IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

T.A. No. 274/2010

[W.P. (C) No. 18136 of 2006 of Delhi High Court]

Brig. (Retd.) R.P. Singh .....Petitioner

Versus

Union of India & Others .....Respondents

For petitioner: Lt. Col. (Retd.) Diljit Singh, Advocate.

For respondents: Col. (Retd.) R. Balasubramanium, Advocate.

CORAM:
HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.
HON'BLE LT. GEN. M.L. NAIDU, MEMBER.

JUDGMENT :

1. Present case W.P. (C) No. 18136 of 2006 was filed in Hon'ble Delhi High Court in 2006 which was transferred to this Tribunal on its formation on 15.01.2010.

2. The brief facts of the case are that the petitioner was commissioned on 12th June, 1969. During his service he qualified in several professional courses and also acquired various

academic qualifications. He held challenging Command and Staff assignments during his tenure. Petitioner was promoted as a Brigadier and was appointed as Commander, 35, Infantry Brigade in Delhi on 09.03.1998. He relinquished his Command on 19.10.2000. He was selected to attend the National Defence Course w.e.f. January, 2001.

3. In June, 2001 General Officer Commanding, 2 Corps ordered a court of inquiry to ascertain irregularities in the Canteen (CSD) of 35, Infantry Brigade accounts as alleged by the Chartered Accountants. The court of inquiry was finalised on 13th December, 2001 which recommended disciplinary action against the petitioner.

4. Petitioner was consequently attached on 14.02.2002 to 7 Infantry Division, Firozepur. Army Rule 22 was complied with in July, 2002 in which of the 18 charges framed, 3 were dropped at this stage. The evidence was ordered to be recorded in writing which commenced in September, 2002 and was completed in December, 2002.

5. Meanwhile petitioner filed a Writ Petition (C) against the order of attachment to Firozepur which was dismissed in May, 2002.

6. After the recording of summary of evidence a charge sheet containing 13 charges was served to the petitioner. GCM assembled on 21.03.2002 and was concluded on 10.07.2003. The petitioner was held guilty of 7 charges. He was awarded punishment of *"severe reprimand and forfeiture of service for 12 years in pension"*.

7. General Officer Commanding, 11 Corps who was also the convening authority in this case, ordered on 15.12.2003, a revision of the sentence as he considered the sentence awarded by the GCM to be too lenient. GCM reassembled on 29.12.2003 and revised the sentence *"to cashiering and rigorous imprisonment for 9 months."*

8. Petitioner filed another Writ Petition (C) No. 122 of 2004 against the revision order which was also dismissed. A SLP

for the same was also dismissed as post confirmation petition preferred by the petitioner was awaiting disposal.

9. The Central Government dismissed the post confirmation petition on 25.04.2006. The present petition was filed thereafter.

10. Learned counsel for the petitioner went to the background of the case by suggesting that Lt. Gen. O.S. Lohchab was inimical to the petitioner as his friend Sh. Surender Kumar was not allotted a shop in the Shanker Vihar Shopping Complex, therefore, note of this fact may be taken. Lt. Gen. Lohchab had become the Director General of Military Intelligence and harboured ill will against the petitioner as he had not helped Sh. Surender Kumar in allotment of a shop in Shanker Vihar Shopping Complex.

11. Learned counsel for the petitioner also argued that the court of inquiry was ordered by the GOC, 2 Corps based on an anonymous letter which was totally against the CVC norms and policies issued by the Army Headquarters from time to time. He

cited CVC Notification No. 3 (V)/99/2 dated 29.06.1999 and Army HQ Letter No. A/56571/AG/DY-I dated 14.08.99. He also cited the decision given in the case of Noor Aga vs. State of Punjab - MANU/SC/12913/2008 to support his contention. We have examined the convening order of the court of inquiry dated 17th June, 2001 and have verified that the Inquiry was based on the letter initiated by Chand Kamal Gupta Associates, Chartered Accountants vide their letter dated Audit/47 dated 11.05.2001. This Chartered Accountant was contracted for audit at 35, Infantry Brigade Canteen accounts and they had highlighted certain irregularities in maintaining of CSD Accounts of 35, Infantry Brigade. As such, it was not an anonymous complaint.

