

ARMED FORCES TRIBUNAL REGIONAL BENCH, LUCKNOW

Transferred Application No. 486 of 2010

Tuesday the 6th day of October, 2015

Reserved
(Court No. 2)

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

Grenadier Lalit Mohan Chawda (No. 2682017 F), son of Bhim Singh Chawda, Aged about 35 Years, C/O Grenadiers Regimental Centre, Jabalpur, MP.

..... Applicant/petitioner

By Col. (Retd) Y.R. Sharma, learned counsel for the applicant.

Versus

1. Union of India through the Secretary, Defence, South Block, New Delhi.
2. Chief of Army Staff, Army Head Quarters, New Delhi.
3. G.O.C., 36 Infantry Division, C/o 56 APO.
4. Commanding Officer, 36 EME Battalion, C/o 56 APO.
5. Commanding Officer, 15 Grenadiers, C/O 56 APO.
6. Commandant, Grenadiers Regimental Centre, Officer Incharge (Records), Jabalpur.

.....Respondents.

By Shri A.K. Srivastava, learned counsel for the respondents alongwith Col. J.G. Manhas and Capt Soma John, Departmental Representative.

ORDER

1. Writ Petition No. 8295 of 2004 was received from High Court of Madhya Pradesh at Jabalpur on 7.5.2010 and was renumbered as above.

2. This T.A. seeks the following reliefs:

“(i) a writ of ‘Certiorari’ quashing the illegal finding (Annexure P-9) and sentence Annexure P-10).

(ii) a writ of Mandamus to the Respondents to reinstate the Petitioner with all service and financial benefits accruing thereof.

(iii) a writ of Mandamus to Respondents to place the Petitioner at par with his course mates as and when the petition is decided.

(iv) a writ of Mandamus to the Respondents to pay Rs.5000/- each for clothing, CILQ allowance and transfer grant alongwith 12% interest.

(v) a command to Respondents to award a compensation for causing harassment due to illegal trial and subsequent suffering mental, financial and physical to the tune of Rs. 10 lakhs alongwith 12% interest.

(vi) a command to respondent no. 2 to decide the post confirmation petition dated 20.4.2004 (Ann.P/12) within 2 weeks from mfg.

(vii) to grant any other relief deemed fit in the circumstances.”

3. Facts of the case are that the petitioner was enrolled in the Army on 17.9.1987. According to the conduct-sheet provided during the General Court Martial (GCM), there were no entries against the petitioner with regard to discipline. He was serving in 15 Grenadiers in July, 2000. It is alleged that between 24th and 27th July, 2000, he collected 119 bottles of Indian Made Foreign Liquor (IMFL) from the unit CSD Canteen and sold it to a civilian, namely, Anup Kumar Urmil for approximately Rs.20,000/-. The petitioner was caught red-handed by the personnel of Field Security Section (FSS) at Dhana on 27.7.2000

while he was handing over 10 cases of IMFL and accepted Rs.20,000/- in lieu thereof, which were recovered from the said civilian. The civilian told that the petitioner and Subedar Major Krishan Pal Singh were involved in the sale of liquor. The petitioner was thereafter attached to 636 EME Battalion with effect from 17.9.2000.

4. The GCM was conducted between 10.1.2003 and 21.3.2003 on the following charge:

“CHARGE-SHEET

The accused: (1) JC-193676F Subedar Major Krishan Pal Singh and (2) No. 2682017F Naik Lalit Singh, both of 15 GRENADIERS, attached to 636 EME Battalion, are charged with:-

<i>Army Act Section 52(f) read with section 34 of Indian Penal Code</i>	<i>SUCH AN OFFENCE AS MENTIONED IN CLAUSE (f) OF SECTION 52 OF THE ARMY ACT WITH INTENT TO CAUSE WRONGFUL GAIN TO A PERSON</i>
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in that they together

at Dhana, between 24 Jul 2000 and 27 July 2000 having collected 119 bottles of Indian made foreign Liquor from the unit CSD Canteen for Rs. 10,889/-, with intent to cause wrongful gain to themselves, caused the same to be sold to civilians for Rs.20,000/- approximately, thereby earning a sum of nine to ten thousand rupees.

