
(2010) 06 MAD CK 0196

In the Madras High Court

Case No : Writ Petition No. 13059 of 2006 and W.P.M.P. No. 14645 of 2006

S.K. Singh

APPELLANT

Vs

The Director General and Others

RESPONDENT

Date of Decision : 09-06-2010

Acts Referred:

Coast Guard (Discipline) Rules, 1983 — Rule 117, 21, 26, 27, 45
Coast Guard (General) Rules, 1986 — Rule 36
Coast Guard Act, 1978 — Section 117, 117(2), 118, 34, 51(1)
Constitution of India, 1950 — Article 14, 21, 226, 227, 32

Citation : (2010) 06 MAD CK 0196

Hon'ble Judges : R. Subbiah, J

Bench : Single Bench

Advocate : G. Rajagopalan for G.R. Associates, for the Appellant; M.K. Ramesh, for R1 to R3, for the Respondent

Final Decision : Dismissed

Judgement

R. Subbiah, J.—Challenging the order of dismissal from service passed by the 3rd respondent dated 05.06.2002, which has been confirmed by the 1st respondent by his communication dated 30.09.2002, the petitioner has come forward with the present writ petition.

2. The facts, in a nutshell, which are necessary to decide the issue involved in the writ petition, are as follows:

The petitioner herein joined as Assistant Commandant on 04.02.1980 in the Indian Coast Guard service. Subsequently, he was promoted as Deputy Commandant and then as Commandant. Thereafter, he was posted as Commanding Officer of Coast Guard Office at Tuticorin and he served in that capacity between May, 1996 and June, 2000. Then, the petitioner was transferred to the Coast Guard Station at Chennai for duties with Regional Headquarters (East). It is the case of respondents 1 to 3 that while the petitioner was working as the Commanding Officer, Coast Guard Station at Tuticorin between May, 1996

and June, 2000, the Deputy Commandant, M.K. Bhat, reported to duty on permanent transfer during April 1998 and subsequently, another Deputy Commandant, S.K. Nath, also reported to duty on permanent transfer in July 1998 to the Coast Guard Station, Tuticorin. The petitioner did not assign various duties of the Station to both these officers and kept the duties of the Supply Officer along with certain other duties with himself throughout his tenure as the Commanding Officer, Coast Guard Station, Tuticorin. In the said situation, during June 1999, when the Assistant Commandant D.K. Chauhan reported to duty on permanent transfer at Tuticorin, the petitioner assigned him the duties of the Station Technical Officer and Officer Incharge of the Interceptor Crafts. While so, during December 1999, D.K. Chauhan, the Assistant Commandant put up a representation through his Executive Officer for the Commander, Coast Guard Region (East) at Chennai, alleging mental harassment and certain financial irregularities which he had noticed, but the same was not forwarded to the Regional Headquarters (East). Subsequently when the petitioner was transferred to the Coast Guard Station at Chennai, the said Chauhan once again put up another representation to the new Commanding Officer bringing out the facts about the harassment and irregularities during the petitioner's tenure and also enclosing copy of the earlier representation submitted by him during July, 2000. The representation sent by Chauhan was investigated by the Commanding Officer, on the instructions of the Regional Headquarters (E) and a report was submitted to the higher authorities. Thereafter, the Commanding Officer convened two Boards of enquiry for investigating the circumstances leading to the irregularities at the Coast Guard Station, Tuticorin reported by the Assistant Commandant D.K. Chauhan. The Board of enquiry proceedings revealed serious financial and other irregularities which were attributable to the petitioner and other enrolled persons of the Station, apart from some lapses on the part of the Assistant Commandant, Chauhan. After perusing the proceedings of the Board of Enquiry, the Director General, Coast Guard Headquarters, directed to take disciplinary action against the petitioner and other persons, who were responsible for the specific lapses on their part, in accordance with Rule 21 of the Coast Guard (Discipline) Rules, 1983.

