



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Civil Appeal No.18830 of 2017

Union of India & Ors. Appellant(s)

Versus

Chandra Bhushan Yadav Respondent(s)

WITH

Civil Appeal No.7440 of 2018

J U D G M E N T

L. NAGESWARA RAO, J.

1. The District Court Martial imposed a punishment of dismissal of the Respondent from service and reduction of the ranks apart from sentencing him to rigorous imprisonment for three months. The Armed Forces Tribunal, Regional Bench, Lucknow (for short “the Tribunal”) set aside the order of the District Court Martial aggrieved by which the Union of India has filed this Appeal. The Respondent was enrolled in the Indian Air Force in the trade of Equipment Assistant on

18.01.1988. He was posted to 402 Air Force Station, Kanpur in August, 1997. The Respondent was assigned duty in Diesel and Petrol Store on 02.02.2000. Information was received from a civilian on 03.05.2000 that 7 barrels of diesel were unloaded in civil area at Pappu Ka Plot at about 1400 hrs. on 02.05.2000. The informant informed 4 Provost & Security (Unit), Air Force, Kanpur, that he saw two airmen in uniform, out of which one was of dark complexion. The informant further stated that a similar incident of unloading of barrels was observed by him on 20.04.2000 also as well.

2. A detailed report was sent by 4 Provost & Security (Unit), Air Force, Kanpur by a letter dated 10.05.2000 in which it was indicated that the Respondent-herein and Corporal G.S. Mani, Equipment Assistant were involved in taking out POL (Petrol, Oil & Lubricants) belonging to Air Force Station, Kanpur. Air-Officer-Commanding, 402 Air Force Station, Kanpur directed a Court of Inquiry to be convened. By its report dated 31.05.2000, the Court of Inquiry found that DHPP quantity of 5800 Ltrs. and

petrol of 5000 Ltrs. was misappropriated by the Respondent and the then Corporal G.S. Mani, Equipment Assistant. According to the report, manipulation was done by raising gate passes for a quantity more than which was authorised by issuance of vouchers and obtaining the signature of Senior Logistic Officer on such gate passes. The said gate passes were used to take out kerosene, diesel and petrol. A second set of vouchers were prepared for the purpose of issuing gate passes when items were taken out of guard room, which were later destroyed after safe passage from the guard room. The misappropriated items were disposed in the civil area. On the basis of the said finding, the Court of Inquiry recommended following actions :

(a) Initiate strict disciplinary action against Corporal C.B. Yadav (Respondent) and others involved in the said action;

(b) To make good the loss incurred due to such action and to recover the cost of quantity DHPP 400 Ltrs. and quantity 200 Ltrs. of petrol (Rs.68,520/-).

3. An Additional Court of Inquiry was ordered to further investigate into certain other aspects not covered by the Court of Inquiry. By the Report dated 12.07.2007, the Additional Court of Inquiry found that the Respondent had prepared the gate passes in advance on some occasions. The record of the Court of Inquiry and Additional Court of Inquiry proceedings were forwarded to the Head Quarters, Maintenance Command on 26.07.2000. The Court of Inquiry proceedings were approved by the AOC-in-C, Maintenance Command, pursuant to which disciplinary action was initiated against the Respondent and others. A charge sheet was framed containing 14 charges and a hearing of charge under Rule 24 of the Air Force Rules, 1969 (for short “the Rules”) was conducted before the Air Officer Commanding-in-Chief. The AOC-in-C ordered evidence to be recorded in writing. After considering the summary of evidence, the AOC-in-C found that there was insufficient evidence to sustain Charges 1 to 5 and

therefore, those charges were dropped. A charge sheet containing fresh charges was issued.

4. On 27.08.2001, AOC-in-C Head Quarters, Maintenance Command convened a District Court Martial for trial of the Respondent. The District Court Martial found the Respondent guilty and imposed a punishment of dismissal from service and reduction of the rank apart from sentencing the Respondent to rigorous imprisonment for three months. The order dated 25.10.2001 was set aside by the Tribunal. The Respondent was directed to have been in continuous service for the purpose of pension and other service benefits. However, arrears of salary was confined to 50 per cent.

