

Union Of India & Ors vs Bodupalli Gopalaswami on 12 September, 2011

Equivalent citations: 2011 AIR SCW 5331, 2011 (13) SCC 553, 2012 (1) AIR JHAR R 180, AIR 2012 SC (SUPP) 245, (2011) 4 MAD LJ(CRI) 895, (2011) 4 CHANDCRIC 286, (2011) 10 SCALE 275, 2011 CRI LJ (SUPP) 59 (SC), (2011) 4 KER LT 28, (2012) 1 SERVLR 1, (2011) 4 SCT 323

Author: R.V.Raveendran

Bench: P. Sathasivam, R. V. Raveendran

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 876 of 2003

Union of India & Ors.

... Appellants

Vs.

Bodupalli Gopalaswami

... Respondent

With

CRIMINAL APPEAL NO. 877 of 2003

Bodupalli Gopalaswami

... Appellant

Vs.

Union of India & Ors.

... Respondents

J U D G M E N T

R.V.RAVEENDRAN,J.

As the ranks of parties in the two appeals are different, for convenience, we will refer to the parties by their ranks in Criminal Appeal No.876/2003.

2. The first respondent was the officiating Commandant and later the Commandant of 227 Company ASC (Supply) Type `G', Ambala Cantonment (hereinafter referred to as the `Supply Depot') from 19.10.1988 to 26.6.1990. The supply depot had three sections - Dry Rations, Fresh Rations and Butchery. The appellant as the Commandant was in overall charge of the supply depot. As per the standard operative procedure for the Butchery, the following staff were detailed for operation:

(i)	Supervisory Officer	-	Cap. P. S. Malhotra
(ii)	Veterinary Officer	-	Lt. Col. G. S. Srivastava
(iii)	J.C.O. in-charge	-	Sub. G. L. Kalra
(iv)	NCO in-charge	-	Havaldar Clerk D. L. Prasad

3. On receiving complaints about irregularities in the butchery, a team of three officers from the Central Bureau of Investigation and two Army Officers carried out a raid/surprise inspection of the butchery on 14.2.1990, with the prior permission of the second respondent. They intercepted eleven vehicles belonging to different units returning from butchery after collecting meat and checked the meat for quality and quantity. They also inspected the butchery. The Report of the Inspection Team disclosed certain irregularities in the quality of the dressed meat supplied by the contractor, (which were being issued to the indenting units), maintenance of live stock and supervision. As a consequence, the officials of the Butchery were all separately charge-sheeted.

4. The first respondent, who was the Commandant of the Supply Depot was also issued a charge-sheet dated 30.12.1992 containing the following charges :

First charge SUCH AN OFFENCE AS IS MENTIONED IN CLAUSE (f) OF SECTION 52 Army Act OF THE ARMY ACT WITH INTENT TO DEFRAUD, Section 52(f) In that he, at Ambala Cantonment, on 14 Feb.1990, while Commanding 27 Company

Supply (ASC), being contract operating officer for meat dressed, with intent to defraud caused the acceptance of meat from the contractor with heart as part of meat, well knowing that the same was not acceptable part of carcasses as per para 86 of Special Condition of the Contract deed for the period from 1st May 1989 to 31st March, 1990, concerning meat supply at Ambala.

Second charge AN OMISSION PREJUDICIAL TO GOOD ORDER AND MILITARY
Army Act DISCIPLINE,
Section 63

In that he,

at Ambala Cantonment, on 14 February 1990, while Commanding 27 Company Supply (ASC), having visited butchery of the said company at the time of inspection of carcasses by the Veterinary Officer and having found the carcasses dribbling with water, failed to ensure that wet meat dribbling with water is not issued to the Units, contrary to para 14(j) of Headquarters PH and HP area Shimla (ST Branch) Technical Instruction dated 30th November, 1989.

Third charge AN OMISSION PREJUDICIAL TO GOOD ORDER AND MILITARY Army Act DISCIPLINE, Section 63 In that he, at Ambala Cantonment, during the period from 26th February 1990 to 8th March 1990 while Commanding 27 Company Supply (ASC) failed to ensure that stock of reserve animals was maintained in the butchery of the said company as per para 51(a) of Special Condition of the Contract deed for the period from 1st May 1989 to 31st March 1990, consequently no animals were held in reserve in the said butchery during that period.

Fourth charge AN OMISSION PREJUDICIAL TO GOOD ORDER AND MILITARY
Army Act DISCIPLINE,
Section 63

In that he,

at Ambala Cantonment, during the period from 11th March 1990 to 22nd March 1990, while Commanding 27 Company supply (ASC), failed to ensure that stock of reserve animals was maintained in the butchery of the said company as per para 51(a) of Special Conditions of the Contract deed for the period from 1st May, 1989 to 31st March, 1990, consequently no animals were held in reserve in the said butchery during that period.

