

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

T.A. No. 244/2010

[W.P. (C) No. 14012/2006 of Delhi High Court]

Cdr. Alok Kumar PathakPetitioner

Versus

Union of India & OthersRespondents

For petitioner: Cmd.(Retd.) Sukhjinder Singh, Advocate.

For respondents: Ms. Jyoti Singh, Advocate.

CORAM:

**HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.
HON'BLE LT. GEN. M.L. NAIDU, MEMBER.**

**ORDER
17.09.2010**

1. Present petition received on transfer from Hon'ble Delhi High Court to this Tribunal on its formation.

2. Petitioner by this petition has prayed that an order or direction may be issued for setting aside the letters dated 31.01.2003, 03.03.2004 and 27.05.2004 of respondents and Annexure P-10 and P-17 to the extent of award of these censure

letters and to the extent of withdrawal of the petitioner from Submarine cadre and consequently stopping of the Submarine allowance and lowering his ACR of 31st March, 2003. It is also prayed that consequent to that pay and allowances and arrears should be paid to him as per review performance appraisal board norms and consider him for promotion.

3. Brief facts of the case are that petitioner was commissioned in Indian Navy as Sub. Lieutenant on 01st July, 1984 and raised to the rank of Commander due to his excellent service and he was awarded Vashisht Sewa Medal for his distinguished service. During 22 years of commissioned service the petitioner performance has been exemplary and during this period, the petitioner spent 16 long years at sea in various capacities. Petitioner was the Commander Officer at INS Sindhu Rakshak, one of the highly potent and front line Submarine of the Indian Navy. It is alleged by the petitioner that an unfortunate incident happened for which he was punished under the Navy Act by awarding of Censure letters. But grievance of the petitioner is that he was removed from Submarine against principle of natural justice without giving a show cause notice and without the

knowledge and recommendations of the competent authority i.e. Flag Officer Commanding Western Naval Command, Mumbai by the order dated 18th May, 2004. In fact petitioner was involved in three incidences when he was Commanding Officer of the INS Sindhu Rakshak and in all the three incidences he was found guilty and he was accordingly punished but finally on that basis he was withdrawn from the Submarine Cadre. Therefore, main grievance is with regard to withdrawal from Submarine Cadre by the order dated 18th May, 2004 against breach of principle of natural justice.

4. Respondents in their reply has pointed out that petitioner was found guilty on three occasions which damaged the Submarine in one case. He was found guilty in hitting the sand dune and damaged Submarine and in second incident he was entangled with fish boat and in third incident he was found hitting the Jetty and damaged Submarine. In all the three occasions Court of Inquiry was held and he was found guilty. It is also submitted that as per the norms laid down in the Naval Order 05/97 the Authorities can withdraw the privilege of wearing the

Submarine Badge. It is clearly mentioned in para 2 which reads as under :-

“This entitlement can be withdrawn for any of the following reasons and will be in conjunction with the individual’s withdrawal from the Submarine arm :-

- (a) Indiscipline*
- (b) Incompetence*
- (c) Unsuitability*
- (d) Service requirement”*

5. It is submitted that petitioner was found to be incompetent and unsuitable in commanding the Submarine therefore, his Badge was withdrawn on the recommendations by the Committee and the Flag Officer Commanding-in-Chief Western Naval Command recommended that the removal of the Badge of petitioner along with other officers who were also found guilty of serious omissions and commissions. Accordingly, the Badge of petitioner was revoked on the basis of the recommendations of the Chief Staff Flag Officer, Commanding-in-Chief by the impugned order. It is also submitted in the reply that because of the Naval Order No. 05/97 since incumbent was found to be incompetent and unsuitable to man the Submarine, therefore, it was recommended to withdraw his privilege.

6. We have heard learned counsels for the parties and perused the record.

7. It is true that the principle of natural justice so entrenched in our judicial system that whenever any order affecting the rights of person is passed, a show cause notice is required to be served to the incumbent. In the present case, it is no gain saying that petitioner was found to be guilty on three occasions which resulted in damage to the Submarine, as a result of this his Submarine Badge was revoked but before this order of revocation is passed, the incumbent is entitled to have a notice that on account of three omissions he is not fit to hold the command of the INS Sindhu Rakshak and therefore, why his Submarine Badge should not be revoked. But this was not done in the present case and his Submarine Badge was unilaterally revoked without giving any notice to him. As a result of revocation of his Badge, petitioner's career is at stake and his Badge allowance was withdrawn which is Rs. 7000/- per month. This order has serious consequence on the career of the petitioner. Maybe he had committed omissions but principle of natural justice requires that he should be given at least notice as to why his Submarine Badge

be not withdrawn. May be the result of that maybe same but the law has to take its own course. There are various decisions which put the matter beyond all reasonable doubt right from the beginning like in the decision given by Hon'ble Supreme Court in the case of State of Orissa vs. Binapani Dei & Others – AIR 1967 SC 1269 wherein it has been observed that “*Even an administrative order which involve civil consequences have to be passed consistently the with rules of natural justice.*” This case was with regard to change of date of birth and the incumbent was compulsorily retired on the basis of date of birth recorded based on the report of the Enquiry Officer conducted in case of the incumbent without her knowledge. In this case their Lordships has held that this was bad without giving a notice to the incumbent on so called change in the date of birth and their Lordships struck down the order of compulsory retirement arrived at on the so called date of birth on the basis of said enquiry. Similarly our attention was invited to the decision in the case of Institute of Chartered Accountants of India vs. L.K. Ratra & Others – [AIR 1987 SC 71] and in this case also a member of the Institute of Chartered Accountants of India was alleged to have committed misconduct. In this case their Lordships have held that “*there is*

nothing in Regulations 14 which excludes the operation of the principle of natural justice entitling the member to be heard by the Council when it proceeds to render its finding. The principles of natural justice be read into the unoccupied interstices of the statute unless there is a clear mandate of the contrary.” Similarly in another decision in the case of Basudev Tiwary vs. Sido Kanhu University & Others - [(1998) 8 SCC 194] their Lordships had held that *“in order to impose procedural safeguards, requirement of natural justice has been read into many situations when the statute is silent on this point.”* In another decision of Hon’ble Supreme Court in the case of Ram Ujarey vs. Union of India – (1991) 1 SCC 685 wherein their Lordships have held that *if the benefit of service rendered by the appellant from 1964 to 1972 was intended to be withdrawn and promotion orders were to be cancelled as having been passed on account of mistake, the respondents ought to have first given an opportunity of hearing to the appellant.”*

8. In view of series of decisions, there is no manner of doubt that the principle of natural justice in administrative action has to be read even if it is not mentioned. In the present case,

suffice it to say that the petitioner was found guilty on three occasions and on the recommendations of the Committee if his Badge was to be revoked then at least he should have been given a notice that why his badge may not be revoked. This is a condition precedent in the situation like the present case and it seems that Authorities were ignorant of the principle of natural justice and passed the order assuming that since he is inefficient and incompetent to manage the Submarine, therefore, his Badge is to be revoked. This resulted in serious consequences to the career of the incumbent. In these circumstances, principle of natural justice should have been followed which was not followed. Therefore, we allow this petition and set aside orders qua the petitioner and leave it open for the respondents to pass the fresh order in accordance with law. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. Naidu
(Member)

New Delhi
September 17, 2010.