

* IN THE HIGH COURT OF DELHI AT New Delhi

+ **WP (C) No. 5644/2002**

% Reserved on : 05th September, 2008
Date of decision: 22nd September, 2008

Lt. Col. RAVENDRA KUMAR ...Petitioner
Through: Mr. C.M. Khan, Advocate.

Versus

UNION OF INDIA & ORS. ...Respondents
Through: Ms. Anjana Gosain, Adv.

CORAM:
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

: **MOOL CHAND GARG, J.**

1. The petitioner joined Indian Army in the year 1979 as an Engineering Graduate. In 1996 he was posted as Officer Commanding of Station Workshop EME at Belgaum, North Karnataka as Lt. Col. At that station, other units including Maratha LIRC commanded by Brigadier S. P. Sharma, (SM) was also stationed. One Col. C. D. Sawant was the Dy. Commandant of the Maratha LIRC. In July 1997 Government of India decided to disband the Station Workshop EME Belgaum and the responsibility to sell off the

regimental properties was placed upon the petitioner. Auction of the Regimental Property took place on 16.3.98. A unit namely EME Cell Belgaum was raised in place of the workshop which was also placed under the command of the petitioner. The property of the EME Cell was also disposed of by an auction held on 24.3.1999 in terms of the decision taken on 19.3.99. A final audit of the regimental fund account was submitted on 30.3.1999 signed by all the board members and countersigned by the petitioner. However Major A.K. Singh who also happened to be the chairman of auction board on the very next day i.e. on 31.3.1999 raised certain objections to the audit report. A response was called from the petitioner which was submitted on 5.4.1999. The allegations leveled against the petitioner are about misappropriation of certain properties of the unit not put up for auction, and kept by the petitioner himself by manipulating the auction.

2. It is the case of the petitioner that Col. C. D. Sawant (SM) was inimical to the petitioner and has falsely implicated him in this case. Soon after Major A.K.Singh raised objections, Col. Sawant ordered a Court of Inquiry by appointing his battalion officer Lt. Col. G. C Chohan OF 8 Maratha LI as its Presiding Officer. During the Court of Inquiry the petitioner was attached to Station Head Quarter,

Belgaum even though his unit the EME Cell stood disbanded on 31.3.1999 and ceased to exist. It is stated that his movement for next posting to Nagaland was delayed even though he was not connected with the Court of Inquiry. He was allowed to join to his next posting after the conclusion of the Court of Inquiry on 10.8.1999 to 310 Field Station Workshop EME (Nagaland).

3. It is also his case that no one deposed against him during the aforesaid C O I. However, vide letter dated 2.2.2000 signed by Brig. S. P. Sharma, the Station Commander, the petitioner was asked to make good a loss of Rs.63924/- of the Regiment fund of the Ex-EME Cell Belgaum by alleging that the said amount had been misappropriated while disposing off the properties of the Regiment. The petitioner was also attached to Maratha LIRC for finalization of disciplinary case against him, on 30.01.2000 and on the same day he was also informed that Lt. Col. Satbir will record the summary of evidence who also happened to be from Maratha LIRC. It is stated that hearing of charge was done by Col. C. D. Sawant even though he was not his Commanding Officer without any prior verbal or written notice contrary to the provisions of Army Rule 22 in a very intransparent and surreptitious manner. It is alleged that the provisions of Army Rule 180 were also not

complied with. Petitioner further alleged that during recording of summary of evidence he was harassed and made to wait and sit in isolation. The petitioner claims to have objected to the malpractices adopted by Col.C.D. Sawant vide his letters dated 8.4.2000, 11.4.2000 & 17.4.2000.

