

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

16.

T. A. No. 250 of 2010

Writ Petition (Civil) No. 14812 of 2006

Raju Guide

.....Petitioner

Versus

Chief of Air Staff & Anr.

.....Respondents

For petitioner: Mr. Kamendra Singh, proxy for Mr. Karan Singh Bhati,
Advocate

For respondents: Mr. Ajai Bhalla, Advocate

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. S.S. DHILLON, MEMBER.

ORDER

21.03.2012

1. This writ petition was filed by the petitioner before the Hon'ble High Court and it was transferred to this Tribunal after its formation.

2. Petitioner vide this petition has prayed that an order or writ may be issued to set aside the order dated 06.10.2005 whereby petitioner has been found guilty in Court Martial Proceedings. It is also prayed that order dated 10.01.2006 whereby sentence has been enhanced by the revisional authority and confirmed on 18.01.2006 may also be quashed. It is further prayed that order dated 07.02.2006 rejecting the pre-confirmation petition and order dated 04.08.2006 rejecting the post confirmation petition may also be quashed and direction may be issued to the respondents to grant pensionary benefits to the petitioner.

3. Petitioner was enrolled in the Air Force as an Airman on 02.03.1989 and was promoted as Corporal on 02.03.1994. Thereafter, he was promoted to the rank of Sergeant on 01.07.2004, however that promotion was withheld due to the impending court martial against him. On 29.06.2005, petitioner was charged under Section 71 of the Air Force Act 1950 with the charge which reads as under;

“For committing a civil offence, that is to say possessing Indian Made Foreign Liquor Punishable under Section 66 (i) (b) of Bombay Prohibition Act, 1949”

4. The charge against the petitioner was that on 16.04.2003 at about 23:15 hrs at Jamnagar, he was found in improper possession of Indian Made Foreign Liquor i.e. 73 bottles of Lord Neison XXX Rum and 04 bottles of Diplomat Whiskey totalling to 77 bottles. During the court martial proceedings, prosecution examined 10 witnesses and defence examined 2 witnesses. The court martial proceedings ultimately resulted in conviction of the petitioner. He was found guilty of the charge and sentenced to undergo detention for one month and to be reduced to the ranks and to be severely reprimanded vide sentence order dated 06.10.2005. Thereafter it was sent for confirmation to the Confirming Authority and Confirming Authority remanded the matter back to the court martial authority vide order dated 26.12.2005 and court martial authority after reconsidering the case, enhanced the sentence of the petitioner to undergo detention for one month and to be dismissed from service and to be reduced to the ranks vide order dated 10.01.2006. This was sent for confirmation to the Confirming Authority and same was confirmed on 18.01.2006.

5. Respondents contested the matter by filing a detailed reply.

6. We have heard both the parties and perused the record. Learned proxy counsel for the petitioner submitted that the prosecution evidence is not a reliable evidence and prosecution has failed to prove the guilt of the accused. In this connection, he has invited our attention to the statement of PW-3 Shri R.C. Rathod, Police Inspector, Local Crime Branch, Jamnagar who deposed that he was working as the Police Inspector at Local Crime Branch, Jamnagar since 29.07.2002. On 16.04.2003 at about 18:00 hrs, he received information that one Shri Juvan Singh Parmar staying at Khadivad was keeping and selling Indian Made Foreign Liquor at his residence. On the same day, he raided the house of Juvan Singh Parmar along with two independent Panchas and staff and recovered 09 bottles of Lord Nelson XXX Rum. After following due process, he arrested Juvan Singh Parmar and during interrogation on the same day, Juvan Singh Parmar revealed that he had taken the bottles from Shri Raju Guide staying in Defence Colony, behind Woollen Mills, Jamnagar. Based on this information, PW-3 arranged two Panchas, namely, Shri Jagdish Kanaiyalal and Shri Ashok Laxmidas and briefed them about the raid to be carried out in the house of Shri Raju Guide. He prepared a preliminary Panchnama. Thereafter, he, at about 21:30 hrs, along with Juvan Singh Parmar and staff, raided the house of Shri Raju Guide and recovered 73 bottles of Lord Nelson XXX Rum and 04 bottles of Diplomat whisky from steel trunks and a wooden box. Some of the bottles were kept in a bag and others were in the boxes. He along with his staff seized the bottles and prepared a Panchnama and arrested the accused. A FIR was lodged under Sections 66 B, 65 E and 116 B of the Bombay Prohibition Act, 1949 at City B Police Division, Jamnagar.

7. PW-7 Shri Jagdish Kanaiyalal Jagyani and PW-8, Shri Ashok Laxmidas Mange, the Panchas also signed on the seizure memos. Learned proxy counsel for the petitioner has taken up the stand that both these witnesses are stated to be not independent witnesses but they are professional police witnesses. It is pointed out that seizure memos were prepared at the police station and signatures of these witnesses on seizure memos have been taken at police station, therefore, their testimonies do not inspire confidence. In this connection, he has invited our attention towards a decision given by the Hon'ble Supreme Court in the case of **Bharat Versus State of M.P. (2003) 3 SCC 106**. Learned proxy counsel for the petitioner submitted that preparation of seizure memos in police station creates doubt on the entire prosecution story.

8. Learned counsel for the respondents has tried to persuade us that all prosecution witnesses are reliable witnesses and only because seizure memos were prepared at police station, the whole prosecution case cannot be said to be a cock and bull story. It is submitted that a large quantity of liquor has been recovered from the house of petitioner. It is also pointed out that statement of PW-3, Shri R.C. Rathod, Police Inspector, Local Crime Branch, Jamnagar has gone unchallenged.

9. We have bestowed our best of consideration to the rival submissions and gone through the record. So far as the testimony of PW-3, Shri R.C. Rathod, Police Inspector is concerned, there is no reason to disbelieve him. He is an inspector by rank. He raided in the house of the petitioner on the information received from Juvan Singh Parmar during his interrogation and

recovered huge quantity of liquor. The recovery has not been challenged by the petitioner. No cross examination has been directed to PW-3 that so called recovery has not been effected from the petitioner's house. The testimony of this police witness is as reliable as testimony of any other witness. Besides the police witnesses, two independent witnesses i.e. PW-7 Shri Jagdish Kanaiyalal Jagyani and PW-8, Shri Ashok Laxmidas Mange who were called and they were asked to sign on the sealing of liquor bottles recovered from the house of the petitioner. Petitioner did not challenge the recovery of these bottles.

10. In view of above discussions, we are of the opinion that court martial authority very rightly framed their opinion from the testimony of reliable witnesses and there is no ground to interfere with the findings of the court martial proceedings. Consequently, we do not find any merit in the petition. Same is accordingly dismissed. No order as to costs.

**A.K. MATHUR
(Chairperson)**

**S.S. DHILLON
(Member)**

**New Delhi
March 21, 2012
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