

**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

T.A. No. 351 of 2010

(Delhi High Court W.P (C) No. 6008 of 2003)

IN THE MATTER OF:

Sgt Rao W S

....Applicant

Through: Mr. Karan Singh Bhati, counsel for the Applicant .

Versus

Union of India and Others

.....Respondents

Through: Mr. Ajai Bhalla, counsel for the Respondents.

CORAM:

**HON'BLE MR JUSTICE MANAK MOHTA, JUDICIAL MEMBER,
HON'BLE LT GEN Z.U.SHAH, ADMINISTRATIVE MEMBER**

JUDGMENT

Date: 20.12.2011

1. The applicant had filed WPC 6008/2003 in the Hon'ble Delhi High Court. The same was transferred in this Tribunal on 12th Nov 2009.

The applicant has prayed for the quashing of the order of his dismissal from service dt 4.04.03 (Annex P-4) and also prayed for his reinstatement into service with all consequential benefits.

2. The applicant was enrolled in the IAF on 9 Feb 1989. He claims that he is from a reputed family and his grand-father was also a Captain in the Army. His services have however been terminated only on the ground of suspicion of his involvement in an espionage case. It was submitted that his dismissal was without holding any C of I, summary of evidence or court martial. The applicant has also stated that a few months before his dismissal he was promoted to the rank of Sgt which proved his innocence.

3. The applicant states that on 14 June 2002 Civil Police Gwalior arrested one Sushil Sharma from a Cyber Cafe in Gwalior. Eight other persons including Ex Cpl Rao DUM were arrested for espionage. The applicant states that his name was not even mentioned in FIR and during investigation of the case his involvement also never came to light. He was merely suspected to have supplied some information pertaining to IAF to Ex Cpl Rao DUM. His services were terminated on administrative grounds.

4. The applicant states that the sole basis for the charges against him was his confession, which was extracted from him, under duress.
5. The applicant states that on 20 June 02 he was taken into custody by the Air Force Liaison Unit (LU) and interrogated in a closed room in SNCO's Mess, No. 40 Wing, Air Force. He claims that he was released after two hours with "clean chit". On 24 June 02 he was again taken into custody and interrogated for 9 hours and released subsequently.
6. The applicant states that on 19 July 02 he was ordered to move to Western Air Command(WAC), New Delhi on temporary duty for work on "augmentation of manpower". On 23 July 02 he reported to WAC where he was blind folded and taken to an unknown location. He was kept under custody upto 26 July 02 and was subjected to threats and torture. During this period a confession was extracted from him admitting that he had supplied IAF "Air Craft State" to Ex Cpl Rao DUM and asked for his share of the money.
7. The applicant avers that while this investigation was in progress he was promoted to the rank of Sgt on 1 Nov 02. The applicant stresses that promotion is only given to fit and responsible personnel. No person against whom disciplinary charges or inquiry, is in progress can be promoted. This clearly brings out that he was never a suspect nor any

disciplinary action contemplated against him otherwise promotion would not have been given to him if he was found involved in a disciplinary case. The order of his promotion to the rank of Sgt was not supplied to him, however his promotion is reflected in his Air Force Central Accounts Office pay-slip for April 2003 (Annx P-3).

8. The applicant states that on 19 Dec 02, two months after his promotion to the rank of Sgt, he was issued a show cause notice (Annx P-1) wherein he was charged with espionage for supplying photocopies of sensitive classified documents pertaining to "augmentation of manpower". He was also charged with not informing the authorities about the suspected activities of Ex Cpl Rao DUM. The applicant states that no interrogation or substantial proof of charge was attached to the show cause notice.

9. The applicant further states that he replied to the show cause notice on 17 Jan 2003 (Annx P-3) wherein he denied any knowledge that Ex Cpl Rao DUM was involved in espionage activities. The applicant also denied the allegations of photocopying any sensitive material for Ex Cpl Rao DUM. He avers that there was no need for him to photocopy any document, for Ex Cpl Rao DUM, since the latter had access to the photocopying machine and no requisition for the same was required.

10. The applicant states that on 24 May 2003 dismissal order dated 4 April 2003 (Annx P-4) was served on him. His discharge certificate was issued on 25 May 2003 (Annx P-5). He was dismissed from services under Section 20 (1) of Air Force Act 1950 r/w Air Force Rule 18.

