

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

RESERVED.
(Court No. 3)**Transferred Application No. 1177 of 2010**Tuesday the 23rd day of December, 2014“Hon’ble Mr. Justice Abdul Mateen, Member (J)
Hon’ble Lt. Gen. A.M. Verma, Member (A)”Sep. Kailash Singh No. 326 D.S.C.P.I.9(I) Mtn. Be.Gp. OMP, son of Late
Sri Munshi Singh, R/o Village Bhatani, P.O. Tindauli, Tehsil and District
Mainpuri...... Petitioner
By Shri V.K. Srivastava, counsel for the applicant.

Versus

1. The Union of India, through Director Defence Security Core Corps.,
Headquarter Central Command, Lucknow.
2. Major Officer Commanding-in-Chief, 326 D.S.C.P.I.9(I) Mtn.Be.Gp.
OMP, Headquarter Central Command, Lucknow.

..... Respondents

By Shri D.K. Pandey, counsel for the respondents, & Capt. Priti Tyagi,
Departmental Representative.**ORDER**

1. This Writ Petition No. 427 of 1997 was filed by the petitioner before
the Hon’ble High Court of Judicature at Allahabad, Allahabad, which
ultimately came on transfer before this Tribunal and renumbered as
Transferred Application No. 1177 of 2010. In this writ petition the petitioner
has claimed the following reliefs :-

“(i) issue a writ, order and direction in the nature of certiorari quashing the orders dated 29.8.1996 and 5.8.1994 passed by the respondents (Annexure Nos. 3, 6 and 6A to the writ petition).

(ii) issue a writ order or direction in the nature of mandamus commanding/directing the respondents to pay salary regularly month to month as and when due.

(iii) issue a writ order or direction as this Hon’ble court may deem fit and proper.

(iv) award cost of the writ petition in favour of the petitioner.”

2. The facts of the case, in brief, are that the petitioner joined the Indian Navy on 11.1.1969 and retired from the Indian Navy on 30.6.1984. He, thereafter, joined DSC on 10.6.1989 and was posted to OMP of 9(I) Independent Mountain Brigade Group. On 1.7.1994 there was an altercation involving the petitioner and five other soldiers. The five soldiers received stab injuries, allegedly caused by the petitioner. The petitioner was tried by Summary Court Martial (SCM), after Summary of Evidence (SoE) was recorded, from 1.8.1994 to 5.8.1994 on the charge, as follows :-

ORDER “Army Act AN ACT PREJUDICIAL TO GOOD
 Section 63 AND MILITARY DISCIPLINE

*In that he, At field on 01 Jul 94, struck with a
 knife in the chest of No 13857532A Sep Pushkar
 Raj, in the right forearm of No. 4449222L Sep
 Baldev Singh, in th left shoulder of No
 6811909L Sep Krishan Chand, in the right*

shoulder of No 9085779K Sep Sarbat Hussain, and in the right ring finger of No 3383172M Sep Gurdeep Singh, all of them being his comrades and of the same unit.”

3. The petitioner pleaded not guilty . Based on the depositions of the witnesses, the Court found him guilty and the petitioner was dismissed from service. Aggrieved by the order of dismissal from service the petitioner filed this petition.

4. During hearing of this petition, Shri V.K. Srivastava, learned counsel for the petitioner, pleaded that in the instant case five co-employees of the petitioner concocted a case against the petitioner and planted a knife following which the petitioner was convicted. He further argued that there was nothing endorsed against the petitioner during his 15 years' of service in the Indian Navy as also during the five years that he spent in the DSC. In fact the petitioner claimed that during the aforesaid period his work was appreciated by his superiors in the DSC. Learned counsel for the petitioner pleaded that on 1.7.1994 there was a fracas during which the petitioner was beaten up by the above named five co-employees. These five co-employees allegedly received injuries during this fight and suffered some stab injuries. Learned counsel for the petitioner claimed that the petitioner was not carrying any knife and these injuries on the five co-employees were not caused by the petitioner.

