

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 17.10.2015

+ W.P.(C) No. 1932/2008 and C.M. No. 5708/2014

RAMPHAL LSA Petitioner

Through: Mr Sukhjinder Singh, Adv.
versus

UOI & ORS. Respondent

Through: Mr Ruchir Mishra with
Mr Mukesh Tiwari, Advs.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MS. JUSTICE DEEPA SHARMA (JUDGMENT)

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1. The petitioner was working in the Indian Navy and at the relevant time was posted as Store Petty Officer incharge of the Ration Issue Shop (RIS) of INHS, Sanjivini. On 31.12.2006, the petitioner was apprehended carrying 13 packets of coffee powder weighing 2.6 kg in front dickey of his scooter which was recovered at the navy base gate where he was stopped for checking by Amarendra Kumar, LPM. The petitioner allegedly attempted to run away, but, was prevented by the security staff. He also gave his hand written statement which he subsequently tried to destroy. He was summarily tried by Commanding Officer, Indian Naval Hospital Ship (INHS), Sanjivini under Regulations 25 to 33 of Navy (Discipline and Miscellaneous)

Regulations, 1965 (REGS Navy). The petitioner was also given the assistance of Surgeon Lieutenant Commander V.V. Vibhakar to defend him. He was explained the charge and the warning in compliance with Regulation 28 was also given to him. The petitioner had pleaded guilty. He was also given an option pursuant to Regulation 30 for trial by Court Martial. The petitioner opted for summary disposal by the Commanding Officer. On being found guilty, he was punished by reduction in rank to Leading Store Assistant and deprivation of 3rd, 2nd and 1st Good Conduct Badges. The petitioner preferred an appeal against the punishment under Section 163 of the Navy Act, which was rejected by Chief of Navy Staff vide order dated 23.09.2007.

2. The petitioner challenges the order of punishment contending that he had been wrongly charged under Section 58 of the Navy Act and that no charge has been made out, because he had actually purchased the two kilos of coffee powder from Ration Issue Shop against Cash Memo No. HH 156694 and 0.600 gms was taken by him as Ration in kind towards his monthly entitlement of September to December, 2006. He argued that this fact is clear from the handing

over/taking over certificate signed between the petitioner and the SPO Neeraj Kumar duly initiated by the Assistant Logistics Officer K.S.Kathait, MSCPO II. He alleges that the argument is vindicated by the order of the Chief Naval Staff passed on a statutory complaint which held that charge under Section 58 of Navy Act, 1957 was wrong and substituted it by invoking Section 91 of the Navy Act, 1957. It is submitted that even action of the Chief of Naval Staff was wrong as he could not have substituted the charges. It is submitted that the entire summary trial proceeding were therefore, vitiated.

3. It is further submitted that the Defending Officer/Divisional Officer was not aware of the rules and did not show any interest in defending the petitioner and connived with respondents, and that the copies of statements of the witnesses and that of the charge-sheet were never supplied to him. He was also not given any opportunity to cross-examine the witnesses, not supplied with the Enquiry Report. The respondent ought to have convened a Board of Enquiry wherein he would have been given the opportunity to defend himself and cross-examine the witnesses which opportunity was denied to him. The entire enquiry was done behind his back by the Commanding

Officer. The Regulating Officer, who was carrying out the duties of the Police Officer, conducted the investigation and also acted as his Defending Officer and the case ought to have been investigated by the Officer of the Day. His plea that the coffee powder belonged to him was also not accepted. It is further contended that the Commanding Officer had pre-judged the issue before the trial commenced and intimated the petitioner that the charge-sheet was serious and that he could be reduced in rank. The CO gave him the option of trial by Court Martial or disposal of charges summarily. On those grounds, the petitioner claims the reliefs sought—set aside the summary trial proceedings and the order of punishment and restoration of his rank of Petty Officer (Store).

4. The respondent argues that the enquiry into the matter was conducted in terms of the prescribed procedure and the petitioner was afforded full opportunity. He voluntarily pleaded guilty of charges and also opted for summary disposal of charges. Nothing had prevented him opting for trial by Court Martial, but he declared to exercise that discretion.

5. We have heard the arguments and have perused the record. The original record of the summary trial of the petitioner was also produced before us.

