

(2010) 03 GAU CK 0024

Gauhati High Court

Case No: Writ Petition (C) No. 562 of 2002

Rupesh Kumar Singh

APPELLANT

Vs

Union of India (UOI)
and Others

RESPONDENT

Date of Decision: March 2, 2010

Acts Referred:

- Army Act, 1950 - Section 116, 52
- Army Rules, 1954 - Rule 23, 23(1), 24(2)

Citation: (2010) 4 GLR 39 : (2010) 2 GLT 991

Hon'ble Judges: Hrishikesh Roy, J

Bench: Single Bench

Advocate: G. Lal, A. Roy and I. Thakuria, for the Appellant; D. Baruah, for the Respondent

Final Decision: Allowed

Judgement

Hrishikesh Roy, J.

Heard Dr. G. Lal, Learned Counsel appearing for the petitioner. Also heard Mr. D. Baruah, learned Central Government Counsel who represents the respondents.

2. The petitioner who served as a Gunner (Surveyor) attached with the 65 Field Regiment has approached this Court to challenge the Summary Court Martial (SCM) Proceeding initiated on the basis of charge dated 24.3.1999. The 2 separate sentences inflicted upon him in pursuant to the said proceeding are also under challenge.

2.1 The petitioner was charged with committing theft of Government property under the provisions of Section 52(a) of the Army Act, 1950 ("the Army Act") and the charge was that on 15.1.1999 at about 1540 hours, he committed the theft of one AK-47 rifle under registration No. TU-7379 with one magazine and 30 live rounds.

2.2 By the impugned order, the petitioner has been sentenced to suffer R.I. for 1 year in civil jail and his dismissal from service has also been ordered. It may be recorded that the petitioner has already served out his jail sentence in the Sibsagar Civil Jail from 29.3.1999.

2.3 While the petitioner was in civil jail, his wife filed a writ petition before the Patna High Court which was eventually transferred to the Jharkhand High Court and the said writ petition was eventually withdrawn for lack of jurisdiction and thereafter the present writ petition has been filed.

3. The chief basis for the SCM finding is the purported confession made by the petitioner during the Court Martial Proceeding and it is contended by the petitioner that he was coerced into making the confession and it was not a voluntary declaration of the petitioner. It is urged that guilty plea in the SCM proceeding was recorded with a vindictive and mala fide intention to take revenge on the petitioner as he refused to succumb to the pressures of Brigadier J.S. Chamba (respondent No. 6), Colonel Amar Deep Singh (respondent No. 7) who are the Commander and Deputy Commander of No. 2 Mountain Artillery Brigade Camp and Captain B.M.S. Talwar (respondent No. 8), of the same Brigade, where the petitioner was earlier posted.

3.1 The petitioner alleges that the charge of theft has been falsely leveled against him as he refused to support the respondents 6, 7 and 8 in the Court of Inquiry (held at Dinjan Army Camp from 1.1.1999 to 6.1.1999), with regard to an incident on 26.5.1998 at the "Short Ranging Firing" at Chabua by bullets fired by the wife of respondent No. 6 the Commanding Officer, through an AK-47 rifle, where one Naik DMT Rajinder Singh received bullet injuries.

3.2 The petitioner also challenges the impugned action by contending that the same is not based on any material evidence to indict the petitioner and in any event, the evidences adduced are full of contradictions as to make the same totally unbelievable and being incapable of corroborating the so called confession of guilt, recorded during the SCM proceeding.

3.3 The SCM proceeding are also contended to be conducted in violation of the procedure laid down by the Army Act the Army Rules, 1954.

3.4. The sentences inflicted on the petitioner, i.e., one civil imprisonment and second one of dismissal of service have been challenged by contending the same to be disproportionate to the charge.

