
(2011) 07 AP CK 0059

In the Andhra Pradesh High Court

Case No : Writ Appeal No: 2540 of 2005

Pradeep Kumar Singh

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 28-07-2011

Acts Referred:

Naval (Discipline Miscellaneous Provisions) Regulations, 1965 — Regulation 36, 37, 37(4), 5, 7
Navy Act, 1957 — Section 41, 72(2), 74
Penal Code, 1860 (IPC) — Section 497

Citation : (2011) 07 AP CK 0059

Hon'ble Judges : Ghulam Mohammed, J;G. Chanpraiah, J

Bench : Division Bench

Advocate : J. Sreenivasa Rao, for the Appellant; Raja Shekhar Rao Salvaji for the Respondents No. 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

Sri G.M., J.—This Writ Appeal is filed against the order of dismissal dated 14.09.2005 passed by a learned single Judge of this Court in W.P. No. 18454 of 2002 in which the Appellant, being the Appellant in the said Writ Petition 18454 of 2002, challenged the order of the third Respondent dated 14.05.1999 in GX No. 1595/1999 imposing rigorous imprisonment for 90 days and dismissal from service and deprivation of Good Conduct Badge.

2. The facts, in brief, are that the Appellant was appointed as Mechanical Engineer - I in Naval Service in the year 1995 and that he was on duty at Volna Tower on Dolphins Nose Hill at Visakhapatnam from April 1998. On 29.12.1998 at about 6.00 PM he went to O.P Pandey's quarters informing his colleague-Mr. H. Singh to collect uniform items to get ready for Muster Call on 31.12.1999 and after collection of the uniform, the Appellant could not reach the Volna Tower and so, he informed the said Mr. Singh on telephone that he could not come there as he had to give urine and blood samples at I N S Veera Bahu, and took shelter in the house of Mr. Pandey. When he was about to leave the quarters early in the

morning, Mr. Pandey came there and suspected that the Appellant had illicit intimacy with his wife and gave a complaint against the Appellant. The investigation conducted thereon by the Regulating Officer revealed no case against the Appellant. But, the Unit Regulating Officer started investigating the case again recording statements of the witnesses including the Mrs. Kiran Pandey, who categorically stated that she had no illicit intimacy with the Appellant and upon pressure by her husband, she wrote whatever dictated by him. The Appellant was also forced by his unit officer to confess about the intercourse. Thereafter the officer gave a false report stating that a prima facie case is against the Appellant. A summary enquiry was conducted against the Appellant, but no prime witness was examined in his presence nor was he served with any charge sheet, and that he was not given any opportunity to cross examine the witnesses. On 14.05.1999 an order was served on the Appellant awarding punishment of a) rigorous imprisonment for 90 days, b) dismissal from naval service and c) deprivation of First Good Conduct Badge.

3. The Respondents filed counter affidavit denying the averments in the affidavit and stating that on that day, he was not supposed to desert his place of duty without prior permission, which is a serious offence u/s 41(a) of the Navy Act, 1957; when the Appellant was caught by Mr. Pandey and questioned about his presence in the quarter, he ran away and bolted the door from outside; that on receipt of complaint, Lieutenant Satish Kumar was appointed to conduct enquiry and basing on his report, the Appellant was charged for the offences; the case was investigated by Lieutenant Commander (SDREG) Yd Singh, Regulating Officer as per Rules; every opportunity was given to the Appellant during the enquiry; the details of summarily trial charge sheet and punishment awarded is recorded on punishment warrant which was publicly read out to the Appellant in the presence of all other Sailors of the unit; as per provisions of the Navy Act, 1957 and Regulations made thereunder, the Commanding Officer is empowered to impose punishment of imprisonment, dismissal from Naval Service and deprivation of Good Conduct Badge; hence, the writ petition is liable to be dismissed.

4. The learned single Judge dismissed the Writ Petition holding that the charges levelled against the Appellant are very serious in nature and that one of the said charges relates to complete absence of the Appellant at vulnerable point in night shift and at the same time his conduct in going to the house of wife of another employee in the absence of her husband is a serious misconduct warranting severe punishment. Hence the present appeal.

5. The Learned Counsel for the Appellant vehemently contended that when a person is holding a Good Conduct Badge, he cannot be tried summarily and hence the provisions of Regulation 37 of the Naval (Discipline Miscellaneous Provisions) Regulations, 1965 have not been followed in imposing the punishment on the Appellant and that when a person is tried summarily, the order of dismissal shall be given by the Chief of the Naval Staff and hence the

order of dismissal is passed without jurisdiction and the learned Single Judge ought not to have dismissed the Writ Petition in view of the above lacunae.

6. On the other hand, the learned Assistant Solicitor General appearing for the Respondents contended that all the witnesses were examined in the presence of the Appellant and a reasonable opportunity was given to him to cross-examine the witnesses and that the contents of the charge sheet were read over to the Appellant and his defending officer, that the Commanding Officer is the authority, who can impose punishment. He further contended that the Commanding Officer, INS Circars had recommended the various punishments, which were duly considered and found to be commensurate with the gravity of the offence committed by the Appellant and that the punishment was awarded after approval in accordance with Regulation 5 and 37(4) of the Regulations for the Navy Part II.

