

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

1.

T. A. No. 328 of 2010

Writ Petition (Civil) No. 1627 of 2007

K. L. Sharma

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. Sukhjinder Singh, Advocate.

For respondents: Ms. Saroj Bidawat, Advocate.

CORAM:

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

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

ORDER

22.7.2011

A. K. MATHUR, CHAIRPERSON

The petitioner by this petition has prayed that the respondents communications dated 23.2.2006 and 7.12.2006 and the order dated 10.3.1976 quoted in Annexure P1 as authority to discharge the petitioner from naval service as "Service No Longer Required" be declared illegal, arbitrary and violative of the provisions of the Navy Act, 1957, Regulations made thereunder. He has further prayed that it may be declared that the petitioner is entitled to pensionary benefits as if he was in the service without break in the rank of Master Chief Petty Officer 1st class.

2. The petitioner was enrolled as an Artificer Apprentice in the Indian Navy, in terms of Sections 11 and 12 of the Navy Act, 1957 on 18.8.1962 and started drawing his salary after his enrolment as an Apprentice. The petitioner underwent training as

an Artificer Apprentice from 18.8.1962 to 19.8.1966. On 20.8.1966, the petitioner was promoted to the rank of Aircraft Artificer 5 class. The petitioner was next promoted to the rank of Aircraft Artificer 4th class and on 9.7.1969, he was promoted to the rank of Aircraft Artificer 3rd class and then on 9.7.1974, he was promoted to the rank of Aircraft Artificer 2nd class i.e. to the rank of Chief Petty Officer. Soon thereafter, i. e. on 10.3.1976, he was illegally and arbitrarily discharged from the naval service as "Service no longer required" in violation of Section 15(2) (b) of the Navy Act, 1957, read with Regulations 279, Regs. Navy Part III (statutory) without administering any warning or counselling to him, though his conduct throughout has been very good since he held all his "Good Conduct Badges". It is alleged that he has already put in about 13 years 6 months and 22 days of service. The petitioner did not challenge the order of 10.3.1976, it appears that he kept mum for a long time and after a long time in 2007, when he woke up and started corresponding with the Government that he has been arbitrarily discharged. He filed the writ petition against his discharge before Delhi High court in the year 2007 which was transferred to this Tribunal after its formation.

3. The respondents have raised a serious objection that the petition is extremely belated as he was discharged in 1976 and he did not raise any objection till he filed the writ petition in Delhi High Court in the year 2007. Therefore, the petition is extremely belated and all the records pertaining to the petitioner's service have already been destroyed and the respondents do not have any records pertaining to the petitioner's service.

4. Ld. Counsel for the petitioner has submitted that the petitioner has been promoted as Chief Petty Officer and he was given good character certificate, despite that, the authorities have discharged him from the service under Regulation 279 of Navy Regulations Part III being "outlived his utility". It is submitted that this discharge is in violation of Regulation 279 of Navy Regulation Part III as no warning or counselling was given to the petitioner and his service has been throughout good. In this connection, he has invited our attention to Regulation 279 which requires that if a Sailor is considered undesirable on account of conduct or character, the authorities shall warn or counsel from time to time but no such thing was done and he was suddenly discharged from service as "Service no longer required". Learned counsel has submitted that delay in this matter is not of much relevance as their Lordships of Hon'ble Supreme Court in the case titled as **"Union of India & Ors. Vs. Tarsem Singh 2009(1) SCC Page 371"** have laid down that if delay does not affect the rights of third parties, then it is continuing wrong. Similarly, our attention was invited to the decision given by Bombay High Court in the case of **"S. S. Phogat Vs. Chief of Naval Staff and others, 1999 LAB. I. C. 1512"**. Learned counsel has also submitted that adverse entries, if any, existed against the petitioner stood washed away when the petitioner has been promoted to the post of Chief Petty Officer in 1976 and in this connection, he has invited our attention to the decision given in the case of **"Brij Nath Pandey Vs. State of U. P. and Others, 2001 (9) SCC Page 398"**. He has also submitted that this discharge is nothing but termination without any notice and in this connection, he has invited our attention to **"D. K. Yadav Vs. J. M. A. Industries Ltd., 1993(3) SCC Page 259"** and **"Sumati P. Shere V. Union of India, AIR 1989 Supreme Court 1431"**, **"Surinder Singh Sihag Vs. Union of India 100(2002) Delhi Law Times 705(DB)"** **"Basudeo Tiwary Vs. Sido Kanhu**

University and Others, 1998(8) SCC Page 194” and “Indian Bank Vs. N. Venkatraman, 2007(10) SCC Page 609.” On the other hand, learned counsel for the respondents has submitted that this is a case of delay of 31 years and the petitioner has no explanation as to why did he remain silent for 31 years. It has also been pointed out that service record of the petitioner has always been just satisfactory or below average. It is also pointed out in the reply that taking into consideration the petitioner's conduct being below average and professional competence being not up to the mark, commanding officer INS Vikrant vide letters dated 21.8.1975 and 22.9.1975 recommended the discharge of the petitioner from service as “Service no longer required (SNLR)”. Accordingly, after obtaining the approval of the competent authority, i. e. Chief of the Naval Staff, vide order dated 10th December, 1975, the petitioner was discharged from service as service “No longer required” on 10.3.1976. The copies of the necessary recommendations dated 22.9.1975 and 6.10.1975 and the discharge order dated 10.3.1976 were placed on record. In this connection, learned counsel for the respondents has produced before us the original correspondence that shows that the authorities have warned the petitioner from time to time and on the basis of the record, he was not found suitable to be retained in service. It has been pointed out that the petitioner has only produced a sheet of good character not original ACR. The original records have been weeded out as after 30 years, it is not possible to retain the same.