Fifth charge AN OMISSION PREJUDICIAL TO GOOD ORDER AND MILITARY
Army Act DISCIPLINE,
Section 63

In that he,

at Ambala Cantonment, between 15th January 1990 and March 1990, while Officer Commanding 27 Company Supply (ASC) and responsible for overall control of the operation of unit butchery, improperly failed to implement the Standard Operating Procedure for Butchery Group Supply Depot Ambala Cantt dated 9th May, 1988, as amended, resulting in the following malpractices:

- (a) Duplicate Brands and Veterinary Officer's stamp were found in possession of contractor's butcher.
- (b) All rejected meat and other offals were not being destroyed as per laid down instructions.
- (c) Passed animals were not segregated but were allowed to mix with the other animals of contractor.
- (d) Hanging room was not sealed by the JCO Incharge butchery after taking the green weight of the carcasses.
- (e) Animals passed and branded were not segregated for a minimum mandatory period of 12 hours before slaughtering.
- (f) Over issue/under issue of meat was made to the units in connivance with the representatives of the units.

Charges 1 and 2 related to what was found during the inspection on 14.2.1990. Charges 3 and 4 related to failure to maintain adequate animals in reserve subsequent to 14.2.1990. Charge 5 related to miscellaneous omissions and commissions generally based upon what was observed during the inspection on 14.2.1990.

5. On 14.1.1993, a direction for trial of the first respondent by General Court Martial ('GCM' or 'Court Martial' for short) was issued. On the same day, an order convening the GCM was issued by the third appellant. The trial commenced on 22.1.1993 and concluded on 30.7.1993. At the end of the trial, the GCM found the first respondent not guilty of the second and third charges, but guilty of the first charge, fourth charge and item (c) of the fifth charge. On that basis, the GCM imposed the sentence of dismissal from service on first respondent on 30.7.1993.

6. In pursuance of it, a show cause notice dated 30.6.1995 was issued to the first respondent calling upon him to show cause why his pensionary benefits should not be forfeited under Rule 16(a) of the

Pension Regulations for the Army (Part I), 1961 (for short 'the Pension Regulations'). After considering the first respondent's representation, the President of India ordered the forfeiture of the entire pensionary benefits of the first respondent, communicated by letter dated 22.12.1995 from the Defence Ministry to the Chief of Army Staff.

7. Feeling aggrieved, the first respondent filed writ petition in the Punjab & Haryana High Court (registered as Crl.WP No.1797/1997) challenging General Court Martial proceedings, findings of the General Court Martial holding him guilty of the charges, sentence of dismissal from service and the decision of the appellants to forfeit his pensionary benefits. The High Court by judgment dated 25.8.2000 allowed the writ petition in part. The High Court held that the GCM proceedings were in order, there was no violation of any rules or procedure. It also found no ground to interfere with findings of guilt or the sentence. Consequently, the punishment imposed by the GCM was upheld. But the High Court held that the order forfeiting the pension and pensionary benefits of the first respondent was invalid as no reasons were assigned in the order dated 22.12.1995, for forfeiture thereof. The High Court therefore quashed the order dated 22.12.1995 forfeiting the pension and directed the appellants to reconsider the matter with reference to Regulation 16(a) of the Pension Regulations and the principles laid down by the Full Bench of the Delhi High Court in *Brig.A.K. Malhotra v. Union of India - (1997) (4) SLR 51*. In short, the writ petition was allowed to the extent of quashing forfeiture of the pension but dismissed in regard to the challenge to the proceedings of GCM and the order of dismissal.

8. Aggrieved by the quashing of the pension forfeiture order dated 22.12.1995, the appellants (Union of India and the Army Authorities) have filed Criminal Appeal No.876/2003. Aggrieved by the rejection of the challenge to the GCM findings and the imposition of the punishment, the first respondent has filed Criminal Appeal No.877/2003. On the contentions urged, the following questions arise for our consideration:

(i) Whether the High Court having upheld the order imposing the punishment of dismissal, is justified in quashing the order dated 22.12.1995 made under Pension Regulation 16(a), forfeiting the pension and directing reconsideration?

(ii) Whether the finding of the High Court that conduct of the proceedings of the GCM did not violate any rules, calls for interference?

(iii) Whether the findings of guilt in regard to charges 1, 4 and 5(c) require interference?

(iv) Whether the punishment of dismissal is excessively disproportionate to the gravity of the charges proved?

Re : Question (i)

9. The High Court having held that there was no irregularity in the court martial proceedings or infirmity in the findings of guilt and the punishment imposed, held that there was no justification for forfeiting the pension on the following reasoning :

".... the general court martial did not think it appropriate to order for the forfeiture of the pension and pensionary benefits under section 71(h) and

(k) of the Army Act and the obvious inference seems to be that the court martial did not think it appropriate that despite the dismissal of the service of the petitioner, he should be awarded the forfeiture of pension and pensionary benefits as a punishment. As held by the Full Bench of the Delhi High Court in the case of Brig. A. K. Malhotra (supra), the pension and pensionary benefits are to be granted in the normal course unless there are such circumstances existing under which the offence against the concerned officer is found to be extra-ordinarily grave and in that case sufficient reasons must be recorded for the forfeiture of the pension by the competent authority taking action on the administrative side. In the instant case the impugned order, Annexure P-12, shows that the forfeiture of the pension and pensionary benefits was ordered by having regard to circumstances of the case leading to the dismissal of the officer from service. In other words, the President considered the forfeiture of the pension and pensionary benefits only on the circumstances which led to the trial, conviction and sentence of dismissal from service of the petitioner by the General Court Martial. The impugned order, annexure P-

12, does not show that it was considered to be a case of extra-ordinarily grave charge where the pension and pensionary benefits should have been forfeited or there were other valid and good reasons for the forfeiture of the pension and pensionary benefits.

