

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(Court No. 2)

Transferred Application No. 725 of 2010

Tuesday the 6th day of October, 2015

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

Ex. No. JC-640004W Sub(SKT) Gopal Sharan Singh of 427(I) Compo Pl ASC att with 832 Lt Regt C/O 56 APO resident of Saguna, Danapur Chhawani(North to Plywood Factory) Patana (Bihar) at present residing at House No. 427, Himmatganj, Allahabad.

.....Petitioner

By Shri R Chandra, learned counsel for the applicant.

Versus

1. The Union of India through Secretary Ministry of Defence, South Block, New Delhi.
2. The Chief of the Army Staff, South Block, New Delhi.
3. Mr. H.S. Aulakh Major/Officer Commanding 427(I) Compo Pl ASC, C/O 56 APO.
4. Lt. Col. Jaswinder Singh 832 Light Regiment, C/O 56 APO.
5. Col. Saran Amarjit Singh, Presiding Officer, SGCM.

.....Respondents

By Shri D.K. Pandey, learned counsel for the respondents, along with Capt. Soma John, Departmental Representative.

ORDER

1. Writ Petition No. 38973 of 2005 was received from High Court of Allahabad, on 11.06.2010 and was re-numbered as above. The reliefs that

petitioner has asked for quashing the SGCM proceedings dated 13.08.2003 and to re-instate the petitioner.

2. Facts of the case, in brief, are that at the time of the SGCM, the petitioner had more than 26 years of service. He was posted to 427 (I) Composite Platoon, ASC with effect from 06.06.1998 where he took over charge from Subedar B.N. Singh. During the handing/taking over, some discrepancies were noted, however, these were not officially reported. In the month of August/September 2000, during handing/taking over between Major H.S. Aulakh and new incumbent Major A. Malhotra the discrepancies were brought to fore following which a court of inquiry was ordered. Based on the court of the inquiry, disciplinary actions were initiated against four persons, Major H.S. Aulakh, the petitioner, Naik Satendra Prasad and Naik Ashok Kumar.

3. All of them were tried by court martial. The petitioner was tried on the following charges:-

“First Charge
Army Act
Section 66

WHICH ABATEMENT SUCH OFFENCE WAS
ABETMENT OF AN OFFENCE SPECIFIED IN
SECTION 52(b) OF THE ARMY ACT IN CONSEQUENCE
OF COMMITTED

in that he,

at field, on active service, between 23 Dec 97 and 05 Sep 2000, which came to the knowledge of authority competent to initiate action on 03 May 2001, while being the JCO incharge all groups and the Depot Stock Officer of 427(Independent) Composite Platoon, Army Service, by omitting to report the deficiencies of stores held on the charge of the said unit to an authority superior to his then Officer Commanding IC-43824W Major Harjit Singh Aulakh as ordained vide Para 317 of the Regulations for the Army, Revised Edition 1987, intentionally

aided the said officer to commit dishonest misappropriation of the stores valued at Rs 53,18,911.48 (Rupees fifty three lacs eighteen thousand nine hundred eleven and paise forty eight only. The property belonging to the Government in consequence of which the said officer dishonestly misappropriated the following stores:-

<u>Ser Item</u> <u>No</u>	<u>Qty</u>	<u>Cost</u>
(a) Steam Coal	1520.533Tons	Rs46,54,353.23
(b) 87 MT Gas	7.972 Kilo Litres	Rs 2,39,240.40
(c) ATF non avn	27.950 Kilo Litres	Rs 3,70,337.50
(d) ATF remnants	3,617 Kilo Litres	Rs 47,925.25
(e) Brake Fluid	78 Litres	Rs 7,055.10
	<i>Total</i>	<u>Rs53,18,911.48</u> -----

“Second Charge *AN ACT PREJUDICIAL TO GOOD ORDER AND*
Army Act *MILITARY DISCIPLINE*
Section 63
(alternative *in that he,*
to the first
charge)

at field on active service, between 23 Dec 97 and 05 Sep 2000, which came to the knowledge of authority competent to initiate action on 03 May 2001, while being the JCO incharge all groups as also the Depot Stock Officer of 427 (Independent) Composite Platoon, Army Service Corps, and having the knowledge that deficiencies of the following ‘government stores, valued at Rs 43,18,911.48 (Rupess fifty three lacs eighteen thousand nine hundred eleven and paise forty eight only), held on the charge of the said unit, had been created due to dishonest act of his then Officer Commanding IC-43824W Major Harjit Singh Aulakh, improperly failed to report the said deficiencies to the next superior officer to his said Officer Commanding, as ordained vide Para 317 of the ‘regulations for the ‘army, Revised ‘edition, 1987:-

<u>Ser Item</u> <u>No</u>	<u>Qty</u>	<u>Cost</u>
(f) Steam Coal	1520.533Tons	Rs46,54,353.23
(g) 87 MT Gas	7.972 Kilo Litres	Rs 2,39,240.40
(h) ATF non avn	27.950 Kilo Litres	Rs 3,70,337.50
(i) ATF remnants	3,617 Kilo Litres	Rs 47,925.25
(j) Brake Fluid	78 Litres	Rs 7,055.10
	<i>Total</i>	<u>Rs53,18,911.48</u>

The punishment awarded to the petitioner was dismissal from the service, forfeiture of all arrears of pay and allowances and other public money.

4. As per respondents, Maj H.S. Aulakh was awarded 3 years RI and Cashiered, Naik Satendra Prasad was awarded 3 years RI, reduced to ranks and dismissed from service. Naik Satendra Prasad has filed an appeal in the Armed Forces Tribunal, Lucknow Bench, which is pending.

