

**A.F.R****RESERVED**

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

COURT NO. 2**O.A. No. 35 of 2016****Friday, this the 25<sup>th</sup> day of November, 2016****“Hon’ble Mr. Justice D.P.Singh, Judicial Member  
Hon’ble Air Marshal Anil Chopra, Administrative Member”**

Jitendra Pratap Singh (Ex- Leading Petrol Man S. No. 175519-H)  
son of Late Vijay Bahadur presently residing at 8C/77, Sector-8,  
Gopal Kunj Vrindavan Colony, Lucknow. Permanent resident of  
village Ganga Khera, P.O. Shivli, District-  
Raebareli..... **Applicant**

Versus

1. Union of India through Secretary, Ministry of Defence,  
New Delhi.
2. The Chief of Naval Staff, Integrated Head Quarters,  
Ministry of Defence (Navy), New Delhi 110011.
3. The Flag Officer, Commanding-in-chief, Head Quarters  
Western Naval Command, Shahid Bhagat Singh Road,  
Mumbai 400001.
4. Commanding Officer, Institution Angre S.B.S. Road,  
Mumbai.
5. The Commodore Bureau of Sailors Cheetah Camp Man  
Khurd, Mumbai.

.....**Respondents****Ld. Counsel appeared for the  
Applicant****- Shri Pradeep Chandola  
Advocate****Ld. Counsel appeared for the  
Respondents  
Assisted by OIC Legal Cell****- Dr. Chet Narain Singh  
C.G.S.C  
Maj Soma John**

## **Order**

**(Per Se Hon'ble Mr Justice Devi Prasad Singh, Member (J))**

1. Present Application under section 14 of the Armed Forces Tribunal Act, 2007 has been preferred by the Applicant being aggrieved by the order dated 09.01.2012, whereby the Applicant was awarded the punishment of reduction in rank i.e. from Regulatory Petty officer to Leading Patrol Man.

2. The facts of the case, shorn of unnecessary details, are that the Applicant was enrolled in the Indian Navy on 03.01.1991 as Sailor MER. After undergoing initial training, he was posted to R.O. (U/T) Branch. Thereafter, he underwent Radio Operator II 'Q' Course till 25.04.1992. In due course, he was promoted to the rank of Leading Patrol Man (In short L.P.M) and thereafter, he stood promoted to the rank of Regulatory Petty Officer in the Indian Navy. Thereafter, regard being had to his good service track record, he was raised to the rank of Master at Arms with effect from 01.01.2011. It is alleged that on 26.12.2010, on the basis of some complaint made by one of his colleague in the service, with the allegations of sexual harassment, investigation was embarked upon. The investigation culminated in Applicant being exonerated of all charges. However, later on he was charged for

keeping illegally .32 mm pistol with eight live cartridges and two empty cartridges at his Govt married accommodation i.e Quarter No R-11/5B Navy Nagar Colaba. In ultimate analysis, the Applicant was found guilty and punished with (i) Reduction in Rank from RPO to LPM and (ii) Deprivation of 3<sup>rd</sup>, 2<sup>nd</sup> and Ist Good conduct Badges. Aggrieved by the order dated 09.01.2012 passed by Summary Trial, the Applicant preferred O.A No 59 of 2013 before Armed Forces Tribunal, Regional Bench Lucknow which was dismissed with liberty to avail of the alternative remedy under section 23 of the Navy Act 1957. As a result, the Applicant preferred a representation under section 163 of the Navy Act, which culminated in being dismissed as being devoid of merit vide order dated 20.08.2015 passed by Chief of the Naval Staff.

3. It may be noted here that during the course of investigation for offence under section 375 IPC which revolved round the crime of molestation and rape of colleague's wife, the Applicant's promotion order (IN 52) which was issued on 11.02.2011 was returned un-actioned to Sailor Record Section CABS by the Commanding officer, INS Angre on 21.02.2011 and Expiry of Engagement (EOE) of Applicant was extended upto 31.01.2012.

4. We have heard learned counsel for the Applicant as also learned counsel for the respondents. We have also perused the materials on record.

