

K.s. Sahu Vs. Uoi .

K.s. Sahu Vs. Uoi .

SooperKanoon Citation : sooperkanoon.com/1229167

Court : Supreme Court of India

Decided On : Aug-05-2022

Judge : Hon'Ble Mr. Justice Abhay S. Oka Hon'Ble Mr. Justice M.M. Sundresh

Appeal No. : C.A. No.-011287-011287 - 2013

Appellant : K.s. Sahu

Respondent : Uoi .

Advocate for Pet/Ap. : DEEPAK GOEL ____

Judgement :

NON-REPORTABLE IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL No.11287 OF2013K. S. SAHU APPELLANT v. UNION OF INDIA & ORS. ...RESPONDENT(S)

JUDGMENT

ABHAY S. OKA, J.

1. This is an appeal under Section 31 of the Armed Forces Tribunal Act, 2007 by which, an exception has been taken to the judgment and order dated 27th August 2013 passed by the Armed Forces Tribunal (for short, the said Tribunal), Regional Bench, Kochi.

2. On 31st July 2002, the appellant joined Indian Navy as a sailor. The appellant was selected by the Service Selection Board to undergo training for being commissioned as an officer. He underwent initial training at INS Mandovi at Goa for a period of two years from 7th July 2002. On 21st June 2009, he was sent for training at Indian Naval Academy, Ezhimala 1 (for short, INA). He was required to complete 5th and 6th terms of training at INA. On 1st December 2010, a communication was issued by the Integrated Headquarters of the Ministry of Defence (Navy), Government of India informing that the competent authority has accorded approval to the withdrawal of the appellant from INA and revert him to his original rank and branch as a sailor without loss of seniority. Being aggrieved by the said decision, the appellant filed Original Application under Section 14 of the Armed Forces Tribunal Act, 2007 before the said Tribunal. By the impugned judgment, the Original Application has been dismissed. SUBMISSIONS OF THE APPELLANT³ The learned senior counsel appearing for the appellant pointed out the order dated 27th August 2013, passed by the said Tribunal by which leave has been granted under sub- Section (1) of Section 31 of the Armed Forces Tribunal Act, 2007 as three questions of general public importance were involved. The first question was whether the appellant who was a service cadet could be withdrawn from the course in INA without following the principles of natural justice. The second question was whether Regulation 216 of the Navy (Discipline 2 and Miscellaneous Provisions) Regulations, 1965 (for short the said Regulations) could be invoked against a service cadet. The third question was whether, after completion of the course and receipt of the certificates, the applicant could be withdrawn.

4. The learned senior counsel submitted that the withdrawal of the appellant from the course is contrary to the Rules in the Enclosure-1 of Naval Headquarters letter dated 11th November 1988, which provide that the final authority for withdrawal of a cadet from the course vests in the Government. He pointed out that in this case, the decision is made not by the Government, but by a subordinate authority. He also pointed out that the same enclosure provides that a cadet is to be dispatched home on leave, pending the acceptance of the proposal for his withdrawal if it is made on the eve of summer/winter break. He submitted that even after the recommendation was made for the withdrawal of the appellant from the course, he

was not sent home but was permitted to pursue the course. He also pointed out that the Naval authorities have contended on one hand that the withdrawal is on the disciplinary grounds and on the other hand, the withdrawal is on the ground that the appellant was found deficient in basic character and other officer like qualities and 3 graded as unacceptable in spite of written warnings. He submitted that both the grounds are distinct grounds. The learned senior counsel further submitted that the officers of the Navy have victimised the appellant due to the fact that he comes from a very poor family and his father is working as a carpenter in a Naval establishment. The learned senior counsel further submitted that the appellant was influenced to sign the documents accepting his mistake under a threat of disciplinary action. He submitted that the entire theory of recovery of articles from the appellants room is very doubtful. He submitted that the Navy forwarded an invitation to the appellants parents for attending the valedictory ceremony on 6th December 2010 and they were never informed about the withdrawal of the appellant. The learned senior counsel submitted that the said Tribunal has completely ignored important questions of public importance involved in the application preferred by the appellant.