5. The Tribunal held that the allegation against the Respondent being theft and misappropriation of kerosene and diesel, the loss caused due to theft required to be reported to the civil police as per Para 804(b) of the Regulations. By referring to Section 154 of

the Code of Criminal Procedure, 1973 (for short "the Cr. PC), the Tribunal held that it is mandatory that a First Information Report (FIR) had to be registered in a cognizable case. The Tribunal observed that the Respondent was not given an opportunity in terms of Rule 156 of the Rules during the Court of Inquiry proceedings. In view of the violation of sub-rule (2), (6) and (7) of Rule 156 of the Air Force Rules, the Tribunal was of the view that the proceedings of the Court of Inquiry were vitiated. The contention on behalf of the Respondent that there was violation of Rule 24 of the Rules and that the summary of evidence was also not recorded in accordance with the prescribed procedure, was not accepted by the Tribunal. Group Captain A.K. Gurtu, Senior Personnel Staff Officer (SPSO), Head Quarters for Air Officer, Commanding-in-Chief signed the order by which the District Court Martial was convened which, according to the Tribunal was in violation of Section 111 of the Act and Rule 43(4) of the Rules. The Tribunal observed that only the AOC-in-C is

competent to convene the District Court Martial. The Tribunal re-appreciated the evidence and came to the conclusion that the charges against the Respondent were not proved beyond reasonable doubt.

First Information Report (FIR)

6. Mr. Vinay Kumar Garg, learned Senior Counsel appearing on behalf of the Respondent submitted that Para 804 (b) of the Regulations imposes an obligation that a loss caused due to theft should be reported to the civil police. He supported the finding of the Tribunal that there is requirement of compulsory registration of FIR in view of the provisions of Section 154 Cr. PC. Mr. R. Balasubramanian, learned Senior Counsel appearing for the Union of India submitted that Para 804(b) of the Regulations is not mandatory. It is open to the authorities to report a theft to the civil police if the situation warrants. He submitted that the Air Force Act, 1950 and Air Force Regulations, 1964 govern the conduct and discipline of the Air Force. The Air Force Act, 1950 is a special law in which detailed procedure

for conducting of trial by a Court Martial has been prescribed and no requirement for registration of an FIR is mandatory under the Rules therein. The conduct of trial including investigation is covered under Air Force Act and the Rules. He referred to Section 5 of the Cr. PC to submit that the Cr. PC is not applicable to the personnel governed under the Air Force Act. He relied upon the judgment of this Court in ***Ajmer Singh & Ors. v. Union of India & Ors.***¹ in support of his argument.

7. In ***Ajmer Singh*** (supra), it was held as follows :

“7. Section 5 of the Code of Criminal Procedure lays down that nothing contained in the said Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force. The relevant Chapters of the Army Act, the Navy Act and the Air Force Act embody a completely self-contained comprehensive Code specifying the various offences under those Acts and

¹ (1987) 3 SCC 340

prescribing the procedure for detention and custody of offenders, investigation and trial of the offenders by court martial, the punishments to be awarded for the various offences, confirmation and revision of the sentences imposed by court martial, the execution of such sentences and the grant of pardons, remissions and suspensions in respect of such sentences. These enactments, therefore, constitute a special law in force conferring special jurisdiction and powers on court martial and prescribing a special form of procedure for the trial of the offences under those Acts. The effect of Section 5 of the Code of Criminal Procedure is to render the provisions of the Code of Criminal Procedure inapplicable in respect of all matters covered by such special law. ”

8. It is clear from the above that the Air Force Act is a special law conferring jurisdiction and powers on the Court Martial and prescribing the procedure for trial of offences. It is also clear that the Code of Criminal Procedure is not applicable in respect of matters covered by the Air Force Act. Hence, the finding

recorded by the Tribunal that it is mandatory for the authorities to report the offences to civil police for registration of an FIR is unsustainable. The Tribunal further relied upon Para 804(b) of the Regulations to hold that it is incumbent on the part of the authorities to report an offence to the civil police for registration of an FIR. Para 804(b) is as follows:

“804. Loss of Air Force Equipment and Foodstuffs.

