

UNION OF INDIA & ORS.

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v.

MAJOR R. METRI NO. 08585N

(Criminal Appeal no. 2196 of 2017)

APRIL 04, 2022

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[L. NAGESWARA RAO AND B. R. GAVAI, JJ.]

Service Law: Armed Force service – Interference by Armed Forces Tribunal (AFT) – Scope of – Respondent-officer was posted as the Recruitment Medical Officer– Case against him was that he helped certain candidates in clearing Army Recruitment Rallies by declaring them medically fit – General Court Martial (GCM) found him guilty u/s.7 of the PC Act, 1988 r/w s.69 of the Army Act, 1950 and sentenced him to be cashiered from service and to suffer rigorous imprisonment for one year – In appeal, AFT set aside the order of GCM and convicted him u/s.63 of the Army Act and sentenced him to punishment of forfeiture of seniority of rank of Major and of severe reprimand – AFT also directed that respondent-officer be reinstated in service with no pay and allowance for the period he remained out of service – Instant appeal filed on the ground that the reappreciation of evidence by the AFT was not permissible – Held: AFT was entitled to reappreciate evidence to find out if any findings of the court martial are legally not sustainable due to any reason, or that the finding involves wrong decision on a question of law, or there was material irregularity in the course of trial resulting in miscarriage of justice – If view taken by AFT is found to be a plausible one, it will not be permissible for the Court to interfere with the same only because the court finds the other view to be more probable/plausible – Equally unless the finding of the AFT is found to be perverse or impossible, interference would not be justified – Army Act, 1950 – ss.63, 69 – Prevention of Corruption Act, 1988 – s.7 – Judicial review.

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Evidence: Extra-judicial confession – Prosecution contended that Respondent-officer confessed about his involvement – Held : Extra-judicial confession is a weak piece of evidence – Unless such a confession is found to be voluntary, trustworthy and reliable, the conviction solely on the basis of the same, without corroboration, would not be justified.

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- A **Partly allowing the appeal, the Court**
- HELD:1.Reappreciation of evidence by AFT is permissible to find out if any findings of the court martial are legally not sustainable due to any reason. If the view taken by the AFT is found to be a plausible one, it will not be permissible for the Court to interfere with the same only because the Court finds the other view to be more probable/plausible. Equally, unless the finding of the AFT is found to be perverse or impossible, an interference would not be justified. [Paras 29 and 33][593-G; 594-G-H]
- C *The State of Bombay v. Kathi Kalu Oghad and Others* (1962) 3 SCR 10 – followed.
Union of India and Others v. Sandeep Kumar and Others (2019) 10 SCC 496 : [2019] 12 SCR 415 – relied on.
2. It is clear from the evidence of P.W.1 and P.W.3 that from December 2008 itself, they were aware about the racket of touts in the recruitment scam. Not only this, but P.W.1 has gone on record to say that, in the recruitment process, 90% of the persons recruited pay varying amount to touts, though the selection process was free and fair. P.W.1 has admitted that the respondent-officer had informed him about the phone calls as early as in December, 2008. Insofar as P.W.3 is concerned, he has also admitted that the respondent-officer had informed him about the phone calls in the month of May, 2009. The finding of the AFT that, in view of the circumstances, it appears unnatural that the respondent-officer would make a voluntary confession on 14th July, 2009 and the written statement on 15th July, 2009 and that many more persons might be involved in the recruitment scam and in order to find a scapegoat, the possibility of the respondent-officer being asked to make a confessional statement with an assurance that no action will be taken against him, cannot be said to be an impossible view. [Para 41][597-A-D]
3. P.W.2 has also admitted in his examination-in-chief that, when he assumed the office of Deputy Director General Recruiting Zone, the first Recruitment Rally was conducted at Jodhpur, sometime between 11th May, 2009 and 18th/19th May, 2009. He
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has admitted that during this Recruitment Rally, he came to know about the receipt of complaints from Medical Officers, including the respondent-officer, that they had received unwanted calls and SMS messages with threatening contents. He has also admitted in his evidence that, on 14th July, 2009, he received local newspapers, which were full of news on recruitment racket. He has also admitted that, on 14th July, 2009, a meeting was arranged with the Superintendent of Police, Ajmer, who informed him about the FIR. It could thus be seen that, on cumulative appreciation of evidence of P.W.1 and P.W.2 and P.W.3, the view that the confessional statement made by the respondent-officer did not appear to be voluntary cannot be said to be a perverse view. It could thus be seen that the extra-judicial confession is a weak piece of evidence. Unless such a confession is found to be voluntary, trustworthy and reliable, the conviction solely on the basis of the same, without corroboration, would not be justified. Further a single officer like the respondent-officer cannot declare a candidate medically fit, if he is otherwise not. His evidence would show that the team like the one of which the respondent-officer was a member, only assists the independent members in the conduct of tests, measurements and the medical examination. [Paras 42, 43, 45, 47][597-D-H; 598-G; 599-C]

