ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Court No 3
JUDGMENT RESERVED

Transferred Application No. 05 of 2010

Thursday the 16th day of April, 2015

"Hon'ble Mr. Justice Abdul Mateen, Member (J)
Hon'ble Lt. Gen. A.M. Verma, Member (A)"

No. 15118859H Ex. Gunner (G.D.) Udai Narain Singh, son of Late Sri Ram Chandra Singh, resident of Village & Post Office –Fully, Tahsil-Jamania, District – Ghazipur (U.P.).

..... Applicant

By Shri Ritwick Rai, counsel for the applicant.

Versus

1. Union of India through Chief of Army Staff, Army Head Quarter, South Block, New Delhi.

2. Commanding Officer, 1988 Med. (Bty), C/O 56 APO.

3. Commander, 9 Mtn Bde, C/O 56 A.P.O..

4. COC-in-C, Central Command, Lucknow

..... Respondents.

By Shri Dileep Singh, counsel for the respondents, along with Capt. Ridhishri Sharma, Departmental Representative.

ORDER

1. This Transferred Application has been filed by the petitioner seeking the following reliefs :

> "(I) issue a writ or order or direction in the nature of certiorari quashing the entire Summary Court Martial Proceedings conducted against the petitioner whereby the petitioner has been dismissed on 01-07-2000 from service (Annexure no. 2 to the writ petition) and the appellate order dated 2-1-2002 intimating to the petitioner by letter dated 7-12-2002 (Annexure no. 10 and 11) to the writ petition being illegal.
>
> (II) issue a writ, order or direction in the nature of the mandamus, directing the respondents to reinstate the petitioner on his post along with entire arrear of his salary and allowances.

(III) issue a Suitable writ order or direction, which this Hon'ble Court may deem fit and proper in view of the circumstances of case.

(IV) To award the costs of present writ petition in favour the petitioner."

2. The facts of the case, in brief, are that the petitioner was enrolled in Army in July, 1993 and in the year 1994 he was posted to 1988 MedMedium Battery. He was working as *Sahayak* with Capt. S.S. Mehta of the Unit, who, on 29.1.1998, lodged a F.I.R. in P.S. Kotwali, District Pithoragarh, bearing case Crime No. 140 of 1998 under Section 354 I.P.C. against the petitioner. At the Unit level a Court of Inquiry was conducted under the orders of the Commander, 9 Independent Mountain Brigade, Brig. A.B. Sayyed, who, on completion of the Court of Inquiry, directed disciplinary action against the petitioner for sexually abusing Capt. Mehta's children and against Capt. Mehta of manhandling the petitioner and using him for unsoldierly jobs. A Summary of Evidence was recorded, charge-sheet was handed over to the petitioner on 19.6.2000 and the petitioner was tried by SCM from 28.6.2000 to 01.7.2000 on two charges, which are as follows :

First Charge
Army Act
Section 69

COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, USING CRIMINAL FORCE TO A WOMAN WITH INTENT TO OUTRAGE HER MODESTY, CONTRARY TO SECTION 354 OF THE INDIAN PENAL CODE

in that he,

at *Pithoragarh, between 19 Jun 1988 and 28 Jun 1998, used criminal force to Kumari Mansi daughter of IC-47932X Capt SS Mehta of 1988 (I) Med Bty, by rubbing his hand on he vulva, intending thereby to outrage her modesty.*

Second Charge
Army Act
Section 46(a)

DISGRACEFUL CONDUCT OF AN INDECENT KIND

in that he,

at Pithoragarh, between 19 Jun 1998 and 28 Jun 1998, with indecent intent, caught hold the penis of Master Saaransh Mehta alias Manu, son of

IC-47932X Capt SS Mehta of 1988 (I) Med Bty and moved his hand up and down over the penis of said Master Saaransh Mehta alias Manu

3. The petitioner had pleaded not guilty to both the charges during the trial by SCM. The Court, however, found him guilty and he was dismissed from service.

4. The petition to the COAS was rejected whereafter the petitioner filed Writ Petition No. 630 of 2005 in Uttaranchal High Court, which has now been transferred to this Tribunal and renumbered as T.A. No. 05 of 2010.

5. The police report in case Crime No. 140 of 1998 was closed on 20.7.1998 as the police did not find any evidence of Section 345 I.P.C.