12. Learned counsel for the petitioner argued that during the court of inquiry, Army Rule 180 was not complied with. We were of the considered opinion that court of inquiry is of no consequence at this stage, as the matter has been referred to a General Court Martial. Learned counsel cited the decision given in the case of Prithi Pal Singh Bedi vs. Union of India – (1982) 3 SSC 140 wherein it has been held that "*Army Rule 180-obligatory-full opportunity to participate. Participation cannot be avoided on*

specious plea no specific inquiry was directed against persons whose character and military reputation involved-afforded full opportunity so that nothing is done at his back and without opportunity of participation-Rule 180-enabling provision to ensure participation-Pr. 46 @ 25- We are sure-authorities-supply necessary documents-avoid even remote reflection-not given adequate opportunity to defend himself ". The argument does not hold relevance, as since after the Court of Inquiry, the charges were heard under Army Rule 22 and evidence reduced to writing under Army Rule 23, followed by examination of witnesses in the General Court Martial.

13. We requested learned counsel for the petitioner to proceed on arguing with the evidence on record during the General Court Martial so that proper appreciation of the evidence can be made. Court of inquiry is actually redundant at this stage, unless matter/facts in proceedings are in dispute.

14. Learned counsel for the petitioner argued that Army Rule 22 was not complied with in the letter and spirit. Two witnesses and documents were not made available on the

grounds that it was “Not relevant”. While referring the case for reducing the evidence in writing was in violation of mandatory provisions of the Army Rule 22 in which the accused was not given full opportunity to cross examine witnesses and to produce witnesses and evidence in his defence on similar grounds. He supported his arguments by citing (1982) 3 SCC – Lt. Col. Prithi Pal Singh Bedi v. Union of India, which states “*the Army Rule 22 – procedure-hearing of charge stage-anterior to convening of court martial-if after hearing further action is contemplated. Army Rule 23 is procedure for Summary of Evidence and Army Rule 24 enables CO to inter-alia rehear case and discharge it summarily*.”

15. Army Rule 23 for reducing the evidence to writing, also similarly did not ask the two witnesses to depose. However, the documents were produced and are on record of GCM proceedings. Learned counsel for the petitioner argued that there was a threat or coercion to all the witnesses. The documents called by the petitioner were also not produced on same grounds as being “*not relevant*”. We again opined that the proceedings at the GCM are material since the defence got an opportunity to produce and examine witnesses during the GCM, deposition of

the witnesses in the recording of evidence is not material. Learned counsel cited the decision given in the case of State of Uttar Pradesh vs. Ram Sajivan and others – 2009 (14) SCALE 376 – "*impact of the evidence in totality on prosecution case or innocence of accused has to be kept in mind in coming to the conclusion-guilt or otherwise of accused-in reaching a conclusion about guilt-court has to appreciate, analyse and assess evidence placed before it by a yardstick of probabilities, its intrinsic value and animus of witness*". In the case of Rajasthan State Road Transport Corporation & Another vs. Bal Mukund Bairwa – (2009) 4 SCC 299 – "*if act-wholly unreasonable or arbitrary-same would be violative of Article 14 - in certain situations even gross violation-principles of Natural Justice-held to come within ambit of Article 14 – Pr. 35 @ 20- Order passed in violation of natural justice, save and except certain contingencies-nullity-AR Antulay (CB)- No prejudice need to be proved for enforcing fundamental rights. Violation of fundamental right itself renders impugned action void-so also violation of principles of natural justice renders act a nullity*". In the cited judgments their Lordships have surmised that impact of evidence in totality should be kept in mind as also the principles of natural justice as not being violative of

fundamental rights. We again requested the learned counsel to come straight to the charges and evidence thereunder. The learned counsel has not alleged nor has shown us any evidence of malafide against the officer recording summary of evidence, except that he was belonging to the same regiment as that of Lt. Gen. O.S. Lohchab, Director General of Military Intelligence. As such no malafide is established.