3. The Commanding Officer, based on the appraisal of record of evidence adduced in accordance with Rule 21 of Coast Guard (Discipline) Rules, 1983, in the presence of the petitioner, submitted the case for convening of Coast Guard Court in terms of Rules 26 and 27 of the Coast Guard (Discipline) Rules, 1983, for trial of the petitioner on 13 charges framed for offences under the said Act, contained in the charge sheet, which was prepared in accordance with Rule 45 of the Coast Guard (Discipline) Rules, 1983. The 1st respondent, on being satisfied with the prima facie evidence relating to the 13 charges contained in the record of evidence, convened a Coast Guard Court for trial of the petitioner. The said Coast Guard Court assembled at Tuticorin on 29th May 2002 and conducted the trial proceedings. On conclusion of the trial, the Coast Guard Court found the petitioner guilty of 10 charges out of 13 contained in the charge sheet and

awarded the sentence of dismissal from service, as provided u/s 53 of the Coast Guard Act, by its order dated 5th June, 2002. The copies of the coast guard proceedings were also served on the petitioner and during July, 2002, he submitted an application to the Chief Law Officer, the 3rd respondent, for a judicial review of the trial proceedings in accordance with Sections 117 and 118 of the Coast Guard Act, 1978. The judicial proceedings were conducted by the Chief Law Officer on 9th September, 2002 at the Coast Guard Headquarters in the presence of the petitioner along with DIG TS Balasubramaniam, who was the defending officer and Commandant Nautiyal, who was the Prosecutor during the Coast Guard court trial. Thereafter, the judicial review report was submitted by the Chief Law Officer to the 1st respondent Director General. After due consideration of the Coast Guard Court trial and the judicial review report, the 1st respondent decided to maintain the findings and sentence of the Coast Guard Court and the decision of the 1st respondent was also conveyed to the petitioner by letter dated 30.09.2002. Aggrieved over the same, the present writ petition is filed by the petitioner.

4. At the outset, the learned Senior Counsel appearing for the petitioner, by inviting the attention of this Court to Rules 91 to 93 of the Coast Guard (Discipline) Rules, 1983, submitted that the opinion of each member of the Coast Guard Court shall be given only by word of mouth on each charge separately starting with the junior most rank and the finding on every charge upon which the accused is arraigned shall be recorded simply as a finding of "guilty" or of "not guilty". Therefore, as per the said Rules, there is no need for the Coast Guard Court to assign any reason in support of their decision. But, the reviewing authority, while confirming the order of the Coast Guard Court, did not provide any reasons for dismissing the review. It is the Law Officer, who is required to summarise the evidence and present the same to the Coast Guard Court to enable it to take a decision. Based on the summing up of the evidence by the Law Officer, the Members of the Coast Guard Court will come to a conclusion, whether the person is guilty or not? Under such circumstances, when a challenge is made by the aggrieved person as against the decision of the Coast Guard Court and the order passed by the reviewing authority under Article 226 of the Constitution of India, the Court has to see whether the Law Officer has acted in conformity with the principles laid down above. Normally the court cannot sit as the appellate authority; but in the instant case, since the decision was not supported by any reason, the entire materials have to be analysed by this Court to find out whether the decision taken by the Members of the Coast Guard Court were proper and correct. In support of this contention, the learned Senior Counsel has also relied upon a judgment reported in S.N. Mukherjee Vs. Union of India, .