Place: Saugor (MP)
Dated: 02 Jan 03

Sd.
(Paramjit Singh)
Colonel
Commanding Officer
636 EME Bn

To be tried by General Court Martial.

Place: Saugor (MP)
Dated: 02 Jan 03

Sd.
(KS Sindhu)
Major General
General Officer Commanding
36 Infantry Division (RAPID)”

5. The aforesaid charge was found proved against the petitioner in the GCM proceedings. However, the competent authority ordered a revision by order dated 26.6.2003. The GCM re-assembled on 18.7.2003 and after suitably modifying the charges pronounced the sentence which was reduction to rank, forfeiture of three years of service for pension and severe reprimand. The aforesaid findings and sentence were confirmed by General Officer Commanding, 36 Infantry Division on 22.8.2003.

6. The petitioner's case was pleaded by Col. (Retd.) Y.R.Sharma, his learned counsel. The petitioner states that the charge against him is false; it was fabricated at the behest of the Commanding Officer, who wanted some additional sums for some project in the Unit. The petitioner pointed out several infirmities in investigation and GCM proceedings. He stated that said civilian Anup Kumar Urmil, who was examined as P.W.1 during the GCM, did not recognize the petitioner during the trial and also stated that he did not purchase any liquor from the petitioner. The currency notes of Rs.10,000/- were not produced before the GCM. The charge framed under Army Act Section 52(f) did not support the statement of offence; in that the exact sum was not mentioned. In the Court of Inquiry that was ordered, the name of Anup Kumar Urmil was not mentioned in the convening order. Also, in the Court of Inquiry Army Rule 180 was not complied with. The petitioner claims that during the trial, only one civilian witness was examined i.e.

Anup Kumar Urmil whereas in the charge, the version used is 'civilians'. According to him, this Anup Kumar Urmil was declared hostile in GCM, hence there is no evidentiary value of his statement given in Court of Inquiry and Summary of Evidence. The petitioner denied having given any confessional statement. In the court martial proceedings, 9 liquor chits, attached to the proceedings as Exhibits 8 onwards, were produced, which go to indicate that the petitioner had not drawn any liquor and, therefore, the charge of procuring 119 bottles of liquor does not stand proved. The petitioner would state that the Commanding Officer Colonel IPS Rana in order to save his own skin pressurized the petitioner to accept the charge. The petitioner further stated that he does not understand English and statement during the Summary of Evidence was in Hindi, which is stated to have been destroyed by the respondents. He also brought out that in the inventory of liquor said to have been recovered from the civilian, it was found that 9 bottles were of 2001 vintage whereas the seizure had taken place in July 2000. The petitioner states that the punishment awarded to him is too harsh and he is not getting any pension since three years have been deducted from his total service of 17 years and 2 months and thus he is not entitled to any pension.

7. The respondents were represented by Shri A.K. Srivastava, learned Standing Counsel appearing for the respondents, duly assisted by Col. J.G. Manhas and Capt Soma John, Departmental Representatives. The respondents state that the petitioner was

