

**ARMED FORCES TRIBUNAL REGIONAL BENCH, LUCKNOW**

**Original Application No. 298 of 2011**

Tuesday, the 9<sup>th</sup> day of February, 2016

**(Reserved)  
Court No. 2**

**“Hon’ble Mr. Justice Abdul Mateen, Member (J)  
Hon’ble Lt. Gen. A.M. Verma, Member (A)”**

Ex-Cfn Avadhesh Kumar Pandey (Army No. 14650770-W) of Electronic Mechanical Engineers, C/o 56 APO, son of Shri Jai Prakash Pandey, resident of Village Chandipatti, Post Office Harahua, District Varanasi (Uttar Pradesh)-221105

..... Petitioner/Applicant

By Shri P.N.Chaturvedi, Counsel for the Applicant.

Versus

1. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi-110 011
2. General Officer Commanding-in-Chief, Headquarters Western Command, Chandi Mandir, C/o 56 APO.
3. Commanding Officer, 640 EME Battalion, C/o 56 APO.
4. Officer Incharge Records, EME Records, Secunderabad.

.....Respondents.

By Shri D.K.Pandey, Counsel for the Respondents alongwith Capt Ridhishri Sharma, Departmental Representative.

**ORDER**

1. This O.A seeks the reliefs of quashing the Summary Court Martial proceedings held from 17.5.2010 to 19.5.2010; quashing the rejection order by General Officer Commanding-in-Chief, Western Command dated 16.6.2011 and to reinstate the petitioner in service with effect from 19.5.2010.

2. Facts of the case are that the petitioner was enrolled in the Army on 1.4.2002. After completing his Basic Military Training, he was trained as Aviation Technician (Avionics). The petitioner was posted to 640 EME Battalion located in Ambala Cantt, where he reported on 21.2.2010. In next 2-3 days, there were allegations of disobedience, aggressive behaviour and insubordination against him, for which investigations were conducted and he was tried by a Summary Court Martial (SCM) on the following charges:

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| <p><b><u>FIRST CHARGE</u></b><br/> <b>ARMY ACT</b><br/> <b>SECTION 40 (c)</b></p> | <p><b>AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE</b></p> <p style="text-align: center;">In that he,</p> <p>at Ambala, on 22 February 2010 at 0630 hrs when ordered by IC-68394H Capt Pratap R Nagarkar, Adjutant of the same Bn, to run during the BPET, did not do so and walked.</p> |
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| <p><u>SECOND CHARGE</u><br/>ARMY ACT<br/>SECTION 40(c)</p> | <p>USING INSUBORDINATE LANGUAGE TO HIS SUPERIOR OFFICER</p> <p>In that he,</p> <p>at Ambala, on 23 February 2010 at approximately 0900 hrs when ordered by JC-750274N Sub Maj Jai Prakash of the same Bn, to maintain and clean the equipment of the Central Servicing Facility of the Battalion under supervision of JC-754911 Sub RC Ghosh, refused and replied rudely that “<i>mene UAV par training ki hai aur main kisi aur equipment par kaam nahin karoonga</i>” (I am trained on UAV and I will not work on any other equipment), or words to that effect.</p> |
| <p><u>THIRD CHARGE</u><br/>SECTION 40(c)</p>               | <p>USING INSUBORDINATE LANGUAGE TO HIS SUPERIOR OFFICER</p> <p>In that he,</p> <p>at Ambala, on 23 February 2010 at approximately 0930 hrs when told by IC-68384H Capt Pratap R Nagarkar, Adjutant of the same Bn, to learn about the new eqpt, said that “<i>Mein aisi phaltu training par time waste nahin karoonga</i>” (I do not want to</p>   |

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|   | <p>waste my time on such useless training, or words to that effect) and then in a raised voice said that “<i>Mujhe kisi par bhi vishvas nahin hai aur main kewal apne par vishvas karta hoon</i>” (I will not trust anybody and will trust myself only), or words to that effect.</p>  |
| <p><u>FOURTH CHARGE</u><br/>SECTION 40(c)</p> | <p>USING INSUBORDINATE LANGUAGE TO HIS SUPERIOR OFFICER</p> <p>In that he,</p> <p>at Ambala, on 23 February 2010 at approximately 1130 hrs said to No. IC-54600W Lt Col Akhil Kumar Singh, Second-in-Command of the same Bn, “<i>Aap yahan par kis liye itni salary le rahe ho aur is chair par kya jhak marne ke liye baithe ho. Maine aap ke jaise bahur officer dekhe hain</i>” (Then why are you taking this much of salary and are you sitting on this chair for doing nothing. I have seen many officers like you), or words to that effect.</p> |

3. The petitioner pleaded not guilty. Seven prosecution witnesses and three defence witnesses were examined during the trial by SCM and the petitioner was found guilty of all the charges. Punishment awarded was four months and fifteen days R.I in civil prison and dismissal from service.