6. The petitioner's case was argued by Shri Ritwick Rai.

7. The petitioner states that he was detailed as *Sahayak* with Capt. S.S. Mehta and was asked to do work such as dusting, polishing shoes, arranging bed, bringing vegetables, maintenance of kitchen, etc. He was also asked to clean utensils and wash clothes which he refused. Mrs. Mehta was furious by this refusal and Capt. Mehta abused the petitioner for disobeying the orders of Mrs. Mehta. On 28.6.1998 in the afternoon, both Capt. Mehta and Mrs. Mehta started beating the petitioner in which his index finger got fractured and was bandaged. The petitioner produced medical report of MH, Pithoragarh, according to which the petitioner was forcibly flexed by the officer of his Unit during altercations resulting in severe sprain in left index finger. The petitioner states that Capt. Mehta lodged a F.I.R. on 29.6.1998 labeling false allegations against him for wrong acts against his daughter. This police case was closed on 20.7.1998 for want of any evidence. According to the petitioner, at Unit level, the petitioner was exonerated in the Court of Inquiry headed by Major R.A. Khan. This was not accepted by the authorities and a second Court of Inquiry was ordered. The petitioner was attached with 1862 Light Regiment CO of which was a good friend of Capt. Mehta. The petitioner claims that he filed a complaint against the CO, 1862 Light Regiment, Lt. Col.

G.S. Dhillon, who threatened the petitioner on 30.6.2000 and obtained his signatures by force on six blank papers.

8. The petitioner argued that under the provisions of Section 120 of the Army Act no trial by Court Martial can take place under Sections 34, 37 and 69 of the Army Act without reference to an officer empowered to order DCM. In the instant case, according to the petitioner, no reference was made to HQ, Central Command. In the SCM Major R.A. Khan, who had exonerated the petitioner, was not examined. The Summary of Evidence was recorded by Major U.T. Babu in English which could not be understood by the petitioner as he does not know English and therefore, it is clear violation of principle of Natural Justice. The petitioner claims that he remained exonerated for two years and after the lapse of this period he was tried by SCM. The provision of Army Rule 34 was violated, claims the petitioner, and he was not asked to provide the names of witnesses. During the SCM no opportunity was given to the petitioner to call defence witnesses. The medical report of the child does not support the prosecution case and the classified specialist of MH, Pithoragarh, too said that the rashness or swelling on the child's private part may occur due to any of the five reasons, viz. specific infection, non-specific infection, allergy, foreign bodies and chemicals. The SCM was on false charges as police during investigation found no evidence against the petitioner of the charge so levelled against him and thus closer report by the police was accepted by the Special Judicial Magistrate, Pithoragarh.

9. Section 121 of the Army Act provides that any person subject to this Act who has either been acquitted or convicted of an offence by a Criminal Court shall not be liable to be tried again for the same offence by a Court Martial. Since the police investigation has not found him to be guilty of the offence hence the SCM deserves to be quashed. In the SCM the authority himself acted as investigator, prosecutor and judge.

10. During the hearing learned counsel for the petitioner argued that the entire case against the petitioner is based on evidence of an approximately 6 years' old male child. He cited judgments of the Hon'ble Supreme Court to state that the evidence of a child witness needs to be looked into very carefully. He also pleaded that the punishment awarded to the petitioner is disproportionate to the crime alleged to have been committed by him and prayed that the T.A. be allowed.

11. The respondents' case was argued by Shri Dileep Singh, Standing Counsel, and Capt. Ridhishri Sharma, Departmental Representative. The respondents have denied all the allegations made by the petitioner in his writ petition by stating that the burden of proof is on the petitioner or the statement is a false story or both.

12 The respondents have denied the allegations of 'no one wanting to work with Capt. Mehta' and have also denied that the petitioner was made to do various kind of unsoldierly work. The petitioner was attached with another Unit after obtaining legal permission from the appropriate authority, i.e. Commander, 9 Independent Mountain Brigade, and no provision of law was violated. Summary of Evidence was recorded strictly as provided for in law and the petitioner was given adequate opportunity to defend himself.

