

(2007) 06 AP CK 0067

In the Andhra Pradesh High Court

Case No : Writ Petition No. 17344 of 1995

Lt. Rajender Singh Punia

APPELLANT

Vs

Chief of Naval Staff and Another

RESPONDENT

Date of Decision : 11-06-2007

Acts Referred:

Army Rules, 1954 — Rule 14, 14(2)
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 9, 79
Constitution of India, 1950 — Article 226, 300
Navy Act, 1957 — Section 15, 15(2)
Navy Regulations — Regulation 216, 216(2), 216(3), 216(5)

Citation : (2007) 5 ALD 349 : (2007) 4 ALT 421

Hon'ble Judges : G.S. Singhvi, C.J

Bench : Single Bench

Advocate : M.R.K. Chowdary and M. Sudhir Kumar, for the Appellant; Deepak Bhattacharjee, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Singhvi, C.J.—This petition involves adjudication of the petitioner's challenge to order dated 28-7-1995 vide which he was discharged from naval service with effect from 10-8-1995 u/s 15(2)(a) of the Navy Act, 1957 (for short, "the Act") read with Regulation 216 of the Regulations Navy, Part II (statutory) (hereinafter referred to as "the Regulations").

The Facts:

(1) While the petitioner was posted as Lieutenant in Fleet Mail Office, INS Arnala, Lieutenant K.L. Godara, Executive Officer, INS, Makar lodged complaint dated 7-3-1994 that he i.e., the petitioner, who was the real uncle of his wife had been maintaining sexual relation with her. Along with the complaint, Lt. K.L. Godara enclosed copies of letters, one written by his own wife and the one written by the wife of the petitioner.

(2) On receipt of the complaint, the statements of Lt. P. Rawat and Lt. S.K.

Gupta, both of INS, Venduruthy were recorded, who confirmed the allegation made by Lt.K.L. Godara against the petitioner. The matter was then examined in Southern Naval Command Head Quarters and it was decided that the case be taken up with the Naval Head Quarters for termination of the petitioner's service in terms of Regulation 216 of the Regulations. Accordingly, letter No. 2010/50/109, dated 09-5-1994 was sent to the Chief of the Naval Staff, New Delhi (respondent No. 1 herein).

(3) Respondent No. 1 issued show cause notice dated 12-1 -1995 to the petitioner proposing termination of his service u/s 15(2)(a) of the Act read with Regulation 216 of the Regulations.

(4) The petitioner submitted reply dated 7-2-1999 and denied the allegation made by Lt.K.L. Godara. At the same time, he made a counter allegation against Lt.K.L. Godara that he was having affair with a divorced lady from Delhi.

(5) The reply of the petitioner was examined by Shri A.K. Sachdeva, Commador, Director Personnel Services, Naval Head Quarters, who opined that the explanation given by the petitioner was untenable and that the allegation levelled against the petitioner of having incestuous sexual relationship with his Niece i.e. Mrs. Vidya Godara is established. He recommended that action may be taken in terms of the proposal contained in the show cause notice. The recommendation of Commador, A.K. Sachdeva was approved by respondent No. 1. Thereafter, the matter was sent to the Ministry of Defence.

(6) On 24-7-1995, the then Defence Minister of the State (Raksha Rajya Mantri) approved the recommendation made by respondent No. 1 to discharge the petitioner from naval service u/s 15(2)(a) of the Act read with Regulation 216 of the Regulations. The decision taken by the Central Government was given effect to by respondent No. 1 by issuing order dated 28-7-1995.

2. The petitioner challenged the termination of his service on the following grounds:

(1) that respondent No. 1 does not have the jurisdiction to discharge or dismiss an officer u/s 15(2)(a) of the Act and, therefore, the order dated 28-7-1995 is liable to be declared nullity;

(2) that the allegation of his having illicit relationship with Mrs. Vidya Godara was totally false and was fabricated by the complainant for extraneous reasons;

(3) that the order of discharge from service is punitive in character and such an order could not have been passed without holding enquiry in accordance with the rules of natural justice and without assigning reasons, and

(4) that the impugned order is vitiated due to non-application of mind inasmuch as respondent No. 1 did not consider the reply filed by him in response to show cause notice dated 07-2-1995.

