

(2012) 03 DEL CK 0687

In the Delhi High Court

Case No : Writ Petition (C) No. 496 of 2004

Ex. Uttam Navik Dalbir Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 21-03-2012

Acts Referred:

Army Act, 1950 — Section 164
Army Rules, 1954 — Rule 66(1)
Border Security Force Act, 1968 — Section 117(2)
Border Security Force Rules, 1969 — Rule 149, 99
Coast Guard (Discipline) Rules, 1983 — Rule 18, 19, 20, 22, 26
Coast Guard (General) Rules, 1986 — Rule 30
Coast Guard Act, 1978 — Section 119, 19, 21, 27, 28
Constitution of India, 1950 — Article 20(2), 226, 227

Citation : (2012) 03 DEL CK 0687

Hon'ble Judges : Sudershan Kumar Misra, J;Anil Kumar, J

Bench : Division Bench

Advocate : Major K. Ramesh, for the Appellant; Ashwani Bhardwaj, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner has challenged the disciplinary proceedings of the Coast Guard held against the petitioner from 2nd June, 1997 to 6th June, 1997 and has sought the quashing of order dated 6th June, 1997 passed by the respondent No. 3 imposing the punishment of six months rigorous imprisonment on the petitioner and dismissing him from service. The petitioner has also sought the quashing of order dated 20th August, 1997 dismissing the appeal of the petitioner.

2. Relevant facts to comprehend the disputes are that the petitioner was employed in the coast guard as an Uttam Navik and on 30th March, 1997 he was posted to the ship named Vajra. According to the petitioner, the Commandant K.B.L. Bhatnagar, who was also performing the duties of the Executive Officer,

had directed the petitioner to attend the duties on the ship on 30th March, 1997, which was a Sunday and he had not protested against the same.

3. According to the petitioner, on the very same day of 30th March, 1997 his elder brother had arrived at his residence at Boriville and, therefore, the petitioner was required to attend to him. The petitioner, therefore, made a telephone call to his immediate superior officer, Assistant Commandant P.B. Mandal stating that he would be late by two hours from the usual time of duty as he had to serve breakfast to his elder brother. However, the Assistant Commandant instructed the petitioner to immediately start for joining his duty as the petitioner was already late. The petitioner further alleged that as he was not allowed to come late by two hours, he bid goodbye to his brother and reported at the ship Vajra at about 1130 hours. The petitioner disclosed that as he had already intimated the Assistant Commandant Mandal, therefore, there was bonafide reason on the part of the petitioner to have reached the ship late at 11.30 AM since the journey from Boriville to Vajra took not less than two hours. On reaching the ship Vajra the petitioner was, however, admonished by the Officer of the day (O.O.D). The petitioner's contention is that the very act of admonishing an employee is a punishment prescribed under the Coast Guard Act, 1978 which fact was also admitted by the OOD as well in his statement during the enquiry.

4. The petitioner further asserted that even after admonishing him, the OOD continued to abuse the petitioner and gave him a push with such force that the petitioner fell even though the petitioner was only requesting him to listen to his explanation. The petitioner also contended that OOD punched the cheek of the petitioner proclaiming that he would seize his MLR. The petitioner in the process allegedly even received an injury on his upper lip which was a wound of about 0.5 cm from which blood was oozing. The petitioner stated that he also received injuries on his chest.

5. The petitioner is also alleged to have slapped the OOD during the scuffle which was reported to the Commandant K.B.L. Bhatnagar who reached the ship after about 2 hours and under his orders the petitioner and the OOD were medically examined and a preliminary enquiry was conducted.

6. The petitioner alleged that thereafter, he was kept in close custody without having access to anybody. Though the petitioner had also reported the incident to Commandant K.B.L. Bhatnagar, who was the Executive Officer, but he failed to act on the complaint of the petitioner and on the basis of the preliminary enquiry, a one sided report was sent by the Commandant on 18th April, 1997 to the Director General Coast Guard Headquarter at New Delhi.

7. The charges were framed against the petitioner and a chargesheet was drawn for convening a Coast Guard Court for trial of the petitioner in terms of Rule 26 & 27 of the Coast Guard (Discipline) Rules, 1983. The charges framed against the petitioner were as under:-

(i) FIRST CHARGE: u/s 19(a) of Coast Guard Act, 1978:-

USING CRIMINAL FORCE TO HIS SUPERIOR OFFICER.