4. All the three witnesses have admitted that they had no knowledge if any candidate, declared fit by the respondent officer, was subsequently found to have been medically unfit. All the three witnesses have also admitted that there was no material to establish that the amount, which was deposited in the account of the respondent-officer and his father-in-law was an amount received as illegal gratification. Therefore, the respondent officer deserves to be acquitted of the offence punishable under section 7 of the Prevention of Corruption Act [Paras 48, 49][599-D-E]

5. The respondent-officer has discharged the burden to prove, as to how the amount of Rs.20,000/- was deposited in his account and as to how the amount of Rs.65,000/- was deposited in the account of his father-in-law. As such, that part of the order, which convicts the respondent-officer for the offence punishable

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- A under Section 63 of the Army Act, in view of Court, was not sustainable. [Para 53][600-C]

Chandra Kumar Chopra v. Union of India and Others
**(2012) 6 SCC 369 : [2012] 5 SCR 1029; Sahadevan
and Another v. State of Tamil Nadu (2012) 6 SCC 403**

- B : [2012] 4 SCR 366 – referred to.

Case Law Reference

[2019] 12 SCR 415	referred to	Para 19
(1962) 3 SCR 10	followed	Para 20
C [2012] 5 SCR 1029	referred to	Para 21
[2012] 4 SCR 366	referred to	Para 44

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2196 of 2017.

- D From the Judgment and Order dated 02.03.2017 of the Armed Forces Tribunal, Regional Bench, Kochi in O.A. (Appeal) No. 02 of 2014/Order dated 30.05.2017 in M.A. No.271 of 2017 in O.A. No. 02 of 2014.

With

- E Criminal Appeal Nos. 537-538 of 2018.

Vikramjit Banerjee, ASG, R. Balasubramanian, Sr. Adv., Nachiketa Joshi, Arvind Kumar Sharma, Ms. Suhasini Sen, B. K. Satija, Manish, Saransh Kumar, Siddhartha Sinha, Nring Chamwibo Zeliang, Prashant Rawat, Tathagat Sharma, Mukesh Kumar Maroria, Gaurav Agrawal,
F Nishe Rajen Shonker, Ms. Anu K. Joy, Alim Anvar, Advs. for the appearing parties.

The Judgment of the Court was delivered by

B. R. GAVAI, J.

- G 1. These two cross-appeals challenge the judgments and orders passed by the learned Armed Forces Tribunal, Regional bench, Kochi (hereinafter referred to as “the learned AFT”) dated 2nd March, 2017, passed in O.A. (Appeal) No.2 of 2014 and 30th May, 2017, passed in M.A. No.271 of 2017.

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2. Criminal Appeal No.2196 of 2017 is filed by the Union of India and others, challenging that part of the judgment and order dated 2nd March, 2017, of the learned AFT, vide which the learned AFT, while setting aside the order of conviction, under Section 7 of the Prevention of Corruption Act, 1988 (hereinafter referred to as “the P.C. Act”) read with Section 69 of the Army Act, 1950 (hereinafter referred to as “the Army Act”) and the sentence of cashiering from service and suffering of rigorous imprisonment for one year, dated 28th April, 2013 passed by the General Court Martial (hereinafter referred to as “GCM”), has convicted the respondent-Major R. Metri (appellant in connected appeals being Criminal Appeal Nos.537-538 of 2018) [hereinafter referred to as “the respondent-officer”] under Section 63 of the Army Act, and in turn, sentenced him to punishment of forfeiture of seniority of rank of Major and of severe reprimand. The learned AFT has also directed that the respondent-officer be reinstated in service, with no pay and allowance for the period he remained out of service, but, without any service break.

3. Criminal Appeal Nos. 537-538 of 2018 have been filed by the respondent-officer, aggrieved by that part of the said judgment and order of the learned AFT, convicting him for offence punishable under Section 63 of the Army Act and sentencing him to punishment of forfeiture of seniority of rank and of severe reprimand.

4. The facts necessary for adjudication of the present appeals are as under:

5. For the sake of convenience, the parties are referred to hereunder as are found in Criminal Appeal No. 2196 of 2017.

6. In the year 2008, the respondent-officer was posted as the Recruiting Medical Officer, Army Recruiting Office, Jhunjhunu, Rajasthan. At the relevant time, P.W.1-Col. Anil Singh Rathore was the Director of the Army Recruiting Office, Jhunjhunu, Rajasthan.

