RESERVED
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

T.A. No. 185 of 2009

Friday, this the 26th day of October, 2018

Hon'ble Mr. Justice SVS Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

Ex No. 14802545N Nk Vijay Kumar Yadav S/o Shri Shiv Raj Singh Yadav R/o Village- Ballampur, Post- Achalpur District Mainpuri.

…. Petitioner/Appellant

Ld. Counsel for the: Shri V.A. Singh, Advocate.
Petitioner/ Appellant

Versus

1. Union of India through Secretary, Ministry of Defence, D.H.Q. Post Office South Block, New Delhi.

2. The Chief of Army Staff, D.H.Q. Post Office, South Block, New Delhi.

3. The General Officer Commanding-in-Chief, Southern Command, Pune.

4. The Commanding Officer, 5221 ASC Battalion C/o 56 APO.

5. The Commanding Officer, 6 Lancers, Presently Posted at Babina, Jhansi.

....Respondents

Ld. Counsel for the: Dr Chet Narain Singh, Advocate.
Respondents.

ORDER

"(Per Hon'ble Mr Justice SVS Rathore, Member (J)"

1. By means of this appeal the petitioner/ appellant has challenged the punishment awarded to him by the SCM, whereby the punishment of (i) reduction to the ranks, (ii) to suffer rigorous imprisonment for one month and (iii) to be dismissed from service was awarded to the appellant.

2. In brief the facts giving rise to the instant appeal may be summarised as under.

The appellant joined the Indian Army as a Sepoy/ driver in the Corps of the ASC. During the period of his service he remained posted on several stations in different capacities and he was also promoted as Naik with effect from August, 2002. Between 31.07.2002 and December, 2004 the appellant was posted at B Company of 5221 ASC Battalion located at Nasirabad, Rajasthan. During this posting he was under the command of Commanding Officer 5221 ASC Battalion between March, 2004 and May, 2004. During this period he performed his duties of fuel oil lubricants (FOL) as NCO. In the month of March, 2004 appellant's unit/Coy had gone for exercise alongwith the 203 Engineer Regiment at a place about 700 kms. from Nasirabad. In the said exercise vehicles of both the units moved together. This exercise continued for about one month. In the month of April, 2004 again a joint exercise took place in which the vehicles of appellant's unit and the vehicles of 108 Engineer Regiment were

involved. During March and April, 2004 the appellant had prepared receipt, issue and expense vouchers reflecting issue of 7082 litres of surplus diesel. On 27.06.2004 when one Nk Mahesh Singh was returning back to his camp after night training and was travelling in one of the vehicles driven by Nk V.K. Verma, second vehicle driven by Nk Mahesh Singh, at about 0930 hrs on 27.06.2004 these vehicles were stopped by Nb Sub Parmanand at a place known as Ramdevra Crossing and these vehicles were searched by Maj Manish Chauhan and his two NCO and it is alleged that currency notes amounting to Rs.1,91,000/- were recovered from the dash board of the vehicle which was driven by Nk Mahesh Singh. This amount is alleged to be the sale proceed of illegal sale of surplus fuel alleged to be created by the appellant. A Court of Inquiry was convened vide convening order dated 29.06.2004. It is pleaded in the writ petition that Havildar Mahesh Singh, Naik Vijay Kumar Verma and Sepoy Pawan Kumar Rathore all of B Company 5221 ASC Battalion were also subject of the Court of Inquiry. In November, 2004 the appellant gave his statement before the Court of Inquiry whereafter he was attached to 6 Lancers under the command of the respondent no.5 and remained so attached and in close arrest till his trial by SCM on 27.03.2007, whereafter he was inflicted the punishment mentioned above. It is the case of the appellant that during the Court of Inquiry he was not permitted to cross examine any witness and the statement of the appellant was taken separately. Since the character and military reputation of the appellant was at

