

**IN THE ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH
NEW DELHI.**

OA No.170 of 2011
(M.A3151/12)

Surg Lt.Cdr A.S.Thakur

...Petitioner

Versus

Union of India & others

...Respondents

For the Petitioner : Mr. Ajay Brahme, Advocate

For the Respondents: Mr.Vishwendra Verma, Advocate

C O R A M:

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

HON'BLE LT.GEN.S.S.DHILLON, ADMINISTRATIVE MEMBER

JUDGMENT

(31.8.2012)

BY CHAIRPERSON:

1. Delay condoned for the reasons mentioned in the prayer.
2. Petitioner by this petition has prayed that the court martial proceedings and orders passed therein may be quashed and applicant may be reinstated to his position in the Indian Navy as Surg. Lt. Cdr. and all consequential benefits be given to him.

3. Petitioner after completing his basic education from Sainik School Rewa (MP) from 1988 to 1995 joined Armed Forces Medical College, Pune in 1997 and completed his MBBS in the year 2003. He was granted permanent commission in the Army Medical Corps on 24.4.2003 and assigned to the Indian Navy as a Medical Officer. The applicant was promoted to the rank of Surgeon Lt. on 22.2.2004 after completing internship training on INS Krishna at Kochi. He did his basic course between March and May, 2004 at the Army Medical Corps Centre, Lucknow. He was appointed as Principal Medical Officer (PMO) in May, 2004 at Indian Naval Ship Krishna, Kochi. He volunteered for submarine training in December, 2004 at INS Satavahan at Vizag. The applicant was posted as PMO from June 2005 to 2007 at Indian Navy Submarine Sindhuraj, Mumbai. It is alleged that petitioner sailed from July to September, 2009 for anti piracy patrol off Somalia in the Gulf of Aden. Subsequently, the applicant was appointed as PMO on Indian Naval Ship, Dunagiri from 29.9.2008 to 06.03.2010. During this tenure, it was alleged that one

Shri R.K.Sharma, POME died while on ship due to cardiac arrest on 25.8.2009. Thereafter, Commanding Officer(CO) Sushil Das directed the applicant that he should visit the family of Late Shri R.K.Sharma and inform them about the progress of paper work in connection with the death of Late R.K.Sharma and also to find out about the well being of the family. During his visit he conveyed the message of the CO and discussed the family problems with the widow of the deceased Mrs. Rekha Sharma wherein she mentioned that her son, Deepak Kumar, is facing some problem due to psychiatric disorder and requested the applicant to help in the treatment of Master Deepak Kumar. He advised Mrs. Sharma for proper treatment of her son and also assured her of his wholehearted cooperation. Later he once again visited the family to enquire about their well being and he offered a small drive to the child within the Cantonment in his car. He took the son in his car and counselled him about his abnormal behaviour and advised him to be more responsible toward his mother and sister. The applicant

also purchased some sweets and crackers for the child out of love and affection. He wanted to help the child to come out of the trauma due to the sudden death of his father.

4. It is alleged that on 21.10.2009, the applicant proceeded on temporary duty to INS, Brahmputra and he was out at sea from 21 to 28.10.2009 and later came to know that on 23.10.2009 Mrs. Rekha Sharma, wife of deceased sailor, alleged that the applicant had molested her son on 19.10.2009. The CO, INS Dhunagiri asked the applicant about visit of applicant to the house of Mrs. Sharma and applicant gave all details of his visit. On 29.10.2009, the CO summoned the Applicant in his office in the presence of Executive Officer and verbally informed the applicant that Mrs. Sharma has alleged that he had molested her son in the car. The applicant alleged that he tried to help the family but on the contrary he was slapped with this complaint, however, no copy of the complaint was given by the CO. Instead he was transferred to INS Angre in low medical category for hypertension on 04.01.2010. Thereafter, a One Man Inquiry(OMI) was ordered by the

Chief of Staff to investigate into the case of the alleged molestation of Master Deepak Sharma. The Court of Inquiry was held and it blamed the petitioner. The petitioner challenged the One Man Inquiry by filing a petition before this tribunal for breach of Regulation 205 of Navy Part II but that was over ruled. It is alleged that he applied for the copies of the OMI in terms of Regulation 209 but same was also denied to the applicant.