16. The **First Charge** pertains to allotment of family living accommodation to Rifleman Satish Kumar Rana. It is alleged that the petitioner in an improper manner allotted one family living quarter to Rifleman Satish Kumar Rana. The first charge against the petitioner under Section 60 of Army Act is with regard to making a false statement knowing to be false. This charge states that "*Rifleman Satish Kumar son of Naik Tupper Singh (Retired) approached him to allow retention of accommodation till his wife's delivery and also for his mother's treatment. I also received a letter from his Commanding Officer requesting for retention of the accommodation"* which was as he well known to be false.

17. Learned counsel for the petitioner argued that GCM proceedings are clear from the deposition of PW-7 who stated that he had met petitioner in Delhi while on leave in June-July, 1998 in which he had requested him for allotment of some accommodation for his family problem. The accommodation which was allotted by 27 Rajput when he requested Subedar Major of 27 Rajput. This accommodation was taken over by him in person.

18. While arguing for the **First Charge**, learned counsel for the respondents submitted that the said accommodation was part of Unit Pool. PW-5 Lt. Col. G. Vinod stated that "*As regards my duties for accommodation is concerned married accommodation was allotted from the Station Pool. However, whenever there was any request for accommodation on compassionate grounds e.g. treatment of relatives etc., we used to allot accommodation from the Unit Pool lying vacant by writing letter to the concerned Unit.*"

19. Appreciating the evidence for the **First Charge** which pertains to allotment accommodation of family living quarters to Rifleman Satish Kumar Rana in an improper manner; we feel that,

it is evident from the statement of PW-5 Lt. Col. G. Vinod that this was pooled accommodation under the respective units. It is understandable that the Brigade Commander is overall responsible for all activities in the Brigade and perhaps also the management of family quarters for other ranks. It was specifically the responsibility of the respective units to ensure that the family living quarters were properly allotted and accounted for. In this case family living quarter was apparently allotted to Rifleman Satish Kumar Rana who was authorised to occupy it; especially so if Brigade Commander felt that his was a compassionate case. The unit of Satish Kumar Rana was posted in a field area. His wife was in the family way and his mother being old was suffering from some ailments. Since the individual was not available always, perhaps it is during those changes of unit responsible for the accommodation that his father Nk. Tupper Singh's (retired) name may have been given in the documents. However, in the absence of any authentic document, other than the lists provided by the unit it is very difficult to say as to in whose name this accommodation was allotted. Correctly speaking, "*handing over and taking over*" voucher between the unit and Rifleman Satish Kumar Rana or Nk. Tupper Singh (Retd.) would have clarified as

to whom this accommodation was allotted. Since it was not produced by either parties and it may be construed that the accommodation was allotted to Rifleman Satish Kumar Rana and therefore, the first charge is not proved.

20. The **Second Charge** is under Section 45 of Army Act with regard to "unbecoming conduct" in which he improperly produced a letter dated 16th May, 1999 written by Col. J.P. Anklesaria knowing fully that the said letter was actually written during June, 2001 at his own behest. Learned counsel for the petitioner argued that Col. J.P. Anklesaria i.e. PW-2 is an unreliable witness because his statement do not match with the statement which he gave while recording of court of inquiry which was under oath. Learned counsel cited the judgment passed by Hon'ble Supreme Court in the case of Sunil v. State of Haryana - 2009 (14) SCALE 370, and Arulvelu & Another vs. State 2009 (13) SCALE 143, in which it was held "*in view of the contradictions no reliance can be placed on the testimony".*

21. Learned counsel for the respondents argued that PW-2 Col. J.P. Anklesaria has given in his statement that "*the letter*

dated 16th May, 1999 was actually written by him in June, 2001 at the behest of the petitioner". This was during the time when he had appeared before the court of inquiry which was being held under oath. Since he has identified the photocopy of the letter and confirmed that the copy was indeed of the same letter which he had written in his own hand there can be no element of doubt that the letter was written by him in June, 2001.

22. We have examined the GCM proceedings in detail. Statement of PW-2 Col. J.P. Anklesaria is clear. The GCM had also considered the issue of the photocopy of the letter written by Col. J.P. Anklesaria being produced as evidence 'Exhibit-7' and accepted the photocopy since it was identified by the originator. PW-2 Col. J.P. Ankesaria by virtue of the statement and answers to the questions led by the defence counsel, has in a way indicted himself. It is obvious that PW-2 Col. J.P. Anklesaria has been under some coercive pressure to change his statement in the Court of Inquiry when conducted on oath. The reason for his making a statement implicating the petitioner is also contradictory. Thereby, PW-2 has constantly changed his statement and cannot

be relied upon. As such, we hold that the Second Charge as not proved.