(a) ...

(b) A loss which is supposed to be due to theft will be reported at once to the civil police, when the circumstances warrant the course of action. In any court of inquiry which may subsequently be held, evidence will be taken to show the date on which the loss was so reported.”

9. There can be no doubt from a plain reading of the Regulations that the reporting of an offence of theft to the civil police is optional. Only when the circumstances warrant such reporting to the civil police, the competent officer can do so. For the aforementioned reasons, para

804 (b) of the Regulations of the Air Force Act cannot be said to be mandatory.

Court of Inquiry:

10. The contention of the Respondent which was accepted by the Tribunal relates to the violation of sub-Rule (2), (6) and (7) of Rule 156. It is necessary to reproduce sub-Rule (2), (6) and (7) of Rule 156 which are as under :

“156. Courts of inquiry other than those held under section 107.—

(1) . . .

(2) Save in the case of a prisoner of war who is still absent, whenever any inquiry affects the character or service reputation of a person subject to the Act, full opportunity must be afforded to such person of being present throughout the inquiry and of making any statements and of giving any evidence he may wish to make or give, and of cross-examining and witness whose evidence, in his opinion, affects his character or service reputation, and producing any witnesses in defence of his character or service reputation.

(3) . . .

(4)

(5)

(6) The proceedings of a court of inquiry, or any confession or statement or answer to a question made or given at a court of inquiry, shall not be admissible in evidence against a person subject to Air Force Law, nor shall any evidence respecting the proceedings of the court be given against any such person except upon the trial of such person for wilfully giving false evidence before that court.

(7) Any person subject to the Act whose character or service reputation is in the opinion of the Chief of the Air Staff, affected by anything in the evidence before or in the report of a court of inquiry shall be entitled to a copy of the proceedings of such court unless the Chief of the Air Staff sees reason to order otherwise."

11. The Tribunal was of the view that the Respondent was not given sufficient opportunity to defend himself during the course of the proceedings before the Court of Inquiry.

12. According to the Respondent, he was not permitted to be present during the recording of statement of witnesses. He was also deprived of an opportunity to cross-examine the witnesses. The contention on behalf of the Union of India is that the Respondent was given an opportunity to make a statement and to cross-examine witnesses. He was also given a chance to produce documentary evidence. The Respondent made a statement on 19.07.2000 to the effect that he did not wish to cross-examine witnesses and to produce any documentary evidence in his defence.

13. The statement made by the Respondent was produced before us which indicates that he did not utilize the opportunity given to him. Therefore, it cannot be held that there is violation of Rule 156 of the Rules and the Tribunal committed an error in holding that the proceedings of Court of Inquiry are vitiated.

Convening Order:

14. The contention of the Respondent is that Group Captain A.K. Gurtu, Senior Personnel Staff Officer

(SPSO), Head Quarters MC IAF signed the order by which the District Court Martial was convened. It is urged that AOC-in-C is the competent authority to convene the Court Martial. The Union of India justified the order by which the District Court Martial was convened in accordance with the Air Force Rules.

15. Section 111 of the Air Force Act provides that District Court Martial may be convened by an officer having power to convene a General Court Martial, or by an officer empowered by warrant of any such officer. Rule 43 deals with convening of General and District Court Martials. Rule 43(4) which is relevant for our purpose reads as under :

“43. Convening of general and district court-martial. —

(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.”

