

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2011

CORAM

THE HONOURABLE MR.JUSTICE ELIPE DHARMA RAO
and
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.A.Nos.1528 to 1530 of 2009

1. Union of India
rep.by its Secretary to Government
Ministry of Defence
New Delhi.
2. The Director General
Coast Guard Headquarters
National Stadium Complex
New Delhi-110 001. ... 1st and 2nd Appellants in all W.As.
3. The Commanding Officer
Coast Guard Air Station
Rudra Road
St. Thomas Mount
Madras-600 016. ... 3rd appellant in W.A.No.1528/2009
and 4th appellant in
W.A.No.1529/2009
4. The Commanding Officer
Coast Guard Station (Madras)
C/o Coast Guard Region HQ (East)
Fort St. George
Chennai-600 016. ... 4th appellant in W.A.No.1528/2009
and 3rd appellant in W.A.Nos.1529
and 1530/2009.

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R. Anand	..Respondent in W.A.No.1528/2009
P.S. Shelliraj	..Respondent in W.A.No.1529/2009
Harish Chandra (Deceased)	..Respondent in W.A.No.1530/2009
1. Mrs. Bindu Fulara	

2. Saurabh Fluara

3. Vishaka Fluara

RR2 and 3 rep.by next friend and
natural guardian 1st respondent.

..Respondents in
W.A.No.1530/2009

Prayer in Writ Appeals: Writ appeals filed under Clause 15 of the Letters Patent against the common order dated 17.7.2009 passed by this court in W.P.Nos.16123/1998, 16924/1998 and 57 of 1999.

Prayer in W.P.No.16123 of 1998:- presented to this court under Article 226 of the Constitution of India praying for the writ of Certiorarified mandamus calling for the records of the third respondent in SO/100/C dated 17.07.1998 served on 30.07.1998 and the order of the fourth respondent passed in No.203/1-01113-L dated 01.09.1998 and order of approval of punishment passed by the second respondent in No.203/1-01113-L dated 16.09.1998 and the order of the fourth respondent passed in CG/1785/N dated 16.09.1998 are illegal, void ultra vires and arbitrary and without jurisdiction and against the principles of natural justice and quash the same and for consequential direction for reinstatement with back wages with connected perquisites.

Prayer in W.P.No.16924 of 1998:- presented to this Court under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified mandamus calling for the records of the third respondent relating to the punishment approval form bearing No.203/1-02038-M dated 01.09.1998 and of the second respondent relating to his consequent order dated 16.09.1998 approving the punishment of dismissal from service and of the third respondent relating to the subsequent order issued on his behalf bearing GX No.CG/1787/N dated 16.09.1998 and quash the same and direct the respondents to reinstate the petitioner in service with continuity of service, backwages and all attendant benefits including seniority and promotions.

Prayer in W.P.No.57 of 1999:- Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified mandamus calling for the records of the third respondent relating to the punishment approval form bearing No.203/1-01815-Z dated 01.09.1998 and of the second respondent relating to his consequent order dated 16.09.1998 approving the punishment of dismissal from service and of the third respondent relating to the subsequent order issued on his behalf bearing GX No.CG 1664/1786/N dated 16.09.1998 and quash the same and direct the respondents to reinstate the petitioner in service with continuity of service, backwages and all attendant benefits including seniority and promotions.

For Appellants : Mr.M.Ravindran
Additional Solicitor General of India
Assisted by M/s Haja Mohindeen Gisthi.

For Respondents : Mr. M. Kamalanathan
for R.1 in W.A.No.1528 of 2009

Mr.V. Prakash
Senior Counsel
for Mr. Sudalai Kannan for R.1
in W.A.No.1529 of 2009

M/s. Lakshmi Priya Associates
in W.A.No.1530 of 2009.

J U D G M E N T

K.K.SASIDHARAN, J

These Intra Court appeals at the instance of the Union of India represented by its Secretary, Ministry of Defence and the Director General of Coast Guard challenge the order dated 17 July 2009 in W.P.Nos.16123, 16924 of 1998 and 57 of 1999 setting aside the punishment of dismissal awarded to the respondents by the Commanding Officer, Coast Guard Station, Chennai and the consequential order of re-instatement with backwages.