stake therefore it was the bounden duty of the Presiding Officer of the Court of Inquiry to ensure compliance of Army Rule 180 but the appellant was not given any opportunity to cross examine the witnesses during the Court of Inquiry, hence there was total violation of Army Rule 180 and the Court of Inquiry is bad in law and deserves to be set aside. We feel it pertinent to mention at this stage that in the writ petition there is no prayer for quashing/ setting aside the report/ findings of Court of Inquiry. Court of Inquiry opined that the appellant is guilty of making fake entries in Fuel Oil Lubricant ledger, thus generated surplus FOL and aided in preparation of false vehicle parades. Based on the aforesaid Court of Inquiry a SCM was conducted. The case of the appellant is that the Army Rule 22 was not followed because as per Army Rule 22 the charge against the appellant has to be heard personally by the Commanding Officer in the presence of the accused and the accused shall have full opportunity to cross examine any witness against him. It is also pleaded that if Army Rule 180 is followed during Court of Inquiry then hearing of charge under Rule 22 could have been dispensed with. It is also pleaded that compliance of Army Rule 22 is mandatory as held by Hon'ble Apex Court in the case of **Lt Col Prithi Pal Singh Bedi vs. Union of India and others** AIR 1982 SC 1413. It has also been pleaded in Para- 24 of the writ petition that no dates in the Court of Inquiry were mentioned, the appellant was in close arrest in his unit from December, 2004. During SCM proceedings Maj Rakesh Mohan was appointed as the friend of the accused,

however there is nothing on record to show that the accused had ever asked for the said officer to be the friend of the accused. On the contrary the appellant asked for the services of Lt Col Nirbhay Kumar through an application dated 23.03.2007. The co-accused Naik Mahesh Singh was tried by GCM and at that time the appellant himself was in military custody and he came to know that Lt Col Nirbhay Kumar had been defending Naik Mahesh Singh in the GCM. This prompted the appellant to request the respondent no. 5 to provide the same officer as a friend of accused but his request was not accepted. This action of the respondent no.5 was violative of provisions of Army Rule 129. Therefore there is violation of the Army Rule 129. It is also pleaded that Car/ Jeep/ Truck drivers used to bring requisition forms stating the requirement of diesel. The requisition forms contained signatures of the Platoon Commander and the signatures of the drivers acknowledging the receipt of the quantity of diesel mentioned in the requisition forms. Corresponding entries were made by the MT Havildar in the Car diary and the NCO (appellant) comes nowhere in picture. The case of the appellant is that if the drivers have been allowed to go scot free on the ground that the Platoon Commander had threatened them then applying the same yardstick the appellant should not have been punished. It is also pleaded that he was forced to plead guilty because the senior officers were exposed and the respondents tried to shield them. His signatures were obtained on certain blank papers and the sentence was awarded. The entire

SCM took place in 10 minutes and the entire papers were prepared behind the back of the appellant and the same were given to him only on his moving an application. It has also been pleaded that during the entire service period of the appellant there was no adverse entry against him and his career was unblemished.

3. In view of the aforesaid facts the claim of the appellant is that the Court of Inquiry was not properly conducted and there was no compliance of Army Rule 129 and Army Rule 180. In this case during pendency of this T.A. the appellant filed several supplementary affidavits and has filed the list of vehicle cards showing that the fuel was duly issued by him as per requisition. Under the directions of the Tribunal by way of a supplementary affidavit dated 17.10.2018 the appellant has filed copy of the statutory petition submitted by the appellant alongwith the covering letter of the Jail Superintendent of District Jail Jhansi.

