

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

O. A. No. 421 of 2010

Commander Ravinder Singh

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. Sukhjinder Singh, Advocate

For respondents: Mr. Vishwendra Verma, Advocate with Lt Cdr Varun Singh

CORAM:

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

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

ORDER
29.05.2012

A.K. Mathur, Chairperson

1. Petitioner vide this petition has prayed to quash and set aside the impugned order (findings and sentence) dated 29.04.2009 of the court martial and order dated 25.06.2009 of the Chief of Naval Staff in judicial review of the proceedings of the trial by court martial of the petitioner.
2. Petitioner joined the Indian Navy in July, 1987 as a Cadet in Naval Academy, INS Mandovi, Goa. He passed from the Naval Academy after successfully completing his training. He stood first in his course and was awarded President's Gold Medal. He was commissioned as a Sub Lt on 01.01.1989. He opted for Aviation and joined Air Force Academy, Dundigal, Hyderabad in July, 1989 for flying training. Petitioner successfully completed his flying training and he stood first in the said flying training. After his flying training, he became a Naval helicopter pilot and continued to fly Chetak. At the material time, he was serving in the Indian Navy with the rank of a Commander and borne as a staff pilot in 321 flight earlier known before 22.01.2009 as Naval Air Station (ANS) Kunjali II, based in Mumbai and now

known as INS Shikra. Petitioner served in various flying appointments on INS Vikrant, INS Viraat and various fleet ships and was appointed as a Flight Commander on board INS Delhi in 2003. He has passed professional examination i.e. the staff college entrance examination in 2001 and did his mandatory sea time for promotions for various ranks on board ships INS Ranjit, INS Sagardhwani and INS Sindhudurg.

3. Petitioner got married in 1993 and had a son, who is now 15 years of age, out of the said wedlock. The marriage ended in an acrimonious divorce on 21.08.2008. During the divorce proceedings, the father-in-law of the petitioner filed a false criminal case against him and his family to pressurize them to withdraw the divorce case and to demand a huge sum of alimony. Petitioner paid Rs. 10 lacs as full and final payment as alimony in addition to the regular maintenance of Rs.12,000/- per month. The criminal complaint was finally quashed by the Hon'ble High Court of Allahabad vide its order dated 12.11.2008.

4. Petitioner went for his mandatory Commercial Helicopter Pilot License medical examination at Air Force Station, Cotton Green on 06.11.2008 in pursuance of the respondents' directives. This was a mandatory medical check up. Petitioner took permission of his immediate superior, the Flight Commander Cdr. S.K. Sridhar to proceed for medicals and he returned to his place of duty at 1300 hrs on 06.11.2008. Since he was suffering from itching and irritation in the eye and swelling on his left cheek below left eye, he reported to medical officer at Naval Air Station, Kunjali at 1415 hrs on 06.11.2008. The medical officer diagnosed the ailment as Conjunctivitis and excused the petitioner for attending the Officer in Charge's divisions (parade) on 07.11.2008. Therefore, petitioner due to Conjunctivitis did not attend the

division rehearsal on 06.11.2008 at 1430 hrs. Although the petitioner was exempted from divisions on 07.11.2008, he was forced to attend the same by respondent no. 4 in spite of medical reasons.

5. After attending the divisions on 07.11.2008, the petitioner was summoned by respondent no. 4 wherein a Show Cause Notice was read out to the petitioner by Cdr N.S.S. Parmar, the Executive Officer in presence of Capt Philipose Pynamootil being respondent no. 4 and Cdr S.K. Sridhar. Petitioner tried to explain to the respondent no. 4 that he had taken approval of his Flight Cdr S.K. Sridhar to proceed for medical and also told him that he was exempted from attending the division rehearsal on 06.11.2008 by medical officer but in vain. Respondent no. 4 proceeded to issue the show cause notice to him despite there being no such provisions under the Naval Law to read or/and issue a show cause notice to an officer of the rank of Commander which the petitioner was holding. He replied to the said show cause notice vide his letter dated 04.12.2008 refuting the baseless allegations/charges.

6. Meanwhile, petitioner was summoned by the Hon'ble Allahabad High Court for personal appearance for 12.11.2008. He applied for leave from 08.11.2008 to 16.11.2008 on the grounds of summon and his father's chemotherapy treatment scheduled on 14.11.2008. His leave was accordingly approved by the respondent no. 4 vide Genform dated 30.09.2008. He proceeded on leave as scheduled on 08.11.2008 after handing over his duties to Cdr. Vivek Kumar, his colleague. Thereafter the respondents issued a Genform cancelling the petitioner's leave which was fabricated and issued subsequently on 07.11.2008 i.e. after the petitioner had already departed on pre-sanctioned leave. Petitioner reported back on duty on 17.11.2008 after answering the summons of the Allahabad High Court. He was surprised to

find out that on 18.11.2008 he was referred to Psychiatric Specialist for his opinion at Indian Naval Hospital Ship Āsvini where he remained under observation and hospitalized in the Psychiatric ward from 18.11.2008 to 28.11.2008. The Psychiatric specialist discharged him from hospital as fully Normal as NAD (Nil Abnormality detected).

