

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

S-03.

T.A.No. 197 of 2010

Writ Petition (Civil) No. 4923 of 1998

Ex. Cpl. Kaibalya Behera

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. Pratap Singh, Advocate.

For respondents: Sh. A.K. Bhardwaj with Ms. Jagriti Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. M.L. NAIDU, MEMBER.

ORDER

20.01.2011

1. This petition has been transferred from Delhi High Court.
2. Petitioner by this petition has prayed that the impugned order dated 9th February 1998 (Annexure P-1) passed by the HQ WAC AF by which the petitioner has been removed from services and the impugned appellate order dated 14th July 1998 (Annexure P-2) passed by the authority and the impugned show cause notice dated 21st November 1997 (Annexure P-3) should be quashed and the petitioner may be reinstated in service along with the arrears of back period pension.
3. Petitioner was enrolled in the Air Force on 21st July 1988 as an Airman and was allotted his Service No. 688578-T and the trade of the petitioner was instrument fitter. Then petitioner completed his Air Force training and was posted in the operation unit of the Air Force. Petitioner was given many promotions and on 21st

July 1993 he was promoted to the rank of Corporal. In the year 1997, when he was posted on the strength of No. 125(HQ) Sqn. C/o 56 APO and was on patrolling duty on 16th August 1997 at HQ which was located by the side of the main road between Station Guard Room and domestic area of Air Force Station which was a busy traffic road. At about 1800 hours on that day when petitioner was patrolling on the road within his beat area in day light, he saw a three years child falling from carrier of a cycle which was held by a minor girl of about 12 years age. One child about 1 year old was sitting on the bar of the cycle and thus the petitioner put the child on the carrier and advised them to go to their home. While petitioner was performing his duty one Sergeant Khokhar GR Clk/PA came on scooter with same girl and asked the petitioner why had had misbehaved with his daughter and he took the particulars of the petitioner. It is submitted that after three hours JWL J Singh, IAF (P) came to the Guard Post and ordered that the petitioner was put under close arrest. It is submitted that the petitioner was given beating by Cpl Shakti Singh and the petitioner made petition against him but that was not considered at all. Respondent No. 5 ordered court of inquiry against the petitioner by the order dated 18th August 1997 and enquired into the circumstances under which petitioner misbehaved with the daughter of Sgt. Khokhar GR Clk/PA of 18 Wing at 1815 hours on 16th August 1997 near 125(H) Sqn. HQ Building. It was alleged that enquiry was conducted against the principles of natural justice and against the mandatory provisions of law.

4. After the conclusion of the court of enquiry, petitioner was served a show cause notice under Section 20(3) of the Air Force Act, 1950 and petitioner replied the impugned notice and pleaded that he was not at fault and the show cause notice

may be withdrawn. Meanwhile, the petitioner also challenged the show cause notice by filing a petition in Delhi High Court which was decided by a judgment dated 19th March 1998. The Court disposed of the petition with the direction that respondents shall consider the reply submitted by the petitioner in accordance with law and it was further held that writ petition was premature at this stage and same was dismissed. After considering the reply filed by the petitioner, the petitioner's services were dispensed with by the order dated 9th February 1998 and this order of removal was challenged by the petitioner by filing the present writ petition before the Delhi High Court which was transferred to this Tribunal after the formation of this Tribunal.

5. A reply was filed by the respondents and respondents contested the petition and submitted that respondents found that the petitioner's misconduct was highly undesirable and, therefore, after the court of enquiry findings that the petitioner was informed and left to take an administrative action. Petitioner's services were thereby dispensed with under sub-section 3 of Section 20 of the Armed Forces Act, 1950. Petitioner filed a further petition before respondents which was without any result. Then he approached Delhi High Court accordingly.

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

7. Learned counsel for the petitioner submitted that once the court of enquiry has been held by the respondents then the respondents should have started the Court Martial proceedings instead of resorting to Section 20 of the Air Force Act, 1950 by summarily dismissing the petitioner from services. In that connection, learned counsel for the petitioner has invited attention of this Tribunal to a decision of

the Delhi High Court in **Avimanyu Panda(Ex. Sgt.) v. Union of India & Ors 1999 1 AD (DELHI) 654** which has been overruled by the decision of a Division Bench of the Delhi High Court in **Union of India v. Ex. Sgt. Avimanyu Panda 101 (2002) DLT 267**. Their Lordship observed as under:-

“13. Thus going by the above decision, the services of an officer subject to the Army Act accused of having committed misconduct amounting to a civil offence can be terminated without being tried by a Court Martial under the administrative power comprised in Section 19 of the Army Act read with Rule 14 of the Army Rules.”

8. The provision of Section 19 is *pari materia* with sub Section 3 of Section 20 of the Air Force Act. Therefore, the view taken by learned Single Judge is no more a good law and in view of the decision of the Division Bench of Delhi High Court that despite the court of enquiry held by the respondents, the respondents can resort to sub Section 3 of Section 20 of the Air Force Act by terminating services by giving a show cause notice. The Hon'ble Delhi High Court followed the decisions of Apex Court in case of **Union of India v. Capt. S.K. Rao AIR 1972 SC 1137**, **Union of India v. Harjeet Singh Sandhu (2001) 5 SCC 593** and **Chief of Army Staff v. Major Dharam Pal Kukrety (1985) 2 SCC 412**. The aforesaid decisions of the Apex Court makes it clear that the administrative power under Section 30(3) of Air Force Act and under Section 19 of the Army Act can be resorted by the authorities by giving a show cause notice instead of holding a Court Martial proceeding. Learned counsel for the petitioner invited our attention to the decision of the Hon'ble Supreme Court in **Major Radha Krishan v. Union of India (1996) 3 SCC 507**. This case also came up for consideration before the Supreme Court later in the case of **Union of**

India and Ors. v. V.N. Saxena (2008) 11 SCC 516 and his Lordship has stated in para 43 as under:

“43.We are also of the opinion that Major Radha Krishan case lays down propositions too broad to be acceptable to the extent. It holds that once the period of limitation for trial by Court Martial is over, the authorities cannot take action under Rule 14(2). We also do not agree with the proposition that for the purpose of Rule 14(2), impracticability is a concept different from impossibility (or impermissibility, for that matter). The view of the Court in that case should be treated as confirmed to the facts and circumstances of that case alone. We agree with the submission of the learned Additional Solicitor General that **Dharam Pal Kukrety** case being a three-Judge Bench decision of this Court, should have been placed before the two-Judge Bench which heard and decided **Major Radha Krishan** case.

Therefore, decision in **Major Radha Krishan** is no more a good law.

9. However, for our satisfaction we called the original file of the respondents and saw why the resort to Court Martial has not been taken and resort to sub Section 3 of Section 20 of the Air Force Act was resorted to. The reason which has been mentioned in the order was that it will put the girl to humiliation and unnecessarily expose the girl to problems. Therefore the authorities have resorted to sub Section 3 of Section 20 of Air Force Act. In our view, this was a correct approach as this would have unnecessarily caused humiliation to the girl if she was sent to the Court Martial proceedings. Therefore, in the present case authorities has rightly exercised powers under sub Section 3 of Section 20 of the Air Force.

10. Consequently, we do not find any merit in this petition and the same is dismissed with no order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
January 20, 2011.