

**ARMED FORCES TRIBUNAL CHANDIGARH BENCH AT
CHANDIMANDIR**

O.A. No. 39 of 2010

Atul Batra

..... Petitioner

Vs.

UOI & Ors

..... Respondents

**ORDER
30-07-2010**

**Coram: Justice Ghanshyam Prasad, Judicial Member.
Lt Gen H.S. Panag (Retd) Administrative Member.**

For the applicant (s) : Mr. Rajeev Anand, Advocate.

For the respondents. : Mr. Sandeep Bansal, CGC.

JUSTICE GHANSHYAM PRASAD:

The petitioner has filed this application for setting aside the order of his discharge dated 11-03-2009 (Annexure A-2) being illegal and against principles of natural justice and also for his reinstatement with all consequential benefits. In alternative to grant him all post retiral benefits including status of Ex-Service man.

The petitioner joined Indian Navy in the year 2000 in the rank of Electrical Artificial Power-4. He completed his basic training on 8-04-2000. During course of his service he remained posted/deployed in various Shores/Ships/Submarine Establishment of the Navy. During deployment in Submarine the petitioner developed physical and mental problems and the same were aggravated while on Ship/Submarine

duties. Later on, he also could not get promotion as he failed to pass written examination. Thereafter, he was forced to perform menial works. Though he never refused to do, but complained to his superior authority. Being irked by the complaint the respondent No.4 initiated proceedings against the petitioner for discharge. Ultimately based on the recommendations of C.O. (Annexure A-1), the respondents discharged the petitioner vide order dated 11-03-2008 (Annexure A-2) without issuing any Show Cause Notice under Rule 278 of the Regulations of Navy. The petitioner was also never brought before the Release Medical Board, which is mandatory.

Written statement has been filed by the respondents. It is averred that the petitioner was indulged in avoidable acts. Adequate opportunities were given to him for improvement, but he never showed any improvement. Ultimately, he was discharged being undesirable as his retention would adversely affect the morale of the soldiers. In this case principle of natural justice was also followed. The petitioner is also not entitled to get any relief as he has not approached the Tribunal with clean hands and has concealed certain material facts. The petitioner was given warnings in accordance with Para 278 of Regulations for Navy on 20th July 2006, 26th October 2006 and 16th March 2007 that his services were no longer required. It is further averred that there is no provision for issuance of any Show Cause Notice under the Navy Regulations. The Regulations only provide for issuance of only warning. The authority gave one year time to the petitioner to improve himself, but he failed and accordingly he was discharged.

Heard the learned counsel for both the parties.

The only question involved in this case for consideration is as to whether discharge of the petitioner without giving any Show Cause Notice to put forward his defence/case is illegal and against the principle of natural justice.

Admittedly, no show cause notice was given to the petitioner before his discharge on the ground of being undesirable. The plea is that the Regulation for Navy does not provide for issue of Show Cause Notice before discharge on administrative grounds. It provides only issue of warnings under paragraph 278 of the Regulations for the Navy which have been given thrice to the petitioner before his discharge.

In support of his contention, the learned counsel for the respondents relied upon two decisions of the Supreme Court reported in **AIR 2009 S.C. 2126 (Chairman, Ganga Yamuna Gramin Bank & Ors Vs. Devi Sahay)** and **AIR 2005 S.C. 2090 (Canara Bank v. V.K. Awasthy)**.

On the other hand, learned counsel for the petitioner submitted that non issuance of Show Cause Notice is violative of principles of natural justice and hence the discharge of the petitioner without giving fair opportunity to be heard by issuing Show Cause Notice is illegal and the order of discharge is liable to set aside. For that, he has relied upon two decisions.

(I) 1993 (3) SCC 259 – D.K. YADAV VS. J.M.A. INDUSTRIES LTD.

(ii) 2007 (4) SCT 777 (DELHI H.C.) – EX RECRUIT MAJOR DESWAL VS. U.O.I.

We have considered the submissions of the learned counsel for both the parties and also gone through all the decision cited by the parties in support of their respective contentions.

The decision of the Delhi High Court relied upon by the learned counsel for the petitioner is based upon the various decisions of the Hon'ble Supreme Court including the decision reported in **1993 (3) SCC 259** as also the decision reported in **1991 (1) SCT 675 - Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Ors.** The Division Bench of the Delhi High Court has quoted both the decisions in paragraphs 8 and 9 of its judgment with approval, which run as follows:-

“8 In **D.K.Yadav v. J.M.A. Industries Ltd., 1993 (3) SCT 537: (1993) SCC 259**, it was held by the Apex Court that before terminating the services of an employee the principles of natural justice are required to be complied with.

9. In **Delhi Transport Corpn. v. D.T.C. Mazdoor Congress, 1991 (1) SCT 675: 1991 SCC (Lands) 1213**, it was held by the Apex Court as under:-

“..... that right to public employment and its concomitant right to livelihood received protective umbrella under the canopy of Articles 14 and 21 etc. All matters relating to employment include the right to continue in service till the employee reaches superannuation or until his service is duly termination in accordance with just, fair and reasonable procedure prescribed under the provisions of the Constitution and the rules made under proviso to Article 309

of the Constitution or the statutory provisions or the rules, regulations or instructions having statutory flavor. They must be conformable to the rights guaranteed in Parts III and IV of the Constitution. It is thus well settled law that right to life enshrined under Article 21 of the Constitution would include right to livelihood. The order of termination of the service of an employee/workman visits with civil consequences of jeopardizing not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/workman fair play requires that a reasonable opportunity to put forth his case is given and domestic inquiry conducted complying with the principles of natural justice.”

Thus, in view of the aforesaid decision, it is quite apparent that the services of the petitioner could not have been terminated by the respondents without serving him a Show Cause Notice. Since admittedly no Show Cause Notice was given to the petitioner before discharging him from the service, the impugned order of discharge cannot stand the test of judicial scrutiny.

As stated above, the learned counsel for the respondents has relied upon two decisions of the Supreme Court. First is of the year 2009 in the case of **Chairman, Ganga Yakuna Gramin Bank**. It appears that in Ganga Yamuna Gramin Bank Staff Service Regulations (1985), there is a specific provision for termination of service of an officer after giving him three month's notice or emoluments in lieu

thereof and for other employees after giving one month's notice or emoluments in lieu thereof. Therefore, the Hon'ble Apex Court did not consider it proper to set aside the termination of the respondent on the ground of non-issuance of the Show Cause Notice. Here in the present case the learned counsel for the respondents failed to show any such provision in the Navy Regulations.

The other decision referred to by the learned Counsel for the respondents has been reported in AIR 2005 as mentioned above. In that very case, it appears that sufficient opportunity was given to the respondent by issuing of Notice as well as giving opportunity of personal hearing before the Appellate Authority. Thus the facts of the case are quite different. It further appears that in above two decisions of the Supreme Court referred to by the learned counsel for the respondents, in none of the decisions, decisions of the Supreme Court relied in Delhi High Court decision has been distinguished or considered.

Thus, having regard to the facts and circumstances of the case as well as the decisions referred to above, we are of the view that the discharge of the petitioner is not sustainable in the eyes of law. Accordingly, this application is allowed and the order of discharge is hereby quashed. We direct the respondents to reinstate the petitioner in service forthwith with all consequential benefits preferably within 15 days from the date of receipt of this order. However, the respondents are at liberty to hold a fresh inquiry after reinstatement against the petitioner

after giving him an opportunity of being heard by issuing a Show Cause Notice and pass order in accordance with law.

(Justice Ghanshyam Prasad)

(Lt Gen H.S. Panag (Retd))

July 30, 2010
'dls'