11. The applicant avers that his confession was extracted from him by threats and coercion. He further contended that even such confession is not admissible under Section 156 (6) Army Act recorded during Court of Enquiry. Further legal procedure was not followed with regard to recording of confession. It was thus of questionable reliability and can not be taken as the sole basis to prove serious charges of espionage. In this respect, it was also contended that the said confession was retracted by applicant thereafter. Therefore, that confession is of no use and no findings can be based on the same. The Learned Counsel for the applicant also contended that in this case along with show cause notice no adverse material was supplied. Complete material was also not made available to him for inspection. Thus he was denied the reasonable opportunity to file complete reply to show cause notice and to defend himself. It was contended that it was obligatory to supply the same along with the notice. He submitted that whole proceedings is against the principles of natural justice. In support of these contentions

he cited the judgements given in the case of Maneka Gandhi v/s Union of India (1978 1 SCC 248), Neelima Misra v/s Harinder Kaur Paintel (1990 2 SCC 746), Pradeep Kumar Biswas v/s Indian Institute of Chemical Biology (2002 5 SCC 111), Kuldeep Singh v/s Union of India 2004 (2) SCC 590. It has been observed in these cases that principles of natural justice apply to administrative actions. Learned Counsel for the applicant also contended that the order of dismissal is a non-speaking order. It shows total non-application of mind i.e. again contrary to the principles of natural justice. Learned counsel for the applicant also referred judgments given in the case of Canara Bank v/s Debasis Dass (2003 (4) SCC 557 and Maharashtra State Board of Secondary & Higher Secondary Education v/s K S Gandhi and Others 1991 (2) SCC 716 in support of his contentions. We have perused the judgments.

12. Learned Counsel for the respondents while reiterating the grounds taken in the counter affidavit have stated that the applicant was enrolled in the IAF on 9 Feb 1989. The applicant belongs to the same state as Ex Cpl Rao DUM and both were close friends.

13. The applicant had passed on several sensitive and classified documents and also gave xerox copies of such documents to Ex Cpl Rao DUM with some ulterior motive. Knowing that copies of such classified

documents are not to be supplied without proper sanction by the authority concerns.

14. The involvement of the applicant in espionage activities came to the notice of the authorities while investigating undesirable activities of one Sushil Kumar at Gwalior in June 2002. When confronted with these facts the applicant confessed about involvement in espionage activities. When the applicant expressed his willingness to render a confession he was cautioned in writing that the confession could be used as evidence against him. The applicant confirmed in writing that he was making the confession voluntarily. During the course of arguments the respondents produced the confession statement made by the applicant and pointed out that the confession was rendered on 26 July 02 when the applicant wished to make a confession in front of the Recording Officer Wg Cdr A S Sandhu. At that time an independent witness Wg Cdr N S Gotra was also present. The applicant signed that he understood the caution but still wished to make a confession. Therefore, the contentions that proper procedure was not followed and it was extracted under duress are not tenable.

15. The applicant was served a show cause notice on 19.12.02 (Annex P-1) wherein alongwith detail of allegations it was also mentioned that

applicant is free to inspect the records. The applicant replied to the show cause notice on 17 Jan 2003 (Annx P-2) in which for the first time, after a lapse of about six months, the applicant retracted his earlier confession dated 26 July 02. That seems to be after thought and can not dilute the relevance of the confession. The reply to the show cause notice was considered by the Chief of Air Staff who ordered the dismissal of the applicant under Section 20 (1) of the Air Force Act 1950 r/w Air Force Rule 18 vide order dated 04.04.2003. The respondents state that the applicant was never taken into custody by the LU. He was however, questioned by them in the SNCO's Mess. During the questioning the applicant was never tortured. The applicant only raised this issue of torture and coercion after being served with the show cause notice.

16. The applicant was promoted to the rank of Sgt w.e.f. 1 Nov 2002 vide AFRO order dt 8 Oct 02. This is a time scale promotion and since the applicant fulfilled the criteria his promotion was ordered by AFRO who were not aware that confidential investigations against the applicant were in progress. Thus, the promotion does not have any bearing on the confidential investigations against the individuals. The respondents stress that grant of promotion does not vitiate disciplinary

proceedings. The respondents stress that the applicant was not dismissed merely on suspicion. Intelligence reports and the confessional statement by the applicant clearly established his involvement in espionage activities. Learned counsel for the respondents also refuted the contentions that the plea of retraction of the confession was an after thought. The contentions that it was obtained under duress is not maintainable in the absence of any reliable evidence.

17. In support of their contentions the respondents have also cited the judgments of **COMMANDER OF POLICE, DELHI V/S NARENDER SINGH AIR 2006 SC 1800** : In that case it was observed by the Apex Court that an embargo rises in Section 25 of the Evidence Act as regard proof of confession while in Police custody is not maintainable in departmental disciplinary proceedings. Para 25 relying an earlier judgment titled as **Kuldip Singh versus State of Punjab and Others (1996) 10 SCC 659**, Apex Court observed that "a confession or admission of guilt made by a person accused of an offence before, or while in the custody of, a police officer is not admissible in a court of law according to Sections 25 and 26 of the Evidence Act, 1872 but it is equally well settled that these rules of evidence do not apply to departmental

enquiries.” In case of **P.K. DAS V/S UNION OF INDIA & ORS** judgment passed by Hon’ble Delhi High Court on 09 December 2005 : It was observed by Delhi High Court that “by the impugned order dated 21 Aug 2002, the petitioner was dismissed from service under Section 20 (1) of the Air Force Act show cause notice to the petitioner. The charge against the petitioner was that he was passing sensitive information/document to unauthorized person and accepted a sum of Rs.8,000/- from the Pakistan International Intelligence agencies and continuance of the petitioner in the service was considered high security risk. Accordingly the petitioner was dismissed under section 20(1) of the Air Force Act read with Rule 18. The petitioner had accepted his guilt and in this view of the matter the plea of the petitioner’s counsel that this confession was obtained under duress cannot be given any credence. We have perused the record and seen the confession and are satisfied that no cause for interference under Article 226 is made out.