7. Between 16th December, 2008 and 18th December, 2008, an Army Recruitment Rally took place in Udaipur. According to the prosecution, P.W.8-Major BSRK Prasad as well as P.W.12-Major D. Srinivas, who were also working as Recruiting Medical Officers, contacted the respondent-officer and told him that they help the candidates by making them medically fit and asked his help for clearing certain candidates by declaring them medically fit. It is the case of the prosecution that, though, at first, the respondent-officer was reluctant, at the insistence

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- A of P.W.8-Major BSRK Prasad, he helped clearing certain candidates within acceptable range.
8. It is further the prosecution case that when the respondent-officer went to his native place at Dharwad on 28th December, 2008, he was informed by P.W.8-Major BSRK Prasad that an amount of Rs.65,000/- would be paid to him towards his share. It is further the prosecution case that the respondent-officer asked P.W.8-Major BSRK Prasad that the said amount be deposited in the account of his father-in-law. Accordingly, an amount of Rs.65,000/- was deposited in the account of the father-in-law of the respondent-officer.
- C 9. It is the further case of the prosecution that there was another Recruitment Rally in Dausa in January, 2009. In the said rally, P.W.12-Major D. Srinivas requested the respondent-officer to help some candidates and the respondent-officer, though reluctant, helped in clearing some candidates within the acceptable range. It is the prosecution case that the respondent-officer's wife delivered a baby girl on 16th February, 2009, and as such, the respondent-officer wanted to immediately rush to his native place. Since he was not having sufficient funds to buy an air-ticket, he requested P.W.12-Major D. Srinivas to lend an amount of Rs. 20,000/-. The said amount of Rs.20,000/- was deposited in the account of the respondent-officer by P.W.10-Varalakshmi Srinivas, i.e., the wife of P.W.12-Major D. Srinivas. It is the case of the prosecution that P.W.12-Major D. Srinivas told the respondent-officer that the said amount of Rs.20,000/- was towards his share for helping the candidates in Dausa Recruitment Rally.
- F 10. It is further the case of the prosecution that there were also Recruitment Rallies in Jodhpur and Ganganagar in May, 2009 and June, 2009 respectively. It is the allegation that in the said rallies also, certain malpractices of clearing some candidates as medically fit, who were not otherwise fit, took place.
- G 11. It is further the prosecution case that in the month of July, 2009, there was another Recruitment Rally at Ajmer. The respondent-officer, along with P.W.1-Col. Anil Singh Rathore, went to Ajmer to take part in the said Recruitment Rally. When the Recruitment process was going on at Ajmer, a First Information Report (hereinafter referred to as "FIR") No.125 of 2009, came to be registered in Police Station Adarsh Nagar, Ajmer on 11th July, 2009, at the instance of one Narendra Singh,
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under Sections 406 and 420 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC"), complaining about the malpractices in the Army Recruitment Rally. P.W.6- Mohd. Anwar Khan, Circle Inspector, took up the investigation and arrested 10 persons, who were alleged to be touts.

12. It is the prosecution case that on 13th July, 2009, certain reports were published in Media at Ajmer. In the media reports, the name of three officers, namely, (1) the respondent-officer; (2) P.W.8-Major BSRK Prasad; and (3) P.W.12-Major D. Srinivas and three Junior Commissioned Officers, namely, (1) Subedar Major VP Singh; (2) Subedar Surjan Singh and (3) Subedar Major Jaswant Singh were mentioned.

13. It is the case of the prosecution that, on 14th July, 2009, in the evening, the respondent-officer went to P.W.1-Col. Anil Singh Rathore. They had gone to a nearby temple and on the stairs of the temple, the respondent-officer confessed about his involvement. P.W.1-Col. Anil Singh Rathore asked the respondent-officer to give his confession in writing. It is further the case of the prosecution that the respondent-officer initially came with a draft confession on 15th July, 2009, on which, P.W.1-Col. Anil Singh Rathore told him that there was no need for him to see the draft and he should submit a final statement. Accordingly, on the same day, at around 8.00 p.m., the respondent-officer gave a written statement to P.W.1- Col. Anil Singh Rathore in the presence of P.W. 3- Col. Bharat Kumar and P.W.4-Col. Balraj Singh Sohi. On 16th July, 2009, the Office of Superintendent of Police sought the presence of the respondent-officer to interrogate him and others in the FIR in question. The statement of the respondent-officer was recorded by the Police on 18th July, 2009.

14. On 14th December, 2009, the Court of Inquiry proceedings were convened. The General Officer in Commanding (hereinafter referred to as "GOC"), South West Command, vide Note dated 14th December, 2009, directed disciplinary action to be taken against the respondent-officer and two other officers, namely P.W.12-Major D. Srinivas and P.W.8-Major BSRK Prasad and three Junior Commissioned Officers.

15. The respondent-officer and others challenged the Court of Inquiry proceedings by way of Original Applications before the learned AFT, Jaipur. The same were rejected by the learned AFT, Jaipur, vide order dated 9th April, 2010.