10. For this purpose, the High Court relied upon the decision of the Delhi High Court in Brig. A. K. Malhotra. In the said decision, the Delhi High Court held that under section 71 of the Army Act, 1950 ('Act' for short), forfeiture of pension was provided as a measure of punishment for offences tried by the court martial and if the court martial did not, in a given case, think it fit to forfeit the pension while awarding the punishment, then the only inference that could be drawn is that the Court Martial was of the view that the punishment of dismissal alone was sufficient for the offences and there was no need to inflict the additional punishment of forfeiture of pension. The Delhi High Court further held that the normal rule is that pensionary and other benefits are to be granted unless the competent authority comes to the conclusion that the service of the officer taken as a whole was not satisfactory from the beginning or unless the offences which are proved and for which he had been sentenced are so extra-ordinarily grave that the entire previous satisfactory service has to be excluded from consideration. The High Court reasoned that if the offence was so extra-

ordinarily grave, the court martial itself would have forfeited the pensionary benefits, and where the court martial did not deem it necessary, if the competent authority wanted to deny pension, he must record good and valid reasons as to why normal rule of granting pensionary benefits is not to be followed.

11. The direction of the High Court to reconsider the matter in the light of the legal principles laid down by the Full Bench of the Delhi High Court in Brig. A.K. Malhotra is no longer valid in view of the fact that the decision in Brig. A.K. Malhotra was reversed by this Court in Union of India v. P.D.

Yadav - 2002 (1) SCC 405. This Court held that even if the GCM while imposing punishment, does not direct forfeiture of service or forfeiture of pension under section 71 of the Act having regard to Regulation 16(a) of the Pension Regulations, it is permissible for the President of India to direct forfeiture of pension in regard to a person dismissed or cashiered consequent to a trial by the GCM. This Court also held that for passing an order for forfeiture of pension under Regulation 16(a), all that was necessary was that cashiering or dismissal of the officer from service and there was no further need, either to assign reasons for forfeiture or to consider whether the merit of his prior service warranted any relaxation or relief against forfeiture.

12. As clarified by this Court in P.D.Yadav, the power to deny pension as a consequence of an officer being cashiered or dismissed or removed from service, vests only with the President of India under Pension Regulation 16(a). The President of India may direct either forfeiture of the entire pension or only a percentage of the pension. Further section 71 of the Act does not provide for forfeiture of pension as one of the punishments awardable by Court Martial. Imposition of punishments of cashiering and dismissal from service are provided in clauses (d) and (e) of section 71.

Clauses (h) and (k) of section 71 relied upon to hold that the Court Martial could also impose the punishment of forfeiture of pensionary benefits, are extracted below :

"(h): The forfeiture of service for the purpose of increased pay, pension or any other prescribed purpose.

(k): The forfeiture in the case of a person's sentence to cashiering or dismissal from service of all arrears of pay and allowances and other public money due to him at the time of such cashiering or dismissal."

Neither clause (h) nor clause (k) nor any of the other clauses in section 71 refers to and provides for forfeiture of pension as a penalty. This Court held:

"Under Section 71(h), a punishment of forfeiture of service for the purpose of increased pay, pension or any other prescribed purpose, can be imposed. If forfeiture of service has the effect of reducing total qualifying service required to earn pension, a person concerned is disentitled for pension itself. In other cases, it may have bearing in regard to claim for increased pay or any other purpose. If by virtue of such punishment itself, a person is not entitled for any pension, the question of passing an order forfeiting pension under Regulation 16(a) may not arise. As per Section 71(k), in case of a person sentenced to cashiering or dismissal from the service, a further punishment of forfeiture of all arrears of pay and allowances and other public money due to him at the time of such cashiering or dismissal may be imposed. Clause (k) of Section 71 does not speak of pension unlike clause (h) of the same Section. x x x x x Merely because punishment is not imposed under clause (h) or (k) of Section 71 and other punishments are imposed, it does not mean that the President is deprived of his power and jurisdiction to pass order under Regulation 16(a);..."

Therefore, the question of court martial imposing the punishment of forfeiture of pension does not arise at all. The court martial can impose any of the penalties enumerated in section 71 of the Act. Dismissal or cashiering of an officer does not lead to automatic forfeiture of pension. The power and discretion vested in the President of India by virtue of Pension Regulation 16(a), to forfeit and deny the pension in full or in part to an officer, who is dismissed or cashiered, is independent of the punishment imposed under section 71 of the Act by the court martial.