7. We have perused the order impugned and also the material available on record. The first contention of the Learned Counsel for the Appellant is that the Appellant is holding a good conduct badge and hence by virtue of Regulation 7(b) he cannot be tried summarily. As seen from Regulation 36 (2) which reads as follows:

Chief Petty Officer and Petty Officers who can not be reduced to lower rank, leading sailors and below wearing Good Conduct Badges shall not be sentenced summarily to imprisonment or detention except for the following offences, namely:

- a. Highly insubordinate conduct;
- b. Desertion or deserting post;
- c. Sleeping on watch;
- d. Indecent acts of an immoral character;
- e. Theft or fraud; etc.

8. In view of the above, if the Sailor commits an act of immoral character or deserts the post or of highly insubordinate conduct, then he can be tried summarily even though having good conduct badge. Here, the charges leveled against the Appellant are desertion or deserting the post and indecent act of an immoral character. Therefore, the contention of the Appellant that since the Appellant was holding a good conduct he cannot be tried summarily has no consequence.

9. In so far as the contention of the Appellant that the order of dismissal should be given by the Chief of the Naval Staff and hence the order of dismissal is passed without jurisdiction is concerned, as seen from the letter dated 28.05.1999 of the Lieutenant Commander addressed to the Commanding Officer, INS Circars, it is clear that approval from the Chief of the Naval Staff for imposition of the punishments viz. (i) 90 (ninety) days rigorous imprisonment; (ii) dismissal from naval service; and (iii) deprivation of the I GCB, has been

taken. The letter from the Naval Headquarters dated 18.05.1999 would clearly go to show that the punishment warrant in respect of Pradeep Kumar, ME I No. 116956 has been approved by the Chief of the Naval Staff for the said punishments. However, punishment warrant of dismissal was approved by the Vice Chief of the Naval Staff in accordance with Regulation 5 of the Navy Part II in the absence of on duty of the Chief of the Naval Staff from Naval Headquarters. Since the procedure contemplated under the Regulation 37(4) has been fully complied with, the contention of the Learned Counsel for the Appellant that the approval of the Chief of the Naval Staff has not been taken is not sustainable.

10. The Learned Counsel for the Appellant further contended that the copies of the preliminary enquiry report were not made available to the Appellant and the findings are not based upon evidence.

11. The charges levelled against the Appellant are as follows:

1. Did at about 18.00 hours on the twenty ninth day of December 1998 desert his post namely Volna Tower Sentry and thereby committed an offence punishable u/s 41(a) of the Navy Act, 1957.

2. Was between 23.00 hours on the day of twenty ninth December 1998 and 05.00 hours on the thirtieth day of December 1998 guilty of an act to the prejudice of good order and naval discipline in that he unauthorisedly slept in quarter number AH-12 Nausena Baugh, Visakhapatnam, the residence of Om Prakash Pandey, Electrical Mechanician (Power) 3rd class number 114172-H and thereby committed an offence punishable u/s 74 of the Navy Act, 1957;

3. Did between 23.00 hours on the twenty ninth day of December 1998 and 05.00 hours on the thirtieth day of December 1998 have sexual intercourse with Smt. Kiran Pandey in quarter No. AH-12, Nausena Baugh, Visakhapatnam, knowing to be the wife of OM Prakash Pandey, Electrical Mechanician (Power), 3rd class, Number 114172-H without the consent of her husband OM Prakash Pandey, Electrical Mechanician (Power) 3rd class Number 114172-H and thereby committed an offence of adultery punishable u/s 497 of the Indian Penal Code read in conjunction with Section 77(2) of the Navy Act, 1957.

12. As far as the first charge is concerned, the Appellant was supposed to be at the towers for security reasons and was not supposed to leave the towers without prior permission from the competent officer. The evidence available shows that the Appellant left the towers to go to the quarter of Mr. Pandey without prior permission, and not to attend his regular way of life such as bathing, taking food, answer calls of nature, etc. Further, he was red handedly caught at the quarters of Mr. Kiran Pandey on the early hours of 30.12.1998. Hence the first and second charges are proved. In so far as the third charge is concerned, (sic)/from the statement of Smt. Kiran Pandey that she had a sexual relation with the Appellant, therefore, (sic) third charge levelled against the Appellant is also proved since it is based upon some evidence on record,

13 The other contention of the Appellant that the Appellant was not served with the documents and that he was not permitted to defend the charges are all devoid of any merit since it is clear from the record that Lieutenant Aditya Minhas was appointed on behalf of the Appellant to defend him and that all the allegations in the charge sheet have been read over on the defaulter table in the presence of the accused and his defending officer, and all the documents were supplied to him. It is also categorically stated in the counter affidavit that the Appellant was also given opportunity to cross-examine the witnesses and no proceedings were conducted in the absence of the Appellant and that the Appellant was present and the divisional officer Lieutenant Aditya Minhas was present throughout the entire investigation. Further, Regulation 92 of the Regulations, 1965 provides for naval custody till completion of investigation. Therefore, as contended by the Learned Counsel appearing for the Respondents, principles of natural justice have been followed in giving reasonable opportunity to the Appellant and hence, there is no illegality or irregularity in conducting the disciplinary enquiry. Therefore, from the aforesaid reasons, the impugned proceedings dated 14.05.1999 of the third Respondent are not vitiated by any error of law or procedural impropriety so as to call for interference by this Court.

14. Hence, we are of the considered view that the order passed by the learned single Judge does not suffer from any irregularity and therefore, the writ appeal is devoid of any merit and is dismissed. No order as to costs.