

**A.F.R.**  
**Court No.2**  
**Reserved Judgment**

ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW

**Transferred Application No. 721 of 2010**

Tuesday this the 12<sup>th</sup> day of April, 2016

**Hon'ble Mr. Justice Devi Prasad Singh, Member (J)**  
**Hon'ble Air Marshal Anil Chopra, Member (A)**

Jai Prakash Singh Hav 14528251 Y (Retd),  
S/o Late Sri Radhey Shyam Singh,  
R/o Village Sarai Bharti, Pargana Rasra,  
The: Rasra, District- Ballia

..... Petitioner

By Legal Practitioner Col (Retd) B.P. Singh, Advocate

Versus

1. Union of India, through Ministry of Defence,  
New Delhi.
2. G.O.C. Head Quarter, 4 Infantry Division,  
C/o 56 A.P.O.
3. Commander (Brig), 4 Infantry Division,  
C/o 56 A.P.O.
4. Commanding Officer, 17<sup>th</sup> Battalion,  
The JAT Regiment,  
C/o 56 A.P.O.

..... Respondents

By Legal Practitioner Shri D.K. Pandey, Learned Counsel  
for the Central Government assisted by Lt Col Subodh  
Verma, OIC Legal Cell.

**(Per Justice D.P Singh)**

**ORDER**

1. Being aggrieved with the impugned order of discharge, the applicant-petitioner had preferred Civil Misc. Writ Petition No. 43286 of 2000 before the Hon'ble High Court of Judicature at Allahabad, which has been transferred to this Tribunal in pursuance of the provisions contained in Section 34 of the Armed Forces Tribunal Act, 2007 and registered as Transferred Application No. 721 of 2010.
2. We have heard Col (Retd) B.P. Singh, learned counsel for the petitioner, Shri D.K. Pandey, learned counsel for the respondents, assisted by assisted by Lt Col Subodh Verma, OIC Legal Cell and perused the record.
3. Wine Woman and Wealth (WWW) is the root cause of pleasure and sorrow in the world. The petitioner, who was an army personnel, was punished by means of the impugned order dated 10.06.2000 (Annexure -11 to the Transferred Application) after summary court martial with the sentence of reduction to the rank of Naik and severe reprimand, with the allegation of being tagged with one W, i.e. consumption of liquor. Admittedly, the petitioner had joined the Indian Army on 29.01.1977 and later on promoted to the rank of Naik. On 01.08.1989, he was promoted to the rank of Havildar. The fateful day of the alleged occurrence took place on 20.03.2000, when Holi festival was organized in the unit/company, where the petitioner was on duty in day hour. The record shows that on 20.03.2000 when Holi function was organized, the petitioner NCO was placed on duty by order dated 17.03.2000. The Holi function was about to commence at 10.00 A.M. The Officer Commanding Workshop arrived at

10.15 A.M. Thereafter, issue of liquor begins. Under the tradition & order passed, those, who are on duty, are supposed to be in dress and do the duty assigned to them. They are provided liquor at later stage. Only the army personnel “off the duty” are permitted to enjoy the Holi function, Though on duty, but the petitioner was alleged to have been found in civil dress. The Holi function was terminated at about 12.00 O’clock. The petitioner was asked to sit there till everybody dispersed for lunch. Later on, from the entry made in the register, it was found that 03 pegs of rum on payment were issued to the petitioner for consumption, which he consumed. Later on one more peg of rum was issued free of cost from the company side to him and others.

4. Keeping in view the entry in the register, summary court martial (SCM) proceeding was initiated against the petitioner. During the SCM proceeding, P.W.-1, Subedar Technical Hari Ram, certified that 03 pegs of rum were issued to the petitiouer followed by one free peg on behalf of the company. P.W.-2, D.N. Rai, Craftsman Vehicle Mechanic made the same statement and stated that colour was used during the Holi function and some people, who were in dress fell on his uniform too. He stated that when Holi function began, the petitioner was sitting with rest and playing ‘dholak’ and others were playing different musical instruments and singing. He noted that the petitioner along with others, sitting there, was consuming rum, which was served to him. At about 11.30 A.M. another peg of rum was served on behalf of the company. After consuming 04 pegs of rum everybody was dancing and enjoying. During the course of SCM proceeding, the petitioner is alleged to have been

cautioned under rule 23 (3) of the Army Rules and made the following statement, relevant portion of which is being quoted as under:

*“2 The accused No.14528251 Y Havildar Telecom Mechanic (Line) Jai Prakash Singh makes the following statement :-*

*“At around 0930 hours there was a fallin where the Holi function was organized. I was the Duty Non Commissioned Officer of the day, hence I was in uniform. At around 0940 hours, all present for the Holi function started playing with colours. As I was in uniform, I told all present that they should not put colours on me. But, still people put colour on me, as such my uniform got spoilt with colour. I then went to my quarter, changed my clothes, put on civil clothes and came back at around at around 1000 hours where the Holi function was organized. At around 1015 hours, Officer Commanding Workshop arrived and all of us met him and played colours with him. Thereafter, the issue of rum commenced. I was sitting along with No.14578106X Craftsman Vehicle Mechanic (Motor Vehicle) D N Rai, No.14555180M Havildar Recovery Mechanic S K Verma and No.14620270K Craftsman Instrument Mechanic Sunder Singh and all of us started singing and playing various musical instruments. I also took one peg of rum and started consuming it. This singing and playing of instruments carried on till around 1215 hours. By then three pegs of rum in all were issued and I consumed all three of them. In the meantime No. 14555180M Havildar Recovery Mechanic Vijay Jha, who was playing dholak asked me to play the dholak as he was tired. I took the dholak from him and played it for around ten minutes. At around 1215 hours every one present there requested Officer Commanding Workshop that one more peg be issued. Permission for issue of one more peg of rum was granted by Officer Commanding Workshop. I did not consume this peg. After that the*



Intoxication on duty. Section 48 of the Army Act provides that any person subject to this Act who is found in a state of intoxication, whether on duty or not, on conviction by court martial, if he is an officer, be liable to be cashiered or to suffer such lesser punishment as is mentioned in the Act. For ready reference, Section 48 of the Army Act is reproduced as under :

*“48. INTOXICATION.- (1) Any person subject to this Act who is found in a state of intoxication, whether on duty or not, on conviction by court martial, if he is an officer be liable to be cashiered or to suffer such lesser punishment as is in this Act mentioned; and, if he is not an officer be liable, subject to the provision of Sub-Section (2) to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.*

*(2) Where an offence of being intoxicated is committed by a person other than an officer when not on active service or not on duty, the period of imprisonment awarded shall not exceed six months.”*

8. A plain reading of the charges framed against the petitioner and the evidence led shows that the petitioner was charged for intoxication. The statements given by P.W.-1 and P.W.-2 show that the petitioner was found to have consumed liquor during duty without any reference to intoxicated state of mind.

9. Learned counsel for the petitioner vehemently argued that neither there is any whisper nor material on record, which may suggest that it was a case of intoxication. It is argued that mere consumption of liquor shall not constitute intoxicated state of mind. Further submission of the petitioner's learned counsel is that consumption of liquor is

not punishable under Section 48 of the Army Act. Since charges were framed under Section 48, the petitioner could not have been punished in the absence of any evidence with regard to intoxicated state of mind. In any case, mere consumption of liquor does not constitute misconduct under the Act or the Rules framed thereunder, as such it was not open to the respondents to punish the petitioner.

10. On the other hand, learned counsel for the respondents submits that the petitioner has been punished since he had consumed liquor during the course of duty. Submission is that consumption of liquor during the course of duty shall break the discipline of the Army, hence the petitioner has rightly been punished.