23. The **Third Charge** is under section 63 of Army Act states that he as Commander, 35 Infantry Brigade, improperly allowed occupation of rent free government accommodation by Naik Tupper Singh (retired). He failed to initiate necessary action, when the case was reported to him. Learned counsel for the petitioner has argued that accommodation was allotted to Rifleman Satish Kumar Rana. Naik Tupper Singh Rana (retired) was his father and was living with him. No tangible proof or document has been produced by the prosecution to conclusively prove that the accommodation was allotted to Nk. Tupper Singh (retired). PW-6 Col. V.S. Balothia of 12 JAK RIF has clearly stated that "*Before the letter at Exh. 11 was written to the Bde HQ, it was not ascertained by me as regards the person in whose name the Qtr was allotted. Since the Qtr was being taken over from 14 SIKH, whatever info was provided by them was mentioned in the Appx to Exh. 11. The information provided by 14 SIKH was not in writing. I am not aware also as to who all were staying in the house of along with NK (TS) Aswal (Retd.)".* Since

the allottee was in field area, therefore, it may have been loosely construed that the accommodation is being occupied by Nk. Tupper Singh (retired) who was not entitled to occupy this accommodation. This was unit pool accommodation; the petitioner was not directly responsible for management of the same. When the matter was reported by 12 JAK Rifle, the successor unit of 27 RAJPUT and 14 SIKH, fresh additional accommodation was allotted by the Brigade which was sought to be adjusted against the individual. No individual gain/loss, therefore, accrued. It is clear from the statement of PW-5 i.e. DAQMG of the Brigade and PW-6 i.e. CO of 14, Sikh Regiment that the accommodation is against the Unit Pool quota. In any case, the accommodation was vacated by the individual in February, 2001. Therefore, this charge is also not proved.

24. The gravamen of **the Fourth Charge** is under Section 45 of the Army Act, in that the officer behaving in a manner unbecoming his position and the character expected from him and in that he as a Brigade Commander having received a report about Naik A.K. Sharma of 12 ASSAM, undertaking sale of liquor in an unauthorised and an improper manner, while ordering a

court of inquiry influenced Col. P.K. Sharma and Maj. S.K. Sharma to suppress the facts. Learned counsel for the petitioner argued that the court of inquiry was ordered by the petitioner himself and at no stage, he had tried to influence the officers who were tasked to conduct court of inquiry. He invited attention of the court to the statement of PW-20 Col. P.K. Sharma wherein Col. P.K. Sharma has categorically stated that he had suggested that strict action should be taken against Nk A.K. Sharma because in the past also he had tried to barter eight bottles of Rum and this time he may be punished. Besides, no money transaction had taken place and there is no counting of these liquor bottles which were impounded in the three tonne truck. The letter from the Headquarters, Delhi Area does not mention any amount having been recovered from Nk. A.K. Sharma. As per the statement of PW-8 Hav. B.K. Pandey, a trap was laid. However, no formalities for 'trap' were completed and therefore, the trap in itself cannot be taken as an evidence. No sale of liquor has been established. The learned counsel cited the decision of Hon'ble Supreme Court in the case of Moni Shankar vs. Union of India & Others - [2008] 3 SCC 484, which lays down that "*with a view to protect innocent employees – traps – appropriate safeguards.. (a) 2 or more*

independent witness must hear conversation, which should establish money was being passed as illegal gratification.. (b) Transaction-within sight and hearing of two independent witness. An opportunity-catch culprit red-handed immediately after passing of illegal gratification-so that accused not able to dispose it of – Following additional instructions (b) Decoy-present money-give bribe money-memo to be prepared by IO in presence of independent witnesses and decoy indicating numbers of GC notices-bear signatures-another memo for returning GD notes to decoy-prepared for making over GC notes to delinquent employee on demand-bear signatures-independent witness-take up position-place-wherefrom can see transaction and hear conversation between decoy and delinquent with a view to satisfy money was demanded, given and accepted as bribe-after money passed over- IO disclose identity and demand, in presence of witness, produce all money including private and bribe money-verification-memo of seizure-recovered notes-sealed envelopes-signed by witness, decoy, accused (in case refused-immediate superior to be called-signed-recovery memo)".

