

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

**Reserved
Court No. 1**

Transferred Application No.590 of 2010

Monday, the 11th day of July, 2016

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

47701/8, A1 (DV3) No 151338P Extraneous. Naik (Clerk) Rajesh Kumar Tiwari Resident of Village and Post Baguara, TO-Lal Ganj Tehsil- Bairia & District Ballia (UP).

..... Petitioner/Applicant

By Shri K.K.Mishra, Counsel for the applicant.

Versus

1. The Union of India, through Secretary (Defence) New Delhi.
2. The Chief of Army Staff, Army Headquarters, New Delhi.
3. The General Officer Commanding in Chief, Head Quarters South Western Command C/o 56 APO.
4. The Colonel Commanding Officer 17-Parachute Field Regiment C/o 56 APO.
5. The General in Chief, Central Command Lucknow.

..... Respondents

By Shri Shyam Singh, Standing Counsel alongwith Major Ridhishri Sharma, Departmental Representative.

ORDER

1. Civil Misc. Writ Petition No. 67857 of 2006 was received by this Tribunal from Hon’ble Allahabad High Court on 17.5.2010 and was renumbered as above.

2. The petitioner seeks the reliefs against the SCM proceedings held on 22.01.2005 and to reinstate him in service. We note that relief clause No. 1 is an incomplete sentence and does not mention what directions are requested to be issued with regard to impugned order dated 31.10.2005 passed by the respondent No. 3 as communicated vide letter dated 09.09.2006 as well as the order dated 22.01.2005. The petition, however, makes it clear that the petitioner wants the quashment of SCM proceedings as well as the order of GOC-in-C South-Western Command dated 31.10.2005 vide which the petition of the petitioner dated 11.04.2005 was rejected.

3. Facts of the case are that Opr Satya Ram Yadav proceeded on leave from 3 October to 15 October 2003. He realized when he reached Tundla Station that he had left his ATM Card in his bag in the room. The petitioner was aware of this since they worked together in the same office. When Satya Ram Yadav came back from leave on 15.10.2003, he checked his bag and found that the ATM Card was missing. He reported the matter and went to the Bank where he found that Rs.10,000/- had been withdrawn from his account on 4.10.2003 and Rs.20,000/- on 7.10.2003. When Satya Ram Yadav returned to the Unit, the petitioner asked Satya Ram Yadav as to what had happened and when Satya Ram Yadav informed him that Rs.30,000/- had been stolen from his bank account, the petitioner advised him that there was no need to report

the matter and that he (petitioner) would give the money back to Satya Ram Yadav in installments provided the matter was not reported. Satya Ram Yadav reported the matter to his superiors, whereafter the case was investigated and the petitioner was then tried by Summary Court Martial on the following charges:-

First Charge *SUCH AN OFFENCE AS IS MENTIONED IN*
Army Act *CLAUSE (F) OF SECTION 52 OF THE ARMY*
Section 52(f) *ACT WITH INTENT TO CAUSE WRONGFUL*
 LOSS TO A PERSON

In that he,

At Agra, on 04 Oct. 2003 with intent to cause wrongful loss to No. 1446291N Gnr (OPR) Satya Ram Yadav, withdrew Rs 10,000/- (Rupees ten thousand only) from the saving Bank account No. 91011 belonging to said Gnr (OPR) Satya Ram Yadav by using his UTI ATM Card.

Second Charge *SUCH AN OFFENCE AS IS MENTIONED IN*
Army Act *CLAUSE (F) OF SECTION 52 OF THE ARMY*
Section 52(f) *ACT WITH INTENT TO CAUSE WRONGFUL*
 LOSS TO A PERSON

In that he,

At Agra, on 07 Oct. 2003 with intent to cause wrongful loss to No. 1446291N Gnr (OPR) Satya Ram Yadav, withdrew Rs 20,000/- (Rupees twenty thousand only) from the saving Bank account No. 91011 belonging to said Gnr (OPR) Satya Ram Yadav by using his UTI ATM Card.

