

ARMED FORCES TRIBUNAL REGIONAL BENCH, LUCKNOW

Transferred Application No. 28 of 2009

Thursday the 3rd day of September, 2015

Reserved
(Court No. 2)

Pramod Bhosale (Terminated) Havildar Clerk Army No3991252W, son of Sri Parsuram Bhosle, resident of village & Post Wadachiwadi, Tehsil Koregaon, District Satara (Maharashtra).

..... Applicant

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

Versus

1. Union of India through the Secretary, Ministry of Defence Secretariat New Delhi.
2. Chief of Army Staff New Delhi/Adjutant General, Adjutant General's Branch Integrated Headquarters, Ministry of Defence (Army) DHQ PO, New Delhi-11.
3. General Officer Commanding-in-Chief, Head Quarter Central Command, Lucknow.
4. Commander Sub Area Head Quarter Allahabad, District Allahabad.
5. Commander, Training Battalion Commander, Dogra Regimental Centre, Faizabad.
6. Brigadier M.S. Dadhwal, Then Commandant, Dogra Regimental Centre, Faizabad.

7. General Court Martial, Major, Judge Advocate of Dogra Regimental Centre, Faizabad.

8. A. Nautiyal, Major Then Officer Commanding Central Command Internal Security Group (CCISG) C/O Station Head Quarter Faizabad.

..... Respondents.

By Shri R.S. Mishra, Counsel for the respondents alongwith Capt. Ridhishri Sharma, Departmental Representative.

ORDER

1. Writ Petition No. 68 (S/S) of 2007 was received from Allahabad High Court, Lucknow Bench on 27.11.2009 and was renumbered as above. The petitioner seeks the reliefs of quashing the ADG DV-3A's order dated 31.10.2006, GOC Central Command order dated 19.03.2005, General Court Martial (GCM) order dated 28.09.2004, to decide the petitioner's petition under Army Act Section 164(2) and to quash/set aside the GCM proceedings with special reference to findings and sentence.

2. Facts of the case are that the petitioner was enrolled in the Army on 16.03.1992 in Dogra Regiment and was working with Dogra Regimental Centre (DRC for short) with effect from 13.01.1998. A Court of Inquiry was ordered on 15.05.2002 to investigate the petitioner's involvement in the recruitment of clerks in DRC. Based on the Court of Inquiry, a tentative charge-sheet was framed against the petitioner, which was heard under the provisions of Army Rule 22, following which Summary of Evidence was recorded. HQ Madhya Bharat Area vide order dated

10.07.2004 ordered a GCM to be held at DRC to try the petitioner on the following charges:

“CHARGE SHEET

The accused, No 3991252W Havildar/Clerk Bhosale Pramod Parasharam of Depot Coy, The Dogra Regimental Centre, attached to Training Battalion, The Dogra Regimental Centre, is charged with:-

First charge *COMMITTING A CIVIL OFFENCE THAT IS TO*
Army Act *SAY, AS A PUBLIC SERVANT, BEING IN*
Section 69 *POSSESSION OF PECUNYARY RESOURCES*
DISPROPORTIONATE TO HIS KNOWN SOURCE
OF INCOME FOR WHICH HE CANNOT
SATISFACTORILY ACCOUNT, CONTRARY TO SEC
13 (2) READ WITH SEC 13 (1) (e) OF THE
PREVENTION OF CORRUPTION ACT 1988,

In that he,

at Faizabad, during the period between 25 May 2001 and 22 Feb 2002, which came to the knowledge of the authority competent to initiate action on 14 Sep 2002, while performing the duties of Recruiting Clerk of the Dogra Regimental Centre, got the following bank drafts amounting to a total sum of Rs 3,60,000.00 (Rupees three lakhs sixty thousand only), made which was disproportionate to his known sources of income and which he could not satisfactorily account :-