5. During SoE and SCM two witnesses, viz. Hav. Subhash Chand and Sep. Brijesh Kumar deposed that a knife was recovered under the cot of the petitioner but there was no blood stains present on the knife. Learned counsel for the petitioner also argued that no independent witness had seen a knife in the hand of the petitioner during the fight, yet the court, without applying its mind, found the petitioner guilty and dismissed him from service. During the trial by SCM the petitioner had been provided a friend of the rank of Havaldar, which is contrary to the law. The case of the prosecution was that the petitioner was, during the fight, under the influence of alcohol, yet no medical examination was carried out to establish this point. The petitioner was sent to jail and medically examined only on 15.7.1994. The officer, who recorded the SoE was also the Presiding Officer (PO) of the SCM, which is also illegal. The other colleagues, who were involved in this fight, were given minor punishment of 28 days' R.I., whereas the petitioner was dismissed from service. Learned counsel for the petitioner further argued that the petitioner was not provided a copy of the Court of Inquiry and the PO of the SCM did not give any detailed reasons for reaching the finding of guilty. The petitioner also refuted the claim of the respondents that neither the knife had been cleaned by him nor the said knife had been sent for chemical examination. According to the petitioner, the SCM was conducted in a prejudicial manner and the sentence was awarded illegally. His appeal too was rejected by the Appellate Authority in haste. Learned counsel for the petitioner, therefore, prayed that the reliefs sought for by the petitioner be granted to him.

6. The respondents admitted the fact relating to service of the petitioner in the Indian Navy, though they also mentioned that they are not aware of the fact that nothing adverse was recorded during his Naval service. As regards his service in DSC, the respondents have stated that the applicant served in OMP of 9(I) Independent Mountain Brigade Group for 1 year and 229 days and not five years, as claimed by the petitioner. The respondents also stated that no letter of appreciation was ever given to the petitioner, as claimed. The respondents further stated that the petitioner was habitual offender and was warned by the OC a number of times. On 1.7.1994 at about 2000 hours the petitioner collected his meal from the Cook House and went to his Barrack and consumed liquor which was in violation of the Unit SOP. Thereafter he used abusive language and quarreled with the soldiers present in the Barrack at that time. During the fight he took out a knife and stabbed five persons, viz. Sep. Krishna Chand, Sep. Pushkar Raj, Sep. Sarbat Hussain, Sep. Gurdeep Singh, and Sep. Baldev Singh. The petitioner, therefore, in accordance with the procedure laid down in the Army Act and the Army Rules, was produced before the Commanding Officer (CO) and charge was heard under Rule 22 of the Army Rules. Thereafter SoE was recorded and the petitioner was tried by SCM following the due process of law. During recording of SoE and also during the SCM the petitioner was given full opportunity to defend himself. He pleaded 'Not guilty' during the SCM. However, based on the evidence produced before the court, the petitioner was found guilty of the charge and was awarded the sentence of dismissal. The respondents argued that considering the gravity of the

offence and the need to maintain discipline in the Army, the sentence is commensurate with the offence and the petitioner is now trying to mislead this Court alleging falsely regarding non-compliance of SCM procedure. There is irrefutable evidence that the petitioner had used a knife to cause injuries to his colleagues. During commencement of the SCM proceedings, the petitioner was kept under Military custody and was never in jail, as claimed by him. Those persons, who received injuries, have stated during SoE and also during SCM that they had been stabbed by the petitioner during the fight. The SCM trial was conducted in a most fair manner and no legal provisions were violated. As regards friend of the accused is concerned, the petitioner was given a choice and he accepted the friend of accused vide his letter dated 27.7.1994. One of the witnesses has stated in his statement that the petitioner had consumed liquor. The charge did not mention liquor and, therefore, it was not required to be proved. No Court of Inquiry was conducted and, therefore, there was no question of handing over a copy of the Court of Inquiry proceedings to the petitioner. The petitioner's appeal was rejected after considering all the relevant factors and it was not necessary to provide detail reasons thereof. The respondents, therefore, prayed that this petition/transferred application be dismissed being devoid of merit.

7. Heard both the sides and perused the documents.

8. The relevant facts that emerge regarding the incident that took place on 1.7.1994 after going through the deposition of the witnesses during the SoE and SCM are that on 1.7.1994 the petitioner was having his meal and

consumed liquor. There were others in the Barrack. Sep. Pushkar Raj went towards the cot where the petitioner was sitting. He was abused by the petitioner and quarrel ensued between them. The others came to separate them. During this altercation the petitioner pulled out a knife and stabbed five persons, who were taken to 2009 Field Ambulance. Immediately after the incident, there was a central fall-in and after that at about 0200 hours a search of the Barrack commenced. During the search, a knife was found under the cot of the petitioner. At that time no blood stain was found on the knife. However, the next morning a thin film of blood was found on the knife. Thereafter SoE was recorded followed by SCM. During SCM, the petitioner pleaded not guilty. The SCM started on 1.8.1994 at 10.45 hours and concluded on 5.8.1994 at 15.30 hours. During the SCM, only prosecution witnesses were examined. The petitioner did not bring any witness on his behalf. He was found guilty and was dismissed from service.

