

**RESERVED**  
Court No.1  
 (Ser No. 43)

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

**ORIGINAL APPLICATION No.537 of 2017**

Wednesday, this the 29<sup>th</sup> day of March, 2023

**"Hon'ble Mr Justice Umesh Chandra Srivastava, Member (J)"**  
**"Hon'ble Vice Admiral Atul Kumar Jain, Member (A)"**

Dinesh Kumar son of Sri Gangwa, resident of Village & Post-Baberu (Banda Road after Canal) District-Banda (U.P.)

..... Applicant

Ld. Counsel for the Applicant : **Ms Navita Sharma**, Advocate

Versus

1. Union of India through Secretary, the Secretary Ministry of Defence (South Block), Government of India, New Delhi, Ministry of Defence, South Block, New Delhi.
2. Chief of the Air Staff, Air Headquarters, Vayu Bhawan, New Delhi-11.
3. Group Captain, Jt JAG (Air) (Discipline), Air HQ (VB), New Delhi- 106.
4. AOC-in-C, HQ Western Air Command, Indian Air Force, Subroto Park, New Delhi-10.
5. Group Captain, Presiding Officer, 46 Wing, Air Force, NAL District Bikaner (Rajasthan).

.....Respondents

Ld. Counsel for the Respondents. : **Shri SN Pandey**  
 Central Govt Counsel

**ORDER****Per Justice Umesh Chandra Srivastava, Member (J)**

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

*(i) To set aside the orders dated 21.01.14, 26.11.13 & 29.10.13 passed by the respondent no. 3,4 & 5 as contained in Ann-3,2 & 1 of the petition and the petitioner shall be entitled for all consequential benefits including reinstatement.*

*(ii) To issue any other order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.*

*(iv) To allow the original application with costs in favour of the applicant.*

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Indian Air Force (IAF) on 20.08.1986. The applicant was suffering from IBS (Irritable Bowl Syndrome) and thereafter, he was diagnosed to be suffering from 'Seronegative Inflammatory Arthritis' and his medical category was downgraded to A4G4. During the course of his service he was charged with (i) wilfully damaging aircraft material belonging to the Govt in that he, at Air Force Station, Nal, during the period 01.12.2011 to

31.03.2012 wilfully damaged five PSM-IV Pilot Parachutes, (ii) two PSM-III Pilot Parachutes, by causing a loss to the Govt to the extent of Rs 7,50,000/- and (iii) wilfully destroying the property belonging to the Govt, in that he, at Air Force Station, Nal, during the month of August, 2012, wilfully damaged MENA Arrester Barrier Net, by cutting its straps, thereby causing a loss to the Govt to the extent of Rs 8,70,424/-. The applicant was tried by General Court Martial (GCM) on 29.10.2013 in which he pleaded guilty. He was awarded one year civil prison, reduction to ranks and dismissal from service w.e.f. 29.10.2013. Against order dated 20.10.2013, applicant preferred first appeal under Section 161 (1) of the Air Force Act, 1950 which being rejected vide order dated 26.11.2013, he filed second appeal against rejection order which too was rejected vide order dated 21.01.2014, hence this O.A. has been filed.

3. Learned counsel for the applicant submitted that the applicant was enrolled in the Indian Air Force on 20.08.1986 and at the time of enrolment he was physically and mentally fit. He further submitted that while posted with 46 Wing Air Force, applicant suffered with IBS (Irritable Bowel Syndrome) and thus, became unable to work efficiently for

that he was humiliated frequently by section personnel. It was further submitted that in September, 2011 when he got swelling on his hands and fingers, there was a lot of pain in hands and fingers and for that he was treated in military hospital. During the course of treatment he was diagnosed to be suffering from 'Seronegative inflammatory arthritis' and his medical category was downgraded to A4G4.

4. Learned counsel for the applicant further submitted that due to his deteriorating condition he was admitted in Military Hospital, Bikaner on 11.10.2011 and shifted to Army Hospital (R&R), New Delhi where he remained up to 28.11.2011. It was further submitted that on alleged damage of Govt property between 01.12.2011 to 31.03.2012, he was tried by GCM whereas medical papers reveal that he was suffering from arthritis hence practically it was not possible for an arthritis patient to do these acts which were alleged to have been done by him. It was further submitted that on account of the aforesaid disability the applicant was very weak, as such it was not possible for him to commit these alleged offences.