4. In the counter affidavit the respondents have pleaded that the appellant during his posting to 'B' Company 5221 Army Service Corps Battalion, Mechanical Transport was performing the duties of FOL NCO of the unit w.e.f. March, 2004. On 27.06.2004 Hav Mahesh, Nk V.K. Verma and Sep P.K. Rathore of the aforesaid company were intercepted by the Southern Command Liaison Unit near Pokhran and were found in possession of Rs.1,91,000 in cash which was the sale proceeds of the illegal sale of so created surplus diesel. A Court of Inquiry

was convened on 29.06.2004 by HQ 21 Corps to investigate the same. The Court of Inquiry was also asked to look into the documents pertaining to the drawl and issue of fuel, oil and lubricants for the last six months. On completion of the Court of Inquiry GOC 21 Corps directed disciplinary action against a number of persons including the appellant for various lapses on their part. Accordingly the appellant was attached to 6 Armoured Regiment (now 6 lancers) for taking disciplinary action against him. The summary of evidence was recorded against the appellant and thereafter the SCM of the appellant was held on the following charges:-

"

CHARGE SHEET

The Accused, No 14802545N Naik Vijay Kumar Yadav of B Company, 521 Army Service Corps Battalion (Mechanical Transport) attached to 6 LANCERS, **is** charged with:-

First Charge

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

in that he,

at Nasirabad, on 31 March 2004, prepared Receipt, Issue and Expense Voucher No B/5221/FOL/65/04 dated 31 March 2004 of B Company 5221 Army Service Corps Battalion (MT) reflecting issue of 1230 litres and 1396 litres of diesel on 27 March 2004 and 1456 litres of diesel on 28 March 2004, well knowing the same to be false, which led to generation of a total of 4082 litres of surplus diesel.

Second Charge

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

in that he,

at Nasirabad, on 30 Apr 2004, prepared Receipt, Issue and Expense Voucher No B/5221/FOL/IV/67/04 dated 30 Apr 04 of B Company 5221 Army Service Corps Battalion (MT) reflecting two issues each of 1000 litres of diesel on 22 April 2004 and one issue of 1000 litres of diesel on 25 April 2004, well knowing the same to

be false, which led to generation of a total of 3000 litres of surplus diesel.

(VIVEK KASHYAP)
COLONOL
COMMANDANT
6 LANCERS ”

Place: Babina
Dated: 12 March 2007

5. In the SCM the appellant pleaded guilty to both the charges and ultimately the order of dismissal from service was passed on 20.04.2007 with reduction to the ranks and to suffer rigorous imprisonment for one month. The appellant filed a petition against his conviction by SCM to GOC in C Southern Command, which was rejected on 14.06.2007. Feeling aggrieved against his conviction and thereafter dismissal of his statutory petition the appellant had preferred a writ petition before the Hon’ble High Court, which has been received by transfer in this Tribunal after establishment of Armed Forces Tribunal, Regional Bench Lucknow.

6. Learned counsel for the appellant has argued that because of the violation of the mandatory provisions of the Army Act and the Army Rules, which the applicant has mentioned in his writ petition, the SCM becomes bad in law. The Court of Inquiry, which is the source of initiation of SCM against the appellant was also conducted in violation of the provisions of the Army Act and Rules framed thereunder and therefore no action ought to have been taken against the appellant and in the alternative it has been pleaded that several non- commissioned and commissioned officers were tried in this case by the GCM. It has also been

argued that Sepoy Pawan Kumar Rathore and Naik Vijay Kumar Verma were tried by the GCM and similar punishment was inflicted against them which was challenged by them in T.A. No.402 of 2010 and T.A. No. 386 of 2010 before the Hon'ble Principal Bench of Armed Forces Tribunal, New Delhi whereby GCM was set aside and their sentence was converted into discharge and they were granted pensionary benefits. The submission of the learned counsel for the appellant is that in view of the aforesaid decision of the Hon'ble Principal Bench and keeping in view the allegations against the appellant, the sentence awarded to the appellant was shocking and disproportionate to the offence committed by him. It is submitted that when the senior officers were tried by the GCM and punished then in order to shield those senior officers the appellant and other persons were involved in the matter and keeping in view the strict discipline of the army the appellant could not gather courage to say against the then serving officers.

7. On behalf of the respondents it has been argued that the appellant has pleaded guilty during SCM proceedings. The SCM was conducted on the prescribed proforma, all the provisions were duly complied with and keeping in view the allegations against the appellant it transpires that he was part of a big scam therefore the sentence inflicted on the appellant cannot be said to be shockingly disproportionate.