apprehended by FSS and Corps of Military Police (CMP) personnel on 27.7.2000 when he was selling 10 cases of IMFL to a civilian. The liquor was confiscated by Military Police. The petitioner was caught red-handed and there was no false implication. The civilian Anup Kumar Urmil was examined during the Court of Inquiry as witness no. 10 and provisions of Army Rule 180 were invoked. Copy of the Court of Inquiry was handed over to the petitioner on 27.12.2002. The civilian and the retired Army personnel were summoned for the court martial through the District Magistrate, Saugor and when they did not appear, a questionnaire was sent to them and the replies of P.Ws. 8 to 12 had been obtained. Only one civilian, namely, Anup Kumar Urmil was examined; no other civilian was involved. As regards 9 bottles of liquor of 2001 vintage, the respondent would state that when it came to the notice of the authorities, a Court of Inquiry was ordered and it was found that one Havaldar VHB Bhai, Quarter Master of 36 Infantry Division Provost Unit disposed of 9 bottles and replaced the same from the stock of 2001 liquor. As regards the exact sum, this was amended in the second finding of the court martial. The respondents also state that civilian Anup Kumar Urmil in his statement before the Court of Inquiry and the Summary of Evidence accepted that he had purchased 10 cases of IMFL from the petitioner and even though he turned hostile in GCM but his statement as a whole cannot be brushed aside. His statement as well as the confessional statement of the petitioner prove the guilt of the petitioner beyond reasonable doubt.

8. Heard both sides and examined all the documents including the photocopies of the Court Martial proceedings alongwith its exhibits.

9. In the revision order dated 26.6.2003, the issue of 9 bottles of liquor of 2001 origin and non-production of currency notes of Rs.10,000/- had been brought out and based on this, the court was asked to re-appreciate the evidence and reconsider their finding as to whether the accused persons could be blamed for procurement and sale of entire quantity of liquor or less the quantity (nine bottles) bearing the lot of the year 2001. The revision order also brought out that no justifiable reason was given for returning Rs.10,000/- recovered from the petitioner back to the civilian Shri Anup Kumar Urmil by Maj. John Lewis.

10. The issue of 9 bottles of rum was explained by the respondents. They state that a Court of Inquiry was conducted in this matter wherein involvement of one Havaldar VHB Bhai, Quarter Master of 36 Infantry Division Provost Unit was established and, therefore, the total quantity of liquor that was sold by the petitioner to Anup Kumar Uermil continued to remain as 119 bottles. As regards the exact quantity of sum it was amended to Rs.9111/- vide finding no. 2 i.e. after revision.

11. So far as the charge against the petitioner is concerned it is relevant to turn to the statement given by the petitioner on 27.7.2000 when he was apprehended by CMP while he was selling liquor to Anup Kumar Urmil. He stated-

“I was doing the duties of DR in the MT pl of 15 GRENADIERS since Apr/May 99. In the performance of duties, I would visit Sagor city frequently. I executed this

act on the specific orders of the SM, Sub Maj Krishanpal Singh. He in turn, informed me that he had received these orders from the CO, Col IPS Rana. SM would receive orders from CO only, and he would execute them accordingly.

I was told by SM that some wk of the Bn had to be done and some of these wks cannot be paid from the Regl funds. This necessitated the sale of liquor in civil at an exorbitant rate. He instructed me to contact a civilian for this purpose.

Once I could contact civilian named Mr Anup Kumar, I informed SM of the same. SM was ready to sell 10 cases of liquor to this civilian. 06 cases were kept in the MT tech store. Tech NCO LHav Mahender Singh, LNK Naveen Kumar and Gdr Munesh Kumar took this liquor from the CSD canteen in a 1 Ton and kept it in the tech store. 04 cases of liquor were kept at my residence.

On 27 Jul 2000, at about 2000h, Mr, Anup Kumar came to my residence. I sat in his car and we drove to the tech store. The storeman, LNK Shetan Singh opened the store and 06 case of liquor were loaded into an Army Gypsy. I told LNK Shetan Singh to drive the gypsy to the MI Room. Gdr Raghubir Singh was the co-dvr of the gypsy. I returned my residence alongwith Mr. Anup Kumar in his veh. Mr. Anup Kumar went away to fetch the other vehicle. After some time, he returned back with Mahindra Jeep. I loaded 04 cases of liquor in this jeep from my residence. We then drove this veh near the MI room. The gypsy was parked there. 06 cases of liquor were loaded from the gypsy to this jeep. The gypsy returned back to the unit MT thereafter. Mr Anup Kumar paid me Rs 10,000/- cash, which I was to give to the SM in turn. Since it was raining that time, and a party was being held at the JCO's Mess, I decided to keep the money with me and hand it over later in the morning. I returned back to my quarter and Mr. Anup Kumar went with the veh.

