IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH NEW DELHI.

TA NO. 312 OF 2009
(WRIT PETITION (C) NO. 7333 OF 2009)

EX. GNR. KRISHAN KUMAR .....APPELLANT

VS.

UNION OF INDIA AND OTHERS ..... RESPONDENTS

ADVOCATES

MR. S.R KALKAL FOR THE APPELLANT
MR. ANKUR CHHIBBER 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
19.10.2010

1. The petitioner is aggrieved at the very arbitrary, hasty and ill conceived Summary Court Martial held on 12.11.2007 whereby for a very trivial offence of intoxication the authorities have ruined his career by giving him one year's rigorous Imprisonment along with dismissal from

service. This high handed, illegal and arbitrary action of the respondents is all the more reprehensible because he has been court martialled without affording him adequate opportunities to defend himself or to put forth his case in accordance with the norms of natural justice. On formation of this Tribunal, the above writ petition has been transferred for disposal. Since the petitioner (hereinafter appellant) challenged the conviction by court martial by filing this writ petition, which was remitted to this Tribunal, the same has been converted into an appeal under Section 15 of the Armed Forces Tribunal Act, 2007.

2. The appellant states that he was enrolled on 25.1.2002 and has always performed his duties to the best of his abilities. This can be ascertained from the fact that he has no discipline entry in his record of service which even at the time of his court martial was assessed by the authorities to be 'excellent'. On 10.9.2007, the appellant was posted to 268 Field Regiment which was located in Assam. The appellant along with other personnel of his unit was assigned the specific task of carrying out surprise check of ULFA terrorists. Accordingly, they were required to establish "STOP" i.e. a Military tactical post from where they could monitor the movement of terrorists. The appellant was detailed in one of

these STOPs near Vill. Tenthingia Gaon in Assam. The task was performed on the intervening night of 10/11 September, 2007 and was completed by 0230 hrs. on 11th September, 2007. Thereafter, at 0545 hrs. the same morning he was woken up and it was alleged that the appellant behaved in an intoxicated manner by running and shouting.

3. During the performance of the tactical manoeuvres on night 10/11 September, 2007, the villagers of Tenthingia Gaon had got agitated and initially 15 to 20 ladies assembled near the Army Camp at 0900 hrs. on 11th September, 2007 to complain about the manner in which the Army personnel had searched the village in the absence of the local police? This agitation by the locals only increased and the village headman also arrived at the spot and so did the SHO of Police Station Khowang. Thereafter, even the media reached the site and because of all this intense pressure an FIR No. 25/2007 was filed by the Police. Even the Division Headquarter of 2 Mountain Division got involved in this incident and ordered a Court of Enquiry. Counsel for the appellant contents that because of the intense media interest in the story, the high profile agitation by the locals of the village and because of pressure of GOC 2 Mountain Division, his CO was forced to take disciplinary action against

him so as to deflect the pressure from himself (the CO) to defuse the situation as well as appease the locals and the media. The entire agitation was about the functioning of the Army during that particular operation and he was made a scapegoat and dismissed from service, because after the operation he consumed a little liquor and went off to asleep. The higher ups in the Army had to show that they had taken some disciplinary action and found the appellant to be a very convenient scapegoat.

4. The appellant also urged that during the Court of Inquiry four people were found to have consumed liquor and the Court of Inquiry convening order specifically mentioned that Army Rule 180 was to be invoked, but the same was not done and the appellant was not present through out the Inquiry and neither he was given the opportunity to cross examine any witness. Furthermore, he was not even heard during the stage of initial hearing of Under Army Rule 22 on 4.10.2007 wherein the CO proceeded with the hearing as if Army Rule 180 had been invoked against the appellant during the COI, and therefore did not produce any witnesses during this hearing. This resulted in double jeopardy against the appellant in that not only was he not provided an adequate

opportunity to defend himself during the COI but even the initial hearing was illegally conducted because no witnesses were produced during the hearing. At the Summary of Evidence which was held from 6th to 27th October, 2007, the appellant was pressurised to give a statement that he had consumed country liquor. However, the prosecution had not been able to substantiate this charge other than some statements by witness alluding to the fact that he was smelling of liquor and therefore intoxicated. Merely smelling of liquor does not necessarily mean that he was intoxicated and for the authorities to presume so was illogical. In fact, this dichotomy is evident in the statements of PWs 1 and 2 wherein PW-1 states that the appellant was running around wildly and shouting while PW-2 states that there was a marked slackness in the conduct and behaviour of the appellant after having consumed alcohol.

5. It was also agitated by the appellant that the time for his court martial has been wrongly entered. The fact of the matter is that four personnel of the Unit were court martialled by the CO on the same day. None of them was heard in the manner as mandated by law and all that was done was that a common paper for compliance of Army Rule 115(2) was got signed from the appellant and his signatures were

obtained at a few places on the printed form of the Summary Court Martial and within 5 minutes, they were sentenced and sent out from the CO's office. Although the appellant was given an imprisonment of one year on 12.11.2007, the Brigade Commander remitted the unexpired portion of the rigorous imprisonment on 25.1.2008. However, by this time he had already served approximately 75 days in custody. It was strongly argued by the counsel for the appellant that for a minor offence of consuming liquor they have aborted the career of a budding soldier by sentencing him to one year's imprisonment and dismissal for this petty offence. This was primarily done because of the intense media focus on the army operation for which the CO was accountable and it was only to deflect the attention of the media that a petty soldier like him was punished, that too when he had an "excellent" record of service.

