

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

O.A NO. 552 OF 2010

GNR/OPR SURESH CHANDRA BEHRA

....APPLICANT

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

CORAM :

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

**ORDER
24-09-2010**

Present: Mr. S.M Dalal, Advocate for applicant
Mr. Ajai Bhalla, Advocate for respondents

Dismissed, vide separate judgment.

**S.S.DHILLON
(MEMBER)**

**S.S.KULSHRESTHA
(MEMBER)**

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ADVOCATES

**MR. S.M DALAL FOR THE APPLICANT
MR. AJAI BHALLA FOR THE RESPONDENTS**

CORAM

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

J U D G M E N T

24.09.2010

1. This application has been brought against the findings of the Summary General Court Martial (SGCM) dated 29.8.2008, whereby the applicant was held guilty of having committed the offence under Army Act Section 69 viz. committing a civil offence, that is to say murder, contrary to

Section 302 of the Ranbir Penal Code, and sentenced to death. The post confirmation petition submitted by the applicant was rejected. In the pre-confirmation petition, the Central Government, while confirming the finding, commuted the death sentence to imprisonment for life and dismissal from service.

2. The facts giving rise to this case, in a nutshell, are: The applicant was enrolled in the Army as Gunner/Operator and posted to the Regiment of Artillery. In April 2006, he was posted to 28 Rashtriya Rifles. He was granted 20 days casual leave in the month of August 2006. While on leave, he had obtained some documents from civil authorities for the allotment of land in his village earmarked for defence personnel. The civil authorities asked the applicant to submit the documents after counter signature of the Commanding Officer. Therefore, he submitted the documents to his Company Commander viz. Lt. Col. Saket Saxena. He was scolded for having brought the documents for his signature. After about a week, the applicant was told by Sub. Jaibir Singh, his Platoon Commander, that the documents would be signed on his production of a certificate from civil authorities to the effect that he did not own any other land in his

village. So also, allegedly, Sub. Jaibir Singh used some derogatory words against the wife of the applicant, by which the applicant felt humiliated. On 31.10.2006, Lt. Col. Saket Saxena visited the post of the applicant. On seeing the applicant talking to a civilian, Lt. Col. Saket Saxena asked the applicant who he was speaking to. Not being satisfied with the reply given by the applicant, Lt. Col. Saxena asked him to meet him after finishing his duty. Thereafter, as a punishment, he was awarded two days' pack drill filled with Bajri. He requested for an interview with the Commanding Officer. He was told to finish the pack drill and then interview would be allowed with the Commanding Officer. Thereafter, again Sub. Jaibir Singh used abusive language against the wife of the applicant. Further, he saw Lt. Col. Saxena talking to Sub Paramjit Singh and making certain gestures towards the applicant, which created doubt in his mind. He thought Lt. Col. Saxena was hatching a plan to kill him. So, on such perceived sudden and grave provocation, the applicant picked up his rifle and fired at Lt. Col. Saxena, which resulted in his death. The applicant was taken into military custody. Though the applicant pleaded guilty to the charge, his plea was changed to "not guilty". The SGCM, after trial, found him guilty and

sentenced him to death, which was subsequently commuted to imprisonment for life and dismissal from service. Hence the challenge.

3. With regard to jurisdiction, counsel for the applicant pointed out that since the applicant has been jailed in Sub Jail at Pallaha, Odissa, the jurisdiction of this Tribunal has been resorted to. Emphasis has been laid that Rule 6 of the Armed Forces Tribunal (Procedure) Rules does not take care of the eventuality when the accused is detained in jail. It is further submitted that in a unique situation as in the present case the accused could resort to the jurisdiction of any Bench irrespective of the State where he is detained in jail. Suffice it to mention that as per Rule 6, the jurisdiction of this Bench can be resorted to. Rule 6 of the Armed Forces Tribunal (Procedure) Rules reads:

6. Place of filing application :--(1) An application shall ordinarily be filed by the applicant with the Registrar of the Bench within whose jurisdiction—

(i) the applicant is posted for the time being, or was last posted or attached; or

(ii) where the cause of action, wholly or in part, has arisen:

Provided that with the leave of the Chairperson the application may be filed with the Registrar of the Principal Bench and subject to the orders under section 14 or 15 of the Act, such application shall be heard and disposed of by the Bench which has jurisdiction over the matter.

(2) Notwithstanding anything contained in sub-rule (1), a person who has ceased to be in service by reason of his retirement, dismissal, discharge, cashiering, release, removal, resignation or termination of service may, at his option, file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application."

This provision empowers the Tribunal to entertain appeal under Section 15 of the Act where he was last posted or where he was tried or where he is residing. In this situation, mere detention in one jail or other would not be a ground to make a departure from the statutory rules. Further, the applicant, who is jailed in Odissa, does not have the right to approach any Tribunal or Court in the country on the ground of his detention in a particular jail would not be a bar for resorting to the jurisdiction of any Tribunal/Court. As per the notification, the territorial jurisdiction of this Tribunal cannot be resorted to beyond what has been conferred on it.

Detaining the convict in one or the other jail would not give any cause of action to the accused. Here, the impugned order is against his conviction and not against his custody in jail.

4. We, therefore, do not find any justifiable reason to entertain this appeal. The appeal is dismissed as not maintainable before this Tribunal.

(S.S DHILLON)
MEMBER

(S.S KULSHRESTHA)
MEMBER