4. It is the case of the petitioner that after recording the summary of evidence the petitioner was tried by a General Court Martial as per order dated 6.9.2000 without supplying him summary of evidence immediately, but supplied only on 28.2.2001. Even the relevant documents were also not supplied. It is also submitted that during the General Court Martial also he was harassed several times and denied visit to his civil counsel. During adjournments of trial he was not released which further prejudiced his defence. The Deputy Judge Advocate General, appointed for GCM was junior to the petitioner and was not changed despite objections raised. Even the defence assistant of the petitioner Col. A. K. Malhotra was humiliated by DJAG. Consequently he withdrew from the proceedings. Finally the petitioner was convicted by the General Court Martial of the charges framed against him under Section 63 of Army Act (for short "the Act") later converted to Section 52 (b) of the Act and has been sentenced to undergo punishment of 'cashiering' and sentence of one year rigorous imprisonment vide orders

pronounced on 15.6.2001. The pre-confirmation petition filed by the petitioner under Section 164(1) of the Act was decided vide order dated 21.9.2001 only after intervention of this Court and was rejected. The sentence imposed was confirmed except that authorities remitted the remaining period of sentence of one year RI and thereafter the remaining sentence was promulgated. The petitioner then filed the post confirmation petition which was also dismissed vide order dated 24.4.2002. Hence this petition.

5. By way of the present Writ Petition, the petitioner has prayed for setting aside the disciplinary proceedings taken out against him right from the beginning and also prays that the sentence imposed upon him be set aside and he be reinstated in service with all consequential benefits, on the following grounds:

(i) Because Col C.D. Sawant who directed holding of the court of inquiry, recording summary of evidence and conducted hearing of charge had no authority to do so. He was also biased against him.

(ii) Because no opportunity was granted to the petitioner for the cross-examination of witnesses as per Rule 22 of the Army Rules (for short "the Rules"). The hearing on the tentative charge was a mere farce.

(iii) Because the initiation of the disciplinary action against the petitioner when no witness had spoken against him in the Court of Inquiry was illegal and biased. Rule 180 of the Army Rules also not complied with.

(iv) Because the respondents ought not to have appointed a Judge Advocate General who was a junior of

the petitioner. In any case when objection was raised corrective steps should have been taken.

(v) Because the DJAG committed misbehavior with the defending officer of the petitioner compelling him to opt out of the proceedings causing a serious prejudice to the case of the petitioner.

(vi) Because the punishment of Cashiering and rigorous imprisonment for one year was not justified in the present case.

(vii) Col. C.D. Sawant who acted as the Commanding Officer of the petitioner at the relevant time acted with bias and with a determined intention to harm the petitioner.

6. It will be appropriate to take note of the tentative chargesheet issued to the petitioner which is reproduced hereunder:

The accused No. IC-39032 W Lt Col Ravender Kumar of 310 Stn Wksp EME, C/o 99 APO, attached with the Maratha Light Infantry Regimental Centre, Belgaum is charged with:-
Army Act Section 63

AN OMMISSION PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE

In that he,

at Belgaum, on 16 March 1998 and 24 March 1999 while functioning as officer Commanding, EME Cell, Belgaum failed to administer the Regimental fund judiciously by allowing auction of regimental property to the disadvantage of Regimental Fund.

Station: Belgaum
Date 02 March 2000

Sd/-
(CD Sawant)

Colonel
Officier Commanding Troops
The Maratha LIRC, Belgaum

Later on this charge was converted into Section 52(b) of the Act.

7. On the other hand the respondents denied all the aforesaid submissions. They have submitted that the grounds raised by the petitioner have no legs to stand. It is submitted that the charge sheet was issued by the competent authority as Brigadier S. P. Sharma was admitted in Hospital and in his place Col. C. D. Sawant by virtue of being IInd in Command acted as the officiating commandant of the Maratha Light Infantry Regimental Centre in addition to his own duties of Dy. Commandant and Officer Commanding Troops and as such he was the commanding officer of the petitioner at the relevant time. In this regard, an official notification was also issued in accordance with the Defence Service Regulations. A copy of the notification in respect of the authority of Col. C. D. Sawant is available on record which is reproduced hereunder:

"RESTRICTED
CENTRE ROUTINE ORDER PART I
BY
COL CD SAWANT, SM
OFFICIATING COMMANDANT
THE MARATHA LIGHT INFANTRY REGIMENTAL CENTRE,
BELGAUM

Station: Belgaum Wednesday 09 Feb 2000

076 CHANGE OF COMMAND. IC-28419F Brig SP Sharma, Comdt, MH Belgaum mein dinank 09 Feb 2000 ke admit hone par IC-3246DP Col CD Sawant SM, Dy. Comdt. Ke allawa Karyawahak Commandant ka padbhar sambhalenge."

