

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

T.A. No. 340/2010

[W.P. (C) No. 3619/02 of Delhi High Court]

Khem Pal Singh

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh.Shankar Divate, Advocate.

For respondents: Ms.Barkha Babbar, Advocate.

CORAM:

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

**ORDER
22.04.2010**

1. The present petition has been transferred from Hon'ble Delhi High Court to this Tribunal on its formation.

2. Petitioner by this petition has prayed that by writ of direction, impugned orders dated 02.03.2001, 27.03.2001 and

20.12.2001 may be quashed and respondents may be directed for regularisation of the absence with pay and allowances for the period 25.04.1996 to 29.11.1997 to him.

3. Brief facts which are necessary for the disposal of present petition are that petitioner joined the Indian Navy in January, 1990 as Leading Air Mechanic-1 (LAM-1) after necessary process for selection. He spent 12 years service with an unblemished record posted at various places like Andaman, Vishakapatnam etc. At the relevant time, he was posted at Kochi during which he was court marshalled and later on he was exonerated of all the charged by the order of Chief of Naval Staff.

4. It is alleged that on 27.12.1995 after spending holiday at home at Delhi, he was going to join his duty at Vishakapatnam where he was arrested and falsely implicated in a case. The gravamen of the charge against him was that at about 19.30 hours on dated 27.12.1995, he was found in unauthorized possession of the 41 bottles of various quantities, brands at Vishakapatnam railway station bus stop. He was intercepted by

the Excise and Prohibition Officials Circle-2, Vishakapatnam and he was committed an office u/s.8(ii) of Andra Pradesh Prohibition Act, 1995 read in conjunction with Section 77(2) of the Navy Act, 1957. He was tried by the Court Martial from 08.04.1996 to 22.04.1996 and was found guilty of the charge u/s.88(I) of the Andra Pradesh Prohibition Act, 1995 read in conjunction with Section 77(2) of the Navy Act and was sentenced to be kept under rigorous imprisonment for a term of 6 calendar months as Class-III prison, to be dismissed from the Naval service, to be reduced in rank Naval air-craft mechanic (first class) and to suffer other consequential involved. Aggrieved by this court martial order, he filed a petition to the Flag Officer-Commanding In-chief, Eastern Naval Command for judicial review but the same was summarily rejected on 24.04.1996. Aggrieved against his rejection of his judicial review, he preferred another petition under section 160(1) of Indian Navy Act, 1957 citing the discrepancies in the order of court martial and the facts which were not considered while passing the order to Chief of Naval Staff in the month of May, 1996 from the Jail where he was lodged. Subsequently, he also filed a writ petition in the Hon'ble High Court of Andra Pardesh at Hyderabad against the order of court martial and he

was released on bail by the Hon'ble High Court. After release from Jail on bail, he made a request to Chief of Naval Staff for personal hearing. The personal hearing was given to the petitioner on 20.03.1997. After hearing the petitioner on 30.09.1997, the Chief of Naval Staff passed the order setting aside the finding and sentence of court martial exonerating him from all the charges levelled against him and reinstating him in the service. The operative para of the said order reads as under:-

In exercise of powers conferred by Section 163 of the Navy Act, 1957, I hereby set aside the findings and sentence of the court martial. The petitioner is exonerated of the charge and reinstated in the service."

However, Chief of Naval Staff did not mention in his order that petitioner is being released by giving him any benefit of doubt or on technical ground. Hence, petitioner made a representation for regularization of absence with pay and allowances for the period 25.04.1996 to 29.11.1997, however, his request was rejected. Aggrieved by this he approached the Hon'ble Delhi High Court by filing present writ petition which was transferred to this Tribunal after its formation.

4. Respondents filed the reply wherein they took the position that since petitioner was not fully exonerated, he was exonerated by giving benefit of doubt, therefore, he is not entitled to the benefit of aforesaid period.

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

6. Learned counsel for the respondents has also produced before us the reasons given in the judicial review of the order of court martial. We do not want to comment on that but the facts remains that petitioner was exonerated and while exonerating him, it has not been mentioned that the incumbent is being exonerated by giving the benefit of doubt or on technical grounds.

7. After going through the judicial review order, it appears that in fact the petitioner was caught carrying 41 bottles of liquor and that area was not covered under the Andhra Pradesh Prohibition Act, therefore, there was no offence committed. Once the offence is not being committed then subsequent reasons for sending all the bottles to forensic tests, has no relevance. In order to constitute the offence, it should be established first that

there was prohibition and carrying liquor is prohibited. If the carrying of bottles is not prohibited under Andhra Pradesh Prohibition Act then no offence can be made out at all. The Chief of Naval Staff rightly exonerated the petitioner without resorting to technical ground. Once the petitioner has been exonerated from all the charges, he is entitled to all the benefits.

8. Hence, petitioner is entitled to all the benefits of the aforesaid period and same shall be released to him as petitioner was not found guilty at all.

9. Consequently, we allow this petition and direct that petitioner should be given all the benefits pertaining to the aforesaid period with regard to salary and allowances as admissible as he has not been punished or found guilty for any criminal offence. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
April 22, 2010.