

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI

T .A.NO.116 OF 2009
W.P.(C) No.16176/06 of the Hon'ble High Court of Kerala at Ernakulam

FRIDAY, THE 24TH DAY OF FEBRUARY, 2012/5TH PHALGUNA, 1933

CORAM:

HON'BLE MR. JUSTICE A.C.ARUMUGAPERUMAL ADITYAN, MEMBER (J)

HON'BLE LT.GEN.THOMAS MATHEW, PVSM, AVSM, MEMBER (A)

S.J.ROSARIO. ACTING PETTY OFFICER, NO.136291 B , **APPLICANT/PETITIONER:**
INDIAN NAVAL SPORTS CONTROL CELL (MB) INS ANGRE,
SHAHID BHAGAT SINGH ROAD,BOMBAY – 400 001.
NOW RESIDING AT: TC 32/973(2), CLARA COTTAGE, TTP P.O.
VETTUKAD, TRIVANDRUM – 695 021.

BY ADV. SRI. C.S. ULLAS

versus

1. UNION OF INDIA, REPRESENTED BY THE
SECRETARY, MINISTRY OF DEFENCE,
NEW DELHI.

RESPONDENTS/RESPONDENTS:

2. THE CHIEF OF THE NAVAL STAFF,
NAVAL HEADQUARTERS, NEW DELHI.
3. THE COMMODORE, BUREAU OF SAILORS,
CHEETAH CAMP, MANKHURD, BOMBAY.
4. THE OFFICER IN CHARGE,
INDIAN NAVAL SPORTS CONTROL CELL (KOCHI),
STATION STADIUM, NAVAL BASE, KOCHI – 682 004.
5. THE SECRETARY, INSCC (MB),
INS ANGRE, SHAHID BHAGAT SINGH ROAD,
MUMBAI – 400 001.
6. THE FLAG OFFICER COMMANDING IN CHIEF,
SOUTHERN NAVAL COMMAND, NAVAL BASE, KOCHI 682 004.

R1 TO R6 BY SR. PANEL COUNSEL SRI. S. KRISHNAMOORTHY

ORDER

Thomas Mathew, Member (A):

The petitioner in this case is aggrieved for being discharged from service without being given adequate opportunity to fulfil the contract that he had entered into when he enrolled in the Indian Navy. The Writ

Petition filed with the Honourable High Court of Kerala has now been transferred to this Tribunal, under Sec.34 of the Armed Forces Tribunal Act, 2007.

2. It has been averred by the petitioner that he was recruited on 12.6.2003 against 'Sports Quota' as an Acting Petty Officer being an outstanding football player. He was promised 15 years tenure in the Indian Navy and maximum opportunity to represent the Services Team in the National Championship within the first three years for confirmation in the rank to which recruitment took place. At the time of recruitment he was medically fit and thereafter sent for basic training from 4.8.2003 to 21.10.2003. During this period, he was not given any opportunity to participate in any event to fulfil the conditions of his enrolment.

3. Further, the petitioner has submitted that he participated with excellence in the inter-services tournament held from 20.1.2004 to 25.1.2004 at Kochi and was selected to the camp of Services team for the National Santhosh Trophy. However, this championship was postponed. Meanwhile, he was afflicted with jaundice and sent on sick leave. When he returned to his unit, he was harassed and humiliated in a case of theft without any reason. Unable to withstand the pressure of the situation, he had inflicted self injury to his arm which resulted in his admission in hospital for observation by the psychiatrist at Naval Hospital, INHS Sanjivani. He was

discharged after two months on 20.10.2004 as a low medical category S3A2 (Temporary) for 24 weeks and due for re-categorisation on 20.4.2005. He was thereafter not permitted to participate in the postponed Santhosh Trophy held in the year 2005. Another player who had not participated in the camp was included in the Services Team.