5. Further, the learned Senior Counsel for the petitioner has relied on the summing up by the Law Officer and contended that the summing up by the Law Officer was very vague and no prudent person based on such summing up can come to the conclusion as to whether a person is guilty or not. Under such

circumstances, the conviction imposed by the Members of the Coast Guard Court amounts to be arbitrary and violative of Articles 14 and 21 of the Constitution of India. That apart, as per Section 51(1) of the Coast Guard Act, no person shall be tried or punished for any offence committed by him unless such trial commences within three years from the commission of such offences. But, in the instant case, the trial had commenced only on 08.05.2002, whereas items 1 to 4 in enclosure-I to the charge sheet and item 5 in enclosure 3 would show that the incidents referred to in those items took place three years prior to the date of commencement of the trial. Under such circumstances, those items ought to have been excluded on the ground of limitation. Further, the learned Senior Counsel submitted that the charges have been made in a consolidated manner. This clubbing of charges would have caused serious prejudice to the petitioner. Therefore, the proceedings is liable to be quashed on the ground of limitation and clubbing of charges.

6. As the next fold of submission, the learned Senior Counsel submitted that the prosecutor, viz., Kirpa Ram Nautiyal and the Assistant Prosecutor Navin Chander Pande were the Presiding Officers in the Board of Enquiry constituted under Rule 36 of the Coast Guard (General) Rules 1986 and Rule 52 of the Coast Guard (Discipline) Rules, 1983 provides for disqualification of officers for serving on Coast Guard Court. Since the Public Prosecutor had taken part in the investigation of the case, he should not have been appointed as the Public Prosecutor. As per Rule 52, if an officer had taken part in the investigation of the case, he shall be disqualified from serving on the Coast Guard Court. Hence, the impugned order has to be set aside on this ground. It is further submitted by the learned Senior Counsel by referring Question No. 118 that during the course of cross-examination of P.W.1 the petitioner asked for certain records. But P.W.1 had answered that those records were not available. In this regard, the learned Senior Counsel further submitted that if the records called for under question No. 118 were produced, they would show that the charges would not have been proved. Further, the first four charges pertain to the expenditure on account of local purchase of diesel and 2T oil for Unit vehicles, Interceptor Crafts and the Unit Bullet Motorcycle. P.W.3 was the person entrusted with the task of preparing the bills. These facts could be evident from the evidence of P.W.3 but he was not arrayed as an accused in the case. Further, in the Board of enquiry, the petitioner was required to give evidence only with regard to the misdeeds committed by P.Ws.3, 11 and 12 as they were found in possession of certain alleged fictitious bills. Subsequent to the Board of enquiry only, the charges were framed against the petitioner. Under such circumstances, the evidence of P.Ws.3, 11 and 12 cannot be relied upon because they ought to have been impleaded as accused in the Coast Guard Court. But, as against P.Ws.3, 11 and 12 there was no proceedings and the petitioner was not allowed to cross examine P.W.12. No independent witness was available other than P.Ws.3, 11 and 12. Thus, the learned Senior Counsel submitted that on account of the dismissal, the petitioner has been deprived of his livelihood, who had worked for more than 22 years.

Hence, by considering all these aspects, the impugned order is liable to be set aside.

7. Per contra, the learned Counsel for respondents 1 to 3 submitted that though it has been held in *S.N. Mukherjee Vs. Union of India*, that under Article 226 of the Constitution of India, this Court can look into the entire materials and it can interfere with the impugned order of the Coast Guard Court, which was confirmed by the 1st respondent only when there is a denial of fundamental right to the petitioner or if the proceedings suffer from jurisdictional error and if there is error apparent on the record. In support of this contention, the learned Counsel relied upon a judgment reported in the case of *R.S. Budhwar v. Union of India* CDJ 1995 DHC 211. But in the instant case, there is no denial of fundamental right to the petitioner nor can it be said that there is any jurisdictional error or there is an error apparent on the face of record. Therefore, the scope for interference in this case is absolutely remote.