7. Thereafter, petitioner was illegally attached to Commanding Officer (CO), INS Kunjali, a friend of respondent no. 4, in violation of Regulation 148(5) Regs Navy Part II (Statutory). A purported investigation under Regulation 149, Regs Navy Part II (Statutory) commenced against him on 13.12.2008 which was carried out by Capt (TS) S.K. Gudi, who was illegally and wrongly appointed by respondent no. 2 whereas the Investigating Officer ought to have been appointed by the Commanding Officer, who under the law, is purported to investigate the case i.e. the Officer Incharge Naval Air Station and not the CO, INS Kunjali who had no jurisdiction over the petitioner as he never served under the CO, Kunjali, nor the alleged offence was committed in INS, Kunjali.

8. The Convening Authority ordered the CO, INS Kunjali to record summary of evidence in violation of Regulation 148(5) and 149, Regs Navy Part II (Statutory). He was illegally summoned by the CO, INS Kunjali who had no jurisdiction to try him who read out 9 charges levelled against the petitioner on 30.01.2009. Petitioner requested for a copy of charge sheet and the evidences against him, including Summaries of Evidences so that he could make a proper reply to the false and baseless charges, however the CO, INS Kunjali illegally denied him to provide the same. He was again called by the CO, INS Kunjali on 31.01.2009 and again read out 9 charges. Petitioner again requested for copies of charge sheet and evidences and

summaries of evidences but to no avail. The convening authority being respondent no. 2 wrongly ordered the petitioner's trial by court martial without any application of mind on 05.03.2009. Petitioner was eventually provided with a copy of charge sheet on 29.02.2009 a few days before the commencement of his trial.

9. Petitioner, for the purpose of his defence in the court martial, requested for appointment of Cdr S. Dixit, Regulating Officer, INS Kunjali who voluntarily agreed to defend the petitioner in terms of Regulation 173. It is alleged that the CO, INS Kunjali pressurized Cdr S.Dixit by telling him that if he defends the petitioner, it will be to his peril, therefore, Cdr. S. Dixit did not defend the petitioner. Thereafter, during the trial of court martial, petitioner raised objections that two members cannot participate in accordance with Section 102 of the Navy Act 1957 and the court martial upheld the objection and replaced two members of the court martial and Court was again constituted. All the members including the President being respondent no. 5 were administered oath in accordance with Section 104 of the Navy Act 1957. Petitioner wanted to raise further objections in accordance with Section 103 of the Navy Act 1957 before administering oath to the member and the Trial Judge Advocate (TJA), however, he was denied his right.

10. Petitioner raised objection before the court martial that the investigation carried out is in violation of Regulation 149 as investigation can only be done by the CO himself or he should have appointed a suitable officer, however the investigation has been carried out by Capt (TS) S.K. Gudi, an officer foisted by the Convening Authority himself. He also raised objection to the constitution of Court Martial under Section 97 (18) (19) of the Navy Act 1957 wherein the members were to be summoned by the President of the court

martial. The convening authority left no occasion for the President of the court martial to invoke Section 97 (19) of the Navy Act, 1957, leaving a fait accompli for the President of the court martial thereby effecting the impartiality of the members of the court martial. All these objections were overruled.

11. Thereafter when the court reassembled, the TJA informed in the open court that the constitution of the court is in contravention to Section 97(10)(a) of the Navy Act, 1957 wherein the majority of the members were not from executive branch. Based upon the advice of the TJA, the President of the court martial dissolved the court martial, even though no such powers were vested in him. It is pointed out that once the court martial is duly constituted then there is no provision in the Navy Act, 1957 to re-constitute another court martial for trying the petitioner. However, the petitioner was shocked to receive a Notice of Trial dated 13.03.2009 in respect of retrial and reconvening of the court martial on 17.03.2009.

12. Being aggrieved by the order of the respondent no. 2 ordering reconvening of the court martial against the petitioner, without jurisdiction and authority, non-compliance and contravention of mandatory provisions of law, the petitioner approached the Hon'ble High Court of Mumbai by filing a Writ Petition No. 613 of 2009. Hon'ble High Court of Mumbai vide order dated 20.04.2009 disposed of the said petition and allowed the court martial proceedings to continue. However the court martial court was restrained from implementing the verdict for a period of 3 weeks in order to enable the petitioner to adopt appropriate remedy to challenge the said verdict of the court martial. In pursuance to that, the court martial proceedings continued and petitioner was found guilty of 4 charges out of 9 charges framed against him by an unreasoned and non-speaking verdict dated 29.04.2009 passed by

the Trial Court Martial in violation of Section 115 of the Navy Act, 1957. By the said impugned verdict, the petitioner was punished with a sentence of forfeiture of seniority of 12 calendar months awarded therein and deduction of mulcts for 42 days.

13. Petitioner filed statutory petition under Section 160, 161 and 162 of the Navy Act, 1957 by preferring a Judicial Review before the Chief of Naval Staff in May, 2009. Since respondents were not forthcoming for personal hearing in the Judicial review by the Judge Advocate General, he filed a Criminal Writ Petition No. 1376 of 2009 before the High Court of Mumbai. In the meantime, Chief of Naval Staff vide his order dated 25.06.2009 maintained the findings and sentence of the court martial. Thereafter, after formation of the Armed Forces Tribunal since 08.08.2009, the Hon'ble High Court of Mumbai vide order dated 18.11.2009 disposed of the above said petition while directing the petitioner to approach this Tribunal. Hence, petitioner filed the present petition challenging the court martial proceedings as well as sentence awarded to the petitioner vide order dated 29.04.2009 and order of the Chief of Naval Staff dated 25.06.2009 whereby the sentence awarded by the court martial was maintained.