4. It is contended by the petitioner that he was not permitted to report for medical re-categorisation on 20.4.2005 by the 4th respondent. The re-categorisation was held later and he was upgraded from S3A2 to S2A2 in September 2005. If he had been brought before the re-categorisation on time, he would have been able to take part in the postponed National Championship held in 2004. It is admitted by the petitioner that even though he was a low medical category of 'unfit for sea service and fit for shore service with restriction' from 20.10.2004 to 20.4.2005, he was sent to Delhi to participate in the Durand Cup on 25.10.2004. However, due to enmity between two officials he was not permitted to participate in the tournament. The petitioner had later participated in the Inter-Services Football tournament held at New Delhi from 14.2.2005 to 18.2.2005 and selected for Services Camp for participation in Nationals. This National tournament was postponed and held at Kochi from 4.11.2005 to 20.11.2005. However, the petitioner was not allowed to participate in the tournament due to the arbitrariness and

illegal exercise of authority by the 4th respondent for ulterior motive to cause loss to the petitioner.

5. The petitioner has submitted that he was again admitted in the hospital from 25.1.2006 to 8.3.2006 and was upgraded to medical category S1A1. Even though he was fully fit, he was not included in the Indian Navy Team, thereby making him ineligible for participation in the National Championship held in October 2006. It was due to the personal rivalry among coaches under the 4th respondent that he was left out of the team. The petitioner had made oral requests in the month of March 2006 to the 4th respondent to grant him additional chances to prove his performance in the year 2006. However, this was declined by the authorities. Thereafter, the 4th respondent discreetly initiated release formalities of the petitioner on the ground of not fulfilling the conditions as contained in Appendix II to Navy Instruction 2/96. The respondent had failed to obtain his consent and signature on any warning letter. It is further argued that two hockey players of the Navy similarly placed like the petitioner have been retained in the Navy. The 5th respondent had approached the petitioner on 1.6.2006 to obtain signature on the warning form which he refused on the ground that he be given additional opportunities to fulfil the condition of his employment.

6. It is averred that, the authorities have hastily taken the decision to

discharge him without considering his requests. The respondents should have treated the selection of the petitioner to services coaching camp in 2004 and 2005 as participation in the National Level Championship in those years. His medical low categorisation and the delay in re-categorisation has been due to maladministration, and mismanagement on the part of the respondents, which also contributed to his non participation in the National Championship. The petitioner has therefore contended that he has been denied opportunity to fulfil the condition of his recruitment due to reason beyond his control. He has therefore prayed that his release order (Ext.P6) be quashed and direct the respondents to grant him sufficient opportunity to participate in the National Championship in future and permit him to continue in service till expiry of his engagement in the year 2018. It has also been prayed to declare the condition of confirmation of the petitioner as contained in Ext.P6 as harsh, unjust and illegal and opposed to public policy.

7. During the hearing of the petition, the learned counsel for the petitioner had argued that he had not been given adequate opportunity to be selected for the Services Team during his period of enrolment in the Navy. It was also asserted that he had entered into a contract with the Chief of Naval Staff and not his subordinates. Therefore, the policy itself is not correct and the authorities wanted to throw out the petitioner on some

excuse or the other and he was discharged.

8. The respondents in their statement have averred that the petitioner was recruited on Sports Quota (Football) on 13.6.2003 as Acting Petty Officer. He was placed on probation for three years and the basic condition for confirmation in Navy was that he should participate at the National Level in the first three years of service, otherwise, the sailor is liable to be discharged from the Navy. These terms and conditions are as per Para 1(a) of Appendix II of N.I. 2/96 and the Government of India, Ministry of Defence letter No. MP/0500/NHQ/819/US/D (N-II) dated 4.5.1989 [Ext.R3(a)]. Recruitment by this scheme is done with the full consent of the candidate and based on application submitted by him for enrollment. The petitioner joined the Navy on 13.6.2003 as Acting Petty Officer for initial engagement of 15 years subject to being confirmed within three years. It is further submitted that the length of service rendered by a sailor is counted from his date of enrollment and in the instant case it is with effect from 13.6.2003. He was also receiving pay with effect from that date. The Sailors enrolled under Sports Quota are sent for basic training whenever they are spared from their sports assignment in the Navy.