8. By way of reply to the submissions made by the learned Senior Counsel for the petitioner, the learned counsel for respondents 1 to 3 further submitted that as per Rule 45 of the Coast Guard (Discipline) Rules, 1983, a charge sheet may contain more than one charge. Therefore, the contention of the petitioner that the clubbing of the charges has caused prejudice to the petitioner does not deserve any consideration. Moreover, the petitioner has not explained as to how he was prejudiced in respect of the charges framed against him. P.W.3, R.K. Nathan was punished with reduction to the rank of Navik, Deprivation of Good Conduct Badges (Three) and Reprimand. Similarly, P.W.12 Nandagopal was dismissed from service. P.W.11, Dayanidhi was punished with Deprivation of Good conduct Badges (Three) and Reprimand. Under such circumstances, these witness cannot be termed as accomplices and it cannot be said that their evidence is inadmissible. Apart from the evidence of P.Ws.3, 11 and 12, who had accepted their culpability, the other documentary and oral evidence available in this case would speak about the offence committed by the petitioner. The evidence of P.Ws.3, 7, 8, 11, 12 was corroborated by the evidence of other witnesses, which proved the guilt as against the petitioner. Moreover, an accomplice shall be a competent witness against an accused person and the question of corroboration is a question of fact and hence, this Court has no jurisdictional power over the same. P.W.14 is the Officer, who seized the fake bills and lodged the complaint to the petitioner against the subordinates. But, no action was taken by the petitioner as against the subordinates. Therefore, it is clear that the verdict of the Coast Guard Court is not based only on the evidence and P.Ws.3, 7, 8, 11 and 12, who, according to the petitioner, had committed the offence. Further, it is incorrect to state that the summing up of the case by the Law Officer to the Coast Guard Court is vague. The verdict has been passed by the court by considering all the evidence placed before it along with summing up. Under Rule 117, the duty of the Law Officer is to sum up the evidence and give his opinion on any question of law, before the court proceeds to deliberate upon its findings. But, in the instant case, the Law Officer has acted well within his

powers and has lawfully discharged his duties impartially. Therefore, it is incorrect to state that the verdict of the Coast Guard Court is based on a vague summing up made by the Law Officer. Similarly, as per Section 117(2) of the said Act, a personal hearing was made with the petitioner and his defending officer by the Chief Law Officer, holding the rank of Deputy Inspector General and he had transmitted the report of such review together with such recommendations to the Director General for his consideration and by considering the entire materials, the 1st respondent has maintained the verdict passed by the Coast Guard court. Hence, no error could be found in the order passed by the 4th respondent.

9. Further, the learned Counsel submitted that the petitioner was dismissed from service on 05.06.2002 by the Coast Guard Court. But the present writ petition has been filed in the year 2006 with a delay of 4 years and the reasons assigned by the petitioner in the affidavit are very vague, namely, on account of the dismissal, he has developed psychological problem of depression and a domestic problem within his family and he has to personally look after one of his daughter's health condition and as such, he could not approach the Court immediately. The learned Counsel submitted that the averments are very vague and hence, it cannot be said to be reasonable and, as such, the writ petition cannot be entertained. In support of his contentions, the learned Counsel relied on the decisions reported in the case of Karnataka Power Corporation Limited through its Chairman and Managing Director and Another Vs. K. Thangappan and Another, , Union of India (UOI) and Others Vs. Major A. Hussain (IC-14827), , Bhoop Singh Vs. Union of India and others, , Union of India v. J.S. Brar Air 1993 SC 773 and Union of India and Others Vs. Himmat Singh Chahar, and submitted that the writ petition has to be dismissed.

10. Heard the learned Counsel for the parties.

11. In view of the submissions made by the learned Counsel on either side, the questions that have to be decided in this petition are as follows:

(1) Whether the interference could be made with the impugned order passed by the Coast Guard Court, by its proceedings dated 05.06.2002, which was confirmed by the 1st respondent on 30.09.2002 and was communicated to the petitioner on 30.09.2002?

(2) Whether any justifiable reason has been assigned by the petitioner for condoning the delay in filing the writ petition?