13. On the issue of two Courts of Inquiry, the respondents stated that the first one of which Major R.A. Khan was the Presiding Officer was rejected by the Commandar, 9 Independent Mountain Brigade, due to faulty composition of the court and a fresh Court of Inquiry was ordered of which Lt. Col. O.I.S. Khanjura of 14 Jat was the Presiding Officer. This Court of Inquiry was conclusive and the Commander thereafter ordered disciplinary action against the petitioner for sexually abusing the child of Capt. S.S. Mehta.

14. According to the respondents, during SCM all provisions of law were strictly followed and the petitioner was given adequate opportunity to defend himself. As

regards testimony of child witness, the Departmental Representative cited O.A. No. 149 of 2014, decided by Court No. 3 of the Principal Bench of this Tribunal on 22.12.2014.

15. Heard both the sides and examined the documents.

16. The narrative that emerges is that on 28.6.1998 at about 1.30 P.M. Mrs Mehta gave bath to her 1-1/2 years old daughter, Mansi. While bathing the girl child said *"Dard"* pointing to her private parts; *"Bhaiya" "susu".* The mother noticed some redness and swelling in the private part of her daughter. She informed her husband, Capt. Mehta. Same day in the evening, i.e. on 28.6.1998, they met Lt. Col. A. Marwah, a classified specialist who examined the child and said that the cause of redness or swelling may occur due to various reasons, viz. rash, infection or physical abuse. The doctor also advised Capt. Mehta that this being a medico-legal case, FIR should be lodged. On 29.6.1998 Capt. Mehta and Mrs. Mehta asked their son, Saransh, who was approximately 6 years old at that time, and the son mentioned that his private parts were also being fiddled by *Bhaiya.* In the house of Capt. Mehta there were two *Bhaiyas,* one was a civilian worker, viz. Dharma, and the second one was the petitioner. On being asked the child pointed out the petitioner. On 29.6.1998 Capt. Mehta lodged a FIR with P.S. Kotwali, District Pithoragarh, and after that the girl child was examined by Dr. Nirmala Punetha of District Female Hospital, Pithoragarh. The relevant extract of the Medical Report is as under :

> *"<u>On Examination of Private Parts</u>*
>
> *- Pubic hairs & minora under diveliped.*
> *- Hymen & Perinium intact.*
> *- No mark of injury laceration on her external genital except some redness at.*
> *- No tenderness at present.*
>
> *<u>Opinion</u> - No mark of injury on the private parts & over the body.*
>
> *<u>INV</u> - Two vaginal swab smear sent to Pathologist B.D. Pandey hospital Pithoragarh for dicrection of spermateizician on 29-6.9.*
>
> *<u>Report received on 1-7-98 at 730PM</u>*
>
> *(1) No spermatozoa seen.*
> *(2) Epithliat cell are present."*

.....

17. We also note that no identification parade was carried out to enable the child son, Saransh, to identify the petitioner.

18. The police investigated the case and did not find any evidence of a case under Section 354 I.P.C. and accordingly they closed the case on 20.7.1998 and the final report was submitted in the court of Special Judicial Magistrate, Pithoragarh.

19. As regards SCM proceedings, we find no infirmity in them. The attachment with 1862 Light Regiment was legal. Summary of Evidence was recorded as prescribed. The charge-sheet was handed over on 19.6.2000 and the trial commenced on 26.6.2000. Thus, the provisions of Army Rule 34 were complied with. The petitioner pleaded 'not guilty' and thereafter the court examined six witnesses. The petitioner was given opportunity to bring defence witness which he did not do. It is also pertinent to bring out the statements of two doctors who had examined the girl child. The relevant portion of the statements given by Dr. Nirmala Punetha is as follows :

> *"3. In my opinion the volta-vaginitis of the vulva of Kumari Mansi daughter of Maj SS Mehta could have been due to specific of nonspecific infection while carrying out examination I did not observe any injury on her private parts or any where on her body except redness of the Vagina. The investigation of spermatozoon was negative as per pathological report of 1st July 1998 the copy of this report have been submitted by me during the summary of evidence. There was no evidence of penetrative intercourse.*
>
> *Cross examination by the ccused*
> *Q.31:- Can vulva vaginitis occur due to wearing of tight under garments?*
>
> *A.31:- Yes, it can.*
>
> *Reexamination by the court*
>
> *Q. 32:- Was there any swelling and redness on the private parts of Kumari Mansi when you examined her?*
>
> *A. 32:- I examined her on 29th June 1998 and there was only redness on her private parts.*