5. Learned counsel for the applicant further submitted that the applicant was forced to plead guilty under coercion.

It was further submitted that besides the threat and coercion there was also an inducement to let him off if he pleads guilty, therefore on their pretence and allurements, the applicant pleaded guilty and accepted all charges without defending himself. It was also submitted that a man of common prudence will not readily confess the guilt voluntarily. The circumstances are pointers that he confessed his guilt as alleged under pressure, coercion and inducement. It can be safely presumed that no person will act against his own interest. It was further submitted that confession being unnatural is liable to be excluded and once the confession is excluded the impugned order stands dismissed.

6. Learned counsel for the applicant further submitted that at the time when he was discharged from Army Hospital his right hand was dysfunctional and in these circumstances it was humanly impossible to indulge in such nefarious activities as alleged. It was further submitted that the alleged parachutes were found damaged in Bhuj (Gujrat) but the C of I was conducted at Bikaner (Rajasthan) which itself is fishy. He pleaded for quashing of dismissal order dated 29.10.2013 and order dated

26.11.2013 and 21.01.2014 and re-instate him into service with all consequential benefits.

7. Per contra, learned counsel for the respondents submitted that the applicant was suffering from Irritable Bowel Syndrome since 2008 which made him unfit to handle heavy safety equipment. It was further submitted that being humiliated frequently by his section personnel he requested Warrant Officer to shift him somewhere else but it was rejected stating that he was trying to run away from the work.

8. Learned counsel for the respondents further submitted that in February, 2011 when his leave was denied he fled away to appear in an examination. On reporting he was tried for the offence of Absent Without Leave (AWL) and was awarded admonition in March 2011. After the punishment being awarded, he submitted an application about the problems related to leave and section duties. Wg Cdr Bohrey counselled him and he withdrew his application. He was also attached to ground equipment section once when he asked for change of section. He had frequent heated argument with his Section Warrant Officers and

thus, tension started building between Sgt D Kumar, Hardayal and JWO K Singh.

9. Learned counsel for the respondents further submitted that in order to take revenge, applicant brought acid mixed with water and poured on parachutes packing and went back to his section. It was further submitted that he repeated the act of pouring acid in the parachutes many times as he could not find JWO K Singh along to take revenge. It was further submitted that this increasing feeling of taking revenge resulted in damaging parachutes and arrester barrier also.

10. Learned counsel for the respondents further submitted that during the C of I proceedings applicant accepted before the court that he had committed the above said acts to take revenge from JWO K Singh because of the humiliation and harassment caused to him. It was also submitted that the applicant committed the mistake under tremendous stress and without thinking about the consequences. Accordingly, summary of evidence was recorded in which he took active part and thereafter, he was convicted of the charges in accordance with law and GCM proceedings were conducted strictly as per the prevailing Rules and Regulations on the

subject by which he was awarded one year rigorous imprisonment in civil jail, reduction in ranks and dismissal from service by order dated 19.10.2013. He pleaded for dismissal of O.A.

11. Heard Ms Navita Sharma, learned counsel for the applicant and Dr. SN Pandey, learned counsel for the respondents and perused the records. We have also gone through the original records produced in the court.

12. No. 698249-B Sgt Dinesh Kumar was enrolled in the Indian Air Force on 20.08.1986. He was suffering from IBS (Irritable Bowl Syndrome) and he was also diagnosed to be suffering from Seronegative Inflammatory Arthritis. Consequent to that his medical category was downgraded to A4G4. During the course of his service he was charged with damaging aircraft material belonging to the Govt in that he, at Air Force Station, Nal, during the period 01.12.2011 to 31.03.2012 wilfully damaged five PSM-IV Pilot Parachutes, two PSM-III Pilot Parachutes, by causing a loss to the Govt to the extent of Rs 7,50,000/- and destroying the property belonging to the Govt, in that he, at Air Force Station, Nal, during the month of August, 2012, wilfully damaged MENA Arrestor Barrier Net, by cutting its straps, thereby causing a

loss to the Govt to the extent of Rs 8,70,424/-. The applicant was tried by General Court Martial (GCM) on 29.10.2013 in which he pleaded guilty. He was awarded one year civil prison, reduction to ranks and dismissal from service w.e.f. 29.10.2013. Against order dated 29.10.2013 applicant preferred first appeal under Section 161 (1) of the Air Force Act, 1950 which being rejected vide order dated 26.11.2013, he filed second appeal against this rejection order which too was rejected vide order dated 21.01.2014. For convenience sake order dated 26.11.2013 passed by AOC-in-C, WAC is reproduced as under:-

