

## ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

**RESERVED**  
(Court No. 3).**Transferred Application No. 1258 of 2010**Tuesday the 17<sup>th</sup> day of March, 2015“Hon’ble Mr. Justice Abdul Mateen, Member (J)  
Hon’ble Lt. Gen. A.M. Verma, Member (A)”Ex. No. 6380032X Hav/Clk (GD/ST) Hari Singh, resident of Village  
Pharaveli, P.O. Porkham, P.S. Farah, District Mathura.

..... Applicant/Petitioner

Shri Shailendra Kumar Singh, learned counsel for the applicant/petitioner.

Versus

1. Union of India through the Secretary, Ministry of Defence, D.H.Q.  
Post Office, South Block, New Delhi.
2. Chief of the Army Staff, Army Headquarters, D.H.Q. Post Office,  
South Block, New Delhi.
3. Commanding Officer, Training Battalion, The Jat Regimental Centre,  
C/o 56 A.P.O.

..... Respondents

By Shri Mukund Tewari, Standing Counsel, along with Lt. Col. Subodh  
Verma, Departmental Representative.**ORDER**

1. This Writ Petition No. 37230 of 2003 was initially filed by the  
petitioner before the Hon’ble Allahabad High Court and on its being  
transferred to this Tribunal this petition has been registered and renumbered  
as Transferred Application No. 1258 of 2010. Through this writ petition the  
petitioner sought the following reliefs :

*“(i) issue a writ, order or direction in the nature of certiorari quashing the sentence of the General Court Martial dated 22<sup>nd</sup> May, 2002, Annexure-3 to the writ petition;*

*(ii) issue a writ, order or direction in the nature of certiorari quashing the minute sheet dated 14<sup>th</sup> July, 2003, Annexure-7 to the writ petition;*

*(iii) issue a writ, order or direction in the nature of mandamus directing the respondents to reinstate the petitioner in service with full seniority, pay and allowances;*

*(iv) issue a writ, order or direction in the nature of mandamus directing the respondents to set the petitioner at liberty;*

*(v) issue any other writ, order or direction as this Hon’ble Court may deem fit and proper in the circumstances of the case;*

*(vi) award the cost of this petition in favour of petitioner.”*

2. The brief facts of the case are that the petitioner was enrolled on 12.3.1984 in the Indian Army and was promoted to the rank of Havildar on 1.4.1990. In November, 1996 he was posted to HQ Central Command, Lucknow. From there he was transferred to HQ 11 Corps on 15.10.1998. While being posted at HQ 11 Corps, he was arrested on 8.9.2000 on suspicion of espionage and was kept in close arrest in the Quarter Guard of 24 Punjab till 12.2.2001. During this period a Court of Inquiry was in progress. The petitioner had given a confessional statement on 16.1.2001. Bases on the findings of the Court of Inquiry, a disciplinary action was ordered by the GOC-in-C, HQ Central Command, and the petitioner was thereafter attached to the Training Battalion of Jat Regimental Centre, Bareilly. Tentative charges under Section 63 of the Army Act were heard by the Commanding Officer on 25.9.2001 and Summary of Evidence was

ordered to be recorded, which commenced on 26.6.2001 and concluded on 11.12.2001. A prima facie case was found against the petitioner and the General Court Martial (for short called the ‘GCM’) was ordered by the General Officer Commanding-in-Chief, Central Command, vide HQ UB Area letter dated 18.5.2002. The petitioner was tried on two charges, which are as follows :

First Charge under Army Act Section 63 :

“AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE

*in that he,*

*during March – April 1999, which came to the knowledge of the authority competent to initiate action on 16 January 2001, while serving at HQ Central Command, contrary to Army Order 2/90, improperly visited a foreign country viz Nepal, without prior security clearance or permission from the competent authority.”*

Second Charge under Army Act Section 63 :

“AN OMISSION PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE

*In that he,*

*During March – April 1999, which came to the knowledge of the authority competent to initiate action on 16 January 2001, while serving at HQ Central Command and having been contacted by foreign agents for procurement of military information and documents, improperly omitted to report the same to his superior authorities.”*

3. The GCM commenced on 23.5.2002 in which the petitioner pleaded guilty. He was, accordingly, sentenced to 27 months’ R.I., reduced to ranks

and dismissal from service. The sentence was confirmed by the competent authority on 15.6.2002.

