

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No(s).7088-7089/2011

COMMANDING OFFICER INS CIRCARS & ORS.

Appellant(s)

VERSUS

B. RAMU

Respondent(s)

O R D E R

The respondent was working as Radio Operator (Telegraphist) with Indian Naval Ship (INS) Circars at Visakhapatnam. The respondent impersonated as a Sub-Inspector of Police and extracted an amount of Rs.2,000/- from one Mr. Aditya Kumar who went to drop his friend Ms.Sandhya at a nearby girls hostel on 21.11.2003. On the next day, the respondent called Ms. Sandhya and demanded an amount of Rs. 5,000/-. Ms. Sandhya informed her parents who in turn reported the matter to the civil police. A trap was laid by the civil police and the respondent was apprehended at the time when Ms. Sandhya was handing over the amount to him. Investigation was conducted by the Commanding Officer INS Circars in terms of Regulation 25-33 of the Regulations for the Navy Part II (Statutory). An investigation officer was appointed. The respondent pleaded not guilty. He submitted an explanation that he knew Ms. Sandhya for four months prior to from the date of the incident, that he gave an amount of Rs.5,000/- to her for payment of college fees and Ms.

Sandhya was returning the amount of Rs.5,000/- when he was caught by the civil police.

On 13.12.2003, the respondent approached Ms.Sandhya and requested her to withdraw the complaint by giving a written apology to her, pursuant to which a letter was written by Ms. Sandhya to Naval Provost Martial and Commanding Officer INS Circars on 22.12.2003 withdrawing her complaint. The statements of Ms.Sandhya and Mr.Aditya Kumar were recorded on 20.02.2004 in the presence of the respondent. The respondent cross examined both the witnesses and questions and answers were reduced to writing. The signature of the respondent was also taken on the deposition of Ms. Sandhya and Mr. Aditya Kumar.

After hearing the respondent, the Commanding officer imposed the punishment of dismissal from service, reduction in rank to Radio Operator I (Telegraphist) and deprivation of 2nd and 1st Good Conduct Badges(GCB). The respondent was also sentenced to rigorous imprisonment for three months.

In terms of Regulation 16 of the Regulations for the Navy Part II (Statutory), the punishment warrant was submitted by the Commanding Officer to the Superior Naval Authority for approval on 23.03.2004. The complete record including the charges, statements made by the respondent before the Investigating officer, the Executive Officer and the Commanding

Officer and evidence recorded during investigation was transmitted to the Superior Naval authority. The Chief of Naval Staff approved the punishment imposed on the respondent vide order dated 13.05.2004.

A writ petition was filed by the respondent challenging the orders of punishment before the High Court which was transferred to the Armed Forces Tribunal, Regional Bench, Chennai.

The Armed Forces Tribunal allowed the application filed by the respondent and set aside the order of punishment on the ground that the respondent was denied an opportunity to defend himself at the summary trial. The Tribunal directed a *de novo* summary trial to be conducted against the respondent.

By an order dated 12.08.2011, this Court stayed the proceedings of the *de novo* summary trial as directed by the Tribunal

The learned senior counsel for the appellant submitted that the Tribunal committed an error in holding that the Regulation 29 (3) and 29 (4) were violated. He argued that the finding recorded by the Tribunal that there was a violation of the regulations and that an opportunity was not given to the respondent to defend himself is contrary to record. He further submitted that failure to send the original statements of Ms. Sandhya and Mr. Aditya Kumar to the Chief of Naval Staff is at the most a

technical lapse. He also stated that a summary trial is not possible at this stage.

Learned counsel for the respondent defended the order passed by the Tribunal submitting that the respondent had an excellent record of service. He stated that the respondent did not get sufficient opportunity in the summary trial and he also stated that the respondent was not provided with the relevant documents which were filed before the Tribunal for the first time. He urged that there is an infraction of Regulation 29 (4) as no approval was sought from the superior authority.

Regulation 29(3) provides that the accused shall be informed that the case is remanded as and when the Commanding Officer decides to apply trial by Court martial or to give a warrant punishment. A perusal of the summary of evidence which was filed along with additional affidavit in this Court would show that the respondent was informed about the enquiry and the witnesses were examined in his presence. Regulation 29(a) provides that a summary of evidence given by the witnesses shall be recorded if the punishment likely to be imposed would be a warrant punishment. The summary of evidence was recorded in the question and answer form and the evidence was transmitted to Chief of Naval Staff. Hence, there is no violation of Regulation 29 (9) of the Regulations.

The other infirmities which are pointed out by the Tribunal in the conduct of the proceedings pertain to original statements of Ms. Sandhya and Aditya Kumar not being sent to the Chief of Naval Staff as only xerox copies were sent.

We anxiously examined the evidence on record and considered the submissions made by both sides. We are of the opinion that the respondent was given enough sufficient opportunity to defend himself in the summary trial. He participated in the trial and cross examined the witnesses. He was also furnished the required documents. Therefore, there is no violation of Regulations 29 (3) and (4).

The learned counsel for the respondent submits that the respondent has completed service of 11 years and 4 months. The appellants are directed to consider the representation preferred by the respondent for payment of gratuity as per his entitlement.

The appeals are, accordingly, allowed. Pending application(s), if any, stand disposed of.

.....J
(L. NAGESWARA RAO)

.....J
(HEMANT GUPTA)

NEW DELHI;
22nd August, 2019

ITEM NO.102

COURT NO.10

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

IA 3/2011, in Civil Appeal No(s).7088-7089/2011

COMMANDING OFFICER INS CIRCARS . & ORS.

Appellant(s)

VERSUS

B. RAMU

Respondent(s)

(FOR STAY APPLICATION ON IA 3/2011
IA No.3/2011 - STAY APPLICATION)

Date : 22-08-2019 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE L. NAGESWARA RAO
HON'BLE MR. JUSTICE HEMANT GUPTAFor Appellant(s) Mr. R.Balasubramaniam, Sr. Adv.
Mr. Nachiketa Joshi, Adv.
Mr. Bharat Singh, Adv.
Mr. N.K.Karhail, Adv.
Mr. Arvinder Kr. Sharma, Adv.
Mrs. Anil Katiyar, AOR

For Respondent(s) Mr. Hitendra Nath Rath, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeals are allowed in terms of the
signed order. Pending application(s), if any, stand
disposed of.

(B.Parvathi)
Court Master(Sunil Kumar Rajvanshi)
Court Master

(Signed order is placed on the file)