<i>Ser No</i>	<i>/ SBI Faizabad Bank Draft No</i>	<i>/ Date of Issue</i>	<i>/ Amount in Rs</i>
1.	569158	25 May 2001	8,000/-
2.	902157	21 Jun 2001	35,000/-
3.	902158	21 Jun 2001	50,000/-
4.	608848	06 Jul 2001	4,000/-
5.	784171	22 Aug 2001	45,000/-
6.	784561	28 Aug 2001	75,000/-
7.	785366	11 Sep 2001	45,000/-

8.	785367	11 Sep 2001	45,000/-
9.	904512	06 Nov 2001	23,000/-
10.	797778	22 Sep 2002	30,000/-

Second Charge *SUCH AN OFFENCE AS IS MENTIONED IN*
Army Act *CLAUSE (f) OF SECTION 52 OF THE ARMY*
Section 52 (f) *ACT WITH INTEND TO DEFRAUD,*

In that he,

at Faizabad, on 23 Oct 2000, which came to knowledge of the authority competent to initiate action on 14 Sep 2002, with intend to defraud, obtained from the Dogra Regimental Centre two concession Vouchers (IAFT-1721A) for the move as shown below, of his family consisting of self, wife, father, brother, sister and a son over five years of age, well knowing that the brother, sister were not so entitled and further that he had no son of the said age.

<i>Ser</i>	<i>/ Concession</i>	<i>/ Station</i>
<i>No</i>	<i>/ Voucher No</i>	<i>/ From / To</i>
<i>(a)</i>	<i>3M 645437</i>	<i>Faizabad Varanasi</i>
<i>(b)</i>	<i>3M 645438</i>	<i>Varanasi Faizabad</i>

Place : Faizabad (UP)

Dated: 17 Jul 2004

Sd/-
(RPS Mann)
Colonel
Commanding Officer
Training Battalion
The Dogra Regimental Centre

To be tried by a General Court Martial

Place : Jabalpur (MP)

Dated : 03 August 2004

Sd./-
(GK Nischol)
Major General
General Officer Commanding
Madhya Bharat Area."

3. The GCM commenced on 31.08.2004 and concluded on 28.09.2004, in which the petitioner was found not guilty of charge no. 2 while charge no.1 was found to be proved with modification and the sentence awarded to him was reduction to ranks, R.I for one year and dismissal from service. This was confirmed by GOC Madhya Bharat Area. The sentence was promulgated on 25.11.2004 and the petitioner was sent to District Prison, Faizabad the same day.

4. The petitioner filed a petition dated 02.10.2004 addressed to General Officer Commanding-in-Chief (GOC-in-C), Central Command, who rejected the said petition on 19.03.2005. The petitioner filed another petition addressed to the Chief of the Army Staff on 10.10.2005, which was returned by the IHQ vide their dated 10.10.2006 stating that the petitioner was entitled to file only one petition under Army Act Section 164(2). Thereafter, the same petition was re-submitted by HQ Central Command to the IHQ for disposal under Army Act Section 179, which relates to pardon and remission. This petition is still under consideration. The petitioner thereafter filed Writ Petition No. 19825 of 2006 at Allahabad High Court, which was dismissed on 13.04.2006 for lack of territorial jurisdiction. The petitioner then filed this petition at Lucknow Bench of the Allahabad High Court, which was transferred to the Armed Forces Tribunal, Lucknow.