14. A reply has been filed by the respondents and they contested the matter and supported the findings of the court martial.

15. We have heard both the parties and perused the record. The arguments of learned counsel for the petitioner can be divided in two stages i.e. prior to convening of the first court martial and after the convening of the second court martial.

16. Learned counsel for the petitioner strenuously urged before us that once a court martial has been constituted, it has to proceed as per the provisions of the Navy Act, 1957 and the President of the court martial has no power to dissolve the same and reconvene another court martial. It is also challenged that investigation could not have been done by the CO, INS Kunjali as the petitioner was attached to INS, Shikra. It is also asserted by learned counsel for the petitioner that President cannot decide alone and all members have to decide and sign the proceedings, therefore, the dissolution of the court martial is a serious violation of the provisions.

17. In order to first examine this aspect that whether the convening of second court martial was correct or not, we have to examine the provisions of the Navy Act, 1957 bearing on the subject. Section 97 of the Navy Act, 1957 deals with the constitution of the court martial. As per Section 97, the President, the Chief of the Naval Staff, or any officer empowered in this behalf by commission from the Chief of the Naval Staff shall have the power to order court-martial for the trial of offences under this Act. No officer shall be qualified to sit as a member of a court-martial unless he is subject to naval law, he is an officer of the Indian Navy of the rank of Lieutenant or higher rank, and he is of or over 21 years of age. This Section prohibits the sitting of prosecutor in the court martial for the trial of the person he is prosecuting. Sub clause 9 of Section 97 further says that the officer ordering the court-martial, the officer who was the commanding officer of the ship to which the accused belonged at the time of the commission of the alleged offence and the officer investigating the offence shall not be qualified to sit on a court-martial for the trial of such accused. Sub Section 10 says that subject to the provisions of sub-sections (7) to (9), officers of the Indian Navy shall be eligible to sit as

members of a court-martial irrespective of the branch of the naval service to which they belong provided that the majority of the members of the court-martial, including the President, shall be officers of the executive branch of the naval service. Sub Section 10 of Section 97 of the Navy Act, 1957 reads as under;

(10) Subject to the provisions of sub-sections (7) to (9), officers of the Indian Navy shall be eligible to sit as members of a court-martial irrespective of the branch of the naval service to which they belong:

Provided that —

(a) the majority of the members of the court-martial, including the president, shall be officers of the executive branch of the naval service, and

(b) at trials for offences against sections 34, 35, 55 [55A, 55c] and 56, officers other than officers of the executive branch of the naval service shall not be eligible to sit.

18. It further provides that at trials for offences against Sections 34, 35, 55 and 56, officers other than officers of the executive branch of the naval service shall not be eligible to sit. The President of a court-martial shall be named by the authority ordering the same or by any officer empowered by such authority to name the President. Further, no court-martial for the trial of a captain shall be duly constituted unless the president is a captain or of higher rank and the other officers composing the court are commanders or officers of higher rank. Sub clause 18 says that members of the court-martial other than the president shall be appointed subject to the provisions of the foregoing sub-sections, in the manner provided in sub-section 19. Sub section 19 says that subject to the provisions of sub-section 11, the president shall summon all officers except such as are exempted under the provisions of sub-section

20, next in seniority to himself present at the place where the court-martial shall be held, to sit thereon until the number of nine or such other number not less than five as is attainable is complete.

19. In this background, the arguments of learned counsel for the petitioner have to be examined. In the present case, first order for convening court martial was passed by Vice Admiral Jagjit Singh Bedi on 17.02.2009. The constitution of this court martial is not disputed. However when objection was raised by the petitioner that two persons cannot participate and accordingly two members were removed and new members were replaced. When the new members were appointed, the majority of members from non-executive branch became higher, therefore, this court martial could not have been proceeded in the matter and matter was referred back to the Convening Authority by the President. Therefore, respondents recalled the convening of the court martial and issued a fresh convening order of court martial on 06.03.2009 which was informed to the petitioner vide Notice of Trial to the accused dated 13.03.2009 regarding reconvening of a court martial whereby he was called for trial to be held on shore at Naval Baracks, Mumbai at 1000 hrs on Tuesday, the 17th day of Mar 09.

20. The grievance raised by the learned counsel for the petitioner is that once the court martial is convened then it cannot be dissolved except on the conditions which are mentioned in Section 123 of the Navy Act, 1957. Section 123 of the Navy Act, 1957 reads as under;

"123. Provisions relating to dissolution of courts-martial – (1) A court-martial assembled under this act shall be dissolved-

(a) when the number of members comprising the court is after the commencement of a trial reduced below four;

- (b) by the prolonged illness of the president, trial judge advocate or the accused;*
- (c) by the death of the president or the trial judge advocate;*
- (d) on the making of a report under sub-section (2) of section 143.*
- (2) whenever a court-martial is dissolved by virtue of sub-section (1) the accused may be retried."*

21. As per this section, once the court martial begins then it cannot be dissolved except in the circumstances mentioned above. There are four circumstances which have been mentioned where court martial can be dissolved i.e. when the number of members comprising of court is after the commencement of a trial reduces to below four or that by the prolonged illness of the president, trial judge advocate or the accused, by the death of the president or the trial judge advocate or on the making of a report under Sub Section (2) of Section 143 i.e. accused found insane during the trial. However Sub Section (2) says that whenever a court martial is dissolved by virtue of sub-section (1) the accused may be retried.

