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W.P.No.33446 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.07.2025

Delivered on : 18.08.2025

CORAM

THE HONOURABLE MRS JUSTICE J. NISHA BANU

AND

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

W.P. No.33446 of 2024

and W.M.P.No.36228 of 2024

- 1.The Secretary,
Ministry of Defence, Union of India,
South Block, Post DHO
Rajaji Marg, New Delhi-110 011.
- 2.The Chief of the Naval Staff,
Integrated HQs of MoD (Navy)
New Delhi-110 011.
- 3.The Flag Officer Commanding in Chief
Headquarters, Western Naval Command
Sahid Bhagat Singh Marg, Mumbai - 400 001.
- 4.The Flag Officer, Naval Aviation Headquarters,
INS Gomantak, Vasco-Da-Gama, Goa-403 802.
- 5.The Commanding Officer,
Indian Naval Ship HANSA
Dabolim, Vasco-da-Gama, Goa-403 801.

.. Petitioners



Vs.

Ex MCEAA-II Amit Dhull,

S.No.197826 F

S/o. Ranbir Singh Dhull,

Door No.7/96, Plot No.07,

LIC Colony, Papayyarajupalem,

PO Sujathanagar, Visakhapatnam-530 051 (AP)

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari calling for the records pertaining to order dated 28.04.2023 passed in OA(Appeal) No.145 of 2017 on the file of the Hon'ble Armed Forces Tribunal, Regional Bench, Chennai Circuit Bench at Hyderabad and quash the same.

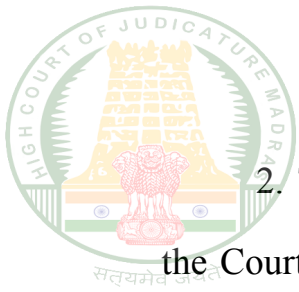
For Petitioner(s): Mr.AR.L.Sundaresan,
Additional Solicitor General of
India for M/s.A.R.Sakthivel

For Respondent(s): Dr.Prabhakar Mishra

ORDER

M.JOTHIRAMAN, J.

The unsuccessful respondents / Secretary to the Ministry of Defence, Union of India and others have preferred this writ petition, challenging the order dated 28.04.2023 passed in OA(Appeal) No.145 of 2017 on the file of the Armed Forces Tribunal [in short "Tribunal"], Regional Bench, Chennai Circuit Bench at Hyderabad.



2. The respondent, namely Ex MCEAA-II Amit Dhull was tried before the Court Martial for two offences under the Navy Act, 1957 [in short "Act"].

The first charge under Section 55(B) of the Act pertains to signing a certificate relating to aircraft spare parts / materials without ensuring its accuracy. The second charge under Section 60(a) of the Act relates to knowingly making or signing a false official document. The Court Martial conducted the proceedings in consonance with the Navy Act, 1957 and the Regulations framed thereunder. The respondent has participated in the Court Martial proceedings. Finally, the Court Martial has passed an order dated 10.09.2014, wherein it has been held as follows:

"THE COURT HAVING FOUND THE ACCUSED AMIT DHULL MCEAA II 197826-F, INDIAN NAVY, INDIAN NAVAL SHIP HANSA, GUILTY OF CHARGE 1, 2 AND NOT GUILTY OF CHARGE 3, ADJUDGES THE SAID AMIT DHULL, MCEAA II 197826-F TO BE DISMISSED FROM NAVAL SERVICE AND TO SUFFER ALL CONSEQUENTIAL PENALTIES INVOLVED, TO DATE."

3. Aggrieved by the order of the Court Martial, the respondent has preferred an appeal in OA(Appeal) No.145 of 2017, challenging the findings of sentence awarded by the Court Martial on 10.09.2014 and also the order passed by the Chief of Naval Staff, Integrated HQs of MoD(Navy), New Delhi in Order No.NL/1601 dated 19.03.2015, confirming the order of the Court Martial maintaining the findings and sentence awarded in the Court Martial and grant



him retirement and financial benefits or in the alternative to convert dismissal into discharge from Naval service and to grant all the financial and service benefits appended to a discharged ex-sailor and also grant him a status of Ex-Servicemen retired from Naval Service.

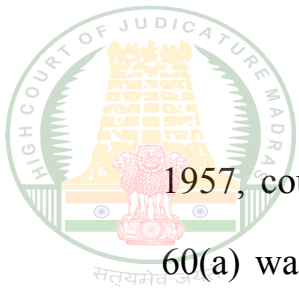
4. The Tribunal, vide order dated 28.04.2023, concluded that the punishment of Dismissal awarded to the respondent be converted to Discharge from Service with effect from 10.09.2014 and the respondent be granted all pensionary benefits with effect from the date of discharge and the petitioners are directed to pay the pensionary benefits with effect from 10.09.2014 within three months from the date of receipt of a copy of that order, failing which the arrears will carry 8% interest per annum from the date of that order. Before the Tribunal, the learned Senior Counsel appeared for the official respondents made an oral prayer to grant leave to appeal before the Hon'ble Supreme Court of India and the same was denied.

5. Mr.AR.L.Sundaresan, learned Additional Solicitor General of India appearing for the petitioners would submit that the Court Martial proceedings were conducted in strict compliance with the Navy Act, 1957 and the Regulations framed thereunder and the respondent was afforded full opportunity to defend himself to cross examine the witnesses. The key witnesses before the Court Martial, namely PW3, PW4, PW6 and PW7 have categorically deposed



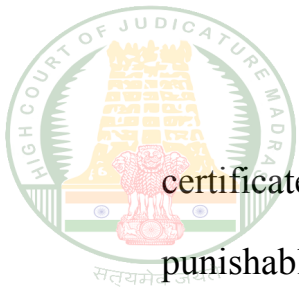
that the respondent was not designated or qualified to inspect the Sea Harrier aircraft spares. It was further established that RAQAS (Goa) lacked facilities to test the subject items and that no superior officer had directed the respondent to sign the Inspection Note. The grave aspect of the case before the Court Martial is the the presence signature of PW4 - Cdr Sobers Abhraham on the Inspection Note. PW4 in his cross examination categorically denied having signed the document and deposed that the signature attributed to him was not his. Therefore, it was established that the Inspection Note was not only unauthorised but also contained a forged endorsement. The respondent prepared and signed the Inspection Note and affixed his own QAS stamp. The presence of a forged signature on the same document proved that the respondent originated, without any inspection and in violation of his designated duties, further aggravates the seriousness of the misconduct.

6. The learned Additional Solicitor General would further submit that the Tribunal, while affirming the respondent's guilty under Section 55(B), erroneously held that Charge No.2 under Section 60(a) of the Navy Act was not proven beyond reasonable doubt. These findings are contrary to the record and unsupported by law. The assumption of shared culpability is speculative and ignores the respondent's sole and deliberate role in preparing and signing the false Inspection Note. The Tribunal having concurred with the Court Martial finding that the respondent was guilty under Section 55(B) of the Navy Act,

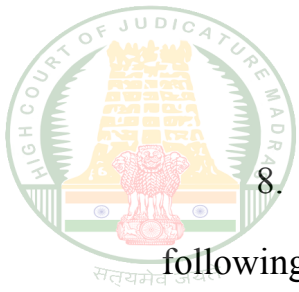


1957, could not have logically or legally held that the offence under Section 60(a) was not proved beyond reasonable doubt. Both charges arise from the same Act i.e., the preparation and signing of the Inspection Note dated 02.09.2011, wherein the respondent falsely certified rejected aircraft spares as serviceable. The Inspection Note was an official certification document, and the respondent's unauthorised and false endorsement of it constitutes not only an inaccurate certificate under Section 55(B) of the Act, but also a knowingly false document under Section 60(a) of the Act. The learned Additional Solicitor General further submits that the respondent knowingly signed a false Inspection Note without inspection or authority. He used his QAS stamp in Ex.P5 issued under strict custodial protocol, to falsely certify the items. He also tampered with the Task Register in Ex.P9 to erase the record of the Inspection Note. He was fully aware of his lack of authority, as evidenced by Exs.P6 to P8 and corroborated by the evidence of PW3 and PW4. The respondent's defence that he acted under the direction of Lt. Cdr Santosh Kumar Chaubey (PW7) was categorically denied by PW7 and is unsupported by any documentary or corroborative evidence. The respondent's own admission that he signed the Inspection Note coupled with his failure to raise any objection or report alleged coercion, further confirms the deliberate and wilful nature of his misconduct.