*"1. WHEREAS, you were enrolled in the Indian Air Force on 20 Aug 86 as Aircraftsman and assigned the trade of SEW.*

*2. AND WHEREAS, you were tried by a General Court Martial (GCM) on 29 Oct 13 at Air Force Station Nal on three charges under Sections 62 (a) & 55 (a) of the AF Act, 1950. The particulars of the said charges mainly averred that you had, during the period from 01 Dec to 31 mar 12, wilfully damaged five PSM-IV pilot parachutes and two PSM-III pilot parachutes, by sprinkling acid on them and thereby causing a loss to the Government to the extent of Rs 7,50,000/- (Rupees Seven Lakh Fifty Thousand only), and during the month of Aug 12, wilfully damaged MENA Arrester Barrier Net, the property belonging to the Government, thereby causing a loss to the Government to the extent of Rs 8,70,424/- (Rupees Eight Lakh Seventy Thousand Four Hundred and Twenty Four only).*

*3. AND WHEREAS, on arraignment, you pleaded 'Guilty' to the first charge, after which the second charge under Section 55 (a) of the AF Act, 1950. The second charge in the alternative to the first charge, was withdrawn. Further, you pleaded 'Guilty' to the third*

*charge also and the trial proceeded accordingly. You were defended by Sqn Ldr SC Kant (29534) Adm/ATC of 8 Wg, AF (Legal Qualification-LLB).*

*4. AND WHEREAS, you had pleaded 'Guilty' to the first and third charges voluntarily and reiterated your plea throughout the trial.*

*5. AND WHEREAS, after considering your plea of 'Guilty' and the entire evidence on record in the SoE, the GCM had found you 'Not Guilty' of the second charge, but 'Guilty' of the first and third charges and further, the GCM sentenced you as follows:-*

- (i) To suffer Rigorous Imprisonment for one year.*
- (ii) To be dismissed from the service; and*
- (iii) To be reduced to the ranks.*

*6. AND WHEREAS, you have submitted a 'pre-confirmation Petition' dated 29 Oct 13 in terms of Section 161 (1) of the Air Force Act, 1950, wherein, you have raised averments identical to those submitted by you in your plea-in-mitigation of punishment. You have mainly submitted the following:-*

- (i) That, the sentence of dismissal will make you ineligible for any further Government employment which will not only affect you, but your family as well. Therefore, your case may be considered sympathetically and the punishment of dismissal be mitigated to any other punishment so that you can either continue serving in IAF or if it is not possible then after leaving the Air Force you can seek any other suitable Government employment.*
- (ii) That, you have completed almost 27 years of dedicated and loyal service to the organization. You are suffering from IBS (Irritable Bowel Syndrome) due to which you were unable to have dinner for the last three years. Your ailment deteriorated with the problem of Seronegative Inflammatory Arthritis. Instead of understanding your condition and helping you out, your section personnel took it as an excuse by you for not performing duties. They started harassing you on one pretext or another and tortured you both physically and mentally. Had they considered your problem as genuine and given*

*you some lighter work in the section, the present situation would have been avoided.*

*(iii) That, JWO K Singh and WO Hardayal conspired and used all possible opportunities that came in their way to harass you. You were deliberately kept in Tech Flt where you had to undertake strenuous jobs, which you were not able to do.*

*(iv) That, you had admitted your mistake on your own like a true air warrior. Nobody had ever questioned you in this regard and it might have gone unsolved had you not come forward and admitted the same. Throughout your service you have never done anything wrong that would disgrace you and also bring bad name to your family. The present incident was a mistake on your part which was committed by you under stress and pressure.*

*(v) That, you are the only bread earner in your family which consists an ailing wife and four daughters. It would be very difficult for you to sustain all of them if you are being given a severe punishment. You have requested that a humanitarian and sympathetic view may be taken in your case and a lenient punishment may be awarded to you.*

