

AFR.
RESERVED
Court No - 3

**BEFORE THE ARMED FORCES TRIBUNAL, REGIONAL
BENCH, LUCKNOW.**

ORIGINAL APPLICATION NO. 299 OF 2011

Thursday this 04th day of February 2016

**“Hon’ble Mr. Justice D.P. Singh, Member (J)
Hon’ble Air Marshal Anil Chopra, Member (A)”**

Ex Sepoy Vishal Singh Chauhan (Army No. 3009286K) son of
Sri Sudhir Singh Chauhan, resident of 7A Gadheriyan Purwa,
Vikas Nagar, District Kanpur (U.P.)

.....Applicant

Ld. Counsel for Applicant : **Shri Virat Anand Singh,
Advocate**

Versus

1. Union of India and others through The Secretary, Ministry
of Defence, South Block, New Delhi – 110011.

2. Chief of the Army Staff, Integrated HQ of MoD (Army),
DHQ PO, New Delhi 110011.

3. Commanding Officer, 16 Rajput Regiment Pin 912116
C/O 56 A P O.

Ld. Counsel for : **Dr. Shesh Narain Pandey, Advocate**
Respondents **assisted by Capt Ridhishri Sharma,
OIC., Legal Cell**

(Per Devi Prasad Singh, J)

(ORDER)

1. Instant Original Application under Section 14 of the Armed Forces Tribunal Act, 2007 has been preferred being aggrieved with the impugned order of dismissal from Army service.

2 We have heard Sri Virat Anand Singh, Ld. Counsel for the applicant and Sri Shesh Narain Pandey, Ld. Counsel for the respondents assisted by OIC, Legal Cell.

3. The applicant who was enrolled in the Army on 19.12.2006 began his service career in Rajput Regiment field area in Akhnoor (J & K) with effect from 19.12.2007. While working at Akhnoor, it is alleged that the applicant faced ill-treatment from Company Havildar Major. Being aggrieved by ill-treatment of Company Havildar Major, he tried to draw attention of the Commanding Officer, but failed to do so. According to Ld. Counsel for the applicant, the applicant suffered mental pain, agony and depression on account of ill-treatment meted out to him by the Company Havildar Major, hence he shot himself on 31.03.2009 with intention to draw attention of the Commanding Officer. In consequence thereof, tentative charge sheet was served on him, copy of which has been annexed as **Annexure A-6** to the O.A. The respondents took a decision for Summary Court Martial. While making

statement during Summary of Evidence, the applicant admitted that he shot himself, but it was only to draw attention of the Commanding Officer. Copy of the Summary of evidence has been annexed as **Annexure A-4** to the O.A.

In the Summary of statements, the applicant stated that he shot himself with an aim to bring his grievance to the notice of the Commanding Officer and not to kill himself. He further stated that the act of shooting himself was not a well thought out action, but it was at the spur of moment.

4. During course of Summary Court Martial, a question was put to the applicant as to why he has shot himself and in response to it; the applicant gave reply and attributed the incident on account of ill-treatment by Company Havildar Major. Question No. 18 and answer thereto given by the applicant before the Court Martial is reproduced as under:

“Q. 18 You have stated earlier that your intention was only to draw attention of our Commanding Officer to the happenings of the company. You have also stated you never had the intention of committing suicide. Why did you write the note which you agree you have written and why did you shoot yourself rather than taking other recourse to draw attention of your Commanding Officer.

A. 18 After speaking to Company Havildar Major on phone, I lost control of myself and did not know what was right or wrong, otherwise I

would not have done this. At that point of time I could only think of this method to draw attention of my Commanding Officer.”

5. Lt. Col VS Chauhan of Command Hospital (Northern Command) gave details of the circumstances under which the applicant had shot himself. A note allegedly recovered from the applicant was handed over to the Court of Inquiry. He further stated that the applicant performed duties satisfactorily while serving the Army. He stated that the Commanding Officer mentioned that the applicant is serving satisfactorily in Regimental activities, cheerful, active, outgoing, punctual, dedicated and non-drinker. He lacked red ink or black ink entries. He further stated that CHM Jiladar Singh allegedly harassed the applicant and in the absence of regular employee, he directed the applicant to complete certain work which he could not do being new-comer. In consequence thereto, the applicant suffered threat and ill-treatment from CHM Jiladar Singh of his Coy. Because of ill-treatment, the applicant could not sleep and being disgusted from the ill-behaviour, shot himself to draw attention of the Commanding Officer. During course of inquiry, the applicant further stated that he does not wanted to die, but live honourably and was preparing for ACC examination and undergoing training for the same in the Unit. Statement of Lt Col VS Chauhan (PW-8) has been filed as Annexure A-7 to the O.A.

