

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

**O.A. NO. 142 OF 2010**

**EX L/HAV JITENDER SINGH**

**.APPELLANT**

**VS.**

**UNION OF INDIA & ORS**

**.RESPONDENTS**

**ADVOCATES**

**MR. S.R KALKAL FOR THE APPELLANT  
MR. ANIL GAUTAM FOR THE RESPONDENTS**

**CORAM**

**HON'BLE MR. JUSTICE S.S.KULSHRESTHA, MEMBER  
HON'BLE LT.GEN. Z.U SHAH, MEMBER**

**J U D G M E N T  
22.02.2011**

1. The appellant had filed O.A No. 142 of 2010 praying for setting aside the Summary Court Martial orders dated 12.10.2007 and 3.3.2009, wherein he was reduced to the ranks and dismissed from

service. The applicant has also prayed that he be reinstated with all consequential benefits.

2. The applicant was enrolled in the Army on 3.3.1994 and rose to the rank of Lance Havildar. On 10.9 2007, the appellant, while serving with 268 Regiment, was detailed for joint operations and was leader of a stop along with a party which was searching village Tintheejam Gaon in Assam. The appellant states that verbal instructions were given to him to search houses without informing the local police. Consequent to the search, a report was made to the police and media regarding ill treatment of the local population of the village by the Army. On 11.9 2007 an FIR was lodged by SHO Police Station Kahwang. The appellant states that after investigation the police closed the report on 20.9.07.

3. On 12.9.2007, a staff quarter of inquiry (Court of Inquiry) was convened (Annexure A1). During the enquiry, the Gaon Budha in his statement brought out that there was no improper behaviour on the part of military personnel. The Court of Inquiry, however, brought out that the appellant had bought country made liquor and consumed the same at 10 pm on 10.9.2007 along with other military personnel. The

appellant contends that there was no medical report to establish that he was intoxicated. The appellant also states that during the Court of Inquiry, he was made to sit outside and coerced into signing statements that he was given a chance to cross examine the witnesses. The appellant states that Army Rule (AR) 180 was violated, in that he was not asked to produce any witnesses or to make statements in his defence.

4. A summary of evidence was recorded on 6.10.07 and additional summary of evidence was held on 27 10 07. The appellant contends that Appendix A to Army Order 24/94 during hearing of charge was not filled up at that time but only completed on 12 11 2007 at the time of conduct of Summary Court Martial (SCM). The appellant also states that he was denied a copy of the summary of evidence in accordance with AR 33(7). The same should have been supplied to him 24 hours before SCM.

5. The appellant also states that ARs 33 and 34 were violated since warning order of his impending SCM should have been given 24 hours in advance since he was serving in field area.

6. The appellant states that the SCM was convened on 12 11 2007 (Annexure A3). During the SCM the appellant pleaded guilty. The appellant contends that the provisions of AR 115(2) were not complied with i.e. the functum of compliance of sub rule (2) should have been recorded by the court. The appellant contends that his signatures were obtained on a separate piece of typed paper which was pasted on the proceedings. The appellant also contends that the “friend of the accused” was an officer from his unit and he was not given a choice in the matter. The copy of the COI was also not provided before hearing of the charge in violation of AR 184. During the hearing of the charge in accordance with Appendix A to Army Order 24/94, his Commanding Officer did not call any prosecution witnesses in terms of AR 22(1). The appellant states that all four personnel accused were called in together by the Commanding Officer and punishment was announced for all the four.

7. The appellant was awarded a sentence of reduction to the ranks and dismissal from service. The appellant submitted a post confirmation petition to the Chief of Army Staff on 22 7 2008. The same was rejected on 3.3.2009.

8. The respondents in their counter affidavit have stated that the appellant was enrolled in the Army on 3.3.1994 and during the course of his service, earned four disciplinary awards. While deployed in Operation "Rhino" the appellant was detailed as Stop Party Commander in joint operations on 10.9.2007 in general area, Tintheejen Gaon under Khawang Police Station. The respondents state that the appellant procured liquor and left his stop location without orders of the superior officer thereby jeopardising on going operations. The Court of Inquiry was ordered on 12.9.2007 and based on the Court of Inquiry and summary of evidence, the appellant was tried by the SCM. The appellant was at liberty to ask for the court of inquiry any time prior to hearing of the charge. A copy of the court of inquiry was provided to the applicant's counsel as and when asked for. During the summary of evidence and additional summary of evidence, AR 180 was complied with. The appellant signed a certificate to that effect on each statement of witnesses. The appellant also signed a certificate on 11.11.2007 stating that he had no objection to Capt. Anil Dhiman of his unit being detailed as "friend of the accused". During the SCM, the appellant

pleaded guilty and no plea regarding court of inquiry was made at that stage.