SUBMISSIONS OF THE RESPONDENT5 Ms. Aishwarya Bhati, the learned Additional Solicitor General of India firstly submitted that Regulation 216 of the said Regulations has not been invoked in the case of the 4 appellant and therefore, there is no question of following the principles of natural justice. She pointed out that the Rules governing resignation, withdrawal, relegation and re- examination of (10+2) Executive Cadets undergoing training at Naval Academy, were issued by the Integrated Headquarters of Ministry of Defence (Navy), New Delhi vide letter dated 11th November 1988. She pointed out that grounds for withdrawal have been set out in the said Rules. In this case, Ground c was invoked as the appellant was found deficient in basic character and other officer like qualities. She pointed out that the written warnings were issued to the appellant on 16th July 2009 and 11th May 2010. The appellant was called upon to submit his explanation while issuing the warnings. She pointed out that though the proposal for withdrawal was submitted on 24th August 2009, on 6th November 2009, the appellant was only relegated. She pointed out that on the basis of the proposal dated 26th June 2010, ultimately the action of withdrawal was taken. She pointed out that all these aspects and the

conduct of the appellant have been taken into consideration by the said Tribunal. She urged that the impugned judgment of the Tribunal does not call for any interference. 5 CONSIDERATION OF SUBMISSIONS6 In the present case, impugned action which was the subject matter of challenge before the said Tribunal, was of the withdrawal of the appellant from the course which he was undergoing in INA. Regulation 216 of the said Regulations deals with the termination of service of an officer by the Government on the ground of misconduct. Clause (1) of Regulation 216 contemplates the issuance of show cause notice to the officer. Clause (2) of the Regulation 216 requires information to be given to the officer about all reports adverse to him and to give an opportunity to him to submit his explanation and defence in writing. However, the action of withdrawal of the appellant from the course was not taken in terms of Regulation 216. The said Regulation is applicable to termination of service. In this case, the service of the appellant has not been terminated.

7. The Integrated Headquarters of Ministry of Defence (Navy) vide letter dated 11th November 1988 forwarded to the Chiefs of the Western as well as Eastern Naval Commands, the Rules governing resignation, withdrawal, relegation and re-examination of (10+2) Executive Cadets undergoing training in INA. Rule 4 provides for the relegation of a cadet on the 6 grounds specified therein, subject to approval by the Naval Headquarters. Rule 4 reads thus.: 4. Subject to approval by naval Headquarters (DNT) a cadet may be relegated on any of the following grounds:- (a).Fails to achieve the minimum standards in academic and service subjects in spite of a written warning and re-examination. (Re- examination is permitted only upto 3 subjects). (b).Possesses the basic qualities required of an Officer but requires more time to develop them (requisite Officer Like Qualities). (c).Misses more than 10 weeks continuous training owing to illness or other medical grounds. (d).On disciplinary grounds. (e).Fails to achieve minimum standards in outdoor training in spite of written warning. (f)(i) Mines more than 40% of course duration due to hospitalization/sick leave/any medical grounds. (ii) mines more than 40% of ODT (games/PT and various PT tests) due to hospitalization/sick leave/medical grounds. (Corrected vide: HQ&NC letter TR/8238/ Policy dated 13 September 04).