Facts as given in the petition

4. On 26.5.1998, while the petitioner was serving as a Gunner (Surveyor) under respondent No. 8 at HQ No. 2 Mountain Artillery Brigade, he was ordered to attend A "Short Range Firing" at Chabua Air Force station area. On such occasion it is the usual practice to fire only small arms like Pistols, Revolvers, etc. But at Chabua on

26.5.1998, apart from small arms, AK-47 rifles were unauthorizedly fired by the civilians present, namely, the wife of Brigade Commander J.S. Chamba (respondent No. 6) and their 2 children, the wife of the Deputy Commander Colonel Amar Deep Singh (respondent No. 7) and their 2 daughters, 2 young children of Major Vijay Kohali and the wife and 2 children of one Brigadier Mang.

4.1 During the said firing activity on 26.5.1998, the wife of Brigadier J.S. Chamba-fired from an AK-47 rifle. At that moment, Naik DMT Rajinder Singh was detailed to assist her and he was standing by her right side. While firing the weapon, the lady lost grip over the AK-47 due to jerk and the bullets fired from the rifle injured Naik DMT Rajinder Singh who had to be shifted to the Military hospital.

5. To prevent the actual truth of the incident from getting out, the officers responsible devised a strategy with the help of pliant personnels and it was projected in the enquiry that Naik DMT Rajinder Singh suffered the injury when he was collecting empty boxes of the fired rounds while "Khali Kar" command was given. But the petitioner refused to support this concocted story.

6. As the petitioner refused to support the concocted version about the firing incident of 26.5.1998, he was transferred to Bailong (Arunachal Pradesh) from Sibsagar as a measure of harassment for a period of 6 months although normally posting in the transferred station is for a smaller duration of 3 months. Then the petitioner went on home leave and for having belatedly reported after 4 days allegedly without information (denied by the petitioner), he was awarded rigorous imprisonment from 23.12.1998 to 5.1.1999.

7. The firing incident of 26.5.1998 at Chabua being a serious matter, a formal Court of Inquiry was ordered and it was scheduled to be conducted by one Major Raju at Dinjan Army Camp from 1.1.1999 to 6.1.1999. Apprehending complicities for themselves if implicated in the scheduled Court of Inquiry, the respondents 6 and 7 summoned the petitioner from his confinement and 2 others and persuaded them to lie in the enquiry and support the concocted version of the incident. The petitioner was released early before serving out the 14 days rigorous imprisonment, and was ordered to depose, that Naik DMT Rajinder Singh got injured during the "Khali Kar" process and was not injured through accidental firing by the wife of the Brigade Commander.

8. The petitioner in the Court of Inquiry unlike DMT Manoj Kr. Yadav, did not depose as directed and spoke the truth as to how Naik DMT Rajinder Singh actually suffered the injuries. When respondent Nos. 6, 7 and 8 learnt about petitioner's speaking the truth during the Court of Inquiry, a concerted attempt was made to punish him for defying the command of his own superiors.

9. After the petitioner returned on 8.1.1999 from Dinjan after conclusion of enquiry, his persecution was started by the respondents 6, 7 and 8. At first the annual leave earlier sanctioned to the petitioner with free railway travelling warrant was

cancelled and opportunities were explored and devised to frame, the petitioner in some way.

9.1 In furtherance of a well designed conspiracy, on 15.11.1999 the petitioner was sent from his camp at Sibsagar to Dinjan camp accompanied by Subedar Major Jogindar Singh. They made the journey from Sibsagar to Dinjan in a civil bus and the petitioner was made to spend the night at Dinjan Army Camp. At night at about 1 a.m. the petitioner was woken up by one Havildar Ganesh with the information that one AK-17 Rifle No. TU 7379 of the Dinjan Camp armoury is missing and the petitioner's rifle was checked to match the rifle number. As the petitioner was carrying the rifle bearing No. TU 3348, nothing further was done thereafter and the petitioner also joined in the search for the missing rifle.