8. The respondents also submitted that Army Rule 180 was duly complied with during the COI. Once allegations came against the petitioner he was allowed to cross-examine the witnesses. As such, there was no requirement of hearing of charge as per the proviso to Army Rule 22. The Commanding Officer was empowered to direct Recording of Summary of evidence if prima facie case existed against the petitioner. However, though not required, hearing of charge was properly done by giving an opportunity to the petitioner as per law. Rule 22 of the Army Rule is reproduced as under for the sake of reference:

"22.Hearing of Charge.- (1) Every Charge against a person subject to the Act shall be heard by the Commanding Officer in the presence of the accused. The accused shall have full liberty to cross-examine any witness against him, and to call such witness and make such statement as may be necessary for his defence:

Provided that where the charge against the accused arises as a result of investigation by a Court of inquiry, wherein the provisions of rule 180 have been complied with in respect of that accused, the Commanding officer may dispense with the procedure in sub-rule (1)."

9. Regarding the third submission, it is submitted that only after the conclusion of Court of Inquiry when it became clear that the petitioner abused his position as officer commanding of the unit (EME Workshop & EME Cell)

and forced his subordinates to tow his line to show that a proper auction was carried out whereas it was not so carried out and loss was caused to the state, taking into account the facts and material available on record, disciplinary action was ordered against the petitioner giving all opportunity to the petitioner under Army Rule 180. This is apparent from the attachment order of the petitioner for the purpose of disciplinary action to be taken against him. The said order was passed on 31.1.2000 and reads as under:

"Confidential

Tele: 337511 Additional Directorates

*Discipline and Vigilance
Adjutant General's Branch
Army Headquarters
DHQ PO New Delhi-110011*

*C/06270/SC/228/AG/DV-2
Headquarters
Eastern Command*

31 Jan 2000

ATTACHMENT ORDER: OFFICERS

1. Ref HQ Southern Command letter no. A/2402615/DV-2(2A) dated 10 Jan 2000.

2. Under the provisions of AI 30/86, IC-39031W Lt. Col. Ravinder Kumar of 310 Stn Wksp EME/Eastern Command is hereby attached to MARATHA LI RC, Belgaum till finalization of the disciplinary case pending against him.

3. The officer will move on attachment forthwith.

*(TK De)
SCSO
Dir/DV-2
For Adjutant General*

Copy to :

*HQ Southern Command
ATNKK AND G AREA (A)
Stn Hq Belgaum
MARATHA LI RC Belgaum
310 Stn Wksp EME*

*C/O 99 APO
CDA(O), Pune
MS (12)"*

10. The respondents have summarised their case against the petitioner by making following averments in paras 3 (iv) & (v) of their counter affidavit ;

"3.(iv) In reply to para 3(iv) it is submitted that on disbandment of the station workshop, EME Belgaum on 31.7.1997, the new unit called EME cell, Belgaum with one officer, one Junior Commissioned Officer and 6 other ranks was to be raised by transfer of personnel from disbanded Station Workshop, EME Belgaum. The petitioner as Officer Commding was aware of the disbandment of this EME Cell, Belgaum well before 19th March 1999. Though the Station Workshop EME, Belgaum stood disbanded on 31.7.1997, the work on transfer of unit personnel, deposition /distribution unserviceable stores/properties, disposal of Regiment and other Government properties, connected documents was not completed by the petitioner well before 31.7.1997 as it is quite common that works of raising/disbandment carries on beyond the dates fixed for the same. Accordingly, the process of disbandment continued much beyond 31.7.1997. The fact that the auction of items of Regimental properties of Station