9. It is averred by the respondents that the petitioner was included in the Navy Football team from the time of his enrollment. He played in the Durand Cup for Navy in November 2003 and then in the Services Football

Championship held in January 2004 at Kochi. The petitioner was provisionally selected for the Services Football Coaching Camp. Since the National Football Championship was postponed, the sailor requested for 20 days of balance of Annual Leave from 10th May 2004. There is no record of any sickness or sick leave of the Sailor during this period.

10. It has been submitted by respondents that a theft of Rs.1,000/- was reported on 23.8.2004 by another Sailor in the same floor of accommodation where the petitioner also stayed. All occupants in that floor were questioned. No individual or the petitioner was harassed or humiliated eventhough he was the only person in the room that evening. On 24.8.2004, the petitioner was found drunk with self inflicted injury on his wrist and was admitted to the hospital. He was under escort of three sailors during his admission. He was discharged from the hospital after two months on 24.10.2004.

11. It has been clarified by the respondents that the selection of the Services Football Team is the prerogative of the Services Sports Control Board. None of the respondents are involved in the selection of players for the Services Teams.

12. The respondents have stated that on his discharge from hospital, the petitioner joined the Navy team at Delhi and then moved to Kolkatta. It is pointed out that it is the duty of every sailor to produce his discharge

slip from hospital and report for re-categorisation to the nearest military hospital on due date. The petitioner failed to do so and it was only after inquiry from the hospital that he reported for re-categorisation. The respondents have denied that allegation that the petitioner was not allowed to report for re-categorisation.

13. It is averred that the petitioner participated in the Services Football Championship held in February 2005 at New Delhi. The selection and fielding of Services Football Team in the National Championship is the prerogative of the Services Sports Control Board. The petitioner was not selected by the said Board for the services team. He was again hospitalised from 25.1.2006 to March 2006 under escort of three sailors. He had been given the requisite Warning letters periodically that he has not been able to fulfil the prescribed conditions of his enrollment. He had signed and acknowledged the Warning Letters of December 2004 and March 2005. However, he refused to sign the third letter of April 2006. It has been submitted by the respondents that since he failed to fulfil the conditions of his enrollment, i.e. to perform at the National level, his release formalities were carried out in accordance with existing regulations. This has been done as per laid down procedure and there was no mala fide intentions or arbitrariness on the part of the respondents.

14. The respondents have reiterated that the petitioner had been

provided all the necessary opportunity to play with the Navy Football team to take part in the Services Football Championship and to be selected for the Services Team. Mere participation in the Services Camp cannot be construed as participation in the National level championship. The basic condition for confirmation in service was that he should have represented the Services Football Team at the National Level in the first three years. The petitioner had been given adequate time and resource to achieve the required standard. It is submitted by the respondents that his own reckless attitude, self injury and alcohol binges prevented him to achieve the desired standard as laid down in the government policy. The procedure adopted to discharge the petitioner from service has been transparent as per norms and rules and there has been no discrimination in the matter as alleged by the petitioner. It has also been stated that the two hockey players mentioned were included in the services team and their case cannot be compared with that of the petitioner.

15. We have heard both sides and perused the documents made available concerning this case. The issue to be decided upon is, whether or not the petitioner had achieved the standard laid down for his retention in the Navy and had he been given adequate opportunity to fulfil his commitment before being discharged?

16. It is evident that the petitioner was enrolled in the vacancy of

'Sports Quota' by the Indian Navy on 13.6.2003. Government of India, Ministry of Defence vide their letter No. MP/0500/NHQ/819/US/D (N-II) dated 4.5.1989 addressed to the Chief of Naval Staff (Exhibit R3) has laid down the mode of selection, vacancy, qualification, age limits, training, probation, promotion, pay and allowances for such enrollments. Paragraph 5 of the Annexure I to this letter reads as follows:

"5. Probation:

(a) Rank at Entry. Candidate recruited under this scheme will be granted the rank of Acting Petty Officer at the time of entry.

