

**COURT NO. 3,
ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

**T.A. No. 152 of 2009
(Delhi High Court W.P (C) No. 2116 of 1995)**

IN THE MATTER OF:

Gnr. Vijay Singh**Applicant**
Through Mr. Sarvesh Bisaria, counsel for the applicant

Versus

Chief of Army Staff & Another**Respondents**
Through: Mr. Anil Gautam, counsel for respondents

CORAM :

**HON'BLE JUSTICE MANAK MOHTA, JUDICIAL MEMBER,
HON'BLE LT GEN Z.U.SHAH, ADMINISTRATIVE MEMBER**

Order

Date: 29-3-2010

1. The applicant filed a writ petition (civil) No. 2116 of 1995 in the Hon'ble Delhi high Court for quashing the order dated 19.8.1994 (**Annexure -1**) by which he was prohibited against reemployment. The same was transferred to the Armed Forces Tribunal on 24.8.2009.

2. The brief facts of the case are as follows. The applicant was enrolled in 1983. On 2.6.1993 while he was on duty and posted at Ambala in 48 Air Defence Regiment he fell down from a motor cycle and sustained head and bodily injuries. He was treated at Military Hospital, Ambala and then granted 28 days medical leave from 19.6.1993 to 16.7.1993. On expiry of the same he was transferred to Army Hospital, Delhi Cantonment. He was discharged from Army hospital, Delhi Cantonment on 3.8.1993 and was to report back to Military Hospital, Ambala. While on his way to proceed to Ambala, accompanied by his wife, the applicant fell down on the ground and became unconscious. His wife took the applicant to his village instead of Ambala Cantt where he was medically treated at Sharma Ayurvedic Hospital, Village Jatoh, Distt Gurgaon from 4.8.1993 to 28.10.1993. During this period his wife informed the respondents vide letters dated 4.8.1993 and 7.9.1993 about his medical condition and requested for leave on medical grounds. The applicant contends that on his recovery he reported to Military Hospital, Ambala Cantt on 29.10.1993. Here he was given a discharge slip. The respondent claims he reported back to his unit on 1.11.1993.

3. Thereafter disciplinary proceedings on grounds of unauthorised absence were initiated against the applicant. A summary of evidence was recorded. A charge sheet was served under Army Act Section 39 (a) for absence without leave and a court martial was convened. On 16.12.1993 the applicant was dismissed from service.

4. It is stated by the applicant that on 22.12.1993 and 30.5.1994 he submitted appeals against the order of dismissal but did not receive any intimation in that respect. On 24.1.1995 the applicant filed a writ petition before the Hon'ble Delhi High Court. During the pendency of the writ petition the respondents issued impugned order dated 19.8.1994 regarding the prohibition of the applicant from reemployment (**Annexure 1**) which the applicant maintains is against the laws of natural justice. The applicant has challenged it on the theory of double punishments on same incident, one of dismissal from service and second of prohibition from reemployment on grounds of “double jeopardy”.

5. The applicant has prayed that a writ of mandamus be issued quashing the order of 19.8.1994 prohibiting his reemployment.

6. The respondents in their reply have stated that personnel dismissed from service are barred from re-employment vide Army Order 177/75. The respondents have further stated that the applicant had earlier been punished twice, once for negligent driving on 10.6.1987 and second time in 1993 for overstaying leave on two occasions. The applicant has made a false statement that he had been injured in a motor cycle accident while on duty. He had initially been admitted to Military hospital, Ambala on 2.6.1993 for “hypertension”. It was submitted that the applicant having about 11 years service should have been aware that he should have reported to the nearest military hospital instead of getting treatment from a “Vaid”.

7. The prohibition against civil reemployment after a punishment of dismissal is as per Army Order 177/75 and does not fall within the purview of Article 20 of the Constitution of India. “Re-employment” pertains to any job under Central/ State Governments and not from private employment. It was also contended that this was not a case of

double jeopardy. The respondents have recommended that the application be rejected.

8. In a rejoinder the applicant has stated that he was not in a position to report to the nearest military hospital after his discharge from Army Hospital, Delhi Cantt on 3.8.1993 as he became unconscious due to ailment and head injury and was thus treated at Sharma Ayurvedic hospital till his complete recovery. The applicant's wife had written to the respondents informing them of his injury and treatment but had not received any reply.

9. We have perused the records and heard the arguments at length. During the course of arguments it was contended by the learned counsel of the applicant that the impugned order has been passed without show cause notice and further this order prohibits the applicant from reemployment. This amounts to double punishment. Thus this order is liable to be set aside. On the contrary learned counsel for respondents contend that the applicant has not challenged AO 177/75 which stipulates that persons dismissed from service are prohibited from reemployment. The impugned order has accordingly been passed. We

have considered the rival submissions. The applicant has not challenged the provisions of AO 177/75 in his application. The applicant has been punished by a summary court martial and dismissed from service. On the basis of order of dismissal the impugned order has been passed as per policy 177/75 there is no infirmity in the said order. This is not a case of double jeopardy. Application is dismissed. No costs.

MANAK MOHTA
(Judicial Member)

Z.U. SHAH
(Administrative Member)

Announced in the open court
Dated: 29-3-2010