- A 16. The GCM proceedings were ordered to be instituted against the respondent-officer and five others on 28th June, 2012, on the following Charges:
- (a) Charge No.1:
- B Army Act Sec 69 Committing a civil offence, that is to say, being a public servant, obtaining for himself a gratification other than legal remuneration as a reward for doing an official act, contrary to section 7 of Prevention of Corruption Act 1988.
- C In that he At Dharwad during January 2009, which came to the knowledge of authority competent to initiate action on 14 Dec 2009, while performing the duties of Recruiting Medical Officer Jhunjhunu, being a public servant, obtained Rs.65000/- from MR-08309 L Major BSRK Prasad as a reward of his share for helping the candidates for recruitment in the Army, in Udaipur rally.
- D b) Charge No.2:
- E Army Act Sec 69 Committing a civil offence, that is to say, being a public servant, obtaining for himself a gratification other than legal remuneration as a reward for doing an official act, contrary to Section 7 of Prevention of Corruption Act 1988.
- F In that he At Dharwad during Feb 2009, which came to the knowledge of authority competent to initiate action on 14 Dec 2009, while performing the duties of Recruiting Medical Officer Army Recruiting Office Jhunjhunu, being a public servant, obtained Rs.20,000/- from Mrs. Vara Laxmi wife of MR-08205 K Major D Srinivas as a reward of his share for helping the candidates for recruitment in the Army in Dausa rally.
- G (c) Charge No.3:
- H Army Act Sec 69 Committing a civil offence, that is to say, being a public, servant, obtaining for himself a gratification

other than legal remuneration as a reward for doing an A official act, contrary to Section 7 of Prevention of Corruption Act 1988.

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At Jodhpur, between January 2009 and April 2009, which came to the knowledge of authority competent to initiate action, on 14 Dec 2009, while performing the duties of Recruiting Medical Officer, Army Recruiting Office Jhunjhunu, being a public servant obtained SIM No.9784341343 from Mr. Taru Lai, as a motive for helping his candidates for recruitment in the Army.” B

17. At the conclusion of the trial, the GCM found the respondent-officer guilty of charge Nos.1 and 2 and not guilty of charge No.3. The GCM, therefore, vide order dated 28th April, 2013, sentenced the respondent-officer to be cashiered from service and to suffer rigorous imprisonment for one year. The GOC confirmed the findings and sentence of the GCM, but remitted the unexpired portion of the sentence of rigorous imprisonment, vide order dated 29th December, 2013. Being aggrieved thereby, the respondent-officer preferred an appeal before the learned AFT by way of O.A. (Appeal) No.2 of 2014. The same has been partly allowed by the impugned judgment and order dated 2nd March, 2017, as aforesaid. Being aggrieved thereby, the present appeals. C

18. We have heard Shri Vikramjit Banerjee, learned Additional Solicitor General (“ASG” for short), appearing on behalf of the Union of India and others and Shri Gaurav Agrawal, learned counsel appearing on behalf of the respondent-officer.

19. Shri Vikramjit Banerjee, learned ASG, submits that the scope of interference by the learned AFT under Section 15 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as “the AFT Act”) is very limited. He submitted that the reappreciation of evidence by the learned AFT is not permissible. It is submitted that the interference by the learned AFT would be warranted only on three grounds, as is mentioned under sub-section (4) of Section 15 of the AFT Act. In this respect, reliance is placed on the judgment of this Court in the case of *Union of India and others vs. Sandeep Kumar and others*¹.

¹(2019) 10 SCC 496

- A 20. Shri Banerjee further submitted that the learned AFT has grossly erred in holding that the confessional statement made by the respondent-officer was not voluntary. It is submitted that when the respondent-officer made the confessional statement, he was not an accused, and as such, the learned AFT has grossly erred in relying on Article 20(3) of the Constitution of India. In this respect, he relies on the judgment of Eleven-judge Bench of this Court in the case of *The State of Bombay vs. Kathi Kalu Oghad and others*².

- B 21. Shri Banerjee further submits that the learned AFT itself has come to a conclusion that the respondent-officer has indulged in financial misconduct, and therefore, the punishment of cashiering from service for such misconduct ought not to have been sustained. Reliance in this respect is placed on the judgment of this Court in the case of *Chandra Kumar Chopra vs. Union of India and others*³.

- C 22. Shri Gaurav Agrawal, learned counsel appearing on behalf of the respondent-officer, on the contrary, submits that the learned AFT has rightly held that the confessional statement was not voluntary. He submitted that the extra-judicial confession is a very weak piece of evidence and conviction on the basis of the same cannot be sustained, unless there is some corroboration. He submits that the news about the respondent-officer being already involved in the FIR, registered on 11th July, 2009, was already published in the newspapers on 13th July, 2009. He submits that the Police had already started interrogation with regard to the FIR and there was discussion between the Police officials and the Army officials. He submitted that the learned AFT has come to a conclusion that it was a huge recruitment scam and in order to save the higher officials, the possibility of the respondent-officer being forced to give such a confession by promising him that he would also be saved, is a possible view. He, therefore, submits that no interference would be warranted with the findings of the learned AFT in that regard.