During the trial, the petitioner pleaded guilty and was awarded the punishment of dismissal from service. He had 5 years, 11 months and 28 days of service on 22.1.2005, the day SCM was conducted. His petition was rejected by the GOC-in-C vide order dated 31.10.2005.

4. The petitioner was represented by his learned counsel Shri K.K.Mishra. The petitioner states that he, to his utter surprise, was served with a charge-sheet alleging therein that he with an intent to cause loss to Satya Ram Yadav, had withdrawn Rs. 30,000/- from SB Account of the latter. The petitioner says he was tried by SCM on 22.1.2005 and was sentenced to be dismissed from service. His appeal too was rejected. The petitioner pleaded that Satya Ram Yadav, before proceeding on leave, had borrowed a sum of Rs.30,000/- from him for the marriage of his sister. The petitioner claims that he gave Rs.30,000/- to Satya Ram Yadav in the evening of 3.10.2003. He claims that Satya Ram Yadav gave him his ATM Card to withdraw the aforesaid amount from Satya Ram's account. The petitioner says that Code Number of the ATM Card is confidential and is known only to its holder, which was intimated to the petitioner by Satya Ram Yadav. The petitioner admits that he withdrew Rs.30,000/- by using ATM Card of Satya Ram Yadav. The petitioner says that for mala fide reasons, Satya Ram Yadav made a complaint against this withdrawal of Rs.30,000/-. The petitioner states that the punishment awarded to him is too severe and harsh.

5. Learned counsel for the petitioner, during the course of hearing, pleaded that the framing of charge against the petitioner was incorrect. His contention is that the charges had been framed

under Army Act Section 52 (f), which is incorrect as the petitioner had not committed any act with intent to defraud. Learned counsel for the petitioner submitted that for an intent to defraud, the fund should have been in personal possession of the person from whom it was taken, which is not the case in hand as the money was in the Bank and not in personal possession of the complainant. According to the learned counsel for the petitioner, the correct Section under which the charge should have been framed is Section 52(a) of the Army Act, which is for committing theft. Learned counsel for the petitioner admits that the money indeed was withdrawn by the petitioner, but he states that Satya Ram Yadav had taken a loan of Rs.30,000/- from the petitioner. Since the charge was under an inappropriate Section, the SCM deserves to be quashed.

6. The respondents were represented by Shri Shyam Singh, learned Standing Counsel. The respondents state that the petitioner was enrolled in the Army on 27.01.1999 and was posted to 17 Parachute Field Regiment. He was performing the duties of Battery Clerk. Satya Ram Yadav of the same Unit had a SB Account in UTI Bank, Agra and in the month of September 2003, a sum of Rs.30,000/- had been credited to his account. While proceeding on leave on 03.10.2003, Satya Ram Yadav forgot his ATM Card in his room alongwith PIN number. This room was adjacent to the Battery Office and the petitioner was aware of this. On return, Satya Ram

Yadav found that Rs.30,000/- had been withdrawn from his account. The respondents state that the petitioner tried to dissuade Satya Ram Yadav from reporting the matter and offered that the office staff will make up the missing money in installments. According to the respondents, the statements of the witnesses corroborate the fact that the petitioner had stolen the ATM Card of Satya Ram Yadav and had withdrawn Rs.30,000/- from the Bank account of Satya Ram Yadav i.e. Rs. 10,000/- on 04.10.2003 and Rs.20,000/- on 07.10.2003. During the SCM, the petitioner pleaded guilty. Petitioner's petition before the GOC-in-C was rejected after due consideration and the punishment awarded to him is appropriate. The respondents state that the petitioner's case deserves to be dismissed lacking in merit.