12. It is the bone of contention of the learned Senior Counsel for the petitioner that as per Rules 91 to 93 of the Coast Guard Rules, only based on the closing address of the Law Officer by summing up the evidence, the Members of the Coast Guard Courts can render their verdict. As per Coast Guard Rules, the Members of the Coast Guard Court need not pass any detailed order, but a finding shall be given by the Members only by word of mouth on each charge separately. Therefore, under Article 226, this Court has ample power to go into

the entire materials to find out, whether the verdict given by the Coast Guard is correct or not. In support of his contention, the learned Senior Counsel for the petitioner relied upon S.N. Mukherjee Vs. Union of India, . It could be seen from the said decision that it relates to Arms Act, which contains similar provisions to that of the Coast Guard Act. In the said judgment, it has been held as follows:

44. As regards confirmation of the findings and sentence of the court martial it may be mentioned that Section 153 of the Act lays down that no finding or sentence of a general, district or summary general, court martial shall be valid except so far as it may be confirmed as provided by the Act. Section 158 lays down that the confirming authority may while confirming the sentence of a court martial mitigate or remit the punishment thereby awarded, or commute that punishment to any punishment lower in the scale laid down in Section 71. Section 160 empowers the confirming authority to revise the finding or sentence of the court martial and in Sub-section (1) of Section 160 it is provided that on such revision, the court, if so directed by the confirming authority, may take additional evidence. The confirmation of the finding and sentence is not required in respect of summary court martial and in Section 162 it is provided that the proceedings of every summary court martial shall without delay be forwarded to the officer commanding the division or brigade within which the trial was held or to the prescribed officer; and such officer or the Chief of the Army Staff or any officer empowered in this behalf may, for reasons based on the merits of the case, but not any merely technical grounds, set aside the proceedings or reduce the sentence to any other sentence which the court might have passed. In Rule 69 it is provided that the proceedings of a general court martial shall be submitted by the judge-advocate at the trial for review to the deputy or assistant judge-advocate general of the command who shall then forward it to the confirming officer and in case of district court martial it is provided that the proceedings should be sent by the presiding officer, who must, in all cases, where the sentence is dismissal or above, seek advice of the deputy or assistant judge-advocate general of the command before confirmation. Rule 70 lays down that upon receiving the proceedings of a general or district court martial, the confirming authority may confirm or refuse confirmation or reserve confirmation for superior authority, and the confirmation, non-confirmation, or reservation shall be entered in and form part of the proceedings. Rule 71 lays down that the charge, finding and sentence, and any recommendation to mercy shall, together with the confirmation or non-confirmation of the proceedings, be promulgated in such manner as the confirming authority may direct, and if no direction is given, according to custom of the service and until promulgation has been effected, confirmation is not complete and the finding and sentence shall not be held to have been confirmed until they have been promulgated.

....

47. 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 Vs. Union of India (UOI) and Others*, the submission of Shri Ganguli that the said decision needs reconsideration cannot be accepted and is, therefore, rejected.

48. But that is not the end of the matter because even though there is no requirement to record reasons by the confirming authority while passing the order confirming the findings and sentence of the court martial or by the Central Government while passing its order on the post-confirmation petition, it is open to the person aggrieved by such an order to challenge the validity of the same before this Court under Article 32 of the Constitution or before the High Court under Article 226 of the Constitution and he can obtain appropriate relief in those proceedings.

13. From the said paragraphs, it is clear that this Court has ample power to go into the entire materials under Article 226 of the Constitution of India. But, at the same time, it has to be seen as to whether this Court can interfere with the impugned order by re-appreciating the evidence as in the case of regular appeals. At this stage, it would be appropriate to rely on the decision cited by the respondents reported in CDJ 1995 DHC 211 (*Budhwar's case*), which would give an answer to this query, wherein the scope of judicial review has been laid down as follows:

37. In *M.A. Rasheed and Others Vs. The State of Kerala*, , the Supreme Court has reiterated the settled proposition of law that "administrative decisions in exercise of powers even if conferred in subjective terms are to be made in good faith on relevant consideration. The Courts inquire whether a reasonable man could have come to the decision in question without misdirecting himself on the law or the facts in a material respect. The standard of reasonableness to which the administrative body is required to conform may range from the court's own opinion of what is reasonable to the criterion of what a reasonable body might have decided. The Courts will find out whether conditions precedent to the formation of the opinion have a factual basis". The case of *Ranjit Thakur Vs. Union of India (UOI) and Others*, relate to the interpretation of the provisions of the Army Act and the relevant rules framed thereunder. The relevant portion which states the law is contained in paragraph 9 and the same reads as follows:

re : contention(d): Judicial review generally speaking, is not directed against a decision, but is directed against the "decision making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court-Martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-Martial, if the decision of the court even as to

sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review....

14. On a reading of the above said judgment, it is clear that though this Court is entitled to go through the materials, the power of judicial review of the order passed by the respondents under Article 226 is very limited. Only if there is a denial of the fundamental rights or that the proceedings suffer from the jurisdictional error, it can make an interference with the order passed by the respondents. Now, it has to be seen, whether the submissions made by the learned Senior Counsel for the petitioner would fall under the various categories laid down in the case reported in CDJ 1995 DHC 211 (cited supra).

15. It is the submission of the learned Senior Counsel for the petitioner that as per Section 51(1) of the Coast Guard Act, no person shall be tried or punished for any offence committed by him unless such trial commences within three years from the commission of offence. In the instant case, the trial had commenced on 08.05.2002. It is the contention of the petitioner that items 1 to 5 in Enclosure-I to the charge sheet and items 1 to 5 in Enclosure-3 were the incidents that took place three years prior to the trial, which commenced on 08.05.2002. Under such circumstances, those items ought to have been excluded on the ground of limitation. Though separate charges were framed, since the consolidated charges have been made clubbing all the incidents, it has caused prejudice to the petitioner.

16. Keeping in view the submissions made by the learned Senior Counsel for the petitioner, this Court has perused items 1 to 4 in Enclosure-1 as well as the item No. 5 in Enclosure 3. All these items referred to in Enclosures 1 and 3 to the charge sheet pertain to the purchase of diesel to the unit vehicles and for unit bullet on various dates during the period from April 1999 to March 2000 and it is a continuous action. It is the specific charge of the respondents that the petitioner had signed forged contingent bills on various dates between 1999 and 2000 with an intention to defraud the amount mentioned in the charges which has not been spent for the Government use. Since it is a continuous action, in my considered opinion, it cannot be said that items 1 to 4 in Enclosure 1 and item No. 5 in Enclosure 3 have to be excluded on the ground of limitation. Moreover, as per Rule 45, a charge sheet can contain more than one charge and since the charges are founded on the same facts or they formed part of series of offences of same or similar character, I do not find any merit on the submission made by the learned Senior Counsel for the petitioner that the clubbing of the charges has caused prejudice to the petitioner. Moreover, it was not pointed out by the learned Senior Counsel for the petitioner, as to how the petitioner was prejudiced by the framing of charges.

17. A perusal of the materials would show that initially, an objection was raised by the petitioner in terms of Rule 63, but the said objection was overruled by the Coast Guard Court since he has not pointed out as to how he is prejudiced by the

charges framed. Subsequently, the petitioner has participated in the trial. Furthermore, as contended by the learned Counsel for the respondents, the series of acts covering the period from July 1999 to June 2000 u/s 34(f) of the Coast Guard Act, 1978, were framed as one charge. Therefore, I do not find any merit in the submission made by the learned Senior Counsel for the petitioner that since no separate charges were framed, it has caused prejudice to the petitioner.