22. The argument of the learned counsel for the petitioner is that once the court martial has commenced then it can only be dissolved in any of these circumstances but in the present case court martial has been dissolved because of the majority of the executive members were fallen short as required under Section 97 (10) (a) of the Navy Act, 1957 that the majority of the members of the court-martial including the president shall be the officers of the executive branch of the naval service. After the objection raised by the petitioner of two members then court martial upheld the objection of the petitioner and replaced two members of the court martial. After replacement of those two members, majority of the executive members was fallen short,

therefore, President of the court martial realised that this court martial cannot be carried out.

23. Therefore, we have to reconcile the subject as per Section 97(10) and Section 123 of the Navy Act, 1957. If the trial was permitted to continue with the defect of Section 97 (10) then whole exercise would have become futile as trial would have rendered illegality when the majority of non executive members increased. If Section 123 of the Navy Act, 1957 is to be read strictly as is contended by learned counsel for the petitioner that the statute must be complied with in the manner it is provided and none else then in that case the petitioner would have been caused great prejudice as he having pointed out to the members that the number of non executive members were increased and the present court martial cannot continue and still court martial proceeded as the same cannot be dissolved under Section 123 of Navy Act, 1957 then it would have caused a greater hardship to the delinquent and would have resulted into futile exercise. Therefore, at the outset, when the President realized that this will not be practicable to continue with this and accordingly he recommended the Convening Authority of the serious lacuna, therefore, Convening Authority dissolved the earlier constitution of the court martial and reconvened the court martial.

24. Learned counsel for the petitioner has invited our attention to the decisions of the Hon'ble Supreme Court given in the cases of **Ramchandra Keshav Adke (Dead) by Lrs. Versus Govind Joti Chavare and Others AIR 1975 SC 915, Ranjit Thakur Versus Union of India & Others (1987) 4 SCC 611** and **Dhanajaya Reddy Versus State of Karnataka (2201) 4 SCC 9.**

25. It is true that when a particular thing has to be done in the particular manner then it has to be done in that manner and nothing else. This is the gist of the cases cited by the learned counsel for the petitioner. Their Lordships in the case of **Ramchandra Keshav Adke (Dead) by Lrs. Versus Govind Joti Chavare and Others (Supra)** clearly said that *"where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and other methods of performance are necessarily forbidden. Thus rule squarely applies where the whole aim and object of the legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other."*

26. So far as the proposition of law is concerned, it is correct that as per Section 123 of the Navy Act, 1957 the dissolution of the court martial can only be undertaken in a particular manner and it should be done only in that manner. But in the present case, we have to reconcile the two provisions i.e. Section 97 (10) and Section 123 of the Navy Act, 1957. If two sections are not reconciled together then this will create more hardship to the delinquent when the defect is pointed out which goes to the root of the constitution of the court martial then the whole exercise of proceeding the court martial with that defect will be more harsh and will be doing great injustice to the delinquent. He will have to go the whole drill of court martial which is not properly constituted and at the end of it, it will be declared bad. Therefore, person who is competent to convene the court martial is also empowered to reconvene the court martial if the defect is brought to his notice rather than to proceed with the defective court martial that will be a travesty of justice. In that Convening Authority has full power to recall their order and constitute a fresh court martial.

27. The contingency which has happened in the present case is not covered by Section 123 because the Section 97 (10) of Navy Act, 1957 is not covered under Section 123, therefore, Convening Authority realized that the proceeding with defective court martial will be of more hardship to the delinquent and it will be a travesty of justice to continue with such defective court martial. In this connection, it was also pointed out that before the members of court martial took the oath, the defect was pointed out in the proceedings and it was recommended to the authorities to dissolve the same. Therefore, it appears that the contingency which has arisen in the present case is not covered by Section 123. Section 123 comes in play when trial begins or commenced. Trial commences when members take oath and charges are read out in court. The whole procedure of court martial is given in Chapter XIII Procedure of Court Martial. Section 123 appears in this Chapter XIII whereas Section 97(10) appears in Chapter XII i.e. Authorities Having Power to Award Punishment. Section 97 talks of Constitution of Court Martial under this Chapter. Therefore, two provisions appear in different chapter and it has different purpose. Section 123 will come into play when trial begins. The constitution or reconstitution is pre-trial issue. Therefore, there is no conflict and argument of learned counsel for the petitioner is without any merit.

28. If the statute is silent in the present contingency then the executive instructions can only be invoked. Now in the present case, the contingency of numbers of the executive members is reduced then this is not the contingency which contemplated in Section 123, therefore, it is open for the respondents to reconvene a fresh court martial.

29. Learned counsel for the petitioner has raised certain objections that the president cannot take the decision alone and each member has to take a decision and sign it. He has also pointed out that President alone dissolved the court martial, therefore, there is no signatures of each of the member. It is also pointed out that President is to choose the members and members have been thrust upon by the Convening Authority. All these objections are not of much relevance. Suffice it to say that the defect which has been pointed by the President goes to the root of the matter, therefore, matter was referred to the Convening Authority and Convening Authority has rightly reconvened the court martial i.e. pre-trial issue. So far as the choosing of the members is concerned, a list of available person is only sent to the President and it is ultimately the President who chooses the members as per the provisions of the Act and same has been done in the present case. Therefore, this objection also has no legs to stand. It is also not correct to say that it is the TJA who interfered in the matter. TJA has no role to play in this case. He has only highlighted the subject and assisted the court martial in arriving at just and fair decision.