Workshop EME, Belgaum was held nine months later in March 1998 amply proves the same. Similarly, the petitioner dragged the disbandment process of his minor unit EME Cell, Belgaum consisting of just eight personnel well beyond 31st March 1999 he moved on posting to 310 Field Workshop in Nagaland by September, 1999. For the sake of administration and to regularize the overstay of the petitioner and his unit personnel beyond 31st March 1999 their attachment to Station Headquarter Belgaum with effect from 1st April 1999 was ordered and it continued till completion of disbandment work.

3.(v) contents of para 3(V) are wrong and are denied. It is submitted that the auction was to be conducted under the provisions of Special Army order 9/S/76 and Regulations for the Army. In violation of these provisions regarding giving wide publicity to all units in station and producing all the listed stores for auction, the petitioner as Officer Commanding of EME Cell, Belgaum failed in his duties. The items in which the petitioner had personal interest were never produced for auction hence there was no bidding on those items. The petitioner himself was also present for both the auctions. Everything at the auctions was as per his orders and instructions. The Junior Commissioned Officers & Non commissioned Officers detailed as Presiding Officer/Members of the auction board carried out his illegal orders. Evidence to this effect is already on record at the Summary of Evidence and General Court Martial proceedings.”

11. It is further submitted that the appointment of JA of a lower rank was made since JA of the rank of the petitioner was not available. It is stated that JAG of junior rank could be there for the trial of the GCM which is permissible. A certificate to that effect was endorsed in the convening order by the convening authority in compliance of C.S. Gill's judgment. It is also submitted that since the petitioner was represented by a legally qualified counsel who defended him in the trial and the fact that a suitable officer was provided as defending counsel to the petitioner as per law, no prejudice has been caused to the petitioner on this account.

12. It is submitted that the punishment given to the petitioner while confirming was reduced by the confirming authority to 'cashiering' and remission of the unexpired portion of the rigorous imprisonment. Considering the nature of the charge, complicity of the offence committed by the petitioner by abusing his position and manipulating the documents, the punishment was commensurate with the charge and no interference is called for on this account. Further, the punishment was awarded in view of the fact that the petitioner had carefully planned and executed the illegal auction whereby the petitioner misappropriated the funds to the tune of Rs.63,924/- (Out of a total of

approximately Rs. 90,000, as submitted by the petitioner in court) by not submitting attractive items, like T. V., VCP etc. for auction of which the petitioner was already in possession. In the auction no member of the board was allowed to participate, the petitioner submitted false details of buyers and continued to enjoy the said products. It is also pertinent to note that the minimum reserve price was also fixed by the petitioner. The petitioner further proceeded to make two of his Junior officers Members of the Board of Auction so that the Petitioner could use undue influence on them to get the O.K. report and being head of the command, it was a gross indiscipline on his part, particularly when he made his own two unit members to do something illegal under his command and there is clear finding against him.

13. Dealing with the issue of the attachment of the petitioner it is submitted that he was attached for disciplinary proceedings only after finalization of Court of Inquiry. Previously his attachment to the station HQ was necessitated because the disbandment proceeding of EME Cell was required to be completed by 31.03.1999. However, the same was completed in Sept. 1999 when ultimately petitioner moved on to new place of posting. The petitioner and other unit personnel were allowed for administrative

purpose to stay at Station HQ Belgaum. The attachment order of petitioner for taking disciplinary action against him was issued by Army HQ on 31.1.2000 after finalization of COI and pursuant to the direction of the competent authority for taking disciplinary action against the petitioner.

14. About the audit of auction proceedings and there being no objection to it, reliance has been made to the averments made in para 3(iv) and 3(v) of the counter affidavit (supra). As to how the petitioner manipulated the Board proceedings a letter was written to the Unit of the petitioner by the Presiding Officer of the Board, copy of which is already annexed as Annexure R-1. The said letter is also being reproduced for the sake of reference.