13. Having held that the proceedings of the GCM was proper and findings of guilt did not suffer from any infirmity and the punishment of dismissal did not call for any interference, the High Court could not have interfered with the power and discretion exercised under Pension Regulation 16(a). If there is no violation of rules in conducting the GCM and if there is no infirmity in the award of punishment, having regard to the decision of this Court in P.D. Yadav, the forfeiture of pension was not required to be supported by any other independent reasons nor was it necessary to consider the previous service or gravity of the offence or other circumstances. The High Court therefore committed an error in quashing the order dated 22.12.1995 passed by the President of India, forfeiting the pension of the appellant. The appeal by the appellants (Criminal Appeal No.876 of 2003) is bound to succeed. But this is, however, subject to the decision in the appeal, preferred by the first respondent. If the first respondent is able to demonstrate in his appeal that either the proceedings of the GCM violated the provisions of the Act/Rules/the procedure prescribed, or that the findings of guilt were perverse and unsustainable, or that the punishment was shockingly disproportionate to the gravity of the proved offences and warranted interference, and if this Court accepting his contentions allows his appeal, and sets aside the order of dismissal or reduces the punishment, then the very basis for issue of the order of forfeiture of pension under Pension Regulation 16(a) will disappear and consequently, that order of forfeiture also will not survive. Therefore, we may now examine the contentions of the first respondent challenging the validity of the proceedings of the GCM and imposition of punishment.

Re : Question (ii)

14. The first respondent has contended that there is a serious procedural irregularity in the constitution and conduct of the court martial, that in spite of his challenge, it was not set right and therefore, the entire Court Martial proceedings and consequently, the punishment, were vitiated. According to first respondent, the Presiding Officer of the Court Martial - Brig. S.K. Kaushal had earlier summarily tried two prosecution witnesses - Sub.

Baryam Singh and Sub. Harjinder Singh (who had drawn meat for their units on 14.2.1990) for drawing less quantity of meat and awarded the reprimand for negligent performance of duties. As the summary trials were in regard to the same incident when the prosecutor disclosed the said fact on 15.4.1990, the first respondent raised a challenge objecting to Brig. S.K.Kaushal being the Presiding Officer, as he was disqualified from serving on a GCM having regard to clause (c) of sub-rule (2) of Rule 39 of the Army Rules 1954 ('Rules' for short). He further alleged that the Presiding Officer would have formulated an opinion in regard to the incident and consequently, be biased.

In spite of it, the Convening Authority wrongly directed the GCM to proceed, overruling his objection under section 130 of the Act read with rule 44 of the Rules. He submits that participation by the Presiding Officer vitiated the entire proceedings, rendering the same invalid and void.

15. Rule 39 of the Army Rules 1954 reads thus :

"39. Ineligibility and disqualification of officers for court-martial.--(1) An officer is not eligible for serving on a court-martial if he is not subject to the Act. (2) An officer is disqualified for serving on a general or district court-martial if he

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(a) Is an officer who convened the court; or

(b) Is the prosecutor or a witness for the prosecution; or

(c) Investigated the charges before trial, or took down the summary of evidence, or was a member of a court of inquiry respecting the matters on which the charges against the accused are founded, or was the squadron, battery, company, or other commander, who made preliminary inquiry into the case, or was a member of a previous court-martial which tried the accused in respect of the same offence; or

(d) Is the commanding officer of the accused, or of the corps to which the accused belongs; or

(e) Has a personal interest in the case.

(3) The provost-marshal or assistant provost-marshal is disqualified from serving on a general court-martial or district court-martial."

It is clear from Rule 39 that an officer is disqualified for serving on a GCM if (i) he had investigated the charges before trial, or (ii) he took down the summary of evidence, or (iii) he was a member of a court of inquiry respecting the matters on which the charges against the accused were founded, or (iv) he was a Squadron, Battery, Company or other Commander who made preliminary inquiry into the case, or (v) he was a member of a previous Court Martial which tried the accused in respect of the same offence. A careful reading of the said Rule demonstrates that the act of summarily trying others for other offences relating to the same incident is not a ground of disqualification. The charges against the first respondent were completely different from the charges against the persons who were summarily tried by Brig. Kaushal. The Presiding Officer did not suffer from any of the disqualifications enumerated in Rule 39. The Convening Authority was therefore justified in directing the GCM to proceed with the trial. Therefore, the challenge to the constitution of the GCM with Brig.

Kaushal as the Presiding Officer is liable to be rejected.

16. The High Court did not find any merit in the contention that after the Court Martial was constituted on 3.2.1993, the first respondent ought to have given 96 hours after giving the names of the members constituting the Court Martial. The first respondent has also not established his allegations that Judge Advocate was biased and Dy. JAG who ultimately reviewed the findings, was also biased as he was actively guiding the prosecution. The first respondent has not been able to demonstrate any error in the finding of the High Court that there was no infirmity in the constitution of the Court Martial and the procedure followed by it.

