

(2024) 02 DEL CK 0017

Delhi High Court

Case No: Civil Writ Petition No. 1113 Of 2019

Krishna Dixit (NVK WTR)

APPELLANT

Vs

Union Of India And Ors.

RESPONDENT

Date of Decision: Feb. 8, 2024**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Indian Coast Guard Act, 1978 - Section 26, 33(c), 57, 119

Hon'ble Judges: V. Kameswar Rao, J; Saurabh Banerjee, J**Bench:** Division Bench**Advocate:** Ajit Kakkar, Ripu Daman Bhardwaj, Kushagra Kumar, Abhinav Bhardwaj**Final Decision:** Dismissed

Judgement

Saurabh Banerjee, J

1. As per facts involved, the petitioner after his enrolment as a Navik in the Indian Coast Guard (hereinafter referred to as "ICG") in the year 2014 completed the training and was posted to ICGS Amogh at Paradip, Odisha. The petitioner claims to have proceeded on Earned Leave (E/L) from 21.10.2016 to 15.11.2016 after due recommendation by the Commanding Officer. However, on 28.10.2016, i.e. within a few days of his leave, first a "run signal" was raised against the petitioner and then upon his return to the Ship on 15.11.2016, all his personal items were confiscated. In fact, the respondents depicted his return as a "surrender" in their official record.

2. Thereafter, a Record of Evidence (hereinafter referred to as "RoE") was conducted against the petitioner under Section(s) 26/33(c) of the Indian Coast Guard Act, 1978 (hereinafter referred to as "ICG Act") for Absence Without Leave as also for stealing the Ship's Imprest Accounts Register (hereinafter referred to as "IAR") and eventually losing it. After that, in a Summary Trial conducted against the petitioner, vide order dated 24.11.2016, a punishment warrant was issued whereby he was awarded a punishment of 90 days Close Custody/ Detention in Quarters (DQ), 60 days mulcts of pay and 60 days stoppage of leave. As a result, the petitioner was detained at ICGS Kunjali at Mumbai, Maharashtra till his release on 08.03.2017. Subsequently, vide letter dated 16.10.2017, the petitioner was informed by the PCDA (Navy) that a recovery of pay and allowance amounting to Rs.1,27,974/- for the period from 09.12.2016 to 07.05.2017 was made from his account.

3. Thereafter, the petitioner on 13.11.2017 filed a petition under Section 119 of the ICG Act before the Director General, Indian Coast Guard. Having not received any response from the respondents, the petitioner filed the present petition under Article 226 of The Constitution of India seeking the following reliefs:-

(a) To issue writ of mandamus for quashing the summary trial and punishment warrant and for setting aside the punishments awarded to the petitioner.

(b) To direct the respondents to dispose of the petition dated 13.11.2017 of the petitioner under Section 119 of Indian Coast Guard Act, 1978 pending with the respondents.

(c) To direct the respondents to repay the illegal recovery of Rs.1,27,974/- made from the account of the petitioner and issue an order or direction for granting proper compensation to the Petitioner for undergoing 90 days illegal detention, 60 days mulcts of pay charged and 60 stoppage on leave.

(d) Issue directions to the respondents to bring on record, all proceedings, all documents and evidences produced against the Petitioner at the time of Charge Trial, Record of Evidence and Summary Trial.

4. In view of the afore-stated facts, learned counsel for the petitioner seeks to urge that the petitioner has been falsely implicated by the respondents and he could not have possibly committed the offence(s) he was charged with since the respondents' own Nominal Leave Record of the enrolled personnel revealed that the petitioner was in fact "On Leave" and hence could not have possibly stolen the IAR. He thus urges that the charge against the petitioner as regards stealing the IAR is baseless since it contained an entry dated 27.10.2016, which was made at the time when the petitioner was on leave and hence was not physically present on the Ship. It is his case that as the said entry was signed by the Commandant (JG), Logistics Officer for the "Commanding Officer", the officials of the Ship were in knowledge of this entry and hence have falsely implicated and charged the petitioner with stealing the IAR and ultimately losing it. He then urges that the RoE against the petitioner itself was conducted in a biased manner based on immaterial grounds.