*"Telephone Military:422517/5227 Marath Light Infantry
Regiment Kendar
The Maratha Light Infantry
Regimental Centre
Belgaum – 590 009
31st March, 1999*

*PPRI/4842/Gen
EME CELL
Belgaum-9*

Convening Order : Disbandment of EME Cell, Belgaum

1. Ref Stn HQ Convening order NO. 152/G(PC) dt. 12th March, 99.

2. *The bd proceedings were left with you at 1900 hrs on 30th March, 99 for me to enable fairing out the draft observations and also to discuss these with other members the next day.*
3. *However it is obs that your yourself or your staff have put your remarks as "Nil" at para (m) & (h) and obtained the signatures of other members w/o appraising them about the observations and submitted the bd proceedings to Stn HQs directly.*
4. *The obsn as under are now sent herewith for your information and necessary action:*
 - (a) *It is obs that value of property auctioned and credited into Regt Fund Account (RV-21 dt 24th March, 99) in terms of SAO 26/S/73 is seemingly disproportionate to the actual value of stores that have been auctioned. Few examples are as under:-*

<i>S.No. Item</i>	<i>Date of Purchase</i>	<i>C. of Value</i>
<i>(i) Camera Niken F</i>	<i>18 Dec. 99</i>	<i>PV-99 Rs. 8300/-</i>
<i>(ii) Auto Stand</i>	<i>22 Jan.99</i>	<i>PV-117 Rs. 3462/-</i>
<i>(iii) Zoom Lons</i>	<i>21 Jan. 99</i>	<i>PV-113 Rs.11200/-</i>
<i>(iv) Carpet</i>	<i>16 Jan.99</i>	<i>PV-108 Rs. 9000/-</i>
 - (b) *A large No. of donations have been made the receipts of which were not shown to the presiding officers despite repeated requests.*
5. *The above is for your information and necessary action please.*

Sd/-
(A.K.Singh)
Major
Presiding Officer"

15. We have given our thoughtful consideration to the rival submissions including written submissions filed by the parties and have also gone through the provisions of the Act as well as the rules framed there under.

16. At the outset, we may discuss the scope of judicial intervention in the matter like the one in hand, which is very limited. It is well settled that while sitting as a writ court under Article 226 of the Constitution, this Court does not sit as a Court of appeal and interferes only if infraction of the rules or the provisions of the Act are writ large during the proceedings or when the punishment imposed is excessively disproportionate and shocks the conscience of this Court.

17. It would be useful to extract some observations by the Apex Court which lay down the law in this regard. Para 4 and 5 of the judgment delivered by the Apex Court in the case of Union of India Vs. Himmat Singh Chahar JT 1999 (3) SC 631 reads as under:

"4. In view of the rival submissions at the Bar the short question that arises for consideration is what would be the extent of the jurisdiction in exercising power under Article 226 of the Constitution over the findings of the Authority in Court Martial Proceedings? The Defence personnel serving in Army, Navy or Air force when commit any offence are dealt with by the special provisions contained in the Army Act or the Navy Act or the Air force Act and not by the normal Procedure Code. The said Navy Act is a complete code by itself and prescribes the procedure to be followed in case it is decided that an officer should be tried by Court Martial. The Act also provides sufficient safeguard by way of further appeal to be Chief of the Staff and then ultimately to the Union Government.