THE BACKGROUND FACTS:

2. The respondents were working as Coast Guards attached to the Coast Guard Station at Chennai. While so, the respondents were arrested on 17 July, 1998 on charges that they conspired together to send anonymous letters to the higher authorities with the object of highlighting their demands with respect to the implementation of the recommendations made by the Fifth Pay Commission, failing which, it was threatened that they would sabotage the ships and air crafts. This was followed by a charge sheet dated 11 August, 1998. The respondents in their explanation to the charge sheet denied the allegations levelled against them. Thereafter, the Commanding Officer authorised the Deputy Commandant to prepare the record of evidence pertaining to the charges levelled against the respondents. Accordingly, the said officer recorded the evidence and submitted a report to the Commanding Officer. The Commanding Officer on the basis of the record of evidence, imposed the following punishment to the respective respondents.

NAME	NATURE OF PUNISHMENT IMPOSED
R.Anand	(a) Simple Imprisonment for two months (b) Dismissal from service (c) Deprivation of 1 st and 2 nd Good Conduct Badges
P.S. Shelli Raj	(a) Dismissal from service (b) Deprivation of 1 st and 2 nd Good Conduct Badges
Harish Chandra	(a) Simple Imprisonment for two months (b) Dismissal from service (c) Deprivation of 1 st and 2 nd Good Conduct Badges

3. The order passed by the Commanding Officer was challenged in W.P.Nos.16123, 16924 of 1998 and 57 of 1999.

4. Before the Learned Single Judge, the respondents contended that the entire proceedings were conducted in violation of the principles of natural justice besides violation of Coast Guard Act and Rules. The respondents pressed into service the following violations.

"(i) The petitioners were not informed of the particulars of the charges levelled against them at the time when they were arrested as required under Rule 15(A) of the Rules.

(ii) The Commanding Officer, Mr.P.P.S.Sodhi who imposed the punishment and submitted approval forms to the Approving Authority actively participated in the investigation and he actively involved himself in the interrogation of the witnesses during investigation and inquiry. Under Rule 21 of the Rules, the Commanding Officer shall not deal with any case, where he himself is a witness in the case against the accused. Since Mr.P.P.S.Sodhi was fully involved in the investigation, he was incompetent to hold the summary trial under Section 57 of the Act and therefore, the entire proceeding is violative of Rules 21(b) and 21(c).

(iii) The investigation into the alleged offences were not done properly.

(iv) Before recording evidence, charge sheets were not furnished to them and they were not questioned as to whether they pleaded guilty or not guilty by explaining to them the nature of charges.

(v) During the course of recording evidence, sufficient opportunity was not given to them for cross examination

(vi) Documents were exhibited in evidence without having given copies to them and without even permitting them to look into the documents.

(vii) Though under Rule, 23(5), they are entitled to examine the defence witnesses, they were not allowed to do so.

(viii) The conclusion that they are guilty of the charges, has been arrived at without any acceptable evidence for the same and thus the punishments imposed on them are highly arbitrary. The evidence of the witnesses were not properly appreciated.

5. The Coast Guard Act and Rules does not contain remedy of appeal against the order passed by the Commanding Officer. Therefore, the learned Single Judge proceeded to consider the matter on merits and particularly, with reference to the relevant file. Since the concerned employees were awarded Simple Imprisonment besides the major penalty of dismissal from service, the learned Single Judge wanted the Coast Guard to produce the original records. However, the Coast Guard pleaded their inability as according to them, they have lost or rather misplaced the file during the time of shifting the Coast Guard Station.

6. The learned Single Judge adjourned the matter on several occasions so as to enable the Coast Guard to produce the file. However, the original file was not produced. This made the learned Single Judge to allow the writ petitions, as according to him even the xerox copies produced by the Coast Guard, appears to be an incomplete record and the issue cannot be decided on the basis of such incomplete records. In short, the learned Single Judge

allowed the writ petitions principally on the ground of non-production of records. Dis-satisfied with the said common order dated 17 July, 2009 the Coast Guard is before us.

