

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Reserved.
(Court No. 3)

Transferred Application No. 526 of 2010

Tuesday the 11th day of August, 2015

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

No. 14621026-W Ex Sep (Dvr) Mohan Kumar Pandey, son of Late Gauri Shakner Pandey (earlier lodged in Central Jail) Ex 608 EME Bn, C/o. 56 APO.

..... Petitioner

By Shri Rohit Kumar, learned counsel for the petitioner.

Versus

1. Chief of the Army Staff, New Delhi.
2. GOC, 8 Mtn Div, C/o 56 APO.
3. Commandant-cum-CRO, EME Centre & Records, Secunderabad.
4. Col. S.P. Yadav, 608 EME Bn, C/o. 56 APO.
5. Lt. Col. P.M. Singh, Second-in-Command, 608 EME Bn, C/o. 56 APO.
(Since posted in Central Sector).
6. CCDA (Pensions), Draupadighat, Allahabad.
7. Union of India through Secretary, Ministry of Defence, New Delhi.

..... Respondents

By Shri Deelip Singh, learned counsel for the respondents, along with Capt. Ridhishri Sharma, Departmental Representative.

ORDER

1. This Writ Petition No. 24145 of 2004 was transferred from the Hon'ble Allahabad High Court to this Regional Bench of the Armed Forces Tribunal on 11.5.2010 and was registered as Transferred Application No. 526 of 2010.
2. By this petition the petitioner prays for an order treating him to be continuously in colour service with all consequential benefits and to quash the rejection order dated 20.4.2004 by the COAS as also the SCM proceedings held on 28.4.2003
3. The facts of the case, in brief, are that the petitioner was enrolled in the Indian Army on 28.2.1994 and in 2002 he was serving in 108 EME Battalion and five charges were levelled against him, which are as follows :

“TENTATIVE CHARGE SHEET

The accused, No 14621026W Sep/Dvr (MT) Mohan Kumar Pandey of 608 EME bn, is charged with:-

First Charge

Army Act Sec 52 (a) COMMITTING THEFT OF PROPERTY BELONGING TO THE GOVERNMENT.

in that he,

at field, on 05 May 2002, committed theft in respect of a Identity Card, bearing No 471413, property of the Government issued to IC-31923M Lt Col PM Singh of the same Battalion.

Second Charge

Army Act Sec 63 AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE.

in that he,

at District Bettiah, West Champaran, unauthorisedly and improperly sold Identity Card bearing No 471413, property of the Government issued to IC-31923M Lt Col PM Singh of

the same Battalion for Rs 10,000/- (Rupees ten thousand only) to Mr DN Tiwari, a civilian.

Third Charge

Army Act Sec 39(b) WITHOUT SUFFICIENT CAUSE OVERSTAYING LEAVE GRANTED TO HIM

in that he,

at FIELD, ON 15 May 2002 having been granted 41 days BAL wef 07 May 2002 to 16 Jun 2002 to proceed to his home and having been asked to rejoin duty immediately on 15 May 2002 due to involvement in disciplinary case, failed without sufficient cause to rejoin immediately at 255 Transit Camp, till he voluntarily rejoined at 255 Transit Camp, on 23 Jun 2002 (FN).

Fourth Charge

Army Act Sec 51 WHEN IN LAWFUL CUSTODY ESCAPING

in that he,

at field, on 10 Jul 2002, when under close arrest in the unit quarter guard escaped there from.

Fifth Charge

Army Act Sec 39(a) ABSENTING HIMSELF WITHOUT LEAVE

in that he,

at field, absented himself without leave from the unit lines from 10 Jul 2002 to 16 Aug 2002.”

4. Based on the charges, the petitioner was tried by SCM on 28.4.2003 and during SCM proceedings he pleaded guilty to all the charges, levelled against him. He was subsequently awarded sentence of one year's R.I. and dismissal from service. His appeal under Section 164(2) of the Army Act before the COAS was rejected on 20.4.2004. Aggrieved by this, the petitioner preferred the present writ petition before the Hon'ble Allahabad High Court, which ultimately has been transferred to this Tribunal.