16. In *Union of India & Ors. v. Ex. Flt. Lt. G.S. Bajwa*², this Court examined the issue pertaining to the authority competent to convene the Court Martial and held as follows:

“44. A ground was taken before the High Court (Ground f) that the convening of the General Court Martial was signed by an officer, in whose name no delegation or such authority had ever been made. In reply thereto the appellant had submitted that the convening order was signed by the said officer on behalf of the Air Officer In-charge Personnel, who had after due application of mind, issued the order for convening the above Court Martial. It was not disputed before us that the Air Officer In-charge Personnel (AOP) was empowered to convene a Court Martial. The only question which, therefore, requires consideration is

² (2003) 9 SCC 630

whether the order convening the General Court Martial was passed by the AOP and it was only formally communicated under signatures of the Air Commodore concerned or whether the Air Commodore named therein, who was not empowered, himself passed the convening order. With a view to avoid any controversy on this factual position, we directed the appellant to produce before us the original file. We have perused the file and we find that the order for convening the General Court Martial was approved by Air Marshal D.A. LaFontaine, AOP. There is, therefore, no force in the submission that the convening order was unauthorized and, therefore, illegal."

17. The order dated 18.08.2001 by which the District Court Martial was convened is issued in the name of Air Marshall S.S. Gupta, PVSM, AVSM, VSM, ADC, Air Officer Commanding-in-Chief, Maintenance Command. There is no doubt that the order was signed by Group Captain A.K. Gurtu, SPSO, Head Quarters MC IAF who is the Personnel Staff Officer for Air Officer Commanding-in-Chief, Maintenance Command, IAF. Rule 43(4) provides that a convening order may be signed by the

Commanding Officer or by the Senior Staff Officer on his behalf. The fact that Group Captain A.K. Gurtu was the Senior Personnel Staff officer for the AOC-in-C Maintenance Command, IAF is not in dispute. A perusal of the Record reveals that the convening order had the approval of the competent authority and as such, it cannot be termed as unauthorized. Another submission that was made by the learned Senior Counsel for the Respondent is that according to the Organizational Chart of Head Quarters MC IAF it is only Senior Air & Administrative Staff Officer (SAASO) who can be the Staff Officer of the AOC-in-C. The said submission was countered by the learned Senior Counsel for the Union of India. It was contended that that Group Captain A.K. Gurtu was Senior Personnel Staff Officer (SPSO) and lesser than that of Senior Air & Administrative Staff Officer (SAASO) in the hierarchy. There is no requirement that only SAASO can be the Staff Officer to AoC-in-C. Even Officers lower than SAASO can be appointed as Staff Officers. According to Mr. R.

Balasubramanian, learned Senior Counsel, it is evident from the order itself that Group Captain A.K. Gurtu who is Senior Personnel Staff Officer (SPSO) was the Staff Officer and competent to sign the convening order.

18. The convening order which was signed by the Staff Officer of the AOC-in-C is in accord with Rule 43(4) of the Rule and no fault can be found with the order. The Tribunal committed an error in holding that the convening order was by an officer who was not competent.

Charges 5 & 6

19. The District Court Martial found the Respondent guilty of Charges 1, 2, 5 and 6. He was exonerated of Charges 3 and 4. The confirmation authority held that there was no sufficient evidence in relation to Charges 1 and 2 and they were dropped. What remains to be seen is whether Charges 5 & 6 are established. Charges 5 & 6 are as follows:

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Fifth Charge	Committing Criminal Breach of Trust
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<p>Section 52(c) Air Force Act, 1950</p>	<p>in Respect of property belonging to the Govt.</p> <p>In that he, At 402 AF Station, on 20 April 2000, being the NCO i/c POL, Stores of 402 AF Station and in that capacity entrusted with POL Stores of the unit, dishonestly misappropriated 1400 Ltrs of DHPP(N), by raising IAFF(Q) 429 No.EX/IV/P/10 (2000-2001) for 200 ltrs of Petrol 87 MT 800 ltrs of DHPP(N), but physically issuing 702670-K Cpl Mani GS Eqpt Asst of 7 AF Hospital 200 ltrs of Petrol 87 MT, 2200 ltrs DHPP(N) and nil Kerosene oil quantity, by writing quantity 200 ltrs of Petrol 87 MT, 800 Ltrs of DHPP(N) and 1400 ltrs of kerosene Oil on gate pass No.3129 dated 29 April 2000.</p>
<p>Sixth charge Section 52(c) Air Force Act, 1950</p>	<p>Committing criminal breach of trust in respect of property belonging to the Govt.</p> <p>In that he, At 402 AF Station, on 02 May 2000 being the NCO i/c POL, stores of 402 AF Station and in that capacity</p>