- D 23. He further submitted that even the evidence of P.W.1-Col. Anil Singh Rathore, Director, Army Recruitment Centre, Jhunjhunu; P.W.2-Brigadier Arun Kumar Tuli, Dy. Director General, Recruitment Zone Rajasthan at Jaipur; and P.W. 4-Col. Balraj Singh Sohi, Director Recruiting Office, Jaipur would reveal that not a single person was found, who could be said to have been medically declared fit, though being

H ²(1962) 3 SCR 10
 ³(2012) 6 SCC 369

unfit. He further submitted that, on the contrary, the evidence of the prosecution witnesses would itself reveal that actual tests were conducted by independent members and the medical team was only assisting the independent members in the conduct of tests, measurements and the medical examination. He further submits that the evidence of prosecution witnesses would itself show that there was no material to establish that the respondent-officer had received any amount from the touts as a consideration for clearing any candidate.

24. Shri Agrawal further submits that from the evidence of P.W.10-Varalakshmi Srinivas, it is clear that the amount of Rs.20,000/- was deposited by her, on the directions of her husband, P.W.12-Major D. Srinivas, since the respondent-officer was in dire need of the said money as he had to rush to his home- town at Dharwad by flight. He submitted that from the evidence of P.W.12-Major D. Srinivas, it would be clear that the said amount of Rs.20,000/- was returned by the respondent-officer to P.W.12-Major D. Srinivas, on his return from Dharwad.

25. Insofar as the amount of Rs.65,000/- alleged to have been received from P.W.8-Major BSRK Prasad is concerned, Shri Agrawal would submit that P.W.8-Major BSRK Prasad had taken a loan of Rs.65,000/- from the father-in-law of the respondent-officer, since he wanted to purchase a plot of land. He submits that the amount of Rs.65,000/- deposited in the account of the father-in-law of the respondent-officer was towards the repayment of the said loan. He submits that the said fact would be evident from the evidence of P.W.8-Major BSRK Prasad.

26. With the assistance of the learned counsel for the parties, we have scrutinized the material on record. Insofar as the first submission with regard to scope of Section 15 of the AFT Act is concerned, it will be relevant to refer to sub-section (4) of Section 15 of the AFT Act, which reads as under:

“15. Jurisdiction, powers and authority in matters of appeal against court-martial.- (1)

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(4) The Tribunal shall allow an appeal against conviction by a court-martial where-

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- A (a) the finding of the court-martial is legally not sustainable due to any reason whatsoever; or
 (b) the finding involves wrong decision on a question of law; or
 (c) there was a material irregularity in the course of the trial resulting in miscarriage of justice, but,
- B in any other case, may dismiss the appeal where the Tribunal considers that no miscarriage of justice is likely to be caused or has actually resulted to the appellant:
- C Provided that no order dismissing the appeal by the Tribunal shall be passed unless such order is made after recording reasons therefor in writing.”
- D 27. It could thus be seen that, in view of clause (a) of sub-section (4) of Section 15 of the AFT Act, the learned AFT would be justified in interfering with the finding of the court-martial where its finding is legally not sustainable due to any reason whatsoever. Under clause (b) thereof, it would be permissible for the learned AFT to interfere with such a finding when it involves a wrong decision on a question of law. Under clause (c) thereof, the learned AFT would be justified in allowing an appeal against conviction by a court-martial when there was a material irregularity in the course of the trial resulting in miscarriage of justice.
- E 28. Insofar as reliance placed by Shri Vikramjit Banerjee, learned ASG on the judgment of this Court in the case of *Sandeep Kumar and others* (supra) is concerned, this Court in the said case itself has observed thus:
- F “46. Section 15 of the Act confers wide power on the Tribunal so as to allow an appeal against conviction by a court martial where the finding of the court martial is legally not sustainable due to any reason; the finding involves wrong decision on a question of law or there was a material irregularity in the course of the trial resulting in miscarriage of justice. Even though the power of the Tribunal is wide but it is not merely a different opinion on the appreciation of the evidence to interfere with the findings recorded by the court martial. The first ground of interference is whether the finding of the court martial is “legally not sustainable”. Therefore, to exercise such power, there has to be error of law by the court martial which would confer jurisdiction on the Tribunal to interfere against
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the conviction recorded by the court martial. The second ground is “wrong application on a question of law”. However, the Tribunal, in the present case, has committed grave error in interfering with the finding of the court martial by misreading an Army Order. There is no material irregularity pointed out by the Tribunal inasmuch as the irregularity pointed out is with regard to confessional statements by military officer which is not a bar either under the Evidence Act or under the Army Order issued under the Act. The Tribunal could reappreciate evidence to find out if any findings of the court martial are legally not sustainable due to any reason; or that the finding involves wrong decision on a question of law or there was a material irregularity in the course of the trial resulting in miscarriage of justice. But such wide powers do not confer jurisdiction to the Tribunal to reverse the findings merely because it finds that different view is possible.”