Re : Question (iii)

17. The principles relating to judicial review in regard to court martial proceedings are well settled. Unless the court martial has acted without jurisdiction, or exceeded its jurisdiction or had acted perversely or arbitrarily, the proceedings and decision of the court martial will not be interfered in exercise of power of judicial review. In Union of India vs. Major A. Hussain - 1998 (1) SCC 537, this Court held :

"Though court-martial proceedings are subject to judicial review by the High Court under Article 226 of the Constitution, the court-martial is not subject to the superintendence of the High Court under Article 227 of the Constitution. If a court-martial has been properly convened and there is no challenge to its composition and the proceedings are in accordance with the procedure prescribed, the High Court or for that matter any court must stay its hands. Proceedings of a court-martial are not to be compared with the proceedings in a criminal court under the CrPC where adjournments have become a matter of routine though that is also against the provisions of law. It has been rightly said that court-martial remains to a significant degree, a specialised part of overall mechanism by which the military discipline is preserved. It is for the special need for the armed forces that a person subject to Army Act is tried by court-martial for an act which is an offence under the Act. Court-martial discharges judicial function and to a great extent is a court where provisions of Evidence Act are applicable. A court-martial has also the same responsibility as any court to protect the rights of the accused charged before it and to follow the procedural safe- guards. If one looks at the provisions of law relating to court-martial in the Army Act, the Army Rules, Defence Service Regulations and other Ad- ministrative Instructions of the Army, it is manifestly clear that the procedure prescribed is perhaps equally fair if not more than a criminal trial provides to the accused. When there is sufficient evidence to sustain conviction, it is unnecessary to examine if pre-trial investigation was adequate or not. Requirement of proper and adequate investigation is not jurisdictional and any violation thereof does not invalidate the court-martial unless it is shown that the accused has been prejudiced or a mandatory provision has been violated. One may usefully refer to Rule 149 quoted above. The High Court should not allow the challenge to the validity of conviction and sentence of the accused when evidence is sufficient, court-martial has jurisdiction over the subject-matter and has followed the prescribed procedure and is within its powers to award punishment."

18. The High Court after exhaustive consideration found that the trial was conducted in accordance with the rules and there was no violation of the procedure or principles of natural justice. On behalf of the prosecution, as many as 13 witnesses were examined. A large number of documents (marked A to Z, AA to ZZ and AAA to ZZZ and AAAA to GGGG), apart from three material objects (ME1 to ME 3) were exhibited. The first respondent was supplied with complete set of proceedings including all exhibits. He was permitted to have the assistance of a legal practitioner. He was given due opportunity to cross examine the witnesses and lead his own evidence. After completion of evidence, the General Court Martial put questions to the accused with reference to the evidence and gave him an opportunity to explain his position. Detailed submissions on behalf of the prosecution and the defence were heard. It was thereafter that the Court Martial gave its findings and imposed the punishment. This is not a case of no-evidence. Inadequacy and unreliability of evidence are not grounds for interference. The Court Martial had jurisdiction. Violation of prescribed procedure has not been made out. In exercise of power of judicial review, it is not possible to re-assess the evidence or sit in judgment over the finding of guilt recorded by the Military Tribunal. The scope of interference with the findings of the GCM is very narrow and should be exercised in rare cases.

This is not one of them. We, therefore, find no reason to interfere with findings of guilt regarding changes 1, 4 and 5(c).

Re : Question (iii)

19. This takes us to the last question as to whether the punishment of dismissal is shockingly disproportionate to the gravity of the charges. The principles relating to judicial review of punishment imposed, as a part of the decision making process by Court Martial, have been explained, in *Ranjit Thakur vs. Union of India - 1987 (4) SCC 611*, where this Court interfered with the punishment imposed by a court martial on the ground that it was strikingly disproportionate to the gravity of offence on the following reasoning :

"Judicial review generally speaking, is not directed against a decision, but is directed against the "decision making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court-Martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review."

In *Union of India vs. R.K. Sharma - 2001 (9) SCC 492*, this Court explained the observations in *Ranjit Thakur*. It clarified that in *Ranjit Thakur*, the charge was ridiculous, the punishment was harsh and disproportionate and it was on such gross facts that this Court had held that the punishment was so strikingly disproportionate that it called for interference; and the said

observations in Ranjit Thakur are not to be taken to mean that a court can, while exercising the power of judicial review, interfere with the punishment merely because it considers the punishment to be disproportionate. It was held that only in extreme cases, which on their face, show perversity or irrationality, there could be judicial review and merely on compassionate grounds, courts should not interfere. In this background, we may examine the third question.

20. The charges that are held to be proved against the first respondent, are: (i) Being the Contract Operating Officer for dressed meat, the first respondent with intent to defraud, caused the acceptance of meat from the contractor with 'heart' as part of the meat knowing that the same was not acceptable part of carcasses as per para 86 of special conditions of the contract (vide first charge); (ii) The first respondent, as the Commandant incharge of the Supply Depot failed to ensure that required stocks were maintained as reserve, in the Butchery as required by para 51(a) of the special conditions of contract (vide fourth charge); (iii) The first respondent as the Commandant responsible for the overall control of the operation of the Butchery improperly failed to implement the standard operating procedure for Butchery resulting in 'passed' animals not being segregated and being allowed to mix with the other animals of the contractor.