5. The petitioner was represented by his learned counsel Shri P.N.Chaturvedi. According to the petitioner, Major A. Nautiyal, an

Intelligence Officer requested Major Adjutant Ashok Kumar to provide employment to one Vivek Sharma. Brigadier M.S.Dadhwal orally directed the petitioner to prepare the documents for employment of the said person, which the petitioner declined since it was an illegal act. Annoyed by this, the respondents decided to throw the petitioner out. According to the petitioner, Major A. Nautiyal took the petitioner to Lucknow with him on 21.03.2001 where he was tortured and harassed, and was forced to sign a confessional statement. He returned to Faizabad the same day. Thereafter a Court of Inquiry was ordered by the HQ Allahabad Sub Area, which was completed on 19.06.2002. The GOC Madhya Bharat Area ordered a GCM. The prosecution, during the GCM, summoned one Krishna Pratap Singh, son of Sachchidanand. However, the said witness did not appear in person and sent a reply by courier, photocopy of which has been annexed by the petitioner in his petition, according to which the petitioner took a loan from said Krishna Pratap Singh for private purposes. The petitioner states that his wife and his father-in-law too took loans from different persons in Faizabad. The petitioner has annexed photocopies of the loan agreements entered into between one Shri Pramod Singh and his wife Smt. Savita P. Bhosale for a loan of Rs.90,000/-. The petitioner claims that he was not given an opportunity to produce a defence witness and the GCM was illegal and arbitrary. He admitted that he had got six out of ten bank-drafts prepared himself. However, he said that these were from his own income. It was vehemently pleaded by learned counsel for the petitioner that the

safeguards under Section 17 of the Prevention of Corruption Act were not provided and, therefore, as held by the Hon'ble Supreme Court in the case of *L.D.Balan Singh versus Union of India*, reported in **Mil.L.J. 2002 SC 1**, the intent of GCM trial stood vitiated and deserves to be quashed. He also pleaded that under the provisions of Cr.P.C Sections 4, 5 and 475, the petitioner could be tried only by a criminal court or by a GCM after the case had been taken over by the Army under the provisions of Army Act, Section 125. The petitioner prays that his appeal be allowed.

6. The respondents, represented by their learned counsel Shri R.S.Mishra and Capt. Ridhishri Sharma, submitted that the petitioner was enrolled in the Army on 16.03.1991. In 2002 he was posted at Dogra Regimental Centre, Faizabad. The petitioner's name was Bhosale Popat Parasharam, which was changed at his request to Bhosale Pramod Parasharam vide DRC DO-II order dated 12.09.2002. Major Anurag Nautiyal, Officer Commanding No. 1 Detachment of Central Command Internal Security Group learnt that one Army personnel from Dogra Regimental Centre was making bank-drafts from the main branch of the State Bank of India frequently. On investigation it came to light that the petitioner was making bank-drafts on regular basis from the State Bank of India, Main Branch. These were made in different names and were all payable at State Bank of India, Koregaon, Maharashtra. The drafts were in the names of petitioner's wife Mrs. Savita P. Bhosale and his father-in-law Shri GH Jagdale. The amounts for all the bank-drafts were paid in

cash. The respondents also stated that in a case of fake educational certificates investigated by the police in Gurdaspur (Punjab) in 2003, the name of the petitioner appeared as one of the links in the chain. The petitioner in his complaint to the Commandant, Dogra Regimental Centre did not mention regarding any loan taken by his wife from Shri Pramod Singh. He has not produced the original of the loan agreements, photocopy of which have been annexed by him with his T.A. During the trial, the residence of Pramod Singh given by the petitioner was different from the residential address of Pramod Singh given alongwith supplementary affidavit.

7. The respondents also pleaded that petitioner's father-in-law GH Jagdale was not a resident of Faizabad and, therefore, it is not logical for the residents of Faizabad to give him loan. The petitioner was given ample opportunity to defend his case and the Court Martial was conducted in lawful and fair manner.