9. The learned counsel for the petitioner reiterated more than once during his argument the point that the petitioner did not have a knife with him. He also stressed on the point that no blood was found on the knife that was recovered from under his cot. The petitioner's claim that he did not have a knife and that he did not stab anybody with the knife is contrary to what the witnesses have deposed in the SoE and during the SCM. The relevant extracts of the deposition of witnesses are as follows :-

Witness No. 1, Sep. Krishan Lal :

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“5. *Opposite these two cots, on two more cots, No. 10403507X L/Nk Dev Singh, No. 4053975F Sep Dalbir Singh and No 8823960K Sep Kailash Singh were sitting. The central gallery of the barrack separated these four beds. As we enter the building, on the right side cot L/Nk Dev Singh and No 4053975F Sep Dalbir Singh were sitting, with their backs towards the direction of the unit mandir and on the left hand side cot No 8823960K Sep Kailash Singh was sitting with his face towards the direction of the unit mandir i.e. they were facing each other.*

6. *Both these groups sitting in the DSC barrack were consuming liquor. I had seen glasses in their hands, however I did not notice any liquor bottle with any of the two group members.*

9. *Immediately No 13857532A Sep Pushkar Raj got up from where he was sitting and came towards where No 8823960K Sep Kailash Singh was sitting. No 13857532A Sep Pushkar Raj shouted, “Kaun madarchod hum ko gali nikal raha hai”, or words to that effect. Meanwhile No 8823960K Sep Kailash Singh also got up and started walking towards No 13857532A Sep Pushkar Raj. No 8823960K Sep Kailash Singh and No 13857532A Sep Pushkar Raj’s confronted each other near the cot where No 8823960K Sep Kailash Singh had been sitting.*

10. *No 13857532A Sep Pushkar Raj boxed No 8823960K Sep Kailash Singh on his chest. No 4053975F Sep Dalbir Singh had also got up and had come up right behind No. 8823960K Sep Kailash Singh. Exchange of blows took place between No 8823960K Sep Kailash Singh and No 13857532A Sep Pushkar Raj and they came in the space between No 8823960K Sep Kailash Singh and No 13857532 Sep Pushkar Raj’s cots. No 4053975F Sep Dalbir Singh had also followed them to this spot.*

13. At this time I saw No 9085779K Sep Sarbat Hussain breaking loose from where the fighting was going on and he came towards me. I saw that he was profusely bleeding from his right shoulder and his uniform shirt was stained wet with fresh blood and he was pressing the front portion of his right shoulder with his left hand. He asked me to give him a piece of cloth to stop the blood and told me that he had been stabbed with a knife by No 8823960K Sep Kailash Singh. I then helped No 9085779K Sep Sarbat Hussain to the cot of Sep Baldev Singh near the door as that is where I had been standing all this while.

17. I then went to the platoon Hav's room which is adjoining to our barrack, to inform him about this incident. When I entered his room, I observed he was not there, as I came out of his room, I saw No 6908939M Hav Subhash Chand the Pl Clk standing at the window near No 4449222L Sep Baldev Singh's cot. I told him that, there is a fight going inside, do something and then came and stood near the door closer to the Pl Hav's room. The fighting was still going on and then I heard the fire alarm being sounded and left for going towards the duty clerk's room for the fall in. I saw No 13857532A Sep Pushkar Raj come out of the barrack shouting save me, No 8823960K Sep Kailash Singh has stabbed me with a knife. I just kept on walking towards the duty clerk's room and came and stood in the central roll call ground."

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Witness No. 2 Sep Pushkar Raj :

x x x x x x x x x x x x x

"28. When I had reached the front side of my cot, No 8823960K Sep Kailash Singh hit his left fist on a steel bod lying near his cot and said, "Madarchod, Bahanchod", or words to that effect and I also abused him, "Madarchod". Then No 8823960K Sep Kailash

Singh said these people are creating chaos. I then bent down to pick up the bucket from under my cot, I felt some sharp and hard object being driven into my left upper back and I felt intense pain. As I turned back, I saw a knife in No 8823960K Sep Kailash Singh's right hand whose blade was soaked in blood. Then in panic, I just hit out at No 8823960K Sep Kailash Singh to save myself and shouted I have been hit, save me, then No 3383172M Sep Gurdeep Singh came up to me and caught me from behind and pulled me back, then I saw No 4051525L Nk Raghubir Singh and No 4053975F Sep Dalbir Singh came towards me. I thought they too are coming in support of No 8823960K Sep Kailash Singh to hit me, but by then No 3383172M Sep Gurdeep Singh had pulled me away, closer to the door towards the Pl Hav's room. No 9085779K Sep Sarbat Hussain, No 4449222L Sep Baldev Singh and No 6811909L Sep Krishan Chand had also got up from where they had been sitting.”