5. Shri Rohit Kumar, learned counsel for the petitioner, argued that the charges against the petitioner are overlapping. According to him charges no. 1 and 2 could have been combined into one charge, and similarly, charges no. 4 and 5 could have been combined into one charge. According to the petitioner the investigation as also trial was rushed through in great haste and, the examination and cross-examination of the prosecution witnesses were not permitted. The charges under Rule 22 of the Army Rules were not properly heard. The hearing commenced at 1300 hours which is unusual since it was the lunch hour and after examining the witnesses it could not have been completed before 1800 hours, which is legally not valid. The petitioner claims that no FIR for the loss of Identity Card was lodged. Also, for trying him by SCM prior sanction of the DJAG was not obtained. The petitioner states that the Identity Card was reportedly checked on 7.5.2002 where as the petitioner had proceeded on leave on 6.5.2002 by a Jet Airways flight and, therefore, he could not have stolen the Identity Card. Major Vijayan KT, the essential witness, was detailed as Member of the Court Martial. Major Vijayan also promulgated the sentence. The prosecution witnesses, viz. Sub. Major P.P. Singh as also Sub. Maharaj levelled baseless charges against him, which were all cock and bull stories. Major A.K. Saxena recorded the Summary of Evidence whereas he was not qualified to do so since he had directed the petitioner to report back from leave. In the Summary of Evidence as also during SCM proceedings there was no whisper about D.M. Tiwari to whom the petitioner allegedly sold the Identity Card. Also the petitioner claims that he has not been given a copy of the Court of Inquiry, held

to investigate the loss of Identity Card of Lt. Col. P.M. Singh. According to the petitioner an FIR should have been lodged and thereafter the case should have been sent to Civil Court. The SCM on the other hand was conducted in a matter of couple of hours which is bad in law. Though the petitioner pleaded guilty which was duly recorded by the court but there is no certificate of compliance of Rule 115(2) of the Army Rules. The petitioner also claims that he was interrogated and tortured by Major Mishra of 8 Mountain Division, FS Section, and his men. The petitioner states that the reason for Lt. Col. P.M. Singh to falsely implicate him in the case of loss of his Identity Card is that the petitioner had declined to massage his leg. Eventually the petitioner claims that he did massage the leg of Lt. Col. P.M. Singh but he was threatened with dire consequences. His statutory petition was rejected by the COAS without examining full details of the case. The petitioner, therefore, prays that the reliefs, sought for by him, be granted. Learned counsel for the respondents Shri Deelip Singh, assisted by Capt. Ridhishri Sharma, submitted that several offences are registered in the petitioner's conduct sheet prior to this trial by SCM. Elaborating the offences committed by the petitioner, learned counsel for the respondents submitted that five red ink entries and one black ink entry for charges under Sections 39(a), 39(b), 52(f), 56(a) and 63 of the Army Act were recorded against the petitioner. The petitioner was detailed as *Sahayak* of Lt. Col. P.M. Singh on 15.4.2002. He requested for 41 days' leave with effect from 7.5.2002 to get married. He left by a civil flight on 6.5.2002. On 7.5.2002 Lt. Col. P.M. Singh discovered that his Identity Card was missing. Lt. Col. Singh suspected the

petitioner and he contacted the petitioner on telephone on 10.5.2002. The petitioner expressed his complete ignorance. Thereafter Sub. B.K. Maharaj of the Unit was sent to meet the petitioner. Sub. Maharaj met the petitioner at his village on 15.5.2002. That time too the petitioner expressed his ignorance about the whereabouts of the Identity Card of Lt. Col. Singh. Sub. Maharaj spoke to his C.O. and was directed to inform the petitioner that his leave had been cancelled. The petitioner did not rejoin the Unit immediately, but did so on 23.6.2002. At this stage the State Bank of India, Udhampur, had complained that the petitioner had committed forgery by converting a cheque of Rs. 1,000/- into Rs. 10,000/- by adding one additional '0'. The petitioner was tried for falsifying documents on 8.7.2002 and was awarded 28 days' R.I. From the Unit Quarter Guard the petitioner ran away on 10.7.2002 and thereafter he reported at the residence of DGEME at New Delhi on 16.8.2002 and from there he was escorted back to the Unit on 31.8.2002. In the Unit he confessed to stealing the Identity Card and selling it to one Mr. D.N. Tewari. The charges under Rule 22 of the Army Rules were heard on 11.9.2002 and pre-trial advice was obtained from DJAG HQ 14 Core through HQ 8 Mountain Division. HQ 8 Mountain Division, vide their letter dated 1.12.2002, accorded permission to the CO of 608 EME Battalion to try the petitioner by SCM. In the meantime another investigation was carried out to examine the counter insurgency angle for which the CO of Central Command, Liaison Unit, was requested and the report was received. The respondents stated that the Identity Card had been checked by Major Vijendra on 1.5.2002 which is borne out by the Identity Card Register which was produced as an exhibit. The

investigation and SCM was not rushed. It was done extremely deliberately and all provisions of law were strictly followed. The respondents pray that the petition be dismissed lacking any merit.