6. In this case, the charge against the petitioner were disposed off summarily and he was reduced in rank. Rule 38 of the REGS Navy stipulates that a sailor may be reduced to a lower rank in his own category summarily. So the Navy under this rule was within its right to impose punishment of reduction in rank by summary disposal of charges. In the present case, the petitioner was found in possession of 13 packets (200 gms each) of coffee powder which was recovered from the dickey of his scooter. The investigation was started into the matter. Section II of REGS which consists of Rule 22 to 33 deals with the investigation of departmental offences allegedly committed by the Sailors. Rule 22 states that the offence shall be investigated by his Departmental or Divisional Officer. This provision requires that the preliminary investigation of the offences be by the officer of the watch or officer of the day. In the present case, the investigation was by Lieutenant Manjit Singh and the petitioner contends that he was not the officer of the day. The respondents have contended that this

contention is not true because under Para 2 Chapter IV, the regulating officer also carries out the duties of the officer of the day during working hours. Thus, the investigation had been done by the authorized person. It is also clear that pursuant to these rules, he could be summarily tried and punished by his Departmental Officer or his Divisional Officer provided he had powers to punish him adequately. In this case, since the departmental officer did not possess the power to punish the petitioner adequately, he referred the matter to the Executive Officer. Before that during the summary trial, the statement of two witnesses Shashi Kant Tiwari and Amrender Kumar, LPM, who had prepared the *panchnama* were examined and thereafter the investigating officer explained the charge to the petitioner and enquired from him if he had understood the charges to which the petitioner had replied in affirmative. He was also issued a warning under Regulation 28 of REGS Navy, Part-II to ensure that he understood the meaning and consequences of his statement. The petitioner had been asked again if he wanted to say anything in answer to the charges. He gave his explanation which was duly recorded.

7. The petitioner stated that he was going to Amrita Hospital, at 11.25 hours on 31.12.2006 to meet his child who was admitted in the hospital and at the main entrance of the Naval Base, duty LPM checked his vehicle and he was found in possession of 13 bags of Nescafe coffee powder which he wanted to send to his home at native place. This explanation by petitioner clearly shows he had fully understood the charges. The petitioner was again asked if he wanted to plead guilty of the charges and he replied in affirmative. The petitioner duly signed the said proceedings. Since he could not be adequately punished by the Divisional Officer, the matter was referred to the Executive Officer. The Executive Officer, followed the same procedure and after petitioner pleaded guilty of charge, after forming the opinion that he could not punish the petitioner adequately; referred the matter to the Commanding Officer. The Commanding Officer thereafter followed the prescribed procedure and explained the charge to the petitioner and made sure that the petitioner had understood the charge; on being satisfied that petitioner had understood the charge, issued the warning under Regulation 28 of REGS Navy, Part-II to the effect:-

*“Do you wish to say anything in answer to the Charge?
You are not obliged to say anything unless you wish to
so, but whatever you say will be taken down in writing
and may be given in evidence.”*

8. On being satisfied that the petitioner had understood the warning, the Commanding Officer (CO) asked for his explanation. He again reiterated the explanation about possession of coffee powder, given by him to two authorities earlier. The explanation given by the petitioner confirms that all along he was aware of and understood the charges against him and also pleaded guilty and put his signature on the proceedings. The Commanding Officer felt that the proper punishment in the case would be reduction in rank. In terms of Regulation 33 of REGS Navy, Part-II (CO) asked for the option from the petitioner if he wanted to be tried by Court Martial and gave him 24 hours to submit his written certificate to this effect. The petitioner by his communication dated 02.01.2007 declined the option of trial by Court Martial and opted for summary disposal of charge.

9. The procedure as prescribed in Section II of REGS Navy, Part-II relating to investigation and summary disposal of charges was duly followed in the case of the petitioner. The pleas of the petitioner that he was forced to plead guilty and his explanation was not considered,

seems to be an afterthought since the record shows that he was brought before three officers at three different stages and before all of he them pleaded guilty of charges and did not urge any contention of forceful extortion of the plea of guilt from him from him when he had the opportunity. He could have (if his contention had any truth) raised this plea in his reply to the notice asking him for his option to be tried by the Court Martial. He received the said notice on 01.01.2007 and had full 24 hours to reply it and nothing had prevented him from detailing his grievance. His plea that he had purchased the coffee powder from the ration shop and that 0.600 gms were issued to him as part of his monthly ration, is not supported by any receipt of purchase of the coffee powder on the date 31.12.2006 which he ought to have carried with him. Also in his explanation, he had, at no stage, disclosed that he had purchased the articles. He had urged this plea for the first time in his statutory appeal to the Chief Naval Staff. His reliance on a receipt dated 01.01.2007 seems to be improbable since the purchase was allegedly made on 31.12.2006. In case the petitioner had purchased the said coffee powder on 31.12.2006, he should have been in possession of the receipt bearing that date. There is no dispute

to the fact that the petitioner was in charge of Victualling Store and RIS, INHS, Sanjivini and on that date, the duty of Logistics Officer was carried out by Lieutenant Manjit Singh.

