

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

O.A NO. 348 OF 2010

**NO. 3187707H NK. RAJVIR SINGH
S/O. SHRI CHHINGA MAL
UNIT 18 JAT, ATTACHED WITH 8 GARH RIF
C/O. 99 APO
R/O. F-6-187, AYA NAGAR, DELHI – 110047.**

THROUGH: MR. D.S KAUNTAE, ADVOCATE

... APPLICANT

VERSUS

- 1. UNION OF INDIA
THROUGH ITS SECRETARY
GOVT. OF INDIA, MINISTRY OF DEFENCE,
SOUTH BLOCK, NEW DELHI**
- 2. CHIEF OF ARMY STAFF
ARMY HEADQUARTERS, NEW DELHI**
- 3. ADDL. DIRECTORATE GENERAL
DISCP & VIGILANCE (DV-3)
IHQ OF MOD (ARMY), DHQ P.O., NEW DELHI.**
- 4. BRIGADIER COMMANDER
181, MOUNTAIN BRIGADE, C/O 99 APO**
- 5. OIC RECORDS
JAT REGIMENT, BAREILLY**
- 6. COMMANDING OFFICER
18 JAT REGIMENT, C/O 99 APO**

7. **COMMANDING OFFICER
18 GARHWAL RIFLE, C/O 99 APO**
8. **MS. POPI BORAH
W/O SHRI BIPEN BORAH
R/O VILLAGE & P.O: HATHIBANDHA
TEHSIL & PS: TENGA GHAT
DISTT. DIBRUGARH (ASSAM)**
9. **MS. GEETI SONOWAL
D/O SHRI ANJAN SONOWAL
R/O VILLAGE & P.O: HATHI BANDA
TEHSIL & P.S: TENGA GHAT
DIST; DIBRUGARH (ASSAM)**
10. **MS. RUNU SONOWAL BORAH
W/O SHRI LOHIT BORAH
R/O VILLAGE & P.O: HATHIBANDHA
TEHSIL & PS: TENGA GHAT
DISTT: DIBRUGARH (ASSAM)**

**THROUGH: MR. AJAI BHALLA, ADVOCATE
WITH LT. COL. NAVEEN SHARMA**

... RESPONDENTS

CORAM

**HON'BLE MR. JUSTICE S.S KULSHRESTA, MEMBER
HON'BLE LT. GEN. S.S DHILLON, MEMBER**

JUDGMENT

23.07.2010

1. By order dated 23.9.2009, a Court of Inquiry was ordered against the applicant alleging misbehaviour. Subsequently,

by order dated 7.4.2010, he was attached for disciplinary purposes with 8 GARH RIF and movement order dated 9.4.2010 was issued. On 20.4.2010, a tentative charge sheet was issued to the applicant, which reads:

Charge – 01

Section 69

COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, USING CRIMINAL FORCE TO A WOMAN WITH INTENT TO OUTRAGE HER ,MODESTY, CONTRARY TO SECTION 354 OF THE INDIAN PENAL CODE

In that he, at field, at approximately 1430 hours on 22 Sep 2009, used criminal force to Mrs. Popi Borah, wife of Mr. Dipen Borah, resident of village Hatibandha, grabbed her right hand, probed and felt her body and planted a kiss on her left cheek with an intent to outrage her modesty.

Charge – 02

Section 69

COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, USING CRIMINAL FORCE TO A WOMAN WITH INTENT TO OUTRAGE HER MODESTY, CONTRARY TO SECTION 354 OF THE INDIAN PENAL CODE

In that he, at field, at approximately 1500 hours on 22 Sep 2009, forcefully entered the house of Miss Geeti Sonowal, daughter of Mr. Anjan Sonowal, resident of village Hatibandha and tried to hold her with both hands with an intent to outrage her modesty.

The challenge in this application is directed against the attachment order of the appellant to 8 GARH RIF.

