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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 2171/2016**

D.S.KAUNTAE Petitioner

Through **Mr.D.K. Kauntae, Advocate**

versus

UNION OF INDIA AND ORS. Respondents

Through **Mr.Sanjay Jain, ASG with
Ms.Suparna Srivastava, Ms.Shreya
Sinha and Mr.Sumit Misra,
Advocates**

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **14.03.2016**

1. The present writ petition has been filed seeking following reliefs:
 - (a) Direct respondent Nos.4, 5 and 6, i.e. the Chief of Army Staff, the Chief of Air Staff and the Chief of Naval Staff to place on record the total number of cases whose services have been terminated on account of having incurred 4 or more than 4 red ink entries in their service records including those red ink entries which have been inflicted upon the soldiers as well as the officers on the sole offence of intoxication during last 10 years, i.e. 01.04.2005 to 31.03.2015;
 - (b) Direct respondent Nos.4, 5 and 6 to also place on record the total number of soldiers admitted to psychiatric ward of various hospitals including the command hospitals due to the

alleged sickness of alleged abuse of alcohol/declared as psychiatric cases due to alcohol use or alcohol dependency syndrome during the last 10 years and covering the same period, i.e. 01.04.2005 to 31.03.2015;

(c) Direct respondent Nos.1,2 and 3 to take all necessary steps to make the new law by repealing the particular sections (Section 48 of the Army Act and Air Force Act and Section 52 of the Navy Act) as the same is being misused by the respective authorities in a discriminatory manner by punishing several hundred soldiers and personnel below officer rank for the mere commission of offence of intoxication and not punishing even a single officer for the same offence hence there is a serious discrimination and arbitrary use of the powers apparently seen on the face of record; and

(d) Direct respondent Nos.1 and 2 to bring the necessary bill to repeal the Section 48 of the Army Act, 1950 and the Air Force Act and Section 52 of the Naval Act as the use of liquor has been authorised and legalised by the policy circular dated 07.10.2006 by the competent authorities or impose a complete ban of use of liquor in all three wings of the armed forces by recalling the said policy circular authorizing the scale of liquor to various ranks in the armed forces by holding and declaring it not an offence at all in the eyes of the government.

2. The petitioner has served the Indian Army as a non-commissioned officer and at present is a practicing lawyer. He claims that he has personal experience regarding the various averments made in the present

writ petition.

3. On facts, it is urged that on 07.10.2006 respondent No.8, i.e. Deputy Director General of Canteen Services has revised the scale of supply of IMFL liquor through canteen store department for all ranks of serving as well as retired Armed Force Personnel.

4. Reliance is placed on Section 48 of the Army Act, Section 48 of the Air Force Act and Section 52 of the Naval Act, which stipulates punishment for a person found in a state of intoxication. It is urged that there are several hundred cases of personnel below officer rank whose services have been terminated merely on the grounds of having incurred number of red ink punishment entries on the charges of intoxication, and on the other hand, not even a single officer of the Armed Force has ever been punished or prosecuted or even tried for such an offence of intoxication. This shows clear discrimination and misuse of the said penal provisions. Reference is made to various representations made by the petitioner and some of the replies received.

5. It is further urged that a large number of soldiers are languishing in psychiatric wards of various service hospitals facing acute mental and psychological trauma, due to a report sent by the respective commanding officer against the soldiers showing him as an alcoholic or suffering from alcohol dependency syndrome etc.

6. We have heard the learned counsel for the petitioner and the learned ASG appearing for the respondents and gone through the record. One of the communications placed on record by the petitioner is a communication dated 15.06.2015 received by the petitioner from Air Headquarters. Relevant portion of the said communication reads as follows:

“Under Air Force Act, 1950 (AFA), a person subject to AF Act is charged for an offence u/s 48 AFA if owing to the influence of alcohol or any drug, whether alone or in combination, he is unfit for or to be entrusted with his duty or any duty which he knew that he was likely to be called upon to perform or behave in a disorderly manner or in any manner likely to bring discredit to his service. Thus, prescribing sales of liquor for defence personnel does not mean authorization to be intoxicated. AFMSF-10 is raised by a Commanding Officer for Psychiatric evaluation of an individual by the Medical authorities and not for treating the person as Psychiatric case. It is raised, irrespective of rank, by a CO of that person, when any behavioural changes are observed in him and is not related to consumption of Alcohol alone. AFMSF-10 is not raised in all cases relating to intoxication unless the individual exhibits Alcohol Dependency Syndrome.”

7. The learned Additional Solicitor General appearing on behalf of the respondents has clarified that all three wings of the Armed Forces adopt this stand which is reflected in the communication issued by the Air Headquarters.

8. In the light of the above communications allegation of misuse of the provisions appears to be misplaced. Further, in our opinion, in any case no case of public interest is made out in the present writ petition. We see no merits in the petition and the same is dismissed.

JAYANT NATH, J

CHIEF JUSTICE

MARCH 14, 2016

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