

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH  
NEW DELHI

O.A NO. 243 OF 2010

COMMANDER (RETD) ASHOK KUMAR ANAND  
L-3/30 (GROUND FLOOR)  
DLF CITY PHASE II, GURGAON-122 002..

THROUGH : MR. P.D.P DEO, ADVOCATE

...APPLICANT

VERSUS

1. UNION OF INDIA THROUGH THE SECRETARY,  
MINISTRY OF DEFENCE, SOUTH BLOCK,  
DHQ P.O., NEW DELHI-110 011.
2. CHIEF OF THE NAVAL STAFF,  
INTEGRATED HQ OF MINISTRY OF DEFENCE (NAVY),  
DHQ P.O., NEW DELHI-110 011.
3. THE FLAG OFFICER COMMANDING-IN-CHIEF,  
HQ EASTERN NAVAL COMMAND,  
VISAKHAPATNAM-530 014.

THROUGH : M/S. A.K BHARDWAJ & JAGRITI SINGH, ADVOCATES  
ASSISTED BY LT. COMDR. VARUN SINGH

...RESPONDENTS

CORAM :

HON'BLE SH. S.S.KULSHRESTHA, MEMBER

HON'BLE SH. S.S.DHILLON, MEMBER

JUDGMENT

20.04.2010

1. This petition has been brought for quashing the order passed by the Court Martial on 15.7.1997, whereby the applicant was found guilty of Charge Nos. (iii), (v) to (x) and (xv) and awarded punishment to forfeit seniority in the rank of Commander for 12 calendar months and to be severely reprimanded in terms of Section 81(1) of the Navy Act, 1957 and to suffer consequential penalties involved.

2. The facts in brief, as unfolded by the applicant, are: The applicant joined the Indian Navy on 1.7.1976 as an acting Sub Lieutenant. In recognition of his hard and meritorious performance, he was awarded President of India's silver medal in the National Defence Academy in 1975. He was promoted to the rank of Commander on 1.7.1991 and subsequently in April 1994, he was given the command of INS Khanjar. Problem started when he was given the task to take ship to participate in the International Defence Exhibition 1995 in Abu Dhabi and later on a goodwill visit to Indonesia, Philippines, etc. from August to

September 1995. The applicant was the Commanding Officer of INS Khanjar and INS Saryu during the International Defence Exhibition. The applicant successfully completed all the tasks assigned to him and returned with the ships and their men. When he returned to India, he was charged with the following:

(i) Caused the receipt of one GPS Marine Receiver Model JRS 4500 of approximate cost of Rs.55,000/- and one Desk Jet Printer (Hewlett Packard) of approximate cost of Rs.35,000/- from Cochin Shipyard Limited against Defect List Items during the Short Refit of Indian Naval Ship Khanjar at Cochin Shipyard Limited, Cochin without the approval of the Administrative Authority.

(ii) Failed to report the opening of a non-public account namely "Cash Account Book W & A Grant (95) INS Khanjar on receiving a sum of Rs.30,000/- from Headquarters Western Naval Command in connection with expenditure to be incurred towards the ship's visit to Abu Dhabi.

(iii) Accepted for the ship a gift item namely Video Camera Recorder CCD-FX730 VE (PAL) Handycam of approximate cost Rs.33,000/- at Abu Dhabi during the visit of INS Khanjar.

(iv) Issued an improper directive for withdrawal of large sums of cash from the ship's non-public fund accounts, namely, Ship's Welfare Fund, Sports Funds and Officers' Welfare Fund which resulted in holding of large cash balance in excess of the actual and immediate requirement.

(v) Carrying unauthorised items of provisions namely rice, wheat, pickles, etc. worth Rs.32,927/- onboard INS Khanjar other than those ordered vide Eastern Fleet Office Letter SEC/702 dated 02 August 1995 with the intention of selling them for profit.

(vi) Received 700 US Dollars (approximately) towards sales proceeds of provisions disposed of at various ports abroad in foreign exchange, in violation of Section 8 of Foreign Exchange Regulation Act, 1973, and thereby committed an offence punishable under Section 56 of the FERA 1973 read with Section 77(2) of the Navy Act 1957.

(vii) Contravene Regulation 235(iii)(c) of Financial Regulations Part II in that he failed to return the unspent balance of about 38 US Dollars remaining from an amount of 455.04 US Dollars to Indian Embassy at Manila.

(viii) Knowingly signed a false statement namely a certificate to be used for official purposes, in that he falsely certified that a sum of 344.65 US Dollars of a total of 641.86 US Dollars received on account of unforeseen contingencies was spent on the purchase of 100 kg of mutton and 96 kg of chicken for INS Khanjar and Saryu, for the purposes of withdrawing the said amount of public money in foreign exchange at Shanghai.