4. The petitioner filed an O.A bearing No. 131 of 2010 in this Tribunal, in which an order was passed on 28.7.2010 directing the petitioner to avail the alternative remedy. The petitioner filed his petition dated 5.8.2010, which was rejected by the GOC-in-C Western Command vide his order dated 16.6.2011.

5. The petitioner was represented by Shri P.N.Chaturvedi, his learned counsel. The petitioner states that he had undergone the specialized training for the trade of Aviation Technician (Avionics) and had been posted to Units having helicopters. From 7004 EME Battalion in the Western Command, the petitioner was posted to 640 EME Battalion in Ambala Cantt. The petitioner states that from the very beginning, it appeared to him that the officers of that Unit were bent upon to harass him and damage his career. On 22.2.2010 there was a BPET of 5 kms run. The petitioner says that since he was out of practice, he was unable to run the entire distance and after some distance he started walking. He had communicated this to his superior officers, yet, the petitioner states, he was charged under Army Act Section 63 which is not correct since

there is nothing on record to indicate that this was an act or omission punishable under the Army Act. As regards the second charge, the petitioner says that it could not be under Army Act Section 40(C). The petitioner says that he was not trained for the Central Servicing Facility and, therefore, he did not touch the costly equipments as it might cause damage. According to the petitioner, his saying that he had been trained in UAV and he would work only on such equipment does not amount to insubordinate language. The third charge is levelled without any basis. The petitioner says that he had politely refused to work on Central Servicing Facility equipments because he was not trained for it. The petitioner says that the entire conversation on 23.2.2010 with Lt Col Akhil Kumar Singh, the then Second in Command of the Battalion had taken place outside the office and not inside the office and that there was nothing in the conversation as alleged in the charge. This charge has been, the petitioner states, fabricated to add gravity to the matter. He goes on to say that as per the military ethos and functioning, which is guided by strict regimentation and high degree of discipline, no person in uniform can ever have the temerity and gumption to make such statement. The petitioner right from the very beginning was being asked to perform duties for which he was not trained. He further states that there is nothing to connect him with the culpability mentioned in the fourth charge. He says that the provisions of Army Rule 22 have not been complied with. The petitioner prays that the entire matter be

examined on the touchstone of rationality, logic and functioning in the Army, where the personnel from one particular trade cannot be asked to work on different equipments.

6. The respondents were represented by Shri D.K.Pandey, learned Standing Counsel, duly assisted by Capt Ridhishri Sharma, Departmental Representative. The respondents state that the petitioner had joined 640 EME Bn on 21.2.2010 and the same day he expressed his desire to file statutory complaints against his two previous Commanding Officers. The very next day, i.e. on 22.2.2010 when he was asked to run a distance of 5 kms as part of BPET, he did not do so on the ground that he had not run BPET for last 3 to 4 years. Thereafter, there were deliberate acts of indiscipline by the petitioner; in that he declined to clean Central Servicing Facility equipments and used insubordinate language to Adjutant and 2IC. The respondents state that the petitioner is a habitual and perpetual offender and has been punished in the past by three COs for six different charges. The respondents state that the SCM was based on direct evidence, duly corroborated. Every EME individual is trained to handle and manage various types of equipments and Central Servicing Facility equipment is such which can conveniently be cleaned by anybody. The Respondents state that the petitioner's statement that he was not required to undergo BPET, is entirely incorrect. Every soldier in Uniform is required and expected to run BPET. In the instant case, the petitioner was in the category of 30 years or less and, therefore, there was

no reason for him not to run the BPET. The statement given by the petitioner that he had not run BPET for last 3 to 4 years is entirely incorrect. The respondents, in support of this argument, have produced the result of BPET conducted by his previous Unit on 9.4.2009 in which he had run the distance of 5 kms in satisfactory timing. He had run 1000 mtrs sprint in 'good' time and had passed other tests. During the investigation and the trial, the procedure followed was strictly in accordance with law and the punishment awarded for the four offences is just and legal.

7. Heard both sides and examined the documents.

8. We have perused the record and we find that there is no infirmity in the investigation, recording of evidence and the trial. The provisions of Army Rule 22 have been fully complied with.

9. The petitioner had reported to his new Unit i.e. 640 EME Battalion on 21.2.2010 and all the aforesaid acts of disobedience, aggressive behaviour and insubordination had occurred in the next 2-3 days. It goes to show that the petitioner was not prepared to accept the life of a soldier technician in 640 EME Battalion. The petitioner at that time was barely 30 years old and he was asked to run BPET as the same is required as a matter of system to every soldier. In any case, during trial the result of BPET conducted by 7004 EME Battalion on 9.4.2009 was produced in evidence, in which he had passed the BPET. Therefore, the statement of



the petitioner that he had not run BPET for last 3 to 4 years is a blatant lie.

