

**COURT NO. 1, ARMED FORCES TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**OA 353/2021 with MA 437/2021**

**Ex-ME-1 Samarjit Sinha**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant : Ms. Eshna Kumar, Advocate**

**For Respondents : Dr. Vijendra Singh Mahndiyan, Advocate**

**CORAM :**

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON**  
**HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

**ORDER**

**MA 437/2021 :**

Reply has been filed. There being delay of 04 days' delay in filing the same, this application has been filed by the respondents for condonation of delay. In view of the averments made, the delay is condoned and reply is taken on record.

Accordingly, MA stands disposed of.

2. **OA 353/2021 :**

Invoking the jurisdiction of this Tribunal; under Section 14, of the Armed Forces Tribunal Act, 2007 the applicant has filed this application and the reliefs claimed in Para 8 read as under:

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- (a) **To pass directions to the respondents to reinstate the applicant to the Indian Navy.**
- (b) **To pass directions to the respondents to bring on record the actions taken by them and provide with the relevant documents for the same.**
- (c) **To grant such relief appropriate to the facts and circumstances of the case as deemed fit and proper.**

### **BRIEF FACTS**

3. The applicant was enrolled in Indian Navy on 31.01.2006. The applicant was discharged from service on 26.11.2010 under the grounds of 'Service No Longer Required' (SNLR). The Applicant participated in LMEQ course conducted in INS Shivaji Lonavala from 15.08.2010 to 30.11.2010. During the last days of completion of the course, the applicant received a letter from Indian Navy asking him to report to New Delhi for the interview for deputation to Singapore. Thereafter when the applicant reached New Delhi, he was taken to a building in INS India which was unknown to him and was detained and imprisoned there for a period of 16 days and the applicant was thereafter issued Discharge order from the naval service on 26.11.2010 without providing the applicant with any reason.

4. On 13.07.2020 the applicant served a legal notice to the Directorate of Ex-servicemen Affairs and the Commodore Bureau of Sailors (CABS) to furnish all the documents pertaining to service record and any other document recorded during the 16-day interrogation period of the applicant. On 14.07.2020 the applicant sent an e-mail of the legal notice to Directorate of Ex-servicemen Affairs due to non-acceptance of legal notice being sent through speed post/courier on account of Covid-19 Pandemic. On 24.08.2020 the applicant received the un-actioned letter from Directorate of Ex-servicemen Affairs stating that the matter may be taken up with Directorate of Naval Law. On 02.09.2020 the applicant sent the legal notice to Directorate of Naval Law and Commodore Bureau of Sailors (CABS) to furnish all the documents pertaining to service record and any other document recorded during the 16-day interrogation period. On 17.11.2020 the CABS had requested INS India to provide a suitable reply to the legal notice of the applicant. On not receiving any reply from any Naval authorities, the applicant has filed the present

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OA on 01.02.2021. In the interest of justice, in terms of Section 21 (2) (b) the AFT Act, 2007, we take up the same for consideration.

### **CONTENTIONS OF THE PARTIES**

5. The learned counsel for the applicant submitted that the after successfully clearing the recruitment test, the applicant was selected in the Indian Navy on 31.01.2006. The learned counsel for the applicant submitted the applicant rendered his services with due diligence and complete satisfaction of his superiors till the day when he was arbitrarily, unlawfully and illegally discharged from the service on 26.11.2010 on the grounds of 'Service No Longer Required' (SNLR).

6. The learned counsel for the applicant submitted that the applicant was participating in LMEQ course conducted in INS Shivaji Lonavala w.e.f. 15.08.2010 to 30.11.2010 and during the last days of completion of the course, the Applicant received a letter from the Indian Navy stating that he has been asked to report for the Interview at New Delhi for Deputation

which will be in Singapore. The learned counsel added that when the Applicant reached New Delhi, two officials guided him to a Jeep and took him to INS India and later the Applicant was taken to a building unknown to him. The learned counsel submitted that the applicant was unlawfully and illegally detained and imprisoned there without any show cause notice and any formal/informal intimation for 16 days from 10.11.2010 to 25.11.2010 and later discharged from the service on 26.11.2010 without providing any reason. The learned counsel for the applicant submitted that the applicant was subjected to the cruel, inhuman and degrading treatment during the 16-days detention period.

7. The learned counsel for the applicant submitted that the actions of the respondents are in violation of the fundamental rights guaranteed to an individual since the Applicant was deprived of any legal aid during the period of 16 days of illegal detention and the respondents leveled false, frivolous and unsubstantiated allegations on the Applicant based on which

he was unlawfully detained and imprisoned without any show cause notice and any formal/informal intimation. The learned counsel for the applicant submitted that the acts committed by the Respondents were unlawful and against the principles of natural justice as prior to imprisonment he was not intimated and apprised with the charges levelled against him which is the basic principle of criminal jurisprudence and the Respondent also violated the fundamental rights under Article 21 of the Constitution of India which deals with providing legal aid and fair opportunity.