3. In the counter filed on behalf of the respondents, a preliminary objection has

been taken to the very maintainability of the writ petition on the ground of non-impleadment of the Union of India as party to the writ petition. On merits, the respondents have pleaded that action was taken against the petitioner strictly in accordance with Section 15(2)(a) and Regulation 216. In para 15 of the affidavit filed by him, Ambat Chacko Avarachan has averred that the discharge of the petitioner was approved by Raksha Rajya Mantri and thereafter, the order was communicated by respondent No. 1. According to Shri Avarachan, action was taken against the petitioner u/s 15(2)(a) of the Act read with Regulation 216 of the Regulations because the allegations of moral turpitude levelled against the petitioner was found correct.

4. Shir M.R.K. Choudary, learned Senior Counsel appearing for the petitioner argued that order dated 28-7-1995 is liable to be declared nullity because respondent No. 1 does not have the power to terminate the services of an officer u/s 15(2)(a). Learned Counsel emphasized that the approval given by the Defence Minister of State on the file cannot be treated as a compliance of the mandate of Section 15(2)(a) of the Act in terms of which, only the Central Government is competent to dismiss or discharge or retire from the naval service any officer or sailor. He further argued that even if the approval given on the file by the concerned Minister is treated as sufficient compliance of Section 15(2)(a), the impugned order is liable to be quashed because it was not preceded by an enquiry and no opportunity was given to the petitioner to defend himself against the charge of having illicit relationship with the wife of the complainant -Lt.K.L Godara.

5. Shri Deepak Bhattacharjee, learned Counsel for the respondents argued that the writ petition is liable to be dismissed because the petitioner has not impleaded Union of India as party respondent. He further argued that the termination of the petitioner's service cannot be invalidated on the ground of violation of Section 15(2)(a) because order dated 28-7-1995 was issued by respondent No. 1 in furtherance of the decision taken by the Government of India. He invited the Court's attention to the documents filed on 28-3-2007 to show that the recommendation made by respondent No. 1 for taking action u/s 15(2)(a) was approved by the Minister of State for Defence on 24-7-1995 and submitted that the irregularity, if any committed in the formalization of the action should not be made a ground for ordering reinstatement of the petitioner. Shri Bhattacharjee relied on the judgments of the Supreme Court in *State of Gujarat and Another Vs. Acharya Shri Devendraprasadji Pande*, and *Chief of Army Staff and Others Vs. Major Dharam Pal Kukrety*, and argued that the impugned order cannot be declared illegal on the ground of violation of the rules of natural justice. Learned Counsel also relied on the judgment of the constitution Bench of the Supreme Court in *S.N. Mukherjee Vs. Union of India*, and argued that the communication of the decision taken by the Central Government cannot be declared as vitiated simply because it does not contain detailed reasons.

6. I have considered the respective submissions and scrutinised the record.

7. I shall first deal with the preliminary objection taken by the respondents to the maintainability of the writ petition. In this connection, I consider it necessary to mention that at the commencement of arguments, attention of the learned Senior Counsel was drawn to the fundamental defect of non-impleadment of the Union of India as party respondent and he was asked whether he would like to remedy the defect. In reply, Shri M.R.K. Choudary submitted that his client's prayer is for quashing communication dated 28-7-1995 issued by respondent No. 1 and, therefore, the Union of India is not required to be impleaded as a party. It is, thus, evident that despite the specific objection taken in the counter-affidavit and opportunity given by the Court at the threshold of hearing, the petitioner has not chosen to implead the Union of India as party respondents.

8. The question whether the writ petition filed by an employee with the prayer for quashing the termination of his service, whether by way of punishment or otherwise, can be maintained without impleading the concerned State or the Union of India, as the case may be, as party respondent is no longer *res integra* and must be answered in negative in view of the judgments of the Supreme Court in *Shri Ranjeet Mal Vs. General Manager, Northern Railway, Baroda House, New Delhi and Another*, and *Chief Conservator of Forests, Govt. of A.P. Vs. The Collector and Others*, . The facts of the case in *Ranjeet Mal's* case (4 *supra*) show that the appellant had challenged his removal from service. A learned Single Judge of Rajasthan High Court dismissed the writ petition on the ground that the Union of India has not been impleaded as party to the writ petition and that the impleadment of General Manager, Northern Railway was not sufficient. The division Bench affirmed the decision of the learned Single Judge. Before the Supreme Court it was argued that the General Manager is the authority to hear appeal etc. against the removal and, therefore, non-impleadment of the Union of India was not fatal. The Supreme Court rejected the contention and held:

(1) It cannot be disputed that the appellant was a servant of the Union. It is equally indisputable that any order of removal is removal from service of the Union. The appellant challenged that order, Any order which can be passed by any Court would have to be enforced against the Union. The General Manager or any other authority acting in the Railway Administration is as much a servant of the Union as the appellant was in the present case.

(2) The Union of India represents the Railway Administration. The Union carries administration through different servants. These servants all represent the Union in regard to activities whether in the matter of appointment or in the matter of removal. It cannot be denied that any order which will be passed on an application under Article 226 which will have the effect of setting aside the removal will fasten liability on the Union of India, and not on any servant of the Union. Therefore, from all points of view, the Union of India was rightly held by the High court to be a necessary party. The petition was rightly rejected by the High Court.

9. In *Chief Conservator of Forests v. Collector* (5 *supra*), the Supreme Court

considered and upheld the objection taken on behalf of the respondents to the maintainability of the writ petition filed by Chief Conservator of Forests as well as the appeal arising therefrom. Paragraphs 12 and 13 of the judgment, which contained discussion on the subject, are extracted below:

12. It needs to be noted here that a legal entity-a natural person or an artificial person-can sue or be sued in his/its own name in a court of law or a tribunal. It is not merely a procedural formality but is essentially a matter of substance and considerable significance. That is why there are special provisions in the Constitution and the CPC as to how the Central Government or the Government of a State may sue or be sued. So also there are special provisions in regard to other Juristic persons specifying as to how they can sue or be sued. In giving description of a party it will be useful to remember the distinction between misdescription or misnomer of a party and misjoinder or non-joinder of a party suing or being sued. In the case of misdescription of a party, the court may at any stage of the suit/proceedings permit correction of the cause-title so that the party before the court is correctly described; however, a misdescription of a party will not be fatal to the maintainability of the suit/proceedings. Though Rule 9 of Order 1 CPC mandates that no suit shall be defeated by reason of the misjoinder or non-joinder of parties, it is important to notice that the proviso thereto clarifies that nothing in that Rule shall apply to non-joinder of a necessary party. Therefore, care must be taken to ensure that the necessary party is before the court, be it a plaintiff or a defendant, otherwise, the suit or the proceedings will have to fail. Rule 10 of Order 1 CPC provides remedy when a suit is filed in the name of the wrong plaintiff and empowers the court to strike out any party improperly joined or to implead a necessary party at any stage of the proceedings.

13. The question that needs to be addressed is, whether the Chief Conservator of Forests as the appellant-petitioner in the writ petition/appeal is a mere misdescription for the State of Andhra Pradesh or whether it is a case of non-joinder of the State of Andhra Pradesh-a necessary party. In a lis dealing with the property of a State, there can be no dispute that the State is the necessary party and should be impleaded as provided in Article 300 of the Constitution and Section 79 CPC viz. in the name of the State/Union of India, as the case may be, lest the suit will be bad for non-joinder of the necessary party. Every post in the hierarchy of the posts in the government set-up, from the lowest to the highest, is not recognised as a juristic person nor can the State be treated as represented when a suit/proceeding is in the name of such offices/posts or the officers holding such posts, therefore, in the absence of the State in the array of parties, the cause will be defeated for non-joinder of a necessary party to the lis, in any court or tribunal.

10. In view of the above stated legal position, it must be held that non-impleadment of the Union of India as party to the writ petition is fatal to the petitioner's prayer for quashing the order of his discharge from service. It

cannot, even for a moment, be disputed that the Ministry of Defence and all the wings of Army are part of the Union of India, which represents the entire administration. The officers and employees employed in various departments are employed under the Union of India and the order, if any, passed for reinstatement of dismissed employee/officer is required to be enforced by the Union. Therefore, non-impleadment of Union of India as party respondent is fatal to the tenability of the petitioner's prayer.