SUBMISSIONS:

7. The learned Additional Solicitor General appearing on behalf of the appellants, while admitting the loss of original file, contended that the xerox copies of the relevant records were produced before the learned Single Judge and the same should have been accepted as secondary evidence. According to the learned Additional Solicitor General, reasonable opportunity was given to the respondents to prove their innocence. The respondents were functioning as members of a Disciplined force and as such, they were not expected to come openly against the Coast Guard and therefore, the Commanding Officer was justified in awarding the maximum punishment of dismissal from service.

8. The learned Senior Counsel for the respondent in W.A.No.1529 of 2009 and the learned counsel for the other respondents contended that the Commanding Officer acted like a prosecutor and ultimately awarded the punishment himself and therefore, the order of the learned Single Judge cannot be set aside even on merits. It was contended that the respondents were illegally detained in the Coast Guard Station and other places and it was only pursuant to the action taken by their parents by filing Habeas Corpus Petitions before this Court, they were released subsequently. According to the learned Senior Counsel the report of the Fifth Pay Commission was implemented with respect to almost all Central Government departments. However no attempt was taken by the Coast Guard to give effect to the recommendation made by the Fifth Pay Commission and naturally, there was discontent among the members of the Coast Guard and the alleged anonymous letters were nothing but spontaneous reaction of the employees and the same cannot be construed to be an act of mutiny. In any case, according to the learned Senior counsel, the punishment of dismissal from service was disproportionate to the misconduct alleged against the respondents. The learned Senior Counsel further contended that Rule Nisi was issued in the year 2003 and therefore, the Coast Guard was expected to produce the records before the High Court. The writ petitions were taken up for final hearing only during July, 2009. Even after a period of six years they were not in a position to produce the records. This clearly shows that the records were suppressed with a view to avoid the scrutiny by the Court.

Charges:

9. The principal charges framed against the respondents read thus:

Charges in respect of R. Anand

"First charge

Violation of Rules

Section 42 of Coast Guard Act, 1978

In that he, at Chennai on 16 July 98 at 1350 hours, with the object to highlight Coast Guard personnel combined grievance regarding pay and allowances, faxed an anonymous letter to Coast Guard Regional Headquarters (East), Coast Guard Regional Headquarters (West), Coast Guard Regional Headquarters (Andaman and Nicobar Islands), Naval Headquarters, New Delhi and Defence minister.

Second Charge

An act pre prejudicial to good order and Coast Guard Discipline Section 44 of Coast Guard Act, 1978.

In that he, at date and place mentioned in the first charge, in company with Harish Chander, Uttam Navik, No.10815-Z, PS Shelly Raj Uttam Navik, No.02038-M and Manoj Kumar, Uttam Navik No.01774-M conspired to send anonymous letter to superior authorities with the object to highlight their combined grievance regarding pay and allowances."

Charges in respect of P.S.Shelly Raj:

"First charge

An act of Prejudicial to Good order and Coast guard Discipline Section 44 of Coast Guard, 1978.

In that he, at Chennai in the first week of July 98, improperly collected Rs.14,600.00 (Rupees fourteen thousand six hundred only) from Coast guard Air Station (Chennai) ship's company, which was later handed over to Harish chander, Uttam Navik No.01815-Z, with the object to highlight their combined grievance through Newspaper and anonymous letter.

Second charge

An Act Prejudicial to Good order and Coast guard Discipline Section 44 of Coast Guard Act, 1978.

In that he, at date and place mentioned in the first charge, in company with R.Anand Pradhan navik, no.01113-L, harish Chandra, Uttam Navik, No.01815-Z and Monoj Kumar, Uttam Navik No.01774-M conspired to send anonymous letters with the object to highlight their combined grievance regarding pay and allowances.

Third charge

Violation of Act.

