

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI
(Court No.2)**

O.A NO. 272/2011

IN THE MATTER OF:

Shri Gajender Singh**APPLICANT**
Through : Mr. Karan Chauhan, counsel for the applicant

Vs.

UNION OF INDIA AND OTHERS ...**RESPONDENTS**
Through: Mr. R. Balasubramaniam, counsel for the respondents

AND

OA No.267/2011

Shri Navtej Singh**APPLICANT**
Through : Mr. Siya Ram, counsel for the applicant

Vs.

UNION OF INDIA AND OTHERS ...**RESPONDENTS**
Through: Anil Gautam, counsel for the respondents
CORAM:

HON'BLE MR. JUSTICE MANAK MOHTA, JUDICIAL MEMBER
HON'BLE LT. GEN. M.L. NAIDU, ADMINISTRATIVE MEMBER

JUDGMENT

Date: 18.05.2012

1. The OA No.272/2011 was filed in the Armed Forces Tribunal on 19.07.2011 and OA No.267/2011 was filed on 13.07.2011 respectively. By way of this common order, we shall hereby dispose off both the above mentioned OAs bearing OA No.272/2011 and 267/2011 as facts and circumstances of both the cases are common in nature and points in dispute are similar and the reliefs sought in both the cases are also

similar in nature. Arguments were heard together with the request of both the parties.

2. The OA No.272/2011 filed by Shri Gajender Singh is being taken first. The applicant in this OA has prayed to set aside his discharge order dated 20.12.2010 and further prayed for reinstatement in service from the date of illegal and premature discharge i.e. 20.12.2010 with all consequential benefits.

3. Brief facts of the case are that the applicant was enrolled in the Navy as a Cook NMER on 19.05.1988. During his service he was posted to various Naval establishments.

4. It is submitted by the learned counsel for the applicant Gajender Singh that in July 2009, the applicant joined INS TIR at Kochi and in October 2009 the applicant visited Srilanka on Board of INS TIR. On reaching Colombo, the applicant and one LT OP Malhotra with two other persons i.e. Ahmad and A.K. Singh, also cooks went to a shopping mall. After some time, one Mr. Daniel came and LT Malhotra introduced the applicant to Mr. Daniel and told the applicant that Mr. Daniel is also from India but his father had settled in Srilanka. All of them sat in a restaurant for some time and exchanged phone numbers with Mr. Daniel. On 30.11.2009, they returned to India from Srilanka. It is further alleged that after returning to India, the applicant spoke to Mr. Daniel on telephone on two or three occasions. Most of the times,

it was Mr. Daniel who called and enquired about him and his family's well being.

5. It has been stated that in October 2010, the applicant again went to Srilanka on board INS TIR. He again met Mr. Daniel and one of his friends Satish Kumar. The applicant had two other friends namely POTOP Nagiya and POPTI John with him. They met in a Hotel and had food together and the applicant paid the bill of Rs.3500/-. The applicant returned to India on 03.11.2010.

6. It has also been averred that on 30.11.2010, the applicant received a fax to join DMPR at Delhi for temporary duty at INS INDIA. On 03.12.2010, on arrival at Nizamuddin Railway Station, three civilians approached him and told him that they are from the Navy and their CO wants to see him and he was taken to Chanakya Bhawan. As soon as the applicant entered Chanakya Bhawan, the three Navy persons started beating him and blind folded him. They also took off his clothes. The applicant was kept there for three days. They alleged that the person he met in Srilanka i.e. Mr. Daniel was an ISI agent and the applicant used to give secret information about Navy to Mr. Daniel. It was further alleged that the applicant was also instrumental in killing his uncle and his son as alleged by the wife of the deceased. It has also been alleged that during this period, the applicant was also made to sign certain documents including his confessional statement that he was providing information to Mr. Daniel.

7. It is contended that on 07.12.2010, the applicant was shifted to another place and kept in detention for another 12 days. He was continuously interrogated regarding his trip to Srilanka. On 21.12.2010, the applicant was released and one LPM Pandey left him at Nizamuddin Railway Station and told him that he should go directly to Kochi and a discharge certificate was handed over to him with remarks "SNLR" (service no longer required) (Annexure A-1).

8. It is submitted by the applicant that on reaching Kochi, the applicant was in a state of shock and remained at home for some time. He was also unable to go to his ship INS TIR as he has no identification documents. His wife went to meet the CO of INS TIR who told her that they should vacate the government accommodation as her husband was no longer in service. On 31.12.2010, the applicant vacated the house. On 12.01.2011, the applicant sent a letter to the Bureau of Sailors Cheetah Camp Mumbai and also to INS INDIA, Delhi (Annexure A-2).