*7. AND WHEREAS, the AOC-in-C, WAC, IAF, being the confirming authority has duly considered the above contentions vis-a-vis the proceedings of the GCM and other relevant material on record and has arrived at the following conclusions:-*

*(i) The proceedings of the GCM are in order. You were afforded due opportunities in accordance with the relevant provisions of AF law to present your case before the GCM. You were also represented at the GCM by a duly qualified defending officer.*

*(ii) During the GCM, on arraignment, you had pleaded 'Guilty' to the first and the third charges voluntarily and persisted with the said plea throughout the trial; and*

*(iii) The circumstances brought out by you in your petition do not absolve you or otherwise mitigate the charges on which you have been found 'Guilty' by the GCM.*

*8. AND WHEREAS, the AOC-in-C WAC is satisfied about the correctness, legality and propriety of the finding recorded by the GCM and convinced that the finding of*

*'Guilty' recorded by the GCM on the first and the third charges is duly supported by the evidence on record and is lawful.*

*9. AND WHEREAS, the confirming authority has carefully considered the issue of quantum of sentence awarded by the GCM vis-a-vis the charges on which you have been found 'Guilty', and the facts and circumstances as brought out in the evidence. The AOC-in-C is of the view that the sentence awarded by the GCM is just, fair, reasonable and commensurate with the gravity of the offences committed by you.*

*10. NOW THEREFORE, in exercise of the powers vested under Section 157 read with Section 161 (1) of the AF Act, 1950, the AOC-in-C WAC, IAF has disposed of your above said petition dated 29 Oct 13, as being devoid of merit and substance and accordingly, confirmed the finding and sentence awarded by the GCM."*

13. The aforesaid order of AOC-in-C, WAC clearly stipulates that the applicant was rightly punished on account of gravity of offence he committed and also on the ground of his confession made before the GCM in which he pleaded 'Guilty'. We have perused GCM proceedings placed before us and we find that the GCM proceedings are in order.

14. Against rejection order dated 26.11.2013 applicant submitted second appeal dated 11.12.2013 for mitigation of his sentence which too was rejected by Chief of Air Staff vide order dated 21.01.2014. For convenience sake, the aforesaid order is reproduced as under:-

*"1. WHEREAS, Ex698249 LAC D Kumar SEW was enrolled in the IAF on 20 Aug 86.*

2. *AND WHEREAS, the petitioner was tried by a GCM held at 46 Wg on 29 Oct 13 on three charges under Sections 62 (a) & 55 (a) of the AF Act, 1950. The crux of the charges is that during the period from 01 Dec 11 to 31 Mar 12 he wilfully damaged five PSM-IV pilot parachutes and two PSM-III pilot parachutes by sprinkling acid on them and thereby caused a loss to the Government to the extent of Rs 7,50,000/- (Rupees Seven Lakh Fifty Thousand only). During the month of Aug 12, he had wilfully damaged MENA Arrester Barrier Net, the property belonging to the Government and thereby caused a loss to the Government to the extent of Rs 8,70,424/- (Rupees Eight Lakh Seventy Thousand Four hundred and Twenty Four only).*

3. *AND WHEREAS, on arraignment, the petitioner pleaded 'Guilty' to the first and third charges. The second charge, being alternative to the first charge, was dropped in terms of Rule 60 (3) of the AF Rules, 1969. The GCM after duly conveying with the laid down procedure, found him 'Guilty' of the first and third charges and sentenced him as follows:-*

- (i) To suffer rigorous imprisonment for one year,*
- (ii) To be dismissed from the service; and*
- (iii) To be reduced to the ranks.*

4. *AND WHEREAS, a pre-confirmation petition dated 29 Oct 13 submitted by the petitioner under Section 161 91) of the AF Act, 1950 was considered by AOC-in-C, WAC while confirming the finding and sentence of the GCM and disposed of on 22 Nov 13. The confirmed finding and sentence of GCM were promulgated to the petitioner on 05 Dec 13 and thereafter he was transferred to the civil prison on 11 Dec 13.*

5. *AND WHEREAS, the petitioner has submitted the instant petition under Section 161 (2) of the AF Act, 1950, wherein, he has brought out the following:-*