7. The learned Additional Solicitor General for the petitioners would argue that Section 55(B) of the Act creates a *per se* offence where signing a



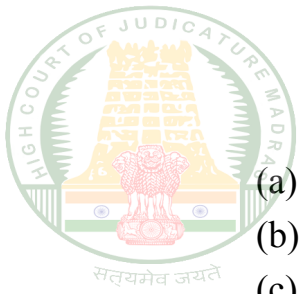
certificate relating to aircraft material without ensuring its accuracy is punishable, irrespective of intent. Similarly, Section 60(a) of the Act penalizes the act of knowingly making or signing a false official document. Judicial Review of Court Martial proceedings is confined to examining procedural irregularities or violations of natural justice. To strengthen his contention, he has relied upon the decision of the Hon'ble Supreme Court in ***Union of India v. Major A.Hussain [(1998) 1 SCC 537]*** to show that the Court does not sit in appeal over findings of fact, unless they are perverse or unsupported by evidence. He further argued that the findings rendered by the Court Martial is in full compliance with law and the findings are based on cogent and corroborated evidence. The Tribunal's re-appreciation of evidence and substitution of its own conclusions amounts to judicial overreach and undermines the sanctity of military justice. The punishment of dismissal from service is not only within the statutory limits, but is also proportionate to the gravity of the offence. The conversion of dismissal into discharge and the grant of pensionary benefits sends a dangerous signal that such breaches of discipline and integrity can be condoned. The findings on the delinquency is proved and has become final, as the respondent has not challenged the same and prays to quash the order of the Tribunal dated 28.04.2023 and also prays to uphold the findings and punishment of dismissal from service awarded by the Court Martial.



8. *Per contra*, learned counsel appearing for the respondent made the following contentions :

8.1. The Tribunal directed the petitioners to pay the pensionary benefits to the respondent with effect from 10.09.2014, within 3 months from the date of receipt of a copy of the order. As per Section 29 of the Armed Forces Tribunal Act, 2007, the order of the Tribunal disposing of an application shall be final and shall not be called in question in any Court and such order shall be executed accordingly. Disregarding the aforesaid provisions of the Act and the orders of the Tribunal, the petitioners neither implemented the order within the stipulated period of 3 months nor preferred the appeal before the Hon'ble Supreme Court under the provisions of Sections 30 and 31 of the Navy Act. After a lapse of more than 15 months, the petitioner has filed the instant writ petition challenging the order passed by the Tribunal.

8.2. The procurement of goods and services in the Armed Forces are governed by the guidelines issued by the Ministry of Defence, Government of India promulgated Defence Procurement Manual in short DPM, which is issued by the Government from time to time. The Material Organisation (Goa), in short MO(G) indented for supply of spares for use in Sea Harrier Aircraft to procurement authority, Headquarters, Naval Aviation, Goa in short HQNA(Goa), 4th petitioner herein and the following agencies were involved in the entire procurement process of the subject spares for Sea Harrier Aircraft:

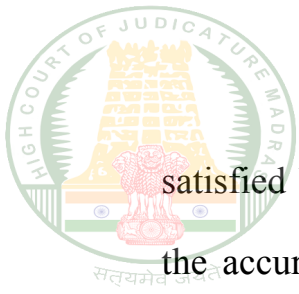


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- (a) Procurement and Financial Authority - HQNA (Goa) (Pr)
- (b) Indenter and Storage Agency - Material Organisation (Goa), MO(G)
- (c) Vendor / Supplier - M/s. NEXA
- (d) Inspecting Authority -NAQAS
- (e) Inspecting Agency - RAQAS(G)
- (f) Auditing Authority - ACDA.

8.3. The incident of signing an Inspection Note under Ex.P5, which was subsequently used by M/s.NEXA (supplier of spares) with collusion and support of officers of various agencies (RAQAS(G), MO(G), HQNA SATO (Proc) and ACDA, Goa) in chain and claimed an amount of Rs.14,33,250/- for rejected spares, cavity tuned Break Down Spares (BDS) of Radio Altimeter (RADALT) of Sea Harrier Aircraft. No financial power is vested in a Military service to personnel below commissioned officer's ranks. The Inspection Note has to be signed by an Officer/PW4. PW4 - Cdr Sobers Abraham signed the Inspection Note after the respondent has signed the same before leaving for temporary duty or someone else forged the signature of PW4. The items were sealed, post inspection by someone in the RAQAS(G) and handed over the same to vendor / supplier. With the collusion of M/s.NEXA and various agencies involved would have gone under the carpet because the culprit firm was supported by every agency in the chain.

8.4. The respondent was found guilty for Charge Nos.1 and 2 and not for Charge No.3 by the Court Martial. The two essential ingredients needs to be



satisfied beyond reasonable doubt by the prosecution are (a) Without ensuring the accuracy for Charge No.1 and (b) Knowingly signs the false document -

Charge No.2. When the respondent signed the Inspection Note, he was not having knowledge about the fact that the Inspection Note pertains to the rejected items, since there was marking on any document. There have been many legal infirmities in the Court Martial pre-trial and during the trial. The pre-trial investigation in the case was conducted multiple times. The material listed witnesses deliberately kept away from the Court Martial proceedings. Though the material witnesses were mentioned in the witness list given to the respondent, he has not chosen to examine the following witnesses:

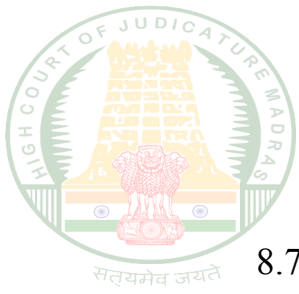
- (i) Lt Cdr J K Panigrahi, IO in OMI
- (ii) Aditya P Mahapatra, CHEAAR
- (iii) RK Gupta, Partnet, M/s.NEXA
- (iv) Ramjee Prasad, Director, M/s.NEXA

8.5. There is no evidence that the respondent has dishonest intention while signing the document in question. No evidence has been adduced by the prosecution that he had no motivated elements like illegal gratification which made him to sign a false document. The respondent has signed the Inspection Note only under the instructions / orders with assurance of his immediate superior officer PW7. It is pertinent to mention that PW7 has admitted during cross examination that he was on Ty Duty and Leave Relief (TDLR) for DCQA



Sea Harrier and the respondent is qualified Sea Harrier Simulator. Therefore, it is not correct on the part of the petitioner to say that the respondent was not qualified or authorized to sign the documents.