9. On 08.03.2011, the applicant went to meet the CO of INS INDIA for orally submitting his grievances but he was not entertained since he had already been discharged. Therefore, he filed a complaint on 16.03.2011 to the CO, INS TIR at Kochi and CO INS INDIA at Delhi and also to the Chief of Naval Staff on 18.03.2011 (Annexure A-4). The Navy vide their reply dated 30.05.2011 denied all the allegations and grievances raised by the applicant and for the first time gave its

reason for discharging the applicant by saying that the applicant while in Naval service was involved in activities where which undesirable and prejudicial to the national interest under Regulation 279 of Regulations in Part III.

10. Learned counsel for the applicant argued that the applicant was not aware that Mr. Daniel was an anti national element and that he was introduced to Mr. Daniel by LT Malhotra saying that he was also an Indian. He also denied all the allegations levelled against the applicant.

11. Learned counsel for the applicant also argued that no show cause notice was issued in this case and therefore, his discharge w.e.f. 21.10.2010 as "SNLR" was illegal as it was against the principles of natural justice.

12. Brief facts of OA No.267 of 2011 are that the applicant Navtej Singh was enrolled in the Indian Navy on 20.02.1996 and during his service he was posted to various Naval establishments. The other facts of the case are similar to the facts of OA No.272/2011. There are similar allegations against the present applicant that he was also having contact with undesirable and anti national elements in violation of service regulations. Thereafter, considering exceptional circumstances, notice was dispensed with and was discharged from service w.e.f. 20.12.2010 on the ground of "SNLR". During course of

arguments on behalf of applicant, his learned counsel adopted and restricted to the grounds taken by the counsel for applicant Gajender Singh and submitted that he has been discharged illegally without following the due procedure and without affording any reasonable opportunity to defend his case.

13. In support of their contentions, learned counsel for the applicants cited the following case laws:-

(i) **AIR 1978 SCC 597 Smt Maneka Gandhi Vs Union of India** and another wherein the Hon'ble Apex Court has held that "*The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Art. 14 like a brooding omnipresence and the procedure contemplated by Art.21 must answer the test of reasonableness in order to be in conformity with Art.14. It must be 'right and just and fair' and not arbitrary, fanciful or oppressive; otherwise it should be no procedure at all and the requirement of law will not be satisfied.*"

(ii) **In 1993 SCR (3) 930 D.K. Yadav Cs J.M.A. Industries Ltd.**, the Hon'ble Apex Court has observed that "*Articles 14 and 21- Right of private employer to terminate service under certified standing order, without holding any domestic enquiry is violative of principles of natural justice and fundamental rights.*"

(iii) **In 2007(7) SCALE 530 Sheel Kr. Roy Vs Secretary M/o Defence & Ors.**, wherein the Hon'ble Apex Court has observed that "*It is now a well settled legal principle which has firmly been accepted throughout the world that a person merely by joining Armed Forces does not ceases to be a citizen or be deprived of his human or constitutional right.*"

(iv) **102(2003) DLT 415(DB) Nirmal Lakra Vs Union of India and Ors.**, wherein the Hon'ble High Court of Delhi has held that "*The Army personnel like others having regard to the expanded definition of Article 21 of the Constitution of India are entitled to preservation of his reputation as also his livelihood and protection from oppression.*"

14. Learned counsel for the respondents argued that the applicants have themselves conceded in the OAs that they were in contact with Mr. Daniel to whom they had spoken on several occasions on telephone. Further, the applicants had passed down certain information to Mr. Daniel which could be utilised by the anti national elements. He further submitted that under Sections 184 and 185 of the Naval Act read in conjunction with SRO 22/E dated 19.10.1954 and Naval Regulations Part-II, Section IV, the conditions of service have been laid down.

15. Learned counsel for the respondents further argued that Regulation 278 authorised the respondents to discharge a Sailor as

“SNLR” in certain circumstances. Regulation 278 lays down about inefficient and incompetent sailors. Further, Regulation 279 empowers the respondents to discharge a sailor as “SNLR” when he is surplus to the establishment or whose retention is detrimental to 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. It further says that *“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 nor previously been warned.”*

16. Learned counsel for the respondents further submitted that as per service regulations, a sailor is debarred from keeping contact with foreigners and in the cases of applicants, there are sufficient material to arrive that position. He further submitted that in such type of cases notice as well as services can be dispensed within the Navy Act and the Regulations.

17. Learned counsel for the respondents in support of his contentions cited the judgment of Hon’ble AFT (PB) Court No.1 in the matter of **TA No.395/2009 Commander Vinod Kumar Jha Vs Union of India & Ors., dated 30.06.2010** wherein under the similar circumstances, the petitioner was blamed and found involved in supplying prohibited material to undesired persons and where the applicant was not given a show cause notice and discharged, the

Hon'ble Tribunal had maintained that the respondents were within their rights to invoke provisions of Section 15 of the Naval Act. He further argued that in the OA, the applicant has not challenged the vires of Regulation 279 (1)(b) and 279 (3). As such, he argued that under these Regulations, the respondents were empowered to dispense with the services of the applicant. "SNLR" is not a dismissal from service and therefore, it is not a punishment as has been stated in Regulation 279 which states 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."