11. The next question which merits consideration is whether the petitioner's discharge is ultra vires the provisions of Section 15(2)(a) of the Act read with Regulation 216 of the Regulations or is vitiated due to violation of the rules of natural justice? For the sake of convenient reference, these provisions are extracted below:

Section 15 of the Navy Act, 1957

15. Tenure of service of officers and sailors.

- (1) Every Officer and sailor shall hold office during the pleasure of the President.
- (2) Subject to the provisions of this Act and the regulations made thereunder,-
 - (a) the Central Government may dismiss or discharge or retire from the naval service any officer or sailor;
 - (b) The Chief of the Naval Staff or any prescribed officer may dismiss or discharge from the naval service any sailor.

Regulation 216 of the Regulations

216. Misconduct of officers-termination of service by Government on grounds of misconduct,

- (1) When it is proposed to terminate the service of an officer u/s 15 on account of misconduct, he shall be given an opportunity to show cause in the manner specified in Sub-regulation (2) against that action:

Provided that this sub-regulation shall not apply-

- (a) where the service is terminated on the ground of misconduct which has led to his conviction by a civil court; or
 - (b) where the Government is satisfied that for reasons, to be recorded in writing it is not expedient or reasonably practicable to give to the officer an opportunity of showing cause.
- (2) When after considering the reports on an officer's misconduct, the Government or the Chief of the Naval Staff is satisfied that the trial of the officer by a court-martial is inexpedient or impracticable, but is of the opinion that the further retention of the said officer in the service is undesirable, the Chief of the Naval Staff, shall so inform the officer together with all reports adverse to him

and he shall be called upon to submit, in writing, his explanation and defence;

Provided that the Chief of the Naval Staff may withhold from disclosure any such report or portion thereof if, in his opinion, its disclosure is not in the interest of the security of the State.

(3) In the event of the explanation of the officer being considered unsatisfactory by the Chief of the Naval Staff, or when so directed by the Government, the case shall be submitted to the government with the officer's defence and the recommendation of the Chief of the Naval Staff as to the termination of the officer's service in the manner specified in Sub-regulation (5).

(4) ...

(5) When submitting a case to the government under Sub-regulation (3), the Chief of the Naval Staff shall make his recommendation whether the officer's service should be terminated and if so, whether the officer should be-

(a) dismissed from the naval service, or

(b) discharged from the service; or

(c) called upon to retire; or

(d) called upon to resign.

(6) The Government after considering the reports and the officer's defence, if any as the case may be, and the recommendation of the Chief of the Naval Staff, may dismiss or discharge the officer with or without pension or call upon him to retire or resign and on his refusing to do so, the officer may be compulsorily retired or discharged from the service on pension or gratuity, if any, admissible to him.

12. A conjoint reading of the provisions reproduced above makes it clear that the Central Government is empowered to dismiss or discharge or retire from the naval service any officer or sailor. The Chief of the Naval Staff or any prescribed officer can dismiss or discharge from the naval service any sailor. This power is required to be exercised subject to the provisions of the Act and the Regulations made thereunder. Regulation 216 postulates termination of service by the government on grounds of misconduct. Clause (1) of this Regulation provides for giving of an opportunity to show cause to an officer whose service is proposed to be terminated u/s 15 on account of misconduct. The requirement of show cause notice can be dispensed with if the service is terminated on the ground of misconduct, which led to his conviction or where the government is satisfied that it is not expedient or reasonably practicable to give an opportunity of showing cause to the officer. Clause (2) speaks of the satisfaction of the government or the Chief of the Naval Staff on the issue of inexpediency or impracticability of issuing showing cause and giving of opportunity to the officer to submit his explanation/defence in writing. In terms of proviso to this clause, the Chief of the Naval Staff can withhold disclosure of any report or portion thereof if he is of the

opinion that such disclosure is not in the interest of the security of the State. If the explanation of the officer is found to be unsatisfactory by the Chief of the Naval Staff, then the case is required to be submitted to the government with the officer's defence and the recommendations of the former. Clause (6) of Regulation 216 lays down that the Government may, after considering the reports and the officer's defence, if any, and the recommendations of the Chief of the Naval Staff, dismiss or discharge the officer with or without pension or call upon to retire or resign and on his refusing to do so, compulsorily retire or discharge him from service.