6. It has been stated that during course of trial, important witnesses viz. Company Havildar Major, Senior JCO and Company Commander of A-Company where the applicant was posted were not called to prove the suicidal attempt.

7. The applicant was admitted in Command Hospital (Northern Command) Udhampur on 02.02.2009 and was discharged from the hospital on 29.07.2009. Tentative charge sheet was issued on 30.07.2009 under Section 64 (c) of the Army Act, 1954 (in short, the Act, 1954). Final charge sheet was served based on the Summary of Evidence on 23.02.2010 and Summary Court Martial commenced on 26.02.2010 and was concluded on 04.03.2010. It is submitted that Summary of Evidence was ordered by the Commanding Officer on the same day. In para 4.8 of the O.A. it has further been stated that the charge sheet was served on 23.02.2010 and the Summary Court Martial commenced on 26.02.2010. The proceedings were held in English and the applicant does not know English. It is alleged that the applicant was not given choice to select friend of accused. By Summary Court Martial, the applicant was punished on 03.03.2010. It shall be appropriate to reproduce the verdict of the Summary Court Martial as well as sentence awarded by it, which is as under:

At 1100 hours on 03 March 2010, the Court adjourns until 1100 hours on 04 March 2010.

At 1100 hours on 04 March 2010, the Court reassembled pursuant to adjournment, present the same officer holding the trial, Junior Commissioned Officers attending the trial and friend of the accused as on 03 March 2010.

The accused is brought before the Court

The Court resumes the proceedings of the trial.

VERDICT OF THE COURT

(5) I am of the opinion on the evidence before me that accused No. 3009286K Sepoy Vishal Singh Chauhan of 10th Battalion the Rajput Regiment is guilty of the charge.

PROCEEDINGS BEFORE SENTENCE

(6) The following minutes by the Court are read and explained.

It is within my own knowledge, from the records of the 16th Battalion The Rajput Regiment that the accused No. 3009286K Sepoy Vishal Singh Chauhan has not been previously convicted by Court Martial or Criminal Court (A separate statement giving full particulars of any previous conviction to be annexed necessary)

That the following is a fair and true summary of the entries in his defaulter exclusive of convictions by a Court-Martial or a Criminal Court.

	Within last 12 months	Since enrolment	
For	NIL	Times NIL	Times
For	NIL	Times NIL	Times
For	NIL	Times NIL	Times

That he is at present undergoing NIL sentence.

That, irrespective of this trial; his general character has been EXEMPLARY.

That his age is 21 years and 207 days, his service is 03 years and 75 days, and his rank is SEPOY

That he has been in arrest (confinement) for NIL days.

That he is in possession of or entitled to the following military decorations and rewards :-NIL

SENTENCE BY THE COURT

Sentence Taking all these matters into consideration, I now sentence the accused No. 3009286K Sepoy Vishal Singh Chauhan of 16th Battalion The Rajput Regiment.

Dismissed(a) To be dismissed from service.

Signed at Shahjahanpur (UP) this Fourth day March 2010

Sd/-

*(SanjeevDhar)
Colonel
Commanding the 16th Battalion The
Rajput Regiment
(holding the trial)*

The trial closes at 1115 hrs.

PROMULGATION

Promulgated and extracts taken at Shahjahanpur (UP) this Fourth day of March 2010.

Sd/-

*(Harsha Kumar)
Captain
Officer-in-Charge of Documents*

[Remarks by the Reviewing Officer (AS Sec 162).]"

8. A plain reading of the findings recorded by the Summary Court Martial shows that no reason has been assigned by the Summary Court Martial how the controversy in question is an incident of attempt to commit suicide and how and under what manner defence set up by the applicant was incorrect and the incident was not for some compelling reason.

9. It has also been submitted by Ld. Counsel for the applicant that the findings recorded by the Summary

Court Martial was hasty and the order passed is cryptic and unreasoned, hence is hit by Article 14 of the Constitution of India.