21. According to the charge-sheet, the first charge was an offence falling under section 52(f) of the Act which provides that subject to the provisions of the Act, any person who does anything with intent to defraud, or to cause wrongful gain to one person or wrongful loss to another person, shall, on conviction by court martial, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is mentioned in the Act. The other two charges which are held to be proved relate to acts or omissions which are said to be "prejudicial to good order and military discipline" punishable under section 63 of the Act on conviction by Court Martial, with imprisonment for a term which may extend to seven years or such less punishment as is mentioned in the Act. We may now consider the nature and content of the charges proved. Section 52(f) and section 63 are very broadly and generally worded and deal with residuary offences, (one dealing with property and another dealing with discipline) to provide for and cover offences which are not specifically provided in sections 34 to 64 of the Act. The offences under these residuary provisions may fall under a wide spectrum, ranging from the mildest technical violations to the severest offences relating to fraud or gross indiscipline. It is therefore necessary to find the degree of gravity of the offence when a person is found guilty of offences under section 52(f) or section 63. Only then, the court can consider whether the punishment is so disproportionate to the gravity of the proved offences that it shocks the conscience of the court or is so perverse or irrational that it cannot be allowed to stand. As held by this Court repeatedly, there could be no judicial review merely because the court feels that the punishment should have been lesser or on the ground of sympathy or compassion.

22. It is necessary to know who was responsible for what in the butchery.

As per the standard operating procedure of Butchery, the responsibility has been divided among the Supervisory Officer, JCOs and NCOs. The duties of the supervisory officer included the following :

"Duties of Supervisory Officer The Supervising Officer, Butchery will be responsible for the proper and efficient functioning of the butchery. He will :

- (a) Be responsible for passing goat and sheep and maintaining the reserve stock of animals at all times.
- (b) Ensure that proper branding of animals is carried out without any cruelty to the animals and the branding so done lasts till the carcass is passed fit by the veterinary officer.
- (c) Be personally responsible for the books and records showing reserve stock and animals passed. The records must be complete and up to date at all times and signed by him duly completed in all respects.
- (d) Visit butchery during slaughter hours at least once a week.
- (e) Ensure that the butchery surroundings are kept scrupulously clean.
- (f) Ensure that branding irons are kept in sealed box in quarter guard and take the same whenever required for branding the animals.
- (g) Ensure that branding irons are not left over with any body in the butchery. He will also ensure that weights and measures are calibrated periodically by the workshop.
- (h) He will ensure that the quality of meat always conforms to ASC specifications and no deviation from these specifications will be allowed. In doing so he will ensure that the contractor does not use unfair means such as use of water except for cleaning of carcasses.
- (i) He will be present in the butchery throughout the issue time and will ensure that units get their entitlements. He will also ensure that every unit rep signs for the quantity and quality of the items being collected. He will be responsible to check the following documents maintain in the butchery for its correctness and will be responsible to put up the same to Commandant once a month :

xxxxxx The duties of JCOs:

- (a) "He is responsible for the smooth functioning of the butchery under the order of Supervising Officer.
- (b) He will ensure that highest standard of cleanliness is maintained in the butchery.
- (c) He will ensure that reserve stock of animals is maintained by the contractor at all times.

(d) He will ensure that strict security is observed as regards to segregation pen, hanging room, disposal of rejected meat by the VO and disposal of dead and rejected animals.

(e) He will supervise the slaughter of all animals as per procedure laid down in order from time to time. He will be personally responsible to ensure that only jhatka meat is being issued unless otherwise demanded by a unit.

(f) He will be responsible to observe the slaughtering animals. He will ensure that only branded and segregated animals are slaughtered and will be present throughout the slaughtering times. He will ensure that no water is injected in the carcasses by contractor. He will ensure that the grown weight is taken and minimum 5 hrs setting time is allowed.

(g) He will ensure that books and records maintained in the butchery are kept up to date at all times.

(h) He will be responsible to supervise the issue of meat to troops and ensure that correct quantity as per their demand is issued and receipt of the same is obtained.

(i) He will ensure that proper duties are allotted to other NCO's and Sepoy detailed to assist him.

(j) He will ensure that from the time of slaughtering to the time of issue, the butchery will be open and NCO/Sepoy will sleep at night properly guarded in the butchery.

(k) He will be responsible for proper setting of meat in that he will see that the butchers do not use water for any other purpose except for the cleaning of carcasses.

(l) He will ensure that the meat is properly set before the postmortem is carried out by Veterinary Officer and will be responsible for retail issue to units.

The duties of the Veterinary Officer :

"He will be responsible for ante-mortem and post mortem inspection. His advice as a rule will be accepted unless there are other reasons. He will ensure that only good and hygienic meat is issued to troops. In doing so he will ensure :

a. That offals which are not edible are removed.

b. That the meat or the carcasses which is unfit for human consumption is removed.

c. He will ensure that the rejected meat portion/carcasses are

destroyed either by burning or by deep burying in his presence. d. He will ensure that meat inspected by him is properly set and no water is dripping from the carcasses. He will bring to the notice of SO butchery and Commandant if any water is found in the carcasses so that remedial measures can be taken. e. He will ensure that veterinary officer stamp has been put on each and every carcasses including the portion of carcasses after he had carried out the post mortem examination. The Commandant was to be in overall charge of the supply depot and his duties were as under :

"(a) A CO will supervise and control all duties performed by those under his command, and will be held accountable for, and be responsible for the security and condition of, all public buildings, armaments, equipment and stores, of whatever description, appertaining to or on charge of his unit, corps or establishment.