9.2 On 16.1.1999 the respondent No. 7, Colonel Amar Deep Singh and respondent No. 8 Captain B.M.S. Talwar came to Dinjan Camp and respondent No. 7 remained at camp and the Captain went back on the next day.

9.3 On 18.1.1999 the petitioner was detailed to accompany the Deputy Commander (respondent No. 7) who went to Duliajan to play Golf and at the end of the day the petitioner was taken back to Sibsagar.

9.4 On 18.1.1999 night,, the petitioner was detailed for Guard Duty and at about 2400 hours (midnight), the petitioner was taken to Captain Talwar (respondent No. 8) at his office. It is during this meeting at midnight, the Captain held a rifle nozzle against the right temple of the petitioner with his finger on the trigger and threatened execution of the petitioner for having told the truth in the Court of Inquiry. 2 other personnels present in the room, namely, BHM Sarvan Singh and BQMH Rajinder Prasad were then told by the respondent No. 8 to bring some papers and on the blank envelope brought by the said 2 personnel, the petitioner was forced to write in Hindi as per the dictates of Captain Talwar, as follows:

HATHIAR DINJAN MEIN HAI. SIVIL GARI MEIN GYA THA. MAINEY RAKHA HAI. LINE MEIN UPPAR HAI. J.C.O. LIVING MEIN

(The arm is in Dinjan. Had gone in a civil vehicle. I have kept it above, in the line of J.C.O's living).

Fearing for his life, the petitioner wrote on the envelop as dictated.

10. The next morning, i.e., on 19.1.1999, the Dy. C.O. Col. Amar Deep Singh (Respondent No. 7) summoned the petitioner and told him that since the petitioner had not supported the officers during the Court of Inquiry and have deposed against them they will make his life miserable and he was instructed to do whatever is told to him by Captain Talwar.

10.1. On the same day Captain Talwar and Subedar Matadin took the petitioner to Dinjan Camps (J.C.O. Lines) and then to a locked room, from where they took out a

rifle and again forced him to write a confessional statement on a piece of paper. Petitioner under fear of life, wrote whatever was dictated and then he was brought back to Sibsagar.

11. Between 20.1.1999 and 17.2.1999, the petitioner was kept in tight lockup and was not allowed to meet anybody except a few interested officers and especially Captain Talwar (respondent No. 8). During his confinement the petitioner was forced to sign several blank papers. For 2 days, i.e., 18.3.1999 and 19.3.1999, the petitioner was released from custody and allowed to move within the camp area but only under armed escort. Again on 20.3.1999 the petitioner was taken into custody and was tortured for 2 days to force him to act as per their dictates during the intended proceeding to be held against him.

11.1 On 22.3.1999 while the petitioner was under arrest, the "Summary of Evidence" was recorded during which the petitioner was not allowed to say anything and was forced to sign on a confessional statement pleading for less punishment.

11.2 He continued to remain in custody and on 27.3.1999 at about 0730 hours a charge sheet signed by the CO. was served where signature of the petitioner was obtained to show that the said charge was served on him 2 days previously, i.e., on 25.3.1999.

11.3 The Summary Court Martial was started at about 11 a.m. on 27.3.1999 and was concluded on the same day at about 4 p.m. When sentence of civil imprisonment was pronounced, the petitioner was immediately sent to District Jail, Sibsagar to serve out the sentence.

Response in counter to specific pleadings

12. The petitioner has given vivid and precise narration of the "Short Range Firing" incident at Chabua in paragraphs 3 to 7 of the writ petition where the civilians who were present during the firing on 26.5.1998 have been named. It is specifically stated that Naik DMT Rajinder Singh was injured by a bullet fired from AK-47 rifle by the wife of the Brigade Commander J.S. Chamba (respondent No. 6). The petitioner has also averred that as he refused to tell a lie (despite being persuaded by the Commander and other officers), in support of the concocted version, i.e., that Rajinder Singh sustained bullet injury because of accidental firing during the "Khali Kar" exercise by Manoj Kr. Yadav the runner attached to the C.O. Brigadier J.S. Chamba. It was also averred that the said Manoj Kr. Yadav succumbing to the pressure of the C.O. supported the false version which exonerates the C.O.'s wife, and the C.O.'s runner was rewarded with promotion to the rank of Lance Naik.