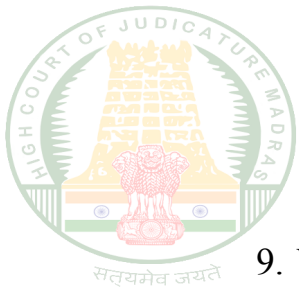
8.6. The Tribunal overlooked the document which certifies that the respondent is qualified Electrical Inspector and worked on Sea Harrier Simulator for about 5 years. As a subordinate, the respondent has obeyed the order of his superior officer, who is a commissioned officer of Lt Cdr Rank, under whom he was working for past 2 years and there was no occasion in the past, when respondent had slightest doubt over the command and guidance of his superior officer PW7. Unfortunately, signing Inspection Note in question on the order and instruction of PW7, the respondent maintained from very first day till last occasion during trial by Court Martial that he had signed the Inspection Note, placed his stamp and made entry in Task Register under the orders of his Superior Officer (PW7). To strengthen his contention, the learned counsel for the respondent has relied on the judgement of the Hon'ble Apex Court in ***Preetipal Singh Bedi vs. Union of India [AIR 1982 SC 1413]*** to show that the Court Martial President and Jury members are subordinate officers in the chain of command to the petitioners, hence they acted under the command influence and not independently. Court Martials are typically adhoc bodies appointed by Military Officer from among his subordinates. They have always been subjected to various degrees of "command influence".



8.7. The sentence awarded is disproportionate to the gravity of offence and also in violation of the Doctrine of Proportionality as laid down by the Hon'ble Apex Court in ***Ranjit Thakur v. Union of India and Ors. [AIR 1987 SC 2386]***, wherein it has been held that *"it is equally true that penalty impose must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution"*.

8.8. The findings of the Court Martial not supported by any reason to their findings. To strengthen the contention, the learned counsel for the respondent has relied upon the judgement of the Hon'ble Supreme Court in ***Lt.Col. Prithi Pal Singh Bedi v. Union of India [1982 AIR 1413]***, to show that the authority exercising quasi judicial function must record reasons for its decision irrespective of whether the decision is subject to appeal, revision or judicial review. Reason should be clear and explicit, though may not be elaborate. The Court Martial has not considered the mitigating circumstances of the respondent.

8.9. The present writ petition has been filed with false, vexatious and frivolous grounds to mislead this Court and not maintainable either in the eyes of law, devoid of merits and hence, this writ petition is liable to be dismissed.



9. We have considered the submissions made on either side and perused the available records.

10. The respondent has raised a preliminary ground on the maintainability of the writ petition. The issue is no longer *res integra* as Three Judges Bench of the Hon'ble Apex Court in the decision in ***Union of India and Others v. Parashotam Dass dated 21.03.2023*** has held that petitions filed under Article 226 of the Constitution against orders of the Armed Forces Tribunal are held to be maintainable.

11. In the case on hand, the respondent joined the Indian Navy as an Artificer Apprentice on 01.01.1994 and after basic training, he was transferred to Kochi for Naval Aviation Course and thereafter, he was transferred to Base Support Facilities (BSF) Goa for Air Craft IL38 on the job training. Subsequently, he attained the rank of Master Chief Electrical Air Artificer II Class. HQNA placed a Purchase Order vide No.HQNA/IND/09/SH/1042/NXA/75 dated 19.10.2009 with M/s.NEXA for supply of 24 By type spares including Cavity Tuned Part No.HRA-A207 (962561-1) Quantity 6 Nos. and Honey Well Altimeters (962561-1) Quantity 7 Nos. for a total cost of Rs.16,80,470/-. These items are Breakdown Spares (BDS) used in the Radio Altimeter of Sea Harrier Aircraft. M/s.NEXA supplied the said items at the



Regional Aeronautical Quality Assurance Server set at Goa, (RAQAS) (Goa) for inspection.

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12. The RAQAS at Goa and its functional Headquarters is at Kochi founded as Naval Aeronautical Quality Assurance Service (NAQAS). RAQAS (Goa) conducts inspection of the items which are procured by Depot Headquarters, Naval Aviation Agencies and NHQ in which RAQAS (Goa) has been marked as an inspection agency for supply orders. Overall, RAQAS (Goa) is a gateway for clearing the fit items for the purpose of use on aircraft. However, in respect of the aforesaid Breakdown Spares, there is no testing facility available in RAQAS, Goa or in any other unit at Goa. Therefore, the said items were sent for User Trial to Naval Aircraft (Kochi) vide RAQAS (G) Letter No.420/25/4 dated 25.08.2010.

13. Accordingly, NAY (Kochi) inspected the said items and assessed the same to be functionally unsatisfactory and unsuitable for their intended use and therefore, sent the items back to the Vendor M/s. NEXA vide NAY(K) Letter No.328/13/2/PC-1 dated 22.10.2010. Thereafter, the vendor M/s.NEXA got the respondent herein to sign an Inspection Note dated 02.09.2011, along with his stamp in respect of the aforesaid rejected items, to certify that the said items were inspected by the respondent and found to be satisfactory. On 05.09.2011, RAQAS (G) made a forwarding letter of the said Inspection Note, vide Letter

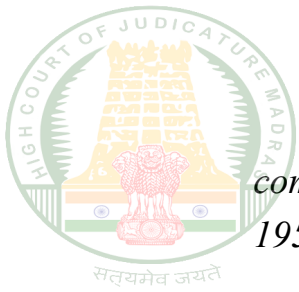


No.25/4 dated 05.09.2011, addressed to the Material Superintendent, MO(G), pursuant to which, the rejected items were handed over to MO(G) on 07.09.2011. Subsequently, M/s.NEXA received the amount due after deduction of some damages.

14. The circumstance leading to the acceptance of rejected spares was investigated and it was found that same were declared satisfactory by the respondent without conducting any inspection, vide Inspection Note dated 02.09.2011. Initially, a One Man Investigation was carried out at Goa. Thereafter, a Board of Inquiry (BOI) was convened. The BOI found sufficient material indicating guilt of the respondent herein and accordingly, the Competent Authority ordered conduct of a de-novo investigation in accordance with Regulation 149 of the Regulations for the Navy Part II (Statutory). Pursuant thereto, the investigation was conducted under Regulation 149 and a trial by Court Martial was convened by the Competent Authority.

15. The respondent herein was tried by Court Martial for the following charges :

(1) Did, on 02 September 2011, signed Regional Aeronautical Quality Assurance Service (Goa), Inspection Note, RAQAS (G) / 118 / 2011-12 dated 02 September 2011 in relation to rejected Aircraft Material, namely Cavity Tuned, bearing no.HRA - A207 (962561-1) Honeywell 962561-1 (SMITHSHRA-A207) respectively of Sea Harrier Aircraft, without ensuring its accuracy and thereby



committed an offence punishable under Section 55-B of Navt Act, 1957.

(2) Did on 02 September 2011, knowingly signed a false document, namely Regional Aeronautical Quality Assurance Service (Goa) Inspection Note, RAQAS (G)/118/2011-12 dated 02 September 2011, a document to be used for official purpose, thereby committed an offence punishable under Section 60(a) of Navy Act, 1957.

(3) Did, on 02 September 2011, contravene para 6(a) of Controller Quality Assurance Temporary Memorandum No.04/2009 dated 09 February 09, in that he did not refer the items worth more than Rs One Lakhs received vide LP Order HQNA / IND / 09 / SH / 1042 / NXA / 75 dated 19.10.2009 prior preparation of inspection note RAQAS(G)/118/2011-12 dated 02 September 2011, to Deputy Controller Quality Assurance (Sea Harrier), thereby committed an offence punishable under Section 68 of Navy Act, 1957.