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Witness No. 3 Sep Gurdeep Singh :

x x x x x x x x x x

“40. I then pulled Sep Pushkar Raj rearwards and in the mean time, No 9085779K Sep Sarbat Hussain also reached there and he came in between us and No 8823960K Sep Kailash Singh. No 4053975F Sep Dalbir Singh and No 4051525L Nk Raghubir Singh were standing near No 13857532A Sep Pushkar Raj's cot. When I brought Sep Pushkar Raj near the barrack door next to No 4449222L Sep Baldev Singh's cot, No 13857532A Sep Pushkar Raj told me that, he had been stabbed with a knife by No 8823960K Sep Kaialash Singh and he asked me to leave him. I left him and he went out of the barrack. When I turned around, I saw No 9085779K Sep Sarbat Hussain neara the doo, he was clutching his right upper chest near the shoulder with his left hand

and his uniform shirt was soaked in blood at the right upper chest and he also told me that he had been stabbed with a knife by No 8823960K Sep Kailash Singh. I then pressed his wound with my hand and made him lie down on No 4449222L Sep Baldev Singh's cot.

41. *I then saw No 6811909L Sep Krishan Chand coming towards me, and he was clutching his left shoulder, which was bleeding and he also told me that he had been stabbed with a knife by No 8823960K Sep Kailash Singh and behind him came No 4449222L Sep Baldev Singh holding his right forearm with his left hand and blood was coming out, he also told me he had been stabbed with a knife by No 8823960K Sep Kailash Singh. In the meantime all the individuals present in the barrack collected around No 4449222L Sep Baldev Singh's cot and even No 6908939N Hav Clk Subhash Chand and No 2969743W Q Nk Brijesh Kuamr had also come there. After No 4449222L Sep Baldev Singh came to me, I did not see No 8823960K Sep Kailash Singh in the DSC barrack."*

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Witness No. 4 Sep Sarbat Hussain :

x x x x x x x x x x x x

"49. *I then saw Sep Kailash Singh and Sep Pushkar Raj exchanging blows. I then saw No 3383172M Sep Gurdeep Singh getting up and running towards them. I and No 6811909L Sep Krishan Chand also got up and followed Sep Gurdeep Singh. No 4053975F Sep Dalbir Singh and No 4051525L Nk Raghbir Singh were also there at the scene of the fighting, but they were standing near Sep Pushkar Raj's cot and I heard Sep Dalbir Singh pleading not to fight. No 8823960K Sep Kailash Singh was standing at that time. I then heard No 13857532A Sep Pushkar Raj shouting that he had been hit by Sep Kailash Singh and he*

was also abusing Sep Kailash Singh. I saw No 3383172M Sep Gurdeep Singh's forearm. I then went and stood in front of No 8823960K Sep Kailash Singh and No 6811909L Sep Krishan Chand was standing behind me. No 6811909L Sep Krishan Chand addressing Sep Kailash Singh said, why are you fighting? There is no enmity between anyone. No 8823960K Sep Kailash Singh suddenly lifted his hand, I saw a knife in his right hand and he stabbed me in my right upper chest neara the shoulder and pulled out the knife. I immediately retreated behind No 6811909L Sep Krishan Chand and I saw No 8823960K Sep Kailash Singh strike with the same knife on the left upper chest of No 6811909L Sep Krishan Chand. I then turned back and came near the door, closer to the Pl Hav's room and then I lost consciousness, however I do remember someone helping me by giving support."

x x x x x x x x x x x x x x

Witness No. 5 Sep Baldev Singh :

x x x x x x x x x x x x

"59. I tried to support Sep Krishan Chand, at that time, I saw No 8823960K Sep Kailash Singh strike my right forearm with a knife which he was holding in his right hand and he immediately pulled it out. I noticed that the blade was approx 4 inches long. I then started shouting for help. Nk Raghbir Singh and No 4053975F Sep Dalbir Singh were still standing near No 13857532A Sep Pushkar Raj's cot, but they did not tough me or hit me, nor did they help me."

x x x x x x x x x x x x

10. The statements of all the above witnesses are corroborative and clearly establish that the petitioner did have a knife in his hand with which he had stabbed the persons who received stab injuries. Therefore, the petitioner's claim that he was not in possession of a knife is not sustainable.