29. It could thus be seen that this Court itself has held that the learned AFT was entitled to reappreciate evidence to find out if any findings of the court martial are legally not sustainable due to any reason; or that the finding involves wrong decision on a question of law; or there was a material irregularity in the course of the trial resulting in miscarriage of justice. We find that the reliance placed by the learned ASG on the sentence, i.e., “But such wide powers do not confer jurisdiction to the Tribunal to reverse the findings merely because it finds that different view is possible”, is being pressed into service without context. In the said case, on facts, this Court came to the conclusion that there was no material irregularity pointed out by the Tribunal inasmuch as the irregularity pointed out was with regard to confessional statements by military officer which was not a bar either under the Evidence Act or under the Army Order issued under the Act. This Court, therefore, came to a specific conclusion that the finding recorded by the Tribunal was on misreading of an Army order. The sentence which is pressed into service will have to be read in the context of those findings. We are unable to accept the contention urged on behalf of the Union of India that the learned AFT is not entitled to reappreciate the evidence. Such reappreciation of evidence is permissible to find out if any findings of the court martial are legally not sustainable due to any reason.

30. It is not in dispute that the GCM has passed its conviction basically on the confessional statement made by the respondent-officer.

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- A Reliance in this respect is placed on the judgment of the Eleven-judge Bench of this Court in the case of *The State of Bombay vs. Kathi Kalu Oghad and others* (supra). It will be relevant to refer to the following observations of this Court in the said case:
- B “(I) An accused person cannot be said to have been compelled to be a witness against himself simply because he made a statement while in police custody, without anything more. In other words, the mere fact of being in police custody at the time when the statement in question was made would not, by itself, as a proposition of law, lend itself to the inference that the accused was compelled to make the statement, though that fact, in conjunction with other circumstances disclosed in evidence in a particular case, would be a relevant consideration in an enquiry whether or not the accused person had been compelled to make the impugned statement.”
- C 31. It is to be noted that this Court, in the aforesaid case itself, has held that the question, as to whether a person was compelled to make a statement or not, is a question of fact in each case to be determined by the Court on weighing the facts and circumstances disclosed in the evidence before it.
- D 32. In the present case, the learned AFT, upon perusal of the evidence of P.W.1- Col. Anil Singh Rathore, P.W.3- Col. Bharat Kumar and P.W.4-Col. Balraj Singh Sohi, has come to a conclusion that from the circumstances as emerged, it cannot be said that the confessional statement was voluntary.
- E 33. The finding as recorded by the learned AFT, was recorded while allowing the appeal preferred by the respondent-officer against the judgment and order of the GCM dated 28th April, 2013, as confirmed by the GOC vide order dated 29th December, 2013, holding him guilty for the offence punishable under Section 7 of the P.C. Act read with Section 69 of the Army Act. As such, in the present matter, while
- F considering the appeal of the Union of India and others, we will be guided by the parameters that weigh while considering an appeal against acquittal. If the view taken by the learned AFT is found to be a plausible one, it will not be permissible for this Court to interfere with the same only because this court finds the other view to be more probable/plausible.
- G Equally, unless the finding of the learned AFT is found to be perverse or
- H impossible, an interference would not be justified.

34. From the perusal of evidence of P.W.1-Col. Anil Singh Rathore, it would reveal that he himself has stated that after he was posted as Director, Army Recruiting Office, Jhunjhunu, Rajasthan in May, 2008, he had received various calls from unauthorized elements seeking favours for recruitment. He had told them to lay off. However, in spite of this, the said callers increased the frequency of making calls seeking favours and also started using threatening language. He stated that the issue was discussed in detail with all Directors of the Army Recruiting Office under the zone. He stated that, in the Conference, he had informed the Additional Director General Recruiting, Integrated Headquarters of Ministry of Defence (Army) that, though the recruiting system was free and fair, yet about 90% of the persons recruited, pay varying amounts to the touts. He further stated that in the month of May, 2009, when the Recruitment Rally was held at Jodhpur, the respondent-officer was detailed as a member of the medical team for the said Recruitment Rally. When the Recruitment Rally was in process, he received a call from the respondent-officer informing him that the respondent-officer had received calls from undesirable elements asking favours from the respondent-officer. P.W.1-Col. Anil Singh Rathore has further stated that he told the respondent-officer not to do any favour to anyone and report the matter to the Director of Host Army Recruiting Office, i.e., P.W.3-Col. Bharat Kumar.

35. P.W.1-Col. Anil Singh Rathore further stated in his evidence that another Recruitment Rally was held in June 2009 at Ganganagar, where he was the Host Army Recruiting Office. He had a meeting with Detachment Commander of South Western Command Intelligence Unit, who provided him some inputs about the touts' activities in the area. He has stated in his evidence that the respondent-officer was one of the members of the medical team at the Recruitment Rally held at Ganganagar.