After about 20-25 mins some FS sec pers came to my residence alongwith Mr Anup Kumar. They started enquiring from me about the money. During this time, the SM arrived on the spot in a jeep. He started talking to the FS sec pers separately at a distance. Thereafter, SM instructed me to handover Rs 10,000/- cash to the FS

sec pers, which I was to give him in the morning next day. The FS sec pers thereafter took me to the TCP at Dhana cantt gate and noted down my statement. After this, I was handed over to the unit.”

12. In the statement given by the petitioner in the Summary of Evidence too, he accepted the charge. However, during the trial he changed his stand completely. During the trial by GCM he stated that evidence of P.W.2 L/Nk Padam Singh and P.W.3 Gdr Chain Singh with regard to issue of liquor is false. He also stated that the evidences of P.W.4 Sub Trilochan Singh, P.W.5 Maj John Lewis Raj, P.W. 12 Anup Kumar Urmil and P.W.13 Sub Charanjit Singh were false. In the like manner, the petitioner stated that the entire evidence brought forth by all the witnesses during the trial was false. He denied having given any confessional statement.

13. P.W.12 Anup Kumar Urmil of Saugor stated that he was employed as Accountant with a private liquor vendor. During trial, in his answer to a question as to whether or not he was in contact with Army personnel including the persons of Field Security Section between July 24 and 27, 2000, this witness stated that he did not know the petitioner and Sub Maj Krishan Pal Singh, a co-accused. The prosecution counsel pointed out to this witness that in his statement in the Summary of Evidence he identified both the accused. The prosecution counsel also sought permission of the court to cross-examine this witness, which was permitted. The witness was shown copy of Summary of Evidence in which the witness identified his own signature but he could not ascribe

any reason for appending his signature to his statement. The witness stated that the Summary of Evidence was recorded in Hindi whereas now it was in English, a language he was not very familiar with. He denied having gone to the residence of the petitioner on 27.7.2000 as also having collected 10 cases of liquor from the petitioner. At this stage, it is relevant to record the statement given by this witness during Summary of Evidence, which is as follows:

“To prove to my boss that defence liquor was available in the market easily and at cheaper rate. I proposed to buy some liquor myself from the defence sources. I met Naik Lalit Singh of 15 Grenadiers for the first time in Jun 2000 and requested for some liquor from unit CSD Canteen. He later introduced me to Sub Maj Krishan Pal Singh at Dhana.

I contacted the persons of Field Security Section of the Army and volunteered to help them in the catch. The rate fixed for the liquor was Rs 2000/- per case of whiskey Mc Dwell No 1. In the civil market rate is approximately Rs 3600/- per case. It was mutually decided between Naik Lalit Singh and me that the delivery of liquor would be made on 27 July 2000 in the evening hours. I intimated the plan to the FS Sections JCOs. Out of the total of Rs 20000/- an amount of Rs 10000/- was already paid to Naik Lalit Singh as advance, who in turn had paid to the Sub Maj.

In the evening of 27 Jul 2000 I went to Dhana in my personal vehicle and alongwith me Major John Louis and two JCOs of the Div FS Section also came in another vehicle. Before I could go and contact Naik Lalit Singh, Maj John Louis noted the machine number of some of the currency notes in my possession, which I was to pay for the delivery of liquor from Naik Lalit Singh.

After some time I took delivery of the liquor and came back to the FS JCO. I told them that the payment has been made and the delivery taken. Thereafter, Major John Louis Raj and the two JCOs from FS Section entered the house of Naik Lalit Singh. The same currency notes were recovered from which machine

numbers were noted earlier. After that Naik Lalit Singh was handed over to the Military Police.”