30. Now coming to the next argument of learned counsel for the petitioner that since the petitioner was attached with INS Shikra and investigation and trial has been taken up by the CO, INS Kunjali without jurisdiction. This objection is also not of much relevance. Since the delinquency has been committed by the petitioner against the CO, INS Shikra, therefore, to have investigated the matter by the CO, INS Shikra would have caused serious prejudice to the case of petitioner. In order to maintain transparency and objectivity, the investigation has been done by Capt. (TS) S.K. Gudi, an officer who has been appointed by the Convening Authority. Petitioner was also

attached to the CO, INS Kunjali. The delinquency is alleged to have been committed by the petitioner with the CO, therefore, in order to maintain transparency and objectivity, the investigation was rightly done by Capt. S.K. Gudi although the CO was himself empowered to do so. Therefore, argument of learned counsel for the petitioner that the CO, INS Kunjali had no jurisdiction to investigate and try the petitioner is not of much relevance.

31. Since we have appreciated that dissolution of first court martial and reconvene of fresh court martial was fully justified and there is no illegality in convening the second court martial, now we will discuss whether the finding of second court martial is justified or not.

32. The petitioner was served with charge sheet. The charges framed against the petitioner reads as under;

"1. Did at about 0805h on 06 Nov 08 improperly leave Naval Air Station, Kunjali and returned onboard at about 1400h on 06 Nov 08 thereby remained absent without leave for 05 hrs 55 minutes and committed an offence punishable under Section 51 of the Navy Act 1957.

2. Did at about 0900h on 06 Nov 08 contravene Para 1 of Chapter VIII of Standing Orders on Accident Prevention Plan of 321 Kunjali Flight in that he failed to conduct the flight briefing of 321 Flight, and thereby committed an offence punishable under Section 68 of the Navy Act, 1957

3. Did at about 1430h on 06 Nov 08 contravene Para 1 of NAS Kunjali Daily Order No.300/08 dated 05 Nov 08 in that he failed to attend rehearsal for the Captain's Division and thereby committed an offence punishable under Section 68 of the Navy Act 1957.

4. Did at about 0845h on 07 Nov 08 behave in a disorderly manner in the office of Staff Officer to OIC at NAS Kunjali in that he stated "Main dekhta hoom kaun rokta hai mujhe. Aag laga doonga is jagah ko" and thereby committed an offence punishable under Section 48(c) of the Navy Act, 1957.

5. Did at about 0850h on 07 Nov 08 wilfully disobey the lawful command of Captain PG Pynumootil (02973-F), OIC, NAS Kunjali, his superior officer, when ordered to sign the office copy of the show cause notice issued to him,

and thereby committed an offence punishable under Section 47(a) of the Navy Act, 1957.

6. *Did at about 0850h on 07 Nov 08 use insubordinate and threatening language to Captain PG Pynumootil (02973-F), OIC, NAS Kunjali, his superior officer, in his office and thereby committed an offence punishable under Section 47(c) of the Navy Act 1957.*

7. *Did at about 0920h on 07 Nov 08 use insubordinate and threatening language to Cdr SK Sridhar (03301-A), Flight Commander, 321 Flight, his superior officer, in his office and thereby committed an offence punishable under Section 47(c) of the Navy Act, 1957.*

8. *Did at about 0805h on 08 Nov 08 wilfully disobey the lawful command of Captain PG Pynumootil (02973-F), OIC, NAS Kunjali, his superior officer, when ordered that his leave stood cancelled, and thereby committed an offence punishable under Section 47(a) of the Navy Act, 1957.*

9. *Did at about 0850h on 08 Nov 08 improperly leave NAS Kunjali and returned onboard at about 0805h on 17 Nov 08 thereby remained absent without leave for 216h and thereby committed an offence punishable under Section 51 of the Navy Act, 1957."*

33. Out of 9 charges levelled against the petitioner, petitioner was found guilty of Charge Nos, 4, 6, 8 & 9. Therefore, we will discuss with regard to these charges in which petitioner has been found guilty and no useful purpose will be served by going into the legality or findings of the charges on which he has not been found guilty.

34. In order to establish the Charge No. 4, prosecution has examined PW-6 Balwinder Singh, MCA (AK)-II and PW-7 Cdr Nikhil Solapurkar.

35. PW-6 M/Chief Balwinder Singh has deposed that he was posted in INS Kunjali, now in INS Shikra since 17.05.2007. He was carrying out the duties of Staff Officer to Commanding Officer INS Shikra, ships mail officers, signing of routine work gen forms and letters etc. On 06.11.2008, evening at about 1900

hrs, the Officer-in-Charge called me in his cabin and told me to inform Cdr R Singh that his leave is cancelled.