36. It will be apposite to reproduce the following part of the cross-examination of P.W.1-Col. Anil Singh Rathore:

"As far as I remember, first time the accused informed me about having received calls from undesirable elements was sometime in the month of December, 2008 when I came back from leave. Subsequently, he informed me about the same from Jodhpur recruitment rally. Further in Ganganagar, I heard the medical officers including the accused discussing about such calls being

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A received by them on the dining table during breakfast time. Finally the same information was given by the accused in his verbal and written confessional statement made on 14 and 15 July 2009 respectively.”

37. P.W.1-Col. Anil Singh Rathore has further stated in his evidence
- B that he along with the respondent-officer, who was also one of the members of team ‘B’ as Medical Officer, went to Ajmer on 9th July, 2009 for the Recruitment Rally to be held on 11th July, 2009. He states about the news being published in newspapers on 13th July, 2009 about the Police taking action against the touts. He states that the respondent-officer came to him on 14th July, 2009 and wanted to confess his involvement in the recruitment racket with the touts. They went to a nearby temple where he narrated about his involvement over a duration of two hours or so. He told the respondent-officer to give everything in writing about what he has narrated. He has further stated that on 15th July, 2009, the respondent-officer came to him and handed over a
 - D written statement in the presence of P.W.3-Col. Bharat Kumar and P.W.4-Col. Balraj Singh Sohi.

38. P.W.1-Col. Anil Singh Rathore, in his cross-examination, has admitted that he and the other Recruiting Officers had been interacting with the Media at the site of the Recruitment Rally. He has further

- E admitted that during interaction on 13th July, 2009, a number of media persons had arrived in the stadium, where the Recruitment Rally was being conducted. Though he has denied that the details of information published in the newspaper dated 13th July, 2009 were given by him, it is not denied that he has interacted with the Police on 13th July, 2009.

F 39. It could thus be seen that when the respondent-officer allegedly made an oral confession on 14th July, 2009 and gave a written statement on 15th July, 2009, the news with regard to the recruitment racket was already known to one and all.

40. P.W.3-Col. Bharat Kumar, who was the Director of Army

- G Recruiting Office at the relevant time, has stated in his examination-in-chief that during Jodhpur Recruitment Rally, held between 11th May, 2009 and 21st May, 2009, the respondent-officer had come to him, totally shattered with tears in his eyes, and informed that he had received threatening calls and SMS messages from the touts’ seeking favours for some candidates.

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41. It is thus clear from the evidence of P.W.1-Col. Anil Singh Rathore and P.W.3-Col. Bharat Kumar that from December 2008 itself, they were aware about the racket of touts in the recruitment scam. Not only this, but P.W.1-Col. Anil Singh Rathore has gone on record to say that, in the recruitment process, 90% of the persons recruited pay varying amount to touts, though the selection process was free and fair. P.W.1-Col. Anil Singh Rathore has admitted that the respondent-officer had informed him about the phone calls as early as in December, 2008. Insofar as P.W.3-Col. Bharat Kumar is concerned, he has also admitted that the respondent-officer had informed him about the phone calls in the month of May, 2009. The finding of the learned AFT that, in view of the circumstances, it appears unnatural that the respondent-officer would make a voluntary confession on 14th July, 2009 and the written statement on 15th July, 2009 and that many more persons might be involved in the recruitment scam and in order to find a scapegoat, the possibility of the respondent-officer being asked to make a confessional statement with an assurance that no action will be taken against him, cannot be said to be an impossible view.

42. P.W.2- Brigadier Arun Kumar Tuli, at the relevant time, was the Deputy Director General, Recruitment Zone Rajasthan at Jaipur. He has also admitted in his examination-in-chief that, when he assumed the office of Deputy Director General Recruiting Zone, the first Recruitment Rally was conducted at Jodhpur, sometime between 11th May, 2009 and 18th/19th May, 2009. He has admitted that during this Recruitment Rally, he came to know about the receipt of complaints from Medical Officers, including the respondent-officer, that they had received unwanted calls and SMS messages with threatening contents. He has also admitted in his evidence that, on 14th July, 2009, he received local newspapers, which were full of news on recruitment racket. He has also admitted that, on 14th July, 2009, a meeting was arranged with the Superintendent of Police, Ajmer, who informed him about the FIR.

43. It could thus be seen that, on cumulative appreciation of evidence of P.W.1-Col. Anil Singh Rathore, P.W.2- Brigadier Arun Kumar Tuli and P.W.3-Col. Bharat Kumar, the view that the confessional statement made by the respondent-officer did not appear to be voluntary cannot be said to be a perverse view. This is particularly so, when P.W.1-Col. Anil Singh Rathore has admitted that the respondent-officer had intimated him about such calls as early as in December, 2008, and also,

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- A P.W.2- Brigadier Arun Kumar Tuli and P.W.3-Col. Bharat Kumar have admitted about they having knowledge about such calls much earlier to 14th July, 2009 and 15th July, 2009, i.e., the dates of oral/written confession.