25. The manuscript copies of the court of inquiry was not found. Therefore, a photocopy was attached with the proceedings of the GCM (PW-27).

26. While arguing for Charge no. 4 relating to influencing outcome of the court of inquiry against Nk. A.K. Sharma both the witnesses i.e. PW-20 Deputy Commander Col. P.K. Sharma and PW-25 Brigade Major now Lt. Col. S.K. Sharma had in unambiguous terms stated that the Commander had indicated to both of them to structure the court of inquiry in a manner that Nk. A.K. Sharma is treated leniently. These statements were not contradicted by the defence counsel and defence has also not questioned the statements during the cross-examination.

27. Having appreciated the evidence for the **Fourth Charge,** we hold the view that PW-20 Col. P.K. Sharma and PW-25 Maj. S.K. Sharma are clear in their statements to say that the petitioner had told them to take lenient view of the episode and structure the court of inquiry in a manner that Nk. A.K. Sharma will be dealt leniently and he can then proceed on retirement from his unit. The circumstances under which it has been stated that the

petitioner conveyed his desire differs in the statement of two witnesses, but the substance of the two statements are identical. This disparity is quite possible especially when the statements have been made after a long gap viz-a-viz time of incident. Regarding the averment by the defence counsel to say that Maj. S.K. Sharma was contacted by Nk. A.K. Sharma from the same regiment seems to be incorrect because Nk. A.K. Sharma is from 12 Assam Regiment while Maj. S.K. Sharma is from JAK Rifle. To the allegation that original court of inquiry was not available and a photocopy was made available to the court of inquiry conducted on oath by Maj. Gen. Riar, has no relevance. PW-27 Maj. Iqbal Singh has produced the copy of the Court of Inquiry which is available on record. Therefore, the contents of the initial court of inquiry against Nk. A.K. Sharma cannot be refuted. In view of the foregoing reasons, we hold that the fourth charge is proved.

28. **The Sixth and Eighth** charge is under Section 57 (a) of the Army Act, with regard to a report signed by him in which he has knowingly made a false statement. The Charge No. 6 is that on 30.11.1999 he as the Commander 35 Infantry Brigade rendered a false certificate in the Annual Administrative Inspection

Report for the year 1998-1999 forwarded to Headquarters 22, Infantry Division that all accounts have been correctly reflected, well knowing that the Combined Amenity Fund account was not reflected in the said report. Similarly, on 12.09.2000, he again rendered a false certificate in the Annual Administrative Inspection Report of 1999-2000 in which Combined Amenity Fund and CSD (I) Extension Counter Accounts were not reflected.

29. Learned counsel for the petitioner argued that preparation of the statement of accounts for the Annual Inspection Report was a joint responsibility in which the accounts came up to him duly minuted and based on which he signed the report on both the occasions. Despite the fact that the petitioner had sought the minute sheets of the process of finalising Annual Administrative Inspection Report, it was not provided to him by the respondents. PW-5 Lt. Col. G. Vinod has admitted in his statement that the responsibility of preparing the form for Annual Administrative Inspection Report is that of the General Staff Branch headed by the Brigade Major. He has stated that the details of Combined Amenity Fund was forwarded by him to the General Staff Branch for inclusion in the Annual Administrative