8. It is also submitted by the applicant that the applicant was released from Naval service without providing any service-related documents and only after representations made by the applicant, the Applicant was granted with the Discharge Certificate after 8 years, whereby, he was discharged on SNLR grounds and apart from this no other service or inquiry related document have been furnished to him till date. The learned counsel for the applicant submitted that the Respondents

failed to follow the procedural law and guidelines as mentioned in the Navy Act, 1957, and the Indian Naval Auxiliary Services Regulations, 1973, whereby due process for trial should have been conducted which includes intimation to the accused about the charges levelled against him and conducting a lawful trial by providing an equal and fair opportunity guaranteed under Article 21 of the Constitution of India pertaining to legal aid and fair opportunity.

9. The learned counsel for the applicant placed reliance on the verdict of the Hon'ble Supreme Court of India in case of ***Lt Col Prithi Pal Singh Bedi vs. Union of India*** (AIR 1982 SC 1413, ***Sunil Batra vs. Delhi Administration and Ors.*** (1978) 4 SCC 494, and ***R. Viswan & Ors. Vs Union of India & Others*** (AIR 1983 SC 658).

10. *Per contra*, the learned counsel for the respondents submits that the applicant's discharge Order dated 26.11.2010 impugned herein is strictly in terms of the provisions of the Navy Act 1957 and the Statutory Regulations

made thereunder. Discharge of the applicant from Naval Service is in accordance with the service conditions of Indian Navy and there is no illegality or arbitrariness in it. The learned counsel for the respondents submitted that intelligence inputs had indicated that the applicant had indulged in undesirable activities and had maintained contact with supposedly Pakistan Intelligence Operative (PIO) based at Pakistan High Commission, Colombo for prolonged duration and was compromised. The learned counsel further submitted that the applicant had shared information related to Indian Navy unauthorizedly and had accepted gratification in various forms from the Pakistan Intelligence Operative (PIO) and therefore, continuation/ retention of such a sailor in service became clearly undesirable in the interest of the Indian Navy and Government of India, and hence, the applicant was discharged from service as Service No Longer Required'.

11. The learned counsel for the respondents submitted that the applicant was discharged from Navy as 'Service No Longer

Required' without recourse to warning as per Regulation 279 (3) of Regs Navy Part III which provides as under: -

***"In all cases of recommendations for discharge of sailors as 'Service No Longer Required' except those who are to be discharged as being surplus to requirements, Captain shall establish clearly the fact that the sailor recommended for discharge has been given suitable warning and opportunity to improve. Evidence to this effect shall accompany the recommendation. In exceptional cases, when in the opinion of the Captain, the retention of a sailor is clearly undesirable, a recommendation may be forwarded and discharge may be approved although the sailor has not previously been warned."***

12. The learned counsel for the respondents further submitted that the Competent Authority prior exercising the power under Regulation 279 of Regulations Navy Part III (Statutory) had also examined the case in detail and therefore, any scope of arbitrariness/ unlawful and prejudice whilst deciding the instant case is ruled out.

13. The learned counsel for the respondents submitted that the retention of the applicant who was involved in breach of National Security is clearly undesirable and the applicant by his conduct had fallen to the trap laid by PIO agents and his activities were detrimental to service interest as well as national interest. The learned counsel added that the Competent Authority has the right and discretion to dismiss or discharge from Naval service any sailor under Section 15 of the Navy Act, 1957 read with Regulation 279 of Regulations Navy Part III (Statutory). The learned counsel submitted that the applicant was fully aware that he was passing information to a person who was not connected with the Indian Navy or was not in the Naval Chain of Command therefore, the consequences of such improper act was fully understood by him and the applicant had committed serious breaches of the trust reposed on him and violated the solemn oath that every person subject to Naval law takes in terms of Section 13 of the Navy Act, 1957 whilst joining the service. The said section 13 is reproduced below:-

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***“13. Oath of allegiance-Every Officer and every sailor shall, as soon as may be, after appointment or enrolment make and subscribe before the Commanding Officer of the ship to which he belongs, or the prescribed officer on oath or affirmation in the following form that is to say: -***

***“I .....do swear in the name of God solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established and that I will, as in duty bound, honestly and faithfully serve in the Naval service and go wherever ordered by sea, land or air, and that I will observe and obey commands of the President and the commands of any superior officer set over me, even to the peril of my life”***

14. The learned counsel for the respondents submitted that accordingly, the Competent Authority after due analysis of the case was satisfied that it is neither expedient nor reasonable to give any opportunity of show cause to the applicant and the order of competent authority was passed taking into account the gravity of misconduct by the individual as well as national

interest/ security of the state. The learned counsel of the respondents has relied on the judgments in TA No 395/2009 titled **Vinod Kumar Jha vs Union of India & Ors** dated 30.06.2010, OA No. 272/2011, OA 267/2011 titled **Shri Gajender Singh vs. Union of India** and **Shri Navtej Singh vs. Union of India, Union of India & Anr. vs M M Sharma**, 2011 SCC(11) 293 and OA 241/2015 titled **Arjun Singh vs Union of India**. The learned counsel further added that in the present case, such power has been exercised legally without any arbitrariness/ malafides or for any other extraneous considerations.