In that he, did, on 30-03-97, while on board CGS Vajra, at about 1140 hours strike his superior officer Assistant Commandant PB Mandal (0339-S) of the same ship, in the officers alleyway.

(ii) SECOND CHARGE : u/s 44 of the Coast Guard Act, 1978:-

AN ACT PREJUDICIAL TO GOOD ORDER AND COAST GUARD DISCIPLINE.

In that he, on 27-03-97, while on board the aforesaid ship, when ordered by Commandant KBL Bhatnagar (0113-E), Executive Officer, being his superior officer to report for duties as MI driver by 0900 hours. On 30-03-97, failed to report by the said stipulated time.

8. Pursuant to the convening of the Coast Guard Court the petitioner was tried from 2nd June, 1997 to 6th June, 1997 at Mumbai. The petitioner was represented by two advocates of Mumbai High Court namely Sh. Suresh Kumar and Ms. Sarita Joglekar. The Coast Guard Court thereafter, found the petitioner guilty of both the charges and awarded the sentence of six months rigorous imprisonment and dismissal from service.

9. The petitioner thereafter filed a petition to the Director General, Coast Guard through the Coast Guard Regional Commander (West) seeking suspension of the sentence of imprisonment in order to file a petition against the finding and sentence in terms of Section 119 of the Coast Guard Act, 1978. The petitioner also sought a copy of the Coast Guard Court proceedings which was handed over to his lawyer on 2nd July, 1997 at the request of the petitioner. The request of the petitioner for suspension of sentence was, however, rejected by the Director General Coast Guard and intimation thereof was sent to the advocate of the petitioner on 10th July, 1997.

10. Thereafter a petition, in the form of a letter, seeking judicial review of the order of punishment was sought on behalf of the petitioner on 24th July, 1997. The Director General, Coast Guard, however, rejected the appeal and sustained the findings in respect of both the charges on which the Coast Guard had found the petitioner guilty, though the sentence of rigorous imprisonment was reduced from six months to three months. The order of dismissal from the service was, however, sustained by the Director General, Coast Guard. This order was intimated to the petitioner's counsel by letter dated 20th August, 1997.

11. The petitioner has challenged his order of dismissal dated 6th June, 1997 and order of dismissal of his appeal dated 20th August, 1997 contending, inter-alia, that the petitioner was not informed about his right to appeal to any superior authority, nor was his sentence suspended to enable him to file an appeal. The petitioner asserted that since the OOD, Assistant Commandant P.B. Mandal had imposed the minor penalty of admonition which was also accepted by

him in his statement so he could not be punished again and the action of the respondents is hit by Article 20(2) of the Constitution of India. According to the petitioner, his coming late for duty is a specified misconduct under Rule 31 of the Coast Guard (Discipline) Rules, 1983 and, therefore, the respondents could not invoke the provisions of Section 44 of the Act of 1978. The petitioner further asserted that under Rule 31 of the Rules of 1983 the petitioner at the most was liable for forfeiture of one day's pay and one day's leave under sub Rule (a) of Rule 31 of the Rules of 1983. The petitioner emphasized that since he was late by 21/2 hours, therefore, he could only be punished under Rule 31 and even the punishment under Rule 31 could not be awarded to the petitioner as he had telephonically intimated the OOD that he would be late by 21/2 hours.

12. Relying on the statement of Commandant K.B.L. Bhatnagar, PW-1 the petitioner has challenged the plea of the respondents that the petitioner had not given any report of complaint of ill treatment of the petitioner by the OOD. On the contrary, the petitioner has contended that he had disclosed about the same during his first statement wherein he has categorically stated that he was abused filthily and physically beaten by the superior officer, Sh. B.P. Mandal, OOD. Thus, it is urged that it was bounden duty of the Executive Officer to have enquired into the matter and to have proceeded against Sh. B.P. Mandal u/s 21 of the Act of 1978. The act on the part of the Executive Officer, Sh. K.B.L. Bhatnagar is also reflective of his wriggling out of his responsibility.

