

(1994) 09 BOM CK 0049

In the Bombay High Court

Case No : Writ Petition No. 3032 of 1991

Parmjit Singh Nayyar

APPELLANT

Vs

Chief of Naval Staff and Others

RESPONDENT

Date of Decision : 20-09-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 226
NAVY ACT, 1957 — Section 184, 68

Citation : (1994) 09 BOM CK 0049

Hon'ble Judges : S.M. Jhunjhunwala, J;M.L. Pendse, J

Bench : Division Bench

Judgement

Pendse, J.—The petitioner joined Indian Navy as an Artificer Apprentice on August 4, 1977. After completion of training, the petitioner served in various ships and establishments of Indian Navy. On January 3, 1988 the petitioner was sent to Yeovil (U. K) for training in maintenance of Seaking Helicopters, then being acquired by Indian Navy. The petitioner, after completion of training, returned back to India and thereafter was promoted to the rank of Master Chief Air artificer II on October 1, 1989.

2. While in United Kingdom, the petitioner came in contract in with Miss Sally Recardo, a British national and who was working in the hotel where the petitioner was residing. The petitioner developed intimate relations with Recardo. In year 1988, Miss Recardo came down to India at the cost of the petitioner. The petitioner secured leave for two months and travelled with Recardo all over the country. Miss Recardo came back to India again in June 1989 and the petitioner took her to Goa and other places around Bombay. Miss Recardo came back to Bombay on third occasion in May 1990 and was accommodated by the petitioner. On May 20, 1990 while the petitioner was riding a motorcycle with Miss Recardo as a pillion passenger, the motorcycle met with an accident. The petitioner suffered injuries and was admitted to Cooper Hospital and thereafter to Hinduja National Hospital. As the petitioner failed to report back to INS Gomati, a ship to which the petitioner was attached, the senior officers opened the locker of the

petitioner and removed several articles and prepared a panchanama.

3. After the petitioner returned back to duty, the petitioner was interrogated and after the petitioner admitted about intimate relations with Miss Recardo, was taken to Delhi and kept in the Red Fort for closer interrogation. The petitioner was then brought back to Bombay and was charged u/s 68 of the Navy Act 1957. The charges was that between January 4, 1988 and May 20, 1990 the petitioner maintained continuous and intimate contract with Miss Recardo, a British National in contravention of Chapter VII (0739) of Western Naval Command Order (Personnel and Administration) Security and thereby committed an offence punishable u/s 68 of the Navy Act.

The investigating Officer warned the petitioner in accordance with Regulation 28(1) of the Regulations for the Navy Part II. The petitioner was then asked as to whether he understood the charge as well as the warning. The petitioner replied in the affirmative and then asked whether he wishes to make any statement in answer to the charge. The petitioner pleaded guilty to the charge and submitted a written statement. The petitioner admitted that after he went to United Kingdom on January 4, 1988 he was introduced to Miss Recardo by one Pillai who knew her for previous two years. The petitioner admitted that he developed further close relation and though the petitioner did not give her forwarding address, Miss Recardo found it out and addressed a letter requesting him to make arrangement for a visit to India. The petitioner admitted that Miss Recardo visited India on three occasions and was entertained by him. The petitioner claimed that he was unaware of the rules pertaining to contract with foreign nationals. The petitioner claimed that he did not take prior approval or gave intimation of his contact with Miss Recardo to the superior officers. The petitioner claimed that he did not discuss with Miss Recardo the service matters or did not take her to any installation of Navy.

The explanation given by the petitioner was not acceptable and the Commanding Officer prepared and signed the punishment warrant dismissing the petitioner from service. The punishment imposed was approved by the Flag Officer Chief in Command and subsequently by Chief of the Naval Staff. The order dated August 2, 1991 served upon the petitioner is under challenge in this petition filed under Article 226 of the Constitution.

4. Shri Chandrachud, learned counsel appearing in support of the petition, submitted that it is not permissible for the respondents in exercise of Regulation No. 7A to impose the punishment of dismissal on a Master Chief Petty Officer. The learned Counsel submitted that the major penalty of dismissal could not have been imposed with reference to the summary powers conferred under Regulation 13 and it was incumbent upon the respondents to hold Court Martial proceedings as required under Chapter V of the Regulations. The learned counsel submitted that in any event, the punishment was harsh and is required to be suitably reduced. We are unable to find any merit in any of the contentions of the learned counsel.

In exercise of powers conferred by section 184 of the Navy Act, the Central Government has framed Regulations known as the Navy (Discipline and Miscellaneous Provisions) Regulations 1965. Chapter II deals with subject of "summary punishment and procedure" and Regulation 7 sets out powers of punishment to the Commanding Officers. Regulation 7A was inserted by amendment in year 1982 and Regulation 7A deals with punishment applicable to Master Chief Petty Officers. The Regulation sets out that a Master Chief Petty Officer may be tried and punished summarily by the Commanding Officer of the rank of Commander and above and may then be awarded punishment Nos. 3, 5, 6, 10, 12 and 14 as mentioned in sub-regulation (1) of Regulation 13. Regulation 13 inter alia provides that the punishment set out can be awarded summarily to Sailors other than Artificer Apprentices and Boys under training subject to the provisions of the Act and the Regulations. Punishment at item No. 3 is dismissal from service Naval Service. Shri Chandrachud submitted that the punishment of dismissal from Naval service as set out at item No. 3 in Regulation 13 cannot be imposed on a Master Chief Petty Officer, the post which the petitioner was holding. The submission is devoid of any merit in view of the specific provisions of Regulation 7A which deals with punishment applicable to Master Chief Petty Officers.