10 On the other hand, Ld. Counsel for the respondents defended the impugned punishment and submitted that the applicant tried to commit suicide and was saved only because of quick medical aid. His conduct makes him unbecoming to be soldier; hence rightly he has been dismissed.

11. Summary Court Martial is held under Section 116 of the Act, 1954. Powers of Summary Court Martial has been provided in Section 120 of the Act, 1954. Sub-section (2) of Section 120 provides that when there is no grave reason for immediate action then matter may be referred to the officer empowered to convene a District Court Martial or on active service a Summary General Court Martial for the trial of the alleged offender. For convenience sake, Section 120 of the Act, 1954 is reproduced as under:

“120.Powers of Summary Courts Martial.—(1)

Subject to the provisions of sub-section (2), a summary court-martial may try any offence punishable under this Act.

(2) When there is no grave reason for immediate action and reference can without detriment to discipline be made to the officer empowered to convene a district court-martial or on active service a summary general

court-martial for the trial of the alleged offender, an officer holding a summary court-martial shall not try without such reference any offence punishable under any of the sections 34, 37 and 69, or any offence against the officer holding the court.”

Sub-Section (2) of Section 120 of the Act, 1954 further provides that Summary Court Martial shall not try without such reference any offence punishable under any of the sections 34, 37 and 69 of the Act.

12. The Army Rules, 1954 contains a procedure with regard to service of charge sheet. For convenience sake, Rule 34 of the Rules, 1954 is reproduced as under:

”34. Warning of accused for trial.—(1) *The accused before he is arraigned shall be informed by an officer of every charge for which he is to be tried and also that, on his giving the names of witnesses or whom he desires to call in his defence, reasonable steps will be taken for procuring their attendance, and those steps shall be taken accordingly.*

The interval between his being so informed and his arraignment shall not be less than ninety-six hours or where the accused is on active service less than twenty-four hours.

(2) *The officer at the time of so informing the accused shall give him a copy of the charge-sheet and shall if necessary, read and explain to him the charges brought against him. If the accused desires to have it in a*

language which he understands, a translation thereof shall also be given to him.

(3) The officer shall also deliver to the accused a list of the names, rank and corps (if any), of the officers who are to form the court, and where officers in waiting are named, also of those officers in court-martial other than summary courts-martial.

(4) If it appears to the court that the accused is liable to be prejudiced at his trial by any non-compliance with his rule, the court shall take steps and, if necessary, adjourn to avoid the accused being so prejudiced.”

In view of Rule 34 (1) of the Army Rules, 1954 the interval between the accused is charge sheeted and arraigned shall not be less than ninety six hours or where the accused is on active service less than twenty four hours. Active service has been defined in Section 3 of the Army Act, 1954, which is reproduced as under:

“active service” as applied to a person subject to this Act, means the time during which such person—

(a) is attached to, or forms part of, a force which is engaged in operation against any enemy, or

(b) is engaged in military operations in, or is on the line of march to, a country or place wholly or partly occupied by an enemy, or

(c) is attached to or forms part of a force which is in military occupation of a foreign country;”

13. Thus, according to sub-section (i) of Section 3 of the Army Act, 1954 active service applies to situation where Army personnel is attached to, or forms part of, a force which is engaged in operation against any enemy, or is engaged in military operations in, or on the line of march to a country or place wholly or partly occupied by an enemy, or is attached to, or forms part of a force which is in military occupation of a foreign country.

14. Coming to the first limb of arguments advanced by Ld. Counsel for the applicant that gap between an accused being informed and his arraignment shall not be less than ninety six hours. It is admitted fact on record that a charge sheet was served upon the applicant on 23.02.2010 and Summary Court Martial commenced on 26.02.2010. The mandatory period of ninety six hours gap was not provided. However, Ld. Counsel for the respondents has set up a case in the counter affidavit that the applicant being in active service, twenty four hours' notice between serving the charge sheet and actual trial would be sufficient.

There appears no pleading on record by the respondents which may indicate that the applicant was part of a force which

was engaged in operation against enemy, or he was engaged in military operation, or was on the line of march to a country or place wholly or partly occupied by an enemy or was attached or formed part of a force which was in military operation in a foreign country. In the absence of any material on record, the plea that the applicant was in active service is not established, hence service of charge sheet seems not prior to ninety six hours before the commencement of proceedings and suffers from violation of statutory provision.