12.1 Despite the pointed averments that the petitioner has been subsequently framed with a false charge of gun theft as a revengeful act because he steadfastly refused to tell a lie, there is an evasive reply in the counter affidavit filed by the respondents in response to paragraphs 2 to 7 where it is stated that as regards "the

statements made in paragraphs 2 to 7 of the writ petition, your deponent does not prefer any comment as the alleged sequence of events does not pertain to the Unit of your deponent".

12.2 Furthermore in paragraphs 10 to 13 the petitioner had specifically stated that before the Court of Inquiry, he did not depose falsely as was directed by respondents 6, 7 & 8 and spoke the truth about how Naik DMT Rajinder Singh suffered bullet wounds from AK-47 fired by the C.O.'s wife and how thereafter the steps were taken by the said respondents to frame the petitioner in a gun theft incident. But notwithstanding such pointed averments, the specific statements have been brushed aside with a evasive response by stating that, the allegations are figments of imagination and afterthoughts of the petitioner.

Summary court martial (SCM)

13. In view of the evasive response of the respondents and absence of specific denial to the pointed allegations in the writ petition, this Court considers it necessary to subject the SCM proceeding to careful scrutiny to determine whether the petitioner was a victim of a frame up for telling the truth, by refusing to support the concocted version of the respondents 6, 7 and 8, on the firing incident of 26.5.1998.

14. The original SCM proceeding records have been produced for perusal of the court. The petitioner contends that the SCM proceeding have been conducted by disregarding the provisions Section 116 of the Army Act.

14.1 Section 116 prescribes that a SCM is to be held by the Commanding Officer (CO.) and he shall alone constitute the court.

It is prescribed under Rule 23 of the Army Rules that Summary of Evidence are to be recorded before the Commanding Officer or such officer as the Commanding Officer may direct.

14.2 The petitioner contends that SCM was not properly convened and constituted and instead of the CO., the adjutant Major D.K. Upadhyay by his order dated 22.3.1999 detailed one Lieutenant S.M. Bandkhadke to record the summary of evidence in the Court Martial Proceeding.

14.3 A perusal of the original records of the SCM proceedings supports the contention of the petitioner in as much as, no order of the Commanding Officer is found authorizing Lieutenant S.M. Bandkhadke to record the Summary of Evidence and in fact instead of the CO., the Adjutant Major D.K. Upadhyay (respondent No. 4) ordered Lieutenant S.M. Bandkhadke to record the Summary of Evidence in SCM proceeding. This appears to be a clear violation of the mandates of the Rule 23 of the Army Rules.

14.4 The Summary Court Martial proceeding also reveals that the same has been conducted in violation of procedure prescribed by Section 116 of the Army Act and Rule 24(2) which requires the C.O. himself to convene the Court Martial Proceeding. In the original records no order of the C.O. convening the Court Martial Proceeding is found but what is seen is that proceedings have been convened by the Adjutant Major D.K. Upadhayay who purports to act on behalf of the Commanding Officer. No authorization of the Commanding Officer is available on record authorizing the Adjutant to exercise the powers of the C.O. as prescribed u/s 116 and Rule 24(2). Under such circumstances, this Court is constrained to hold that the Court Martial Proceeding have been convened in violation of the mandates of the Army Act and the Rules.

Evidence in the SCM

15. Apart from the procedural irregularities noticed above, this Court is also called upon to examine as to whether the recorded evidence corroborates or contradicts the guilt confession purportedly made by the petitioner.

