the court. In the said statement the petitioner has categorically stated that after crossing over to Pakistan he enquired from a villager and was told that it was 'Lassi' village. It was two hours thereafter that he was apprehended by Pakistan Rangers 1 to 1.5 km in their territory. Further, he had confessed to PW-5 and PW-6 consistently that he voluntarily crossed over to Pakistan from Sidharwan post since he was punished by PW-3 over loss of one round and got perturbed as PW-3 told him to search for missing round and not to show his face till it was found. It was by any means not sufficient cause for normal person to get perturbed and cross over to Pakistan. The timing of the accused in leaving the post in the absence of PW3 and PW-8 and his conduct and above mentioned circumstances shows that the actions of the accused in leaving his post was not by mistake but was deliberate and thus the absence was voluntary.

In the evidence of Ex CHM Ramesh Singh (PW-4) of 4 Raj Rif it appears that on 21 Oct 99 at about 0830 hours while doing patrolling duty alongwith his party near Abdullain village/10r Post, he saw the petitioner standing aloof near the bus stop, village Abdullain. He was looking apprehensive and scared. He was putting on light Dust colour Pathani suit and sports shoes and was having long hairs and unkept beard. He was not giving looks of a soldier. PW-4 being suspicious enquired from the petitioner as to his identity to which he showed him his identity card and told him that he is posted in 3 JAK LI which is deployed in Assam. He is on leave and had come to meet his friend and stayed with him for the night. On further questioning by PW-4, the petitioner failed to give the name of his friend and the village where he had stayed for the night. On this PW-4 apprehended him and took him to his company commander. The above conduct of the accused in suppressing his identity from PW-4 clearly shows his intention to never to return to his unit. There is nothing to discredit this version of PW-4. The defence version that the accused voluntarily surrendered to an officer at Army post in Abdullian village first sighted by him at about 0600 hours, belies the evidence on record and his own statement at summary of evidence (Exhibit W) that he crossed the border at about 0200-0300 hours on 20/21 Oct 99 night and was shown the lights of Abdullian and Suchetgarh Indian posts by Pakistan officer and was apprehended by troops of 4 Raj Rif while waiting for a bus at Adbullian village bus stop. There was no reason for PW-4 to depose falsely against the accused. Further during preliminary interrogation by Maj JS Boparai (PW-5) immediately after his apprehension, the petitioner initially gave evasive and varying answers to PW-5 as to his identity and after about one and half

hours he disclosed his identity as belonging to 16 JAK LI. Further on search of the petitioner Rs.5000/- (ME-1) was found concealed in his socks.

It has been established on record through testimonies of PW-5 and PW-6 that the petitioner voluntarily confessed to them that while in Gurra Jail, Sialkot, he during interrogation divulged certain information of military value to Pakistan intelligence officers. The evidence of PW-5 and PW-6 is truthful and reliable and extra judicial confession made to them can be relied upon being consistent though not reduced to writing. It has also been established that during the period 10 Dec 1998 to 21 Dec 1999, the petitioner was under the control of Pakistan intelligence Officers in Gurra Jail. The course of events and his conduct shows that he gained their confidence and offered to work for them voluntarily. In view of presumptions of Law under Section 4 of Official Secrets Act 1923, it is established that the accused gave information on military matters of which he had knowledge. The statement made by the petitioner at the Summary of Evidence under Army Rule 23(3), corroborates the prosecution case and is valid evidence against the petitioner.

From the facts and circumstances of his return to Indian Territory it is clear that he was not repatriated which should have been the case had he been held by the Pakistanis after inadvertently crossing over to their side. He had in fact infiltrated back to Indian Territory. In case he had been pressurised to work for the pakisyani Intelligence Agencies it would have been appropriate for him to report to the nearest Army unit on returning to Indian territory and explaining the circumstances, however, he had not voluntarily approached the nearest military unit to report his return and on the contrary on being apprehended by personnel of 4 Raj Rif, he had tried to conceal his identity. The acceptance to work for the enemy is evident.

Having considered all aspects of the matter we find no irregularity or illegality in the trial of the petitioner by SGCM and accordingly uphold the finding and sentence.

This appeal is accordingly dismissed.

**[Justice Prakash Krishna]**

**[Lt Gen (Retd) NS Brar]**

25.02.2014  
RS

Whether the judgment for reference is to be put on internet? Yes/No