5. *Since the entire procedure is provided in the Act itself and the Act also provides for a further consideration by the Chief of the Naval Staff and then by the Union Government then ordinarily there should be a finality to the findings arrived at by the Competent Authority in the Court Martial Proceeding. It is of course true that notwithstanding the finality attached to the orders of the Competent Authority in the Court Martial Proceeding the High Court is entitled to exercise its power of judicial review by invoking jurisdiction under Article [226](#) but that would be for a limited purpose of finding out whether there has been infraction of any mandatory provisions of the Act prescribing the procedure which has caused gross miscarriage of justice or for finding out that whether there has been violation of the principles of natural justice which vitiates the entire proceeding or that the authority exercising the jurisdiction had not been vested with jurisdiction under the Act. The said power of judicial review cannot be a power of an Appellate Authority permitting the High Court to re-appreciate the evidence and in coming to a conclusion that the evidence is insufficient for the conclusion arrived at by the Competent Authorities in Court Martial Proceedings. At any rate it cannot be higher than the jurisdiction of the High Court exercised under Article [227](#) against an order of an inferior Tribunal. This being the parameter for exercise of the power of Judicial review against the findings of a Competent Authority in a Court Martial Proceeding, and applying the same to the impugned judgment of the High Court we have no hesitation to come to the conclusion that the High Court overstepped its jurisdiction in trying to re-appreciate the evidence of Mrs. Nirmala Sharma and in coming to the conclusion that her evidence is not credible enough to give a finding of guilt of the respondent of a charge under Section [354](#)."*

18. The record of this case also goes to show that in the present case the petitioner contested the proceedings and cross-examined every witness who was examined during

the GCM and also led evidence. He has also not particularized his allegation of bias for initiating the enquiry against him or for holding the GCM before the conclusion of the proceedings of the GCM.

19. The reasoning given by the GCM in holding the petitioner guilty of the charges levelled against him goes to show, that the petitioner who was admittedly performing the duties of Commanding Officer of EME workshop and EME Cell Belgaum in March, 1999 and was in charge of the auction which took place in respect of the regimental properties manipulated the auction in such a way that he was able to keep for himself items like Videocon, VHS TC EC Colour, Steel almirah with glass and steel almirah plain besides manipulating possession of Nikon Camera Zoom lenses with camera stand, woolen carpet and cordless telephone without putting them for auction and by paying the money even less than the reserved price though reflecting them in the list of the goods which were put for auction on 16.3.99 and 24.3.99 respectively and in this manner misappropriated the amount charged for. The officers who were deputed for auction acted under his instructions being his juniors. No wide publicity was given to the auction. They have deposed against him before the GCM and have supported their allegations. This proves the

dishonest intention of the petitioner in misappropriating the aforesaid items. His defence, that the items were non-serviceable was also found to be false in view of the time when these goods were purchased.

20. At this juncture, it would also be appropriate to make a reference to the reply filed by the petitioner to the objections raised by Major A.K.Singh which goes to show, that no specific reply has been given by him to the charges leveled against him by the Chairman of the Auction Board on 31st March, 1999 itself.

Tele: 422517/5216

10201/disband

*Station HQs
Belgaum-590009*

EME Cell

Belgaum-59009

05th April, 1999

*CONVENING ORDER: DISBANDMENT OF EME CELL,
BELGAUM*

1. Kindly refer to Maj AK singh (Presiding Officer of the board) letter No PRI/4842/Gen Dated 31 Mar 99, addressed to EME Cell Belgaum and copy to your HQ.

2. Parawise comment on the letter under ref is submitted as follows for your info and necessary action please:-

a) Para2: the Presiding Officer of the board sent of his JCO Clk to EME Cell, Belgaum on 30 Mar 99 at about 1030h for checking of the accounts for final audit. In the evening at about 1630h, Presiding Officer alongwith the said JCo came to the unit and audited the Regimental and Public Fund accounts. He dd not give any draft observation but directed to put up the board proceedings which was complied with. The Presiding Officer signed the proceedings and the ledgers. He also confirmed to the undersigned that there was no obsn what so ever and everything was in order and then he left at about 1800 h.

(b) Para 3: This cell can not make any one to sign the board proceedings against their wishes. The Presiding Officer and the members of the board had signed it as nil as there was no obsn given by them. Proceedings were submitted to stn HQ with a copy to the Presiding Officer as per the procedure.