13. The petitioner also highlighted the alleged contradictions in the statements of the witnesses examined during the enquiry and extensively quoted the same in the writ petition. To buttress the point that the petitioner was not solely responsible, he has also relied on the statement of Dr. Surgeon Lt. R.W. Thergonker who had affirmed in his statement that the petitioner had received a wound on his inner lips.

14. According to the petitioner, he could not be held solely responsible for the incident, as it was the result of grave provocation by the OOD in consequence to which there was a scuffle between the OOD and the petitioner and as a consequence of which both of them were injured. According to the petitioner, since it has been established on record that he had also received injuries, it was the boundant duty of the respondents to ascertain as to how the injuries were caused to the petitioner.

15. The petitioner has also challenged the imposition of punishment on the ground that he cannot be punished for the same offence twice as for the alleged misconduct of coming late, he had already been admonished by the OOD, which is construed as a punishment under the Coast Guard Act, 1978, as admitted by the OOD himself, in his statement during the enquiry and thus the petitioner could not have been punished twice for the same misconduct as per Article 20(2) of the Indian Constitution.

16. The respondents have refuted the pleas and contentions of the petitioner in

their Counter Affidavit dated 28th September, 1999 by contending that summary punishment had been imposed on the petitioner as per Section 57, and as per Rules 18 to 20 of the Coast Guard (Discipline) Rules, 1983. It is further contended that the petitioner on coming late on the day of the incident did not give an opportunity to the Officer of the Day (OOD) to initiate action as per the rules 18 and 19 of the Coast Guard Rules, 1983 and also that when the petitioner was questioned by the OOD he got into an argument and committed the serious offence of striking the OOD, his superior officer, which is an offence punishable u/s 19 of the Coast Guard Act, 1978. It is also urged that as per Rule 22 of the Coast Guard Rules, 1983, such an offence cannot be tried summarily by the Commanding Officer u/s 57 of the said Act and also that under Rule 30 of the Coast Guard (General) Rules, 1986 no power is vested in the OOD for punishing such offences.

17. With regard to the second charge framed against the petitioner, the respondents has contended that by not reporting for the duty as directed, the petitioner had committed an offence u/s 44 of the Coast Guard Act, 1978 and thus the second charge is legally correct. The Learned Counsel for the respondents has further contended that the petitioner had been given sufficient opportunity to put forward his defense during the pre-trial stage, as well as during the trial by the Coast Guard Court. It is only after taking into consideration the evidence on record and all the facts and circumstances that the Coast Guard Court had arrived at its finding of the guilt of the petitioner for the charges framed against him and had consequently awarded the sentence. It is also urged that the Coast Guard Proceedings are governed by the provisions the Coast Guard Act, 1978 and the Statutory Rules there under and that the provisions of the Cr.P.C. are not applicable and thus, there is no requirement for the Coast Guard Court or the Appellate Authority to give reasons for either its findings or the punishment awarded by it.

18. The Learned Counsel also relied on the judgment of Union of India v. Maj. A. Hussain 1998(1) SLR 343 wherein it was held that the High Court cannot minutely examine the record of the General Court Martial as if it is sitting in an appeal. It was further held that even though the Court Martial proceedings are subject to the Judicial Review by the High Court under Article 226, but, nevertheless, the Court Martial is not subject to the superintendence of the High Court under Article 227 of the Constitution and that the Court Martial proceedings are not to be compared with the proceedings in a Criminal Court under Cr.P.C.

19. this Court has heard the Learned Counsel for the parties in detail and has perused the record pertaining to the matter. The orders dated 6th June, 1997 and 20th August, 1997 have been challenged primarily on the ground that no reasons had been given either by the Coast Guard Court while imposing the penalty or the Director General/Chief Law Officer, Coast Guard while disposing of the appeal of the petitioner. Thus, it is urged that the said orders have not been

passed in a judicious manner and, therefore, they are bad in law and consequently, deserve to be quashed. The petitioner has also relied on the judgment of another Division Bench of this Court titled as "Nirmal Lakra v. Union of India & Ors." 2003 I AD (Del) 793 wherein it was held that the principles of natural justice prescribe the assigning of reasons whenever civil or evil consequences ensue by reason of an administrative order. In the said case it was further held that the Summary Security Force Court (SSFC) should have passed a speaking order while convicting the member of the force.