8. There is a specific provision in Rules dealing with the withdrawal of a cadet from the course in INA. It reads thus.: Final authority for the withdrawal of a cadet read the Government. Withdrawal on 7 medical grounds will be regulated in accordance with regulation 218, Regulation for the Navy Part II (Statutory). A cadet may be recommended for withdrawal on any of the following grounds:- a.Fails to make the grade in academic subjects inspite of relegations and written warning for withdrawal. b.Fails to achieve the minimum standards in services, subjects, inspite of relegation(s) and written warning for withdrawal. c.Found deficient in basic character and other Officer Like Qualities and graded unacceptable in spite of written warnings. e.Disciplinary grounds f.Medical grounds. 10.Except for disciplinary or medical grounds, a cadet will normally be recommended for withdrawal at the end of a term. Recommendations for withdrawal on disciplinary grounds will be made after the cadet has been given adequate written warnings and opportunity to explain his conduct in terms of regulations 216, Regulation for the Navy Part II, Statutory. (emphasis added) 9. It is in the light of the aforesaid provision of the Rules that the controversy will have to be examined. It appears that on the basis of irregularities in the conduct of the appellant reported on 19th April 2010 by Lt. Praveen Kumar, an investigation was made. After carrying out the investigation 8 and questioning the appellant, his cabin was checked. In his cabin, various objectionable articles were found that were taken into the custody of Squadrons office. On 9th July 2009, the appellant was questioned on the charge that on 5th July 2009, he was found in possession of a large number of items which were government property and some were belongings of other cadets. While answering the questions, the appellant accepted that his cabin was checked on 5th July 2009. The appellant accepted that he was found in possession of pornographic magazines, cigarettes, a lighter and a mobile phone. He was also found in possession of Garuda Pay office stamp and a large number of seamens knives. He was in possession of a stabilizer, a multimeter as well as a BSNL phone. He accepted that a bedsheet of another cadet was found in his possession. In response to question no.24, the appellant stated that he has committed a wrong for the first time and was ready to take any punishment.

10. Based on the investigation carried out, a notice dated 16th July 2009 was issued to the appellant. In the notice, it was stated that the appellant was found in

the custody of government property, such as a stabilizer, a multimeter, BSNL landline phone, INS Garuda Pay office stamp, etc. He was found in possession of pornographic material apart from the possession of prohibited items like cigarettes, a lighter and mobile phone, etc. Moreover, he was found in possession of a large number of items belonging to other cadets. By the said notice, a warning was issued to the appellant and he was called upon to explain why action should not be taken against him. The appellant replied in writing on 16th July 2009, in which he claimed that the stabilizer, multimeter and cables were already in his room when he occupied it. He claimed that the INS Garuda Pay office stamp does not belong to him and he does not know how it was found in his cabin. He accepted that he was in possession of 5 Seamens knives, 16 bedsheets, 9 buckles of a drill, and a bedsheet of cadet Mr. Kunal Saini. He claimed that the mobile phone, MP3 player, etc. were his personal belongings. He accepted that he was in possession of cigarettes. He accepted that he was in possession of pornographic magazines. But shockingly, he claimed that the magazines were used for making greetings.

11. INA submitted a proposal on 24th August 2009 to the Headquarters recommending withdrawal of the appellant. The proposal contains all details of what was found during the investigation. The proposal refers to the fact that the appellant 10 was found in the custody of prohibited items, such as a mobile phone, cigarettes, lighter, etc. as well as pornographic material. It refers to the warning issued to the appellant. Though the proposal lastly refers to Regulation 216, it also mentions that the record shows that the appellant lacks basic character and officer like qualities. Instead of withdrawal from the course on 6th November 2009, the appellant was only relegated.

12. Another show cause notice was issued to the appellant on 11th May 2010, which is based on the investigation carried out by Lt.Commodore Ashutosh Bobade. In the Notice, it was stated that the appellant was found guilty of tampering with an official document (Squadron Sick Report Book). Apart from articles of the other cadets, he was found in possession of hammers, pliers and ante-room magazines.

13. INA submitted another proposal dated 26th June 2010 to the Naval Headquarters, which records that after the appellant was relegated on 6th November 2009, he indulged in tampering with the said official document. Moreover, he remained absent from the classes. It is also mentioned that the appellant has been so far subjected to 52 restrictions and he has accumulated 260 negative points. INA recommended action of 11 withdrawal against the appellant on the ground of lack of basic character and officer like qualities. It is on the basis of this proposal that a decision was taken by the Naval Headquarters to grant approval to the proposal for withdrawal of the appellant from INA. The Headquarters communicated the same to the Flag Officer Commanding-in-Chief, Headquarters Southern Naval Command, Kochi on 1st December 2010. We may note here that in response to the show cause notice issued on 16th July 2009, the appellant had accepted that he was found in possession of objectionable articles and requested the authorities to forgive him by stating that it was his first ever offence.