	entrusted with POL stores of the unit, dishonestly misappropriated 1400 ltrs of DHPP(N), by making use of two sets of IAFF(Q) 429 bearing same serial No.EX/IV/P/16 (2000-20010 for a single transaction of issue of POL to 7 AF Hospital first set (receipted blue) showing issue of 2400 ltrs of Kerosene oil only and second set (original black) showing issue of 2400 ltrs of kerosene oil and 1400 ltrs of DHPP(N), and physically issuing to 702670-K Cpl Mani GS Eqpt Asst of 7 AF Hospital as per second set and gate pass No.3131 dated 02 May 2000.
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20. The Tribunal on a reconsideration of the evidence on record concluded that Charges 5 and 6 were not established beyond reasonable doubt. PW1 Corporal M.K. Sharma failed to identify the signatures appended on the vouchers. PW2 Sergeant L. Singh who was the Record Keeper in Security Section deposed that he was not aware as to who was responsible for the issuance of

kerosene oil. W.O. S.K. Singh who was examined as PW3, does not remember the dates and data with regard to deficiencies of POL. He stated that no deficiency was found in POL during the weekly snap checks from February-May, 2000. He further stated that the Respondent was not related to issuance of kerosene oil during the months of February-May, 2000. Wing Commander J.K. Chakraborty who appeared as PW4 admitted that there was no deficiency of diesel at the time of handing and taking over of duty by the Respondent. PW5 Flight Lieutenant Arvind Kumar had no personal knowledge of the evidence as he was on leave. However, he stated that there was no surplus or deficiency of POL. PW6 Corporal G.S. Mani admitted to unloading seven empty barrels at Pardevanpurwa on 20.04.2000 at the request of the Respondent. He further stated that an amount of Rs.1,500/- was forcibly given by the Respondent. He also stated that he carried 20 barrels for collecting 2400 liters of kerosene oil and again collected seven barrels on 02.05.2000. During

cross-examination, he was confronted with his previous statement wherein he stated that he was coerced to make a statement against the Respondent. In view of the contradictions made by PW6 who is the co-accused, the Tribunal held that he is not a reliable witness. PW7 Corporal S. Singh categorically stated that the loading of barrels containing POL was at the behest of Corporal G.S. Mani. PW8 Hasan R. Lascar who was working in the Medical Ward stated that he loaded empty barrels on the instructions of Corporal G.S. Mani. PW9 Rajendra Prasad Lascar also stated that loading and off loading of diesel at Pardevanpurwa was in the presence of Corporal G.S. Mani.

21. We have examined the evidence to satisfy ourselves as to whether there is any iota of evidence against the Respondent. It appears from the evidence that Corporal G.S. Mani was actively involved in the transportation of diesel barrels and loading and off loading in the civil area. Curiously no action was taken against Corporal G.S. Mani. There is no evidence on

record to connect the Respondent to the offence of illegal transportation of POL. Though we are not in agreement with the Tribunal on the other issues, in view of lack of any evidence against the Respondent, we are inclined to uphold the judgment of the Tribunal. The Appeal is dismissed.

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22. This appeal has been filed by the Respondent aggrieved by the directions of the Tribunal that the Appellant shall pay only 50 per cent of the arrears of salary. After considering the submissions of the learned Senior Counsel, we are not inclined to interfere with the order of the Tribunal. The appeal is accordingly dismissed.

.....J.
[L. NAGESWARA RAO]

.....J.
[DEEPAK GUPTA]

**New Delhi,
January 17, 2020.**