(c) Para 4: (a): Under the orders on the subject, the property of the disbanding unit was sold by constituting a board of offr and the sale proceed was credited to the regimental fund account.

(d) Para 4 (b) All the documents demanded were produced to the board. There is no question of not showing any receipt. Notwithstanding, all the donations were made through cheques/Demand Draft and everything is in black and white.

*Sd/-
(Ravendra Kumar)
Major
Commanding Officer*

21. The orders passed by the Appellate Authority shows that all points raised by the petitioner about his attachment, holding of court of enquiry, recording of summary of evidence and constitution of General Court Martial including appointment of a Judge Advocate have been dealt with but they have not found any merit in his contentions. From the order of attachment it is apparent that the attachment of the petitioner had taken place only after court of inquiry was recorded and a preliminary finding about the role of the petitioner was available and it is thereafter the petitioner was given an opportunity to cross-examine the witnesses who deposed against him in compliance with Rule 180 of the Rules. Explanation has also been furnished as to why a junior person was appointed as a Judge Advocate in the case of the petitioner because it has been specified that a person either of the equivalent rank or his senior was not available. An explanation is available in the order

convening the General Court Martial. Moreover any irregularity in appointment of a Judge Advocate does not vitiate the trial as provided under Rule 103 of the Rules, which is reproduced hereunder:

"103 Invalidity in the appointment of judge-advocate.—

A court-martial shall not be invalid merely by reason of any invalidity in the appointment of the judge-advocate officiating thereat, in whatever manner appointed, if a fit person has been appointed and the subsequent approval of the Judge-Advocate General or Deputy Judge-Advocate General obtained, but this rule shall not relieve from responsibility the person who made the invalid appointment."

22. All the documents which were necessary for the petitioner to prepare his defences were admittedly supplied. Even though Col. A.K.Malhotra withdrew from the trial, the petitioner who is an officer was allowed to be defended by a civil counsel and therefore, it does not lie in the mouth of the petitioner to say that he was undefended during the holding of the general court martial. The charges against the petitioner have been proved by the witnesses who appeared before the General Court Martial and deposed about the manner and method in which the auction of the regiment was conducted by the petitioner. His plea, that the auction was conducted by a three member board is of no consequence because admittedly, the two members of the Board were from his own unit and third one has taken

objection in writing. More over, they all were very junior officer and could not have taken a different stand contrary to the instructions of the petitioner about the manner of holding auction. Their testimony is against the petitioner.

Even otherwise, it is not for us to re-appreciate the evidence since we do not find any abrasion of the provisions of the Act or the rules framed there under while holding the trial. The post confirmation petition has been dismissed by the Central Government by a detailed order which has dealt with each and every point raised by the petitioner in his appeal.

23. It may also be appropriate to take note of the reasons given by the Central Government while rejecting the post confirmation petition filed by the petitioner which reads as under:

“6. AND WHEREAS, the Central Government after carefully considering the circumstances of the case and the evidence available on the record is of the view that the allegation of vindictiveness leveled by the petitioner are unfounded all the witnesses were from his unit and there is sufficient and reliable evidence on record in support of the charges. The point regarding invoking the provisions of Army Rule 180 improperly in respect of certain witnesses at the behest of Stn. HQ. Belgaum it is mentioned that the records of the case reveal that after completion of the Court of Inquiry (C of I) proceedings, it was observed that provisions of Army Rule 180 were not compelled with in respect of the petitioner vis-à-vis three witnesses. The proceedings of the C of I were thereafter referred back for doing the needful. Therefore, there was irregularity in invoking the provisions of Army Rule 180 Moreover, by invoking the provisions of Army