The writ petition is accordingly dismissed in limine.”

18. In a rejoinder the applicant has reiterated the earlier points made by him and stressed that his promotion to Sgt after the investigations against him commenced, was a certificate of his innocence. The

respondents did not carry out any inquiry, however an independent inquiry by the Civil Police Gwalior had concluded that he (applicant) had no role to play in the case of espionage as no charge sheet was filed against him in Civil Court.

19. We have heard the arguments and perused the record including the extra judicial confession dated 26 July 02 rendered by the applicant. We have also perused the material made available pertaining to the case.

20. The main stress of the applicant is on confession, we also considered the same. The applicant made the confession on 26 July 02 after submitting in writing that he was fully aware of the implications of the same. At that time he was also warned with the consequences of rendering a confession. The same was made in the presence of an independent witness. He had made the confession narrating full details of the facts, in which he had accepted the allegations of supplying restricted material to Cpl Rao DUM. The first time the applicant retracted the confession was on 11 Jan 2003 when he was replying to the show cause notice served on him. Before that he had not made any statement to any authority with regard to procuring of such confession. It is clear that the said confession was voluntary and that its mere

retraction after five & half months does not make it involuntary. The applicant was cautioned in writing that he was not bound to make any confession and if he did the same may be used as evidence against him. The applicant confirmed in writing that he understood the caution and was making the same voluntarily. The belated retraction of the confession does not help the contentions raised by the applicant. The pleas of using force in procuring the confession are also not sustainable. That is an after thought. We have also considered the other contentions placed by the learned counsel for the applicant that neither his name figured in FIR nor charge sheet. These contentions can not sustain as during interrogation the applicant had confessed about his involvement. Further during interrogation of Cpl Rao DUM by Air Force Authority, it was revealed that said Cpl was in possession of Xerox copies of certain classified material pertaining to the Air Force which were made available to Cpl Rao DUM by the applicant. In that connection, the applicant was interrogated by Air Force Authority during which he rendered a confession. Proper precautionary measures were taken while recording the same. We have perused the extra-judicial confession. The same seems to be rendered voluntarily without application of pressure. We do not find violation of natural justice. The

judgments referred to by the applicant are of no help to him. The applicant was given a show cause notice and he filed a reply. Thereafter, the order has been passed.

21. We have also considered the contentions raised with regard to retraction of confession made earlier. But as discussed above the confession was made on 26 July 2002 and immediately, thereafter no protest was made though it has been stated that confession was procured under duress. But for the first time in reply to show cause notice, it has been retracted but looking at the details of earlier confession we are not convinced that confession recorded earlier was procured under duress or threat. The allegations levelled for procuring the confession, under duress, are not convincing. We are of the opinion that a confession made during the interrogation can be taken into consideration in departmental proceedings even such type of confession made during police interrogation can be taken into consideration in departmental enquiries as observed by the Hon'ble Supreme Court in the judgment of Commander of Police v/s Narender Singh (supra), cited by learned counsel for the respondents. Thus, these contentions put forward by the learned counsel of applicant are not acceptable and rejected.

22. The case for dismissal of the applicant from service was considered by the Chief of Air Staff on 4 April 03 and thereafter it was approved. We find that and the correct procedure under Indian Air Force Act 1950 section 20 (1) r/w Rule 18 for termination of service was adhered to. The applicant was served with a show cause notice (Annex P-1) in which it was specifically mentioned that if the applicant wanted to inspect the record he is free to inspect the same within office hours. (referred para 11 of SCN i.e. "Adverse material against you is available with AOC 40 Wing, AF for your perusal, if desired"). Thus, the contentions that adverse material was not made available to him is not sustainable. Further the applicant had filed a detailed reply and in his reply had nowhere stated that he was facing problems in replying to the notice for non-availability of required material. Thus, in any way, he has not suffered any prejudice. Therefore, mere non-supply of material along with notice would not have vitiated the proceedings. During the course of arguments learned counsel for the applicant admitted that applicant had inspected the records but complete record of the same was not made available. At that time, the applicant had not made any request. Thus, the contention is not sustainable. We have perused the judgments cited by the applicant. But as discussed above, due procedure

has been followed. They do not support the contentions of applicant.

There is no violation of natural justice.

23. In view of the above observations, we find that no infirmity and illegality in the impugned order. Application is hereby dismissed.

Order is confirmed. No costs.

Z.U.SHAH
(Administrative Member)

MANAK MOHTA
(Judicial Member)

Announced in the open Court
on the 20th day of December, 2011