16. The Court Martial, based on the evidence adduced during trial, found the respondent guilty in respect of Charge Nos.1 and 2 and not guilty in respect of Charge No.3. The Court Martial pronounced the sentence on 10.09.2014, holding the respondent guilty for Charge Nos.1 and 2 and not guilty for Charge No.3 and dismissed him from service. Aggrieved by the sentence of the Court Martial, which was also maintained by the order of the second petitioner dated 19.03.2015, the respondent filed the appeal in O.A.(Appeal) No.145 of 2017 before the Armed Forces Tribunal, Regional Bench, Chennai (Circuit Bench at Hyderabad) to set aside the findings and sentence awarded by the Court Martial and also the second petitioner's order dated 19.03.2015, maintaining the finding and sentence awarded by the Court Martial and to grant him retirement and



financial benefits or in alternative, to convert dismissal into discharge from Naval Service and to grant all the financial service benefits appended to a discharged Ex-Sailor, thereby granting him Ex-Servicemen status.

17. It was contended by the respondent before the Tribunal that the Charges 1 and 2 of the Charge Sheet are with reference to the same transaction containing the date and other particulars of the Inspection Note and that, there is no denial on his part and that he signed the document in question on 02.09.2011 and that when he signed the Inspection Note on 02.09.2011, he was not aware about the document pertaining to the rejected items. It was also contended that the items were delivered by M/s.NEXA on 07.09.2011 when he was on temporary duty and that, he came to know about the earlier rejection of the items in question, only after the receipt of the report of NAY(K). It was also contended that the earlier rejection of the items in question by NAY(K) was known to DCQA (SH) Master Chief In-Charge and the other DCQA's and the Inspector of the Sea Harriers Group i.e., CHEAAR, Aditya P Mohapatra, but not to him.

18. It was the case of the petitioners before the Tribunal that the respondent herein had attempted to make false accusation against his superior Lt. Cdr Santhosh Kumar Chaube that on 02.09.2011, he reported back from leave and was to proceed on temporary duty to NAQAS at Kochi on the same



day in the evening and that around lunch time, he was allegedly asked to sign the Inspection Note while the representative of M/s.NEXA, Mr.R.K.Gupta was allegedly sitting with Lt Cdr Santhosh Kumar Chaubey. The respondent had signed the Inspection Note in good faith as a faithful and obedient subordinate of Lt.Cdr Santhosh Kumar Chaubey, considering the said Note to be genuine and correct. It was also contended by the respondent that there was no evidence that the respondent had dishonest intention while signing the document in question and that no evidence had been adduced by the prosecution that he had any motivating elements like illegal gratification, which made him to sign a false document, which unjustly enriched the firm M/s.NEXA.

19. It was also contended by the respondent before the Tribunal that the Investigating Officers in the pre-trial proceedings were not examined during the Court Martial and though the prosecution had failed to adduce any cogent evidence to support the essential ingredients of the charges, the respondent herein was punished. The sentence awarded to him is extremely harsh, excessive and disproportionate to the gravity of offence, if at all committed, which has not entitled him to pensionary and terminal benefits after serving more than 20 years in the Indian Navy.

20. The petitioners herein had filed their reply statement before the Tribunal wherein they denied the allegations and disputed the statements made



by the respondent herein and prayed for dismissal of the appeal by stating as under:

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20.1. The instant case pertains to acceptance of rejected spares of Sea Harrier Aircraft which were declared unsuitable for usage on Naval Aircrafts. These spares were offered for inspection to RAQA (Goa) by M/s.NEXA in October, 2009. Since the capability to test these items did not exist in RAQAS, Goa, the items were forwarded to Naval Aviation Yard, Kochi, for user trials on 25.08.2010. During the testing / trials at Naval Aircraft Kochi, the spares were assessed as functionally unsatisfactory and unsuitable for usage. Thereafter, the items were returned to the vendor and the firm was intimated regarding the unsuitability. The vendor then managed to get the respondent herein sign an Inspection Note dated 02.09.2011 in respect of the aforesaid rejected items as if the said items were inspected by the respondent herein and found to be satisfactory. Based on the Inspection Note issued by the respondent herein, the items were issued for usage. However, the items were again forwarded by NAY, Goa to NAY, Kochi for assessment of its suitability. NAY, Kochi found out that despite rejection of the subject spares, the same have been accepted and were intended to be used on aircraft.

20.2. The respondent was tried by the Court Martial duly constituted under the Navy Act, 1957 and there were a total of 7 witnesses and 23



documentary evidences which the prosecution had brought before the Court Martial to establish the guilt of the respondent beyond reasonable doubt.

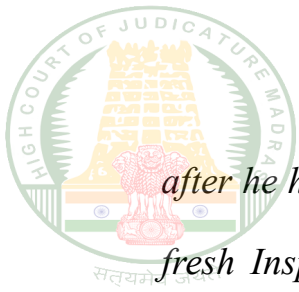
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20.3. As per the Navy Act, 1957, the maximum punishment for offences under Sections 55(B) and 60(a) of the Navy Act are imprisonment for two years and seven years respectively. The mitigating circumstances raised by the respondent herein was duly considered by the Court Martial and he was awarded a much lenient punishment.

20.4. The main contention of the respondent herein that there was a practice that Inspectors used to sign the documents on directives of superior officers is incorrect. PW7, Lt Cdr Santhosh Kumar Chaubey, during cross examination in the Court Martial, had clarified by his reply to Q.503, about the misdeed of the respondent herein.

20.5. It is relevant to Extract Q.No.503: Why Amit Dhull, MCEAA II signed the Inspection Note. Was the Inspector of SH also absent ?

Answer : Amit Dhull, MCEAA II, had come to me with one Inspection Note of 12 By Type of same LPO lot signed by him and counter signed by Cdr Joglekar and intimated that rest 8 items were also inspected by him. I cross questioned to Amit Dhull, MCEAA II, regarding his qualification and he has intimated that he is qualified in SH Simulator and SH Aircraft and therefore,



after he has recommended to collate or merge these 8 items with 12 and issue a fresh Inspection Note which I approved. But now I realise he has not only misled me but also Cdr Joglekar, who was also RCAQA.

Observation of Tribunal : It is inconceivable that the applicant's / respondent's superior officer is not aware of his subordinate's qualification and approves an Inspection Note which annuls a previous document signed by an Officer, who is present in station.

20.6. PW7 categorically brought out the exact factual aspects by way of his reply to Q.540.

Q.540 reads as follows: Sir, May I suggest you that M/s.NEXA was a favored company by you and Mr.Rajeev Kumar Gupta was your good friend that is the reason the rejected item Cavity Tuned were passed by you by issuing Inspection Note admitted at Exhibit P-5 and you ordered the accused to sign the document while he was proceeding on Ty duty in the same evening and because of your pressure and faith the accused signed the document in your presence and later you assured that you will take signature from Cdr Sobers?

Answer: The suggestion is absolutely wrong as in Board of Inquiry the accused has admitted that he was taking monetary benefits, gifts from all vendors including M/s. NEXA and the representative of M/s NEXA has also accepted that he was giving monetary benefits to the accused. The Board of Inquiry has also asked the vendor whether he had any connection with him or



any officer in RAQAS (G), in reply the vendor said that he had no connection with any officers of RAQAS (G).