6. Heard both the sides and examined the documents.

7. The narrative that emerges out is that the petitioner was *Sahayak* of Lt. Col. P.M. Singh. The Identity Card of Lt. Col. P.M. Singh was checked on 1.5.2002 by Major Vijayan KT. The petitioner proceeded on leave by a civil flight on 6.5.2002. On 7.5.2002 Lt. Col. P.M. Singh found his Identity Card missing and he suspected that the petitioner might be involved in the loss of this Identity Card. He contacted the petitioner on 10.5.2002 on telephone, but the petitioner expressed his ignorance. Thereafter Sub. Maharaj was sent to meet the petitioner. That time too the petitioner expressed his ignorance. Thereafter his leave was cancelled. The petitioner did not return to the Unit immediately, but did so on 23.6.2002. In the Unit, on questioning, he confessed to sealing of the Identity Card and selling it to one D.N. Tewari. Sub. Major P.P. Singh in his testimony stated, inter alia, that on 10.7.2002 the petitioner deserted from the military custody until he reported to the DGME on 16.8.2002. From there he was escorted back to the Unit. Sub. B.K. Maharaj also in his testimony narrated the facts that have been mentioned above. Sub. Maharaj further said in his testimony that the petitioner had told him that he would meet him at 255 Transit Camp, New Delhi, on 19.5.2002, but the petitioner failed to turn up on the said date.

8. The petitioner gave a statement during Summary of Evidence. He admitted that he had left by a civil flight on 6.5.2002. He also admitted that he had

received a phone call from Lt. Col. P.M. Singh on 10.5.2002 and he admits Sub. B.K. Maharaj met him on 15.5.2002. He said that he expressed ignorance. He, however, goes on to say that on 15.5.2002 itself he met one Mr. D.N. Tewari at Bettiah and handed over the Identity Card of Lt. Col. P.M. Singh to him, for which he was paid a sum of Rs. 10,000/-. On return to the Unit he was marched up to the CO on 8.7.2002 on charge of falsifying documents for which he was awarded 28 days' R.I. He admits that on 10.7.2002 he escaped from custody and travelled to Jammu in a civil Truck. He reached Jammu on 13.6.2002 and from there he went to his village. Thereafter, on 10.8.2002, he met the Member of Parliament of his area, viz. Dr. M.P.Jaiswal, at Delhi and requested him for his posting. On 16.8.2002 he went to the residence of DGEME to put before him his grievance. On the orders of the DGEME, he was attached with Army HQ with effect from 19.8.2002 and thereafter was escorted back to the Unit. During recording of Summary of Evidence, the petitioner did not call for any defence witness, neither did he made any statement before the court.

9. We have very carefully examined the documents relating to the SCM and have found no infirmity in them. The charges against the petitioner have been correctly framed and have been proved beyond a reasonable doubt by corroborating testimonies of the prosecution witnesses during Summary of Evidence. By his own admission, the petitioner sold the Identity Card of Lt. Col. P.M. Singh to one D.N.. Tewari. Maj Vijayan KT attended the trial. He was not a member of the court as Court in SCM comprises just one person, viz CO. The Court of Inquiry to inquire into the counter insurgency angle of the loss of

Identity Card is a confidential matter and does not relate to the charges made against the petitioner.

10. We are of the view that the charges are serious and breach of discipline of the Army, as such the punishment awarded to the petitioner by SCM is just and legal. Also we take into account the fact that in his short span of service, which is approximately 9 years, the petitioner had been awarded red ink entries on five earlier occasions and that indicates that the petitioner is not given to adhere to norms of discipline in the Army and, therefore, the punishment awarded by SCM is appropriate. Accordingly, this Transferred Application is dismissed as it lacks merit. No order as to costs.

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

(Justice Abdul Mateen)
Member(J)

PG.