20. However, the decision of this Court in the matter Nirmal Lakara (supra) had been over-ruled by the Supreme Court in the matter of Union of India (UOI) and Another Vs. Dinesh Kumar, wherein it has been held that reasons would not be required to be given by the SSFC under Rule 149 of the BSF Rules, 1969 or by the appellate authority u/s 117(2) of the Border Security Force Act, 1968. In the said case, the Supreme Court had carefully examined the provisions of Rule 149 of the Border Security Force Rules, 1969 and observed that since in Rule 149, which specifically governs the procedure of SSFC, has expressly dispensed with the requirement of recording reasons, by the administrative authority exercising judicial and quasi-judicial functions, the order of punishment would not be vitiated solely on the ground that no reasons had been recorded while passing the same. The Apex Court had also placed reliance on the judgment of the Constitution Bench in the matter of S.N. Mukherjee Vs. Union of India, and noted that it was bound by its ratio, which declared that reasons are not required to be recorded for an order passed by the confirming authority, confirming the findings and sentence recorded by the court martial, as well as, for the order passed by the Central Government dismissing the post-confirmation petition. The relevant portion of the judgment is as follows:

11. In S.N. Mukherjee v. Union of India (cited supra), again more or the less same question came before the Constitution Bench of this Court in respect of the provisions u/s 164 of the Army Act, as also the Army Rules. The Court held that except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions must record the reasons for its decision. The Court was of the view that such reasons, if recorded, would enable the higher Courts like Supreme Court and the High Courts to effectively exercise the appellate or supervisory power. It also expressed that the requirement of recording reasons would necessarily (i) guarantee consideration by the authority; (ii) introduce clarity in the decisions; and (iii) minimize chances of arbitrariness in decision making. this Court also further went on to hold that the reasons need not be as elaborate, as in the decision of a Court of law and that the extent and nature of the reasons would depend on particular facts and circumstances. What was necessary was that the reasons were clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. However, the Court further went on to hold that the provisions of the Army Act and Rules suggested that at the stage of recording of findings and sentence, the court martial is not required

to record its reasons. this Court also held that the judge-advocate plays an important role during the course of trial at a general court martial and he is enjoined to maintain an impartial position. this Court further held that under the Army Rules, the court martial records its findings after the judge- advocate has summed up the evidence and has given his opinion upon the legal bearing of the case and that the members of the court have to express their opinion as to the findings by word of mouth on each charge separately and the finding on each charge is to be recorded simply as a finding of "guilty" or of "not guilty". It was held that it was only in case of Rule 66(1) of the Army Rules, where there was a recommendation for mercy, the reasons were required to be given. The Court further went on to hold in paragraph 48 that reasons are also not required to be recorded for an order passed by the confirming authority, confirming the findings and sentence recorded by the court martial. It further went on to hold that even the Central Government, dismissing the post-confirmation petition, is not required to record the reasons. Ultimately in para 48, the Court observed:

48. For the reasons aforesaid, it must be held that reasons are not required to be recorded for an order passed by the confirming authority confirming the findings and sentence recorded by the court martial as well as for the order passed by the Central Government dismissing the post-confirmation petition. Since we have arrived at the same conclusion as in *Som Datt Datta Case* the submission of *Shri Ganguli* that the said decision needs reconsideration cannot be accepted and is, therefore, rejected.

21. In this backdrop, it is clear that the provision for the SSFC and the appellate authority are *pari materia*, with Rule 149 and Section 117(2) of the Act, with the provisions applicable in the present case. Therefore, there cannot be any escape from the conclusion that as held by the Constitution Bench, the reasons would not be required to be given by the SSFC under Rule 149 or by the appellate authority u/s 117(2) of the Act. This position is all the more obtained in case of SSFC, particularly, as the Legislature has chosen not to amend Rule 149, though it has specifically amended Rule 99 w.e.f. 9.7.2003. It was pointed out that in spite of this, some other view was taken by the Delhi High Court in the decision in *Nirmal Lakra v. Union of India and Ors.* (102) 2003 DLT 415. However, it need not detain us, since Rule 149 did not fall for consideration in that case. Even otherwise, this Court would be bound by law declared by the Constitution Bench in the decision in *S.N. Mukherjee v. Union of India* (cited *supra*)."