14. On being asked as to which of his two statements was correct, the witness stated that whatever he had deposed before the Court is correct.

He states during the trial as follows:

“As on 27 Jul 2000 I had not gone to Dhana nor I knew both the accused persons at that time.

Now my attention is drawn to that portion of my statement recorded at S of E in respect of accused No (2) which reads as quote.

“I came into contact with Naik Lalit Singh through a contact person called ‘SINDHI’ in the month of June 2000. On 24 July 2000, I went to Naik Lalit’s residence at Dhana and requested him to sell me ten cases of liquor; Lalit told me that he would speak to Subedar major and also arrange for a meeting with the SM. After some time Subedar Major accompanied by Naik Lalit Singh came to the rear side of Nk Lalit Singh’s residence and met me, I handed over Rs 10000/- in cash to the SM as advance towards the delivery of ten cases of liquor. I asked for the delivery on the next day but Subedar Major told me that the Canteen remained closed on Tuesday, hence the delivery would be given on Wednesday, 26 Jul 2000. He instructed me to remit the balance amount Rs 10000/- to Naik Lalit Singh on receipt of the delivery.

On 26 Jul 2000, I went to Naik Lalit’s residence, but could not meet him there. I met him near the CSD Canteen and he informed me that the delivery would not be done today. He told me to come on the next day i.e. 27 July 2000.

On 27 July 2000 I reached Dhana Cantt alongwith two vehicles viz a Santro car and Mahindra Jeep at about 1900 hours. An army Jeep alongwith Sub Trilochan Singh and Nb Sub CS Shekhon also met us enroute and accompanied us to Dhana. I halted the Mahindra Jeep at one place. The Army Jeep also halted there. I took the other vehicle, reached Naik Laliat’s residence. I entered Naik Lalit’s house alone, I spoke to Naik Lalit and remitted the balance payment of Rs 10000/- in cash to

him. Naik Lalit came downstairs and accompanied me in my car and drove me to a shed near his shouse. Two men were waiting in the shed. Lalit spoke to them and then they loaded six cases of liquor from the shed into an Army gypsy standing nearby. The Army Gypsy followed our car and thereafter went away. I reached the spot where the Mahindra was standing and took the Jeep to Naik Lalit's house. Lalit loaded two cases of liquor into the Mahindra Jeep from his house and another two cases from some house on the ground floor.

We then drove the vehicles to a spot behind Lalit's house. The Army Gypsy was waiting there. Six cases of liquor were loaded into the Mahindra Jeep by the two persons in the Gypsy. Lalit stood next to me during this period.

I took leave of Naik Lalit and drove back with both the vehicle to the spot where the Army Jeep was awaiting. I told Sub Trilochan Singh that I had taken the delivery. They accompanied me and I took them to Naik Lalit's house. They entered Naik Lalit's house and started enquiring with him about the money. They requested me to wait downstairs.

I came down and waited in the Army Jeep. After some time. Subedar Major Trilochan Singh to take the money and also take some extra money but leave back the liquor. The Subedar Major instructed Naik Lalit to return Rs 10000/- that I had given him and thereafter he returned he did so. The money was received by Nb Sub Trilochan Singh from Naik Lalit Singh and he thereafter returned the money back to me. They were the same currency notes that I had earlier handed over to Naik Lalit Singh as payment for the sale of ten cases and I counted them to be Rs 10000/-."

15. It would be relevant to look at the findings of the court. On appraisal of evidence on record, the first set of findings on which the revision order was issued, reads as follows:

"There being no dispute that both the accused persons were present at Dhana during the period as averred in the charge, the Court was required to satisfy

itself with regard to other averments and the ingredients of the charge. Notwithstanding the foregoing the court is convinced from the evidence on record that the accused persons were present at Dhana during the period as averred.