- (i) He had unblemished record of 26 years in the service. The award of punishments by the GCM resulting in reduction to the ranks from Sgt to LAC and dismissal from the service and further punishment of RI has spoiled his career and future. After his release from RI, he will be ineligible for any Govt employment and even a private agency will not give him a job.*
- (ii) He has the onerous responsibility of a large family and due to the effect of punishments, he will not be able to look after his ailing wife and four grown up daughters. His wife is suffering from tuberculosis and is unable to take independent responsibility without his help. Also, he would be unable to search suitable matches for his daughters. He has pleaded to consider his case sympathetically*

*and mitigate the punishment of RI and dismissal from the service, so that, he can fulfil his requirements and prove himself to be a better air warrior.*

*(iii) In the year 2012, on completion of 26 years of service, he wanted to take discharge from the service, however, his father did not give his share of property to him and thus, he was compelled to apply for extension of service. His immediate requirement is to purchase a plot/house and if he remains in jail for one year, then, no one will help out his family for a suitable accommodation, as he is totally cut off from his native place. Besides this, his mother-in-law and father-in-law have already expired. His brother-in-law too has expired.*

*(iv) After his salary has been stopped, he is facing financial hardship in terms of bearing expenditure at two places i.e. at AF Stn Nal and at Allahabad. He is apprehending difficulties for his family for their proposed shifting from Nal to Allahabad on completion of the current academic year as his wife is illiterate and unable to face the adversities and challenges of settling in a new place, especially with four grown up daughters. His daughter studying in B.Sc. 1<sup>st</sup> year would be upset when she comes to know about his one year of RI in jail.*

*(v) He is suffering from ailments of IBS (Irritable Bowel Syndrome) and inflammatory Arthritis, due to which, he is unable to undertake strenuous works. In view of his family circumstances, the punishment of one year RI and Dismissal from the service be remitted so that he can continue in service for fulfilling his family commitments and also to be a better air warrior. If the same is not feasible, he has requested that at least the punishment of one year RI be remitted. The punishment be remitted so that he may earn pension for his 26 years of past clean service.*

*6. AND WHEREAS, the CAS has given careful consideration to the contentions of the petitioner in the instant petition. After examining the contentions vis-a-vis the proceedings of the GCM and the provisions of AF Law, the CAS has arrived at the following conclusions:-*

*(i) The proceedings of the GCM are in order and the petitioner was afforded every possible opportunity as per AF Law to defend himself. The proceedings have been conducted in accordance with the procedure prescribed in AF Act, 1950 and Rules made thereunder.*

*(ii) On arraignment, the petitioner pleaded 'Guilty' to the first and third charges and was not arraigned*

*on the second charge, being alternative to the first charge. The petitioner was provided ample opportunities during the trial to withdraw his plea of 'Guilty' to the charges and plead 'Not Guilty'. He was also informed about implications of his pleading 'Guilty' and it was duly ascertained by the GCM from the petitioner that he was pleading 'Guilty' voluntarily, without any inducement, threat or promise. After following the prescribed procedure meticulously, the GCM found him 'Guilty' of the first and third charges and awarded the sentence as stated herein before.*

*(iii) The confirming authority, AOC-in-C, had duly considered the petition under Section 161 (1) of the AF Act, 1950 submitted by the petitioner and in terms of powers vested in him vide Section 153 of the AF Act, 1950, AOC-in-C confirmed the finding and sentence of GCM.*

*(iv) In his 'plea-in-Mitigation of Punishment' before the GCM as well as petition under Section 161 (1) of AF Act, 1950, the petitioner had inter-alia raised similar submissions, which were duly considered by the GCM while awarding the sentence and later by the AOC-in-C, WAC while confirming the proceedings.*

*(v) The petitioner has not challenged the legality of Court Martial proceedings but has merely pleaded for mercy in view of his own and family liabilities which has no relevance to the serious offences committed by him. The sentence awarded by the GCM is just, legal and commensurate with the gravity of the offences for which he has been convicted.*

*(vi) The applicant is responsible for his misdeeds and thus, he ought to have been aware of consequences of misconduct and its adverse impact on his personal life. It is a settled principle of law that every sane person intends the natural and probable consequences of his acts or omissions. The petitioner's trade was Safety Equipment Worker and it was part of his duty to service and maintain the equipment which had a direct bearing on his operations in terms of safety of the aircraft and the pilots. He has betrayed the implicit trust reposed in him to perform his duties effectively so as not to compromise the safety of the aircraft and its pilots. By his wilful misconduct, he placed the lives of pilots in jeopardy by damaging the pilot parachutes (by pouring acid into them) and the arrester barrier net (by cutting its straps).*