10. During the trial, the petitioner pleaded not guilty and seven prosecution witnesses and three defence witnesses were examined during the trial. The first Prosecution Witness was Capt Pratap Nagarkar, the then Adjutant of 640 EME Bn. He in his testimony states that the petitioner had been explained the route of BPET but was informed that the petitioner was walking. The witness says that the petitioner told him that he had not done PT for last 4-5 years and hence was unable to run. The witness also asked the petitioner why he would not do the duties, to which the petitioner replied that it was a waste of time and was a fatigue. Later the same day, the petitioner was sent for a practice run, during which he ran the route without any problem. As regards the cleaning of Central Servicing Facility, the petitioner declined, according to this witness, the cleaning of the equipments, saying, "*Main UAV par trained hun. Main usi par kam karunga, main aisi phaltu training par time waste nahin karunga*". When the witness asked him why he was behaving in such a manner, the petitioner replied, "*Mujhe kisi par bhi vishvas nahin hai aur mein kewal apne par vishvas karta hoon*".

11. Prosecution Witness No. 2 was Sub Maj Jai Prakash of 640 EME Bn, who corroborated the statement given by the Adjutant i.e. Prosecution Witness No. 1. He went on to testify that the petitioner had misbehaved with Maj Lakhanpal who was conducting the ground tests.

This witness states, *“Adjt told me to take him to the 2IC. When 2IC returned, I took him to 2IC for interview in his office. I cannot even imagine the way he spoke to 2IC in an unbelievably disrespectful manner. I have never seen such an undisciplined soldier in my life. 2IC was so surprised to see a jawan in such disrespectful manner. During their conversation, Cfn Pandey stated that he will decide what he has to do. After that 2IC told me to take him away for CO’s interview. I took him to my office. I tried hard to counsel and explain him and then I asked him to go away. After some time, CO came to his office and Cfn AK Pandey was interviewed by CO.”* This witness goes on to say that the next day on 23 Feb 2010, the petitioner refused to clean the Central Servicing Facility equipments. When this matter was brought to the notice of 2IC, according to the witness, the petitioner spoke to the 2IC in an unacceptable and disrespectful manner. The petitioner asked the 2IC, *“Aap yahan par kis liye itni salary le rahe ho. Is chair par kya jhakh marne ke liye baithe ho”*. Thereafter, the 2IC asked the petitioner to go out and not to disturb the daily routine of the office.

12. Prosecution witness No. 3 was Lt Col Akhil Kumar Singh, the 2IC. He stated that when the misbehaviour of the petitioner was brought to his notice, he asked the individual to be sent to him for interview. When the petitioner was marched in, instead of coming with a proper drill, he came walking and stated in a very disrespectful and arrogant manner that he would speak to CO only. On 23.2.2010, this witness was informed by

the Sub Maj that the petitioner had declined to clean the Central Servicing Facility equipments. When the 2IC was discussing the matter with the Sub Major, the petitioner barged in his office without any permission with a piece of paper, of which he wanted a receipt. Despite being told to go back, he did not go back and said, “*Phir aap yahan par kis liye itni salary le rahe ho aur is chair par kya jhakh marne ke liye baithe ho.*” Thereafter this witness ordered the witness to go out of his office but he did not leave his office. Then he ordered SM for his arrest.

13. In his own defence, the petitioner was asked if he would like to comment on the fact that instead of running during BPET, he started walking, his reply was- “*Nothing*”. Similarly for other charges also, the petitioner replied by saying, “*Nothing*”. The three defence witnesses have testified to the facts of the case and their testimonies do not in any manner indicate that the petitioner had not done what he was being charged to have done and accordingly, the Court found him guilty of all the charges.

14. We also find that the petitioner had been punished twice for absenting himself without leave under Army Act Section 39(a), twice under Army Act Section 39(d) for not appearing at the time fixed for parade, once under Army Act Section 63 and once under Army Act Section 40(b), as recorded in the SCM proceedings.

15. Discipline is an extremely important facet of the functioning of the Army. Every soldier is expected to follow the norms of discipline.

Respect to the superiors is part of the training of every soldier and insubordinate behaviour by any soldier is absolutely unacceptable. As regards BPET, every soldier and officer, who is in the Army, is expected to pass the minimum standards of BPET. These tests are conducted in every unit by the Army periodically often after every three months. In any case, for a soldier to say that he is out of practice and cannot run BPET is not acceptable. In the instant case, the petitioner said that he had not run BPET for last 4-5 years, which is a blatant lie. Thus, we find that all the charges against the petitioner were proved beyond reasonable doubt. In this view of the matter, the punishment awarded is just and proper and calls for no interference.

16. Accordingly, we dismiss this O.A lacking in merit. No order as to costs.

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

**(Justice Abdul Mateen)**  
**Member (J)**

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