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20.7. PW7 had made it clear in his cross examination that he had not ordered the respondent to make Inspection Note in respect of the said stores. Admittedly, the respondent herein did not question his superior's alleged unlawful orders nor did he ever raise it to any other Superior Officer of RAQAS (G), which shows that the respondent herein is stating unacceptable reasons to defend his illegal act. The respondent herein tampered entries in the Task Register, where issuance of all inspection notes are indicated. Ex.P5 is the Inspection Note signed by the respondent. Exs.P6 to P8 Ty Memos and Out Register proved that the respondent was not authorized to inspect the Sea Harrier spares. Ex.P12 - RAQAS(G) Stamp Issue Register confirming that the stamp used was under the respondent custody.

20.8. PW3 CS YADAV, PW4 Cdr Sobers Abraham, PW6-Captain (TS) Hemant G Vyas and PW7 Lt.Cdr SK Chaubey categorically deposed that the respondent was not designated or qualified to inspect the Sea Harrier Aircraft spares. It is further established that the RAQAS lack facility to test the subject items and that no superior has directed the respondent to sign in the Inspection Note.



20.9. The Tribunal, confirming the respondent guilty under Section 55(B) of the Act held that Charge No.2 under Section 60(a) of the Act was not proved beyond reasonable doubt. Charge Nos.1 and 2 framed against the respondents are entirely different in nature and they have the essential ingredients. The most essential ingredient to prove Charge No.1 was that the respondent had signed the Inspection Note without ensuring the efficacy of the subject items and the basic essential element of the charge was that the respondent herein signed the Inspection Note without even checking or inspecting the subject spare parts. This aspect was proved during pre-trial through the testimonies of various witnesses mentioned above that the capability of inspecting those spare parts on the date of incident was not even available at RAQAS (Goa), however the respondent herein still signed the Inspection Note. Thus, the basic essential element of Charge No.1 i.e., signing of the certificate in respect of aircraft material without ensuring the efficacy, was proved beyond reasonable doubt.

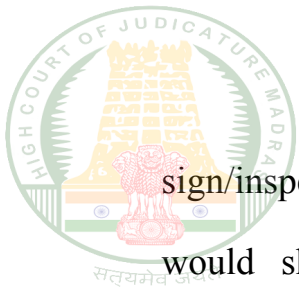
20.10. The respondent herein was read over the charges before commencement of the trial in the presence of his counsel. The respondent herein and his counsel did not raise any objection regarding the charges framed against him. It is seen from the records that a preliminary investigation was conducted at RAQAS (G) in order to find the basic facts pertaining to the incident and appraise his superior authorities at HQNA. Thereafter, after considering its findings and considering the gravity of the offence, a statutory



inquiry in the form of a BOI was ordered to ascertain the extent of culpability of personnel involved. The respondent herein was found guilty by the Court Martial based on independent evidence brought before trial. There was no irregularities in conduct of the trial and any allegation with respect to pre-trial irregularities, in no way have bearing on the Court Martial proceedings or on the finding and sentence of the Court Martial.

20.11. The Court Martial has considered the testimony of PW7 as the sole basis for conviction of the respondent herein. The charge against the respondent herein was proved beyond reasonable doubt through the deposition of various witnesses viz., PWs.3, 4 and 7 and along with other documentary evidence. The documentary evidences and the deposition of PWs.3 and 4 proved that the Inspection Note was a false document pertaining to rejected spare parts of Sea Harrier and the same was prepared without an official authority by the respondent herein and the guilt of the respondent herein was proved beyond reasonable doubt.

20.12. With regard to Charge No.2, the respondent herein contended that though he did not have knowledge of the fact that the spare parts were rejected on previous occasion, in this regard, it is pertinent to mention that the essential element which the prosecution proved beyond reasonable doubt was that the respondent herein had sufficient knowledge of being unauthorised to



sign/inspect any item which pertains to Sea Harrier Aircraft. Exs.P7 and P8 would show that the respondent herein was not authorized to conduct inspection. The defence put forth by the respondent that he did not have knowledge about the earlier rejection of the spare parts is totally baseless and without any merit. Even though the respondent had sufficient knowledge that his signature and stamp cannot be used for these spare parts, still he used it to prepare a false document. The respondent with his vast experience of 20 years, knowingly made a false document without having the authority to prepare it and thus, all the essential ingredients of Charge No.2 are sufficiently proved beyond reasonable doubt.

21. Jurisdiction, powers and authority in matters of appeal against the order of the Court Martial before the Tribunal has been enumerated in Chapter III of the Armed Forces Tribunal Act, 2007 and the relevant provisions are extracted hereunder:

Section 14 of the AFT Act, which speaks about the jurisdiction, powers and authority of the Tribunal in service matters, says that the *Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority, exercisable immediately before that day by all Courts (except the Supreme Court or a High Court exercising jurisdiction under Articles 226 and 227 of the Constitution) in relation to all service matters.*

Sub-Clause (2) of Section 14 of the Act says that *subject to the other*



provisions of this Act, a person aggrieved by an order pertaining to any service matter may make an application to the Tribunal in such form and accompanied by such documents or other evidence and on payment of such fee as may be prescribed.

Sub-Clause (3) of Section 14 says that on receipt of an application relating to service matters, the Tribunal shall, if satisfied after due inquiry, as it may deem necessary, that it is fit for adjudication by it, admit such application; but where the Tribunal is not so satisfied, it may dismiss the application after recording its reasons in writing.

Sub-Clause (4) of Section 14 says that for the purpose of adjudicating an application, the Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908.

Sub-Section (5) of Section 14 says that the Tribunal shall decide both questions of law and facts that may be raised before it.

22. Section 15 of the AFT Act which deals with the jurisdiction, powers and authority in matters of appeal against Court Martial. Section 16 of the AFT Act deals with Re-Trial and Section 17 of the AFT Act deals with the powers of the Tribunal on appeal under Section 15. It is relevant to extract the aforesaid Sections as under:

Section 15. Jurisdiction, powers and authority in matters of appeal against court martial.—

(1) Save as otherwise expressly provided in this Act, the



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Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable under this Act in relation to appeal against any order, decision, finding or sentence passed by a court martial or any matter connected therewith or incidental thereto.

(2) Any person aggrieved by an order, decision, finding or sentence passed by a court martial may prefer an appeal in such form, manner and within such time as may be prescribed.

(3) The Tribunal shall have power to grant bail to any person accused of an offence and in military custody, with or without any conditions which it considers necessary: Provided that no accused person shall be so released if there appears reasonable ground for believing that he has been guilty of an offence punishable with death or imprisonment for life.

(4) The Tribunal shall allow an appeal against conviction by a court martial where—

(a) the finding of the court martial is legally not sustainable due to any reason whatsoever; or

(b) the finding involves wrong decision on a question of law; or

(c) there was a material irregularity in the course of the trial resulting in miscarriage of justice, but, in any other case, may dismiss the appeal where the Tribunal considers that no miscarriage of justice is likely to be caused or has actually resulted to the appellant:

Provided that no order dismissing the appeal by the Tribunal shall be passed unless such order is made after recording reasons therefor in writing.