15. The three Judges bench of Hon'ble Supreme Court in the case reported in (2009) 10 SCC 552 ***Union of India vs. A. K. Pandey*** held that prohibitive or negative words used in a statute are ordinarily indicative of mandatory nature of provision alone may not be conclusive. The Court may examine carefully the purpose of such provision. In the present case, Rule 34 of the Army Rules 1954 categorically provides that the interval between serving of charge sheet and beginning of trial shall not be less than ninety-six hours. Legislature to its wisdom has used the word '**shall not be less than ninety six hours**' which reflects that the provision contained in sub –rule (1) of Rule 34 of the Rules, 1954 is mandatory. Of course, for active service (supra) the period may be twenty-four hours.

16. In the case of ***A.K. Pandey*** (supra) Hon'ble the Supreme Court has held that the timeframe provided under sub-rule (3)

of Rule 34 of the Rules, 1954 has definite object and purpose and must be strictly followed; its non observance shall vitiate the entire proceedings. Their Lordships' of the Hon'ble Supreme Court further held that merely because the accused pleads guilty shall be immaterial. The mandatory provision contained in Rule 34 of the Rules, 1954, having been breached, the order of Court Martial shall liable to be set aside.

17. Needless to say that the purpose of Rule 34 conform to principles of natural justice with intention to give sufficient time and opportunity to the charged personal to prepare himself to face the trial. Little latitude or interpretation otherwise shall be prone to abuse resulting in miscarriage of justice. The other reason for ninety six hours' time lag is to give sufficient time to object the charges under Rule 112 that it does not disclose evidence or it is not in accordance with rules so that the charges may not be arraigned to the accused. For convenience sake, Rules 111 and 112 of the Rules, 1954 are reproduced as under:

“111. Arraignment of accused.—(1) After the course and interpreter (if any) are sworn or affirmed as above mentioned, the accused shall be arraigned on the charges against him.

(2) The charges on which the accused is arraigned shall be read and, if necessary translated to

him, and he shall be required to plead separately to each charge.”

“112. Objection by accused to charge.—*The accused when required to plead to any charge, may object of the charge on the ground that it does not disclose an offence under this Act, or not in accordance with these rules.”*

18. Any deviation from the time lag as provided in Rule 34 of the Rules, 1954 may not provide sufficient time to raise objection under Rule 112 (supra) by the charged officer. Even if the accused pleads guilty, procedure given in Rules 115 and 116 of the Rules, 1956 is to be followed. It may be noted that in Rule 117 of the Rules, 1954 accused has been given liberty to withdraw his plea of not guilty and plead guilty.

19. One of the grounds raised by Ld. Counsel for the applicant is that Summary Court Martial was held in English and the applicant does not understand English being Hindi speaking person. However, the argument seems to not proved for the reason that according to averment contained in para 4.10 of the counter affidavit, the applicant has studied up to B.Com Part-I before joining Army. He undertook Corps training, a course meant for entry in the Army as an officer. It is further averred that the applicant as a Company Clerk had been typing on computer and making correspondence in English language. The averments contained in para 4.10 of the counter affidavit

have not been specifically denied; hence the ground raised on the ground of language is not tenable.

20. The other limb of argument that the applicant did not attempt to commit suicide requires to be considered. The order of the Summary Court Martial as well as the statements of the witnesses shows that the applicant's service career has been exemplary without any complaint from any section. Verdict of the court further shows that the applicant has not been previously convicted or suffered any red or black ink entry. It is not disputed that the applicant was charged for attempting to commit suicide under Section 64 (c) of the Army Act, 1954. Section 64(c) of the Army Act, 1954 deals with offence of 'attempt'. For convenience sake, Section 64 (c) of the Army Act, 1954 is reproduced as under:-

“64. Miscellaneous offences.—Any person subject this Act who commits any of the following offences, that is to say,—

(a) ...

(c) attempts to commit suicide, and in such attempt does any act towards the commission of such offence; or”

.....”