6. The facts of the matter have been adequately covered by the appellant in his arguments, it would therefore to appropriate to merely list out the charge sheet of the appellant which is as under:

ARMY ACT SEC 36 (C)

INTOXICATED ON POST WHILE ON ACTIVE SERVICE

in that he,

at Field at about 0300h on 11 Sep 07 was found highly intoxicated while deployed as stop on active service during Counter Terrorist Operations in operational area.

7. From the side of the respondents it was argued that the appellant was attempting to twist the actual facts of the matter and also making false attempts to trivialise the issue. The Army had a very important role to play in Assam and 268 Field Regiment at that point of time i.e. September, 2007 was deployed in "Operation Rhino" for conducting counter terrorist operations in Dibrugarh District in Assam. The appellant was deployed in a field area and was on active duty wherein a high degree of self conduct and discipline was expected. Therefore, for the appellant to illicitly procure and consume country liquor when operating with his weapon and ammunition is contrary to all norms of Army discipline and in fact his conduct could have been dangerous to his colleagues and to the civil population at large. He was a bad example for the unit and it was because of soldiers like him that the Army was projected in poor light in Assam. After consuming liquor, for approximately three hours, the appellant made a nuisance of himself and indulged in disturbing the civil population thereby drawing adverse public

attention. The appellant was highly intoxicated, abusive in behaviour and compromised the ongoing Military operations. Therefore, it was not a trivial issue as is being made out by the appellant but one that ran contrary to all the functional norms and discipline of the Army.

8. It was urged that the COI, which was ordered by Headquarter 2 Mountain Div. on 12.9.2007, was to investigate as to how the Army and personnel of 268 Field Regiment "misbehaved with resident of Tenthingia Gaon" and was not specifically directed against the appellant. The COI had to look into the military aspects as well as the disciplinary aspect of the entire party consisting of 20 soldiers and not primarily only that of the appellant. Therefore the aspect of applying AR 180 did not arise. Thereafter a comprehensive Summary of Evidence was recorded wherein the appellant was afforded full opportunity to hear all witnesses, to cross examine them, make a statement and to bring witnesses in his defence. A total of 10 witnesses have been examined in the Summary of Evidence. PW-1 Nb. Sub. Deep Raj was the overall in charge of the party and has stated that the appellant had consumed country made liquor and was highly intoxicated and out of control. PW-2 L/Hav. Jitendra Singh was the Commander of the STOP, in which the appellant was functioning and he

too has testified to the appellant was smelling of liquor and that the appellant was initially very slack and later become uncontrollable and was running and shouting. Hav. Abid Ali Mandal (PW-3) has also stated that he saw the appellant at 0545 hrs. on 11 Sep moving around in an uncontrollable manner and that the appellant was smelling of liquor. Gunner Sehdev (PW-4) has also stated that at approx. 0300 hrs he saw the appellant fully intoxicated and sleeping and that at 0500 hrs when they woke him up, the appellant became uncontrollable and started running and shouting. Gunner Thakur Santosh Kumar Jai Prakash Singh (PW-5) has testified to the fact that he also consumed country made liquor along with the appellant and that the appellant got highly intoxicated and started running around uncontrollably. Even the statement given by the appellant at the Summary of Evidence accepts that he consumed liquor and moved around in a drunken state thereafter. Witnesses 6 to 10 refer to the tactical operation of the army conducted on the night 10/11 September, 2007 and there is no mention of the intoxication and other actions of the appellant.

9. Counsel for the respondents argued that while there was agitation by the locals of the village and this incident did draw media

attention, the appellant was punished for a specific wrong doing committed by him and he has not been made the scapegoat for the operations of the Army. The three other persons who had consumed country made liquor the same evening were also punished and the Summary Court Martial of the appellant was conducted from 1315 to 1415 hrs. which was more than adequate time to complete the trial especially when he had pleaded guilty. The Summary Court Martial was conducted in accordance with Rules and Regulations and there was no infringement. However, it was conceded that it was the first offence that the appellant had committed in his career and other than this offence, his record was "excellent".

10. Having seen the contending view points, it appears that the appellant had consumed liquor on the night of 10/11 September, 2007. However, as has been accepted this was his first offence and he had an excellent record of service. The appellant had put in six years of unblemished service and at the young age of 25 to be proceeded against so harshly was injudicious. There is no evidence on record to suggest that the appellant's intoxication compromised the ongoing military operations by the Army. Neither is there any evidence that he consumed alcohol

while on sentry duty nor did he commit any grievous offence after intoxication. All in all there is no evidence of his having used physical force against any soldier or civilian or being abusive against his superiors or of causing damage to any government property. Considering these facts it does appear that the sentence awarded to the appellant is grossly disproportionate and harsh. For an offence of this nature, the appellant has already served 75 days in custody which meets the ends of justice.

11. We, therefore, partly allow the appeal and direct that the appellant be reinstated in service within 90 days of this order. To that extent, this appeal is allowed.

S.S.DHILLON
(MEMBER)

S.S.KULSHRESTHA
(MEMBER)