7. Heard both sides and examined the documents.

8. It has been admitted by the petitioner and the learned counsel for the petitioner that the petitioner had withdrawn Rs.30,000/- from the bank account of Satya Ram Yadav. The principal contention of the learned counsel for the petitioner is that the petitioner had borrowed a sum of Rs. 30,000/- from Satya Ram Yadav. This is a private transaction between two individuals and has not been established by evidence. Petitioner claims Satya Ram Yadav had given his ATM Card and PIN number to the petitioner to withdraw

Rs.30,000/- from the bank account. The petitioner has admitted that he had withdrawn this money on two occasions i.e. on 04.10.2003 and 07.10.2003. He himself has stated that he gave a sum of Rs.30,000/- to Satya Ram Yadav in the evening of 03.10.2003 whereafter Satya Ram Yadav proceeded on leave. The petitioner withdrew Rs.10,000/- on 04.10.2003 and Rs.20,000/- on 07.10.2003. The question that engages our attention is that if Satya Ram Yadav had Rs. 30,000/- in his account and he was well in a position to withdraw this money, why would he borrow this amount from anyone else before proceeding on leave and hand over his ATM Card to the lender for withdrawal of said amount from his bank account. It has not been established in the Summary of Evidence that Satya Ram Yadav had borrowed a sum of Rs.30,000/- from the petitioner. It has also not been established that the petitioner was handed over ATM Card and PIN number by Satya Ram Yadav. Therefore, the testimony of Satya Ram Yadav that he forgot his ATM Card alongwith PIN number in the room, which was stolen by the petitioner to withdraw the money from his bank account, is credible. It is in the statement of Satya Ram Yadav that when he came back from leave on 15.10.2003, he checked his bag and found that the ATM Card was missing, whereupon he went to the Bank and found that Rs.30,000/- had been withdrawn from his account. Immediately on return of Satya Ram Yadav from the bank, the

petitioner asked Satya Ram Yadav not to report the matter as that would entail an inquiry against all of them and that he would return the money to Satya Ram Yadav in installments. Learned counsel for the petitioner, as part of his pleadings, submitted that there was another individual with the petitioner who was aware of the transaction between Satya Ram Yadav and the petitioner with regard to the loan and handing over of ATM Card. From the Summary of Evidence, it emerges that there was another person, namely, Hav Balwan Singh, who had gone with the petitioner to the Bank on 04.10.2003 when the petitioner had withdrawn Rs.10,000/-. Hav Balwan Singh was examined as Witness No. 4 in the Summary of Evidence, wherein he has stated that he was with the petitioner when he withdrew the money using the ATM Card. However, he did not make any statement with regard to any loan having been given to Satya Ram Yadav by the petitioner or that the ATM Card used for withdrawing money was of somebody else's. Hav Balwan Singh also states in the Summary of Evidence that after withdrawing money, the petitioner alongwith him went to Sadar Bazar, where the petitioner purchased a mobile phone worth Rs.5000/- and a card worth Rs.600/- was put in it. This establishes beyond doubt that the petitioner used an ATM Card, which was learnt later that it belonged to Satya Ram Yadav, to withdraw thirty thousand rupees from the bank account of Satya Ram Yadav and we are inclined to believe

that this was done without the knowledge of Satya Ram Yadav with an intent to cause loss to Satya Ram Yadav.

9. As regards the framing of charge under Army Act Section 52(f), we have carefully examined the pleadings of the learned counsel for the petitioner. Section 52 (f) envisages that any person subject to the Army Act who does anything with an intent to defraud, or to cause wrongful gain to one person or wrongful loss to another person, shall, on conviction by court-martial, be liable suffer punishment as provided under the said section. The ingredients of this charge are that the act has to be done with intent to defraud or to cause wrongful gain to one person or wrongful loss to another person. In the instant case, the fund/money belonged to another person i.e. Satya Ram Yadav and it was kept in the Bank. In the Bank, this amount rightfully and wholly belonged to Satya Ram Yadav and no other person had any right to withdraw this money. The petitioner, by his own admission, has withdrawn this money, which caused wrongful loss to Satya Ram Yadav and, therefore, we find no infirmity in framing of charge under Army Act Section 52(f) against the petitioner. There is no substance in the submission made by learned counsel for the petitioner that charge was wrongly framed against him under Army Act Section 52(f) and it should have been framed under Army Act Section 52(a) instead of Section 52(f).

10. Accordingly, this T.A lacking in merit is hereby dismissed.

No order as to costs.

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

July 2016

(Justice Abdul Mateen)
Member (J)

July 2016

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