8. First submission of learned counsel for the appellant is that there was no compliance of Army Rule 180. Army Rule 180 reads as under:-

> "180. Procedure when character of a person subject to the Act is involved – Save in the case of a prisoner of war who is still absent whenever any inquiry affects the character or military reputation of a person subject to the Act, full opportunity must be afforded to such person of being present throughout the inquiry and of making any statement, and of giving any evidence he may wish to make or give, and of crossexamining any witness whose evidence in his opinion, affects his character or military reputation and producing any witnesses in defence of his character or military reputation. The presiding officer of the court shall take such steps as may be necessary to ensure that any such person so affected and not previously notified receives notice of and fully understands his rights, under this rule"

9. This rule has been considered by Hon'ble Apex Court in the case of **Maj Gen Inder Jeet Kumar vs. Union of India and others** (1997) 9 SCC 1 decided on 20.03.1997. Relevant portion of the aforementioned judgment dealing with the Army Rule 180 reads as under:-

> " The Court of Inquiry is in the nature of a fact-finding inquiry committee. Army Rule 180 provides, inter alia, that whenever any inquiry affects the character of military reputation of a person subject to the Army Act, full opportunity must be afforded to such a person of being present throughout the inquiry and of making any statement, and of giving any evidence he may wish to make or give, and or cross-examining any witness whose evidence, in his opinion, affects his character of military reputation and producing any witnesses in defence of his character of military reputation. The presiding officer of the Court of Inquiry is required to take such steps as may be necessary to ensure that any such person so affected receives notice of and fully understands his rights under this rule. The appellant was accordingly present before the Court of

Inquiry. Witnesses were examined by the Court of Inquiry in the presence of the appellant. He, however, declined to cross-examine the witnesses. Instead, the appellant moved an application for an adjournment for preparing his defence. He also applied that the evidence adduced before the Court of Inquiry should be reduced to writing. The Court of Inquiry noticed that sufficient time had been granted to the appellant for preparation of his defence after receipt of the Court of Inquiry proceedings by him. Hence his application for adjournment was refused. The hearing on charges took place in the presence of the appellant. At the conclusion of the hearing on charges, an order was passed that evidence be reduced to writing and a recommendation was made to convene a General Court Martial for trial along with recommendations on charges to be framed. Thereafter the charges were finalised, charge-sheet was issued and a General Court Martial was convened.

The appellant has also contended that copy of the report of the Court of Inquiry was not given not to him and this has vitiated the entire Court Martial. The appellant has relied upon Rule 184 of the Army Rules, 1954 in this connection. Rule 184, however, provides that the person who is tried by a Court Martial shall be entitled to copies of such statements and documents contained in the proceedings of a court of Inquiry as are relevant to his prosecution or defence at his trial. There is no provision for supplying the accused with the copy of the report of the court of Inquiry. The procedure relating to a Court of inquiry and the framing of a charges was examined by this Court in the case of Major G.S. Sodhi v. Union of India [1991 (2) SCC 382]. This Court said that the Court of Inquiry and participation in the Court of Inquiry is at a stage prior to the trial by Court martial. It is the order of the Court Martial which results in deprivation of liberty and not any order directing that a charge be heard or that a summary of evidence be recorded or that a Court martial be convened. Principles of natural justice are not attracted to such a preliminary inquiry. **Army Rule 180, however, which is set out earlier gives adequate protection to the person affected even at the stage of the Court of Inquiry. In the present case, the appellant was given that protection. He was present at the Court of Inquiry and evidence was recorded in his presence. He was given an opportunity to cross-examine witnesses, make a**

statement or examine defence witnesses. The order of the Court of Inquiry directing that a Court Martial be convened and framing of charges, therefore, cannot be faulted on this ground since it was conducted in accordance with the relevant Rules."