The court do not find any animus on the part of Lt Col MK Dasgupta (PW-15) and Lt Col KV Vitthal (PW-17) as claimed by the defence, who have recorded the respective statement of accused persons as Officer recording summary of evidence and produced as Exhibit 31 and exhibit 32 respective. The Court is convinced with the testimony of L/Nk Padam Singh (PW-2), L/Nk Chain Singh (PW-3), Hav Mohinder Singh (PW-9) and L/Nk Muneesh Kumar (PW-10) and the statements of the accused persons made at the respective S of E (Exhibit 31 and Exhibit 32) that accused persons in furtherance of common intention to earn money not entitle to them, joined together and collected 119 bottles of Indian Made Foreign liquor from the unit CSD Canteen for a sum of Rs 10,889/-. The Court is also convinced from the evidence of Subedar Trilochan Singh (PW-4), Major John Louis (PW-5) and Subedar CS Sekhon (PW-13) that the accused persons had entered into a deal with Mr Anup Kumar (PW-12), a civilian, fir the sale of 119 bottles of Indian Made Foreign liquor collected from the unit CSD Canteen, for Rs 20,000/-, out of which Rs 10,000/- had already been given to the accused No (2) and the balance was to be paid at the time of delivery. The evidence of PW-4, PW-5 and PW-13 establish that on 27 July 2000 PW-12 collected 119 bottles of Indian Made Foreign liquor i.e 107 bottles of Mc Dowell No 1 and 12 bottles of Old Tavern and paid Rs 10,000/- as the balance payment to accused No (2), which he at the time of raid brought and handed over to Hav Om Prakash (PW-8). The said currency notes were found to be the same currency notes which had been handed over to PW-12 prior to his going to accused No (2) for collection of liquor bottles.

The Court is convinced from the evidence of PW-4, PW-5 and PW-13 that at the time of revelation of the transaction, PW-12 had collected 119 bottles of Indian Made Foreign liquor from accused No (2) and the complicity of accused No (1) is further evident by his conduct, to hush up the case.

The Court is convinced that the witnesses comprising the raid party i.e PW-4, PW-5, PW-8 and PW-13 had no animus to implicate the accused persons falsely as being claimed by the defence. There being no evidence in this regard, the Court does not believe the defence version.

The evidence has established that the manner in which the accused persons earned the amount as averred in the charge was not entitled to them.

The Court has also examined in detail incongruencies and subsequent defence in the batch No of the liquor bottles as contended by the defence. However the Court is firmly convinced from the evidence on record that the accused persons did commit the offence concerning collection of 19 bottles of India Made Foreign liquor from the unit CSD Canteen for subsequent sale to Mr Anup with intent to cause wrongful gain to themselves irrespective of the methodology used or concomitant orders passed in this regard.”

16. In compliance with the order dated 26.6.2003 passed by the competent authority directing reconsideration of the matter by GCM in the light of the observations made, the GCM re-assembled on 18.7.2003 and after suitably modifying the charges pronounced the sentence which was reduction to rank, forfeiture of three years of service of pension and severe reprimand. The infirmities in the charge as pointed out by the petitioner were taken note of, as is evident from its finding reproduced hereinbelow:

“The Court having attentively considered the observations of the confirming authority and whole of the proceedings do now respectfully adhere to their finding and now find the accused No 1 Shri Krishan Pal Singh formerly JC-193676F Subedar Major Krishan Pal Singh of 15 Grenadiers attached to 636 EME Battalion guilty of the charge with the exception of the words ‘approximately’ preceding Rs.20,000/- and with the following variations:-

- (a) *that words 'civilians' shall be read as civilian and*
- (b) *that words 'nine to ten thousand rupees' shall read as Rs. 9111/- (Rupees nine thousand and one hundred eleven)."*

17. Two issues engage our attention at this stage; the first one is that of hostile witness i.e. Anup Kumar Urmil. The Supreme Court in the case of *Jagir Singh versus The State (Delhi Administration)*, reported in **AIR 1975 SC 1400**, has held as under:

"It is now well settled that when a witness, who has been called by the prosecution, is permitted to be cross-examined on behalf of the prosecution, the result of that course being adopted is to discredit that witness altogether and not merely to get rid of a part of his testimony."