8. Heard both sides and scrutinized the documents on record.

9. So far as the challenge made by the learned counsel for the petitioner relating to Code of Criminal Procedure is concerned, this issue has been discussed in detail in a judgment of Armed Forces Tribunal, Lucknow Bench in the case of *Rakesh Kumar Singh versus Union of India* in **OA No. 1 of 2009**, in para 24 of which, the judgment of Armed Forces Tribunal in **TA No. 386 of 2010** has also been mentioned, wherein relevant extracts of the Apex Court's judgment in *Ajmer Singh versus*

Union of India, reported in **AIR 1987 SC 1646** have been quoted, which read as under:

“24. TA No 386/2010 decided by AFT Lucknow Bench too holistically examines the issue of jurisdiction in which judgments by the Honourable Supreme Court have been cited. The relevant extract of the judgment of the AFT are:

“32. Similar question came to be considered before the Apex Court in case of Ajmer Singh Versus Union of India reported in AIR 1987 Supreme Court 1646. The hon’ble Supreme Court held that the effect of Section 5 of Code is to clearly exclude the application of Code in respect of proceedings under any special or local law or any special jurisdiction or from or procedure prescribed by any other law. In para 10 of the said report the Apex Court observed as follows:-

“10. As we have already indicated, we are unable to accept as correct the narrow and restricted interpretation sought to be placed on Section 5 of the Code by the Counsel appearing on behalf of the appellants. In our opinion the effect of Section 5 of the Code is clearly to exclude the applicability of the Code in respect of proceedings under any special or local law or any special jurisdiction or form of procedure prescribed by any other law. Whatever, doubt might otherwise have existed on this point is totally set at rest by Section 475 of the Code of Criminal Procedure which furnishes a conclusive indication that the provisions of the Code are not intended to apply in respect of proceeding before the Court-Martial. That Section is in the following terms.

“475. Delivery to commanding Officers of persons liable to be tried by Court Martial-

(1) The Central Government may make rules consistent with this Code and the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957), and the Air Force Act, 1950 (45 of 1950) and any other law, relating to the Armed Forces of the Union, for the time being in force, as to cases in which persons subject to military, navel or air force law, or such other law, shall be tried by a Court to which this Code applied or by a Court martial; and when any person is brought before a Magistrate and charged with an offence for which he is liable to be tried either by a Court to which this Code applies or by a Court –martial, such Magistrate shall have regard to such rules, and shall in proper cases deliver him, together with a statement of the offence of which he is accused, to the commanding officer of the unit to which he belongs, or to the commanding officer of the nearest military, naval or air force station, as the case may be, for the purpose of being tried by a Court-martial.

Explanation- In this section-

- (a) *“unit” includes a regiment, corps, ship, detachment, group, battalion or company,*
 - (b) *“Court-martial” includes any tribunal with the powers similar to those of a Court-martial constituted under the relevant law applicable to the Armed Forces of the Union.*
- (2) *Every Magistrate shall, on receiving a written application for that purpose by the commanding officer of any unit or body of soldiers, sailors or airmen stationed or employed at any such place, use his utmost endeavors to apprehend and secure any person accused of such offence.*
- (3) *A High Court may, if it thinks fit, direct that a prisoner detained in any jail situated within the State be brought before a Court-martial for trial or to be examined touching any matter pending before the Court-martial”.*

The distinction made in the Section between “trial by a court to which this Code applies” and by a Court-martial conclusively indicates that Parliament intended to treat the Court-Martial as a forum to the proceedings before which the provisions of the Code will have no application.”

10. This judgment of the Apex Court clearly established that the Code of Criminal Procedure does not apply in respect of the proceedings of Court Martial. Therefore, this challenge is not valid and is hereby rejected. We also observe that in the case in which this judgment was cited i.e. T.A.No. 386 of 2010, learned counsel appearing for the petitioner Shri P.N.Chaturvedi, was the counsel for the petitioner in that case too. He has, we presume, read the judgment. It is surprising, therefore, that Shri P.N.Chaturvedi has challenged the non-adherence of Cr.P.C in this case.