(Underlined by us)

10. In the written arguments filed on behalf of the applicant in this case dated 04.12.2017 it has been specifically mentioned by the appellant that no witness has testified against him in the Court of Inquiry. Thus on one hand the appellant has pleaded that no witness has testified against him in Court of Inquiry then how he can say that the provisions of Army Rule 180 have not been followed. The two arguments raised on behalf of the appellant are self contradictory. When there is no evidence against the appellant, as per his own admission, then no prejudice can be said to have been caused on account of non compliance of Army Rule 180. Even if for argument sake it is treated to be correct even then when there was no evidence against him, how he can say that he was prejudiced as no opportunity to cross examine was made available to him. Apart from it in the statutory appeal the appellant has not raised any grievance against Court of Inquiry. Therefore, this ground has no substance. Law is settled on the point the procedural law is meant to achieve the ends of justice and not frustrate it. Procedural mistakes would matter only when accused can show some prejudice in his defence. Reference may be made to the following cases (1) **Bhagwan Swaroop vs. Mool Chand** AIR 1983 SC 355 and (2) **Mahadeo Govind Gharge vs. LAO** (2011) 6 SCC 321.

11. Second ground raised on behalf of the appellant is that Army Rule 22 was not followed. Army Rule 22 reads as under:-

"22. Hearing of Charge.—

(1) Every Charge against a person subject to the Act shall be heard by the Commanding Officer in the presence of the accused. The accused shall have full liberty to cross-examine any witness against him, and to call such witness and make such statement as may be necessary for his defence:

Provided that where the charge against the accused arises as a result of investigation by a Court of inquiry, wherein the provisions of rule 180 have been complied with in respect of that accused, the commanding officer may dispense with the procedure in sub-rule (1).

(2) The commanding officer shall dismiss a charge brought before him if, in his opinion the evidence does not show that an offence under the Act has been committed, and may do so if, he is satisfied that the charge ought not to be proceeded with:

Provided that the commanding officer shall not dismiss a charge which he is debarred to try under sub-section (2) of Sec. 120 without reference to superior authority as specified therein.

(3) After compliance of sub-rule (1), if the commanding officer is of opinion that the charge ought to be proceeded with, he shall within a reasonable time—

(a) dispose of the case under section 80 in accordance with the manner and form in Appendix III; or

(b) refer the case to the proper superior military authority; or

(c) adjourn the case for the purpose of having the evidence reduced to writing; or

(d) if the accused is below the rank of warrant officer, order his trial by a summary court-martial: Provided that the commanding officer shall not order trial by a summary court-martial without a reference to the

> officer empowered to convene a district court-martial or on active service a summary general court-martial for the trial of the alleged offender unless—
>
> (a) the offence is one which he can try by a summary court-martial without any reference to that officer; or
>
> (b) he considers that there is grave reason for immediate action and such reference cannot be made without detriment to discipline.
>
> (4) Where the evidence taken in accordance with sub-rule (3) of this rule discloses an offence other than the offence which was the subject of the investigation, the commanding officer may frame suitable charge (s) on the basis of the evidence so taken as well as the investigation of the original charge.]"

12. Admittedly Army Rule 22 is pre-trial stage. During the SCM proceedings the appellant has pleaded guilty and therefore in our considered opinion the finding of Hon'ble Apex Court in the case of **Union of India and others vs. Maj A. Hussain** (1998) 1 SCC 537 decided on 08.04.1997 becomes very relevant to adjudicate the present controversy, wherein Hon'ble Apex Court has observed that when there is sufficient evidence to sustain conviction, it is unnecessary to examine if pre-trial investigation was adequate or not. Requirement of proper and adequate investigation is not jurisdictional and any violation thereof does not invalidate the Court Martial unless it is shown that the accused has been prejudiced or a mandatory provision has been violated. Thus, in view of the aforesaid pronouncement, in this case wherein the appellant himself has pleaded guilty cannot claim that his interest was prejudiced as there is violation of Army Rule 22.

13. Learned counsel for the appellant has also raised the plea that he was not provided friend of accused of his own choice. Army Rule 129 deals with the provisions of friend of accused, which reads as under:-

> "129. Friend of accused. — In any summary court-martial, an accused person may have a person to assist him during the trial, whether a legal advisor or any other person. A person so assisting him may advise him on all points and suggest the questions to be put to witnesses, but shall not examine or cross-examine witnesses or address the court."

