

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

**T.A NO. 217 OF 2010  
(WRIT PETITION (C) NO. 598 OF 2008)**

EX. RFN. RAJVIR SINGH NO. 3177424N  
UNIT 18 GARHWAL RIF  
S/O. DANI LAL  
VILLAGE & P.O CHANDANI, DISTT. BHIWANI (HARYANA)

THROUGH: MR. D.S KAUNTAE, ADVOCATE

**.. PETITIONER**

VS.

1. UNION OF INDIA THROUGH ITS SECRETARY  
GOVT. OF INDIA,  
MINISTRY OF DEFENCE,  
NEW DELHI – 110 011.
2. THE CHIEF OF ARMY STAFF,  
ARMY HEADQUARTERS,  
NEW DELHI-110 011.
3. COMMANDING OFFICER  
18 GARHWAL RIF  
C/O. 56 APO
4. OFFICE IN-CHARGE RECORDKS  
18 GARHWAL RIF  
C/O 56 APO.

THROUGH: MS. BARKHA BABBAR, ADVOCATE WITH LT. COL. NAVEEN  
SHARMA

**.. RESPONDENTS**

**CORAM**

**HON'BLE MR. JUSTICE S.S KULSHRESTHA, MEMBER**  
**HON'BLE LT. GEN. S.S DHILLON, MEMBER**

**JUDGMENT**

11.05.2010

1. This petition has been brought by the petitioner to set aside the Summary Court Martial proceedings of 9.5.1995, wherein he was dismissed from service. The petitioner seeks to be reinstated in service with all consequential benefits.

2. The petitioner is aggrieved by the fact that despite being a case of neurotic depression and mental disorder and having been placed in Low Medical Category CEE (Psy) since 13.3.1995, he was still subjected to disciplinary proceedings knowing fully well that he was unable to understand or grasp the proceedings. He was supposedly undergoing anxiety and depressive symptoms which was not appreciated by his Commanding Officer. The petitioner has also challenged the medical opinion of 2.5.1995 declaring

him fit to stand trial on the ground that he was never brought before a duly constituted Review Medical Board and that the opinion of the Psychiatrist of 2.5.1995 is perverse and suffers from substantial legal infirmity. The petitioner contends that he was suffering from neurosis for the last four to five years before being subjected to trial and that this trial should not have been held knowing that he was mentally unfit to be subjected to such proceedings. The petitioner contends that he was suffering from 1990 onwards, a fact which has also been recorded by the medical authorities in their opinion of 2.5.1995.

3. The petitioner was charged for two offences under Army Act Sections 39(b) and 41(2):

First Charge  
(i) AA Sec 39(b)

WITHOUT SUFFICIENT CAUSE OVERSTAYING LEAVE GRANTED TO HIM.

In that he,

At Peace on 27 Nov 94 having been granted leave of absence from 07 Nov 94 to 26 Nov 94 to proceed to his home, failed without sufficient cause to rejoin duty on 27 Nov 94 (FN) on expiry of the said leave till he voluntarily rejoined at Army6 Hosp Delhi Cantt on 19 Dec 94 (AN).

Total period of absence – 23 days.

Second Charge  
(ii) AA Sec 41(2)

DISOBEYING A LALWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER

in that he,

In Unit line on 03 Apr 95, when under orders of the Medical Board “not to consume alcohol” valid between 13 Mar 95 and 13 Sep 95 was found to have consumed alcohol.

The petitioner also contends that there were gross irregularities in his trial and that the entire trial was finished in a period of 25 minutes i.e. from 1140 to 1205 hours on 9.5.1995. Such expeditious trial is indicative of non-application of mind and bias on the part of the Commanding Officer, especially since he was to adjudicate on two dissimilar charges which would involve considerable time in examination and acceptance of evidence. The petitioner is also aggrieved that no inquiry was done in his case and Army Rule 180 was never applied in the initial investigation into his absence. He was not given a fair hearing under Army Rule 22 and even the recording of summary of evidence, as required under Army Rules 23 and 24, was done in his absence and he was not present during such proceedings and neither was he given an opportunity to cross examine the witnesses. The main inconsistency was that he never pleaded guilty to the charges, as has been recorded in the SCM and the Commanding Officer has illegally recorded so in the proceedings. The petitioner had not pleaded guilty to both the charges. The signatures of the petitioner do not appear below the plea of guilt and neither are they

appended alongside the statutory caution to be given under Army Rule 115(2). Keeping in view the above irregularities and legal infirmities in the trial, the petitioner argued that the entire trial proceedings require to be set aside.