(b) A CO is responsible for the correct receipt, issue, accounting and stock taking of all supplies, stores and equipment received or issued by the unit. He will ensure that daily issues are inspected and weighed in the presence of an officer or a Junior Commissioner Officer.

(c) A CO is responsible for the maintenance of discipline, efficiency and proper administration in the unit under his command. He is also responsible for its training and readiness for war."

23. We may now consider the first charge. The charge that has been held to have been proved is an offence under section 52(f) of the Act that is while commanding the supply depot, the first respondent being the Contract Operating Officer for dressed meat, with intent to defraud, caused the acceptance of meat from the contractor with heart as part of meat between 1.5.1989 and 31.3.1990, knowing that the same was not acceptable part of the carcass as per para 86 of the Special Conditions of Contract. What was established was that when the butchery was raided and the meat issued to units were inspected on 14.2.1990, it was found that out of the dressed meat weighing 1411.2 kgs. that was issued to various units, the weight of hearts found as part of the meat was 14.5 kgs. The Supervisory Officer and Veterinary Officer have been charged and punished in this behalf. The case against the first respondent was not that he had instructed heart to be accepted as part of dressed meat nor is it the case that heart was being regularly accepted as part of dressed meat from the contractor. The case against first respondent was that when the butchery was being inspected on 14.2.1990, the first respondent as Commandant visited the butchery and during discussions with the inspecting officers made an observation that to the best of his knowledge, heart was an edible offal and could be issued on demand of units and also reiterated the said observation in his confidential report dated 15.2.1990. Making of the said remark has been interpreted as the first respondent accepting meat from the contractor with heart as part of the dressed meat, knowing well that heart was not acceptable part of carcass;

to defraud the government. This charge depends upon the interpretation of para 86 of the special conditions of the contract and an inference that his understanding of para 86 amounted to causing acceptance of heart as part of the dressed meat.

24. Para 86 of the `special conditions - meat dressed/meat on hoof' reads as under :

"86. I/We agree that I/We will supply meat dressed (Jhatka/Halal) as per ASC Specification No.115, including liver, kidney and testicles passed fit by the Veterinary Officer/Contract Operating Officer of the total arising of carcasses and as a part of meat dressed at the rate of meat dressed (Jhatka/Halal) by weight as given in the schedule. Any other offals, cuttings and arising of meat carcasses will not be taken over by the Contract Operating Officer. The same will be removed by me/us and will be disposed off by me/us in any manner I/We like at my/our cost."

(emphasis supplied) The word `offal' has two meanings. Firstly, it refers to the edible internal parts of an animal such as heart, livers, kidneys, testicles and tongue.

Secondly the term `offal' refers to the refuse or waste that is cuttings and other non-edible parts of the animal which are either fallen or cut-off. One way of interpreting clause 86 of the special conditions of contract is that the dressed meat supplied may include liver, kidney, testicles (which are specifically mentioned) but not other edible internal parts like heart and tongue. The other interpretation in view of the use of the words "including liver, kidney, testicles" would be that the dressed meat can include all edible internal parts which include liver, kidney, and testicles as also heart, and what should be excluded from the supply are other waste like cuttings, fallen portions and inedible portions. Be that as it may. Even if we proceed on the basis that clause 86 should be interpreted as specifying that the dressed meat to be supplied could include only liver, kidney and testicles, but not heart, that by itself does not mean that the appellant committed any offence. On the day of raid and inspection, it was found that the supplies included heart (out of a take quantity of 1411.2 kg. of meat supplied to various indenting units, 14.5 kgs. were heart). The first respondent who visited the Butchery at the time of the inspection observed that the heart is also an edible offal and could be issued on demand by the units. He did not say that heart was a part of dressed meat under clause 86 or that heart was required to be regularly supplied as part of dressed meat. No evidence was given that he had instructed the butchery staff to accept `heart' as part of dressed meat and issue it to the units. It is of some interest to note that the first respondent had stated that the earlier supply contract was in the monopoly of one Om Prakash and when that was broken and the contract was given to M/s Rajan Malik & Co., Om Prakash became inimical to M/s Rajan Malik & Co., that some of the persons employed by M/s Rajan Malik & Co. in the Butchery were ex-employees of Om Prakash owing allegiance to Om Prakash, that some mischief had been done at the instance of Om Prakash to prevent Rajan Malik & Co. from continuing as contractor, that the raid was at the instance of Om Prakash and that he and his henchmen were present all through the inspection. The first respondent submitted that he was a victim in a fight between the contractors. Be that as it may. Therefore, all that is established is at best a wrong interpretation of clause 86 of the Special Conditions of Contract.

25. The charge 4 is that between 11.3.1990 and 22.3.1990, the first respondent failed to ensure that the reserve stock of animals were maintained in the butchery as per para 51(a) of the Special Conditions of Contract. Here again the charge should be properly understood. The first respondent was not the supplier of the animals. The government had entered into a contract with that supplier

and clause 51(a) of Special Conditions is an undertaking by the Contractor which reads thus : "I/We shall maintain complete at all time from/upto as reserve of not less than three days supply animals (sheep/goat) based on the average number of animals to be slaughtered as meat on hoof daily". Contract also provided (vide clause 52) that if the contractor failed to do so, the supply officer shall be at liberty to effect risk purchase be effected at the cost of the contractor and also take other steps.