A plain reading of Army Rule 129 shows that it has not been worded in mandatory language. The argument of the learned counsel for the appellant was that he wanted Lt Col Nirbhay Kumar as friend of accused as he was defending Nk Mahesh Singh in the GCM proceedings. But it is an admitted fact that GCM of Nk Mahesh Singh in which Lt Col Nirbhay Kumar was friend of accused has also punished the appellant in that case. That apart the appellant has pleaded guilty so there was no role for the friend of the accused to play and therefore the appellant cannot claim that his defence has been prejudiced in any manner as Lt Col Nirbhay Kumar was not provided to him as friend of the accused.

14. It has also been argued that the SCM was concluded within few minutes, which itself shows that there was no application of mind. We do not find any substance in the argument of the learned counsel for the appellant because the SCM is conducted on a printed proforma and the appellant has pleaded

guilty. This point has been considered by a Co-ordinate Bench of this Tribunal in O.A. (A) No. 192 of 2014 **Hav Brijesh Kumar vs. Union of India and others** decided on 25.09.2017. Relevant portion of the aforementioned judgment is reproduced below:-

> "10. Next argument of learned counsel for the appellant that SCM concluded within few hours but this by itself is no ground in absence of any procedural irregularity of any mandatory provisions. In the case of **Rajinder Singh vs Armed Forces Tribunal Regional Bench and others, Chandigarh, Hon'ble Punjab and Haryana High Court in CWP No 4801 of 2013** has held as under:-
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> > "We have given our thoughtful consideration to the said contention of the petitioner regarding the proceedings having been concluded and a finding of guilty being recorded and thereafter the sentence imposed in twenty minutes. The matter, in our view could have been adjudicated upon and concluded within the period of twenty minutes and we are unable to hold the proceedings to be invalid on this count. The petitioner had pleaded guilty and the proceedings recorded after informing him of its effect and Forces Tribunal Regional Bench and others, Chandigarh, Hon'ble Punjab and Haryana High Court in CWP No 4801 of 2013 has held as under:- "We have given our thoughtful consideration to the said contention of the petitioner regarding the proceedings having been concluded and a finding of guilty being recorded and thereafter the sentence imposed in twenty minutes. The matter, in our view could have been adjudicated upon and concluded within the period of twenty minutes and we are unable to hold the proceedings to be invalid on this count. The petitioner had pleaded guilty and the proceedings recorded after informing him of its effect and consequences. This could well be concluded within the said time. A photocopy of the Court Martial proceedings has been shown during the course of hearing. A perusal of the same shows that it is on a printed form. The questions to be asked are printed and the answers are handwritten or typed. Besides, where ever required, the printed portions

> have been scored of and/or tick marked. This process could indeed have been completed in the time as has been recorded. Besides, there is a presumption in law that judicial and official acts have been regularly performed."
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> 11. When we examined the original record of the instant case, we find that the facts of this case are also identical and therefore simply because the SCM proceedings were concluded in a short time cannot by itself, be a ground to vitiate the SCM proceedings."

15. It has also been argued that appellant had not pleaded guilty and his signatures were obtained on blank papers. Perusal of record shows that the plea of guilty has been duly signed by the appellant. Apart from it in his statutory petition which was sent by him from Jhansi jail he has no where challenged the said plea of guilty and has not said that he was forced to sign. So this ground is an afterthought which deserves to be rejected.