36. In the morning of 07.11.2008, he was doing his routine work in Staff Office at about 0845 hrs Cdr R Singh sir came to his office along with Flight Cdr SK Sridhar and he asked me in Hindi "Master Chief Sir, kya ho raha he?" I wished him good morning sir and informed that his leave is cancelled. On hearing this Cdr R Singh got annoyed and said that "kisne aag lagayi, kiskee himmat hui, Sridhar ki". I informed him that I do not know sir then he said "Aag laga doonga, kisee ko patha nahi court kacheri ka chakkar". Then he left my office. At that time, Cdr Nikhil Solapurkar from Talwar flight was filling his leave application in my office. At about 1430 hrs I called ships office to inform cancellation of leave gen form but I found that no one picking the phone in ships office. Then I gave a call to pay office to Chief Wtr Ramkumar and told him please make cancellation gen form for Cdr R Singh's 05 days CL. He told that he will inform ships office. Later I informed ships office regarding cancellation of leave gen form. About 1630-1700 hrs Arun Krishnan Wtr-I came to my office and handed over cancellation gen form to me, which I kept in my drawer, after signing it, because that gen form to be handed over to Cdr R Singh. This witness has also deposed that actually he wanted to send this file to Flight Cdr's office. He personally went to his office and kept the file on his table and then came back to his office.

37. PW-6 was cross examined at length. During his cross examination, he deposed that Cdr R Singh has not misbehaved with him. He reiterated that he informed Cdr R Singh that his leave application was cancelled.

38. Similarly, PW-7 Cdr Nikhil Solapurkar has also deposed that on 07.11.2008 at about 0830 hrs I learnt about demise of my father because of which I rushed across to meet OIC Kunjali II to put up my leave. At about 0845 hrs while I was writing my leave application in the Staff Office, Cdr Ravinder Singh of 321 flight came into Staff Office and asked the Staff officer Master Chief Balvinder Singh about his well being. Thereafter, Master Chief Balvinder Singh informed Cdr Ravinder Singh about cancellation of his leave then he replied in loud voice "kisne aag lagayi, kiskee himmat hui, Sridhar ki". Balvinder Singh showed his ignorance then Cdr Ravinder Singh exclaimed in very agitated voice "Mein dekhta hue kaun rokata hai. Aag laga doonga is jagah ko, yah pe kisee ko patha nahi court kacheri ka chakkar kya hai"

39. The testimony of both above witnesses clearly establish that act of the petitioner was totally unwarranted and unbecoming of an officer. Section 48 (c) of the Navy Act, 1957 clearly says that every person subject to naval law who behaves in a disorderly manner shall be punished with imprisonment for a term which may extend to two years or such other punishment as is hereinafter mentioned. Petitioner has acted in a most unbecoming of an officer before an Staff Officer who has no role to play in the matter. Therefore, statements of PW-6 and PW-7 amply justified the guilt of the petitioner under Section 48(c) of the Navy Act, 1957. Hence, charge no. 4 stands proved against the petitioners.

40. Now coming to the next Charge No. 6 which relates to in violation of Section 47(c) of the Navy Act, 1957 which talks about insubordination, threatening or insulting language to his superior officer. In order to substantiate this charge, the prosecution has examined PW-2 Capt Philipose G Pynumootil, PW-4 Cdr S.K. Sridhar and PW-16 Cdr NSS Parmar.

41. PW-2 Capt Philipose G Pynumootil deposed that he resumed his charge of Naval Air Station Kunjali on 31.03.2007 and present posting is at INS Shikra w.e.f. 22.01.2009. He deposed that air station is commanded by him and he is assisted by Cdr Air who is responsible for flying operation at the air department. The executive officer looks after administrative and disciplinary functions. The air department follows a routine from 0730 hrs to 1330 hrs with 2 days full day i.e. Monday and Friday wherein working hours are 1500-1600 hrs. In addition, to the morning, also night flight on 2 designated days i.e. Monday & Thursday and in additional days as required, rest all the air station routine is 0900 hrs to 1730 hrs. The Divisional rehearsal is conducted at 1430 hrs on 06 Nov 08, in dress No. 10 with Peak cap. All officer of the rank of Cdr and below are to attend the rehearsal. All departmental regulators are to brief their parade state briefing platoons attendance of officer be briefed by HOD's and report to EXO.

42. This witness further deposed that there was a Divisional Rehearsal scheduled in the afternoon of 06.11.08 for preparation of annual Inspection which was schedule at 14.11.08. Some officers were excused at attend the divisional rehearsal on medical ground and on that day Cdr Deol, Cdr Sood, Cdr Arora and he was told that Cdr Ravinder Singh had got the medical excuse for the same. He was told verbally that the officer had excused that he ascertained from the medical officer. The officer had an eye irritation and that he had reported sick at 1600 hrs in evening. Then he instructed the Principal Medical Officer to advice the officer to attend the division subject to medical fitness the next day. He further deposed that he was told that he will permit the office to attend subject to his medical fitness. Principal Medical Officer

informed him that Cdr Ravinder Singh reported sick to him at 1600 hrs. He further deposed that Cdr S.K. Sridhar was the Flight Commander.