Also, the fact is that five individuals had received stab injuries. There was no other weapon or knife found. All these five individuals have independently stated that they were stabbed by the petitioner. If the petitioner is to be believed then these five individuals stabbed each other and then blamed the petitioner for such injuries, which is totally illogical and not believable at all. Apart from the above, there is no motive on the part of the injured persons to implicate the petitioner and allow the actual accused to go scot free.

11. The petitioner claims the knife, which was found under his cot, did not have any blood stains. Hav Subhash Chand , who came to the site of the altercation, has deposed as follows :

“I saw No 8823960K Sep Kailash Singh lying down and No 3383172M Sep Gurdeep Singh, No 6811909L Sep Krishan Chand, No 4449222L Sep Baldev Singh and No 9085779K Sep Sarbat Hussain were standing surrounding him. These four individuals were exchanging blows with Sep Kailash Singh. I did not see anybody else except the above mentioned individuals at the scene of the fight. I shouted at them to stop the fighting. The individuals separated out, I entered the barrack and Sep Gurdeep Singh, Sep Baldev Singh, Sep Sarbat Hussain and Sep Krishan Chand showed me their wounds and informed me, they have been stabbed with a knife by No 8823960K Sep Kailash Singh. I noticed that Sep Sarbat Hussain had been injured in the right upper chest near the right shoulder, Sep Baldev Singh had been injured in the right forearm, Sep Krishan Chand had been injured in his left upper chest near his left shoulder and Sep Gurdeep Singh had a small cut on his right hand in Sep Kailash Singh’s hand. I did not say anything to Sep Kailash Singh, nor did Sep Kailash Singh say anything to me. I then got busy helping the injured

persons and when I looked up again towards Sep Kailash Singh, I found that Sep Kailash Singh was not present in the DSC barrack. At approx 0200h the central fall in was broken off and I, L/Nk Brijesh Kumar and Hav Amrik Singh came to the DSC barrack to search the barrack. We found a knife under Sep Kailash Singh's cot. The handle was of white coloured metal, at the front of the handle, was a brass latch, the blade was 4" to 5" long and had a sharp edge along one side and blunt along the other side. The blade was bent into 'L' shape approx 1 ¼" from the front end. In the night we could notice only some rusty spots on the knife blade, but in the morning, in better light conditions, I noticed a thin film of blood on the blade and some clotted blood in the serrations at the rear end of the carved handle."

12. From this it is evident that the knife was found under the petitioner's cot and at that time no blood stain was seen due to poor light, though in the morning a thin film of blood was found. The time lag between the altercation which happened between 2000 hours and 2100 hours and 0200 hours when the knife was found would have allowed the petitioner to clean the blade and throw it under his cot. If indeed someone wanted to plant a knife on him a blood stained knife would have been placed rather than a cleaned knife. The argument put forward by the petitioner that the knife had been planted by the injured persons to implicate him is not sustainable, and we accordingly reject it.

13. We are, therefore, of the view that the petitioner did possess a knife with which he stabbed these five individuals and was, therefore, rightly found guilty of the charge for which he was tried by the SCM. The charge has been proved beyond a reasonable doubt. We find the petitioner guilty of stabbing the five injured persons with a knife.

14. As regards friend of accused, Rule 129 of the Army Rules specifies that the accused may have any person as friend of the accused. No rank has been specified. The respondents have produced a letter dated 27.7.1994 as CA-3 signed by the petitioner which states that “Hav SKT S.K. Singh will act as friend of the accused in my case” and, therefore, the allegation that he was given friend of the accused who was not of his choice is not sustainable. We also find that the findings of guilt arrived at by the court during SCM proceedings was after detailed examination of the prosecution witnesses and the petitioner’s contention that the PO did not apply his mind is not sustainable. GOC-in-C, who considered the appeal of the petitioner, examined all relevant factors before arriving at his decision to reject the appeal.

15. We find no infirmity in the entire procedure of SCM and consideration of appeal by the Competent Authority. Accordingly, this Transferred Application is dismissed being devoid of merit. No order as to costs.

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

(Justice Abdul Mateen)
Member (J)

PG.