21. The legislature have begin with the word “attempt to commit suicide” means intention of the accused (mensrea) should be commission of suicide. In view of above, a question cropped up whether in the present case the applicant has attempted to commit suicide. Blacks Law Dictionary (Ninth Edition p. 146) defines the words ‘attempt’ as under:

*“**attempt, I.** the act or an instance of making an effort to accomplish something, esp. without success. **2.** Criminal Law. An overt act that is done with the intent to commit a crime but that falls short of completing the crime. Attempt is an inchoate offence distinct from intended crime. Under the Model Penal Code, an attempt includes any act that is a substantial step toward commission of a crime, such as enticing, lying in wait for or following the intended victim or unlawfully entering a building where a crime is expected to be committed... .”*

Thus, a person shall be deemed to attempt to commit suicide while making such attempt he or she` was intensely pre-decided to commit suicide. In the present case, applicant has set up a defence that his only intention was to draw attention of the Commanding Officer to the ill-treatment meted out to him by the Company Havildar Major. The dictionary meaning of the word ‘attempt’ shows that it is making an effort to accomplish something. Accordingly, in case from the evidence on record it is established that the applicant made an effort to accomplish suicide with predecided mind/intention,

only then he/she may be punished for the offence keeping in view the letter and spirit of Sections 64 and 65 of the Act, 1954. Merely because the applicant shot himself shall not be sufficient to punish him for attempting to commit suicide. The burden shall be on the prosecution to establish from cogent and trustworthy evidence that the applicant was intending to commit suicide and only for that purpose he shot himself. The word 'attempt' connotes some conscious endeavour to accomplish something.

22. In a case reported in 1976 *Cri LJ 1519 (Bom)* reported in ***Phulabai Sadhu Shinde*** where the accused attempted to commit suicide by jumping into a well along with her child, the Court granted benefit of doubt under Section 84 Indian Penal Code. The jumping into the well was held on account mental pain and agony because of physical ailment and poverty.

In another case reported in (1883) Unrep Cr C 188 ***Tayee*** *the pounding of oleander roots with the intention to poison one's self with it was held not to constitute the offence. The act amounted merely to preparation to commit suicide.*

In another case reported in (1878) PR. No. 22 of 1878 ***Madho Singh*** it was held that a person who emasculated himself was held to have committed no offence under Section 309 Indian Penal Code since the act was held not likely to cause death.

Similarly, hunger strike for fairly long period, then withdrawing the same before actual danger was not held to be an act to commit suicide in a case reported in *AIR 1962 All 262 Ram Sunder Dubey vs State of U.P.*

23. In criminal jurisprudence mens rea plays important role to ascertain intend to commit a crime. Intend to commit a crime requires mens rea in addition to the action itself, although certain acts are considered to inherently carry mens rea. Rollin M. Perkins & Ronald N. Boyce in their treatise *Criminal Law 826-27 (3rd ed. 1982)*, while considering the doctrine of mens rea observed as under:

“Some years ago the mens rea doctrine was criticized on the ground that the Latin phrase is ‘misleading’. If the words ‘mens rea’ were to be regarded as self-explanatory they would be open to this objection, but they are to be considered merely as a convenient label which may be attached to any physical fact sufficient for criminal guilt (in connection with social-harmful conduct). This includes a field too complex for any brief self-explanatory phrase, and since it is important to have some sort of dialectic shorthand to express the idea, this time-honoured label will do as well as any”.

According to Glanville Williams: *Criminal law (2nd Edn. C. 3, S. 3.1 page 71)*, *“mens rea means in Latin a guilty mind, but in legal use it denotes the mental state (subjective element) required for the particular crime in question, or it can refer to the*

mental states commonly required for serious crimes (and a number of lesser offences)”.

Hon’ble Apex Court in the case reported in AIR 1956 SC 575, ***Jaswantrai Manilal Akhaney vs. State of Bombay*** held that without mens rea facts may give cause of action for civil action and not for a criminal prosecution. In AIR 1996 SC 1199, 1103 ***Director of Enforcement vs. M.C.T.M. Corpn. Pvt Ltd*** held reiterated that mens rea is a state of mind. Under the Criminal Law mens rea is considered as the “guilty intention” and unless it is found that the accused had the guilty intention to commit the ‘crime’ he cannot be guilty of committing the crime.