18. In yet another case, *Keshoram Bora versus the State of Assam*, reported in **AIR 1978 SC 1096**, the Apex Court held as under:

"While it is true that merely because a witness is declared hostile his evidence cannot be rejected on that ground alone, it is equally well settled that when once a prosecution witness is declared hostile the prosecution clearly exhibits its intention not to rely on the evidence of such a witness and, hence his version cannot be treated as the prosecution of the prosecution itself."

19. As regards the extra-judicial confession made by the petitioner, in the case of *The State of Punjab versus Bhajan Singh and others*, reported in **(1975) 4 SCC 472**, the Supreme Court held as under:

"The evidence of extra-judicial confession in the very nature of things is a weak piece of evidence. According to the prosecution in the instant case, the murders of the three deceased persons were committed in a most heinous manner and under a veil of secrecy. Persons who commit such murders after taking

precautions of secrecy are not normally likely to become garrulous after the commission of the offence and acquire a sudden proneness to blurt out what they were at pains to conceal. In any case, it seems rather odd that all the three accused who had not been arrested till two days after filing of F. I. R. should be seized almost at the same time by a mood to make confession. The evidence adduced in this respect in the present case thus lacks plausibility and it does not inspire.”

20. As regards hostile witness, in the instant case, Anup Kumar Urmil, P.W.12 turned hostile. Thereafter the prosecution counsel proceeded to discredit him by placing before the witness his statement during the Summary of Evidence. The witness admitted that the signature was his, but said he couldn't ascribe any reason for putting his signature on this statement. The statement corroborates the statements given by the petitioner when he was apprehended by the Military Police on 27.7.2000 as also witnesses P.W.5 and P.W.13 during the trial. So, the witness may have turned hostile, his statement during the Summary of Evidence holds.

21. As regards extra-judicial confession, it is a weak piece of evidence and needs to be corroborated. In the instant case, the statements given by the petitioner at the time of his arrest on 27.3.2000, Court of Inquiry and Summary of Evidence were corroborated by evidence placed before the GCM by other witnesses, notably P.W.5 Maj John Louis and Sub Trilochan Singh. Also the liquor had been seized and kept and barring the replacement of 9 bottles by Hav NHB Bhai was

intact. Therefore, there is adequate corroboration to prove the charge beyond reasonable doubt.

22. The narrative that emerges is that Sub Maj Krishan Pal Singh had full authority and control to issue liquor to the Unit. He misused his power to issue liquor chits. The petitioner contacted Anup Kumar Urmil for sale of liquor. This information reached the FSS and then the petitioner was caught red-handed on 27.7.2000. The liquor recovered from the civilian was kept in Provost Unit where an NCO disposed of 9 bottles of liquor and replaced them with 9 bottles of 2001 stock, obviously in 2001 or thereafter.

23. Having gone through the court martial proceedings and the evidence on record, we find that the extra-judicial confession made by the petitioner has been adequately corroborated. There is no escape from the conclusion that illegal sale of liquor did take place in which the petitioner was involved and he was rightly held guilty.

24. However, we are of the view that the punishment is too harsh. The petitioner had 17 years 2 months of service when the punishment was confirmed. By deducting three years of service for pension purposes, his service comes down to less than 15 years which does not entitle him to pension. We are inclined to believe that the petitioner should be granted pension and to that extent the quantum of punishment deserves intervention.

25. Accordingly, the T.A is partly allowed. While the trial by GCM and finding of guilt arrived at by the GCM against the petitioner are held

to be legally valid, punishment of deduction of three years' service is hereby quashed. We direct the respondents to grant pension to the petitioner with effect from the date the sentence was awarded by the GCM and the same was promulgated. No order as to costs.

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

(Justice Abdul Mateen)
Member (J)

LN/-