*(vii) Sentence passed by the GCM is commensurate with the gravity of offence and past good conduct does not mitigate the imputations of misconduct for which he has been sentenced by the GCM. IAF is a disciplined force wherein trust and integrity are the key features of cohesive living and therefore persons who lack integrity are undesirable.*

*(viii) In case of dismissal from the service, an airman becomes ineligible for pensionary benefits, unless the competent authority decides in the facts and circumstances of the case to grant either the whole or a portion of such benefits to him. The petitioner can put up his representation for pensionary benefits bringing out his family obligations etc, which will be considered by the competent authority in accordance with the extant instructions.*

*7. AND WHEREAS, the CAS has duly considered the entire material on record and is satisfied that the petitioner has not brought out anything in his petition, which merits interference with the finding and sentence of GCM as confirmed by the AOC-in-C, WAC.*

*8. NOW THEREFORE, in exercise of power vested under Sections 161 (2) of the AF Act, 1950, CAS has rejected the instant petition dated 11 Dec 13 submitted by Ex-698249 LAC D Kumar SEW, being devoid of merit and lacking in substance. The said petition stands disposed of, accordingly.*

*9. This is issued on the order of the CAS."*

15. The aforesaid order passed by the Chief of Air Staff is crystal clear that applicant's second appeal was considered keeping in view of entire material of GCM proceedings and it was dismissed being devoid of merit and lacking in substance. It was also stated in the order that applicant was punished in accordance with rules on the subject and no error was found in holding GCM.

16. Charges levelled against the applicant have been held proved based on plead guilty statements made by him

during trial. Except plead guilty statements, no other corroborative evidence has been led in support of the charges. In regard to plead guilty statements, applicant's contention is that the same being given under coercion and pressure could not be made basis for holding applicant guilty as they were hit by section 24 of the Indian Evidence Act. Section 24 clearly states that confession caused by inducement, threat or promise is irrelevant in criminal proceedings. In order to establish that plead guilty statements made by the applicant were given under fear, coercion and pressure, applicant has based his case on following pleas:-

- (i) At the relevant time when offences are said to have been committed applicant was not posted at the place where offences were committed. He was posted at a place situated at a distance of 3 Km from there.
- (ii) Applicant was not physically strong to commit the offences which involved a lot labour which could normally be done by minimum three persons and not alone. At the relevant time applicant was suffering from IBS (Irritable Bowl Syndrome) as a result of which he was unable to do hard work, lift the weight

and even stand properly. Therefore, looking to his physical condition, it was not possible for him to commit the offences he was charged. Further, looking to ill condition of the applicant he was assigned light work in tech flight in place of heavy duties at main SE section.

(iii) There is always some motive behind commission of an offence whereas no such motive has been assigned to the applicant.

17. In regard to applicant's contention that he was situated at a distance of 3 kms from the place of incident and he, being suffering from Arthritis, was unable to go to 3 kms and pour acid mixed with water on parachutes, it may be submitted that the applicant was not bed ridden but he was performing his normal day to day professional duties involving going from one place to the other in and around the unit. The parachutes were kept in the unit premises where he would have poured the acid mixed with water on parachutes. The applicant has conceded pouring of acid mixed with water on parachutes two times firstly in his confessional statement made during the C of I and secondly in his representation submitted for mitigation of sentence.

Therefore, contention of the applicant that he was unable to go to 3 kms and pour acid mixed with water on parachutes, is not tenable.

18. In regard to applicant's second contention that being suffering from Arthritis he was not strong enough to pour acid mixed with water on parachutes. In this connection it may be submitted that in his confessional statement and representation he has conceded pouring of 20 ml to 50 ml acid mixed with water on parachutes which in our opinion does not require enough strength. Therefore, his submission that he was not strong enough to pour acid mixed with water on parachutes is not acceptable and is rejected.

19. Applicant's contention is that GCM failed to consider aforesaid points before concluding the trial and holding applicant guilty for the offences and sentencing him to undergo one year rigorous imprisonment, suffer punishment of reduction in rank and dismissal from service. The court also failed to consider that punishment awarded should be proportionate to the offence and nothing beyond.