18. Having heard both the parties at length and having seen the documents, we are of this opinion that the applicants have violated the regulations of service since they came into contact with Mr. Daniel at Colombo. They further kept in contact with Mr. Daniel on telephone when they returned to India. Also, they met Mr. Daniel again when they visited Colombo on board of INS TIR, in October 2010.

19. We have also perused certain secret documents produced by the respondents in original. Gravamen of undesirable activities on the part of the applicants have clearly been mentioned therein. Details are not narrated for obvious reasons. It has been contended by the

learned counsel for the respondents that the applicants had become a fragile resource in the hands of enemy intelligence. That is based on material.

20. We have also seen that the applicants themselves had confessed to the meeting with Mr. Daniel and their subsequent contact on telephone. Both the applicants have denied that they had not passed any information to Mr. Daniel which could have been useful to the enemy agents. This denial is not convincing since the information that was passed on to Mr. Daniel was substantiated in terms of proof by the respondents in their secret files.

21. We have also examined the original documents placed before us in which reasons were recorded for dispensing with the conduct of BOI before dismissal of the incumbents. In this connection, the Section 15 of the Act gives a power to the Central Government to dismiss or discharge or retire any Naval Officer or Sailor from service, however, subject to the provisions of this act and regulation made there under. Regulation bearing on the subject is regulation 216 which reads as under:

“(1) When it is proposed to terminate the service of an officer under section 15 on account of misconduct, he shall be given an opportunity to show cause in the manner specified in sub-regulation (2) against that action.

The provision of this regulation makes an exception in two contingencies the show cause notice is not required to be given:

(a) Where the service is terminated on the ground of misconduct which has led to his conviction by a civil court; or

(b) "Where the Government is satisfied that for reasons, to be recorded in writing, it is not expedient or reasonably practicable to give to the officer an opportunity of showing cause:

22. Looking at the facts of the case and having examined the documents produced before us since they were of confidential nature having security implications, they have not been given to the applicants. We are convinced that the discharge order under Section 15 of the Act read with Regulation 216 have been invoked and the requirement of show cause notice was thus rightly dispensed with. The incumbents were discharged by the respondents as "SNLR" on the grounds of misconduct. It was considered not expedient or reasonably practicable to give the incumbents an opportunity to show cause. Therefore, in view of the foregoing, no show cause notice has been issued before discharging the incumbents as "SNLR". Article 310 lays down that tenure of the office of persons serving the Union or a State during the pleasure of the President or the Governor of the State as the case may be. Article 311(2)(c) says that President or Governor, as

the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such COI. Therefore, so far as defence personnel are concerned, Regulation 216 (b) specifically lays down that "*where the Government is satisfied that for reasons, to be recorded in writing, it is not expedient or reasonably practicable to give to the officer an opportunity of showing cause*". Therefore, a parallel can be drawn from the Article 311(2)(c) to interpret the provisions of regulation 216(b) of the Naval Regulations. The Regulation 216 (b) is an exception to a normal procedure giving of show cause notice, it can be dispensed with whenever the Central Government is satisfied that for reasons, to be recorded in writing that it is not expedient or reasonably practicable to give to the officer an opportunity of showing cause.

23. In this respect, our view is strengthened by the judgment of Hon'ble AFT (PB) Court No.1 in TA No.395/2009 in Commander Vinod Kumar Jha (Supra). Thus, in the light of facts and circumstances of the present cases, the judgments cited by the applicants do not help their contentions.

24. However, it is also a fact that Gajender Singh (OA No.272/2011) has been discharged after 22 years of service. Hence he will be entitled to pension since he has been declared as "SNLR". Thus, he has not been prejudiced.

25. So far as case of Navtej Singh (OA No.267/2011) is concerned, he has completed about 14 years and 10 months of service and therefore, as per regulation he is not entitled to pension. However, he may apply to respondents authorities for grant of waiver for two months so that he may also be entitled to pension. The respondents' authorities are directed to consider his representation, if so made by the Navtej Singh.

26. In view of the above discussion, both the OAs stand dismissed with aforesaid observations with regard to OA No.267/2011 filed by Navtej Singh. No orders as to costs. A copy of this judgment be kept in OA No.267/2011 also.

(M.L. NAIDU)
(Administrative Member)

(MANAK MOHTA)
(Judicial Member)

Announced in the open Court
on this 18th day of May, 2012.