(b) Confirmation. Candidates will remain on probation for a period of maximum three years. During this period, if the standard does not improve to an expected level they will be liable to discharge from service. Acting Petty Officer will be confirmed as Petty Officer after a minimum period of 1 year subject to representing Services in the Nationals."

17. It is therefore clear that the petitioner was on probation from 13.6.2003 till 13.6.2006 during which period he had to represent Services in the National Football Championship failing which he was liable to be discharged. Paragraph 4 of the same document lays down that such Sailors are required to undergo basic training. The petitioner has remained part of the Navy Football team from the date of his enrollment till his discharge. He has carried out his basic training as stipulated and had been admitted in the hospital on three occasions. At the first instance, it was due to self inflicted injury as admitted by him and alcohol consumption; the second and third

time was for re-categorisation. He had continued to play football for the Navy team from 2003 onwards as per his own admission and that of the respondents. He was a member of the Naval Team in the Durand Cup in November 2003 and also played in the Services Championship in January 2004. The petitioner was included in the services coaching camp to select the team for Santosh Trophy 2004. However, the championship was postponed to October 2004. After his self inflicted injury, he remained in the hospital for two months and was discharged on 20.10.2004. The Santosh Trophy (National) commenced four days later on 24.10.2004 and the petitioner was not part of the Services team.

18. The petitioner thereafter, represented the Navy in the Services Tournament in February 2005. However, there is no record of the petitioner having been selected for the Services Coaching Camp in 2005 or the Services Team. The petitioner had already been warned regarding his lack of performance on 18.10.2004 and then again on 11.3.2005. These have been acknowledged by the petitioner also. There is no averment by either side regarding the petitioner's participation in any tournament in the year 2006. The Services Sports Control Board has confirmed by their letter of 23.12.2011 that the petitioner was never a member of the Services Football Team between 2002 and 2006. Thereafter he moved with the Navy team

to Mumbai. He was served a third warning letter on 5.4.2006, which he refused to sign. The petitioner was discharged on 12.6.2006 from the Navy for not fulfilling the contractual obligation of being selected for the Services Team in three years.

19. The petitioner had been a member of the Navy Football team ever since his enrollment. Except for the period when he was admitted in the hospital due to self inflicted injury and alcohol consumption, he has continued to take part in various tournaments. He had to undergo basic training as per policy and immediately thereafter, took part in the Durand Cup tournament. The only issue raised by the petitioner is that some coaches and seniors were against him which prevented his participation in some of the tournaments, without substantiating these claims.

20. Considering our earlier discussions, we see no reason to believe that the petitioner during the three years was denied any opportunity to play football for the Navy and to be selected for the Services Team. The respondents have reiterated number of times that it is the Services Sports Control Board which selects players for the Services Teams. We have no reason to doubt the integrity of the Services Sports Control Board, which is an independent body. Further, the petitioner had never been selected for the Services Football Team between the years 2003 and 2006.

21. Therefore we are of the considered opinion that no injustice has been done to the petitioner by the respondents. He was given adequate time and opportunity to pursue and improve his skills in the 'sports' due to which he was enrolled in the Navy. There is no one else to be blamed except himself for his failure to achieve the requisite standard during the prescribed period of three years for retention in the Navy. He was also well aware of the contractual obligation that he had to meet during the probation period of enrolment. There has been no violation of the existing policy on the subject [Exhibit R3(a)] by the respondents. As long as the policy as laid down by the Government of India, Ministry of Defence remains in vogue, there is no possibility of any relief to the petitioner in this case.

22. In the result, the case is dismissed. No costs. Issue free copies.

Sd/-
LT. GEN. THOMAS MATHEW,
MEMBER (A)

Sd/-
JUSTICE A.C.A. ADITYAN,
MEMBER (J)

DK.

(True copy)

Prl. Private Secretary

ARMED FORCES TRIBUNAL,
REGIONAL BENCH, KOCHI.

T.A. 116 of 2009
[WP(C) No.16176/2006 of the
High Court of Kerala at Ernakulam]

ORDER

DATED: 24.02.2012