20. Applicant's other contention is that had court taken the above points into consideration it would never hold applicant guilty for the offences based on merely his confessional statements which being made under fear, pressure and coercion and not supported by other corroborative evidence were not voluntary and therefore, not sufficient to hold applicant guilty.

21. Contrarily, we find that on 29.10.2013 applicant was punished by GCM and on the same day he submitted an appeal for mitigating his sentence in which he admitted to have committed the offence. For convenience sake, extract of Para 5 of aforesaid appeal is excerpted below:-

*"5. Further, I would like to depose before the Hon'ble Court that I had admitted my mistake of my own free will and without being questioned by one. I realised that I had done a mistake and that as a true air warrior I should own up the same. Nobody ever questioned me in this regard and it might have gone unsolved had I not come forward and admitted the same. Throughout my service, I have never done anything wrong that would disgrace me and also bring bad name to my family. I was so stressed at that particular moment that this mistake was committed by me."*

22. Taking the above facts in view we are of the view that applicant on account some arguments with JWO K Singh, felt taking revenge with him. Thereafter, one day he brought acid mixed with water to pour on the JWO K Singh

but due to non availability of the JWO, he in anger poured acid in the parachutes which resulted in damaging parachutes and arrester barrier also. During C of I proceedings also he accepted before the court that he had committed the above said acts to take revenge from JWO K Singh because of humiliation and harassment caused to him. This is corroborated with his statement made during GCM on 29.10.2013, which for convenience sake is reproduced as under:-

*"One day around 1900 hrs a heated argument took place between me and JWO K Singh about duty detailing in Tech Flt hanger in front of Officers' room. Again I started feeling that why I was suffered so much. Again I decided that 'Kaise main ise chuktkara paunga'*

*Thereafter one day I brought acid about 50 to 20 ml and I mixed water with it and decided that I would pour acid on the bag or pass book of JWO K Singh. Then again on one day I came to section and found that parachute packing was going on and JWO K Singh was available. But after some time JWO K Singh left to somewhere. At this time also I was not able to do anything to JWO K Singh, in anger I poured acid in the parachute thereafter I went back to Tech Flt. Like this I was going to SE Section to take revenge against JWO K Singh, as I could not find him alone I poured acid in the parachutes, when I don't remember, when and how many time I did this."*

23. In the circumstances we are of the opinion that he caused loss to the Government to the tune of Rs 16,20,424/- by pouring acid on parachutes and arrested barrier for

which he was appropriately punished by the GCM on plead guilty statement.

24. The dictum now is that no innocent person should be punished but letting guilty escape is also not doing justice according to law. On this point reference may be made to the pronouncement of the Hon'ble Apex Court in the case of ***Bhagwan Jagannath Markad v. State of Maharashtra***,(2016) 10 SCC 537, wherein the Hon'ble Apex Court has held in Para 20 as under:

*"Exaggerated to the rule of benefit of doubt can result in miscarriage of justice. Letting the guilty escape is not doing justice. A Judge presides over the trial not only to ensure that no innocent is punished but also to see that guilty does not escape"*

25. Nine prosecution witnesses were produced in the C of I and they have stated that the applicant was serving in low medical category and he used to take frequent leave which resulted in shortage of manpower thereby keeping burden on other personnel in section in which he was serving. This would have been the main cause of argument with JWO K Singh but the fact remains that he committed the mistake and damaged Govt property worth approx Rs 15 lakhs for which he was appropriately punished.

26. Therefore, in view of discussion made above, we are of the considered view that there is no illegality, irregularity leading to miscarriage of justice in conduct of GCM. The GCM has followed all the procedural safe guards prescribed for and no illegality that can vitiate the proceedings could be brought to our notice.

27. Accordingly, we are of the view that the findings recorded by the GCM are in accordance with law and based on correct appreciation of evidence.

28. Thus, keeping in view the seriousness of offence committed by the applicant, punishment awarded by the GCM is proportionate to the gravity of offence which deserves no consideration.

29. Accordingly this O.A. lacks merit and deserves to be dismissed.

30. It is accordingly, **dismissed**.

31. No order as to costs.

32. Pending application(s), if any, stand disposed off.

(Vice Admiral Atul Kumar Jain)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated :29.03.2023