4. The petitioner next contended that the sentence awarded to him was very harsh and severe, especially considering that he was mentally depressed, was a permanent medical category for neurosis and the period of his absence was merely 23 days. Furthermore, he had already completed almost 12 years of service and to dismiss him at this stage without permitting him to complete his pensionable service was not only inhuman, but immoral also.

5. The petition was resisted by the respondents by a specific assertion that the petitioner was medically fit to be tried by SCM. Keeping in view the petitioner's low medical category for neurosis (depression), he was referred to the graded Specialist in Psychiatry of Command Hospital (Eastern Command), Calcutta. The graded psychiatric Specialist examined the petitioner in detail on 2.5.1995, wherein he recorded the complete facts of his earlier disability and the statement of the accused as well as the petitioner's

general and specific condition. After an intensive examination, the graded specialist in 'psychiatry', Maj. P.S Moorthy, certified the petitioner "fit to stand SCM proceedings in accordance with Appendix A to Army Order 37/83". Therefore, there is no substance in the accusation that he was not medically fit to withstand trial. Being a low medical category does not exempt him from trial and since the graded specialist (psychiatry) had specified that the petitioner was in a sound state of mind, there was absolutely no embargo to his trial. His trial by SCM was done one week after such detailed psychiatry examination and the complete provisions of law had been adhered to.

6. The various legal infirmities mentioned by the petitioner were addressed by the respondents by specifying that no Court of Inquiry had been held in this particular case since a Court of Inquiry is not mandatory. Therefore, there was no occasion to apply Army Rule 180 against the petitioner. The respondents also stated that a hearing under Army Rule 22 was conducted by the Commanding Officer on 4.4.1995 wherein the documentary evidence was produced before the petitioner as well as two witnesses viz. Sub. Santokh Raj and Hav. Ramesh Chandra. During such hearing under Army Rule 22, the petitioner did not make any statement neither did he ask for any witnesses to

be produced and accordingly the Commanding Officer decided to record the summary of evidence in writing. The summary of evidence was duly recorded, wherein five witnesses were examined who testified about the charges as referred to in the charge sheet. Below the statement of all five witnesses, there are four signatures, i.e. of the concerned witness, the petitioner, the independent witness (Sub. Krishan Singh) and also of the officer recording summary of evidence (Maj. R. Venkitaraman). The petitioner was also asked whether he wished to make any statement which he declined and signed in acceptance of such refusal. Therefore, at this stage, to argue that he was not present during summary of evidence is redundant and unsubstantiated. The trial was completed in a period of 25 minutes because the petitioner pleaded guilty and neither did he produce any witness in his defence. However, while perusing the SCM proceedings, it was observed that the supposed plea of guilty as preferred by the petitioner was unsigned by him and neither did his signature appear on the certificate to be rendered vide Army Rule 115(2). This inconsistency was admitted by the respondents as an oversight on the part of the officer conducting the SCM.

7. With regard to the severity of the sentence, the respondents admitted that of the two charges, for which the petitioner was tried, the second charge was dropped being unsustainable. This charge was set aside by the Brigade Commander, 167 Infantry Brigade, who was required to review the proceedings. This charge was not legally sustainable and, therefore, set aside. However, the petitioner had a past record of four disciplinary entries which are appended below:

<b>SI No</b>	<b>Unit</b>	<b>Offence</b>	<b>Date</b>	<b>Punishment</b>
(a)	18 Garhwal Rifles	AA Sec.39(a)	Dec. 1990	03 days RI in military custody
(b)	Duggadda Garhwal Rifle Regiment Centre Lansdowne (UKD)	AA Sec. 48	Jan. 1994	14 days RI
(c)	Garhwal Rifle Regiment Centre, Lansdowne (UKD)	AA Sec. 39(a)	Aug. 1994	28 days RI
(d)	18 Garhwal Rifle	AA Sec. 48	Oct. 1994	07 days RI

The respondents argued that the petitioner had a record of four disciplinary entries and, therefore, he could have been dismissed under the class of 'undesirable personnel'. Keeping in view his past record, the respondents indicated that the sentence awarded was not disproportionately shocking.

8. While it appears that the petitioner was medically fit to stand trial, the fact of a fair and just trial is apparently disputed due to lack of

signatures of the petitioner on his plea of guilt or on the mandatory caution under Army Rule 115(2). From this, it can only be construed that the petitioner had not pleaded guilty and the trial ought to have been conducted as if the petitioner had pleaded not guilty. This glaring lacuna vitiates the trial.

9. Keeping in view the above, we set aside the SCM proceedings of 9.5.1995. The petitioner will be deemed to be in service till he completes the minimum service required to earn pension, after which he will be entitled to his pensionary benefits as provided by law. No order on backwages. The petition is accordingly disposed of.

(S.S DHILLON)  
MEMBER

(S.S KULSHRESTHA)  
MEMBER