

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

T.A.No.164 of 2010  
(W.P.No.13097 of 2007-High Court of Andhra Pradesh)

Friday, 17<sup>th</sup> day of September 2010

THE HONOURABLE JUSTICE A.C. ARUMUGAPERUMAL ADITYAN  
(MEMBER-JUDICIAL)  
AND  
THE HONOURABLE LT GEN (RETD) S. PATTABHIRAMAN  
(MEMBER – ADMINISTRATIVE)

P.K.Parida,  
S/o.Kirthana Parida,  
I.N.S. DEAGA, Lakshya Squadron,  
Visakhapatnam.

.... Applicant

By Legal Practitioner Mrs.Tonifia Miranda

Vs.

1.The Union of India,  
Represented by the Secretary,  
Ministry of Defence, New Delhi.

2.The Chief of Naval Staff,  
Kotla House, New Delhi.

3.The Flag Officer-Commanding-in-Chief,  
Eastern Naval Command,  
Naval Base, Visakhapatnam.

4.The Commanding Officer,  
INS DEGA, Eastern Naval Base,  
Visakhapatnam.

.... Respondents

By Mr.S.Haja Mohideen Gisthi, SCGSC,

**ORDER**

(Order of the Tribunal made by Justice ACA Adityan)

The petitioner, who has been charged under Section 354 IPC r/w Section 77(2) of the Indian Navy Act, 1957 and after undergoing Summary Trial proceedings, awarded with a punishment of dismissal from Naval service and deprivation of 3<sup>rd</sup>, 2<sup>nd</sup> & 1<sup>st</sup> Good Conduct Badges by the Chief of Naval Staff, challenging the said punishment had approached the

Honourable High Court of Andhra Pradesh at Hyderabad, by way of filing W.P.No.13097 of 2007, which has been transferred to this Regional Bench of Armed Forces Tribunal, Chennai, in accordance with the provision contemplated under Section 34 of the Armed Forces Tribunal Act, 2007 and reassigned T.A.No.164 of 2010.

2.The petitioner in his petition has narrated the alleged facts which led him to face the Summary Trial for the offence under Section 354 IPC r/w Section 77(2) of the Indian Navy Act and has raised the point that the 4<sup>th</sup> respondent did not provide an opportunity to the petitioner to exercise his option or to take up the matter to the Court Marshal. This point was answered by the respondents in their joint counter at Para 18 as to the effect that Regulation 30(c) of the Regulations for the Navy (Part II, Statutory), will not be applicable to the present case since the Commanding Officer has not punished the petitioner with reduction in rank, but has awarded only the punishment of dismissal besides giving para-war answer to the objection raised in the petition, in their counter.

3.We heard the learned counsel for the petitioner as well as the learned Junior Counsel of the Senior Central Government Standing Counsel appearing for the respondents and considered their respective submissions.

4.Now the point for determination in this petition is *whether the award of punishment by the 4<sup>th</sup> respondent is in conformity with the Regulations for the Navy [Regulation 30(c)]?*

5.**POINT:-** The provisions under the Regulation 30 of the Regulations for the Navy (Part II, Statutory) read as follows:-

**"30.Right to Elect Trial by Court-Martial:-** If a Chief Petty Officer or Petty Officer is charged with an offence which, if proved, would justify his being summarily reduced in lower rank, the following procedure shall be adopted\_

(a).....

(b).....

(c)At the conclusion of the investigation, the Commanding Officer, if he thinks that the offences if proved, would deserve summary reduction in rank, shall inform the accused that he can, if he desires, be tried by court-martial and that a rank taken away by sentence of court-martial cannot be regained without submitting it to the Chief of the Naval Staff for approval, but the Commodore Bureau of sailor or the Commanding officer would have the power to restore it if the reduction in rank is summarily effected by warrant.

(d)If the accused, within twenty-four hours of such information indicates that he does not wish to be tried by court-martial and the Commanding Officer decides that reduction in rank is the appropriate punishment, necessary steps shall be taken to obtain the approval on the warrant, of a Flag Officer or Commodore to whom reference can most conveniently be made, the warrant being accompanied by a summary of the evidence. Each of the witnesses shall sign the summary of the evidence he has given. The warrant shall be signed, but neither dated nor read until the necessary approval has been obtained, but if such approval cannot be obtained with in a reasonable period, the Commanding Officer may award the sentence himself, reporting the circumstances with out delay to the appropriate Administrative Authority.

(e).....

(f)....."

5(a)A perusal of Warrant Form available in the records shows that the Commanding Officer after coming to the conclusion that the petitioner/accused is liable to be awarded with the punishments of

(i)Imprisonment for a period of 89 days (No.1)

(ii)Dismissal from the Naval Service (No.3)

(iii)Reduction in the rank of Mech (AL) (No.4)

(iv)Deprivation of third, second and first Good Conduct Badges (No.9)

had submitted the same to the decision of the Senior Officer, who in turn had awarded the punishment of (a) dismissal from Naval Service and (b) Deprivation of third, second and first Good Conduct Badges. Under such circumstances, We are of the considered view that once the Commanding officer has come to the conclusion that the petitioner / accused is liable to be punished with the reduction in rank, then he ought to have followed the provision contemplated under Regulation 30(c) of the Regulations for the Navy (Part II, Statutory), which We have extracted in the earlier paragraph. The Commanding Officer, after coming to the conclusion that the petitioner is liable to be punished with reduction in rank, the Commanding Officer, ought to have given an opportunity to the petitioner / accused to exercise the option whether he desires to be tried by Court-Martial, as per the provision contemplated under Regulation 30(c) of the Regulations for the Navy. Unfortunately, the said procedure was not followed by the Commanding Officer before awarding the punishment. Under such circumstances, We are of the considered view that the petitioner shall be given an opportunity by the Commanding Officer, to exercise his option whether he desires to be tried by the Court-

Martial as contemplated under Regulation 30(c) of the Regulation for the Navy, then to be proceeded with in accordance with law. Point is answered accordingly.

6. In fine, the petition is allowed and the impugned order is set aside and the case is remanded to the concerned Commanding Officer for re-trial after giving an opportunity to the petitioner to exercise his option as contemplated under Regulation 30(c) of the Regulation for the Navy (Part-II, Statutory). The petitioner shall appear before the concerned Commanding Officer on 04.10.2010. If the petitioner fails to appear before the Commanding Officer on 04.10.2010, the petition shall deemed to have been dismissed. No costs.

Justice ACA Adityan  
M(J)

Lt Gen (Retd) S.Pattabhiraman  
M(A)

17.09.2010

**Member (J)** \_ Index : Yes / No Internet : Yes / No

**Member (A)** \_ Index : Yes / No Internet : Yes / No

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To,

1.The Secretary, Ministry of Defence,  
Union of India, New Delhi.

2.The Chief of Naval Staff, Ktla House, New Delhi.

3.The Flag Officer-Commanding-in-Chief,  
Eastern Naval Command,  
Naval Base, Visakhapatnam.

4.The Commanding Officer, INS DEGA,  
Easern Naval Base, Viskhapatnam.

5.Mrs.Tonifia Miranda (Advocate for the petitioner)

6.Mr.S.Haja Mohideen Gisthi, SCGSC.

**JUSTICE ACA ADITYAN – M(J)  
AND  
LT GEN (RETD) S.PATTABHIRAMAN – M(A)**

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