15.1 The confession of the petitioner was recorded as follows:

I No. 15118576F Svyr Rupesh Kumar Singh confess that "I Svyr Rupesh Kumar Singh on 15th January, 1999 between 1530h to 1545h stole the rifle AK-47 Regd. No. TU-7379 with a magazine and 30 live rounds which I carried to Dinjan in Civil Mini Bus AS-04-4275, the rifle was recovered on 19th January, 1999. I am willingly ready to accept the punishment awarded to me but plead in the court that my martial status may be considered and I may be awarded with the minimum punishment that is possible.

15.2 The embellishment by way of unnatural and unnecessary details contained in the said statement gives cause for suspicion that the confession was not voluntary. It is not expected from any normal traveling passenger to note and remember the bus number in which he undertook a journey a couple of months earlier. But contrary to a natural recollection, in the confessional statement purported to have been made by the petitioner, the registration number of the bus he traveled in 2 months previously, is recorded as civil Mini Bus AS-04-4275. Therefore, it is quite possible that the so called confession was recorded on their own by the officers while the petitioner was under custodial detention, and he was simply made to sign the same.

16. Additionally, if we examine the confession vis-a-vis the deposition of the prosecution witnesses, further contradiction are found in the version projected in the Court Martial proceeding.

16.1 It must be borne in mind that charge is theft of an AK-47 rifle in the Brigade Camp at Dinjan and not at the Sibsagar camp, where the petitioner was posted. The rifle bearing No. TU 7379 was issued to Gunner Jagpal Singh from the Dinjan Camp

armoury and on 15.1.1999 morning, he traveled with the said gun to Jorhat, as per his assigned duty.

16.2 It is found from the deposition of Gunner Jagpal Singh (PW1) that he returned from Jorhat to their Dinjan camp at about 1530 hours and he proceeded to have launch, leaving his issued rifle on his bed. When he returned after launch at about 1545 hours, he found the rifle missing. But notwithstanding the missing rifle, it is seen from the evidence of PW4 Subedar Matadin that Gunner Jagpal Singh was assigned Guard duty at night, without his weapon.

16.3 If the gun was really missing from 1545 hours, it is not understood how the personnel who was issued the missing gun (PW1) was assigned to Guard Duty at night at Dinjan camp without a weapon and furthermore why no action was taken against the said personnel who has been so careless with the AK-47 rifle issued to him.

17. The Arms Issue Register (Exbt. "A") of Dinjan camp which was exhibited in the SCM proceeding also cast doubt on the version given by PW1 and PW4 about the weapon being missing at 1545 hours from the bed of PW1 Gunner Jagpal Singh. In the Exbt.-A register, an entry is recorded on 15.1.1999 showing deposit of the gun ("Time in" at 1940 hours) but the said entry was struck off subsequently. There is no explanation anywhere as to why, Istly the entry showing return of the rifle to the armoury was made and how it was struck off subsequently from the Register.

17.1 Furthermore it is clear from the evidence of PW4 Subedar Matadin that on 15.1.1999 "Night OK Report" (Exbt-"C") at 2130 hours was produced by Brigade Camp Havildar Lalchand and thereafter PW4 gave "All OK report" to Colonel Amar Deep Singh, the Dy. CO. of Dinjan camp.

17.2 If an AK-47 rifle was actually missing at 1545 hours on 15.1.1999, there could not and should not have been any "Night OK Report" at Dinjan camp. Therefore, Exbt.-C itself clouds the version introduced through the evidence of PW1 and PW4 that AK-47 rifle issued to PW1 had actually gone missing on 15.1.1999 as the Arms Issue Register (Exbt.-A) shows that the weapon was deposited back in the Dinjan camp Armoury, at 1940 hours.