4. The petitioner filed a statutory petition under Section 164(2) of the Army Act on 12.8.2002. He also filed Writ Petition No. 34186 of 2002 in the Hon'ble Allahabad High Court. This petition was heard and disposed of the Hon'ble Allahabad High Court on 21.4.2003 directing the respondents to consider and decide the statutory petition filed by the petitioner.

5. The Chief of the Army Staff (called the 'COAS' for short) considered the said petition dated 12.8.2002 and rejected the same, vide letter dated 14.7.2003.

6. Aggrieved by the rejection of the statutory petition by the COAS, the petitioner filed the present writ petition before the Hon'ble Allahabad High Court, which, ultimately on being transferred to this Tribunal, has been renumbered as T.A. No. 1258 of 2010.

7. While arguing the case, Shri Shailendra Kumar Singh, learned counsel for the petitioner, submitted that in his 18 years' of service the petitioner was punished only once for an offence under Section 63 of the Army Act and was awarded punishment of 'severe reprimand'. Other than that the petitioner had enjoyed an impeccable service. When he was posted out from HQ Central Command in October, 1999 he handed over the charge to Hav. Clk. R.D. Tripathi, who was involved in some 'racket' in which military information was leaked. On being caught, Hav Clk Tripathi implicated the petitioner, who was at that time on annual leave and while

the petitioner was on annual leave he was arrested by the Military Police on 6.9.2000. Learned counsel submitted that the reason for arresting the petitioner after one year of his departure from HQ Central Command has not been explained by the respondents. The petitioner remained in Quarter Guard from 6.9.2000 to 22.11.2001 and the confession was elicited from him on 16.1.2001.

8. It has also been claimed that while in under close arrest the petitioner was tortured. One Major Rajender Singh was ordered to record the Summary of Evidence, which took nearly six months to conclude, i.e. from 26.6.2001 to 11.12.2001. Learned counsel for the petitioner questioned the inordinate time taken by the officer in recording Summary of Evidence and to complete this task.

9. In the Summary of Evidence seven witnesses deposed as prosecution witnesses, out of which Nos. 6 and 7, viz. Nb Sub Sant Ram Rai and Shamim Ahmad Khan, turned hostile according to the petitioner.

10. The prosecution case was that the petitioner went to Nepal with Nb Sub Sant Ram Rai and met one T.M. Sheikh in Nepal. There is no evidence to support the prosecution story. There is no direct evidence to corroborate that the petitioner visited Nepal without prior permission. The only evidence available with the prosecution was the statement of Hav Clk Tripathi. The Summary of Evidence and the confessional statement both being not admissible on legal grounds. The Commanding Officer of the petitioner had recommended SCM, as indicated in Annexure '4' to the supplementary

affidavit. The petitioner surprised that GCM was ordered. The petitioner also claimed that his signatures were obtained on blank sheets of paper and material suitable to the respondents was typed out on them. He claimed that his two such letters dated 11.5.2002, attached as Annexure '7' to the supplementary affidavit, were produced by the respondents, to which the petitioner had declined to have a defending officer of his choice and declined to call any defence witness.

11. Learned counsel for the petitioner has challenged the confession on legal grounds. However, during arguments at the Bar he accepted that the petitioner did go to Nepal without prior permission and that he did not disclose any information to any foreign agent. Learned counsel for the petitioner, during argument, though admitted that the petitioner had gone to Nepal, but the petitioner had been lured into going to Nepal. The petitioner did not leak any information to the foreign agent and, therefore, his plea of guilt, should have been converted into plea of non-guilt, since the whole case of prosecution revolved around the confession, which is not legally admissible and as such the procedure laid down under Rule 52 of the Army Rules have been violated. During conduct of the trial the Army Order which lays down that prior permission is needed before visiting a foreign country was also not brought forth by the respondents. Learned counsel very emphatically stated that the punishment awarded to the petitioner in GCM is excessive and disproportionate to the charges.