5. The substance of submissions advanced by learned counsel for the Applicant is that possessing a pistol with license granted by competent authority and keeping the same at the official residence, does not constitute any offence and secondly, once the Applicant was promoted to a higher post, he could not have been punished with reduction in rank from R.P.O to L.P.M.

6. Per contra, while defending the impugned order of punishment, the contention of the learned counsel for the respondents is that the Applicant ought not to have kept the licensed pistol at his residence and further that the controversy involved in this case is not one relating to service matter and by this reckoning, the Application is not maintainable in this Tribunal.

7. Since preliminary issue raised across the bar pertains to maintainability of the Application under section 14 of the Armed Forces Tribunal Act 2007, we have given our anxious consideration to this aspect and we are of the view that the contention is not sustainable inasmuch as the Applicant has been reverted to lower rank and punishment awarded is based on misconduct committed during the course of

service. In this connection, we feel called to refer to section 3 (iv) of the Armed Forces Tribunal Act 2007 in which the Legislature in their wisdom has added the word "any other matter". In our considered opinion, the controversy in question would not fall under the exception clause and rather, it is a matter which affects and impinges upon the Applicant's service career. Hence, it is a case which involves service elements and thus, it is a service matter cognizable by this Tribunal. Our view finds support from the decision of a Division Bench of Allahabad High Court, Lucknow Bench Lucknow in Writ Petition No 8051 of 89 decided on 20.02.2014. Accordingly, the argument advanced by learned counsel for the respondents with regard to maintainability of the O.A. cannot be countenanced being misconceived and thus it is held to be unsustainable.

8. Coming to the second limb of argument as to whether keeping fire-arm of which license was granted by the competent authority, constitutes misconduct under section 68 of the Navy Act 1957. For ready reference, section 68 of the Navy Act is reproduced below.

*"68. Violation of the Act, regulations and orders.- Every person subject to naval law who neglects to obey or contravenes any provisions of this Act or*

*any regulation made under this Act or any general or local order, shall, unless other punishment is provided in this Act for such neglect or contravention, be punished with imprisonment for a term which may extend to two years or such other punishment as is hereinafter mentioned."*

9. A plain and punctilious reading of the aforesaid provisions shows that in case, a member of the Indian Navy neglects to obey, and contravenes any provisions of the Act or any regulation made under the Act or any general or local order may be punished with imprisonment for a term which extend to two years. In the present case, punishment has been awarded under section 68 of the Act. The question that haunts our minds and is not comprehensible- how and under what manner, it constitutes an offence under section 68 of the Indian Navy Act (supra)? In this connection, we may refer to the order of punishment has been filed as Annexure 2 to the O.A. which is dated 09.01.2012. The relevant portion of the said order being germane to the controversy is reproduced below.

*" Tried summarily by the Commanding Officer for the offence of un-authorizedly keeping weapons in Govt. Married Accommodation under section 68 of the Navy Act 1957 and awarded following punishment vide INS Angre Punishment warrant 01/2012 dated 09 Jan 12.*

- (A) *Reduction in Rank to LMP-No. 4*  
(B) *Deprivation of Third, Second and First GCBS-  
No 9."*

10. How, merely keeping a licensed Arm in Govt Married Accommodation, makes out an offence or constitutes misconduct, is not comprehensible from the punishment order. The submission that the Applicant had pleaded guilty, in our opinion, would not make any difference unless the charge, the Applicant was tried by Commanding Officer IN Angre on 09.01.2012 for offence under section 68 of the Navy Act is proved to the hilt. The authority ought to have applied mind even while recording guilty, to the contents of the charges with a finding as to how and under what manner offence or misconduct is made out. The finding recorded by Shri R.K.Dhowan, Admiral Chief of the Naval Staff in his order dated 20.08.2015 also seems to be an instance of non-application of mind. For ready reference, the finding recorded by the Chief of Naval Staff recorded in his order dated 20.08.2015 is reproduced below.