4. Thereafter, a detailed investigation was ordered by the Commanding Officer in terms of Naval Regulation 149 for taking Summary of Evidence. After receiving the report of the investigation, the CO asked the applicant to make a statement in terms of Regulation 152(2) of Navy on 16.7.2010 after having given the warning. He was given the copy of the One Man enquiry without its 'findings', 'recommendations' and 'attributability of blame'. Thereafter, the charges were framed against the petitioner and court martial was ordered against him and all his objections with regard to pre-trial irregularities were overruled. Incidentally, it was mentioned that all

pre-trial issues were challenged by the petitioner and it has been dismissed by the tribunal. The following charges were framed against the accused:

CHARGE No.1

Did at about 1800 hrs on 19 Oct. 2009, commit an indecent act with Master Deepak Sharma, aged 12 years, being a minor, son of Late RK Sharma, POME of Indian Naval Ship Dunagiri, I that he fondled the private parts of Master Deepak Sharma, forcibly kissed him and threatened him with the use of criminal force, whilst seating in his car (Maruti WagonR, Registration No.MH 01 AL 1361), which was halted in the Army Residential Campus, near Dockyard House, Colaba, Mumbai thereby committed an offence punishable under section 53(b) of Navy Act, 1957.

CHARGE No.2

Did at about 1500 hrs on 30th Oct. 2009, make a false statement to Commander Sushil Das (03563-K), the Commanding Officer, Indian Naval Ship Dunagiri stating that he had visited the family of Late RK Sharma, POME of Indian Naval Ship Dunagiri at Quarter No. AC-6, New Navy Nagar, Colaba Mumbai only on two occasions and wilfully concealed the fact that he had made four visits namely on 04 Oct 2009, 12 Oct 2009, 17 Oct 2009 and 19 Oct 2009, thereby committed an offence punishable under section 60(d) of Navy Act, 1957.

CHARGE No.3

Did between 01 January 2010 and 15 January 2010 obtain the original copy of case sheet of Master Deepak Sharma, son of Late RK Sharma, POME of Indian Naval Ship Dunagiri, from Clinical Psychologist of Arogyadham, Navy Nagar, Colaba, Mumbai Ms. Supriya Ramalingam by making a fraudulent statement, in that he said that he was directed Executive Officer Indian Naval Ship Dunagiri, Commander Sanjay Kumar (04566-A) to collect the original documents in respect of Master Deepak Sharma from her to facilitate welfare of the family of Late RK Sharma, POME, thereby committed an offence under section 54(2) of Navy Act, 1957.

5. The petitioner was tried and prosecution examined as many as 18 witnesses and defence examined 1 witness. After recording the necessary evidence of all the

witnesses, the court martial authorities found petitioner guilty of all the three charges and thereafter petitioner was dismissed from the service. Hence present petition.

6. Respondent has filed its reply and took objection that petitioner has not sought any judicial review of the trial by court martial from the Chief of Naval Staff in terms of section 160 of the Navy Act, 1957. It is also pointed out that by virtue of article 21 of the Armed Forces Tribunal Act, 2008 the petitioner should first approach authorities for redressal of his grievance.
7. The respondent has filed a detailed reply and pointed out that all pre-trial issues of the petitioner were agitated by him by filing a OA No.558/2010 before this tribunal and same was dismissed. The copy of the OMI proceedings were given to him as per Regulation 209 part II which provides interalia that "Recommendations" are not to be handed over to the person mentioned therein. They also denied the allegation that he was not allowed to avail the opportunity to defend himself by an advocate Mahendar

Pal Singh and pointed out that the all provisions were complied with.

8. We have heard learned counsel for the parties and perused the record. The whole case is dependent on the testimony of the boy PW-11 Master Deepak Sharma s/o Mrs. Rekha Sharma w/o Late R.K.Sharma, POME who has deposed that the applicant came to his house and took him out in his car for Diwali Mela and bought crackers for him. Then Dr. Thakur took him to the Dockyard, Navy Nagar, and opened his pant and pressed his penis. When PW-11 Master Deepak Sharma closed his zip, he scolded him and asked why you are closing the zip? Dr. Thakur kissed him on his cheeks. He brought him back and left him at his school. He also stated that he was taken from his house forcibly.
9. This child witness was examined at length and the basic facts which he has deposed was reiterated by him. Then other witnesses were also examined including the boy's mother Mrs. Rekha Sharma and his sister. All those

statements are not of much relevance because basic issue depends on the testimony of the child who has been molested.