5. To buttress his submissions, learned counsel for the petitioner places reliance upon Union of India vs R. Anand 2011 SCC OnLine Mad 945, wherein a Division Bench of the Madras High Court has observed that any enquiry made by a disciplinary authority should be initiated with an open mind and without any element of bias. He places further reliance upon State of Punjab vs Gurdial Singh & Ors. 1980 AIR 319, wherein, the Hon'ble Supreme Court of India while describing colourable exercise of power had observed as under:-

"Fraud on power voids the order if it is not exercised bonafide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to affect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad."

6. On the other hand, learned counsel for the respondents urges that the petitioner had improperly left the Ship without any due permission while the Ship was under operational sailing orders. He further urges that as the petitioner intentionally stole the Ship's IAR, he was duly punished by conducting a Summary Trial in a fair and transparent manner for the charges under Section(s) 26/33(c) of the ICG Act. He yet further urges that though the petition under Section 119 of the ICG Act filed by the petitioner before the Director General, ICG was time barred and legally untenable under the extant provisions, however, the same was duly considered by the appropriate authorities and after finding no merit therein, the same was rejected vide CGHQ letter NK/0221/13102-H dated 05.09.2018 and communicated to (and received by) the petitioner on 05.03.2019.

7. Learned counsel for the respondents then urges that the petitioner's lack of discipline is also evident from the fact that while undergoing LWTR "Q" Course on 10.08.2017 at INS Hamla, Mumbai, the petitioner once again left the Unit without following due process and was thus, for the second time, tried summarily under Section 26 of the ICG Act and punished appropriately by issuance of a warning letter dated 08.12.2017 by the Commanding Officer for non-compliance of service norms. Based thereon, the learned counsel for the respondents urges that the petitioner ought not to be granted any relief.

8. Before proceeding further, it is relevant to mention that this Court vide its order dated 07.02.2019, while issuing notice, directed the respondents to decide the petition of the petitioner filed on 13.11.2017 within a period of eight weeks, which has since been decided against him vide CGHQ letter NK/0221/13102-H dated 05.09.2018 and the same has been duly received by the petitioner on 05.03.2019. In view thereof, the prayer clause (b) has become infructuous since the same has already been decided. This Court now proceeds to adjudicate on the rest of the prayers.

9. At the outset, this Court finds that interestingly though the petitioner contends that the Nominal Leave Record of the respondents reflects that he was in fact on leave during the period from 21.10.2016 to 15.11.2016 i.e. during the period when the offence(s) were alleged to have been committed by him, however, there is no cogent record/ proof of his having availed any leave for that period in the prescribed manner. The same leads this Court to conclude that the petitioner had left the Ship in an unauthorised and illegal manner, that too when the Ship was under operational sailing orders. The said act of the petitioner cannot be atoned.

10. Moving ahead, this Court also does not agree with the submissions of the petitioner that he could not have stolen the IAR, since the IAR reflects an alleged entry dated 27.10.2016 which was made when the petitioner was on leave and hence was not physically present on the Ship. This is so, as it is the case of the respondents since beginning that the said IAR was in fact lost. Under the existing circumstances, the petitioner cannot avail any benefit of the said entry of 27.10.2016.

11. Further, the fact that the respondents entertained the petition under Section 119 of the ICG Act filed by petitioner despite it being time barred and not maintainable reflects that there was no malafide of any kind on their part. More so, whence the said petition was rejected vide a well-reasoned, speaking order passed by the respondents on 05.09.2018. In any event, though the petitioner has alleged high handedness but has been unable to show any specific instance of malafide or bias of any kind against any specific person. As such, this Court has no occasion of finding any fault on the part of the respondents. Consequently, reliance upon Union of India (supra) and State of Punjab (supra) by the learned counsel for the petitioner are misplaced as they are not applicable to the facts involved herein.

12. Even otherwise, the respondents, taking a lenient view of the matter, have imposed the less stringent punishments prescribed under

13. Lastly, it is not in dispute that, within a short period of time after the first incident, the petitioner was once again tried summarily under Section 26 of the ICG Act and punished by issuing a warning letter dated 08.12.2017 by the Commanding Officer for non-compliance of service norms since he was guilty of leaving the Unit without following due process while undergoing LWTR "Q" Course on 10.08.2017 at INS Hamla, Mumbai. Importantly, the respondents had once again, taking a lenient view of the matter, had only issued a warning letter. Thus, the aforesaid acts of the petitioner do not behove good of him.

14. For the afore-stated discussions and reasoning therewith and in view of the existing facts and circumstances involved, this Court finds no merit in the present petition.

15. Accordingly, the present writ petition is dismissed, leaving the parties to bear their respective costs.