(ix) Knowingly signed a false document, namely a certificate to be used for official purposes, in that he falsely certified that a sum of 536.33 US Dollars out of a total of 641.56 US Dollars received on account of unforeseen contingencies was spent towards transportation and fresh provisions for INS Khanjar and Saryu for the purpose of withdrawing the said amount of public money in foreign exchange in HO Chi Minh City.

(x) Failed to return to the Indian Embassy at Jakarta, Manila, Shanghai and Ho Chi Minh City, the unspent balance of the foreign exchange drawn namely 44.68 US Dollars, 16.19 US Dollars, 38.16 US Dollars and 28.50 US Dollars respectively.

(xi) Carried personal cash of at least Rs.12,180/- in Indian currency while proceeding out of India on board INS Khanjar in violation of Section 13(2) of FERA 1973 read with Section 67 of FERA 1973 further read with Section 11 of the Customs Act, 1962, and thereby committed an offence punishable under Section 135 of the Customs Act 1962 read with Section 77(2) of the Navy Act 1957.

(xii) Exchanged his personal cash of about Rs.12180/- into 386 US Dollars held with the Executive Officer which was part of the 700 US Dollars obtained by the ship through unauthorised sale of provisions in violation of Section 8 of the FERA 1973, and thereby committed an offence punishable under Section 56 of the FERA 1973 read with Section 77(2) of the Navy Act, 1957.

(xiii) Caused a sum of 1192 US Dollars in foreign exchange to be brought into India, in violation of Section 13(1) of the FERA 1973, read with Section 67 of the FERA 1973, further read with Section 11 of the Customs Act 1962 and thereby committed an offence under Section 135(1)(b)(ii) of the Customs Act 1962 read with Section 77(2) of the Navy Act 1957.

(xiv) At Vishakhapatnam caused the conversion of 1192 US Dollars of unutilised foreign exchange into Indian currency in violation of Section 8 of the FERA 1973 and thereby committed an offence punishable under Section 56 read with Section 77(2) of the Navy Act 1957.

(xv) Guilty of fraudulent conduct in that he issued directions for (a) making false entries in the Canteen Cash Account, (b) fabricated a fictitious Canteen Stock Ledger, (c) falsified the Canteen Balance Sheet for the quarter ended 31<sup>st</sup> Aug 1995, all for the purpose of reflecting that a sum of Rs.20,000/- had been made as profit by the ship's canteen.

The Court Martial found the applicant guilty of Charge Nos. (iii), (v), (vi), (vii), (viii), (ix), (x) and (xv) and punished him for the said offences. As against the punishment, the applicant made a representation to the Chief of Naval Staff on 18.8.1998 for making judicial review of the Court Martial proceedings, which was unsuccessful. Rejection of his representation was communicated to him only in August 2008.

3. Under Section 162 of the Navy Act 1957, the applicant made a representation to the Central Government. It remained pending with the Government for a pretty long time i.e. about ten years. Subsequently, he received a letter (No.FN/NL 1329/MF/699/US(P)/D(N-II)/09) dated 4.1.2010 stating that the belated representation cannot be considered. Hence the present application.

3. As has already been stated, the order rejecting his representation under Section 162 of the Navy Act was received by the applicant in August 2000. The applicant thereafter slept over the matter for nearly ten years and has now come by filing this application to get his grievance redressed. It is strenuously contended by learned counsel for the applicant that the representation under Section 162 of the Navy Act was pending with the Central Government for quite a long period and such delay cannot be attributed against the applicant as he was bona fide pursuing the matter and that for the delay on the part of the respondents, the applicant cannot be penalised.

4. We have gone through the representation made by the applicant (Annexure P2), which refers to the representation under Section 162 of the Navy Act 1957. The representation was made to “the Raksha Mantri, Raksha Mantralaya, Bharat Sarkar, New Delhi” on 14.3.2001. There cannot be any doubt that the Ministry is headed by the Minister in charge and it cannot be construed to be a representation to the Central Government. A representation not made to the statutory authority under Section 162 of the Navy Act has no meaning. There is nothing on record to show that such a representation was received in the secretariat of the Raksha Mantri. To the contrary, as was informed vide letter dated 4.1.2010, the representation filed by the applicant

was not available on record. Therefore, there was laches on the part of the applicant. We, therefore, do not find any justification to entertain this petition. It is dismissed.

**(S.S DHILLON)**  
**MEMBER**

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