22. Thus for the foregoing reasons, there is no requirement to record reasons by the administrative authority in its decision as long as it has been expressly or by necessary implication been excluded by the statutory provisions that govern its functioning. Rules 57 to 97 of the Coast Guard (Discipline) Rules 1983 prescribe the procedure for the Coast Guard Courts, wherein specifically Rules 92 and 93 deal with the aspect of the finding, pursuant to trial by the Coast Guard Court. The relevant rules are reproduced hereunder:

92. Deliberation on finding. - (1) The court shall deliberate on its finding in

closed court in the presence of the Law Officer.

(2) The opinion of each member of the court as to the finding shall be given by word of mouth on each charge separately starting with the junior most rank.

93. Record and announcement of findings. - (1) The finding on every charge upon which the accused is arraigned shall be recorded and except as provided in these rules, shall be recorded simply as a finding of "Guilty" or of "Not guilty".

((1A) The reasons for finding of "Guilty" or "Not Guilty", including cases where the court accepts the defence submission of "no case" to answer on charges under sections 27 and 28, shall be recorded;)

(2) Where the court is of the opinion as regards any charge that the facts proved do not disclose the offence charged or any offence of which he might under the Act legally be found guilty on the charge as laid, the court shall acquit the accused of that charge.

(3) Where the court is of the opinion as regards any charge that the facts which it finds to be proved in evidence differ materially from the facts alleged in the statement of particulars in the charge but are nevertheless sufficient to prove the offence stated in the charge, and that the difference is not so material as to have prejudiced the accused in his defence, it may, instead of a finding of "not guilty" record a special finding.

(4) The special finding may find the accused guilty on a charge subject to the statement of exceptions or variation specified therein.

(5) Where there are alternative charges, and the facts proved appear to the court not to constitute the offence mentioned in any of those alternative charges, the court shall record a finding of "not guilty", on that charge.

(6) The court shall not find the accused guilty on more than one of two or more charges laid in the alternative, even if conviction upon one charge necessarily connotes guilty upon the alternative charge or charges.

(7) The finding on each charge shall be announced forthwith in the open court.

23. Thus it is inevitable to infer that Rule 93(1) expressly dispenses with the requirement of recording reasons while stipulating that only a finding of either "guilty" or "not guilty" is required to be specified. It is also pertinent to note that Rule 93(1) of the Coast Guard (Discipline) Rules 1983 is *pari materia* with Rule 149 of the BSF Rules, 1969 except for the requirement of recording the reasons for the finding of "guilty" or "not guilty" for offences under Sections 27 and 28 of the Coast Guard Act, 1978 which was brought about by the amendment carried out on 9th May 2005. Thus, as held in *Dinesh Kumar (supra)* there is no need for recording any reasons as the finding on every charge upon which the accused is arraigned. Thus, the order dated 6th June, 1997 passed by the Coast Guard Court and the order dated 20th August, 1997 passed by the Appellate Authority confirming the findings of the Coast Guard Court cannot be vitiated solely on the

ground that no reasons had been recorded.

24. The remaining pleas of the petitioner pertain to the finding the petitioner guilty for the charges framed against him. With regard to charge I the petitioner has urged that he had been greatly provoked by the OOD, as he had reprimanded him without giving him an opportunity to explain and that the scuffle had occasioned as a result of the provocation. He has also contended that the OOD had abused him in front of his juniors and that he had even threatened to seize the petitioner's MLR which facts were not taken into consideration by respondent no.3 while concluding on his guilt. According to the petitioner, the incident could have been diffused had the OOD acted with restraint instead of provoking the petitioner.

25. However, on examining the record, the evidence recorded, it is clear that none of the witnesses had deposed that the OOD had unnecessarily provoked the petitioner, nor is the same evident from the facts. It is not disputed by the petitioner that he was to report to duty at 0830 hours on 30th March, 1997, which he was well aware of. However, it was only at 0900 hours that the petitioner had called the OOD to inform him that he would be late for two hours and that too for an unconvincing reason of having breakfast with his brother. In the circumstances, the scolding or admonishment given by the OOD cannot be termed to be a provocation, but is, in fact, the necessary consequence of the admitted misconduct on the part of the petitioner. Also none of the witnesses have deposed that they had seen the OOD abusing the petitioner. Thus, there is no ground to accept the plea of the petitioner that he had been provoked, which is why he had a scuffle with the OOD, during which he had struck him.

