

32

**IN THE ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

TA/138/09
IN W.P.C. No. 1003/95

**No. 14262862F
SIGMN S.K.SHARMA
R/O. VILLAGE BHOULIPUR
DIST. BHOJPUR
BIHAR**

THROUGH : SH. J.S. MANHAS, ADVOCATE

...PETITIONER

VERSUS

- 1. UNION OF INDIA
THROUGH SECRETARY
MINISTRY OF DEFENCE
SOUTH BLOCK
NEW DELHI-110 011.**
- 2. THE CHIEF OF ARMY STAFF
ARMY HEADQUARTERS
SOUTH BLOCK, DHQ PO
NEW DELHI-110 011.**

THROUGH : LT COL NAVEEN SHARMA

...RESPONDENTS

CORAM :

**HON'BLE SH. S.S.KULSHRESTHA, MEMBER
HON'BLE SH. S.S.DHILLON, MEMBER**

**J U D G M E N T
DATED : 26.11.2009**

- 1. This petition has been brought for quashing the Summary
Court Martial Proceedings whereby the petitioner was held guilty for**

wilfully disobeying the orders of the Commanding Officer and was punished for three months Rigorous Imprisonment in Civil Jail and dismissal from service. Simultaneously prayer has also been made that he be reinstated with all back wages and damages be also awarded to him for inflicting illegal punishment on him. It is contended by the petitioner that he was posted at Leh on 15.03.1991 to 15 Corps Engineering Signal Regiment. His father was reported to be very sick and he being the only son had to take care of his ailing father. Therefore, he applied for 15 days Casual Leave on 02.04.1991 as sufficient leave was also in his credit. In the normal circumstances, it was to be allowed looking to the urgent need of the petitioner. He did not get any reply and so on 14.04.1991 he sought interview with the Commanding Officer under the rules. His leave application along with other application seeking permission for interview with the Commanding Officer were returned to him on 16.04.1991 with stern warning by his immediate superior that if he persisted on demand for the leave he would be taught a lesson. Senior Officer since felt annoyed with the petitioner, fabricated a false case against him showing his absence from piquet and was awarded punishment of 28 days RI in Military Custody after summary trial under Section 80 of the Army Act. He had to undergo 28 days RI in Military Custody as per the provisions prescribed in Regulation 509. During the period of his incarceration he was indicted for refusing to obey the order for carrying out pack drill, which

was out of the purview of the provisions contained in Regulation 509. The punishment so awarded to the petitioner for doing pack drill was not in consonance with the powers vested under Regulation 353.

2. It is further contended by the petitioner that during the course of his military custody, respondents illegally imposed two hours pack drill on the petitioner which itself is a separate punishment under Regulation 443 which could only be awarded after summary trial. The extra drill has been specified by the COAS exercising his power u/s.82 of the Act with the consent of Central Government. Such extra drill is since not the part of the earlier sentence and for which a separate SCM proceedings were required to be resorted by the Commanding Officer. Since the order of the pack drill was passed by the Commanding Officer contrary to the statutory provisions and if at all any breach was committed by the petitioner he cannot be held liable for defiance of order of the superior. Such punishment was illegal, arbitrary and without authority and was not complied with. For such illegal order the service of the petitioner could not be dismissed. On the other hand he was liable to be compensated with damages.

3. This petition was resisted by the respondents with the averments that the petitioner had not come with clean hands. Before the orders to be passed by the Commanding Officer on the leave application dated 15.04.1991, the petitioner had withdrawn the same on 16.04.1991 under the pretext that he would make the request at the time of evening roll call. The petitioner was not obeying the commands of his senior. He was ordered by Officiating Company Havildar Major S.P.Singh to proceed on piquet duty at Number 2 gate of the Regiment on 17.04.1991 in place of other sentry but he refused to carry out the orders. He was tried under Section 63 of the Army Act and was awarded 28 days RI by the Commanding Officer. When he was undergoing imprisonment, was asked to do the pack drill/drill with FSMO which he refused. He was tried under the Regulations for Army 1987 (Vol. I) Para-509 in Para 53 Chapter-8 of the Unit Standing Orders on 27.04.1991 and subsequent dates. He was afforded full opportunity and was found guilty for defiance of the orders and was punished by way of three months imprisonment and dismissal from service.

4. Material point involved in this case as to whether refusal to perform the punishment of pack drill/Drill with FSMO which was inflicted without trial, could be the basis for the dismissal of the petitioner

from service and award of RI. In this regard it is urged by the counsel for the petitioner that Army Regulation 353 itself cast out on all officers particularly the Commanding Officer not to award any unauthorised punishment. He is under obligation not to introduce or adopt any procedure contrary to Army Rules and Regulations. It is said that pack drill itself is a separate punishment under regulations 443 which can be awarded only after summary trial u/s.80 of distinct military offence. The pack drill/drill with FSMO has also been specified as the additional punishment under Regulation 443 (b). These regulations have been issued by the Central Government specifying the other punishments. Regulation 443 reads as under:

**Regulation 443 : Summary Punishments Under
Army Act Sections 80 and 82:**

(b) Under the provisions of Army Act Section 82, the Chief of the Army Staff with the consent of the Central Government, has specified the following 'other punishments' which may be awarded under Section 80:-

(i) Extra drill for two hours upto fifteen days,

(ii) Reduction to a lower class of pay for a period upto 28 days.