11. While considering the word “intoxicated” in ***O.A. No. 231 of 2014***, *Basant Kumar Singh vs. Union of India and others*, we have considered its dictionary meaning and observed as under :

*“31. Apart from above right to consume liquor and food in routine life, in the absence of any statutory bar, is a constitutional protected fundamental right co-related to dignity and quality of life protected by article 21 of the Constitution, would be curtailed. Hence no interference should be done to the personal life of armed forces personnel unless the conduct is treated as misconduct under the Rules, Regulations or statutory provisions or army.*

*32. The word “intoxicated” or “intoxicated state” has been defined in Oxford Advance Learned Dictionary (Seventh Edition, p. 816)) as under:*

- (a) “intoxicated. 1. Under the influence of alcohol or drugs”*
- (b) “intoxicating. 1. (of drink) containing alcohol 2 making you feel excited so that you cannot think clearly.”*

*In the New Illustrated Medical Dictionary by Dr. Shrinandan Bansal (Third Edition ; 2009 p. 787), the word “intoxication has been defined as under:*

*“Intoxication – 1. The State of being intoxicated or poisoned. 2. The condition produced by excessive use of alcohol.”*

**BLACK’S LAW DISCTIONARY**

33. *In Black’s Law Dictionary (9<sup>th</sup> Edition p. 898) ‘intoxication’ has been defined as under :-*

*“**intoxication**, A diminished ability to act with full mental and physical capabilities because of alcohol or drug consumption; drunkenness”.*

34. *Thus, in view of dictionary meaning the state of intoxication is a question of fact which means and includes (1) anything, state of things, or relation of things capable of being perceived by the senses; (2) any mental condition of which any person is conscious.*

35. *In view of meaning of intoxication, in case after consumption of liquor a person’s ability to act with full mental and physical capabilities because of alcohol consumption to be drunkenness diminishes, only then a person may be charged for intoxication. Intoxicated state of mind is a question of fact which must be established by material evidence showing how a charged officer or employee because of his or her conduct, may be held to be suffering from intoxication. Unless there is some overt act, violent behaviour or apparent misbehaviour or misconduct a person may not be held to be in intoxicated state of mind, more so, when consumption of liquor is permissible in army.*

36. *In the case reported in AIR 1962 Mys. 53 **Rayjappa vs. Nilakanta Rao**, it was held that Section 11 of the Evidence Act makes existence of facts admissible and not statements as to such existence.*



37. *Orrisa High Court in the case reported in AIR 1996 Orrisa 38, Raghunath Behera vs. Balaram Behera & anr held that a question in fact exists or does not exist is a question of fact and finding recorded thereon is a finding of fact.*

38. *Hon'ble Supreme Court in a case reported in AIR 1983 SC 446, Earabhadrapa alias Krishnappa vs. State of Karnataka held that the word 'fact' means some concrete and material fact to which information directly relates."*

12. In view of the aforesaid findings, burden was on the respondents to establish that the petitioner overacted and failed to discharge duty, his ability to act with full mental and physical capacity was diminished or he was over excited and was not in control of his own behavior and mind, which seems to lacking.

13. In the present case, the petitioner seems to have consumed the liquor in presence of the superior officers and other colleagues and after closure of function remained there up to 03.00 P.M. to complete his work/duty.

14. Apart from above, consumption of liquor by the petitioner was noticed by the witnesses from the register maintained for the purpose. In case consumption of liquor was prohibited by the Company Commander, then how and under what circumstances, the petitioner was permitted to remain in Holi function and one additional peg of rum free of cost was issued to him by the company, is not understandable. In case, the petitioner was committing wrong by joining the Holi function, then it was incumbent upon the Company Commander to have checked the petitioner's participation or consumption of liquor, but he was permitted to participate and play the musical instrument, i.e., dholak, along with others. Rather a free peg

of rum was issued to him. Active participation of the petitioner in the Holi function in presence of superior officers of the company does not seem to have been objected by any superior officer. It is evident from the statements of P.W.-1 and P.W.-2. There is nothing on record, which may indicate that the petitioner had not performed his duty. In such situation, it appears that the petitioner was impliedly permitted to share the function by the superiors.

15. Argument of the learned counsel for the respondents that the petitioner should not have consumed liquor during the course of duty, is not part of the charge-sheet (supra). The charge has not been framed with regard to alleged consumption of liquor during the course of duty and the offence/misconduct committed thereon. In spite of time granted and query made, the respondents could not invite attention of the Tribunal to any statutory provision under which consumption of liquor, whether on duty or off the duty, is punishable. If the Act or the Rules framed thereunder does not make the consumption of liquor an offence under Section 48 of the Army Act, the petitioner could not have been punished.