Section 42 of Coast guard Act, 1978

In that he, at Chennai on 13/14 July 1998 with the object to highlight Coast guard personnel combined grievance unauthorisedly communicated to the press, consequence of which, news was published in Indian Express, Chennai Edition on 18 July 1998, thereby violated the provisions of section 13(c) of Coast Guard Act, 1978."

Charges against Harish Chandra

"First charge

An act prejudicial to good order and Coast Guard Discipline under Section 44 of Coast Guard Act 1978. I

In that he, at Chennai on first week of July, 98, incited the Ship's Company of Coast Guard Air Station (Chennai), to contribute funds with the object to highlight their combined grievances regarding pay and allowances through press and by sending anonymous letter, consequences of which, he received Rs.14,600.00 (Rupees Fourteen thousand six hundred only) from PS Shelly Raj, Pradhan Navik No.02038-M of Coast Guard Air Station, (Chennai).

Second Charge

Violation of Act

In that he, at Chennai, with the object to highlight Coast Guard Personnel grievances regarding pay and allowances, ulauthorisedly communicated to the press, consequences of which Coast Guard Headquarters letter No.PA/0172 dated 23 January 98 regarding "Redressal of grievances" Harish Chander, Uttam Navik (ME)

No.01815-Z was published in local news papers namely "Thinaboomi" Chennai edition on 03 August 98, thereby contravened the provisions of Section 13(c) of Coast Guard Act, 1978.

Third charge:-

An act prejudicial to good order and Coast Guard Discipline Section 44 of Coast Guard Act 1978.

In that he, at Chennai, on the first week of July 98 guilty in company with R.Anand, Pradhan Navik No.01113-L, PS Shelly Raj, U/Navik No.02038-M and Manoj Kumar, Uttam Navik No.01774-M conspired to send anonymous letters with the object to highlight their combined grievance regarding pay and allowances. "

Discussion:

10. The Commanding Officer Sri.P.P.S.Sodhi after initiating the action appears to have conducted the preliminary investigation and it was only on the basis of the said preliminary enquiry, further proceedings were taken against the respondents including their detention in the Coast Guard Station. There is a reference about the preliminary investigation conducted by Sri.P.P.S.Sodhi in the counter affidavit filed by Commandant Sri.V.S.R.Murthi in Writ Petition No.16924 of 1998. The records produced by the Coast Guard also give an indication that it was only the said Sri.Sodhi, who has ordered the arrest of the respondents on the ground of mutiny in Coast Guard. It is true that the evidence was recorded by another officer. However, the punishment was awarded only by the Commanding Officer, who was instrumental in commencing the proceedings. Therefore, the respondents were justified in their contention that Sri. P.P.S.Sodhi, the then Commanding Officer, Coast Guard Station, Chennai acted as the de- facto complainant, prosecutor as well as the Judge.

11. The order passed by the Commanding Officer in the case of P.S.Shelliraj (respondent in W.A.No.1529 of 2009) read thus:

"PUNISHMENT APPROVAL FORM

CGS Madras

Dated 01 Sep, 98

CGS Madras.

No.203/1-02038-M

For: Proposed following punishments

a) To suffer Rigorous Imprisonment for two

months.

b) To dismiss from the service

c) Deprivation of first and second Good Conduct Badges.

Whereas PS Shelly Raj Rank Uttam Navik (ACD)
No.02038 - M

Good Conduct Medal : Nil

Good Conduct Badges: Two

Date of Birth: 27.03.71

Date of Entry into Coast Guard Service:
05.09.1989

Date of joining CGAS (Chennai) : 22.05.96

Character assessed to date: Very good

Was charge for that he did:

(a) "Was in the first week of Jul 98 guilty of an act prejudicial to good order and Coast Guard Discipline under Section 44 of Coast Guard Act 1978. In that he, at Chennai on first week of Jul 98, improperly collected Rs.14,600/- (Rupees fourteen thousand six hundred only) from Coast Guard Air Station (Chennai), Ship's Company, which was later handed over to Harish Chandra, Uttam Navik No.01815-Z, with the object to highlight their combined grievance through newspaper and anonymous letters to superior authorities."