*"5. The undersigned, after having considered the contentions raised by the Petitioner, perusing the relevant records, facts and circumstances of the case, finds that:-*

- (a) *The petitioner, whilst borne onboard INS Angre was tried summarily by CO INS Angre on 09 Jan 12 for an offence under sec 68 of the Navy Act, 1957, for unauthorisedly keeping weapon in Govt. Married Accommodation.*
- (b) *The charges framed against the petitioner are found to be in order.*
- (c) *Apart from the plea of guilt tendered by the Petitioner, the charge is considered to have been independently established on the basis of the evidence on record in the form of statements of various witnesses and documents brought on record.*
- (d) *The petitioner being fully aware of the consequences of his acts, it can be safely inferred that the petitioner was willfully committing the offence with a deliberate disregard for rules and regulations.*
- (e) *The Petitioner during the summary trial was warned in accordance with the extant regulations and was given the opportunity to answer all the charges. He was also given the liberty to call witness in his defence, which he denied.*
- (f) *The petitioner and his defending officer were given full opportunity to cross examine all the witnesses which they declined during the Summary Trial.*
- (g) *In the Review Petition, the petitioner has mis-quoted Clause F of Appendix I*



*of Regulations for the Navy, Par-I and clause H of Appendix I of Regulations for the Navy, Part-I. It is evident that the petitioner has mis-interpreted Regulations to strengthen his plea.*

*6. Thus, from the aforesaid, it is axiomatic that the punishment awarded to the petitioner is commensurate with the gravity of offence committed. In light of what is discussed above and law laid down, I find that there is no substance in the contentions raised by the petitioner in his Review Petition. The contentions put forth by the petitioner are without any merit and hereby stand rejected.*

*7. The findings arrived at by Commanding officer, INS Angre and the warrant punishment of Reduction in rank to LPM-No.4 and Deprivation of 3<sup>rd</sup>, 2<sup>nd</sup> and Ist GCBs-No 9 awarded is hereby maintained. The review Petition dated 16 Mar 15 submitted by Jitendra Pratap Singh, Ex-LMP, No (175519-H) is accordingly rejected being devoid of merit.*

*(RK Dhowan)  
Admiral  
Chief of the Naval Staff"*

11. A perusal of the record is eloquent of the fact that the Applicant was granted National Arms Licence by the Government of Maharashtra on 17.03.2010, a copy of which has been filed as Annexure 8 to the O.A. Appendix I filed as Annexure 7 to the O.A issued under Regulation 0134 of the Regulations permits the

acquisition or possession of fire arms issued in pursuance of the Arms Act, 1959. The condition (f) of the Appendix attached with the Navy Regulations Provides that while serving in the organisation, a member of the Indian Navy, if they so desire, may deposit their private arms and ammunition for safe custody in the armoury of the nearest Naval Unit/establishment but it does not make it mandatory for the licensee to deposit such arms in the armoury. For ready reference, the condition (f) is reproduced below.

*"(f) While serving with the inter service organisation or on deputation with a civil department, officers wishing to retain their private arms and ammunition for which no licence is required, will get such arms and ammunition recorded in the private arms register at their respective base establishment. They will be personally responsible to report to the commanding officer of the base establishment regarding disposal or purchase of arms and ammunition. They may, if they so desire, deposit their private arms and ammunition for safe custody in the armoury of the nearest Naval unit/establishment."*

12. Apart from the above, the Arm licenses are issued under section 3 of the Arms Act 1959. For ready

reference, section 3 of the Arms Act 1959 is reproduced below.

**"3. Licence for acquisition and possession of firearms and ammunition.**-(1) *No person shall acquire, have in his possession, or carry any firearm or ammunition unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder:*

*Provided that a person may, without himself holding a licence, carry any firearm or ammunition in the presence, or under the written authority, of the holder of the licence for repair or for renewal of the licence or for use by such holder.*

(2) *Notwithstanding anything contained in sub-section (1), no person, other than a person referred to in sub-section (3), shall acquire, have in his possession or carry, at any time, more than three firearms:*

*Provided that a person who has in his possession more firearms than three at the commencement of the Arms (Amendment) Act, 1983, may retain with him any three of such firearms and shall deposit, within ninety days from such commencement, the remaining firearms with the officer in charge of the nearest police station or, subject to the conditions prescribed for the purposes of sub-section (1) of section 21, with a licensed dealer or, where such person is a member of the armed forces of the Union, in a unit armoury referred to in that sub-section.*

