

(2003) 03 OHC CK 0019
In the Orissa High Court
Case No : OJC No. 12775 of 1999

Md. Abbas Mohidden

APPELLANT

Vs

The Director General, Coast Guard and Another

RESPONDENT

Date of Decision : 05-03-2003

Acts Referred:

Citation : (2003) 95 CLT 593

Hon'ble Judges : P.K. Balasubramanyan, C.J; Pradip Mohanty, J

Bench : Division Bench

Advocate : Y. Das, N.C. Mohanty, R. Sahu, P.K. Dhal, A.K. Biswal and B.B. Panda, for the Appellant; M. Agrawal, Standing Counsel (Central), for the Respondent

Judgement

Pradip Mohanty, J.—The petitioner in this writ application under Articles 226 and 227 of the Constitution of India challenges the order under Annexures-5 and 6 issued by the Director General, Coast Guard.

2. Shorn of unnecessary details, the petitioner's case is that he joined as Engineer Officer of the Coast Guardship "Jijabai" on 12.8.1993, the headquarters being at Paradip in the State of Orissa. The petitioner went on leave on 27.3.95 till 17.4.95 for his marriage. According to the petitioner, a Board of Enquiry was held from 29.5.95 to 10.6.95 in Coast Guard Ship "Jijabai" regarding the defects of machinery. After completion of the Board of Enquiry, the petitioner went for sailing in the said "Jijabai Ship". On being transferred from C.G.S. "Jijabai", the petitioner joined at Coast Guard Station, Madras, Coast Guard Region (East) on 29.1.96. While the petitioner was continuing at the Coast Guard Region (East), Madras, the Commanding Officer of the said Coast Guard region directed in the letter under Annexure-1 to prepare record of evidence of tentative charges against the petitioner. A charge-sheet under Annexure-2 was also issued. Thereafter, the Director General, Coast Guard passed an order to convene a Coast Guard Court for trial of the petitioner under Annexure-3 dated 27.8.96. The petitioner had challenged the same in this Court by filing a writ petition in

OJC No. 10043 of 1996. This writ application was disposed of vide order dated 6.4.98 with the direction that the petitioner would make a representation to the Director General, Coast Guard, within two weeks, which shall be disposed of by the concerned authority. It was further directed that till disposal of the representation, trial shall not proceed.

It appears, after disposal of OJC No. 10043 of 1996, the Coast Guard Court was dissolved by the concerned authority under Annexure-4. Thereafter, charges were framed under Annexure-6 dated 10.8.99 and a Coast Guard Court was convened on 11.10.1999 under Annexure-5 by the Director General of Coast Guard. These two orders are under challenge in this writ application.

3. The opposite parties have filed their counter-affidavit opposing the grounds averred and the prayer made by the petitioner. It is stated in the counter-affidavit that the Coast Guard Court after assembling on 24.9.96 was adjourned sine die because of the interim order passed by this Court in OJC No. 10043 of 1996. As the Coast Guard Court convened could not proceed with the trial, and in view of the fact that few of the officers constituting the Court had been transferred out to different Coast Guard Units, and the Commanding Officer of the petitioner having also changed, it was decided to dissolve the said Coast Guard Court in exercise of the powers u/s 66(3) of the Coast Guard Act, 1978 (hereinafter referred to as "the Act"). It is also stated that the Director General of Coast Guard did not find any material in the representation of the petitioner to absolve him from the earlier charges. It is further stated that the two charges under Annexure-6 on which the petitioner was to be tried by the earlier Coast Guard Court, do not stand negated and the fresh recording of evidence (for short "R.O.E.") is to be carried on. It is also stated that Director General of Coast Guard has convened the present Coast Guard Court for the trial of the petitioner since charges against him have not been dismissed.

4. The learned counsel for the petitioner submits that the orders under Annexures-5 and 6 are bad in law, because there is mala fide exercise of power, and the entire proceeding has been conducted de hors the principle of NATURAL JUSTICE. The learned counsel also submits that the instant proceeding is barred by limitation in view of provisions contained in Section 51 of the Act. The learned Counsel in support of his contention with regard to mala fide, further submitted that as he was not pulling on well with his Commanding Officer, he has been victimised. Though he was on leave for a part of the charge-period, yet the proceeding has been initiated.

The learned Standing Counsel, on the other hand, submitted that the proceeding has been concluded and has been kept in a sealed cover in view of the interim order passed by this Court. It is also submitted by the learned Standing Counsel that the instant proceeding is not barred by limitation and a Coast Guard Court which is dissolved, can be constituted and the petitioner can be tried again under Sub-section (4) of Section 66 of the Act.

5. Having heard the learned counsel for the parties, we are of the view that all the submissions raised can be effectively adjudicated upon by the Coast Guard Court. Suffice it to say that the question of limitation being a mixed question of fact and law, the same should be urged before the Coast Guard Court at the first instance.

The other question that the petitioner was on leave during the relevant period, and hostility of the higher officers, are matters of evidence. Therefore, we are not in a position to adjudicate the same in a writ application.

6. Be that as it may, in view of the nature of order we propose to pass, it is not necessary for us to answer the contention raised on behalf of the parties. Accordingly, we direct that the petitioner is at liberty to raise all such contentions before the Coast Guard Court and we are sure that the said Court shall take the same into consideration while passing the final order.

Although the proceeding has been concluded and kept in sealed cover, as submitted by the learned Standing Counsel, yet we direct that the opposite parties shall permit the petitioner to raise all his objections including mala fide and question of limitation and, thereafter, the Coast Guard Court will pass final order in the said proceeding. In the event the decision of the said Court is not favourable to the petitioner, then the petitioner shall be permitted to make an application as visualised under Sections 117 and 119 of the Act. The authority on receipt of such application shall deal with the same in accordance with law. If the grievance of the petitioner still persists then the petitioner is at liberty to approach this Court.

7. With the aforesaid observations the writ application is disposed of. No cost.

P.K. Balasubramanyan, C.J.

8. I agree.