15. The learned counsel for the respondents also submitted that it is humbly submitted that the present OA is liable to be dismissed on grounds of delay and laches and as the applicant was discharged from Service in Nov 2010 and he approached this Tribunal after a delay of approximately 10 years and 02 months from the date of discharge from Service.

16. The learned counsel submitted that the case file with respect to discharge of the Applicant as 'Service No Longer Required' (SNLR) from Naval service is classified in nature i.e. Secret Document and have bearing on national security and hence, the same cannot be disclosed to the Applicant and also it may not be proper in public interest to file the same with the supply of advance copy to other parties. However, Respondents would keep the aforesaid documents ready in a sealed cover for the perusal of this Tribunal and the case file containing all the original records will be produced before the Tribunal in a sealed cover.

### **ANALYSIS**

17. Heard the parties at length and have perused the documents produced before us including the 'Personal and Secret' file produced by the respondents in a sealed cover.

18. From the perusal of the documents produced before us, it is established that the applicant was in communication with one Mr. Daniel who is supposedly a 'Pakistan Intelligence

Operative' (PIO) through mobile phone and e-mails. The statements of the applicant given during his interrogation by the Indian Navy authorities also point to the fact that certain information regarding Indian Navy especially movement of Indian Naval Ships was inadvertently communicated by the applicant to the Mr. Danial (PIO). The statement of other Naval sailors involved in the matter besides the applicant also indicate the these sailors including the applicant were aware about the activities of one another and their contact with Mr. Daniel (PIO).

19. Since the case involved 'National Security' and it would have been impractical and inexpedient to take recourse to the disciplinary proceedings i.e conduct Court Martial /summary trial of the applicant as prime witness i.e Mr. Daniel (PIO) would not be available for the trial, the Indian Navy considered the case as exceptional case and processed to administratively discharge the applicant as 'Services No Longer Required' (SNLR) without previous SNLR warning under the provisions of

Regulation 279 (3) of Regs Navy Part III (statutory). The said Regs Navy Regulation reads as under:-

***“In all cases of recommendations for discharge of sailors as ‘Service No Longer Required’ except those who are to be discharged as being surplus to requirements, Captain shall establish clearly the fact that the sailor recommended for discharge has been given suitable warning and opportunity to improve. Evidence to this effect shall accompany the recommendation. In exceptional cases, when in the opinion of the captain, the recommendation may be forwarded and discharge may be approved although the sailor has not previously been warned.”***

20. Since the recourse to the trial by Court Martial/ Summary proceedings were inexpedient therefore the averments of learned counsel of the applicant with regard to following the due process of law followed in trial does not hold good. We have also perused the judgments relied by the learned counsel for the applicant for alleged violation of Article 21 of the Constitution of India as also the alleged violation of Principles of Natural Justice, *qua non* issuance of warning/ show cause notice by the respondents. It is a settled law that the elasticity of principles of Natural Justice cannot be

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expanded beyond limit specifically when it is a question of National Security. Therefore, we do not find any merit in the submissions made by the learned counsel for the applicant.

21. With regard to the issues brought out in respect of violation of Article 21 of the Constitution of India, it is clarified, ~~that~~<sup>3</sup> from the perusal of the classified records submitted by the respondents, that the applicant and some other Naval Sailors were involved in Anti National activities and the respondents were well within their rights to investigate and take action in the matter expeditiously. The learned counsel for the applicant has also brought out the issue of torture of the applicant for 16 days by the respondents and the same has been denied by the respondents. It is observed that the alleged incident ~~i.e~~<sup>3</sup> occurred in year 2010 and the applicant approached this Tribunal in the year 2021 almost with a delay of 11 years and no medical or any other records have been produced by the applicant in support of his alleged

torture by the respondents, we are therefore unable to accept the issue of torture meted out to the applicant.

22. The case of the applicant was processed through the proper channel and the chief of the Naval Staff (CNS) being the competent authority having perused the entire case had approved the discharge of the sailor as SNLR on 25.11.2010.

23. Keeping the above facts in mind, we are of the considered view that the administrative discharge of the applicant as 'SNLR' has been done as per the established procedure and regulations and there is no mala fide involved on the part of the respondents in the entire case.

24. The OA is thus dismissed being devoid of merit.

Pronounced today on <sup>14</sup>29 August, 2024.

(JUSTICE RAJENDRA MENON)  
CHAIRPERSON

(REAR ADMIRAL DHIREN VIG)  
MEMBER (A)

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