

**RESERVED**  
**COURT NO. 1**

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

**O.A. No. 310 of 2013**

**Thursday, this the 5<sup>th</sup> day of October, 2017**

**“Hon’ble Mr. Justice D.P.Singh, Member (J)**  
**Hon’ble Air Marshal Anil Chopra, Member (A)”**

Ex- Corporal Piyooash Kumar Singh Parmar (795904-G),  
Clerk Pay Accounts, of HQ Southern Air Command (Unit),  
Air Force, C/o 56 APO, son of Shri. Jagroop Singh, resident  
of Village – Kurara, Post – Kurara, District – Hamirpur  
(U.P.) – 210505 ----- **Applicant**

**Ld. Counsel appeared for the applicant** - **Shri P.N. Chaturvedi,**  
**Advocate,**

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi – 110011.
2. Chief of the Air Staff, Integrated HQ of Ministry of Defence (Air) Vayu Bhawan, New Delhi – 110011.
3. Air Officer Commanding-in-Chief, HQ Southern Air Command, C/o 56 APO.
4. Commanding Officer, HQ Southern Air Command (Unit) Air Force Station, C/o 56 APO.

----**Respondents**

**Ld. Counsel appeared for the Respondents** - **Dr. Shailendra Sharma Atal,**  
**Advocate, Central Govt.**  
**Standing Counsel.**

**Assisted by** - **Wg Cdr Sardul Singh,**  
**OIC Legal Cell.**

**ORDER****“Per Hon’ble Mr Justice Devi Prasad Singh, Member (J)”**

1. This Present Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the petitioner for grant of relief of setting aside the findings and sentence by the District Court Martial on 26.04.2013 and its confirmation on 16.05.2013 and the order dated 16.05.2013 as contained in HQ South Air Command, Indian Air Force letter.

2. The facts in nutshell are that the Applicant was enrolled in the Indian Air Force as Aircraftsman in the trade of Pay Accounts Clerk on 04.02.1999 and was posted in Southern Air Command Unit on 21.04.2008. He was tried by the District Court Martial from 09.04.2013 to 26.04.2013 and in ultimate analysis, was found guilty of different charges. As a consequence of his being held guilty, the Applicant was awarded punishment of reduction in rank from 26.04.2013 attended with punishment of dismissal from service and six months R.I. The sentence was later-on confirmed by order dated 16.05.2013. The confirming Authority also reiterated the punishment and the Application moved by the Applicant was rejected by confirming authority on 16.05.2013. Feeling aggrieved, the

Applicant has approached the Tribunal by way of filing the aforesaid O.A seeking the reliefs as enumerated above.

3. The Applicant has set out several grounds to prop up the reliefs claimed in the O.A and one of the ground urged is that he was the cash out clerk and not the Pay Acct Clerk attended with further submission that in the event of misappropriation of funds, no FIR was lodge against the Applicant. It is also urged that the convening order was passed and signed by the Staff Officer who does not happen to be the Commanding officer attended with further submission that the convening authority AO-in-C, Southern Air Command Air Force Rules 43 which empowers the Commanding officer to sign the convening order inasmuch as there is a purpose behind it. Being competent authority, it is expected from the Commanding officer for applying his own mind in the case where fundamental right to livelihood is involved protected by Article 21 of the Constitution of India.

4. In the light of the above submissions, for ready reference, Rule 43 of the Air Force Rules 1969 being relevant is reproduced below.

*"43. Convening of general and district Court martial.- (1) An officer before convening a general or district Court Martial shall first satisfy himself that the charges to be tried by the Court*

*Martial are for offences within the meaning of the Act, and framed in accordance with law, and that evidence justifies a trial on those charges he may amend the charges if he deems fit, and if not so, satisfied order release of the accused, or refer the case to superior authority.*

*(2) He shall also satisfy himself that the case is a proper one to be tried by the description of Court-Martial he proposes to convene.*

*(3) The officer convening a Court Martial shall appoint or detail the officers to form the Court, and may also appoint or detail such waiting officers as he thinks expedient. He may also, where he considers the services of an Interpreter to be necessary, appoint or detail an interpreter to the Court.*

*(4) After the convening officer has appointed or detailed the officer to form a Court martial under sub rule (3), convening order of the Court martial and endorsement on the charge sheet for trial of the accused by Court Martial may either be signed by convening officer or by a staff officer on his behalf. The charge sheet on which the accused to be tried, the summary of evidence and the convening order for assembly of Court martial shall then be sent to the Senior officer of Court Martial and the Judge advocate, if appointed."*

5. A plain reading of aforesaid provision shows that District Court Martial proceeding may be convened only on the decision taken and order passed by the officer in

command, in the present case, AO-C-in-C. Of course in appropriate case, decision taken by the AO-C-in-C may be communicated by the Staff officer, but the record must reflect that the decision was taken by the AO-C-in-C with conscious mind to hold District Court martial and this fact must emerge from the order passed by the Staff Officers. In the present the order to convene District Court Martial has been passed by Wing Commander, Command Discipline officer for AO-C-in-C. For ready reference, the impugned convening order is reproduced below.