2. The applicant contends that he has served for 16 years in the Army as a soldier. The situation leading to the issuance of the tentative charge sheet arose when he was serving as a Naik with 18 JAT. The charge against him is a frivolous one supposedly with a view to harm his reputation. For disciplinary purposes, he was attached with Commanding Officer, 8 GARH RIF. According to the applicant, he cannot be attached to another unit for the purpose of disciplinary action. The Commanding Officer of his parent unit alone has power to try him. In light of Army Order No.7/2000, as amended from time to time, his attachment to another unit is illegal. As per the said order, the trial is to be conducted by the Commanding Officer of his parent unit. When such attachment of the applicant is not in accordance with Army order No.7/2000, the trial cannot be sustained in law. Furthermore, since proceedings under Army Rules 22-24 had

already been initiated, at this stage, there is no justified reason to attach him with a different unit. Referring to the letter purported to have been given by the victim woman before the Commanding Officer it is stated that instead of having a fresh inning by attaching him to another unit, the proceedings could be dropped even by his parent unit. In support of his case, counsel for the applicant relied on the decision in **L/Dfr. Laxman Singh v. Union of India and others** (1993(1) Recent Judgments 357).

3. The application is resisted by the respondents contending, inter alia, that the Army Order No. 7/2000 itself dealt with the power of making attachment of an individual to another unit for the purpose of disciplinary action. The bar, which was incorporated on the basis of Note (5), which was earlier added to Section 120(2), had already been deleted by the Central Government. Now, subsequent to the deletion of Note (5), there appears to be no point in re-agitating time and again with regard to attachment of an individual to a different unit. In this regard, reliance was placed on

the decision of the Delhi High Court reported in **Vishav Priya Singh v. Union of India and others** (147 (2008) Delhi Law Times 202 (DB)). Further, it has also been stated that the definition of “Commanding Officer” itself is clear when it is read in the context of Para 9 of Regulations for the Army. It confers jurisdiction upon the officer commanding the unit to which the individual is posted or “attached” to proceed against him.

4. The first and foremost argument from the side of the applicant to challenge his attachment is that there is clear violation of Army Order 7/2000, which refers to the attachment of service personnel to a different unit for the purpose of criminal/disciplinary/vigilance case. In this context, it would be appropriate to refer to the relevant paragraphs of Army Order No. 7/2000, which read:

1. In a number of cases attachments of personnel subject to the Army Act, other than officers, are necessitated to process their cases in criminal courts or under the Army Act. The procedure contained in the succeeding Paras would, henceforth, be followed in

regard to their attachments away from their units. It hardly needs an emphasis that proper attachment of such personnel particularly for proceeding against them under the Army Act, bestows jurisdiction upon the officer commanding the unit to which attached and the Cdrs in chain. Therefore, there is an imperative need to ensure that there is no default in regard to the attachment, including that the same is ordered by the authority competent to do so as provided hereinunder.

Attachment of Personnel Released on Bail and Awaiting Trial in a Criminal Court.

2.	XX XX	XX XX
	XX XX	XX XX

3. The arrest of a person subject to the Army Act by the civil police is required to be reported to his Commanding Officer by them in accordance with the instructions issued by the Ministry of Home Affairs vide Letter No. F/9/7/60-Judl-II dated 14 Jul 60 (reproduced in AO 409/71). Immediately on receipt of this information, the arrested person will be instructed, telegraphically, that as and when he is released on bail by the court, he will report for duty to the nearest unit/station HQ or Formation HQ without delay so that he may be able to perform duty, in terms of the provisions of the Regulations quoted above and that non compliance of the orders will be punishable under the Army Act. The unit/station HQ or Formation HQs to which such person

reports on release on bail, will intimate the date of his arrival/reporting to his parent unit. To avoid delay, the attachment in such cases shall be got formalised by the immediate Formation HQ of the parent unit, not below Sub Area HQ or equivalent as the case may be, by empowering and authorising the Sub Area HQ (or equivalent HQ) or higher Headquarters concerned, in writing, under whose jurisdiction such attachment is required to be made to attach the said individual w.e.f the date of his joining/reporting. The latter shall, thereupon and accordingly, attach the individuals anywhere under its command keeping in view the administrative convenience s also to facilitate the civil investigation/trial. The above notwithstanding no unit/station HQ or Formation HQs shall refuse to allow such person to join on establishing his identity/bona fide. Further, such attachment shall not be denied awaiting written request from the parent unit/Fmn HQs of the individual.