16. It is well settled proposition of law that a person cannot be convicted unless charges framed against him are specific and clear. Contents or the ingredients of charges have been considered by the Armed Forces Tribunal, Regional Bench, Kolkata in O.A. No. 45 of 2013, Rifleman Sunil Kumar vs. Union of India and others, decided on 13.07.2015, and it has been held that charges framed against the accused must be specific and clear. Therein reliance has been placed over catena of judgments of the

Hon'ble Supreme Court. The judgment was delivered on behalf of the Bench by one of us (Justice D.P. Singh).

17. In a recent case reported in *2016 (1) SCC (Criminal) 405, State of M.P. vs. Rakesh Mishra*, the Hon'ble Supreme Court held that charges should be framed on subjective satisfaction of the court as to existence of prima facie case and accompanying materials are to be considered so as to satisfy that prima facie case is made out.

18. In the present case, while framing charge of intoxication, it appears that mind has not been applied to the letter and spirit of Section 48 of the Army Act and everything has been done mechanically. Sections 45 & 46 of the Army Act deal with unbecoming conduct and disgraceful conduct. Even if there is no provision in the Army Act to punish for consumption of liquor during duty, being unbecoming and disgraceful conduct, charges would have been framed with assistance of Sections 45 and 46 of the Army Act, but it has been not done. The respondents could have discharged their duty by framing the charge and placing the material evidence on record. In the absence of any evidence with regard to intoxicated state of mind, the petitioner could not have been punished merely for consumption of liquor, since no charge was framed for alleged consumption of liquor on duty.

19. In the case of Basant Kumar (supra), we have held as under :

*“(i) Mere consumption of liquor off the duty by armed force personnel shall not construe misconduct.*

*(ii) Intoxication is a state of mind and question of fact and should be proved by overt act, violence, non-compliance of orders or alike acts and disgraceful acts with the aid of Sections 45 and 46 of the Army Act. Mere*

*saying that army personnel is intoxicated shall not be sufficient to punish for misconduct.*

*(iii) Supply of liquor to army personnel by providing quota means that it is permissible for the members of armed forces to consume liquor while they are off the duty, hence for mere consumption of liquor they cannot be punished.*

*(iv) It is permissible under the quota to purchase liquor from CSD Canteen. No Rules, Regulations or Circular letter has been brought to the notice of the Tribunal that purchase of liquor from private shops situated outside army area ignoring army canteen is punishable or construed misconduct, hence punishment awarded through red ink entries with the allegation of purchase of liquor from outside seems to be based on unfounded facts.*

*(v) Out sourcing liquor may be on payment from outside, hence what is the nature of outsourcing liquor is a material fact which should be established by material evidence while holding armed force personnel guilty.*

*xxxx      xxxx      xxxx*

*(ix) Sections 45, 46 and 48 of the Army Act, 1950 should be read conjointly while recording a finding with regard to misconduct under Section 48 of the Army Act, 1950. Nature of misconduct committed under Section 48 of the Act should be ascertained from the letter and spirit of Section 48 of the Act and definitions of intoxication (supra)”*

20. It must be kept in mind that in civilized society, even in Army, rule of law must prevail. Every action must conform to some enabling statutory provision, rules, regulations and guidelines issued for the purpose.

21. Hon'ble Supreme Court in the case reported in **AIR 1975 SUPREMECOURT 2260: Smt. Indira Nehru Gandhi vs. Raj Narain**, has defined the Rule of law as under:

“205. Rule of Law postulates that the decisions should be made by the application of known principles and rule and in general such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule, it is not predictable and such decision is the antithesis of a decision taken in accordance with the rule of law.”

22. Since in the present case, attention has not been invited to any statutory provision with regard to punishment even by respondent that in case a soldier consumes liquor, no punishment could have been awarded in the garb of Section 48 of the Army Act, which relates to intoxication. Any punishment awarded in the absence of any enabling statutory provision or the procedure made for the purpose, is antithesis of rule of law.