**"ORDER BY AIR MARSHAL RK JOLLY VM VSM  
AIR OFFICE COMMANDING -IN-CHIEF  
SOUTHERN AIR COMMAND, IAF**

795904 CPL PKS Parmar Clk PA of  HQ SAC (U), Air Force	The details of officers as mentioned below will assemble at HQ SAC (U), AF, at 1000 h, on the ninth day of April 2013, for the purpose of Trying by a District Court Martial the accused Person named in the margin.  The senior most officer to sit as Presiding Officer.
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**MEMBERS**

Wg Cdr RK Dodium (24769) AE (M) HQ SAC, IAF  
Flt Lt SK Singh (29459) F (P) 151 HU, AF  
Flt Lt M Sharma (31464) F (P) 33 Sqn, AF

**WAITING MEMBERS**

Two officers not below the rank of Flt Lt having not less than two whole years of commissioned service in the Indian Air Force, are to

be detailed as waiting members by Commanding Officer, HQ SAC (U), AF.

**JUDGE ADVOCATE**

Wg Cdr AK Nair (25902) Lgs/Lgl of HQ TC, IAF is appointed as Judge Advocate.

**PROSECTUOR**

Sqn Ldr R Rajesh (28075) Accts of 17 FBSU, AF is appointed as Prosecutor.

The accused will be warned and all witnesses duly required to attend.

The proceedings (of which original and three copies are required) will be forwarded to HQ Southern Air Command, IAF under a confidential cover marked "For the personal attention of Command Discipline Officer, HQ SAC, IAF"

Signed at HQ SAC, IAF this second day of April 2013.

Sd/- x x x x x  
(RN Magadum)  
Wing Commander  
Command Discipline Officer  
For Air Marshal  
Air Officer Commanding-in-Chief  
Southern Air Command, Indian Air  
Force

6. Learned counsel for the Applicant vehemently submits that a perusal of the impugned order shows that the Wing Commander had not indicated in his order as to when the AO-C-in-C took the decision to hold District Court martial or what its composition was. Only a reference has been made in the signature block that it has been passed "for AO-C-in-

C". It is further submitted that the impugned order is silent with regard to application of mind by the AO-C-in-C.

7. Per contra, it is contended that a court of inquiry was ordered at HQ SAC on 07.02.2011 to probe into alleged involvement of the Applicant in the discrepancy found in the bank schedule correspondence file in respect of cheque no 068768 dated 21.01.2011 for Rs 42,182/- issued to SBT, Akkulam by SAO on 25.01.2011. It is further contended that on analysis of evidence, the Court held Applicant blameworthy for misappropriation of Public Fund amounting to Rs 1,25,018/- and recommended initiation of disciplinary action against him. The said Court of Inquiry was taken to finality on 24.02.2011. In the said Court of Inquiry, the Applicant has stated that he in the month of Jan 2011 had processed some wrong claims by forging the signatures of account staff including WO I/C and deposited an amount of Rs 38,427/- out of the claims in his bank account with SBT, Akkulam. He also stated that this was the one time he did the fraud. Further he stated that knowing that those claims mentioned at EX 'A' to 'F' to said Court of Inquiry proceeding were false claims, he has not attached all mandatory supporting documents alongwith them. He also admitted that he had prepared the bills of Hotel stay and food charges mentioned in Ex 'A' and 'B' on computer and attached the same to the claims, He also

admitted on oath that he had processed false claims and fraudulently credited Rs 37,427/- only in his savings account in the month of Jan 2011. However, on producing further evidence through vouchers and other witnesses, the Applicant made two additional statements which being relevant are quoted below.

“(a) That he has hidden truth on oath in front of CoI and he does not know the total amount he had manipulated. It may be approximately Rs 75000/-. Nobody other than him is involved in this matter.

(b) He had diverted an amount of Rs 1,25,018/- from Public Fund Bank list to his personal saving bank account with SBT Akkulam.

(c) As dealing Clerk, making of bank schedule in his responsibility. However, he is not authorized to sign the bank list/covering letter sent to bank.

(d) he has processed/raised claims on his own and fraudulently made signature of WO i/c with full intention to manipulate public funds.

(e) He has invested Rs 2 lakhs in City Group New Delhi in Feb 2008 which is yielding an income of Rs 7,775/- per month till July 2009.



8. In the instant case in all 24 charges were framed and in all 18 witnesses were examined. Out of 24 charges, he was found guilty of 9 charges.

9. The original record has been produced before us. From a perusal of the record, it would transpire that Wg Cdre R.N.Magadum, Chief Judge Advocate made the following recommendations for approval for holding of DCM vide note dated 05.03.2013 and the same being relevant is quoted below.