9. The appellant was tried by the SCM on 12.11.2007 and awarded the punishment of reduction to the ranks and dismissal from service. The appellant submitted a post confirmation petition to the Chief of Army Staff on 22.7.2008. The same was rejected on 3.3.2009 wherein the Chief of Army Staff in his directions stated that non supply of court of inquiry to the appellant did not amount to violation of AR 184 as the appellant had pleaded guilty during the SCM and thus no prejudice was caused to the appellant. The respondents state that the appellant was present during the court of inquiry and AR 180 was complied with. During the SCM, the hearing of witnesses was dispensed with in terms of AR 22(1) since the provisions of AR 180 were complied with during the conduct of the court of inquiry. The respondents maintain that all four accused in the incident were tried by separate SCMs and not jointly. The respondents state that the appellant had a poor disciplinary record and had earned four punishments. The appellant on 18.5.2000 had been awarded 28 days RI, on 2.3.2001 he was again awarded 28 days RI, on 22.11.01, a SCM awarded him 2

months and 20 days imprisonment and on 17.2.2006 the appellant was awarded 7 days pay fine. The respondents state that in view of the past disciplinary record of the appellant and the fact that he was stop commander and his absence jeopardised the operations. The application, therefore, be rejected. The respondents state that there was a difference in the case of Ex. Gnr. Kishan Kumar whose order has been cited by the appellant. In the case of Gnr. Kishan Kumar, it was his first offence and prior to that he had six years of unblemished service. The punishment at the young age of 25 was, therefore, found unduly harsh by this Tribunal.

10. We have heard the arguments and perused the records. Before appreciating the rival contentions of the parties, it would be appropriate to quote the charges, for which the appellant was tried by the SCM. They are:

**FIRST CHARGE**

**Army Act Section 63**

**AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE**

in that he,

At Field, when deployed as Stop Party Commander for Counter Terrorist Operations, procured country made

liquor from unauthorised sources at about 1800h on 10 Sep 07 and thereafter consumed this liquor at about 1810h on 10 Sep 07 while on active duty in operational area in contravention to the Regimental Orders.

## **SECOND CHARGE**

### **Army Act Section 36(d)**

#### **LEAVING POST WITHOUT ORDERS FROM HIS SUPERIOR OFFICER WHILE ON ACTIVE SERVICE.**

in that he,

at Field, when deployed on active duty as Stop Party Commander for Counter Terrorist Operations, left his stop location from 0230h to 0300h on 11 Sep 07 without orders from his Section Commander.

The offence under Army Act Section 63 alleged against the appellant is proved from the statements of the prosecution witnesses. PW 1 Nb Sub (GD) Deep Raj has stated about the detailment of the appellant to Stop No.2 and he narrated with regard to the incident in which the appellant was involved. PW 2 Hav (GD) Abid Ali Mandal has stated of having seen the appellant to be intoxicated during active duty on 10.9.2007. Identical is the statement of PW 3 Gnr (GD) Sahadev and PW 4 Gnr (GD) Krishan Kumar. The testimony of these witnesses on the inebriety of the appellant remained unimpeached. The appellant has not disputed with regard to the procurement of country made liquor from



unauthorised sources and his consuming liquor while on active duty in operational area. Such activities on the part of the appellant were in contravention to the relevant Regimental Orders and unbecoming of an individual who was on active duty in operational area. So is the position with regard to the second charge also. He made transgression of the established Rules/Orders.

11. Apart from substantiating the charges against the appellant based on summary of evidence, the appellant pleaded guilty. The plea of guilt finds support from the summary of evidence. A judgment can also be based on such plea of guilt when made deliberately and voluntarily. The voluntary nature of guilt depends upon whether there was any threat, inducement or promise and its truth is just on the basis of the entire prosecution case. The witnesses, as referred to above, have categorically stated about the incident in which the appellant was involved. There was also the statement of the appellant admitting procurement of country made liquor and consuming it. All precautions under AR 115(2) were taken by the prosecution and explained its effect to the appellant.

12. It has next been argued that in an identically placed circumstance, this Bench, in the case of ex Col Kishan Kumar (TA No. 312 of 2009), finding the punishment shockingly disproportionate, allowed the appellant therein to be reinstated in service. Here, in this case, the appellant had a chequered career. The appellant was enrolled in the Army on 3.3.1994 and rose to the rank of Lance Hav. During his service, the appellant had been awarded punishments on four occasions. The appellant contends that he did not commit any misconduct after consuming liquor. He slept in the 3 Ton vehicle after consuming liquor.

13. The Court of Inquiry, summary of evidence and additional summary of evidence were conducted as per the statutory provisions and there was no violation on the same. Since the appellant had already served for an extended period in military custody, we direct that the order of dismissal be converted to discharge, but the punishment of reduction to ranks should stand. The appellant would have approximately 13 years service before his deemed date of discharge and he is free to file a petition for grant of pensionary

benefits, which should be sympathetically considered. To this extent, this appeal is partly allowed.

**(Z.U SHAH)**  
**MEMBER**

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