5. The petitioner was represented by Shri R. Chandra. He brings out that during the process of handing/taking over between petitioner and Subedar B.N. Singh deficiencies were found. The petitioner informed Major H.S. Aulakh, the then Officer Commanding, who asked the petitioner to keep the deficiencies oral which the petitioner refused. No administrative works was given to him upto a month and thereafter on 27.07.1998, he was informed that posting of Subedar B.N. Singh has been stopped and the petitioner was directed to report to Supply Point, Manas Bal. On 30.09.1998, he was ordered to report to 427 (I) Compo Pl by the OC and asked to take over from Subedar B.N. Singh. On 06.10.1998, the petitioner was told by the OC, Major H.S. Aulakh to make entries of the deficiency in his own handing/taking over notes and put up. Further, the

OC assured to petitioner that he that is to say the OC would make up the deficiencies. Thereafter, the petitioner continued to remind the OC to make up the deficiencies which was not done. The petitioner on his own was able to make up part of the deficiencies which he stated during the summary of evidence. Major A. Malhotra, the new OC, joined on 08.08.2000. The deficiencies were brought to his notice and thereafter on 05.09.2000, all charges were taken over from the petitioner. A charge-sheet for SGCM was served on the petitioner on 10.07.2003. The petitioner states that the deficiencies were of the period before he had joined and the same had been reported to the OC who had assured him that deficiencies would be made up. Petitioner says that he did not misappropriate any store. During the hearing of the charge under Army Rule 22, on 18.09.2003, four witnesses were examined, who were also cross-examined by the petitioner. The SGCM was conducted from 04.08.2003 to 13.08.2003 in which the petitioner was compelled to plea guilty, while he had initially pleaded not guilty. The petitioner says that he was willing to report the matter to the higher authorities under the provisions of Regulations for the Army 1987, Para 317 but did not do so since he had been assured by the OC that the deficiencies would be made up. During the trial, he was not allowed to cross-examine any witness but it was recorded that he had declined to cross-examine the witnesses. Petitioner says that he had filed an appeal dated 15.04.2004 before the COAS and two reminders also were sent. However the same has not been responded by the respondents.

6. The respondents were represented by Shri D.K. Pandey, assisted by Capt Soma John, department representative. OC directing the petitioner to keep the deficiencies oral and that petitioner moved to Manas Bal and recalled to the unit were denied by the respondents “**For want of knowledge**”. As regards plea during the trial, the petitioner had offered an unequivocal plea of guilty. The charge against the petitioner stands proved beyond reasonable doubt. The SGCM was conducted in the manner prescribed and the punishment is just and legal and, therefore, the respondents prayed that the petition be dismissed being devoid of merit.

7. Heard both sides and scrutinised the documents.

8. The theme of respondents’ case is that since the petitioner had pleaded guilty, the charges stand proved. The SGCM proceedings reveal that the petitioner had pleaded not guilty on 04.08.2003, the date SGCM proceedings commenced. Then he changed his defence counsel and in consultation with his new defence counsel the petitioner had pleaded guilty on 13.08.2003. The reasons for pleading guilty has not been explained in the proceedings.

9. During recording of the Summary of Evidence, the petitioner questioned PW-1 i.e. Major H.S. Aulakh with regard to deficiencies and OC had assured that the deficiencies would be made good. The witness denied it.

10. Let us look at the charges. Charge No. 1 is abetement under Army Act Section 66 and its operative part is “**By omitting to report the**

deficiencies of stores held on the charge of the said unit to an authority superior to his then OC” in terms of Regulations for the Army, 1987 Para 317. This charge does not mention that any personal gain accrued to the petitioner from this act. The 2nd charge is under Army Act Section 63 i.e violation of good order and military discipline in that knowing stores worth Rs. 53,18,911.48 to be deficient due to dishonest act of his then OC **“improperly failed to report the said deficiency to his next superior officer”** as provided in Para 137 of Regulations for the Army 1987. Para 317 reads as follows :-

*“317. **Obligation to Bring Dishonesty to Notice.**- It is the obligatory duty of every person in military employ to bring at once to the notice of his immediate superior, or the next superior where the immediate superior officer is involved, any case of dishonesty, fraud or infringement of orders that may come to his knowledge”.*

11. Admittedly, the petitioner did not report the deficiencies to an authority superior to his OC but claims that he was assured by his OC that the deficiencies will be made good. He has personally not gained anything by not reporting to superior officer as is revealed by the two charges. In his own statement during summary of evidence, the petitioner stated that he had made up deficiencies of Atta, Beson, Milk TD, Butter TD and to some extent 87 MT before arrival of Major A Malhotra. When the handing/taking over between Major Aulakh and Major Malhotra was in progress, he along with Naik Satendra Prasad reported the deficiencies to

the new incumbent which indicates that there was no intention on the part of the petitioner to hide the deficiencies. Once again we wish to mention that the charges did not mentioned any personal gain and that the petitioner had initially pleaded not guilty.

12. The petitioner had over 26 years of blemishless service as stated by him in the Transferred Application. The respondents in reply have not refuted the claim.

13. We are of the view that the charges though proved, do not merit such a harsh punishment which denies the petitioner the benefit of pension after over 26 years of service. Accordingly, we partly allow the petition. The punishment of dismissal is hereby quashed and petitioner will be deemed to be discharged from service with effect from the date on which the punishment was promulgated. He will be entitled to all the pensionary benefits and arrears of pay if any. The arrears of pay and pension shall be paid to the petitioner within 3 months from today. No order as to costs.

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

(Justice Abdul Mateen)
Member (J)

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