

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

O. A. No. 130/10

Hav. Shambhu Kumar

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. S. S. Pandey, Advocate.

For respondents: Dr. Ashwani Bhardwaj, Advocate.

CORAM:**HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.****HON'BLE LT. GEN. M.L. NAIDU, MEMBER.****ORDER****03.01.2011**

1. The petitioner by this petition has prayed to quash the decision of the authorities of not granting extension of service to the Applicant and the consequent order by which the Applicant has been informed about his retirement in the present rank on 31.12.2010(AN) on denial of such extension of service on the basis of punishment under section 64 (e) and issue directions to respondents to consider the case of the Applicant afresh for extension of two years of service as well as for further promotion after relieving the Applicant from all consequential of illegal punishment.

2. The petitioner was enrolled in the Army Ordinance Corps of Indian Army in the Clerk (General Duties) Trade on 03.12.86 and due to his hard work, sincerity and dedication was promoted to the paid acting rank of Naik on 01.01.1991. Between 1986 and 1992, the Applicant served in various units to the satisfaction of his superiors. The applicant was posted to Ammunition Depot Road in 1991 and during March, 1993, he

was dealing with pay and allowances of Junior Commissioned Officers / Other Ranks as well as Accounts of the depot including Public Fund and CSD canteen. In 2nd week of March, 1993, Lieutenant Colonel Balbir Singh, the then Deputy Commandant of Depot told the petitioner on telephone to issue a cheque for Rs.1500/- immediately from Public Fund Account for a bill of that amount which he was sending through his messenger and also told the Applicant that the stores mentioned in the bill will come later. The Applicant requested him to talk to Administrative Officer Lt. Col. MA Balasubramaniam for the same who was cheque countersigning authority. At this he lost his cool and he used abusive language. The applicant reported the same to Head Clerk Subedar JN Ram. Subsequently, the Applicant prepared the cheque, got it signed from CCME and went to Administrative Officer for his signature. He enquired about the items of the said bill and said that he would not sign the cheque until items are produced to him. Ultimately he did not sign the cheque and financial year closed.

3. The deputy Commandant called him in his office and scolded him. On 18.7.1992, the applicant rejoined after six days casual leave and Dy. Commandant was doing the duties of officiating Commandant as Col RS Mannar, the then Commandant was away on leave. On reaching office, the applicant was informed by Head Clerk Subedar JN Ram that he had been transferred from ME Office to HQ Section. Accordingly, the Applicant reported to HQ Section on the same day.

4. On 20.7.1993, the then Deputy Commandant called the applicant to his office and without any fault informed the applicant that he will not wear the rank of Naik as then Deputy Commandant has given him a punishment for an offence that Canteen NCO gave

the Applicant 04 bottles Rum and 04 bottles beer during the month of April, 1993 and July, 1993 against his chits issued by the Applicant. The Applicant as well as Canteen NCO objected/denied the allegation as the petitioner has not issued any chit nor the Canteen NCO had issued any liquor. The applicant tried to argue with the Commander but without any result and he was granted a punishment u/s 64 (e) and petitioner did not protest against this and took it as he was under bonafied belief that probably realizing his mistake, Respondent No 4 has not proceeded to award the punishment to the Applicant.

Thereafter when petitioner after attaining the age of superannuation was sought to be retired, he applied for further extension of two years. The authority in their order dated 26.6.2009 has taken that issue to be a serious one for denying him the extension. Therefore, the petitioner has now challenged the order under 64(e) at such a long distance of time.

5. Learned Counsel for the petitioner submitted hat he would not have protested against this punishment but for the fact that now this is being forced upon him to deny him further extension from service on the ground that he was given a punishment of reprimand in 1993. Therefore, he submits that though the punishment was not challenged by him at the relevant time when it was imposed on him, however, he protested against it but without any result.

6. Learned counsel for the petitioner submits that even if the allegation which has been levelled against the petitioner may be accepted that he has overdrawn the liquor that too also the offence under section 64(e) is not made out. Learned Counsel further submitted that the main ingredient of section 64(e) is that if he has done anything for the

advantage of any other person then this offence could be made out. He further submitted that even if the allegation may be taken on the face of it, no offence u/s 64 (e) is made out.

7. Before we deal on this aspect, section 64(e) is reproduced as under:

“directly or indirectly accepts or obtains, or agrees to accept or attempts to obtain, for himself or for any other person, any gratification as a motive or reward for procuring the enrolment of any person, or leave of absence, promotion or any other advantage or indulgence for any person in the service.”

8. As per section 64(e) it clearly says that if any person directly or indirectly accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person any gratification as a motive or reward for procuring enrolment of any person or leave of absence, promotion or any advantage or indulge for any person in service meaning thereby that if he facilitates for the benefit for himself. In neither of a situation procuring of a excess liquor does falls in the four corners of section 64(e). Had it been a case that the petitioner procured this liquor for the benefit of third party then it could have been understood, but that is not the case. The case as it simply stands that he overdrawn the liquor that is four bottles of rum and four bottles of beer during particular currency of the year that could be an offence in other provision which we don't know, but so far as section 64(e) is concerned, the action is not covered. The section 64(e) only means that accepting any gratification for giving any advantage or getting any benefit for benefit of third party. But here there is no third party involved, here it is only the incumbent

himself has as per the allegation has drawn excess liquor that does not fall even remotely in the offence u/s 64(e).

9. The learned counsel for the respondent has protested that the punishment was awarded in 1993 and it cannot be challenged now at this distance of time. The objection would have been sustained had it not been used by the respondent now at this distance of time, otherwise the petitioner has already accepted it and did not protest. But after probing the matter we find that section 64(e) is nowhere involved in the given facts of the case. Therefore, the punishment which has been awarded in the year 1993 u/s 64(e) was totally without jurisdiction and void ab-initio. Since the punishment itself is void ab-initio then no amount of delay can come in the way of the incumbent. Consequently, we allow the petition and set aside the punishment awarded in the year 1993 u/s 64(e) and leave the authorities to reconsider the matter again for extension of incumbent in accordance with rules.

The petition is allowed and no order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
January 03, 2011