*(3) Nothing contained in sub-section (2) shall apply to any dealer in firearms or to any member of a rifle club or rifle association licensed or recognised by the Central Government using a point 22 bore rifle or an air rifle for target practice."*

13. It would appear from perusal of Section 4 that the Licences for acquisition and possession of arms of specified description are also issued in certain cases. Thus, the provisions contained in sections 3 and 4 of the Arms Act 1958 confer statutory right to the licensee to keep with him fire arms. The right has been conferred by the Parliamentary Legislation and the same cannot be taken away by subordinate legislation. Apart from section 3 of the Arms Act supra, the conditions provided for renewal of Arm Licence also confer power to retain the licensed arms.

14. Rule 13 of the Arms Rules, 1962 contains a mandate to retainer of Arms license to keep it at safe place and to use it in the manner provided therein. Thus, it leaves no manner of doubt that once a person including member of the Navy possesses an Arms Licence duly issued by the Appropriate Govt with the permission of a competent authority of the Navy, then he or she is entitled to keep the weapon with him or at his residence as the case may be in accordance with

the Arms Rules 1962 read with section 3 of the Arms Act, unless prohibited by service rules.

No person may be tried or punished for keeping the arms with him in compliance of the statutory power conferred upon such person under the Arms Act and Rules framed there-under subject to service conditions. Of course, if desires to do so, he or she could deposit the weapons to the armoury of Navy as provided by the appropriate authority (supra). Apart from the above, Form V of the Arms Rule makes it obligatory for the licensee to keep the arms in accordance with the provisions contained in Arms Act 1959 and certain other statutory provisions. For the sake of ready reference, conditions nos. 1,2,3 and 4 contained in Form No 5 of the Arms Rules are reproduced below.

*"1. The licence is granted subject to-*

*(a) the provisions of the Arms Act, 1959 and of the Arms Rules, 1962 , and*

*(b) the provisions of sections 11 and 39 of the Wild Life (Protection) Act, 1972, or other relevant sections, as the case may be in respect of the States and Union Territories where the said Act is applicable.*

*2. The licensee shall not carry any arms covered by this licence otherwise than in good faith for the destruction of wild animals which do injury to crops or cattle, nor shall h take any such arms to a fair, religious procession or other public*

*assemblage or any considerable distance beyond the place or area entered in column 6;*

*[Provided that save where he is specifically authorised in this behalf by the District Magistrate concerned, the licensee shall not carry arms covered by the licence within the campus or precincts of any educational institution.]*

*3. He shall not lend any arms or ammunition covered by this licence to any person, other than a member of his family or servant who may be employed by the licensee to protect the crops or cattle situated in the area specified in the licence and who is mentioned in column 2 of the licence.*

*4. The licensee shall-*

*(a) on demand by an authorised officer produce the weapons covered by this licence;*

*(b) not sell or transfer any arms or ammunition or any part thereof covered by the licence to any person not lawfully entitled to possess them;*

*(c) forthwith give information at the nearest police station of the loss or theft of any arms or ammunition covered by his licence; and*

*(d) give prior intimation to the licensing authority concerned of his intention to break up or dispose of any arms or ammunition or any part thereof (otherwise than as mentioned in (b) above); failing which, proof of the articles having been broken up or disposed of, will have to be furnished to the satisfaction of the licensing authority."*

15. Having considered the matter in its entirety, we converge to the view that no offence is made out even assuming the allegations to be correct made under section 68 of the Navy Act and once from the allegations and charges, no offence is made out, a person cannot be convicted or punished even if factual foundation is admitted by him.

16. As a result of foregoing discussion, the O.A deserves to be allowed and is accordingly allowed. The impugned orders dated 09.01.2012 and 20.08.2015 are set aside attended with direction that the Applicant shall be entitled to all consequential benefits flowing from setting aside of the impugned orders. The respondents shall comply with the order of the Tribunal within four months from the date of receipt of a certified copy of the present order.

17. There shall be no order as to costs.

**(Air Marshal Anil Chopra)**  
**Member (A)**

**(Justice D.P. Singh)**  
**Member (J)**

**Date: November, 25 , 2016.**

**MH/-**