23. A famous Hindi poet, Haribansh Rai Bachchan, though he was not a drinker wrote 'Madhushala'. Relevant couplet is being reproduced as under:

“Lo;a ugha ihrk] vkSjksa dks]  
 fdUrq fiyk nsrk gkyk]  
 Lo;a ugha Nwrk] vkSjksa dks]  
 lkj idM-k nsrk l;kyk]  
                           lkj      mins'k      dq'ky  
 cgqrsjksa  
                           Lsk eSaus ;g lh[kk gS]  
                           Lo;a      ugha      tkrk]  
 vkSjksa dks

ig^qqpk            nsrk

e/kq'kkykA  
cgqrksads flj pkj fnukas rd  
p<-dj mrj xbZ gkyk]  
cgqrksa ds gkFksak esa nks fnu  
Nyd Nyd jhrk l;kyk  
   lkj c<-rh rklhj lqjk dh  
   lkFk le;] ds bls gh  
   vkSj iqjkuh gksdj  
esjh  
   vkSj                    u'khyh  
e/kq'kkykA”

24. The eminent poet also deals with intoxicated state of mind in Madhushala (supra) as thus :

“fdrus eeZ trk tkrh gS  
ckj ckj vkdj gkyk]  
fdrus Hksn crk tkrk gS]  
ckj ckj vkdj l;kyk]  
   fdrus vFkksZ dks ladsrksa  
   ls ctrk tkrk lkdh]  
   fQj Hkh ihus okyksa dks  
gS  
   ,d igsyh e/kq'kkyk A”

The meaning and sense of the aforesaid couplet shows that in case a person is in intoxicated state of mind, then he or she may not have control over the mind/senses and may disclose even secret things. That is why intoxication which ordinarily caused by excessive dose of liquor has been prohibited under Section 48 of the Army Act and consumption has not been made punishable, but in case forbidden by Commanding Officer or competent

authority, then it shall not be open to consume liquor by Armed Forces/Army personnel.

However, as observed, there may be circumstances like posting at Siachin, Rann of Kutch or at high altitude, including hazardous places, consumption liquor may be required, but then it should be regulated by the Chief of Army Staff by issuing appropriate order, direction or circular or officer at spot.

In the present case, the Commanding Officer along with other himself enjoyed 'dholak' played by the applicant along with others and permitted to serve free one peg of rum and three pegs on payment with full participation in the function. It seems lifting of restriction whatever had been imposed on the applicant-petitioner. There is no deliberate or intentional attempt of the applicant to violate any order.

25. In view of above, the impugned order of punishment seems to suffer from the vice of arbitrariness and not sustainable having no material on record to prove the intoxicated state of mind.

26. While parting with the case, we feel that consumption of liquor during the course of duty may be covered by Sections 45 and 46 of the Army Act and certain other provisions. It shall be appropriate for the Chief of the Army Staff to issue appropriate order or direction relating to the consumption of liquor during duty and in case anyone violates it, it may be treated as insubordination and misconduct and the person concerned may be charged for it.

27. Liquor represents, under the Indian philosophy, 'Rajas & Tamas'. Excessive consumption of liquor may make a person 'Tamasi', but balance consumption may keep the spirit to fight with enemy, i.e. rajas. In appropriate case, it also increases killing spirit of enemies. Since centuries, it is provided to Armed Forces personnel. While taking any decision to regulate the consumption of liquor, the Chief of Army or the Government of India should keep in mind that sometimes or as an exception, during the course of war injury, depression, fatigue, loneliness and for alike reasons, liquor may be given to the Armed Forces personnel during duty with necessary safeguard. That is why, the Army Act seem to not contain a provision to punish the Army personnel merely for consumption of liquor. Though on duty, it may be punishable for other reasons, like violation of order of commanding Officer etc.

28. In view of above, the Transferred Application succeeds and is allowed. The impugned order dated 10.06.2000 (Annexure-11 to the Transferred Application) is set aside. The petitioner shall be treated as in service notionally, with all consequential benefits, in the rank of Havildar for full of period and shall be deemed to have retired on attaining the age of superannuation of the rank of Havildar. However, back wages are confined to 50%. The respondents are directed to give effect to this order expeditiously, say within four months from the date of receipt of a certified copy of this order.

29. No order as to cost.

(Air Marshal Anil Chopra)  
Member (A)

(Justice D.P. Singh)  
Member (J)



Sry  
Dated : April. 2016