20. Lt. Col. A. Marawah, classified specialist in Gynecology, who had examined the girl child on 29.6.1998, in his statement stated as under :

"3. *On 28th Jun 1998 at a private function at the residence f Maj A Khurma, I was requested by Capt. Now Maj. S.S. Mehta to examine his about two year old daughter who had some gynecological problem. I went upto his house which was on the first floor of the same block and examined the child. I found that she had vulva-vaginitis and prescribed a local ointment for the same. The condition of the child i.e. vulva-vaginitis could have been caused by non specific infection by following diseases:-*

(a) Chemical such as soap and detergent.
(b) Allergy.
(c) Foreign bodies.
(d) Tight fitting clothes.

5. In my opinion the vulva vaginitis that is swelling and the redness of the vulva of Kumari Mansi daughter of Maj. S.S. Mehta could have been because of any of the causes as under:-

(a) Specific infection
(b) Non-specific infection
(c) Allergy
(d) Foreign bodies
(e) Chemicals
(f) Tight clothes
(g) Other associated disorders."

21. There are two issues that need to be answered. The first one relates to the petitioner's contention that since he had been acquitted by the police the trial by SCM was legally not valid. In this case the police had closed the investigation and the case was not brought before a Criminal Court. The petitioner was not acquitted or convicted by the Criminal Court and, therefore, the provision of Section 121 of the Army Act does not apply. Consequently, the petitioner's contention that the SCM proceedings are vitiated is not valid and is rejected.

22. The next important issue relates to the testimony of the child witness. The entire case against the petitioner is based on the testimony given by the child, Saransh. The relevant extracts of his testimony are as under :

"<u>Third witness</u>

1. *The court considers that Master Saaransh Mehta does not have sufficient maturity to understand the obligation of an oath and accordingly decides not to administer oath to him and is examined by the court.*
2. *I identify the accused as 'Bhaiya means No. 15118859H Gnr (GC) Udai Narayan Singh.*

3. *The accused used to fiddle with my shoo-shoo daily while dressing me up before going to school and also while changing my dress on return from school. He also used to fiddle with Mansi's shoo-shoo with finger. (The witness showed the action with his own right hand by moving his hand up and down for him and index finger for Kumari mansi). I also told this all to my mother and she informed my father.*
4. *Initially my father though that the other Bhaiya means Dharma use to do this to us but later I told my mother that this Bhaiya means the accused used to fiddle with the shoo-shoo of mine and mansi".*

23. The statement of the child, who was approximately 6 years old at that time, needs to be examined in the perspective of the cases cited by both the respondents and the petitioner. In O.A. No. 149 of 2014 (this case also relates to touching of a five years old girl with sexual intent) the Principal Bench of this Tribunal has observed as follows :

> *"42. The competency of a child to give evidence is not regulated by the age but by the degree of understanding he appears to possess. Obviously, the question depends upon a number of circumstances, such as the possibility of tutoring, the consistency of the evidence, how far has it stood the test of cross-examination and how far it fits in with the rest of the evidence.*
> *43. The answer given by the prosecutrix in reply to questions put in during preliminary-examination to ascertain level of her under- training would reveal that she being a student of Class-1 was quite brilliant, able to communicate with her father on Skype and well aware about the things happening around her. Her answers reflected that she was able to understand every question as well as to give a complete answer. On being asked as to why she did not inform her father about the misdemeanor of the petitioner, she candidly replied that her father had come to India to see his father who had suffered a heart attack. However, she was emphatic in saying that she used to tell her Nani about the offending acts of the petitioner and also tried to tell her mummy (mother) about the touching of her shame-shame by the accused once but her mummy did not listen. All these answers completely ruled out any tutoring. The prosecutrix was cross- examined at length but nothing could be elicited so as to suggest that she has been provoked or tutored by her mother or anyone else to make absolutely false allegations against the petitioner.*
>
> *44. In K. Venkateshwarlu vs. State of Andhra Pradesh AIR 2012 SC 2955 relied on by learned counsel for the petitioner, the Supreme Court reaffirmed the well settled quidelines for appreciation of evidence of a child witness in the following words*
>
> > *" The evidence of a child witness has to be subjected to closest scrutiny and can be accepted only if the court comes to the conclusion that the child understands the question put to him and he is capable of giving rational answers (see Section 118 of the Evidence Act). A child witness, by reason of his tender age, is a pliable witness. He can be tutored easily either by threat, coercion or inducement. Therefore, the court must be satisfied that the attendant circumstances do not show*

