

**IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
GUWAHATI**

**T.A. 09 of 2013**  
(AOO W.P.(C) 2046 of 2006)

**PRESENT**

**HON`BLE MR. JUSTICE B.P.KATAKEY, OFFICIATING CHAIRPERSON  
HON`BLE LT GEN GAUTAM MOORTHY, MEMBER (A)**

**Sri Dharjya Baruah,  
Dismissed GD Rfl No. 213357Y,  
Vill. Rampur Megela, P.O. Sadiya-Ghumtibil,  
Dist. Tinsukia, Assam.**

..... **Applicant.**

By legal practitioners for  
Applicant.  
**Mr. R.P.Sarma,  
Mr. B.Chakravarty,  
Mr. U.Das,  
Ms R.Chakravorty.**

**-VERSUS-**

- 1. Union of India,  
Through the Secretary,  
Govt. of India, Ministry of Home Affair,  
New Delhi.**
- 2. Director General, Assam Rifles,  
DGAR HQ, Shillong-11.**
- 3. Commanding Officer,  
No. 24 Assam Riles, C/o 99 APO.**
- 4. The Summary General Court Martial,  
(Constituted to held trial in respect of Ex-Rifleman  
GD No. 213357Y), Assam Rifles, C/O. 99 APO.**

..... **Respondents..**

**Mr. C.Barua, CGSC**

Legal Practitioner  
for the Respondents.

Date of Hearing : 24.08.2016

Date of Order : 24.08.2016.

**ORDER (ORAL)**

(By B.P.Katakey, J.)

1. The applicant, who was enrolled in the Assam Rifle as Rifleman in September, 1986 and has been dismissed from service on 26.03.2002, after serving for about 15 and half years, has filed W.P.(C ) 2046/2006 before the Hon`ble Gauhati High Court challenging his order of dismissal from service and also the order dated 28.10.2005 passed by the Director General of Assam Rifle rejecting his appeal against the findings recorded by the Summary General Court Martial for dismissal from service and imprisonment for a period of 3 (three) years. The proceeding in the said Writ petition was transferred to this Tribunal vide order dated 7.5.2013. The said proceeding thereafter has been registered and numbered as T.A. 09/2013 before this Tribunal.
2. We have heard Mr. U.Das, learned Counsel for the applicant and Mr. C.Barua, learned Central Govt. Standing Counsel appearing for the respondents.
3. Referring to the Summary General Court Martial proceeding conducted against the applicant under Section 69 of the Army Act it has been submitted by the learned Counsel for the applicant that since there is no evidence on record to record the findings of guilt for the charge leveled against him under Section 307 IPC, the findings recorded in the Summary General Court Martial proceeding needs to be interfered with and consequently, the order of dismissal and the subsequent communication dated 2.1.2004 issued by the authority intimating the applicant's wife about his imprisonment and dismissal from service apart from the order dated 28.10.2005 rejecting the departmental appeal need to be set aside. It has also been submitted that the applicant consequently is entitled to re-instatement in service with full service benefit. In the alternative, the learned Counsel submits that in the event this Tribunal finds that there are evidences on record to substantiate the charge framed against him under Section 69 of the Army Act, the applicant may be given liberty to approach the competent authority under Section 179 of the Army Act for pardon so that he may get the pension since he has completed more than 15 years of service in the Assam Rifle.

4. Mr. C.Barua, learned Central Govt. Standing Counsel appearing for the respondents, on the other hand, referring to the evidence recorded during the Summary General Court Martial proceeding has submitted that it is apparent therefrom that there are sufficient materials available on record to record the findings of guilt against the applicant. It has also been submitted that the applicant in fact admitted his guilt and he did not cross-examine any of the witnesses in support of the charge. That apart, there being no procedural lapse in conducting the Court Martial proceeding the applicant is not entitled to the relief. Relating to the alternative submission it has been submitted by the learned Counsel for the respondents that if the applicant approach the competent authority under Section 179 of the Army Act the authority would definitely look into the grievance of the applicant and take an appropriate decision.
5. We have heard the arguments advanced by the learned Counsel for the parties and also perused the pleadings of the parties, apart from the record of the Summary General Court Martial proceeding.
6. The applicant, who was an Assam Rifle personnel and who is subject to Army Act, 1950, has been issued with a chargesheet under Section 69 of the Army Act for committing civil offence of attempt to murder, punishable under Section 307 of the IPC with the allegation that on 25<sup>th</sup> March, 2002, he fired three rounds from the Light Machine Gun (LMG) Butt No. 37 Registered No. G-5583 at Number 213980P Rifleman/General Duty G.K. Das of the same Unit with such knowledge and under such circumstances that if by the said act he had caused the death of Number 213980P Rifleman/General duty G.K.Das , he would have been guilty of murder. The statement altogether of 8 (eight) witnesses were recorded. None of the witnesses have been cross-examined by the applicant. The applicant in fact has admitted his guilt.

7. It appears from the evidence adduced by the aforesaid 8 witnesses that the respondents could prove the ingredients constituting the offence under Section 307 IPC. The applicant in his statement, which he volunteered, had also admitted his guilt taking the plea that he committed the offence under the influence of liquor.
8. Having regard to the aforesaid position and the evidence available on record, we of the considered opinion that the finding of guilt has rightly been recorded by the Summary General Court Martial, which has been confirmed by the confirming authority. Consequently, the appeal preferred by the applicant has also rightly been rejected by the appellate authority on 28.10.2005.
9. In view of the above, we do not find any merit in the T.A. to set aside the findings recorded by the Summary General Court Martial and the sentences imposed by it while convicting the applicant for the charge leveled against him. This leads to the submission made by the learned Counsel for the applicant relating to the filing of the mercy petition before the authority under Section 179 of the Army Act. The applicant being subjected to Army Act and having been punished by following the procedure laid down in the Army Act, he can approach the appropriate authority under Section 179 of the Army Act seeking pardon/remission. The applicant is, therefore, free to approach the appropriate authority under Section 179 of the Army Act seeking pardon with a view to get pension. In the event such approach is made the appropriate authority shall consider the same in accordance with law and having regard to the fact that the applicant, prior to his dismissal from service, has served the Assam Rifle more than 15 years. The authority shall also take into consideration the facts and circumstances under which the offence was committed by the applicant.
10. The T.A. is accordingly disposed of. No costs.

**MEMBER (A)**

**OFFICIATING CHAIRPERSON.**