18. The next submission of the learned Senior Counsel for the petitioner is that the summing up of the evidence by the Law Officer to the Members of the Coast Guard Court is very vague and no prudent person can come to a conclusion whether such a person is guilty or not. In support of his contention, he has also relied upon the summing up by the Law Officer with regard to the first four charges, wherein it has been held as follows:

In the light of above direct oral and documentary evidence, now you have to decide that whether the accused had no means to check the correctness of these bills put up to him, whether these bills found mention in the caption approval register, why the same have been processed through these sailors only and why the station technical officer was not involved. Was the accused not aware about the actual sailing of the Interceptor Craft, generator and the unit motor cycle. Further, whether the statement by P.W.5, P.W.1 and P.SW.14 finds due corroboration in the forms of testimony of other witnesses and the documents produced before the Hon'ble Court. The Court has to satisfy themselves that the statement of these witnesses have been thoroughly corroborated by the circumstantial evidence produced in the form of P.W.2, P.W.14, P.W.10 and P.W.11. If in answer to the above questions, you find that the accused had no means to check these bills and the sailors have misappropriated the money, the accused signed the Contingent Bills as genuine and had intentions to defraud, then you may find these issues relating to the first four charges not proved, however, if you find otherwise, we may consider the next issue, which stand proved automatically, as if the accused has signed the forged Contingent Bills with intent to defraud, and the amount mentioned in the charges has not been spent for the government use, then it has certainly caused loss to the Government. Hence the accused having signed the forged bil with intent to defraud caused loss to the Government.

19. It is the contention of the petitioner that the Law Officer, while summing up, had stated that if the Coast Guard Court found the issues relating to the charges 1 to 4 as not proved, they may consider the next issue. According to the learned Senior Counsel for the petitioner, the Law Officer, who had summed up the entire evidence, himself is not sure about the charges levelled against the petitioner. But in my considered opinion, I do not find any vagueness in the summing up of the evidence by the Law Officer because as the Law Officer, he cannot take any decision on the verdict and it is for the Coast Guard Court to take a decision based on the summing up of the evidence by the Law Officer. In the instant case, by considering the summing up of the evidence by the Law Officer, the Coast

Guard Court has come to the conclusion that the petitioner is guilty of the first four charges. I find that in the present case, the Law Officer has acted well within the powers conferred under Rule 117 of the Coast Guard Rules and has lawfully discharged his duties impartially.

20. It is the next fold of submission of the petitioner that P.Ws.3, 11 and 12 were found in possession of certain alleged fictitious bills during the enquiry conducted by the Board of Enquiry. Under such circumstances, P.Ws.3, 11 and 12 ought to have been made as accused in the Coast Guard Court, but they have been cited as witnesses and as such, their evidence is not worthy of acceptance. But I find that P.Ws.3 and 11 were punished with deprivation of Good Conduct Badges (Three) and Reprimand, whereas P.W.12 was dismissed from service. Therefore, these witnesses cannot be termed as vital witnesses. Further, I find that, apart from the evidence of P.Ws.3, 11 and 12, there are plenty of documentary and oral evidence. P.W.1 had produced the blank fuel bills seized by P.W.14. P.W.2, the Executive Officer of Coast Guard Court, Tuticorin had explained the duties held by the petitioner during his examination. Therefore, it cannot be said that the verdict was passed solely on the basis of the evidence of P.Ws.3, 8, 11 and 12 alone, who were involved in the occurrence.

21. It is yet another submission of the petitioner that he was not allowed to cross-examine P.W.12. But, on going through the evidence of P.W.12, I find that immediately after questioning by the Coast Guard Court, no questions were advanced by the prosecutor and the defending officer to the witness through the court. In fact, the defending officer had read the written statement of the accused marked and signed as "EEEEEE". Therefore, it cannot be said that P.W.2 was prevented from cross examining P.W.12.

22. It is the other contention of the petitioner that certain documents sought for under question No. 118 were not produced. Though certain documents sought by the petitioner were not produced, the crucial documents, which are necessary to prove the charges, were produced before the court proceedings. Therefore, in my considered view, no prejudice has been caused to the petitioner.