(5) The Tribunal may allow an appeal against conviction, and pass appropriate order thereon

(6) Notwithstanding anything contained in the foregoing provisions of this section, the Tribunal shall have the power to—

(a) substitute for the findings of the court martial, a finding



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of guilty for any other offence for which the offender could have been lawfully found guilty by the court martial and pass a sentence afresh for the offence specified or involved in such findings under the provisions of the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or the Air Force Act, 1950 (45 of 1950), as the case may be; or

(b) if sentence is found to be excessive, illegal or unjust, the Tribunal may—

(i) remit the whole or any part of the sentence, with or without conditions;

(ii) mitigate the punishment awarded;

(iii) commute such punishment to any lesser punishment or punishments mentioned in the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950), as the case may be;

(c) enhance the sentence awarded by a court martial: Provided that no such sentence shall be enhanced unless the appellant has been given an opportunity of being heard;

(d) release the appellant, if sentenced to imprisonment, on parole with or without conditions;

(e) suspend a sentence of imprisonment;

(f) pass any other order as it may think appropriate.

(7) Notwithstanding any other provisions in this Act, for the purposes of this section, the Tribunal shall be deemed to be a criminal court for the purposes of sections 175, 178, 179, 180, 193, 195, 196 or 228 of the Indian Penal Code (45 of 1860) and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

Section 16. Re-trial.—

(1) Except as provided by this Act, where the conviction of a person by court martial for an offence has been quashed, he shall not be liable to be tried again for that offence by a court martial or by any other Court.



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(2) The Tribunal shall have the power of quashing a conviction, to make an order authorising the appellant to be retried by court martial, but shall only exercise this power when the appeal against conviction is allowed by reasons only of evidence received or available to be received by the Tribunal under this Act and it appears to the Tribunal that the interests of justice require that an order under this section should be made: Provided that an appellant shall not be retried under this section for an offence other than—

(a) the offence for which he was convicted by the original court martial and in respect of which his appeal is allowed;

(b) any offence for which he could have been convicted at the original court martial on a charge of the first-mentioned offence; (c) any offence charged in the alternative in respect of which the court martial recorded no finding in consequence of convicting him of the first-mentioned offence.

(3) A person who is to be retried under this section for an offence shall, if the Tribunal or the Supreme Court so directs, whether or not such person is being tried or retried on one or more of the original charges, no fresh investigation or other action shall be taken under the relevant provision of the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or the Air Force Act, 1950 (45 of 1950) as the case may be, or rules and regulations made thereunder, in relation to the said charge or charges on which he is to be retried.

Section 17. Powers of the Tribunal on appeal under section 15.—The Tribunal, while hearing and deciding an appeal under section 15, shall have the power

(a) to order production of documents or exhibits connected with the proceedings before the court martial;

(b) to order the attendance of the witnesses;

(c) to receive evidence;

(d) to obtain reports from Court martial;

(e) order reference of any question for enquiry;



(f) appoint a person with special expert knowledge to act as an assessor; and

(g) to determine any question which is necessary to be determined in order to do justice in the case.

23. It is seen from the Minutes of Proceedings at a Court Martial held on Shoreat Ins Gomantak, Goa at 1000 hours on 27 Aug, 01, 02, 03, 04, 05, 08, 09 and 10 Sep 14 for the Trial of Amit Dhull, MCEAA II, No.197826-F, Indian Navy, of Indian Naval Ship HANSA that before the Court Martial, the accused has been furnished on 22.08.2014, a copy of circumstantial letter with enclosures, charge sheet, list of witnesses and summary of their evidence. The accused have been informed that it is competent for him to give evidence subject to cross examination by the Prosecutor and examination by the Court and that any witness whom he desire to call and who can reasonably be procured shall be summoned on his behalf.

24. The Statement of Amit Dhull, MCEAA II No.197826-F has been recorded before the Court Martial on 02.05.2014, which reads as follows:

STATEMENT OF AMIT DHULL, MCEAA II NO 197826-F
INDIAN NAVY OF INDIAN NAVAL SHIP HANSA

Amit Dhull, MCEAA II No 197826-F, Indian Navy of Indian Naval Ship Hansa, you are warned in accordance with regulation 151(2), Regulations for the Navy Part II (statutory) as under:

"Do you wish to make any statement ? You are not obliged to say anything unless you wish to do so, but whatever you say, will be taken down in writing and may be given as evidence."



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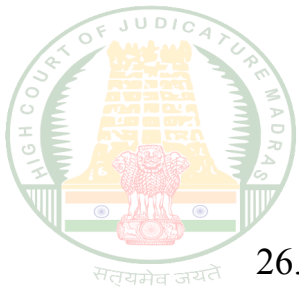
Answer by Amit Dhull, MCEAA II No197826-F, Indian Navy, of Indian Naval Ship Hansa:

"I do not wish to make any statement at this juncture. However, I reserve my right to give it at an appropriate time and in appropriate forum."

25. It is seen from the records that Charge No.1 has been framed under Section 55B of the Navy Act, 1957, which reads as follows:

Section 55B - Inaccurate Certificate - Every person subject to Naval Law who signs any certificate in relation to an aircraft material belonging to or in service of the Government without ensuring the accuracy thereof, shall be punished with imprisonment for a term which may extend upto two years or such other punishment as hereinafter mentioned.

The essential ingredients which are required to be proved in respect of this charge are (a) Person subject to Naval Law, (b) Signs any certificate in relation to an Aircraft or Aircraft material, (c) Belonging to or in the service of the Government, (d) Without ensuring the accuracy. In addition to the aforesaid essential ingredients, in order to substantiate the charge, the common ingredients are that the accused made the certificate namely, Regional Aeronautical Quality Assurance Service (Goa), Inspection Note, RAQAS (G) /118/2011-12 dated 02.09.2011 in relation to rejected Aircraft material, namely Cavity Tuned bearing No.HRA-A207 (962561-1) and Honeywell 962561-1 (Smithshra-A207) respectively of Sea Harrier Aircraft.



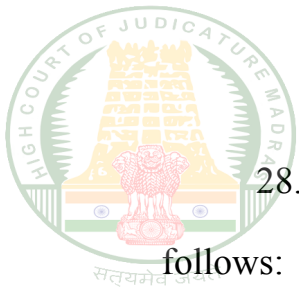
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26. Charge No.2 has been framed under Section 60(a) of the Act, which reads as under:

Section 60(a) : Falsifying Official Documents and False Declaration: - Every person subject to Naval Law - (a) who knowingly makes or signs a false report, return, list, certificate, book, master or other document to be used for the official purpose, shall be punished with imprisonment for a term which may extend to seven years or such other punishment as is hereinafter mentioned.

The important ingredient to establish this charge is that the accused person should have acted knowingly. The offence should only be related to a document which is used for official purpose.

27. The main essential elements to check whilst receiving Inspection Note to ascertain that the inspection note have been prepared at RAQAS(G) are Rubber Stamp, Inspection Note Number, Order Number, Part Number, Description, Denomination, Order quantity, Supply quantity, Accepted quantity, Remarks and Signature. These elements are present in Ex.P5- Inspection Note and it is signed and endorsed by the respondent with stamp. In this regard, PW3 - CS Yadav, MCAA I No 187028R has been examined and through his testimony, Exs.P6 to P11 and Ex.D1 were introduced.



28. The gist of the deposition given by PW3 in his cross examination is as follows:

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"On Exhibit P5 the witness identify for the inspectors signature and name as Amit Dhull, MCAA II dated 02 Sep 11 bearing the sign of Amit Dhull, MCAA II and type A stamp A NAQAS II next to him name is written as Cdr Sobres Abraham, DCQA for CQA and bearing sign but this sign he did not recognize.

There was a practice to have two signatures on inspection note, one is of Inspector and another is of Officer. The stamp was only issued to qualified Inspectors and at that time stamp was only placed by the Inspectors."