12. The respondents through their counter affidavit and supplementary counter affidavit as also as argued by Shri Mukund Tewari, learned Standing Counsel, duly assisted by Lt. Col. Subodh Verma, Departmental Representative, stated that the petitioner had been arrested on 8.9.2000 on suspicion of involvement in an espionage case when he was in HQ Central Command and based on a Court of Inquiry disciplinary action was ordered by the GOC-in-C, HQ Central Command, on 15.3.2001. Since the matter was very serious and discipline which is the backbone of the Army and security of the Nation was involved, a through enquiry was done and the petitioner was given every opportunity to cross-examine the witnesses during recording of Summary of Evidence. After Summary of Evidence was recorded, an application was made for trial and the competent authority ordered GCM.

13. On allegation made by the petitioner that an officiating Commanding Officer has signed the charge-sheet, the respondents submitted that C.O. is fully and legally authorized, to sign the charge-sheet. The respondents also stated that ab initio the petitioner had been pleading guilty. He is fully conversant with English language being a Clerk. His voluntary confessional statement was recorded when he was in full senses and after prior medical examination. During the trial when the petitioner pleaded guilty, Summary of Evidence was read in court and he was aware of the contents of the SOE fully. The respondents emphasized that all provisions of law, as applicable

to GCM including Rule 52 of the Army Rules, were fully complied with and, therefore, this petition has no merit and deserves to be dismissed.

14. Heard both the sides and examined the documents.

15. In the Summary of Evidence seven witnesses were examined. P.W. 1, Major S.K. Sharma, who produced the confessional statement of the petitioner dated 16.1.2001, stated that there was no pressure on the petitioner and he was in good health. The petitioner did not cross-examine him. P.W. 2 Hav/Clk R.D. Tripathi in his statement stated that the petitioner had told him that he was taken to Kathmandu and Pashupathi Nath temple. The relevant portion of the statement of P.W. 2 is as follows :

*“8. In Nov 1998 I, alongwith Hav/Clk Hari Singh met Sant Ram Rai at tea stall in Sadar Bazar opposite to Usman crossing (Lucknow) and talked about employment of my brother. Sant Ram Rai told me that he is going to Gorakhpur in connection with employment of Hav/Clk Hari Singh’s Brother and brother in law and will talk to the chairman Rly Recruitment board about my brother’s employment also.*

*9. Within a weeks time, Hari Singh went with Sant Ram Rai to Gorakhpur. When Hav/Clk Hari Singh returned, I enquired about the employment. Hav/Clk Hari Singh told me that from Gorakhpur he was taken to Kathmandu (Nepal) and also made to visit Pashupathi Nath temple. He further told me that he was asked to supply information by Sant Ram Rai and other one or two persons. He told me that if Sant Ram Rai desires he can help in getting the employment. I told him that what information did we have and in case he can get the employment he should do our job.”*

16. The petitioner cross-examined Hav/Clk R.D. Tripathi. From the cross-examination it emerges very clearly that the petitioner had admitted that he went to Nepal. The relevant questions no. 2, 3 and 4 and answers thereto are extracted hereunder :

*“Q-2. After returning from Gorakhpur/Nepal did n’t I tell you that Sant Ram Rai under the disguise of employment had taken me to Kathmandu and pashupathi temple and asked me to supply defence related information?”*

*Ans-2 Yes, you had told me.*

*Q-3. Didn’t I also tell you that Sant Ram Rai is working with ISI/other Foreign Countries and requested you not to mention this incident to anyone and not to make any contact/relationship with Sant Ram Rai? Didn’t I also tell you that I will also not make any contact/relationship with him?”*

*Ans-3 You only told me that Sant Ram Rain and others are working with some syndicate (group / Countries/info agencies). You never mentioned about ISI, and you told me not to mention this incident to anyone. You did not even mention “ISI” in the C of I.*

*Q-4. Didn’t you tell me as to what information can we give as all the information is with the officers? Didn’t you swear that you will not tell this incident to anyone?”*

*Ans-4 No, I did not swear. I only told you as to what information can we give and if Sant Ram Rai can get the employment he should do our job.*

*Hav/Clk Hari Singh insists that he had told Hav/Clk R.D. Tripathi about involvement of Sant Ram Rai with ISI/other foreign Countries.”*