that the child was acting under the influence of someone or was under a threat or coercion. Evidence of a child witness can be relied upon if the court, with its expertise and ability to evaluate the evidence, comes to the conclusion that the child is not tutored that his evidence has a ring of truth. It is safe and prudent to look for corroboration for the evidence of a child witness from the other evidence on record, because while giving evidence a child may give scope to his imagination and exaggerate his version or may develop cold feet and not tell the truth or may repeat what he has been asked to say not knowing the consequences of his deposition in the court. Careful evaluation of the evidence of a child witness in the background and context of other evidence on record is a must before the court decides to rely upon it".

45. Applying these tests to the testimony of the prosecutrix in the instant case we are of the opinion that the Court Martial did not commit any illegality in relying upon it as a true disclosure of traumatic experience undergone by her at the hands of the appellant.

24. The Principal Bench in this case has accepted that the testimony of the prosecutrix, who was a 5 years old child, could be relied upon as it was a true disclosure of a traumatic experience. On the other hand there are Supreme Court rulings which recommend caution when dealing with child witnesses. In the case of Radhey Shyam v. State of Rajasthan in Criminal Appeal No. 593 of 2005, decided on 25.2.2014, the Hon'ble Supreme Court held as under :

"8. In Ratansinh Dalsukhbhai Nayak, this Court considered the evidentiary value of the testimony of a child witness and observed as under:
"The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intellignence as well as his understanding of the obligation of an oath. The decision of the trial court may, however, be disturbed by the higher court if from what is preserved in the records, it is clear that his conclusion was erroneous. This recaution is necessary because child witnesses are amenable to tutoring and often live in a world of make-believe. Though it is an established principle that child witnesses are dangerous witneses as they are pliable and liable to be influenced easily, shaken and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness."

9. In Panchhi, after reiterating the same principles, this Court observed that the evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and, thus, a child witness is an easy pray to tutoring. This Court further observed that the courts have held that the evidence of a child witness must find adequate corroboration before it is relied upon. But, it is more

a rule of practical wisdom than of law. It is not necessary to refer to other judgments cited by learned counsel because they reiterate the same principles. The conclusion which can be deduced from the relevant pronouncements of this Court is that the evidence of a child witness must be subjected to close scrutiny to rule out the possibility of tutoring. It can be relied upon if the court finds that the child witness has sufficient intelligence and understanding of the obligation of an oath. As a matter of caution, the court must find adequate corroboration to the child witness's evidence. If found, reliable and truthful and corroborated by other evidence on record, it can be accepted without hesitation. We will scrutinize PW-2 Banwari's evidence in light of the above principles.

25. In the case of **Bhagwan Singh & others v. State of M.P.** in Criminal Appeal No. 789 of 2002, decided on 23.1.2003, the Hon'ble Supreme Court observed as follows:

> *"19. In our considered opinion, the evidence of the child witness suffers from serious infirmity due to omission of the prosecution in not holding test identification parade and not examining Agyaram to whom as alleged, the child first met after the incident. There are other circumstances discussed by the trial Judge, which also make the evidence of the child witness highly unreliable for basing a conviction.*
>
> *20. The law recognizes the child as a competent witness but a child particularly at such a tender age of six years, who is unable to form a proper opinion about the nature of the incident because of immaturity of understanding, is not considered by the court to be a witness whose sole testimony can be relied without other corroborative evidence. The evidence of child is required to be evaluated are fully because he is an easy prey to tutoring. Therefore, always the court looks for adequate corroboration from other evidence to his testimony.[See Panchhik and Ors,v.State of U.P. : MANU/SC/0530/1998:1998riLJ4044]*
>
> *23. It Is hazardous to rely on the sole testimony of the child witness as it is not available immediately after the occurrence of the incident and before there were any possibility of coaching and tutoring him. See : Pars 14-15 of State of Assam V. Mafizuddin Ahmed MANU/SC/0153/1983 : 1983CriLJ426. In that case evidence of child witness is appreciated and held unreliable thus:*
>
> *"14. The other direct evidence is the deposition of PW 7, the son of the deceased, a lad of 7 years. The High Court has observed in its judgment:-*
> *....the evidence of a child witness is always dangerous unless it is available immediately after the occurrence and before there were any possibility of coaching and tutoring.*
>
> *15. A bare perusal of the deposition of PW 7 convinces us that he was vacillating throughout and has deposed as he was asked to depose either by his Nana or by his own uncle. It is true that we cannot expect much consistency in the deposition of his witness who ws only a lad of 7 years. But from the tenor of his deposition it is evidence that he was not a free agent and has been tutored at all stags by someone or the other".*