18. In the present case it is projected by the prosecution that the gun issued to PW1 was found missing at 1545 hours on 15.1.1999 and it is alleged that the petitioner committed theft of the said gun and hid the same in the J.C.O's barracks in the Dinjan Camp. Here one must not forget that the petitioner is based at Sibsagar and it is difficult to accept as true the projected version that he stole a gun from a personnel of Dinjan Camp and kept it hidden in the J.C.O's barracks of the said camp for retrieval at a later stage. When the petitioner was a man posted at Sibsagar camp, which is at a distance of at least 50 k.m. from the Dinjan camp, the frame up contention appears to be probable.

18.1 The Arms Issue Register (Exbt.-A) and the Night OK Report (Exbt.-C) cast serious doubt on the story that the gun issued to PW1 had actually gone missing on 15.1.1999 and that the same was stolen by the petitioner on that-day.

18.2 Considering these discrepancies, it is quite probable that the petitioner was sent from Sibsagar to Dinjan on 15.1.1999 and made to spend the night at Dinjan camp only to facilitate the frame up. This conclusion appears more reasonable particularly in view of the evasive reply of the respondents.

Legal position

19. To explain the extent of permissible scrutiny by a High Court in a Court Martial Proceeding, Mr. D. Baruah, learned Central Government Counsel has referred to the Supreme Court decisions in [Major G.S. Sodhi Vs. Union of India \(UOI\)](#), the decision in the case of [Union of India \(UOI\) and Others Vs. Major A. Hussain \(IC-14827\)](#),

19.1 In the case of G.S. Sodhi, the Supreme Court has observed that some lapses in constitution of Court of Inquiry and recording of evidence would not vitiate a Court Martial Proceeding. However, notwithstanding its own observation, the court in that case scrutinized the Court Martial Proceeding and recorded that there was no violation of the Rules and in any case, no prejudice has been caused in the defence of the charged delinquent.

19.2 In the case of Major A. Hussain, the Supreme Court recorded that it is not necessary for the High Court to minutely examine the records of the General Court Martial as if it is sitting in an Appeal. But in this case itself, the Apex Court has not barred court's scrutiny to see whether the Court Martial has been properly convened and is composed, in accordance with the procedure prescribed by the Army Act and the Rules.

20. Having regard to the ratio laid down by the Apex Court in G.S. Sodhi (supra) and Major A. Hussain (supra), I find in the instant case that the Court Martial Proceeding on the basis of which the petitioner has been found guilty have not been convened as per the prescriptions of Section 116 of the Army Act and Rule 24(2) of the Rules as it was not the CO. who had convened the proceeding.

20.1 It is further seen that evidences were recorded by an officer who was not authorized by the C.O. himself as was the requirement under Rule 23 of the Army Rules.

20.2 Therefore, in my view the impugned Court Martial Proceeding have been convened and conducted, in contravention of the provisions of the Army Act and the Army Rules. Accordingly the sentences ordered against the petitioner on the basis of such Summary Court Martial Proceeding which have not been convened in accordance with the Army Act and the Rules and where evidences have been recorded by an officer who was not authorized to do so, by the Commanding Officer, cannot be sustained in law.

21. Significantly the respondents do not deny the specific contention raised by the writ petitioner that he has been victimized and framed for telling the truth about the firing incident of 26.5.1998 before the Court of Inquiry held by Major Raju. The averments made in the writ petition in paragraphs 2 to 7 were pointed and Specific and the respondents were aware of the specific case set up by the petitioner. But they have chosen to be evasive. They have not specifically denied that theft charge was falsely foisted on the petitioner as he declined to speak the untruth about the firing incident of 26.5.1998. Therefore, this Court feels that the version projected by the writ petitioner is the truthful version of the impugned proceeding.

22. The claim that the petitioner has been subjected to discriminately retaliatory action is further fortified by the contradictions in the evidence of PW1 and PW4 vis-a-vis the material evidence Exbt.-A (Arms Issue Register) and material Exbt.-B and Exbt.-C ("Night OK Report") recorded on 15.1.1999 by the personnel at Dinjan camp who could not have recorded an "OK Report", if a rifle was actually missing on that date. Under such circumstances the court is persuaded to accept the version of the writ petitioner that he was subjected to a frameup for saying the truth, which compromised the position of the C.O. (respondent No. 6) and other officers, whose civilian family members were involved in the firing incident of 26.5.1998.