17. P.W. 5 Major Nagendra Rai of AMC Centre and School, Lucknow, had recorded the confessional statement of the petitioner. The relevant extract of his statements are as follows :-

*“22. On 16 Jan 2001 I was directed by Bn Cdr No. 2 MT Bn to report to CO Central Comd Liaison Unit. When I reported to CO Centrl Comd Liaison Unit, he informed me that No 6380032X Hav/Clk(GD/SD) Hari Singh who was in military custody at 24 PUNJAB location in Lucknow is likely to make a confessional statement.*

*23. On reaching 24 PUNJAB location I found that No 6380032X Hav/Clk (GD/SD) Hari Singh of HQ 11 Corps was in good physical and mental health. He was taken out from the Quarter Guard Cell and made to sit comfortably in the premises of the Quarter Guard. He told me that he wanted to make a statement. I explained to him that it was not obligatory to make the statement but if he wishes to make statement he could do so at his own will.*

*24. I further state that No 6380032X Hav/Clk (GD/SD) Hari Singh told me that he was not under any threat, inducement or promise to give the confessional statement.*

*25. Thereafter No 6380032X Hav/Clk (GD/SD) Hari Singh made the statement voluntarily. Whatever No 6380032X Hav/Clk (GD/SD) Hari Singh stated was recorded verbatim by me. After recording the statement, it was read over to the individual. He being a clerk was having adequate knowledge of English and had read the recorded statement and signed it as correct in my presence.”*

18. The facts of the petitioner being in full senses and the voluntary nature of confessional statements are established. It is very clear that the statement of these prosecution witnesses clearly established that the petitioner had gone to Nepal knowing fully where he was going and he did

so without obtaining prior permission from a competent authority. P.W. 6 Nb Sub (Retd.) Sant Ram Rai and P.W. 7 Shri Shamim Ahmed Khan stated that they were not known to the petitioner. The petitioner did not make any statement during the Summary of Evidence.

19. Now we turn to the confession. It is a very detailed handwritten confession statement. It was written by P.W. 5 Major Nagender Rai. In the confessional statement the petitioner described his journey to Nepal in detail and the activities that he indulged with while in Nepal. The relevant extracts of this statement are as follows :-

*“We took meal at a shop behind station. After the meal they started towards bus station. I asked about destination and also informed that I was running shortage of money. You had informed me that officer is available at Gorakhpur. Now where are you leading me? Rai said that he could bear expenses on the condition of payment after return. We all sat in bus which moved towards Sonali. After reaching Sonali we took another bus which stopped at unknown place at a roadside hotel during noon that day. After meal I desired to come back asked them regarding destination. I also said that you had told me that the destination was nearby but now it is too far from the Gorakhpur. Then Rai told me that now you have come this much distance. Travel a little more and get the work completed otherwise you may be required to come again. He also assured me that he was a JCO of Army and would not wrong him. He could be believed from then they did not allow me to return and compelled to sit in the bus. We reached Kathmandu at about 1730-1800 hours during evening. From there we reached in a hotel with the help of autorikshaw. After getting fresh they ordered for meal. In the mean time third man also came. He was carrying a bottle of whisky. He was bearing a red*

*Tilak on his forehead. Nb/bub Rai informed him that Hawaldar Hari Singh has come to talk you regarding the service of his brother in law. The man with Tilak on his fore head assured him the job on payment of Rs 80000/- I showed inability to pay Rs. 80000/- as I was not having that much money. In the mean time that man poured whisky in the glasses I refused to drink thrice but he insisted and I took approximately one and half peg. Then he offered me to work with him if money was not available. I asked about the work to be done with them. He asked me to available some military documents which are required by them. He also assured me some money over and above the employment to my brother in law. I refused to budge and showed inability to do such work. I informed them that I had completed pensionable service and keeping the future of my four children I can not do this work. The man with tilak on fore head assured me Rs. 4-5 lacs in return of their requirement. These three puzzled me and in disgust I kept on refusing and accepting their pleas. I sensed wrong and got disturbed. That man asked about my I card and asked one photocopy which I promised to hand over during next morning.”*

.....