5. The second contention urged by the learned counsel is that in case the major punishment of dismissal from Naval service was to be imposed upon the petitioner, then the summary procedure prescribed under Regulation 13 could not have been followed and it was incumbent upon the Commanding Officer to make an application for trial of the petitioner by Court Martial. In support of the submission, reliance was placed upon Regulation 14B. The Regulation inter alia provides that the Commanding Officer shall make an application for the trial of an offender by Court Martial when any offence is committed which the Commanding Officer considers ought to be tried by Court Martial. The assumption of the learned counsel that the punishment of dismissal from Naval service cannot be imposed without holding of a Court Martial is entirely unwarranted. As mentioned hereinabove, Regulation 13 clearly prescribes that the punishment of dismissal from Naval service can be imposed as a summary punishment and such punishment is permissible in respect of Master Chief Petty Officer in accordance with Regulation 7A.

The submission of the learned counsel that it was incumbent for the Commanding Officer to recommend holding of a trial by Court martial is without any merit for more than one reason. In the first instance, it was entirely unnecessary for the Commanding Officer to do so as the conditions of Regulation 148 were not attracted. Secondly, it was wholly unnecessary to hold a trial by Court Martial when the petitioner in unequivocal terms admitted the charge of having contracts with the foreign national without prior approval of the superior officers. The petitioner has not only admitted having intimate relations with Miss Recardo while in United Kingdom, but on more than two occasions when Miss Recardo visited India at the expenses of the petitioner. The petitioner did not

dispute that the statements recorded by the Commanding Officer were accurate but indeed reiterated the same in the present petition also. The learned counsel, during the arguments, frankly stated that the petitioner is not disputing the contract with the foreign national but pleaded that the petitioner had not disclosed any secrets to Miss Recardo. The issue is not whether the petitioner disclosed the secrets to his knowledge but whether he had contract with the foreign national or what the foreign national gathered from the petitioner and which may not have been known to the petitioner.

The Naval Authorities had issued a secret document known as Charge document and it inter alia sets out the policy and the procedure to be followed by service personnel when they come into contract with foreign national. Though it was not practicable to codify instructions to cover each and every eventuality, the secret document sets out general rules for guidance. Rule (a) provides that Indian Navy Personnel are normally not to contract foreign nationals except when it is necessary for them to do so and in which case prior approval of Naval Headquarters (Director of Naval Intelligence) or Administrative Authority concerned is to be obtained. It is futile for the petitioner to claim that he was not aware of such instructions. Indeed, everyone is expected to know that the contact with foreign national is not always innocent and more so in the case of personnel working in the Navy. The contracts with foreign national are likely to lead to danger to the security of his country and it is futile for the petitioner to claim when found out that he was not aware of the restrictions. In our judgment, the claim of the petitioner that it was essential to hold Court Martial to impose major punishment is required to be rejected.

6. The final contention of Shri Chandrachud is that the punishment of dismissal from service is extremely harsh and disproportionate to the charge levelled. The learned counsel urged that initially the punishment recommended by the Commanding Officer was forfeiture of seniority but subsequently the Commanding Officer at the behest of the superiors, altered the same and recommended dismissal from service. The learned counsel urged that though it is undoubtedly true that the Flag Officer Commanding in Chief was entitled to enhance the punishment recommended by the Commanding officer, it was not necessary for flag Officer Commanding in Chief to prescribe punishment of dismissal from service and the superior authorities to confirm the same. In support of the submission that it is open for this Court exercising writ jurisdiction to interfere with the quantum of punishment, reliance was placed on the decision reported in *Ranjit Thakur Vs. Union of India (UOI) and Others*, . It was urged with reference to paragraph 9 of the judgment that penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution. We are unable to find any merit in the submission for more than one reason. In the first instance, it is not permissible for this Court exercising writ jurisdiction to interfere with the quantum of punishment merely because it is claimed that the misconduct was not grave and such misconduct is

committed by several other personnel in the Navy. Secondly, on the facts and circumstances of the case, we have no hesitation in concluding that the misconduct was extremely grave. The facts admitted by the petitioner clearly establish that the petitioner came in close contract with the foreign national while undertaking training in United Kingdom. The petitioner thereafter invited the foreign national to this country on three occasions and that too within short span of two years. The petitioner borne her expenses at least on one occasion. The petitioner never sought prior approval to have contacts nor did ever think it necessary to inform the superior officers of the friendship and contact developed. The petitioner had travelled with the foreign national all over the country on more than two occasions after obtaining leave from the service. These facts, in our judgment, clearly indicate grave misconduct on the part of a person serving in the Navy and who is closely connected with the security of the country. In our judgment, the punishment imposed is neither disproportionate to the misconduct nor harsh as claimed by the learned counsel. In our judgment, the petitioner is not entitled to any relief and the petition must fail.

7. Accordingly, rule is discharged, but there will be no order as to costs.