

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI**

O.A NO. 568 OF 2010

SEP. Y.B THAKUR

...APPLICANT

VERSUS

UNION OF INDIA AND OTHERS

...RESPONDENTS

FOR APPLICANT

M/S.K. RAMESH & ARCHANA, ADVOCATES

FOR RESPONDENTS

LT. COL. NAVEEN SHARMA

CORAM

**HON'BLE MR. JUSTICE S.S.KULSHRESTHA, MEMBER
HON'BLE LT. GEN. S.S.DHILLON, MEMBER**

J U D G M E N T

23.09.2010

1. This petition has been brought for quashing the finding and sentence awarded by the Summary Court Martial (SCM), whereby the applicant was held guilty of having committed the offences under Section 41(2) viz. (i) refusing to take meals when ordered by TC 34395 Lt. Gurmit Singh and (ii) not obeying the lawful command given by the superior officer, and sentenced to be dismissed from service. The same was challenged by filing a petition before the Supreme Court and that petition was dismissed on 8.9.1986. Thereafter the applicant went to the High Court under Article 226 of the Constitution of India for the same cause i.e. seeking redressal against the dismissal order passed by the SCM. That writ petition was also dismissed. That order was assailed by the applicant by filing S.L.P No. 8503 of 1987 before the Supreme

Court and the same was also dismissed on 24.1.1994. The applicant again moved a separate petition before the Supreme Court under Article 32. That was also dismissed on 7.8.1995. Not being satisfied, the applicant again moved a petition under Article 32 before the Supreme Court. That was dismissed on 9.5.1996. The applicant thereafter moved a separate writ petition - W.P (C) No 4742 of 1998 - under Article 226 before the Delhi High Court, which was dismissed with costs of Rs.5000/- by the High Court. Subsequently a miscellaneous application was moved for recalling the order awarding cost against the applicant. Now this is the 7th inning which the applicant has initiated for the redressal of his grievance against the order of dismissal.

2. It is mainly contended by learned counsel for the applicant that the Delhi High Court/Supreme Court have passed orders without assigning any reasons and the expression 'dismissed' would connote that the writ petitions/appeals were not disposed of on merit. They were just disposed of in limine. In this regard, reliance has been placed on the decisions in **Narinder Singh v. Khaliq-ur-Rehman and others** (AIR 1974 Delhi 184) and **Workmen, Cochin Port Trust v. Board of Trustees of the Cochin Port Trust and another** (1978(3) SCC 119). Some citations were also quoted at Para 5(G) of this O.A. Suffice it to mention that all the cases filed by the applicant were disposed of by the Delhi High Court and again the impugned order is challenged before this Tribunal. The Delhi High Court has passed a reasoned order while dismissing the writ petition. That judgment has not been challenged before the Supreme

Court and as would appear, only an application for waiving the cost awarded was moved before the Delhi High Court. Now this fresh application is not maintainable and this Tribunal is not sitting in appeal against the decision of the Delhi High Court.

3. It has next been contended that the order of the Supreme Court dismissing the petition without assigning any reason shall be construed as dismissal "in limine". The point of making dismissal of the petition in limine shall be construed to have been made after taking into consideration all material facts and points involved in the case. These aspects were also taken into consideration by the Delhi High Court while passing order in W.P No. 4742 of 1998 and awarding costs of Rs.5000/-. Further, it may also be mentioned that the Supreme Court, while dismissing W.P (C) No. 86 of 1995, made it clear that the applicant intended to make one or other attempt to get his case re-opened which had finally been decided. Taking into consideration the fact that he is a dismissed employee, the Supreme Court thought it appropriate not to award costs against him. But the applicant is bringing one or other petition on the strength of it not being barred by res judicata. The seventh inning was initiated for the same

cause by filing the present O.A before this Tribunal. It is not maintainable. Reliance may be placed on the decision in **Sunitha Rathore and others v. Union of India and others** (2005(13) SCC 264).

4. This O.A is dismissed with a costs of Rs.10000/-, which has to be deposited within two months, failing which, steps shall be taken to recover the same.

(S.S DHILLON)
MEMBER

(S.S KULSHRESTHA)
MEMBER