*“Then Rai telephoned the man having Tilak on forehead and called him there. He came and asked me to stop one more night. I started weeping and started towards bus stand. The stopped me forcibly. I said Nb/Sub Rai that he had deceived me. I also said that I am not a man which they were searching. You brought me here on the pretend of Gorakhpur. You have lied me. I told them that I was having Rs 125/- and can managed the fair after selling my wrist watch. They allured me offering girl if I stopped there that night. I refused. Then third man (Tilak on forehead) paid me 1000 for expenses in the way. I returned Rs 800. He again put that money in my pocket I again said that I was in need of 200-300/- only but they*

*compelled me to take the money. I took the money and started. They again asked me to stop but I refused. Then the man with tilak on forehead asked me to swear (for family member) not to divulge this matter to any officer I seared. He also intimidated that he was having proof of my being there which could be used against me. He informed me that he had taped my conversation in addition to my photograph and other details. He threatened me to kill all the family members if I told about this incidence to any one else.”*

20. It is to be noted that in the confessional statement, recorded on 16.1.2001, the petitioner made a mention of having a cup of tea along with Hav/Clk R.D. Tripathi and Nb Sub Sant Ram Rai. P.W. 2 Hav/Clk Tripathi, in the Summary of Evidence, also mentioned that he had a cup of tea with the petitioner along with Nb Sub Sant Ram Rai and the statement of P.W. 2 must have been recorded after 26.6.2001, so there is corroboration that this event did take place. Further the petitioner had 18 years of service as Clerk in the Indian Army. All the official work performed by him was in English language and, therefore, he is well educated. For him to state that he was lured into going to Nepal is not sustainable as when he sat in the Bus at Indo-Nepal border he had the knowledge that the Bus was heading towards Nepal and not moving inside India. The claim of the petitioner that he was not inclined to consume whiskey offered by one gentleman who had *Tilak* on his forehead, yet he consumed whiskey too is not sustainable. Had he wanted, he could have flatly reposed to consume whiskey. Subsequently, the next morning, as per confessional statement, he woke up at the insistence of Nb Sub Rai and he was taken to Pashupati Nath temple. After

visiting the temple, the petitioner, in his confessional statement, claims that he wanted to come back to India since his wife was ill but the two persons, viz. Nb Sub Rai and the person who had *Tilak* on his forehead tried to stop him and they “*allured me to offer girl if I stop that night*”. The petitioner refused and thereafter the person with *Tilak* on his forehead paid him Rs. 1,000/- for the expenses to be incurred on the way. The same person, the petitioner claims, “*threatened me to kill all the family members if I told about this incident to anyone else.*” Now, from this detailed confession of the petitioner, there remains no doubt that the petitioner had gone to Nepal. It also shows that he was asked for some military information which he did not provide. It has also not been claimed or stated at any point of time by the petitioner that he had obtained prior security clearance from the competent authority before going to Nepal. The first charge, which relates to visiting a foreign country without prior permission, therefore, stands proved. The second charge which relates to being contacted by a foreign national but not reporting the same to the higher authorities also stand proved as the petitioner intentionally kept himself away from providing this information to his superiors. There is a mention of offering a girl which could amount to a honey trap. Some money too was paid to the petitioner. Therefore, based on the confessional statement of the petitioner we conclude that this money was received by the petitioner reluctantly. The right thing for the petitioner to do was to immediately inform his superiors, after return from Nepal, that against his wishes he was taken to Nepal and was asked some military

information, which he did not provide. Had he done that, probably the course of events would have been different. He, however, did not do so and, therefore, he was rightly pressed with disciplinary action. Though the petitioner claims that he did not provide any information of military value to the foreign agent, which also was one of the charges on which he was tried, the fact remains that this is a matter which concerns our national security.

21. The petitioner is an educated person and well aware of the issues concerning security of the Army as well as Nation and for him to state that he was not aware of the entire consequences of his actions is very hard to believe. The petitioner, in our view, willfully violated the orders on this subject which has the potential to adversely impact on our national security and an act of indiscipline which deserves exemplary punishment. All provisions of law, during investigation and GCM, were followed and the punishment awarded to the petitioner is, in our view, commensurate to the charges levelled against the petitioner. Accordingly, finding no merit in this Transferred Application, we dismiss it. No order as to costs.

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

(Justice Abdul Mateen)  
Member (J)

PG.