26. Regarding the threat of seizing the petitioner's MLR the OOD himself had admitted the same during his examination and had further deposed that he had threatened the petitioner after the petitioner had slapped him, with the intension of deterring the petitioner from becoming more aggressive. this Court does not find the conduct of the OOD in the facts and circumstances to be abusive in any manner, to be construed as amounting to gross provocation as against the petitioner and thus cannot fault with the decision of respondent no.3 for dismissing the petitioner from the service by the impugned order.

27. The petitioner also contended that since it is clear that both the accused, as well as the OOD had received injuries due to the scuffle that ensued between them, and since he had received more grievous injuries than the OOD, it was wrong to have not arrayed the Assistant Comdt. P.B. Mandal (OOD) as one of the accused and impose the punishment prescribed u/s 21 of the Act, 1978, for the misconduct of ill-treating a sub-ordinate officer either in rank or position. According to the petitioner, he was deliberately isolated and blamed entirely for the whole episode that took place on the alleged day of the incident. The petitioner has also relied on the depositions of S.A. Ramtake, D. Kumar, Duty Adhikar and the Surgeon, Lt. R.W. Thergonker who had deposed about the petitioner and the OOD receiving injuries during the scuffle and thus the OOD

was also to be blamed for the alleged incident.

28. For the forgoing reason it cannot be inferred in the facts and circumstances that the OOD had provoked the petitioner. Also with regard to the reliance on the witnesses placed by the petitioner, none of them had deposed that they had seen the petitioner being beaten by the OOD. It would be pertinent to note that at the time the alleged scuffle had taken place, the persons present were S. A. Ramtake, Kumar and Bhagit all of whom had been examined. Perusal of their depositions do not reveal anything substantiating the plea of the petitioner, that they had witnessed the injuries being inflicted on the petitioner by the OOD, as claimed by him. In fact, at the time of the alleged incident it is clear that the only witness who had witnessed the entire episode was S.A. Ramtake. To question no. 252 whereby he was asked to recount what had happened on the said day, the said witness had replied as follows:

Q.252 What happened after that please inform the court in detail?

A. I came back after dropping the Commanding Officer at 1130 hrs. While I was parking the vehicle D Singh U/N also came there. I informed him about the problem in the vehicle. Then we both came to the ship. After that I was going to the OOD to make the report. D Singh U/N asked me where myself was going. I informed him that I was going to make report to the OOD. He waited there. I made the arrival report to the OOD. He waited there. I made the arrival report to the OOD. After 6 to 7 minutes, D Singh U/N also came there. He saluted and wished the OOD. OOD asked him why he was late by two hrs. During the talk between D Singh U/N and the OOD, D Singh's hand touched the OOD on which OOD shouted and asked him how you touched him. During that time BM Kumar NVK and KK Bhagit E/F were working in Cos cabin. D Singh U/N shouted at them to clear from the Officer's alleyway. They went away but I remained there. Thereafter both of them were holding each other. I was standing nearby and looking at the photograph put up on the wall. I saw D Singh U/N holding the hand of the OOD and the OOD was pushing him back. I got nervous and caught hold of D Singh U/N. While holding, near the EO's cabin, his identity card and other items fell down from his pocket. He asked me to leave him to pick up those items. As soon as I left him, he again rushed towards OOD, who was making a telephone call. He slapped him on the face and OOD pushed him back. I rushed towards him and told him "AB AAPSE MERA JAGADA HO JAYEGA CHALO VAHIN SE (Now I will have fight with you, go from here). While I was taking him away from the place, Duty Adhikari D Kumar came there. D Singh U/N was showing his lips having been hit, he was saying "He had completed 9 years of service, I am the father of 2 children I have been beaten". Thereafter myself and D Kumar P/N brought him to the gangway. There D Singh U/N was trying to call Borivali on telephone, but it was engaged. After some time the OOD also came there and asked Duty Adhikari to take his identity card. D Singh U/N asked what authority he had to take his identity card. Thereafter I went to the quarter deck. While outside D Singh U/N was talking to me that "ETHANA SAAL NAUKARI HO GAYA.