43. PW-2 further deposed that he had called all the HOD's in the evening of 06.11.2008 to brief on their preparedness towards the IT inspection which was scheduled shortly. Cdr S.K. Sridhar briefed me on his department and I enquired about attendance of the division schedules at next day. Cdr Sridhar stated that Cdr H.S. Arora and Cdr R Singh would not be attending the divisions. At this point I enquired about the where about of Cdr Ravinder Singh on the forenoon of 06.11.2008 till about 1300 hrs. Thereafter, I told Cdr Sridhar that I was hereby cancelling the officer's leave that was scheduled from 08.11.2008 including the prefix and that he may informed the officer accordingly. I also instructed him to march up Cdr Ravinder Singh to meet me at the next day on completion of the division. He further deposed that Cdr Ravinder Singh was holding an important appointment in 321 flight as Senior Pilot and he as Commanding Officer would banked on him for the efficient functioning of his flight. The absence of Cdr Ravinder Singh for the entire forenoon and the divisional rehearsal as well as obtaining medical excuse for the next day division was unacceptable. Therefore, he cancelled the leave of Cdr Ravinder Singh so that he may contribute to the Annual Inspection in someway. Cdr Sridhar confirmed that Cdr Ravinder Singh has been informed about his cancellation of leave and fact that he would be brought before me on the next day.

44. This witness further deposed that on 07.11.2008, he addressed to the Commander of my establishment in the briefing room. Thereafter he proceeded to his office and instructed that the Cdr Ravinder Singh be march up to him. At about 0850 hrs Cdr Ravinder Singh was march to him with the

presence of Cdr NSS Parmar and Flight Cdr S.K. Sridhar. Then a show cause notice was read out by the executive officer to Cdr Ravinder Singh and I had asked the officer explanation for being absent from place of duty on 06.11.2008 in the forenoon followed by absence from the EXO division in the afternoon on 06.11.2008. After the show cause notice was read out to Cdr Ravinder Singh, I was astonished to see the reaction of the officer in command. He shouted at the top of his voice and said "what non sense is that. Is that a joke. I am being framed by this chap and pointed towards Flight Cdr S.K. Sridhar". He then told me at the same deafening volume. He said "I caution you withdraw this show cause notice or else I will make out a 60 pages ROG case against you and this would be determent to your career".

45. PW-2 further deposed that he cautioned the officer to reduce the volume and told him to sign on the show cause notice at which point Cdr Ravinder Singh rudely told me that he was not required to so as there were 2 witnesses present. I then told him to leave my office. The officer left my office at the same time. Before he left, I reiterated the officer that his leave was cancelled and this fact which I knew has been conveyed to him previous night by his Flight Cdr.

46. This witness has been exhaustively cross examined from all angles. The testimony of this witness is also supported by the statement of PW-4 Flight Cdr S.K. Sridhar who deposed that on 07.11.2008 on completion of the Captain Division as per the directions of the OIC Capt Philpose, I accompanied my Senior Pilot Cdr R Singh to the SO's office to the OIC. As I entered SO's office along with Cdr Ravinder Singh, the Staff Officer sitting in his table with Cdr Nikhil Solapurkar in front of him. I stood there for a couple of minute thereafter I came out of the SO's office. Meanwhile Cdr Ravinder

Singh approached to the Staff Officer and also talking to the staff officer. The SO stood up and acknowledged the presence of Cdr Ravinder Singh and they got into dialogue by this time I had stepped of the SO's office and stood in front of the Captain's office. During the time I suddenly heard Cdr Ravinder Singh shouting at the SO in a consideration deafening voice which could be heard outside and repeating the same words "kisne aag lagayi, Sridhar ne, kisee ko patha nahi court kacheri ka kya chakkar hota hai, aag laago dhunga is jagah ko". I as per directive issued by OIC Capt Philpose G Pynumootil marched him Cdr Ravinder Singh into the office of the OIC. I saw the Captain was standing along with EXO Cdr NSS Parmar who as on right side of the table. I positioned myself on left side of the OIC table with Cdr Ravinder Singh facing the OIC. Thereafter OIC directed EXO Cdr NSS Parmar to read out show cause notice. This was at about 0850 h. The movement EXO started reading of the show cause notice, Cdr Ravinder Singh again shouted to OIC in a very deafening form inside the office and said "is this some kind of joke going on I am being targeted and harassed for no reason, this is a conspiracy against him". Then Cdr Ravinder Singh pointed his finger at me and said that "this man is feeding all the wrong information".

47. This witness further deposed that he protested that he did not do anything. The OIC advised and cautioned Cdr Ravinder Singh to listen to the show cause notice which was being read by EXO. As soon as the EXO completed reading show cause notice to Cdr Ravinder Singh, Cdr Ravinder Singh once again raised his voice and shouted at the OIC saying that "let me advise you and caution you if you did not withdraw the show cause notice, I put up a 60 page representation against you and Flt Cdr which would be potentially damaging to the career and reputation of both".

48. PW-16 Cdr NSS Parmar has also supported the version of PW-2 Capt Philipose G Pynumootil and PW-4 Cdr S.K. Sridhar. This witness has also deposed that he was posted in INS Shikra as Executive Officer since 17.07.2007. The officers are to attend the Division Rehearsal. On 07.11.2008, we had Captain's Division which finished at 0845h and he was still at parade ground addressing parade sailors about the forthcoming Annual Inspection scheduled on 14.11.2008. He heard an announcement made on the main broadcast asking all officers to be seated in Station Briefing Room in dress No. 2 for IOC address. He immediately rapped his instructions and handed over the parade to Parade GI and came to station Briefing Room to attend the OIC address. After addressing the officers of INS Shikra, OIC asked him to bring Cdr Deal and Cdr Ravinder Singh along with their HODs to the OIC office. Once inside the OIC office after reading show cause notice to Cdr Deol, Cdr Ravinder Singh and Cdr S.K. Sridhar came inside in presence of two officers, OIC handed over a show cause notice addressed to Cdr Ravinder Singh and directed him to read out. As per the directive, he read out the show cause notice and somewhere in between, Cdr Ravinder Singh shouted on top of his voice in a very loud manner that "is this some kind of joke, this is a conspiracy against me and pointing finger at Cdr S.K. Sridhar and said that this man is feeding all wrong information about me". Cdr Ravinder Singh further went down screaming saying he has been harassed and targeted for no reasons. At that movement, OIC said to Cdr Ravinder Singh to keep his voice low and he said your leave is cancelled, sign this show cause notice and carry on. However, Cdr Ravinder Singh continued in loud voice pointing finger this time at Captain Philipose saying "he is being targeted and harassed for no reasons. He should take his advice, withdraw