29. PW4- Cdr Sobers Abraham (41488R), in his Chief Examination, deposed as follows:

"These items at Sl.1 & 2 of the Inspection Note Exhibit P-5 were previously rejected by witness through a letter to the firm M/s.NEXA vide RAQAS letter 420/25/04 dated 23 Nov 10 and later the same was reiterated vide even number letter dated 01 Feb 2011. Exhibit P-17 and P-19 respectively. The witness compared the stamp on Exhibit P-5 with the stamp on Stamp Issue Register issued to accused and found both to be the same. The witness identified the stamp to be the same which was issued to accused and further said that the signatures are not his."

30. PW4, in the further cross examination, deposed as follows:

"The witness compared the documents Exhibit P-13 and Exhibit D-2 with the inward entry i.e. 25 Aug 2010 at 1615 hrs and on the same date letter issued by you for checking the suitability of



the item to NAY(K). He was asked was it a special case for M/s.NEXA or it was instructions from your senior officer. The witness replied that the supply order for the concerned spares was raised to M/s.NEXA on 19 Oct 09 (Exhibit P-10) a copy of the same was received by RAQAS (G) due to proactive liaisoning and dedicated inspection personnel of RAQAS(G) already the home work on the spares including ABC analysis of the spares was carried out.... Therefore, the organization proactively dispatched or made available the covering letter when the spares were produced."

31. The gist of the deposition of PW6 given in Court Examination reads as follows:

"The witness was sought clarification regarding the reason which determine the said items received in Dec 12 to be the same item that were rejected by NAY(K) in Oct 10. The witness brought out that NAY(K) work centres are manned by civilian and working in the same workshop for the period ranging from 01 year to 35 years. This particular item got rejected as that the supplied item had a report attached with the component which were issued and attached by the same bench supervisors in 2010. The report came to me stating the item were coming to the same workshop and the same supervisors tested the component and found the results were same and identification of the item is also same and hence the workshop can identify this item what had been supplied by MO(G) was that of rejected by the work centre in 2010."

32. PW7- Lt Cdr Santhosh Kumar Choubey (51929 W), in his chief examination, deposed as under:

"The witness was borne at RAQAS (Goa) from Jan 10 to Apr 12 and was carrying out the duties of DCQA. TU, KM 28 & KM 31



and IT Officer. The witness was the Divisional Officer at Amit Dhull, MCEAA II.

PW7 reiterated the LP procedure and stamping procedure. The witness corroborated the aspect of issue of stamps to qualified inspectors and value of its usage.

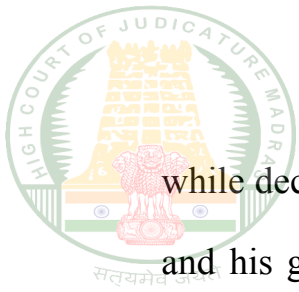
The witness was asked to have a careful look at the stamp embossed and the signature head of the inspector in the Exhibit P-5. Further, he was also asked whose signature and rank is written on Serial No 118 and column Inspectors name in Exhibit P-9. The answer of the witness was Amit Dhull, MCEAA II.

33. The gist of the deposition of PW7, in his further cross examination and in re-examination, reads as under:

"The witness by way of various answers during cross examination answered that as far as he know, all vendors and suppliers are supposed to enter their presence whenever they are entering RAQAS (Goa) premises. Whenever the items were submitted from the vendors, the item list was put in the list of items inspected, the document which was maintained by MCAA and put up to RCQA twice a week who gives the remarks and whereabouts of the item.

The witness was asked whose signature and stamp are there on Exhibit D-6 and Exhibit D-7 and was he qualified to sign for Exhibit D-6 and D-7. He answered that the same is of Amit Dhull, MCEAA II and he was not qualified."

34. The findings of the Court Martial is that the respondent is guilty in respect of Charge Nos.1 and 2 and not guilty in respect of Charge No.3. On behalf of the accused / respondent, his counsel made a mitigating statement



while deciding the sentence to the accused viz., service record, family condition and his good behaviour. On the same day i.e., 10.09.2014, the Court Martial has passed the sentence that the respondent is found guilty of Charge Nos.1 and 2 and not guilty of Charge No.3 and adjudges the respondent to be dismissed from Naval Service and to suffer all consequential penalties involved to date.

35. This Court has to consider whether the punishment of dismissal from service is within the statutory limit or not ? and also to consider whether it is proportionate to the gravity of the offence ? In this regard, it is relevant to refer Chapter-IX of the Navy Act, 1957, which deals with provisions as to punishments. Section 81 of the Act deals with punishments and Section 82 deals with provisions as to award of punishment and the said sections are extracted hereunder:

Section 81 - Punishments.—

(1) The following punishments may be inflicted under this Act, namely:—

- (a) death;
- (b) imprisonment which may be for the term of life or any other lesser term;
- (c) dismissal with disgrace from the naval service;
- (d) detention;
- (e) dismissal from the naval service;
- (f) forfeiture of seniority in rank in the case of officers 1 [and master chief petty officers];
- (g) forfeiture of time for promotion in the case of 2 [officers below the rank of commander and master chief petty officers];



- (h) dismissal from the ship to which the offender belongs; (i) 3 [reduction in rank], in the case of 4 [petty officers] and persons holding leading rates;
- (j) fine, in respect of civil offences;
- (k) mulcts of pay and allowances;
- (l) severe reprimand or reprimand;
- (m) forfeiture of pay, head money, bounty, salvage, prize money and allowances earned by, and all annuities, pensions, gratuities, medals and decorations granted to, the offender or of any one or more of the above particulars; also in the case of desertion, of all clothes and effects left by the deserter in the ship to which he belongs;
- (n) such minor punishments as are inflicted according to the custom of the navy or may from time to time be prescribed.

(2) Each of the punishments specified in sub-section (1) shall be deemed to be inferior in degree to every punishment preceding it in the above scale.

Section 82. Provisions as to award of punishment.—

(1) The punishments that may be inflicted under this Act shall be awarded in accordance with the provisions of the following sub-sections.

(2) Except in the case of mutiny in time of war or on active service, the punishment of death shall not be inflicted on any offender until the sentence has been confirmed by the Central Government.

(3) The punishment of imprisonment for a term exceeding two years shall in all cases be accompanied by a sentence of dismissal with disgrace from the naval service.

(4) The punishment of imprisonment for a term not exceeding two years may in all cases be accompanied by a sentence of dismissal with disgrace or dismissal from the naval service: Provided that in the case of officers, unless the sentence of dismissal



with disgrace is also awarded, such sentence of imprisonment shall involve dismissal from the naval service.

(5) The sentence of imprisonment may be rigorous or simple, or partly rigorous and partly simple.

(6) The sentence of dismissal with disgrace shall involve in all cases forfeiture of all pay, head money, bounty, salvage, prize money and allowances that have been earned by and of all annuities, pensions, gratuities, medals and decorations that may have been granted to the offender and an incapacity to serve Government again in a defence service, or a civil service, or to hold any post connected with defence or any civil post under the Government: Provided that the forfeiture of moneys shall not apply, except in the case of deserters, to moneys which should have been paid on the last pay day preceding conviction.

(7) The punishment of dismissal from the naval service shall in the case of persons who hold any lien on appointments in the regular Army or Air Force, involve dismissal from such army or air force service.

(8) The punishment of detention may be inflicted for any term not exceeding two years but no sentence of detention shall be awarded unless naval detention quarters or army or air force detention barracks are in existence.