23. Yet another contention raised by the petitioner is that the prosecutor Kirpa Ram Nautiyal and the Assistant Public Prosecutor Navin Chander Pande have acted as Presiding Officers in the Board of Enquiry. Since they had taken part in the investigation of the case, they are disqualified to serve as officers in the Coast Guard Court as per Rule 52 of Coast Guard Rules, but contrary to Rule 52, they were appointed as Prosecutors before the Coast Guard Court. In my considered opinion, though the prosecutors had taken part in the investigation, they were appointed only as prosecutors before the Coast Guard Court to sum up the evidence to the Members of the Coast Court Guard. Ultimately it is the Members who have to pass the verdict. Therefore, I do not find any violation of Rule 52 of the Coast Guard Rules in the appointment of the Prosecutors. Moreover, before the Coast Guard Court, no objection was raised by the petitioner with regard to the appointment of the prosecutors.

24. It is the other grievance of the petitioner that no finding was given in the order of judicial review. On a perusal of the same, it is clear that a personal hearing was made with the petitioner and his defending officer by the Chief Law Officer, holding the rank of Deputy Inspector General and he had transmitted the report of such review together with such recommendations. After perusing the entire report, the 1st respondent has come to the conclusion that the order of dismissal of the petitioner was maintained. Hence, I do not find any infirmity in the order passed by the 1st respondent.

25. With regard to the laches, I find that though the order is of the year 2002, the writ petition has been filed with a delay of four years and the only reason assigned by the petitioner was that he was suffering from mental agony. But, in my considered opinion, such a reason is not sufficient to condone the delay of four years in filing the writ petition. In this regard, reference could be placed in the various judgments relied on by the respondents. In Bhoop Singh Vs. Union of India and others, , it has been held as follows:

8. There is another aspect of the matter. Inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. Others are then justified in acting on that behalf....

26. It has been held in Karnataka Power Corporation Limited through its Chairman and Managing Director and Another Vs. K. Thangappan and Another, reads thus:

6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in Durga Prashad Vs. Chief Controller of Imports and Exports, . Of course, the discretion has to be exercised judicially and reasonably.

27. Following the principle laid down in the said decisions, I am of the view, that in the instant case, the reason for the delay has not been satisfactorily explained. Hence, on this ground also, this writ petition is liable to be dismissed. Though the petitioner is entitled to invoke Article 226, the scope of interference with the order is very limited. In this regard, a reference could be placed in Union of India (UOI) and Others Vs. Major A. Hussain (IC-14827), , wherein it has been held as follows:

23. Though court-martial proceedings are subject to judicial review by the High Court under Article 226 of the Constitution, the court-martial is not subject to the

superintendence of the High Court under Article 227 of the Constitution. If a court-martial has been properly convened and there is no challenge to its composition and the proceedings are in accordance with the procedure prescribed, the High Court or for that matter any court must stay its hands. Proceedings of a court-martial are not to be compared with the proceedings in a criminal court under the Code of Criminal Procedure where adjournments have become a matter of routine though that is also against the provisions of law.

28. From the dictum laid down in the judgment referred to above, it is clear that the scope of interference in the order passed by the 3rd respondent, under Article 226 of the Constitution of India is very limited. In the instant case, I do not find any denial of fundamental rights of the petitioner or any jurisdictional error or any error of law apparent on the face of the record. Moreover, in my opinion, during the enquiry conducted by the Coast Guard Court, the preponderance of probability is sufficient to bring home the guilt against the petitioner. In the instant case, the evidence on record would strongly point out the guilt as against the petitioner. Moreover, the petitioner has not given any convincing reasons for the delay. Under the stated circumstances, I am of the view that the writ petition is liable to be dismissed.

For the reasons stated above, the writ petition fails and the same is dismissed. No costs. Consequently, connected M.P. is closed.