Even in some cases, mens rea cannot be required like possession of unlicensed arms as held by Allahabad High Court in the case reported in 1960 All LJ 692, ***Kamta Prasad vs. State***. In (2203)11 SCC 405, ***Asstt. Commr vs. Velliappa Textiles Ltd.***, Hon’ble Apex Court has held that mens rea and ‘negligence’ are both fault elements, which provide a basis for imposition of liability in criminal cases, mens rea focuses on the mental state of the accused and requires proof of a positive state of mind such as intend, recklessness or wilful blindness, but on the other hand ‘negligence’ measures the conduct of the accused on the basis of an objective standard, irrespective of the accused’s subjective mental state.

24. In the present case, applicant has been charged for attempting to commit suicide, hence establishment of mens rea or state of mind to commit suicide was necessary which seems to not have been done by the prosecution. The Legislature in their wisdom have used the words 'attempt to commit suicide' which requires to establish the intention or mens rea of the accused, which seems to not have been done.

25. It has been noticed from time to time that suicide by lethal weapon is exceedingly lesser than that which exist in England. The most common causes of suicide in India are jealousy, family discord, destitution and physical suffering etc. Needless to say that suicide means an effort to die. Committing suicide for a person is a voluntary deed or act for the purpose of destroying his own life. In the present case, the applicant had shot himself to draw the attention of the Commanding Officer towards his grievance. Neither the Court Martial in its proceeding mentioned that the injury suffered by the applicant was so serious that it could not have caused death nor prosecution established that applicant shot himself to commit suicide with pre decided mind. The burden was on the respondents to establish the gravity of injury suffered by the applicant with the opinion of expert, i.e. the seat of the injury suffered by the applicant, the depth as well as magnitude of injury was so much that it could have caused death in normal

circumstances or intention to commit suicide, which seems not to have been established.

26. From the law on the subject with regard to attempt to commit suicide, some of the conditions may be summarized as under:

- (1) Persons who are driven to attempt to commit suicide by real intense suffering either from mental or physical. Every instance of this kind should be treated according to its peculiar features.
- (2) Where suicide is attempted in a moment of passion, with little or no reflection and no very definite motive, punishment, though not severe, should be inflicted.
- (3) Where the suicide partakes or the nature of poison, severe punishment may be inflicted.

27. Keeping in view aforesaid parameters of law laid down by Courts, in the present case it is not borne out that the intention of the applicant was to commit suicide, rather he tried to draw attention of the Commanding Officer by inflicting injury upon himself on account of alleged persecution by Company Havildar Major. Since charges were framed for 'attempt to commit suicide' and no other allegation has been raised during the course of arguments inviting attention of the Tribunal to any

other offence committed under the Army Act, the applicant seems to be entitled to be discharged from the charges for which he has been convicted with dismissal from service.

28. According to a report in "*Times of India*" 100 suicides every year are committed in the Armed Forces. Total number of suicides in last four years, i.e. 2012 to 2015 is 413. According to the report (*Times of India*) the suicide seems to have been committed for variety of factors which include prolong posting in far flung areas, at high altitude or insurgent areas where soldiers suffer with tremendous mental stress because of monotony or for not being able to take care of the problems being faced by their families at home, which include property dispute, harassment by anti-social elements, marital problems or other facets of life. Prolonged deployment in counter insurgency operations in J & K and North East also takes toll of physical endurance and mental health of the soldiers or sometimes officers also. It shall be appropriate to increase strength of Army so that prolong deployment in the counter insurgency operations in J. & K. and North East area, High Altitude Areas like Siachen may be sorted out with due rotation of soldiers and officers. The chart published in *Times of India* with regard to suicide is reproduced as under:

ENEMY WITHIN

Year	ARMY		NAVY		AIR FORCE	
	Suicide	Patricide	Suicide	Patricide	Suicide	Patricide
2012	95	01	01	Nil	15	Nil
2013	86	03	06	Nil	15	Nil
2014	84	03	04	Nil	24	01
2015	69	01	01	Nil	13	Nil
Total	334	08	12	00	67	01

29. Apart from suicide or attempt to suicide, substantial number of cases are coming to the Armed Forces Tribunals where persons are suffering from psychological disorder/disease. The magnitude of suicides and cases of psychological disorder itself indicate that the respondents should find out the reasons by constituting a committee so that persons fighting enemy and securing border of the country may not suffer from ill-consequences, may be for variety of factors

30. Subject to aforesaid backdrop, situation becomes worst when superior or the Commanding Officer is not available to address the grievance, if any, like in the present case. The problems of soldiers on any ground whatsoever should be attended immediately by the superiors and in case the problem is because of ill-treatment meted out by the immediate superior, then the next superior officer must entertain the complaint and

redress grievance in a cooled atmosphere. The problems at home of the Armed Forces personnel should also be attended giving priority over others by respective police and revenue authorities. A person facing enemy at the border or at some hazardous place, involved in Counter Insurgency Areas must be attended by the State authorities (Police and Revenue) to meet out the requirement and solve the problem of members of Armed Force personnel in a friendly atmosphere. Government of India and the Chief Secretaries of the States must issue appropriate orders/instructions to meet out this requirement.