11. Learned counsel for the petitioner claims that the case should have been tried by a criminal court and not by a military court. Here, Section 125 of the Army Act is relevant, which reads as follows:

CHOICE BETWEEN CRIMINAL COURT AND COURT-MARTIAL

Here, we turn to the case of *Union of India versus State of Punjab* in **Crl. Misc. No. 10831 of 1999**, decided on 3.6.1999, the relevant extract of which is as follows:

C. Criminal Courts and Court-martial (Adjustment of Jurisdiction) Rules, 1978, Rules 3 to 9 – Criminal Procedure Code, 1973, Section 475 – Offence committed by a Military personnel – Accused whether be tried by Court Martial or Ordinary Criminal Court – Law enunciated by Supreme Court summed up:-

- i) When both ordinary criminal court and Court Martial have concurrent jurisdiction to try the offence, the conflict of opinion whether the accused by tried by ordinary criminal court or court martial is to be resolved by Central Government.*
- ii) Inherent jurisdiction under which criminal courts have to take cognizance of civil offences is not taken away by any of the provisions of Air Force Act or 475 Cr.P.C and rules framed thereunder.*
- iii) If both Criminal Courts and Court martial have concurrent jurisdiction, the first option lies with Military Authorities to try the accused – If Military authorities had surrendered the accused in the Ordinary Criminal Courts, it will be deemed that Military Authorities and exercised its option not to try the accused.*
- iv) If accused has been tried by Criminal Court without objection by the Military Authorities such trial is not vitiated.*
- v) First right is of the Military Authorities to try the offender – Once express their intention to do so – If they abdicate their right in favour of ordinary criminal courts, it is not open to them to try the offender.”*

12. Thus, It has been clearly held that the first choice is the military court. This issue has also been dealt with in the judgment by the AFT,

Lucknow in **TA No. 1 of 2009**, in which it has been held that a Commanding Officer has the power of exercising option of trying civil offences.

13. The next challenge is on the issue of procedural safeguards in the special Act, in which the learned counsel for the applicant has cited the case of **L.D.Balan**, stating that the statutory safeguards as provided under Section 17 of the Prevention of Corruption Act were not provided to the applicant. Section 17 of the Prevention of Corruption Act, 1988 reads as under:

“17. Persons authorized to investigate.-Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no police officer below the rank,-

- (a) In the case Delhi Special Police Establishment, of an Inspector of Police;*
- (b) In the metropolitan area of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area noticed as such under sub-section (1) of section 8 of the Code of Criminal Procedure, 1973 (2 of 1974), of an Assistant Commissioner of Police;*
- (c) Elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank,*

Shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefor without a warrant:

Provided that if a police officer not below the rank of an Inspector of Police is authorized by the Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefor without a warrant:

Provided further that an offence referred to in clause (e) of sub-section (1) of section 13 shall not be investigate without the order of a police officer not below the rank of Superintendent of Police.”

14. Our attention is also drawn to Section 25 of the Prevention of Corruption Act, 1988 which excludes the jurisdiction of Court Martial from the application of the said Act. Section 25 of the said Act reads as under:

“25. Military, Naval and Air Force or other law not to be affected.-

- (1) *Nothing in this Act shall affect the jurisdiction exercisable by, or the procedure applicable to, any court or other authority under the Army Act, 1950 (45 of 1950), the Air Force Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957), the Border Security Force Act, 1968 (47 of 1968), the Coast Guard Act, 1978 (30 of 1978) and the National Security Guard Act, 1986 (47 of 1986).*
- (2) *For the removal of doubts, it is hereby declared that for the purpose of any such law as is referred to in sub-section (1), the court of a special Judge shall be deemed to be a court of ordinary criminal justice.”*

15. Learned counsel for the petitioner has relied on the case of *L.D.Balan Singh* reported in **Mil.L.J 2002 SC 1**. This order is inapplicable in the instant case. In *L.D.Balan Singh's* case, the Apex Court held, “If a particular statute is taken recourse to question of trial under another statute without taking safeguards would be void and entire trial would stand vitiated.” In the Prevention of Corruption Act, however, Section 25 puts the instant case on a different footing as there is no provision similar to aforesaid Section 25 in N.D.P.S.Act, 1985. Hence, *L.D.Balan Singh's* case is not relevant in the instant case.