Inspection Report. While PW-25 Maj. S.K. Sharma stated that he as a Brigade Major used to write letters to all branches for forwarding the details to be included in the Annual Administrative Report to the Camp Commander. The preparation of the same is the responsibility of Officer Commanding Troops. Once it is ready, it is shown to him by all the branch-heads to verify its correctness. The General Staff (SD) Branch is responsible for forwarding the brochure to the inspecting officer. A format was forwarded by 22 Infantry Division for preparation of Brochure. It was forwarded to all the units including Brigade Camp. He further confirmed that the over all responsibility for ensuring the correctness of details in the inspection brochure was that of the OC Troops. PW-20 Col. P.K. Sharma had admitted that as Chairman of the Public & Regimental Institutes (PRI), he was responsible for inter-alia CSD accounts and Combined Amenity Fund. No instructions were given by the petitioner to the OC Troops for not including details of these two accounts in the Annual Administrative Inspection Report. Besides the Combined Amenity Fund and the Canteen accounts are periodically checked by the Army Headquarters (IS Group). No observations were raised during these inspections. He also confirmed that while

briefing GOC, 2 Corps and GOC-in-C, Western Command, these two accounts were included by the petitioner. This is further confirmed by the records of observations of the inspection team as per PW-27. Learned counsel cited decision of Hon'ble Supreme Court in the case of Arun Nivalaji More vs. State of Maharashtra – MANU/SC/3502/2006. The definition of knowledge has been discussed in detail which is as under :-

> *"An awareness or understanding of a fact or circumstances; a state of mind in which a person has no substantial doubt about the existence of a fact.*
>
> *It is necessary... to distinguish between producing a result intentionally and producing it knowingly. Intention and knowledge commonly go together, for he who intends a result usually knows that it will follow, and he who knows the consequences of his act usually intends them. But there may be intention without knowledge, the consequence being desired but not foreknown as certain or even probable. Conversely, there may be knowledge without intention, the consequence being foreknown as the inevitable concomitant of that which is desired, but being itself an object of repugnance rather than desire, and therefore not intended.*
>
> *'Knowledge' can be seen in many ways as playing the same role in relation to circumstances as intention plays in relation to consequences. One knows something if one is absolutely sure that it is so although, unlike intention, it is of no relevance whether one wants or desires the thing to be so. Since it is difficult ever to be absolutely certain of anything, it has to be accepted that a person who feels 'virtually certain' about something can equally be regarded as knowing it."*

30. Learned counsel for the respondents drew our attention to Exhibit 13 which deals with the Annual Administrative Inspection Report of 1998-99 on which the Commander had signed along with a Certificate, though the Combined Amenity Fund was not reflected in the statement of funds. He also drew our attention to Annual Administrative Inspection Report of 1999-2000 in which both the accounts i.e. Combined Amenity Fund and CSD Canteen (Extension Counter) Account was not reflected. CSD Canteen counter had been opened in the year 1999 and therefore, it was very much in the knowledge of the petitioner that this fund existed and should have been correctly reflected in the Annual Administrative Inspection forms which he signed as correct. He argued that both these inspection documents speak for themselves, therefore, there are no further arguments to the fact that the Annual Inspection form is an important document for which correctness should have been ensured by the Commander.

31. We notice that averments made by the petitioner that he perhaps omitted the said Account in the reports to shield the organisation, seems to be far fetched. To the averment that the petitioner was aware of the existence of the account but did not

find it proper for them to be included in the said report as "*he did not want illegal activities to be brought on record*" and thus suppressed it and deliberately caused the said accounts not to be reflected, seems to be also little far fetched.

32. Evidence by PW-5 Lt. Col. G. Vinod, PW-17 Maj. Raman Verma, PW-25 Maj. S.K. Sharma clearly bring out that in the initial draft, all the accounts were properly reflected. However, the petitioner consciously chose to delete two items i.e. Combined Amenity Fund and Canteen Account (Extension Counter) of 35, Infantry Brigade. PW-17 Maj. Raman Verma goes on to state that "*in addition he changed the figures in the balance sheet at random in the case of Canteen accounts*". Therefore, to say that the petitioner did not have any knowledge of the incorrect statement given in the proforma for Annual Administrative Inspection Report for the year 1998-99 and 1999-2000 is wrong. Therefore, both these charges stand proved.

33. The **Eleventh Charge** is under Section 52 (f) of Army Act "*causing wrongful gain to a person. In that he intended to cause wrongful gain upon himself by purchasing 4290 bottles*

amounting to Rs.4.28 Lacs from 35 Infantry Brigade CSD Canteen well knowing that he was not entitled to such quantity in terms of Army Headquarters letter No.. 96219/Q/DDGCS dated 17th September, 1992".