(b) " Was in the week of Jul 98, guilty of an act prejudicial to good order of and Coast Guard Discipline Section 44 of Coast Guard Act 1978, in that he, at the date and place mentioned in the first charge, in company with R.Anand, Pradhan Navik No.01113-L, Harish Chander Uttam Navik, No.01815-Z and Manoj Kumar Uttam Navik No.01774-M conspired to send anonymous letters to superior authorities with the object to highlight their combined grievance regarding pay and allowances."

(c) "Did contravened the provisions of Section 13(c) of Coast Guard Act, 1978 hence committed an offence under Section 42 of Coast Guard Act 1978. In that he, at Chennai, with the object to highlight Coast Guard Personnel combined grievances regarding Pay and allowances, unauthorisedly communicated to the

press, consequences of which news was published in Indian Express, Chennai edition on 18 Jul 98."

AND WHEREAS I did, on the 01 day of September, 1998 personally and publically, in the presence of the complainant and the accused investigated the matter and whereas the accused pleaded not guilty to the charges.

Having heard the evidence of Dy. Comdt. K.Dikshit (0237-M) and Comdt RM Sharma (0018-P) in support of the charges as well as what the accused has to offer in his defence and the evidence of Nil whom he called on his behalf, I consider the charges to be substantiated against him and taking into consideration that this is the first offence registered against him on his Conduct Sheet, I adjudge him to be punished as follows:

- a) To suffer Rigorous Imprisonment for two months.
- b) To dismiss from the service
- c) Deprivation of first and second Good Conduct Badges.

Given under my hand on board CGS Chennai on the first day of September 1998.

sd/
Signature and Rank of CO
(PPS Sodhi)
Commander
Commanding Officer
CGS Madras."

12. Though the learned Single Judge has allowed the writ petitions on the ground of non-production of original file to substantiate the contentions taken by the Coast Guard, we have perused the xerox copies of the documents produced by the Coast guard.

13. The order dated 1 September, 1998 on the file of the Commanding Officer clearly shows that he has not made any attempt to consider the evidence recorded by the Deputy Commandant. The Commanding Officer after extracting the background facts, abruptly concluded that the charges were proved and punishment was imposed.

14. The Commanding Officer has passed a brief order without reasons on account of his personal knowledge of the matter as he was the officer who conducted the preliminary enquiry in the matter. The available materials clearly gives an impression that the Commanding Officer Sri.Sodhi actively took part in the proceedings except recording of evidence.

Right to reason:

15. The Supreme Court in Goyal Enterprises v. State of Jharkhand, {(2008) 13 SCC 570, at page 571} indicated that even in respect of administrative orders reasons should be furnished. The following paragraph would make the legal position clear.

"8. Even in respect of administrative orders, Lord Denning, M.R. in Breen v. Amalgamated Engg. Union⁵ observed (All ER p. 1154h): 'The giving of reasons is one of the fundamentals of good administration.' In Alexander Machinery (Dudley) Ltd. v. Crabtree⁶ it was observed:

'Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at.'

Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the 'inscrutable face of the sphinx', it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements

of natural justice is spelling out reasons for the order made; in other words, a speaking-out. The 'inscrutable face of the sphinx' is ordinarily incongruous with a judicial or quasi-judicial performance."*

16. In *Rani Lakshmi Bai Kshetriya Gramin Bank v. Jagdish Sharan Varshney* (2009 (4) SCC 240), the Honourable Supreme Court again underlined the necessity to furnish reasons in support of the order thus:-

"The purpose of disclosure of reasons, as held by a Constitutional Bench of this Court in *S.N.Mukherjee v. Union of India* is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimises the chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation."