16. Hence, it is clear that the procedural safeguards are not applicable in the case of Court Martial when a person is tried for an offence under

the Army Act read with certain sections of the Prevention of Corruption Act.

17. The challenge by the petitioner that sanction under Section 6 of Prevention of Corruption Act has not been obtained stands rejected in the light of the case of *Capt T K Singhal versus Union of India and others* in J & K High Court, reported in **Mil. L.J. 2000 J & K 152**, in which it was held, “A person subject to Army Act who commits any civil offence, that is an offence triable by a criminal Court, will be regarded by a fiction as having committed an offence against the Act-Criminal Law (Amendment) Act, 1952, Sec 11 declares that the Court of Special Judge set up to try an offence under Sec 5 of P C Act shall be deemed to be a Court of ordinary criminal justice- Petitioner was charged under Sec 69 of the Army Act with having committed an offence against the Act. Under Sec 69 there is no requirement of obtaining the previous sanction of the competent authority. Section 6(1) of the Prevention of Corruption Act, 1947 is not projected into Section 69 by reference or incorporation.”

18. Now we move on the main issue as to whether or not the petitioner was guilty. The findings of the Court Martial reads as follows:

“BRIEF REASONS IN SUPPORT OF FINDINGS”

After dispassionately considering all the material before it and the addresses of the respective representative of both sides, the Court has found the accused guilty of the first charge with certain exceptions and variations and not guilty of the second charge due to the following brief reasons:-

FIRST CHARGE

The fact that, the accused was generally performing the duties of Recruiting Clerk and account clerk between the period 25 May 2001 to 22 Feb 2002 is substantially evident from the material on records. The facts regarding preparation of ten Bank drafts at SBI Faizabad and their subsequent disposal at SBI Koregaon is evident from Exhibit-8 to Exhibit-17 and Exhibit-32. The accused has not disputed having sent six Bank drafts for a total amount Rs. 1,50,000/- (Rupees one lakh fifty thousand only). The court is satisfied about the source of income for the Bank draft number 569158, 608848 and 9045122 and considers the same to have been made from legitimate income. The court is also satisfied that the source of income to the extent of Rs.10,000/- and Rs. 15,000/- in respect of bank drafts numbers 902157 and 797778 respectively was legitimate. The above amount were received by the accused on account of PLI Bonus and pay drawn in the month of Feb 2002.

The court is not inclined to believe the arguments of the accused that the source of income for making Bank drafts No 902157, 902158 and 797778 was from the loan amount received by his wife. The version of the accused regarding loans having been taken by him, his wife and his father in law does not inspire confidence and the court finds it difficult to believe the preposition being advanced by the accused. The facts and circumstances, pertaining to the loan transactions and the related sequence of events as projected and argued by the accused cannot be believed. It has been observed that though the accused is claiming total ignorance about the four Bank drafts made in favour of his father in law, however two of such bank drafts for a total amount of Rs 90,000/- (Rupees ninety thousand only) were finally credited into Bank account of accused himself which he was operating jointly with his father in law at Satara Sahakari Bank Ltd. The court is fully convinced that, the four Bank drafts made in favour of his father in law were prepared by or under the instructions of the accused and nobody else. The deposition given PW11 is found to be truthful and reliable and corroborates the fact that the drafts in favour of his father in law were in fact got prepared by the accused himself. While drawing various inferences and logical

conclusions the court has discarded the evidence given by PW-1 and has not, taken the same into consideration. The confessional statement given to PW-1 on 22 Mar 2002 does not appear to be voluntary. From the facts and circumstances connected with the case and the other available evidence which has come on record the court certainly believes that the accused was responsible for making all the ten Bank drafts. The transaction carried out in the name of Shri Gulab Rao Hariba Jagdale are of Benami nature carried out on behalf of the accused. There is overwhelming circumstantial evidence to establish, the guilt of the accused on this charge beyond reasonable doubt. The accused has failed to satisfactorily account for the pecuniary resources in respect of seven drafts which were found to be disproportionate to his known source of income.