13. The above analysis of the relevant statutory provisions shows that the discharge of an officer in terms of Section 15(2)(a) need not be preceded by a regular departmental enquiry, which is usually held before terminating the services of a civil servant by way of punishment. The scheme of the Act and the rules envisages issue of show cause notice to the concerned officer, supply of adverse reports to him with an opportunity to submit his defence and consideration thereof by the competent authority. In *Chief of Army Staff v. Major Dharam Pal Kukrety* (2 *supra*), the Supreme Court interpreted Rule 14 of the Army Rules, 1954, which is *pari materia* to Regulation 216 of the Navy Regulations and observed:

Under Sub-rule (2) of Rule 14, the foundation of the jurisdiction of the Central Government or the Chief of the Army Staff to issue a show cause notice is the satisfaction of the Central Government or the Chief of the Army Staff after considering the reports of an officer's misconduct that the trial of the officer by a court-martial is inexpedient or impracticable and the opinion formed that the further retention of the officer in the service is undesirable.

14. The Supreme Court then considered the argument that once the court-martial was held, the Central Government or the Chief of Army Staff cannot resort to Rule 14 and held:

Though it is open to the Central Government or the Chief of the Army Staff to have recourse to that Rule in the first instance without directing trial by a court-martial of the concerned officer, there is no provision in the Army Act or in Rule 14 or any of the other rules of the Army Rules which prohibits the Central government or the Chief of the Army Staff from resorting in such a case to Rule 14. Can it, however, be said that in such a case a trial by a court-martial is inexpedient or impracticable? The Shorter Oxford English Dictionary, Third Edition, defines the word "inexpedient" as meaning "not expedient; disadvantageous in the circumstances, unadvisable, impolitic." The same dictionary defines "expedient" *inter alia* as meaning, "advantageous, fit, proper, or suitable to the circumstances of the case." Webster's Third New International Dictionary also defines the term "expedient" *inter alia* as meaning "characterized by suitability, practicality, and efficiency in achieving a particular end: fit, proper, or advantageous under the circumstances."

In the present case, the Chief of the Army Staff had, on the one hand, the finding of a general court-martial which had not been confirmed and the Chief of the Army Staff was of the opinion that the further retention of the Respondent in the service was undesirable and, on the other hand, there were the above three High Court decisions and the point was not concluded by a definitive pronouncement of this court. In such circumstances, to order a fresh trial by a court-martial could certainly be said to be both inexpedient and impracticable and the only expedient and practicable course, therefore, open to the Chief of the Army Staff would be to take action against the Respondent under Rule 14, which he did. The action of the Chief of the Army Staff in issuing the impugned notice was, therefore, neither without jurisdiction nor unwarranted in law.

15. In my opinion, the aforementioned judgment is a complete answer to the petitioner's challenge to his discharge from service on the ground of violation of Section 15(2)(a) and Regulation 216 and the rules of natural justice.

16. The argument of Shri M.R.K. Choudary that the petitioner's discharge is liable to be invalidated because the final communication was issued by respondent No. 1 and not by the Central government, which is competent to issue order in terms of Section 15(2)(a) sounds attractive, but lacks merit. A combined reading of Section 15 and Regulation 216 shows that the final decision in the matter of dismissal or discharge or retirement of an officer is required to be taken by the Central Government. However, the statute does not mandate that the order must be issued in the name of the Central Government. What Section 15(2)(a) and Regulation 216 postulate is that the decision to dismiss or discharge or retire any officer must be taken by the Central Government. There is nothing in the language of these provisions from which it can be inferred that the decision taken by the Central Government cannot be communicated by respondent No. 1 or any other authorized officer. The documents produced before the Court shows that the decision to discharge the petitioner from service was taken by the Central Government and not by respondent No. 1. Therefore, the order impugned in the writ petition cannot be nullified on the ground that the Central Government had not taken decision to discharge the petitioner from service.

17. On the basis of the above discussion, I hold that the petitioner's discharge from service in terms of Section 15(2)(a) read with Regulation 216 does not suffer from any legal infirmity.

18. In the result, the writ petition is dismissed.