34. Learned counsel for the petitioner argued that firstly, the only bill which was produced in evidence is Bill No. 5018 dated 02nd February, 1999 for 40 bottles. All other bills that were produced are either in the name of Commander Residence, Commander Secretariat or just Commander. In any case, there are no signatures of the petitioner on any of the bills. Learned counsel for the petitioner argued that the petitioner being in Delhi which has a large percentage of transitory population, senior officers in the Army Headquarters and retired officers, he was required to help out in certain cases in order to meet their urgent and special requirements like weddings and other events. Those officers who came from outstation would also draw their entitled quota from 35, Infantry Brigade CSD. He would have, therefore directed the Canteen Officer to issue liquor accordingly.

35. The Canteen Officer had told the NCO to make bills for all such deliveries on the name of Commander Secretariat/Commander Residence/Commander. PW-11 Hav. N.K. Tonger has clearly stated that he had issued liquor to Nk. A.K. Sharma whenever he demanded based on chits which were given by the Canteen Officer or any other officer. PW-24 Nk. A.K. Sharma also confirms the same arrangement. Learned counsel further argued that there was no sale of liquor, therefore, causing wrongful gain to himself does not arise. Besides, the management of the Canteen is strictly the Charter of the Deputy Commander of the Brigade and part of his duty as laid down under para 20 of the Regulations for the Army, 1962. PW-17 Maj. Raman Verma is absolutely clear about his duties with respect to the CSD Canteen. Therefore, to hold the petitioner responsible for this unauthorised sale of liquor from the Canteen on his name or in the name of his office is incorrect.

36. Learned counsel for the respondents argued for the Eleventh Charge, saying firstly, this was not a ‘gain’ in terms of money as has been made out by the petitioner. It is not a gain in monetary terms, but a gain in terms of drawal of liquor over and

above the authorisation for a 'Brigadier' as laid down in the authorisation of liquor for all ranks issued vide letter of 17th September, 1992. Instructions for authorisation of liquor to all ranks is promulgated by the Army Headquarter letter dated 17th September, 1992. The letter has also been produced as one of the exhibits (Exhibit-92) which clearly states that a Brigadier is authorised 14 units per month. As such, entire liquor drawn in excess implied depriving some one else of his legitimate dues or acquiring additional advantage to himself by drawing the additional liquor. PW-11 Hav. N.K. Tonger, Canteen NCO of the Brigade has stated in his deposition that he was ordered to issue liquor to anyone who accompanied Nk. A.K. Sharma who was Administrative NCO. PW-19 Hav. Negi stated that the orders were to issue liquor to anyone who was accompanied by Nk. A.K. Sharma or to Nk. A.K.Sharma himself when he demanded liquor based on the chits given by Canteen Officer or other officers. PW-20 Col. P.K. Sharma has stated that he drew attention of the petitioner on several occasions regarding heavy outflow of liquor in an unauthorised manner. As per the witness he assured the Deputy Commander that everything is under control and will be taken care of. It is also fact that the Deputy Commander was

therefore forced to demand additional liquor which was much more than the authorisation of the Brigade Headquarters and its normal dependency.

37. Appreciating the evidence for the **Eleventh Charge,** we find that the statement of PW-17 Maj. Raman Verma who was also the Canteen officer clearly states that "*daily slips were seen by the Canteen Officer, Deputy Commander and the Commander"*. These figures would have indicated that such heavy out-flow on account of liquor sale which was well beyond the authorisation of a normal Brigade Headquarter Canteen. Besides, PW-9 Hav. Tusar Singh, PW-11 N.K. Tonger, PW-16 Subedar Chand Paul and PW-19 Maj. Raman Verma, Canteen Officer in their statement have clarified that instructions were passed by the petitioner that Nk. A.K. Sharma when accompanying in person will be issued with liquor as demanded on the chits carried by him from either the Canteen Officer or any other officer of the Brigade Headquarter. Also, that Nk. A.K. Sharma will be provided liquor whenever he approached the Canteen with a demand, even if he was not accompanied by some one. Though there has been no chit personally signed by

the Commander nor is there any bill which has been attributed to the petitioner himself other than which says that Commander's Office, Commander's Residence and Commander. It is quite clear from the statement of witnesses that it was in the full knowledge of the petitioner that heavy out flow of liquor from the Canteen through Nk. A.K. Sharma and also otherwise was taking place. It was pointed out by PW-17 Maj. Raman Verma and PW-20 Col. P.K. Sharma to the petitioner who had assured them that everything is being taken care of and they "*should not worry*".