5. We have heard learned counsel for the parties and gone through the record.

6. After going through the record and the correspondence which has been placed before us, it appears that the petitioner had outlived his utility in service and,

therefore, provisions of Regulation 279 were invoked. It is true that the petitioner was promoted to the post of Chief Petty Officer but his total service career appears to be not satisfactory therefore the authorities are well within their rights to weed out such unsuitable person from service. As in the Civil Service also, if an incumbent has put in 25 years of service and has outlived his utility, then he can be compulsorily retired. Similarly, Regulation 279 is also identical provision that if an incumbent has outlived his utility, then he can be discharged. Such discharge cannot be treated to be punishment as is clear from the reading of Regulation 279. Regulation 279 reads as under:-

"279. Discharge "S. N. L. R." - (1) Discharge S. N. L. R. (Service no longer required) shall not be considered as a punishment but only as the appropriate method of dispensing with the services of a man:

- (a) who is surplus to requirements,**
- (b) whose retention would be to the detriment of the Service but who has not recently committed a specific offence for which dismissal would be an appropriate punishment in addition to any other sentence awarded,**
- (c) on whom an adverse report has been forwarded in the post-enrolment verification report.**

(2) Subject to the provisions of sub-regulation (1), if the retention of any sailor is considered undesirable on grounds of conduct or character, a report accompanied by his Service Documents, shall be forwarded to the Administrative Authority, with a recommendation that the man be discharged "Service No Longer Required".

(3) In all cases of recommendations for discharge of sailors as 'Service No Longer Required' except those who are to be discharged as being

surplus to requirements, Captains shall establish clearly the fact that the sailor recommended for discharge has been give suitable warning and opportunity to improve. Evidence to this effect shall accompany the recommendation. In exceptional cases, when in the opinion of the Captain, the retention of a sailor is clearly undesirable, a recommendation may be forwarded and discharge may be approved although the sailor has not previously been warned.

(4) The Administrative Authority, if satisfied that discharge 'Service No Longer Required' is appropriate, shall forward the application to the Chief of the Nval Staff through Captain Naval Barracks with his recommendation. It is essential The man's Service Documents completed uptodate shall accompany the application for discharge.

(5) Abroad, sailors recommended for discharge 'Service No longer Required' shall not be sent home until the approval of the Chief of the Naval Staff for discharge has been received. If in the interim, the man is transferred to another ship, the Service Document sent with the man shall be annotated to the effect that an application for his discharge has been made and a copy of the application shall accompany his papers."

Regulation 279 clearly stipulates that if the incumbent has outlived his utility and if he is being discharged from service as "Service No Longer Required", because his retention is considered undesirable on grounds of conduct or character, a report accompanied by his Service Documents, shall be forwarded to the Administrative Authority, with a recommendation that the man be discharged "Service No Longer Required". All this communication has been shown to us by the respondents and it has been clearly mentioned that his ACR is also forwarded but on account of the fact that all records have been weeded out, his ACR is not available.

It is true that the petitioner has kept mum for 31 years and did not challenge his discharge. Therefore, in such a situation, official act will have to be presumed to have been done in the manner required as correspondence show that ACR of petitioner along with the recommendation was forwarded to Chief of Naval Staff and after his approval, order of discharge was issued. So far as the decision given by the Apex Court in the case of **"Union of India & Ors. Vs. Tarsem Singh 2009(1) SCC Page 371"** (supra) is concerned, in that case, their Lordships have laid down the proposition that if delay does not affect the third parties then delay can be condoned. But in a case where delay results in weeding out of record, then can it be said that there was no material to weed out the petitioner. Our answer is in negative. Delay is fatal for petitioner.

7. So far as the promotion of the petitioner to the post of Chief Petty Officer is concerned, learned counsel referred to the decision of Supreme Court in **"Brij Nath Pandey Vs. State of U. P. and Others, 2001 (9) SCC Page 398"**. However, that is a matter of crossing the efficiency bar, but this is not the case in hand. It is a case of compulsory retirement, therefore, all the entries which are on the record will have to be taken into consideration for assessing the utility for retention in service. Similarly, this is not a case of termination, therefore, no notice is required. This is a case of compulsory retirement whether the incumbent is fit to be retained in service or not. The Navy is in discipline force and if the incumbent by his poor performance has outlived his utility, then it is well within the rights of the authorities to discharge the incumbent from service. Similar provisions also exist in the Army & Air Force. Therefore, the only thing which should be considered as whether the exercise of power was arbitrary or not. In the present case, there is no question of arbitrariness

in the matter. The petition is extremely belated and has been filed after a long gap of 31 years. There is no satisfactory explanation as to what prevented the petitioner from approaching the Court within time. As the record has already been weeded out, therefore, it cannot be examined whether petitioner's conduct was below average or not and his professional competence was up to the mark or not as the originals have been weeded out. However, whatever correspondence is available, it transpires from it that relevant material was taken into consideration and the same was placed before the Chief of Naval Staff and he after satisfying himself, approved the same. At one point of time, learned counsel also urged that this discharge order was not approved by the Chief of Naval Staff but the order clearly mentions that the discharge has been made with due approval of the Chief of the Naval Staff. Since the petitioner raised the objection that it was not approved by Chief of Naval Staff, we directed the respondents to produce the original record but the respondents filed the affidavit that the records have been weeded out as there is a delay of 31 years. Since the order speaks that it has approval of Chief of Naval Staff, we have no reason to disbelieve it. The official act is presumed to have been done in the manner required unless it is proved otherwise.

8. Hence, we are satisfied that this is not a fit case which warrants interference by us and the same is dismissed. No order as to costs.

A.K. MATHUR
(Chairperson)

M. L. NAIDU
(Member)

New Delhi
July 22, 2011

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