5. On the basis of these rules emphasis has been laid that since pack drill is the additional punishment as provided under Regulation 443, he ought to have been tried before awarding any such punishment. Such submissions appeared to be of substance if read in isolation but entire scheme as envisaged in Army Regulation 509 which provides the duties of the prisoners are taken into consideration, position will appear to be altogether different. It shall be useful to refer Army Regulation 509 for appreciating the points raised by the Learned Counsel for the parties.

Reg. 509 : Duties of a Prisoners : Prisoner will carry out work for 6 hours daily from mid March to mid October and 7 hours daily from mid October to mid March. The work will comprise :

- (i) **Military instructions for such period as the OC Unit may decide subject to minimum of 2 hours daily.**
- (ii) **Hard labour for the remaining hours of work. Hard labour will consist of labour tasks such as spade work and working parties but no task will exceed a period of 2 hours at a time. In the hot season hard labour will be performed under the cover.**

6. These are regulatory provisions dealing with the duties of the prisoners. The prisoner is required to carry out the work for the specified hours and also further arrangement has also been made under

Regulation 509 (i) that prisoner would also be required to comply the military instructions for such a period as the OC Unit may decide subject to the minimum of two hours daily. This army instructions have already been spelled out in para-53 Chapter-8 of the Unit Standing Orders which is reproduced below:

Orders, Regarding Personnel Undergoing Rigorous Imprisonment : Personnel undergoing Rigorous Imprisonment will carry out following parard/punishments :-

<u>S.No.</u>	<u>Dress</u>	<u>T I M E</u> <u>Summer</u>	<u>Winter</u>
1	Reveille	0500 Hours	0530 Hours
2	Drill with FSMO	0630 to 0700 hours	0700 to 0730 Hours
3	Breakfast	0700 to 0830 hours	0730 to 0830 hours
4	Kit Insp as per Regt. parade	0830 to 0900 hours	0830 to 0900 hours
5	Fatgue/hard/ press Labour	0900 to 1200 hours	0900 to 1200 hours
6	Digging/hard labour PT Dress	1200 to 1300 hours	1200 to 1300 hours
7	Do	1500 to 1545 hours	1500 to 1545 hours
8	Drill	1630 to 1730 hours	1615 to 1715 hours
9	Kit insp as per regt. Parade	1800 to 1815 hours	1730 to 1745 hours

7. These regulatory power/standing orders would be construed to be the Regulatory instructions and are covered under Regulation 509 (i). These provisions are dealing with a different situation when the individual is undergoing the imprisonment. It has nothing to do with Section 82 R/w. Regulation 443 which deal with the different situation. These orders/instructions are since confined to the prisoners and is considered to be the part of the duty, cannot be termed as a separate punishment. It is elementary that highly disciplined and efficient Armed Forces is essential for the country. Moral and discipline are the very soul of Army and no other consideration howsoever important outweighs the need to strengthen the moral of the Army and create discipline amongst them. Apart from the sentence, this drill is also part of the discipline which the individual under custody is required to observe. This also appears to be from the wordings of the aforesaid standing order para-53 Chapter-8 which also refers even to his daily routine including that of breakfast, inspection etc. Such daily routine duties cannot have the effect of punishment. However, from the side of the petitioner it is contended that when the statute requires that something shall be done or done in a particular manner or without expressing or declaring what shall be the consequences of non compliance. Here Section 82 of the Army Act itself defines additional punishment and on that basis with the appropriate consent of Government Regulation 443 specifies the drill of 2 hours as a

CP

punishment and for that purpose petitioner was required to be tried as already indicated that under Section 82 R/w. 443 extra drill of two hours constitute to be punishment but the drill with FSMO cannot be construed to mean extra drill.

8. Here these instructions contained in Para-53 of Chapter-8 for prisoner are pertaining to taking duties from prisoners. There is no need to go for fresh trial. In other words it is not necessary that the individual/petitioner should first be tried in view of the provisions as contained in Section 82 R/w. 443 before taking any duty from the prisoner undergoing his sentence. Military instructions/Para-53 of Chapter-8 deals with duties of the prisoner by Section 80 R/w. Regulation 443 makes certain criminal offences. Section 80 and Regulation 443 do not in any way limit the operation of Regulation 509 R/w. Para-53 Chapter 8 of the Unit Standing Orders.

9. It is next contended by the Learned Counsel for the petitioner that Drill with FSMO is nothing but the pack drill as has also been referred in the counter affidavit of the respondents. Whatever the name or expression is used for this type of drill but meaning is attached what has been provided in Para-53 Chapter 8 of the Unit Standing Order. However, it is submitted that this drill with FSMO is itself a technique of

91

physiosychic torture. Practice of drill with the trapping of rules cannot be said to be part of the duty of the prisoner.

10. The interpretation to this expression Drill with FSMO would be dependent upon the provisions of the Act coupled with Regulatory provisions for the prisoners (Regulation 509) and the standing instructions, elucidate, amplify and provide the duties and guidelines with regard to the conduct of the prisoner. He has wilfully flouted the orders for carrying out the Drill with FSMO and for which he was tried by the SCM wherein the testimony of the witnesses remained unassailable as no cross examination was preferred by the petitioner.

11. In view of that we do not find any illegality and impropriety in the impugned order. Petition is, therefore, dismissed.

S.S.DHILLON
(Member)

S.S.KULSHRESHTA
(Member)

**PRONOUNCED IN THE OPEN COURT
TODAY ON DATE 26.11.2009**