the show cause notice or he will put up a 60 page representation which will be detrimental to both Captain Philipose and Cdr Sridhar's career". Again at this movement Captain Philipose said your leave is cancelled, sign the show cause notice and carry on. Further Cdr Ravinder Singh in his loud voice said there is no need to sign show cause notice. He is aware of the legality and will not sign before two witnesses and took the show cause notice and went out of office.

49. The testimonies of PW-2 Capt Philipose G Pynumootil, PW-4 Cdr S.K. Sridhar and PW-16 Cdr NSS Parmar amply establishes the misbehaviour of the officer and insubordination and threatening language to his superiors. The way petitioner shouted at his superior, PW-2 Capt Philipose G Pynumootil, and PW-4 Cdr S.K. Sridhar clearly demonstrate his insubordination and establish the charge against him. Hence, this charge stands fully established against the petitioner.

50. Now coming to Charge nos. 8 and 9. As per Charge no. 8 petitioner has been charged that at about 0805 hs on 08.11.2009, he wilfully disobey the lawful command of Captain PG Pynumootil (02973-F), OIC, NAS Kunjali, his superior officer, when ordered that his leave stood cancelled, and thereby committed an offence punishable under Section 47(a) of the Navy Act, 1957. As per Charge no. 9, petitioner has been charged that he at about 0850h on 08 Nov 08 improperly left NAS Kunjali and returned onboard at about 0805h on 17 Nov 18 thereby remained absent without leave for 216h and thereby committed an offence punishable under Section 51 of the Navy Act, 1957.

51. Section 47(a) of the Navy Act, 1957 talks about wilfully disobeys any lawful command of his superior officer and Section 51 of the Navy Act, 1957 talks about breaking out of ship and absence without leave. Both these

charges are put together means that despite cancellation of leave of the petitioner which was duly informed to him by PW-2 Capt Philipose G Pynumootil, PW-4 Cdr S.K. Sridhar and PW-6 M/Chief Balwinder Singh, he disobeyed the lawful command of his senior and left the ship and remained absent without leave. The testimonies of PW-6 Balwinder Singh, MCA (AK)-II, PW-2 Capt Philipose G Pynumootil, PW-4 Cdr S.K. Sridhar and PW-16 Cdr NSS Parmar amply establish both charges against the petitioner. Learned counsel for the petitioner has also submitted that petitioner was not given a proper opportunity to defend himself. We have examined the court martial proceedings and we find that petitioner's counsel has exhaustively cross examined all the prosecution witnesses. That itself shows that his case was dealt with by a competent defending counsel and no prejudice has been caused to the petitioner. Hence, this argument of the learned counsel is rejected.

52. Learned counsel for the petitioner tried to persuade us that there is no speaking order has been passed to justify the above charges alleged to have been proved against the petitioner. He has also prayed that direction may be issued to the respondents to pass a speaking order.

53. Suffice it to say that as per the provisions of the Act, respondents are not under obligation to pass a speaking order and such proposition has also been upheld by the Hon'ble Supreme Court in the case of **S.N. Mukherjee Versus Union of India AIR 1990 SC 1984**. Their Lordships have discussed the scope of Section 162 of the Army Act which is almost para-material of Section 115 of the Navy Act. In that connection, their Lordships have very

clearly said in paragraph no. 45 of the judgment **S.N. Mukherjee Versus Union of India (Supra)** that "the only inference that can be drawn from Section 162 is that reasons have to be recorded only in cases where the proceedings of a summary court-martial are set aside or the sentence is reduced and not when the findings and sentence are confirmed. Section 162 thus negatives a requirement to give reasons on the part of the confirming authority while confirming the findings and sentence of a court-martial and it must be held that the confirming authority is not required to record reasons while confirming the findings and sentence of the court-martial". Similarly proposition has been laid in the case of **Union of India and Another versus Dinesh Kumar (2010) 3 SCC 161** in which their Lordships in paragraph no. 21 while referring the judgment of **S.N. Mukherjee Versus Union of India (Supra)** held that "at the stage of recording of findings and sentence, the Court Martial is not required to record its reasons".

54. It is true that recording of reasons in the finding on charges would certainly show proper application of mind but such requirement has been dispensed with in this Act. The Army has already amended its Act whereas Navy has yet to amend its Act and make a proper provision for recording of reasons in their findings. Be that as it may, the fact remains that we have examined the matter without any reasons being recorded in the finding on the charge and after examining the statement of all the witnesses relevant to the charges. We are satisfied that all the aforesaid charges stand proved against the petitioner. Hence, in view of above, we do not find any reason to interfere in the petition.

55. The petition is accordingly dismissed. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
May 29, 2012
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