BAR AISA HOTA TO JAN SAY MAR DETA (I have put in 9 years of service had it been happened in civil would have killed).

29. In reply to the categorical question, whether the petitioner had hit the OOD when he was speaking on the phone in Question no. 282 the said witness clearly deposed that he did and he also divulged that the OOD had been hit on his left ear and that he himself had seen the mark on the OOD's face due to the slap. The surgeon Lt RW Thergonkar, who had examined both the petitioner and the OOD on the said date, had deposed in court that the OOD had suffered the injury of a contusion, which is a bruise, accompanied with the swelling behind the right cheek bone of the OOD. Thus there can be no ambiguity regarding whether or not the petitioner had slapped the OOD. The surgeon had further deposed that the petitioner had suffered a minute lacerated wound on the inner lips, measuring 0.5 cm x 0.5 cms and that there was no active bleeding. Thus on the preponderance of probability it could be inferred that the injury received by the petitioner might have occasioned during the scuffle, and it does not seem to have been intentionally inflicted by the OOD. In any case, none of the witnesses have deposed that they had seen the OOD hitting the petitioner. The petitioner himself has not denied that he had a scuffle with the OOD who was his superior at the time and thus it cannot be denied that he had acted in a manner very unbecoming of a member of the Coast Guard. The petitioner cannot justify his misconduct on the ground that he had been provoked by the OOD. In these circumstances there is no illegality or perversity in the inferences drawn on the basis of evidence recorded in the case and inferring that the charges framed against the petitioner have been substantiated and the guilt of the petitioner has been established.

30. With regard to Charge II the petitioner has contended that it is an admitted fact that the OOD had admonished the petitioner on reporting late for duty, which is one of the penalties stipulated u/s 57 of the Coast Guard Act, 1978. Thus, according to the petitioner, since he had already been punished for his misconduct, he could not have been punished again for the same misconduct as it will be barred under law. The petitioner contended that the misconduct of coming late is specified under Rule 31 of the Coast Guard (Discipline) Rules, 1983 thus, the respondents could not have invoked the provisions of Section 44 of the Act of 1978 for charge II, which is applicable only in those cases which involve acts construed to be prejudicial to the good order and discipline of the Coast Guard, which according to the petitioner is not the case in the facts and circumstances of the present case.

31. This plea had been raised before the appellate authority. It has been categorically denied by the respondents in the reply dated 29th July, 1997. In para 1 (A) the respondents had stated that the misconduct of the petitioner was not only that of coming late, which would have only attracted a minor punishment u/s 57 of the Coast Guard Act, 1978 read with Rule 31(a)(b) of the Coast Guard (Discipline) Rules, 1983. However, the petitioner had also

committed a serious offence of striking an officer of the day (OOD) which is punishable u/s 19 of the Act of 1978. Thus misconduct on the part was not confined to coming late but also included misbehaving and attacking a superior officer. Therefore, the petitioner cannot contend that he could not be punished u/s 44 of the Coast Guard Act, 1978. Therefore, the plea of the petitioner in this regard is to be repelled and cannot be accepted.

32. It is not denied that the petitioner was well aware of the fact that he had to report for duty on 30th March, 1997 at 0830 hours. For reaching at 0830 hrs, the petitioner was required to leave his place at least two hours before the time of reporting. It is also not denied that it was only at around 0900 hours that the petitioner had sought permission to come late by two hours. Therefore, it cannot be inferred that the petitioner was late after duly informing the concerned officer. If intention of the petitioner was to have complied with the order of his superior, then the petitioner should have left for his place of posting at 0630 hours, since, by his own admission, it took around two hours to travel from his residence to Vajra.