Rule 180 the petitioner got an opportunity to vindicate himself. Therefore, the point raised by the petitioner has no force. As regards the point that the hearing of charge was not conducted in accordance with the law and instruction on the subject and neither any witness was examined nor any opportunity was given to the petitioner to submit his defence, it is observed that as per the records that the hearing of charge was conducted strictly as per rules. The petitioner declined to produce any witness in his defence. Therefore, the point raised by him does not hold any water. As regards the point regarding issue hearing of charge and directions for recording of the Summary of Evidence by the OC Troops and not by the Commanding Officer of the petitioner it is pointed out that Col. C.D. Sawant, SM Deputy Commandant/OC Troops, Maratha LIRC, who conducted hearing of the charge, at the relevant time was officiating Commandant, Maratha LIRC. The powers of the Commanding Officer were vested in him and thus he was the competent authority to conduct hearing of the charge. As regards the point that the Summary of Evidence was not recorded in a fair and impartial manner it has been observed from the records that this allegation is unfounded. The Summary of Evidence was recorded in accordance with the rules. As regards the point that no hearing of charge for two charges under Army Act See 52(b) was conducted it has been revealed from the records that the tentative charge was framed under Army Act See 63 and after recording of evidence the charges were framed under Army Act See 52(b), which is permitted by the Army Rule 22(4). Contention of the petitioner is not legally tenable. As regards the point regarding the petitioner not having been released from custody during adjournment of the GCM it has been noticed that the petitioner remained in custody in accordance with the instructions on the subject and representations of the petitioner for release were duly considered by the competent authority. The defence counsel and the defending officer were given full access to the petitioner. Therefore, the point is devoid of any merit. As regards the point that the Judge Advocate and Presiding Officer were biased it is mentioned that the GCM Proceedings were conducted in accordance with the procedure laid down by law. The Court duly addressed to the issues raised by the petitioner. Advice given by the Judge Advocate were in conformity with the legal provisions. The findings

of the GCM are based solely on the evidence on record. The petitioner has not given any evidence in support of his allegations therefore, it appears to be figment of his imagination. As regards the point that the petitioner was not provided with defending officer of his choice perusal of the GCM proceedings reveal that the petitioner was duly defended by his defence counsel and a suitable defending officer. The issue, therefore, lacks merits and substance. As regards, the point that Photostat copies of the documents were admitted in evidence without production of the originals it has been noticed that original copies of the auction board proceedings were also produced before GCM. Contention of the petitioner is, therefore, contrary to the records of the case. As regards the point that incorrect and wrong procedure was followed for assessment of the block value/price of the articles it has been observed that the value of the articles was assessed after applying maximum permissible depreciation rates. Contention of the petitioner is not tenable. As regards the point that the GCM considered and relied upon evidence of the witnesses who were also convicted in the same case it may be stated that even a co-accused or accomplice is also not barred to depose the facts and conviction is not illegal if based upon the testimony of such a witness. In this case, other independent oral and documentary evidence duly corroborates evidence of the witnesses referred to by the petitioner. Therefore, the point is devoid of any merit."

24. A person like the petitioner who was officer commanding is not expected to have indulged in activities just to get petty benefits to his credit. However, when it is so done, it becomes all the more necessary to award maximum punishment as is available so as to set standards in a disciplined force like the Army and no leniency can be shown. We, therefore, do not consider that the punishment imposed upon the petitioner as shockingly disproportionate which may call for interference by us while exercising writ

jurisdiction more so when the punishment imposed is within the parameters of Section 71 read with Section 73 of the Act.

25. We are however conscious of the fact that the petitioner who served in the Indian Army for a period of 22 years would be deprived of the pension also because of the punishment imposed upon him and in fact only the family members and dependents would be sufferers. We, therefore feel it proper to observe that if any petition is filed by the petitioner under Regulation 16(a) of the Pension Regulations for showing mercy and to consider grant of pensionary benefits to the petitioner by the competent authority, the representation may be considered by the competent authority within a period of three months from the date of his representation taking into consideration the length of his service and his past record.

26. With these observations the writ petition is dismissed with no orders as to cost.

MOOL CHAND GARG, J.

September 22, 2008
mv/dc/anb

SANJAY KISHAN KAUL, J.