

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

T. A. No. 657/09

WRIT PETITION (CIVIL) NO. 1734/2000

Ex. Sailor/Steward Rajesh Kumar

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner : Sh. Pratap Singh Advocate.

For respondents: Lt. Cdr. Varun Singh .

CORAM:

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

ORDER
07.12.2010

Petitioner by this petition has prayed that the orders of the dismissal from service of the petitioner by the order dated 29 Jul 1997 as intimated by Beareu of sailer Chikla in Bombay by the ordered dated 13 Sep 1997 is improper illegal and does not commensurate with the offence committed by the Petitioner. Therefore the same may quashed and the respondent may be directed to reinstate the petitioner in service and give all consequential benefits.

Petitioner was inducted in Naval service on 12 May 1989. Petitioner joined navy as he was in IX class and its is non matriculate entry and he was inducted into the Naval Service and sent on to INS Chilka for basic training and he has remained at various places from time to time. It is alleged that fateful day 18 March 1997 at about 20 hours petitioner has gone to civil market for purchase of consumable items for officers mess. On his return at 2130 hours, he was checked by Sub Lt Anna Verghees and asked him in

a very rude and abusive language that where was he. He informed that he had gone with permission to buy certain consumable items for officer's mess. Later on the petitioner was tried by summary court martial under Section 93 Navy Act by commanding officer for offence of visiting civil area unauthorisedly and 2130 hours on 1997 consuming the liquor and he was awarded punishment of deprivation of Good Conduct Batch dismissal from service and imprisonment of 90 days. Aggrieved against this order petitioner filed a petition setting aside the illegal punishment. The said petition was rejected by the Fortress HQ, Portblair. Therefore filed present Writ Petition in Delhi High Court which has been transferred to this tribunal after its formation.

The grievance of the petitioner is that the basic principle of natural justice has not been followed and he has not been given the copies of documents and fair trial has not been conducted, he has not been given assistance of a defending officer and the findings recorded is perverse. Hence prayed to set aside the same. A reply has been filed by the respondent. The respondent has pointed that petitioner was charged for four charges

- 1) Under Section 74 for Consuming alcohol in the Civil area.
- 2) Under Section 509 IPC for intruding upon the privacy of Sub Lt Anna Verghees
- 3) Under Section 354 IPC for using criminal force against sub Lt Anna Verghees intend to outrage her modesty.
- 4) Under Section 74 making false allegation against Sub Lt Anna Verghees

During the trial Petitioner admitted his guilt and gave a statement in writing. This fact is corroborated by other witnesses. Summery Court Martial after recording necessary evidence found petitioner guilty of all charges. However Chief of staff found petitioners guilty of charge 2 & 4

We have heard at learned counsel for parties and perused the original record to satisfy ourselves that whether there was fair trial or not. After going through the summary of the evidence and the statement of the petitioner who had himself admitted that he had gone to the room of Lt Anna Verghees at the middle of the night and tried to outrage her modesty. In view of his own admission we do not think we need to further probe in to the matter. There is also medical report on the record which shows the accused was smelling of a liquor. Anna Vergees during the course of the enquiry has identified the accused which has been supported by other witnesses. Hence we are satisfied, that in view of the admission of the petitioner of his own guilt walking in to the room of a lady officer at the midnight, clinches the issue therefore we are satisfied there is no unfairness in the trial and he has been given sufficient opportunity to defend himself. Hence we do not find any merit in the petition, and same is dismissed. No order as to cost.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
December 07, 2010.