*"12. The Col assembled to inquire into the subject matter in its recommendation, has recommended 'disciplinary action' against the accused for the said misappropriation of money from Air Force Public Fund. The charges against the accused can either be summarily disposed of by Commanding Officer under section 82 of Air Force Act, 1950 or he can be ordered to be tried by a District Court Martial (DCM). Commanding Officer, HQ SAC (U) has recommended for trial of the accused by DCM. Considering the gravity of offences committed by the accused and the recommendation of the Commanding Officer, it is recommended that the accused be ordered to be tried by a DCM on the draft charge sheet placed at Annexure-1 to my RAT."*

10. On the above recommendations, AO-C-in-C passed the following order on 07.03.2013:

*"1. On reconsidering the entire case de novo, I agree with the revised recommendation made at Para 12 above as same will provide an additional opportunity to the accused to vindicate his stand.*

*2. Accordingly, I, now order that the accused, 795904 Cpl PKS Parmar be tried by a DCM."*

11. The entire record does show that the AO-C-in-C took a conscious decision to convene the District Court Martial against the applicant with composition or select members and direct the staff officer to circulate the order accordingly.

12. From a perusal of Rule 43 quoted above, it would appear that it is for the AO-C-in-C to apply his mind with regard to composition of District Court Martial.

13. No doubt, it is well settled proposition of law that every order should stand on its own leg. In case, convening order does not refer to decision taken by the AO-C-in-C who is the competent authority, it shall then be presumed that no decision was taken by the AO-C-in-C i.e. the convening authority but in the instant case, the order passed by AO-C-in-C does reflect that a conscious decision has been taken by the competent authority.

14. In the case of **State of Punjab Vs Bandeep Singh and others, 2016 (1) SCC 724**, their Lordships of Hon'ble Supreme Court have held that decision must be

composite and self-sustaining one, containing all reasons which prevailed with the officer/official to arrive at his conclusion. The order of statutory authority cannot be construed in the light of explanation subsequently given by the officer. It must be construed objectively with reference to the language used in the order. The decision must be informed and buttressed with reasons, which seems to be lacking.

15. We have scanned the entire record and it does appear to us that proper decision has been taken by the AO-C-in-C with regard to composition of District Court Martial. Rather, decision for District Court Martial does seem to have been taken by conscious application of mind by the Competent Authority. Hence, we are of the view that there is no error in the action taken by the respondents rendering the entire proceeding having become vitiated.

16. It is well settled proposition of law that a thing should be done in the manner provided by the Act or the statute and not otherwise vide **Nazir Ahmed vs. King Emperor**, AIR 1936 PC 253; **Deep Chand vs. State of Rajasthan**, AIR 1961 SC 1527, **Patna Improvement Trust vs. Smt. Lakshmi Devi and ors**, AIR 1963 SC 1077; **State of U.P. vs. Singhara Singh and others**, AIR 1964 SC 358; **Barium Chemicals Ltd vs. Company Law Board**, AIR

1967 SC 295; **Chandra Kishore Jha vs. Mahavir Prasad and others**, 1999 (8) SCC 266; **Delhi Administration vs. Gurdip Singh Uban and others**, 2000 (7) SCC 296; **Dhananjay Reddy vs. State of Karnataka**, AIR 2001 SC 1512; **Commissioner of Income Tax, Mumbai vs. Anjum M.H. Ghaswala and others**, 2002 (1) SCC 633; **Prabha Shankar Dubey vs. State of M.P.**, AIR 2004 SC 486 and **Ramphal Kundu vs. Kamal Sharma**, AIR 2004 SC 1657.

17. Hon'ble Supreme Court in the case reported in **Jaisinghani vs. Union of India and others**, AIR 1967 SC 1427 ruled that decision should be made by the application of known principles and rules and in general such decision should be predictable and a citizen should know where he is.

18. In view of the above, since the convening order has been passed by the Convening Authority in terms of the Rule 43 of the Air Force Rules 1969 and in view of the settled proposition of law as discussed above, there is no illegality permeating the proceeding.

19. Yet another ground that commends to us for demolishing the stand of the Applicant is that specific admission is on record in which the Applicant has confessed to his guilt of embezzling public fund to the extent of more

than one lakh. There is yet another admission on record that he had forged the signatures of Warrant Officer Incharge with full intention to manipulate public funds. There being overwhelming evidence on record against the applicant, we do not find any convincing ground to interfere with the order of dismissal. It does not lie in the mouth to say that it would inure to his benefit in case no FIR was lodged against the Applicant. In the event of specific admission, in our view, the authorities took a lenient view of dismissing him from service instead of launching criminal action against him.

20. As a result of foregoing discussions, the impugned orders/findings and sentence by the District Court Martial on 26.04.2013 and its confirmation on 16.05.2013 and the order dated 16.05.2013 as contained in HQ South Air Command, Indian Air Force letter cannot be said to be unlawful and thus the O.A is accordingly dismissed in limine.

21. No order as to costs.

**(Air Marshal Anil Chopra)**  
**Member (A)**

**(Justice D.P. Singh)**  
**Member (J)**

**Dated : October, ,2017**

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