17. The father of P.S.Shelliraj, respondent in Writ Appeal No.1529 of 2009 filed a Habeas Corpus Petition before this Court in H.C.P.No.1054 of 1998 for a direction to produce the body and person of P.S.Shelliraj, who has been detained by the Commanding Coast Guard, Chennai. In the said Habeas Corpus petition, Sri. P.P.S.Sodhi, the Commanding Officer, who ultimately passed the order of dismissal, filed a counter justifying the detention. The counter was filed as early as on 17 August 1998. It is a matter of record that on 11 August, 1998 that the Commanding Officer appointed the Deputy Commandant to record the evidence. Therefore, the counter affidavit justifying the action taken against the respondents was filed even before the recording of evidence by the Deputy Commander. In the counter affidavit, Commander Sri.P.P.S. Sodhi contended that few disgruntled sailors had resorted to unlawful means to highlight their demand in respect of the recommendations made by Fifth Pay Commission regarding pay and allowances of Coast Guard Personnel. They pasted threatening

posters at Coast Guard Stations/ships at Mumbai, Cochin, Visakhapatnam and Chennai. It was found that fax message was sent from Kavitha Xerox to the Minister for Defence with regard to non-implementation of the recommendation of Fifth Pay Commission. Enquiry conducted in the matter and particularly with regard to fax message sent through Kavitha xerox confirmed the participation of the respondents. The respondents instigated the personnel of Coast Guard Air Station (Chennai) to make a demand before the Defence Minister and for the purpose collected a sum of Rs.14,600/- to fund the unlawful activities against Coast Guard. In short, the Commanding Officer arrived at a finding that the respondents have committed an offence punishable under the Coast Guard Act and Rules.

18. Rule 21 of the Coast Guard Rules (Disciplines), 1983 reads thus:

21. Attachment to another unit:- The Commanding Officer shall not deal with any case:-

(a) Where the offence with which the accused is charged is against the Commanding Officer himself; or

(b) Where the Commanding Officer is himself a witness in the case against the accused; or

(c) Where the Commanding Officer is otherwise (personally interested in the case) the accused shall be attached to another ship or station for the disposal of the case under the orders of the District Commander or the Regional Commander:

Provided that a Commanding Officer shall not be disqualified from hearing a charge merely because the offence was committed against the property of a Coast Guard Mess or band or institution of which the Commanding Officer is a member or trustee or because the offence is one of disobedience of such Commanding Officer's orders."

19. Rule 21 was introduced with a view to avoid the element of arbitrariness. The misconduct in question was committed during the commandship of Sri. P.P.S.Sodhi. He was instrumental in taking up this matter. Therefore he should be treated as a witness with respect to the charges framed against the respondents. In such circumstances, the said Officer should have recused himself from the disciplinary proceedings. The proceedings initiated by the said Officer resulted in the punishment of respondents. The disciplinary proceedings were conducted in total violation of Rule 21(b) of the

Coast Guard Rules (Disciplines), 1983.

20. It is, therefore, a matter of record that the very same officer, who conducted the preliminary enquiry had ultimately passed the order of dismissal besides imposing jail sentence for two months in the case of R. Anand and Harish Chandra.

21. The Supreme Court in State of U.P. v. Saroj Kumar Sinha (2010(2) Scale 42) indicated that a Government employee facing departmental enquiry is entitled to a reasonable opportunity to defend himself and the enquiry proceedings should be conducted unbiased. The Supreme Court said:

"28. When a department enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service. In the case of Shaughnessy v. United States, 345 US 206 (1953) (Jackson J), a judge of the United States Supreme Court has said procedural fairness and regularity are of the indispensable essence of liberty. Severe substantive laws can be endured if they are fairly and impartially applied."

22. It is true that the respondents were members of a disciplined force. They were expected to maintain high degree of discipline in a force like Coast Guard. However, it cannot be said that they are not entitled for a reasonable opportunity and they should be deprived of a fair enquiry. The disciplinary authority should not commence the enquiry with an element of bias. The enquiry should have been initiated with an open mind and depending upon the evidence adduced necessary action could have been taken against the delinquents.

23. However, in the case on hand, the entire proceedings right from conducting the preliminary enquiry, filing Counter in the Habeas Corpus Petition and ultimately passing the order of dismissal, were all done by the very same officer. Therefore, the

respondents were fully justified in their contention that they were denied of a fair hearing and the recording of evidence conducted by the Deputy Commander was a make-belief affair.