Therefore, failure to maintain reserve stocks of animals was not an omission on the part of any person in charge or overall charge of the butchery, but a breach by the contractor. The omission that could be attributed to the officer in-charge of the butchery or the first respondent is that when the contractor failed to maintain reserves failure to bring it to the contractor's notice or failure to take action to make risk purchase and other steps in terms of the contract. But the charge is not that risk purchase was not effected or that the first respondent failed to take necessary remedial steps. The evidence showed that arrangements were made to procure the animals required for slaughter on day to day basis to ensure no breaks in supply of meat. It has also come in evidence that ever since 1989, the first respondent had been informing and complaining to his higher ups that the Ambala area where the supply depot was situated, had a shortage of stock of animals, that the contractor was not in a position to maintain the required reserves and therefore, suggesting that tenders should be invited from contractors in Delhi where there was an abundance of stocks. Therefore, an omission of the contractor cannot be considered to be an omission on part of the Contract Operating Officer, particularly when he had pointed out deficiencies, and taken remedial steps. Therefore, the effect of the finding in regard to charge (4) is that the contractor did not keep any animals as reserve between 11.3.1990 and 22.3.1990 as undertaken by it under clause 51(a) of the Special Conditions. The failure attributed to the supervisory staff of butchery and the first respondent who was in overall charge was that they failed to ensure that the contractor performed his obligations. What is established against first respondent under charge (4) is therefore, only a technical lapse.

26. Charge 5(c) is that the appellant failed to implement the standard operating procedure for butchery which required passed animals to be segregated and not allowed to mix with the other animals of the contractor.

Animals that were branded and accepted for supply were the 'passed animals'. The evidence was not that passed animals and other animals were being kept together. The evidence was that on a particular day when the surprise inspection took place, the passed animals had not been segregated from the other animals of the contractor which were yet to be branded and passed. It was also not disputed that there was no specific directive relating to segregation. Even if there was any lapse, it was a lapse of the JCO as per the standard procedure for the butchery and not the Commandant of the supply depot. The omission that could be attributed is at best would be a technical lapse as far as the first respondent is concerned.

27. The omissions attributed to first respondent in regard to charges 4 and 5(c) were actually omissions by his sub-ordinates and those sub-

ordinates were charge-sheeted. In regard to the subject of charges (1) and (4), the supervisory officer Capt. Paramjeet Singh Malhotra was cashiered and sentenced to undergo rigorous imprisonment for 30 months and the Veterinary Officer Lt. Capt. G. S. Srivastava was punished with forfeiture of eight years past service for the purpose of pension and severely reprimanded. In regard to the subject of charges (4) and 5(c), the Supervisory Officer Capt. Paramjeet Singh Malhotra was punished. The role of the appellant being that of an overall controlling officer of the supply depot was limited and the charges in so far as the first respondent were technical in nature. But for the limitation of interference with regard to findings of fact in judicial review, this might even be a case for interference with the findings of guilt recorded. Be that as it may.

28. In the circumstances, the punishment of dismissal from service is shockingly disproportionate to the gravity of the offences held to be proved.

While we may not interfere with the findings of guilt, in a case of this nature, having regard to the nature of offences, we may consider the proportionality of punishment to find out whether it is perverse and irrational. Even accepting the said findings of guilt regarding charges (1), (4) and 5(c), it is clearly a case of shockingly disproportionate punishment being meted out to the Commandant for offering an alternative interpretation to clause (86), for the lapses of his supervisory officer and for the breach committed by the contractor. In the normal course, we would have set aside the punishment and referred the matter back for consideration and imposition of a lesser punishment. But having regard to the fact that the matter is more than 20 years old and the first respondent reached the age of superannuation long ago, no purpose would be served, by referring it back to the appellants. We are of the view on the facts and circumstances, interests of justice would be served if the punishment of dismissal is substituted by the following punishment : (a) forfeiture of eight years of service for the purpose of pension; and (b) Severe reprimand. As a consequence, the order forfeiting pension requires to be set aside as pension can be denied under Pension Regulation 16(a) only to the officers who are cashiered, dismissed or removed from service.

29. We accordingly dispose of the appeals as under :

(i) We allow Criminal Appeal No.876 of 2003 and set aside the order of the High Court quashing the order dated 22.12.1995.

(ii) We allow Criminal Appeal No.877 of 2003 filed by the first respondent and set aside the order of punishment dated 30.7.1993 imposing the punishment of dismissal from service and substitute the same with the punishment of forfeiture of eight years of service for purposes of pension and severe reprimand.

(iii) As a consequence of the punishment of dismissal being set aside and substituted by a lesser punishment necessarily, the order dated 22.12.1995 forfeiting the pension, passed under Pension Regulation 16(a), is set aside.

The respondents are directed to process and settle his pension claim within six months.

(iv) The first respondent will not be entitled to any back-wages from the date of his dismissal to the date of his superannuation, as a consequence of his dismissal being set aside.

.....J [R. V. Raveendran]J [P. Sathasivam] New Delhi;

September 12, 2011.