10. The petitioner's contention that he was not given chance to participate in the summary trial is also contrary to the record because the record clearly shows that *panchnama*, i.e. recovery of memo of the 13 packets of the coffee powder consisting of 2 kg and 600 gms was prepared in his presence. He had appended his signatures on the purchase. It was done in the presence of the witnesses, namely, Naib Subedar Basant Ram, Naik P.K. Rai. The statements of the witnesses were also recorded during the summary trial proceedings and charges were duly explained to him when his plea was recorded. It is also not in dispute that pursuant to Regulation 26, the petitioner was provided an Assistant who had assisted him during the summary trial. His contention that the Assistant, who was provided to him, was not conversant with the rules and regulations and thus not able to provide him effective assistance is of no consequence because at no stage did the petitioner raise this objection before the Commanding Officer or in his reply under clause (c) of Regulation 30 of REGS Navy, Part-II.

The contention of the petitioner that he was not supplied with any documents also seems to be an afterthought since he never requested for the supply of the documents at any stage. If the petitioner, while submitting his reply dated 02.01.2007, felt prejudiced for the reason of non-supply of documents, he could have, before exercising his option of not being tried by Court Martial, asked for the documents before exercising the said discretion. Since he did not ask for any document at that time and had been able to make up his mind for not being tried by the Court Martial shows that he was well aware of all the facts and circumstances of the case and had understood the charges and the likely punishment before exercising his option of summary disposal of his case. The fact that the petitioner had given the explanation that he had planned to send coffee powder to his native village clearly shows that he was aware of the allegations and charges levelled against him and pleaded guilty repeatedly before three different officers voluntarily.

11. It is argued by petitioner that the charge against him was never explained to him and has relied on the findings in the case ***Nochur R Vasudevan, LMA vs. Union of India and Ors., Criminal Writ***

Petition No. 1160 of 2007, decided on 07.08.2008, wherein the Bombay High Court has observed as under:-

“9. Since we are convinced that the proceedings, which ultimately ended with the punishment to the petitioners, started with the question, "Do you understand the charge?", without the charge having been made known to the petitioners, the whole process gets vitiated. Therefore, the impugned orders and findings and sentence passed by respondent No.5 are set aside. The Writ Petitions are accordingly allowed. In the peculiar circumstances, there shall be no order as to costs.”

12. It is argued on behalf of respondent that this case is distinguishable on facts. In this case, recovery was made from petitioner and *panchnama* was duly prepared. Thus, petitioner was aware of charges.

13. The facts of this case are distinguishable from the above decision. In that case, the petitioner was serving as a Sailor in the Indian Navy as Medical Assistant and was promoted to the rank of Leading Medical Assistant. He received a signal Flag Officer Commanding-in-Chief, Western Naval Command, Mumbai, by which he was asked to report to INS KUNJALI for investigation of an incident alleged to have taken place between 1st November, 2002 and 31st October, 2003. He was questioned if he knew anything about the

leaking of recruitment medical examination result at INHS ASVINI and had involvement in it. In that case, there were 11 accused and all of them were made to confess at different stages of the investigation/trial and confession of one was used against the other. It was on these facts that the Bombay High Court held that the charge was not made known to the petitioner and allowed the writ petition. In this case, the petitioner when going out of the INHS, Sanjivini was checked at the gate and 13 packets of coffee powder (200 gms each) was found concealed in dickey of his scooter which were recovered and a *punchnama* was prepared in the presence of witnesses which was also duly signed by the petitioner. After recording the statements of the witnesses, the question put to the petitioner “do you understand the charge”. In the light of the facts which preceded this question, it cannot be said that the petitioner did not understand the charges. Rather he has well aware that he was questioned for the possession of 2.600 kg of coffee powder that is why he explained that he had planned to send it to his native house. Consequently, it cannot be said that the petitioner was not aware of the charges against him. In these circumstances, it cannot be said that the whole process was vitiated.

14. Since the respondents have since duly followed the prescribed procedure under REGS Navy, Part-II, we find no infirmity in the trial. It is well settled principle of law that this Court while exercising writ jurisdiction under Article 226 of the Constitution of India exercises a limited jurisdiction. The Court is not required to judge the correctness of decision made by an authority, but is only required to see if the decision making process is fair, just and in accordance with the governing law, free from bias and mala fides. As discussed above, in the present case, the respondents duly followed the prescribed procedure while holding the summary trial of the petitioner. The decision of the respondent also rests on the *panchnama*, i.e., recovery memo, the statement of the witnesses and also the admission of guilt by the petitioner. We find no infirmity in the impugned order. The petition has no merit and along with the pending application, is dismissed.

**DEEPA SHARMA
(JUDGE)**

**S. RAVINDRA BHAT
(JUDGE)**

OCTOBER 17, 2015/BG