44. This Court in the case of *Sahadevan and another vs. State of Tamil Nadu*⁴, after surveying various judgments on the issue, has B laid down the following principles:

“The principles”

16. Upon a proper analysis of the abovereferred judgments of this Court, it will be appropriate to state the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused:
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(i) The extra-judicial confession is a weak evidence by itself. D It has to be examined by the court with greater care and caution.

(ii) It should be made voluntarily and should be truthful.

(iii) It should inspire confidence.

(iv) An extra-judicial confession attains greater credibility E and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.

(v) For an extra-judicial confession to be the basis of F conviction, it should not suffer from any material discrepancies and inherent improbabilities.

(vi) Such statement essentially has to be proved like any other fact and in accordance with law.”

45. It could thus be seen that the extra-judicial confession is a G weak piece of evidence. Unless such a confession is found to be voluntary, trustworthy and reliable, the conviction solely on the basis of the same, without corroboration, would not be justified.

46. In the present case, there is no corroboration at all. On the contrary, P.W.1-Col. Anil Singh Rathore in his evidence has himself

H ⁴(2012) 6 SCC 403

admitted that the respondent-officer was part of team ‘B’. It will be A relevant to refer to the following part of his examination-in-chief:

“In any recruitment rally there are three teams, Host Army Recruiting Office, team ‘A’ and ‘B’. Host Army Recruiting Office is responsible for documentation and administration. Team ‘A’ is responsible for physical tests and run while team ‘B’ is responsible for measurements of the candidate and their medical examination. Actual tests are conducted by independent members. These team only assist the independent members in conduct of tests, measurements and the medical examination.

47. It could thus be seen that a single officer like the respondent-officer cannot declare a candidate medically fit, if he is otherwise not. His evidence would show that the team like the one of which the respondent-officer was a member, only assists the independent members in the conduct of tests, measurements and the medical examination.

48. All the three witnesses have admitted that they had no knowledge if any candidate, declared fit by the respondent-officer, was subsequently found to have been medically unfit. All the three witnesses have also admitted that there was no material to establish that the amount, which was deposited in the account of the respondent-officer and his father-in-law was an amount received as illegal gratification.

49. We are, therefore, of the view that no error could be found with the findings of the learned AFT that the respondent-officer deserves to be acquitted of the offence punishable under section 7 of the P.C. Act.

50. That leaves us with the appeals of the respondent-officer.

51. Perusal of the evidence of P.W.10-Varalakshmi Srinivas and P.W.12-Major D. Srinivas would reveal that they have stated in their evidence, that since the wife of the respondent-officer had given birth to a girl child on 16th February, 2009, he wanted to rush to his native place at Dharwad and did not have sufficient funds. As such, he had requested P.W.12-Major D. Srinivas to give a loan of Rs.20,000/-, which amount was deposited by P.W.10-Varalakshmi Srinivas in the account of the respondent-officer, on the instructions of her husband P.W.12-Major D. Srinivas. From the evidence of P.W.12- Major D. Srinivas, it would reveal that on his return from his native place, the respondent-officer had returned the said amount.

- A 52. Insofar as the amount of Rs.65,000/- is concerned, P.W.8-Major BSRK Prasad, in his evidence, has stated that he had taken a loan of Rs.65,000/- from the father-in-law of the respondent-officer for purchase of a plot of land. The amount of Rs.65,000/- deposited by him in the account of the father-in-law of the respondent-officer was towards repayment of the said loan amount.
- B 53. It could thus be seen that the respondent-officer had discharged the burden to prove, as to how the said amount of Rs.20,000/- was deposited in his account and as to how the amount of Rs.65,000/- was deposited in the account of his father-in-law. As such, that part of the order, which convicts the respondent-officer for the offence punishable under Section 63 of the Army Act, in our view, is not sustainable.

54. In the result, we pass the following order:

A. CRIMINAL APPEAL NO. 2196 OF 2017

- D (i) Criminal Appeal No. 2196 of 2017 filed on behalf of the Union of India and others is dismissed.

B. CRIMINAL APPEAL NOS. 537-538 OF 2018

- (i) Criminal Appeal Nos.537-538 of 2018 filed on behalf of the appellant-Major R. Metri No.08585N are allowed.
- E (ii) The impugned judgment and order dated 2nd March, 2017, passed by the learned AFT, convicting the appellant-Major R. Metri No.08585N for the offence punishable under Section 63 of the Army Act and sentencing him to forfeiture of seniority of rank and of severe reprimand is quashed and set aside.
- F (iii) The appellant-Major R. Metri No.08585N is acquitted of all the charges, charged with.
- G (iv) The appellant-Major R. Metri No.08585N is directed to be reinstated forthwith with continuity of service. However, in the facts and circumstances of the case, the appellant-Major R. Metri No.08585N will not be entitled for back-wages for the period during which he was out of employment.

55. Pending applications, if any, shall stand disposed of.