16. Last submission of the learned counsel for the appellant is that the punishment inflicted on the appellant is shocking and disproportionate. It is submitted that in the case of Sepoy Pawan Kumar Rathore and Naik Vijay Kumar Verma, against whom the allegation was that the sale proceed of illegal sale of fuel was recovered from their vehicles and the sentence was to suffer imprisonment of five years and dismissal from service with reduction to the ranks of Sepoy while the appellant was inflicted with the punishment of one month imprisonment. It is submitted that Sepoy Pawan Kumar Rathore and Naik Vijay Kumar Verma challenged the punishment inflicted on them before Hon'ble

Principal Bench of the Armed Forces Tribunal, New Delhi by means of T.A. No.402 of 2010 and T.A. No. 386 of 2010 respectively and the same were disposed of together by Hon'ble Principal Bench of Armed Forces Tribunal on 02.03.2017. Proceedings of GCM were quashed and the aforementioned T.As. were allowed with the following directions :-

> " (a) The sentence of dismissal from service of the two appellants is to be read as discharge, for which in the case of Sep Pavan Kumar Rathore, he will be given pensionary benefits to include notional service up to 15 years of service.
> (b) In the case of Nk Mahesh Singh, he will be given the benefit of notional service till the age/service of discharge of a Naik based on terms and conditions of service.
> (c) Both the appellants will be entitled to draw pension for these constructed periods of service.
> (d) There will, however, be no lien on wages for the notional periods that have been permitted by the Tribunal for purposes of pension and as such no wage or pay, for these periods, will be claimed or paid.
> (e) The period served in rigorous imprisonment of both the appellants will be counted as pensionable periods as relevant, and no interruption in pension will be undertaken for these periods.
> 34. Both the T.A.s are allowed to the extent as indicated above."

17. The submission of the learned counsel for the appellant is that since the offence alleged to have been committed by the appellant was less grave in nature as he was inflicted the lesser punishment of imprisonment of one month apart from other punishments, therefore, he is also entitled to the same treatment which was given to Ex Nk Vijay Kumar Verma and Ex Sep Pawan Kumar Rathore.

18. On behalf of the respondents it has been argued that the infliction of appropriate punishment is within the domain of the disciplinary authority and the Court should not ordinarily interfere in it. We would like to mention here the legal position regarding interference in punishment by Court/ Tribunal. Hon'ble Apex Court in the case of **Ranjit Thakur vs. Union of India** AIR 1987 SC 2392 has held that where the punishment inflicted by the disciplinary authority is shocking and disproportionate then the Court would certainly interfere in the punishment. In the facts of the instant case the appellant is seeking parity with the co-accused whose cases were much serious than the case of the appellant because in their case sale proceeds of the alleged illegal sale of oil was recovered from them while in the case of the appellant he has only illegally supplied the petrol to the vehicles as per demand received by him. What transpires is that all were in hand and glove with each other under a conspiracy.

19. We have gone through the judgment passed by the Hon'ble Principal Bench of the Armed Forces Tribunal in the aforesaid T.As. and we find that on the basis of evidence recorded in the GCM and after perusal of the record the Hon'ble Tribunal reached to the conclusion that there is no evidence of dishonest misappropriation by the appellants and on these grounds the GCM was quashed. However, in the instant case, as stated earlier the appellant has pleaded guilty and therefore to this extent the case of the appellant is distinguishable. But we are of the view

that since the persons who were charged with more serious offence and the alleged sale consideration of the surplus fuel was recovered from them, therefore the appellant is also entitled for modification of the punishment order. The appellant has already served the sentence of one month imprisonment. The appellant has also more than 17 years of unblemished service to his credit, therefore, ends of justice would meet if the appellant's sentence is modified to the sentence of imprisonment inflicted by the SCM and his dismissal may be converted into discharge. The punishment of reduction to ranks also deserves to be set aside.

20. Accordingly, this T.A. is **partly allowed**. The finding of the SCM is confirmed and sentence of imprisonment of one month is also confirmed which the appellant has already served. The sentence of dismissal shall be modified into discharge and the punishment of reduction to the ranks is also set aside. The appellant shall be entitled to the pensionary benefits of the rank last held by him. The respondents are directed to calculate arrears of pension of the appellant and the same shall be paid to him within four months from the date a copy of this order is produced before them, failing which they will have to pay interest @ 9% from the date it became due till the date of actual payment.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated: October 26, 2018
JPT