SECOND CHARGE

Though the prosecution has led evidence to prove that the accused was issued with two Concession Vouchers which are subject matter of this charge, however it has failed to prove beyond reasonable doubt that the details of the particulars of persons incorrectly shown as dependants therein were furnished by the accused. The prosecution has not produced the written requisition form which would have been submitted by the accused before the issue of said Concession Vouchers. Neither it has examined any witness who could depose that the incorrect details were given verbally by the accused. The intent to defraud is not at all discernible from the facts and circumstances and the accused is entitled to given benefit of doubt and is accordingly found not guilty of the charge.”

19. The petitioner himself has admitted that he got six bank-drafts made and the rest were made by his father-in-law. It has also been brought to our notice that he and his father-in-law had joint account. We have examined requisition forms for preparation of bank-drafts. In each case, cash was given to the Bank. All the bank-drafts were payable at

State Bank of India, Goregaon, Maharashtra. These evidences clearly establish that the findings of the Court Martial were on firm ground and the petitioner was rightly held guilty of charge no. 1 as modified by the General Court Martial.

20. The petitioner has claimed that the money for the bank-drafts came from his own income. He has also produced several bills showing expenditure in house construction etc. However, we find that still they do not explain the source from which he brought the money in cash for the bank drafts except the loans that he allegedly took from Mr. K.P.Singh, his wife from Pramod Singh and his father-in-law from Vikas Singh. We have examined the photocopies of loan agreements annexed by the petitioner alongwith his T.A. All the said agreements were signed on 05.05.2001. Admittedly the petitioner was in Faizabad till May, 2001, where his father-in-law was not residing permanently, but according to the petitioner, was visiting off and on. Now, reverting back to the loan agreements, both the loans i.e. the loans taken by him and his wife, are unconditional, interest free loans payable in 3-4 years. The petitioner was a resident of Maharashtra, posted only temporarily in Faizabad. In the two years he spent in Faizabad, the petitioner developed such a close friendship with the loan-givers that they loaned him and his wife such huge sums without any condition and interest is something that sounds somewhat not plausible. If indeed the loan-givers were ready to advance loan of such huge amounts to the petitioner without any condition and

interest, they could do so without any loan agreement. Secondly, we find that both the loan agreements were signed on 05.05.2001 whereas the Notary Stamp on both the loan agreements are dated 06.05.2002. This has been explained by the petitioner by saying that though the loan agreements were made in 2001, need for notarizing them arose only in 2002 and hence were so notarized. We find this reasoning not convincing at all. We are of the view that the loan agreements were afterthoughts manufactured purposely after the petitioner's involvement in taking money had come to light. Thirdly, the originals of the loan agreements have not been produced by the petitioner even though he was asked during the course of court martial. The relevant extracts of the proceedings of the court martial are as under:

“Q-28 You have stated that you, your wife and father-in-law have taken loans at Faizabad and received different amounts of money, at different times. However you have not submitted any receipt which might have been given by you, your wife or your father-in-law to the respective persons who have given the loan. What do you have to say?”

A-18 As the loan was given on mutual trust and due to friendship, neither myself nor my wife had given any kind of receipt to the respective lenders on receiving the loan amount. I cannot say anything regarding my father-in-law because money was sent directly by Shri Vikas Singh to him.

Q-31 It has come in the evidence of PW-9 that you stayed with your family in government accommodation allotted to you from April 2000 to May 2001. However it is seen that though the loan agreements entered into by you, your wife and father-in-law have been signed on 05 May 2001, but notary stamp is observed to have been affixed on 06 May 2002. What do you have to say?”