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|----|-------|-------|
| 4. | XX XX | XX XX |
| | XX XX | XX XX |
| 5. | XX XX | XX XX |
| 6. | XX XX | XX XX |

Attachment of Personnel for Progressing Disciplinary/Vigilance Cases under the Army Act

7. Where attachment is visualised in progressing disciplinary/vigilance cases under the Army Act, including the cases which have been taken over from the Civil (Criminal) Courts for trial under the said Act, the procedure outlined in Para 3 above will be invoked by the competent authorities as specified therein. During attachment the individuals will continue to be held against the strength and appointment of the parent unit and no replacement will be made until completion of the disciplinary proceedings. This power, however, shall not be exercised merely to change the command with a view to secure award of enhanced punishment/penalty e.g. for a trial by Summary Court Martial.

Disposal of Offences Committed by Personnel Away from Their Parent Units

8. Persons subject to Army Act, committing offences while away from their parent units, will not except in the case of offences committed by deserters, be returned to their units for disposal, as it would involve absence from normal duties of persons required as witnesses and escorts in such cases, the formation commander within whose jurisdiction the offence was committed, will arrange for the individual concerned to be attached to a local unit for disposal of the case in accordance with the procedure outlined above.

Emphasis has been laid that the words “including the cases” which have been referred to in Para 7 would be relevant only when the individual subject to Army Act is tried by the Criminal Court and his case had been taken over from civil authorities to be dealt with under the Army Act. It is to be noted that the outcome of Para 7 if read as a whole, the position becomes clear. It refers that for the purpose of ensuring the progress of disciplinary/vigilance cases, including cases which have been taken over from the Civil/Criminal Courts, attachment can be made. Here, the expression “including” means, other than cases of disciplinary/vigilance proceedings initiated against an individual. The word “include” does not require any interpretation if we refer to the dictionary meaning. “Include” means, **to take in or consider something or someone along with other things or people, as part of a group; to contain or be made up of something, or to have it as parts of its contents** (Chambers 21st Century Dictionary; Revised Edition). Here, the authority/Legislature, using the expression “including” in their wisdom, proceeded to lay down regulations pertaining to disciplinary/vigilance cases under Army Act, including cases which have been taken over from

civil/criminal courts. In such a situation, there appears to be no justified reason to take a different view. No other interpretation could be possible to the expression in question which would lead to frustrating the very purpose for which the clauses were included in the Army Order. In this case, contextual interpretation is also warranted. As has already been stated, Para 7 of AO 7/2000 deals with the procedure to be adopted where the case of the individual has to be progressed on discipline/vigilance grounds or has been taken over from the civil/criminal court. There appears to be no reason to interpret other than keeping it confined only to criminal case in which the individual was released on bail.

5. It has next been argued that the attachment of the applicant by Respondent No.4 to a different unit is not in consonance with the spirit of Para 8 of AO 7/2000. The words “this power, however, shall not be exercised merely to change the command” refer only to enable the authority to make the attachment of the individual to another unit. It is to be noted that the words cannot be

read in isolation. The entire sentence runs as under: "This power, however, shall not be exercised merely to change the command with a view to secure award of enhanced punishment/penalty e.g. for a trial by Summary Court Martial". Here the restriction, which was imposed under Para 7, makes it clear that though the power vests with the authority to make attachment of individuals to different units with a view to facilitating the disciplinary proceedings, it should be keeping in view administrative convenience. The sentence, as referred to above, is to be read at least from where it is ascertainable that the power for making attachment of the individual to other units. However, from the side of the respondents, it is contended that limitations have been given in that clause i.e. with regard to Note (5), for the purpose of awarding enhanced punishment. In this regard, Section 120(5) of the Army Act shall be referred to, which refers to the powers of different level of officers to award punishment. Here, in this case, the Commanding Officer of the parent unit and the Commanding Officer of the other unit, to which the applicant was attached, appear to be of equal ranks and there

appears to be no cause for the exercise of the powers for the purpose of ensuring enhanced punishment.

6. It is further contended by counsel for the respondents that when proceedings under Army Rules 22-24 had already been initiated against the applicant and witnesses were also examined, even at this stage, his attachment to another unit is not illegal and it has caused him no prejudice at all. Further, the proceedings under Army Rules 22-24 had been initiated de novo. In that eventuality, no prejudice can be said to have been caused to the applicant. To the contrary, he would be in an advantageous position to cross examine the witnesses once again.

7. In view of the above, we do not find any merit in the application. In the result, it is dismissed.

(S.S DHILLON)
MEMBER

(S.S KULSHRESTHA)
MEMBER