10. PW-9 Ms. Supriya Ramlingam, Clinical Psychologist was also examined and she has deposed that this child, Master Deepak Sharma, was under her observation and this child was brought before her with the complaint of distractibility, poor in studies, disobedience and lack of interest in studies. She assessed him on that day purely based on play session which she generally used with children as a rapport building techniques, and a brief developmental history as given by the mother. His mother said that occasionally the child used to steal, lie and lose his temper. Therefore, an attempt was made to show that the testimony of the child is not very reliable as child is already under psychiatric treatment. However, other evidence was also recorded and he was found guilty of charges u/s 53 (b) of Navy Act, 1957 for an indecent act and other charges that he visited the house on four occasions but wilfully concede that he had made only two

visits, thereby committing an offence u/s 60(d) of Navy Act, 1957. The third charge pertained to obtaining the case history of the boy from Dr. Supriya Ramlingam without any direction given by the Executive Officer of IN Ship Dunagiri for which it was found that he has committed an offence u/s 54(2) of Navy Act, 1957.

11. Learned Counsel for the petitioner has submitted that as per Regulation 209 of the Navy, copy of the OMI report was not given but that does not appear to be correct. He has admitted that copy has been given and only question that whether the finding and attributability of the blame was given to him or not. In the present case they have pointed out in their reply in para 17, 19 & 32 by the respondent that *"the applicant was supplied with a copy of the OMI proceedings in accordance with Reg 209 of the Reg. Navy Part II, which does not provide for handing over the "Attributability of Blame" and "Recommendations" of the OMI to be handed over to the persons mentioned therein.*

12. We have examined the provisions of regulation 209, the explanation of regulation 209 says that "*proceedings shall include the findings of the board but shall not include recommendations of the board*". In that they have already provided report of the One Man Inquiry including the finding therein and it does not require that "attributability of blame" or "recommendations" be given. Since finding of the one man enquiry have already been given to the petitioner nothing remains to be done.
13. Learned Counsel for the petitioner has pointed out that original copy of the finding which is said to have been given has been torn away. This may be true or not but in the copy which has been shown to us, the finding seems to have been deleted. Learned counsel for the respondent could not state that whether it was deleted or not. Be that as it may, the fact remains, the report was given and he had full opportunity to challenge the court martial proceedings also.

14. The learned counsel for the petitioner has also raised a question of proportionality in the punishment. It is pointed out that the petitioner had a long career as a doctor and simply deviating for one incident like the present one, where he tried to molest the boy is not so serious as to warrant the punishment of dismissal from service. We are inclined to agree with the learned counsel for the petitioner. It is true that main allegation is of molesting of a boy and there is no charge of sodomising the boy. The only charge is that he kissed the boy and tried to fondle his private parts. This may be an indecent behaviour on the part of an officer but it is not a case which entails such a serious punishment as dismissal from services for a doctor. While it is true that he has not requested for a judicial review or filed a representation for reconsideration of the sentence, and perhaps if he had made such a request for judicial review as required under the provisions of the Navy Act u/s 162, the authorities may have taken a sympathetic view as the petitioner is from the medical profession. However, looking to the

facts of this case, we are of the opinion that despite the fact that the conduct of the petitioner was unethical and improper, but the punishment of dismissal will be a lifelong and serious blot on his career.

15. It is true that the petitioner should have made a representation u/s 162 before approaching this tribunal, but he seems to have not done it. Even if we were to now direct him to make such representation, it would be difficult for the respondents to take a different position. It needs to be remembered that justice should be tempered with mercy. Since the petitioner is a young man and belongs to the medical profession, he cannot be giving a lifelong stigma which is seemingly harsh and disproportionate. In our opinion, dismissing him from service is disproportionate to the misconduct committed by him. As far as remaining two charges are concerned, they are of minor nature, as asking for a psychiatric report about the child or visiting more than two times are minor charges which do not have much relevance in the matter. But the main charge is fondling with the private

parts of the boy which of course is an indecent behaviour on the part of the applicant who is a Naval Officer. Nonetheless the offence committed by him is not so grave to warrant such a serious punishment as dismissal thereby ruining his medical career.

16. Therefore, in these circumstances we are of the opinion that disproportionate punishment of dismissal from service has been levelled against the petitioner, which we set aside. We direct that he be reinstated in service, but he will not be entitled to any benefits of arrears of salary. However, this period will be counted for the purposes of his pension. He may be reinstated forthwith. Petition is allowed.

22. No order as to costs.

[Justice A.K. Mathur]
Chairperson

[Lt. Genl. SS Dhillon]
Member (A)

New Delhi
31st August, 2012