33. The next point for consideration is whether the misconduct of the petitioner is a minor offence under Rule 31 of the Coast Guard (Discipline) Rules, 1983 or a serious offence u/s 44 of the Act of 1978. The punishment of admonishment was given by the OOD at the time the petitioner had reported for duty, about 3 hours late, on 30th March, 1997. However, it is clear that the matter did not end there. From the statement of the witnesses, it is evident that the petitioner had argued with the OOD on being reprimanded for reporting late and had also involved himself in a scuffle with the OOD, during which he had struck the OOD, which undeniably is an act of gross misconduct and indiscipline that was not to be treated in isolation. In the facts and circumstances it cannot be accepted that the misconduct on the part of the petitioner was a minor offence under Rule 31 of the Coast Guard (Discipline) Rules, 1983. The misconduct on the part of the petitioner is apparently is an act prejudicial to the good order and discipline of the Coast Guard as stipulated u/s 44 of the Act of 1978. Consequently, the plea of the petitioner that he had already been punished for the said misconduct of reporting late to duty has to be repelled and thus in the facts and circumstances the bar prescribed under Article 20(2) of the Constitution of India, cannot be invoked.

34. The petitioner also contended that considering the fact that he has always been disciplined, obedient and efficient, which has been endorsed by the OOD himself and that he was unnecessarily scolded over a trivial matter and also that he had been provoked which is why he got into a scuffle with the OOD and that he too had received many injuries at the time, the punishment imposed upon him is highly disproportionate to the gravity of the misconduct committed by him. The petitioner has relied on the judgment of Ex-Naik Sardar Singh Vs. Union of India (UOI) and Others, wherein the Supreme Court had reduced the punishment and quashed the dismissal of the petitioner from the service.

35. It is settled law that it is not the function of the High Court exercising its jurisdiction under Article 226 to review the findings and to arrive at independent findings on the same evidence. In *State of Andhra Pradesh Vs. Sree Rama Rao*, it was held that where there is relevant evidence which the authority has accepted and which evidence may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court exercising its jurisdiction under Article 226 to review the findings and to arrive at an independent findings on the evidence. It was further held that if the enquiry has been properly held, the question of adequacy or reliability of the evidence cannot be canvassed before the High Court. In the facts and circumstances this Court does not find any irrationality, illegality or procedural impropriety in the actions of the respondents.

36. Thus, this would not go into the correctness of the charges established against the delinquent. It cannot take over the functions of the disciplinary authority. It also cannot sit in appeal on the findings of the disciplinary authority and assume the role of the appellate authority. It cannot interfere with the findings of the fact arrived at in the disciplinary proceedings except in the case of mala-fides or perversity i.e where there is no evidence to support a finding or where the finding is such that no one acting reasonably or with objectivity could have arrived at or where a reasonable opportunity has not been given to the delinquent to defend himself or it is a case where there has been non application of mind on the part of the inquiry authority or if the charges are vague or if the punishment imposed is shocking to the conscience of the Court. The Court will not interfere in such matters unless the decision is tainted by any vulnerability like illegality, irrationality and procedural impropriety. Whether action falls within any of the categories is to be established and mere assertion in that regard may not be sufficient. To be "irrational" it has to be held, that on material, it is a decision "so outrageous" so as to be in total defiance of logic or moral standards. If the power is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power shall be vitiated. Exercise of power will be set aside if there is manifest error in the exercise of such power or the exercise of power is manifestly arbitrary. To arrive at a decision on "reasonableness" the court has to find out if the respondents have left out a relevant factor or taken into account irrelevant factors. It was held in *M.V. Bijlani Vs. Union of India (UOI) and Others*, , that the Judicial review is of decision making process and not with re-appreciation of evidence. The Supreme Court in para 25 at page 96 had held as under:

25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analyzing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot

take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.

Similarly in *B.C. Chaturvedi Vs. Union of India and others*, , Supreme Court at page 759 has held as under:-

12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support there from, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappraise the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

37. In the circumstances, the Learned Counsel for the petitioner has not made out any grounds to demonstrate that the finding of guilt arrived at by the Coast Guard Court is so outrageous so as to be in total defiance of logic or reasoning. The finding of respondent no.3 is also not patently erroneous, nor does it suffer from any manifest error and in any case this Court is not to sit in appeal over and re-appreciate the evidence, already considered by the Coast Guard Court.

38. For the foregoing reasons, and in the facts and circumstances, there are no grounds to interfere with the orders of the respondents, nor is the petitioner entitled for any of the reliefs claimed by him. The writ petition is without any merit, and therefore, it is dismissed. The parties are however, left to bear their own costs.