31. Coming to the present case, mere injury on the abdomen unless proved to be fatal and intended to commit suicide shall not make out a case of an offence of attempt to commit suicide for which the applicant was charged. Moreover, since the provisions contained Rule 34 of the 1954 Rules has not been complied with, which is mandatory (supra), the trial vitiates. Otherwise also, the respondents have failed to prove that the applicant has attempted to commit suicide. It is unfortunate that to invite attention of the Commanding Officer towards alleged persecution by the Company Havildar Major, the applicant has inflicted injury. The Army as well as the govt must take corrective steps to meet out such situation.

32. Payment of wages is not material, but the zeal and enthusiasm with which a person opts Armed Forces to serve

the country requires highest recognition in social and political life. These people sacrifice their personal pleasure as well as joys of life while serving the nation. They should not be descanted from their job and for that the Central Government and the State Governments must step in to solve their problems so that they may not commit highest sin of mankind, i.e. suicide or suffer from psychological disorder/disease.

We wish to quote a couplet from the poem of *Kahlil Gibran*, titled '*HAVE MERCY ON ME, MY SOUL*':-

*My heart was glorying upon the
Throne, but is now yoked in slavery;
My patience was a companion, but
Now contends against me,
My youth was my hope, but
Now reprimands my neglect,
Why, my Soul, are you all-demanding?
I have denied myself pleasure
And deserted the joy of life.
Following the course which you
Impelled me to pursue.
Be just to me, or call Death
To unshackle me,
For justice is your glory."*

33. In *Second World War*, when United Kingdom was fighting to save its honour and country, Winston Churchill, the then Prime Minister of United Kingdom encouraged and appreciated sacrifice, dedication and commitment of Armed Forces personnel, said the Army would be broken up in the open field or else would have to capitulate for lack of food and

ammunition, hence the Army should be ready for the hard and heaving tidings. He appreciated the credibility of armed forces and trusted it to save Nation. To quote a few lines from Winston Churchill speech:

“Even though large tracts of Europe and many old and famous States have fallen or may fall into the grip of Gestapo and all the odious apparatus of Nazi rule, we shall not flag or fail. We shall go on to the end. We shall fight in France, we shall fight on the seas and oceans, we shall fight with growing confidence and growing strength in the air, we shall defend our island, whatever the cost may be. We shall fight on beaches, we shall fight on the landing grounds, we shall fight in the fields and in the streets, we shall fight in the hills; we shall never surrender, and even if, which I do not for a moment believe, this island or a large part of it were subjugated and starving, then our Empire beyond the seas, armed and guarded by the British Fleet, would carry on the struggle, until, in God’s good time, the new world, with all its power and might, steps forth to the rescue and the liberation of the old.”

In nation’s life such situation may arise, hence morale, strength as well as capability of Armed Forces must be preserved by all means at the cost of others.

34. In view of above, O.A. deserves to be allowed; hence allowed. Impugned order dated 04.03.2010, dismissing the applicant from service is set aside with all consequential benefits. However, payment of back wages is confined to 25% and for all other practical purposes, the applicant shall be deemed to be continuing in service with other consequential

benefits. Let consequential order be passed by the respondents within four months from the date of presentation of a certified copy of this order.

No order as to costs.

35. Let copy of the order be sent to the Secretary (Defence), Union of India, Chief of the Army Staff and Chief Secretary, State of Uttar Pradesh, M.P. Chhattishgarh and Uttranchal to consider for appropriate follow up action to meet out the requirements of the Armed Forces personnel, keeping in view the observations made herein above.

Let the present order be circulated to all concern of the Army.

(Air Marshall Anil Chopra)
Member (A)

anb

(Justice D.P. Singh)
Member (J)