24. The Coast Guard was well aware that proceedings were pending before the High Court with respect to the order of dismissal passed against the respondents. In fact Habeas Corpus Petitions were also filed before this Court on earlier occasion. The writ petitions were admitted in the year 2003 and Rule Nisi was issued directing the appellants to produce the records. For the reasons best known to them, the original records were not produced. Finally when the learned Single Judge directed them to produce the records they have given an explanation that during the course of shifting their office, they lost the file. There was nothing on record to indicate as to when the file was lost and what prevented them from producing the file immediately after receiving Rule Nisi by them. Non-production of the file has to be considered in the light of the challenge made to the disciplinary proceedings at the instance of the respondents.

25. Therefore on a careful consideration of the entire factual matrix, we are of the view that the Commanding Officer, Coast Guard Station failed to conduct the enquiry as contemplated under the Coast Guard Rules (Disciplines), 1983 and as such, the learned Single Judge was justified in quashing the order of dismissal, though on the ground of non-production of file. Even otherwise, on a careful perusal of the available records, we are convinced that the alleged attempt was only to redress their grievances with respect to the non-implementation of the recommendations made by the Fifth Pay Commission and it was not a mutiny.

26. The documents relied on by the Coast Guard themselves contains statements with regard to the implementation of pay scales by the other departments. There was no finding with regard to mutiny and the principal charge relates to despatch of anonymous letters and the evidence also proceeds on the basis that the respondents were instrumental in sending fax message to the Defence Minister.

27. We are, therefore, of the considered view that the available materials clearly give an indication that the Commanding Officer was acting as the complainant, prosecutor as well as the Judge and as such, a fair enquiry was denied to the respondents. The Commanding Officer appears to have entertained a clear bias against the respondents and the same is evident from the records (xerox copies) produced before us.

28. The secondary issue is as to whether we should remit the

matter to the Coast Guard for fresh consideration.

29. The misconduct in question relates to the year 1998. According to the Coast Guard, none of the original records are available with them. In the said circumstances, there is no point in remitting the matter to the Coast Guard for considering the issue afresh. We are, therefore, of the opinion that relief should be moulded in this case.

DISPOSITION:

30. Accordingly, we confirm the order passed by the learned Single Judge with respect to setting aside the order of dismissal from service.

31. It is a matter of record that the respondents have not worked for the period in question. Therefore they are not entitled to the salary for the period up to 17 July, 2009, the date of order passed by the learned Single Judge directing re-instatement. In short, the respondents are entitled to backwages with effect from 18 July, 2009. They should be given all the other benefits including continuity of service and seniority, consequent to the order setting aside the punishment.

32. The original respondent in W.A.No.1530 of 2009 died during the pendency of the proceedings and as such, his legal representatives are shown as respondents 1 to 3. Therefore, the third appellant (The Commanding Officer, Coast Guard Station, Madras) is directed to calculate the benefits due to the deceased, consequent to the order setting aside the punishment of dismissal from service and the consequential order of re-instatement and pay the amount to the legal representatives as expeditiously as possible and in any case within a period of three months from the date of receipt or production of a copy of this judgment.

33. The writ appeals are allowed in part. No costs.

Sd/-

Asst.Registrar.

/true copy/

Sub Asst.Registrar.

Tr/

To

1. Union of India
rep.by its Secretary to Government
Union of India
Ministry of Defence
New Delhi.

2. The Director General
Coast Guard Headquarters
National Stadium Complex
New Delhi-110 001.

3. The Commanding Officer
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Rudra Road
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4. The Commanding Officer
Coast Guard Station (Madras)
C/o Coast Guard Region HQ (East)
Fort St. George
Chennai-600 016.

1 cc to Mr.S. Hajamohideen Gisthi, Advocate, Sr. 46320

2 ccs to Mr.M. Kamalakannan, advocate, Sr. 46303

1 cc to Mr.K. Sudalaikannu, Advocate, Sr. 46358

1 cc to Ms/ Lakshmipriya associates, Sr. 46256

W.A.NOs.1528 to 1530
of `2009

RSY (CO)
kk 2/8

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