24. We have also taken note of the fact that even after the alleged involvement of the three accused by the child witness in his statement under Section 161Cr.P.C. to the police, no test identification parade was held. In such circumstances, in our opinion, mere dock identification of the accused by the child in the court cannot be accepted with certainty as a reliable identification [see – Japal Singh v. State of Punjab, MANU/SC/0090/1997:1997CriLJ370]"

26. The import of the above referred judgments of the Hon'ble Supreme Court is that the testimony of a child needs to be examined with care because a child is vulnerable to tutoring. In the instant case the talk about the wrong acts done by the petitioner with Mansi. This may have influenced the boy to form an opinion as to what the petitioner had done with him too was a wrong act. Against this backdrop we examined the statement given by the petitioner in his defence. The relevant extract of the statement of the petitioner are as follows :

"2- While performing the duties of a sahayak at Maj SS Mehta's residence, I was asked to do the additional work like cleaning of utensils and washing clothes. I am not guilty of the charges leveled against me. As per the statement of Maj SS Mehta and Mrs Manmala Mehta I used to touch the private parts of Kumari Mansi in the servant quarter but Master Saaransh Mehta has said that he saw me doing this inside the TV room of their house. Mrs Manimla Mehta used to give bath to the child Kumara Mansi in a tub which was inside their bath room but in he statement she has said that the child was given bath while standing. It is important to note that mother has not seen her daughters private parts while giving her bath. Lt Col A Marwath examined the private parts of Kumari Mansi in the evening on 28i June 1998 however, I was busy packing with Maj SS Mehta had filed FIR in the police station but the police investigated the matter and found nothing against me. I have not fiddled with private parts of Master Saaransh and Kumari Mansi, this is a cooked up story as Mrs Manimala Mehta had said that I shall have you court martialed when I refused to was clothes and utensils.

Q. 34:- As it has come in the statement of Maj SS Mehta, Mrs Manimala Mehta and Master Saaransh Menta that you have been fiddling with penis of Master Saaransh Mehta and touching private parts of Kumar Mansi within you fingers. Doy with to say any thing in this regrd?

A. 34:- My hand may have touched the penis of Master Saaransh Mehta while changing his clothes but I have never touched the private parts of Kumari Mansi Mehta."

27. The petitioner states that he never touched the private parts of Mansi, the girl child. As regards Saransh he said that while changing his clothes his hand may have touched the private parts of the boy.

28. We have examined the statements of both Saransh and the petitioner and are of the view that the petitioner touching the private parts of Saransh accidentally while changing his clothes cannot be ruled out and to that extent the defence put forward by the petitioner appears to be valid. He has very clearly stated that he has not touched the private parts of the girl child and there is no corroboration of any kind. The medical examination is not conclusive as regards physical abuse or insertion of a foreign body. As noted earlier no identification parade had been carried out. The court has made no mention of the demeanor of the boy when he was examined by them.

29. Thus, it is clear that the entire case against the petitioner is based on evidence of Saransh which has not been corroborated. No identification parade was held. Medical report does not support the prosecution case. In this backdrop we are inclined to believe that the charges against the petitioner has not been proved beyond reasonable doubt. Accordingly, Transferred Application is partly allowed. Summary Court Martial proceedings conducted against the petitioner and the punishment awarded are quashed. The respondents letter dated 7.12.2002 attached as Annexure 10 and 11 to the Writ Petition are also quashed. The petitioner would be treated to be notionally in service till he attains the age to make him eligible to receive pension whereupon he shall be granted full pension of a Sepoy. It is made clear that he shall not be paid salary for the period in which he remains notionally in service. No order as to costs.

(Lt. Gen. A.M. Verma)
Member (A)

(Justice Abdul Mateen)
Member (J)

PG.