23. As regards the purported confessional statement recorded by the Lieutenant S.M. Bandkhadke, firstly the same was recorded by an officer who was not authorized by the C.O., as per the requirement of Rule 23(1) of the Army Rules. Secondly before and during the Summary Court Martial Proceeding, the petitioner was kept in confinement and was subjected to torture. The mentioning of the specific bus number in which the petitioner and Subedar Major Jogindar Singh traveled on 15.1.1999, also indicates the confession to be a dictated version not voluntarily made and, therefore, such confessional statement cannot be acceptable in law and the same cannot be made the basis for holding the petitioner guilty of the charge of theft.

24. In this case it is evident that the petitioner has been subjected to vindictive action for refusing to submit to falsehood. He has defied all odds to resist the unlawful pressure of his immediate superiors who not only subjected him to various tortures but also foisted a false case on him and ensured his incarceration and dismissal. What is of greater concern is that there was none in the organization who saw through the game plan of respondents 6, 7 and 8 and the petitioner had to wage a lonely and relentless battle against huge odds. In this manner he has lost 11 years of his precious and productive life.

25. A case of this kind makes the court wonder as to whether adequate mechanism is available in the Indian Army which is otherwise well known for its discipline and integrity, to take care of the kind of aberration noticed in this case. It is also disturbing to find that a Jawan whose only fault was that he spoke the truth, could be hounded and punished and there could be no redressal of his predicament

within the existing set up of the Indian Army, although several glaring infirmities are noticed in the impugned proceedings.

26. Respondents 6, 7 and 8, i.e., Brigadier J.S. Chamba, Colonel Amar Deep Singh and Captain B.M.S. Talwar of No. 2 Mountain Artillery Brigade Camp (as they were then) chose not to appear in the court proceeding although they have been arrayed as respondents by name. Therefore, I do not consider it appropriate to pass any order of adversarial nature against them. However, considering the court's findings recorded in this order, I deem it appropriate to direct that a copy of this Judgment be made available to the Secretary, Government of India, Ministry of Defence and the Chief of the Army for taking appropriate action as may be considered necessary by them to ensure that men in the Indian Army does not have to suffer in the hands of those, who manipulate the system to escape action for their misconduct. Let a copy of this order be furnished to Mr. D. Baruah, learned Central Government Counsel for communication to the said 2 authorities.

27. The petitioner has already suffered the sentence of civil imprisonment. But the impugned jail sentence is nevertheless declared to be unwarranted and unjustified in law. However, the 2nd penalty of dismissal from service, has to be effectively interfered with, in view of the conclusion reached by the court that the entire Summary Court Martial proceeding is vitiated in law.

28. Accordingly the impugned sentence dated 27.3.1999 and the affirmation of the said sentence made on 6.11.1999 (Annexure 14) by the G.O. Cs in Chief are interfered with and quashed. Consequently the petitioner is ordered to be reinstated in service forthwith subject to fitness satisfaction as he has been out of service for last 11 years.

29. If the petitioner is found fit, he shall be reinstated in service by protecting his service seniority but in the facts and circumstances, instead of full back wages he shall be paid 25% of his entitled wages. But if the petitioner is not found fit for reinstatement, he shall be given his due pensionary benefits along with 25% of the arrear wages. The necessary exercise in this regard shall be carried out and be completed within a period of 4 (four) months from today, i.e., by 2.7.2010.

30. This petition is allowed by imposing cost of Rs. 20,000 on the respondents as the petitioner had to fight a long drawn litigation to get relief.

Furnish a copy of this order to Mr. D. Baruah, learned Central Government Counsel for appropriate action as per direction contained in paragraph 26.