38. In view of the foregoing, it is proved well beyond doubt that the petitioner was in the knowledge of excessive sale of liquor from Headquarters 35 Infantry Brigade Canteen including the Extension Counter. That he did not check as to on whose name the liquor is being drawn or sold makes him responsible for all the liquor that was purportedly issued on his name. Brigade Commander will certainly not sign personally for himself, every time when he needs liquor and therefore to say that the petitioner's signature are not available on the bills is no conclusive proof that liquor was being taken away by some one else. In fact, it is quite normal for a Senior Officer like that of a Brigade

Commander to be able to draw liquor as per the requirements within the entitlement just by word of mouth rather than making a requisition, submitting his liquor card and signing for the bill in person. As such, we hold that eleventh charge is conclusively proved and petitioner stands guilty of having wrongfully gained himself by violating Army Headquarters instructions dated 17th September, 1992 on entitlement of liquor.

39. Learned counsel for the petitioner argued that the Convening Officer of the GCM gave an order for 'Revision' of Sentence, which was perverse and not a reasoned order. It was bad in law. It shows that the Convening Order was already prejudiced.

40. As regards revision of sentence by the convening authority, learned counsel for the respondents has argued that it is very much within the realm of the convening authority as per Section 154 and 160 of the Army Act. For the convening authority to order revision of the findings or sentence in case he feels that the justice has not been rendered in the correct manner. In this

case, the convening authority gave a reasoned order for the revision of the sentence.

41. Having heard the counsels for both the parties we are of the opinion that the court of inquiry and the non adherence to Army Rule 22 in case of the petitioner, really speaking, holds very little meaning at this stage because thereafter evidence was brought out in front of the Commanding Officer under Army Rule 22 and again it was put down in writing as summary of evidence before the trial commenced. On both the occasions, petitioner had full liberty to cross-examine the witness as also to produce any witnesses or evidence in his favour. During the court martial, the petitioner again had a similar opportunity. The defence was given opportunity to examine all the witnesses. Therefore, issue raised by the petitioner as regards the initial court of inquiry is not sustainable.

42. As regards the malafide committed by the Lt. Gen. O.S. Lohchab, Director General of Military Intelligence and the nexus between Lt. Gen. O.S. Lohchab and Sh. Surinder Kumar who was desirous of a shop in Shanker Vihar Shopping Complex

being allotted to Sh. Surinder Kumar, no evidence has been lead to show the nexus between the two nor any malafide has been established. Hence, the contention that Lt. Gen. O.S. Lohchab was instrumental in trapping the petitioner in which Nk. A.K. Sharma was apprehended in a civil area with 25 cases of liquor does not hold good.

43. It is also clear from the proceedings that the initial court of inquiry which was initiated against the discrepancies in the Canteen accounts was first reported by the Chartered Accountants Chand Kamal Gupta Associates which is clearly reflected in the convening order of the court of inquiry. Therefore, contention of the petitioner that court of inquiry was initiated on the basis of an anonymous letter, against the CVC guidelines and against the departmental instructions on the subject, is not sustainable. The convening order of the court of inquiry clearly refers the Chartered Accountants reported discrepancies in the Canteen accounts of 35 Infantry Brigade. Therefore, inquiry was not initiated on the basis of anonymous complaint.

44. Hence as a result of above discussion, **the first, second and third charge** is not proved. However, Charge No. **fourth, sixth, eighth and eleventh charges are established beyond doubt**. We are therefore, not inclined to interfere with the findings of the General Court Martial which has been duly confirmed, except to the first, second and the third charge for which petitioner is not guilty.

45. However, coming to the question of sentence, we are of the view that nine months imprisonment will be too harsh, therefore, we modify the sentence to this extent and maintain the order of dismissal awarded by the Court Martial. Consequently, petition is disposed of with the aforesaid modification. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
May 18, 2010.