(9) The punishment of imprisonment or detention whether on board ship or on shore shall, subject to the provisions of sub-section (14), involve 1 [reduction in rank], in the case of a petty officer or a person holding a leading 2 [rank], and shall in all cases be accompanied by stoppage of pay and allowances during the term of imprisonment or detention:

Provided that where the punishment awarded is detention for a term not exceeding fourteen days, the sentence may direct that the punishment shall not be accompanied by stoppage of pay and allowances during the term of detention.

(10) No officer shall be subject to detention.



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(11) The punishment of forfeiture of seniority shall be imposed in the substantive rank held at the date of the sentence, and shall involve a corresponding forfeiture of seniority in every higher acting rank subject always to the condition that forfeiture of seniority in any rank shall in no case exceed the seniority in that rank at the date of the sentence.

(12) The punishment of forfeiture of seniority shall involve the loss of the benefit of service included in the seniority forfeited for the purposes of pay, pension, gratuity, promotion and such other purposes, as may be prescribed, provided that such pay, pension, gratuity and promotion and other purposes depend upon such service. [(12A) No master chief petty officer shall be subject to the punishment of forfeiture of seniority of more than twelve months.]

(13) The punishment of forfeiture of time for promotion shall delay the promotion by the time specified, [(13A) No master chief petty officer shall be subject to the punishment of forfeiture of time for promotion of more than twelve months.]

(14) No person shall be 4 [reduced in rank] below the limits prescribed, or lower either actually or relatively than the 5 [rank] in which he entered or was appointed in the naval service.

(15) Mulcts of pay and allowances shall not be awarded except as provided in sub-sections (16) and (17).

(16) Mulcts of pay and allowances shall be awarded in accordance with the regulations made under this Act on conviction of offences under Section 31.

(17) Mulcts of pay may also be awarded to make good any proved loss or damage occasioned by the offence on which there is a conviction, and for the offence of drunkenness by 1 [sailors].

(18) The punishment of fine may be awarded in respect of civil offences in addition to, or in lieu of, other punishments specified in this Act.

(19) The forfeiture of moneys under clause (m) of sub-section (1) of section 81 shall not, except in case of desertion apply to



moneys which should have been paid on the last pay day preceding conviction.

(20) All other punishments authorised by this Act may be inflicted in such manner as is heretofore in use in the naval service or as may be prescribed.

(21) Subject to the provisions of the foregoing sub-sections, where any punishment is specified by this Act as the penalty for an offence and it is further declared that “such other punishment as is hereinafter mentioned” may be awarded in respect of the same offence, the expression “such other punishment” shall be deemed to comprise any one or more of the punishments inferior in degree to the specified punishment according to the scale of punishments laid down in sub-section (1) of section 81.

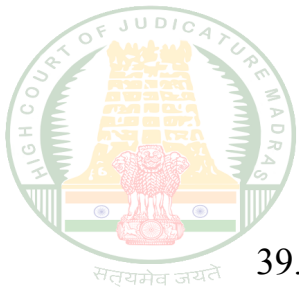
36. A perusal of the entire records would disclose that the Court Martial proceedings were conducted in strict compliance with the Navy Act, 1957 and the Regulations framed thereunder. The respondent was afforded full opportunity to defend himself, cross examine witnesses and present his evidence. The Tribunal, while affirming the respondent guilty under Section 55(B) of the Act, erroneously held that Charge No.2 under Section 60(a) was not proven beyond reasonable doubt. The Tribunal further assumed that the respondent was a victim of circumstances and a scapegoat and proceeded to covert the punishment from dismissal to discharge and granted pensionary benefits. These findings are contrary to the record and unsupported by law. The assumption of shared culpability is speculative and ignores the respondent's sole and deliberate role in preparing and signing the false Inspection Note. The



Tribunal, having concurred with the Court Martial finding that the respondent was guilty under Section 55(B) of the Act, could not have logically and legally held that the offence under Section 60(a) was not proved beyond reasonable doubt. Both charges arise from the same act i.e., the preparation and signing of the Inspection Note dated 02.09.2011, wherein the respondent falsely certified rejected Aircraft spares as serviceable.

37. The Tribunal's conclusion that one charge is proved while the other is not despite both being based on the same Inspection Note and the same evidenciary foundation, is internally inconsistent and legally untenable. The evidence clearly establishes that the respondent knowingly signed a false Inspection Note without inspection or authority. He used his QAS stamp, issued under strict custodial protocol, to falsely certify the subject items. He tampered with the Task Register to erase the record of the Inspection Note. He was fully aware of his lack of authority, as evidenced by Exhibits P6 to P8 and corroborated by the testimonies of PWs.3 and 4.

38. Though the respondent defended that as per the direction of PW7-Lt Cdr Santosh Kumar Chaubey he acted upon, categorically denied the same. The respondent's own admission that he signed the Inspection Note, coupled with his failure to raise any objection or report alleged coercion, further confirms the deliberate and wilful nature of his misconduct.



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39. It is well settled that judicial review of Court Martial proceedings is confined to examining procedural irregularities or violations of natural justice. The Court cannot sit in appeal over the findings of facts unless they are perverse or unsupported by evidence. The Hon'ble Supreme Court has heavily emphasised the same in its decision in ***Union of India v. Major A.Hussain, [(1998) 1 SCC 537]***.

40. In the present case on hand, the Court Martial proceedings were conducted in full compliance with law. The findings are based on cogent and corroborated evidence. There is no procedural infirmity or violation of natural justice. The Tribunal's re-appreciation of evidence and substitution of its own conclusion amounts to judicial overreach and undermines the sanctity of military justice. Further, the punishment of dismissal from service is not only within the statutory limits, particularly Section 55(B) of the Navy Act, 1957 which prescribes 2 years imprisonment and also Section 60(a) of the Navy Act, 1957 which prescribes imprisonment upto 7 years, but is also proportionate to the gravity of the offence.

41. The findings of the Tribunal based on reliance that the respondent's prior unblemished service and commendations is misplaced. Since the disciplinary proceedings under the Navy Act are governed by statutory



provisions and are not subject to equitable dilution, this Court is of the considered opinion that the conversion of dismissal from service into discharge and the grant of pensionary benefits is not proper. The services in the Navy being disciplined services and involving the safety and security, there can be no room for any compromise on discipline in discharge of services. Once the charge was held as proved, the Tribunal erred in substituting the punishment of dismissal with discharge and granted pensionary benefits. The findings on the delinquency is proved and has become final, as the respondent has not challenged the same. There are merits in this writ petition and the impugned order of the Tribunal warrants interference.

42. In the result, this Writ Petition stands allowed and the order passed by the Armed Forces Tribunal, Regional Bench, Chennai Circuit Bench at Hyderabad dated 28.04.2023 passed in OA(Appeal) No.145 of 2017 is quashed and the order of the Court Martial dated 10.09.2014 is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

(J.NISHA BANU J.,) (M.JOTHIRAMAN J.)
18-08-2025

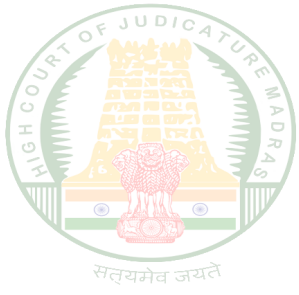
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Speaking/Non-speaking order

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Neutral Citation: Yes/No



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J.NISHA BANU J.
AND
M.JOTHIRAMAN J.

Jvm

Order in
W.P.No.33446 of 2024

18.08.2025