A-31 It is correct to say that my family stayed with me at Faizabad from April 2000 to May 2001. In fact I handed over the government accommodation on 10 May 2001. On 06 May 2002 my wife and father-in-law were not present at Faizabad. The notary stamp dt. 06 May 2002 is merely a testimony to the fact that on that particular day the photocopy of

the receive loan agreements has been compared with the original loan agreement and accordingly attested as true copy by the notary.

“Q-33 As per loan agreement signed by your father-in-law on 05 May 2001, the loan amount was to be repaid within three years. What do you have to say?”

A-33 I can't say any thing on this issue. I do not know how much money has been repaid and how much loan amount is still outstanding against my father-in-law.”

“Q-36 It is observed that you have not produced the original copy of the loan agreement. What do you have to say?”

A-36 The original copy of the loan agreements, signed by me and any my wife is with Shri Krishna Pratap Singh and Shri Pramod Singh respectively.

Q-37 It is mentioned in the loan agreement signed by your father-in-law that Shri Vikas Singh has agreed to give the loan amount of Rs.1,65,000/- to him only because of his friendship with you. What do you have to say?

A-37 It is not correct. I do not know Shri Vikas Singh personally. In fact he was a friend of Shri Krishna Pratap Singh and Shri Pramod Singh who were my friends.”

Q-41 It has been argued on your behalf that the loan amount has been repaid partly to the extent of Rs.30,000/- and Rs.65,000/- to Shri Krishna Pratap Singh and Shri Pramod Singh. Can you tell the court about the mode of payment?

A-41 The amount has been paid in cash in a number of installments out of my savings from pay.

Q-42 Have you obtained any receipt from Shri Krishna Pratap Singh and Shri Pramod Singh while making the above payment to them?

A-42 I have not taken any receipt from them.”

Q-43 It has been admitted by you that you had received a loan amount of Rs.50,000/- (Rupees fifty thousand only) from Shri Krishna Pratap Singh in the month of May 2001. However it is seen that you have not reflected this amount anywhere as your source of income towards preparation of Bank drafts. What do you have to say?

A-43 This amount was taken in cash by me personally and delivered at my home while going on leave and was not used towards preparation of any of the Bank drafts.”

21. The cumulative effect of the above observation as well as the questions put and answers given by the petitioner during the GCM clearly establish that the loan agreements were afterthoughts and his source of income was clearly somewhere else rather than the so-called loans allegedly taken by him.

22. The petitioner also, during the GCM, stated that he had returned some loans, but no receipts have been taken and produced no receipts. However, alongwith T.A, we find, there are two receipts signed by K.P.Singh and Pramod Singh. This is inconsistency which has not been explained by the petitioner. We are of the view that these two receipts are also afterthoughts; they are not genuine and convincing at all. In the loan agreement between the petitioner and K.P.Singh, it has been mentioned that the petitioner needed Rs. 50,000/- for business. The petitioner has not explained why he was engaged in conduct of any business being a Government servant. On this ground alone, the petitioner can be found blame-worthy since he being a Government servant cannot himself engage in any business activity.

23. The narrative that emerges is that the petitioner indeed was involved in some illegal activity which allowed him to access cash from unauthorized source which he converted into bank-drafts and sent to his bank in his home town. Both the so-called loan givers i.e. K.P.Singh and Pramod Singh did not appear; instead they sent identical replies to the

Court on stamp-papers alongwith photocopies of loan agreements, which are not convincing and genuine. Originals of the loan agreements were not brought before the Court or before us.

24. All this leads us to the conclusion that the defence put up by the petitioner during the GCM and also during the hearing by this AFT was not convincing. We are of the view that the petitioner was rightly found guilty by the GCM. The GCM proceedings were conducted as provided in law and we find no infirmity in it. The sentence awarded to the petitioner is just and legal and calls for no interference. Accordingly, we find no merit in the appeal and dismiss the same. No order as to costs.

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

(Justice Abdul Mateen)
Member (J)

LN/-