14. Before we deal with the legal submissions, we may note here that on 14th January 2011, the appellants father made a representation to the Chief of the Naval Staff for reconsideration of the action of withdrawal. He requested on behalf of the family that one more opportunity may be granted to the appellant. He assured that if the appellant was given one more chance, there wont be any complaint against him. By the letter dated 8th March 2011, the Commodore of Integrated Headquarters of the Ministry of Defence (Navy) informed the appellants father that the case of the appellant was 12 reconsidered and after reconsideration of the entire case, the request made by the appellants father could not be accepted on the grounds mentioned therein. It was mentioned therein that the appellant was offered every opportunity to improve. In fact, feedback on his progress at INA was communicated to the appellants father and he was requested to guide the appellant and encourage him to show progress. The said communication recorded that as the appellant met the mandatory educational requirement of the University of Goa, in the Graduation ceremony conducted on 27th November 2010, a B.Sc Degree of Goa University was granted to the appellant. By another letter dated 18th February 2011, the Commander and Training Captain clarified that the invitation for the passing out parade to be held

on 5th December 2010 was dispatched to the appellants father on 22nd October 2010 as a procedural norm. The appellants father was informed on 2nd December 2010 about the decision of the Headquarters of approving the proposal for withdrawal of the appellant. He specifically stated that on 2nd December 2010, Lt. Commodore Ashutosh Bobade informed the appellants father over telephone about the said decision and requested him to avoid attending passing out parade. It is stated in the said letter that the appellant never participated in the passing out parade. We may also note here that an appeal was thereafter preferred by the appellant to the Central Government on 7th July 2011.

15. Regulation 216 deals with the dismissal of an officer from service on disciplinary grounds. The appellant has not been dismissed from service. On the contrary, his service as a sailor was protected and even his seniority was protected. The withdrawal did not affect his service in any manner. In this case, we are not dealing with disciplinary action, but the action of withdrawal of the appellant from the course on the ground that the appellant was found deficient in basic character and other officer like qualities. As narrated above, based on the search of his cabin, a show cause notice was issued way back on 16th July 2009 to the appellant calling for his explanation. The appellant accepted that he was in possession of objectionable articles including pornographic magazines. Though a recommendation was made for withdrawal on 6th November 2009, the appellant was only relegated and was given one more opportunity to improve. Even thereafter, the appellant indulged in tampering with the record which led to the issuance of a fresh show cause notice and warning to the appellant on 11th May 2010. Only thereafter, on 26th June 14 2010 that a proposal was submitted to the Naval Headquarters for grant of approval to the proposed action of withdrawal.

16. We are dealing with a very disciplined force like the Navy. The appellant who was already in Naval service as a sailor was given an opportunity to undergo training. While assessing whether the appellant was found deficient in basic character and other officer like qualities, the conduct of the appellant, which is reflected from the Inquiry Report, two show cause notices and his own statement, has been taken into consideration. We have already quoted relevant Rules which provide that only the withdrawal on medical grounds will be governed by

Regulation 216 of the said Regulations. There are four other grounds mentioned therein, on the basis of which, withdrawal can be made. As can be seen from the said Rules and considering the fact that the question was of continuing training of the appellant, the competent authority could have always taken the decision of withdrawal on the basis of its subjective satisfaction of the existence of one of the grounds for withdrawal provided in the Rules. In this case, the subjective satisfaction of the competent authority is on the basis of material on record. At least on two occasions, the appellant was put to notice and warning and was given an 15 opportunity to explain his conduct. While taking action of withdrawal of the appellant from training, the competent authority made the assessment of the performance and conduct of the cadet in INA during his training. There was material on record to come to a subjective satisfaction that the appellant was deficient in basic character and officer like qualities. Two show cause notices were served upon the appellant before taking the action of withdrawal. There was an opportunity given on two occasions to the appellant to explain his conduct and improve his conduct. His conduct as reflected from record, certainly supports the conclusion that he lacked the qualities which an officer of Navy must possess.

17. As regards the argument that the power of withdrawal could have been exercised only by the Government, in the counter affidavit, reliance has been placed on the letter dated 17th August 2001 of the Ministry of Defence of the Government of India. The Chief of Personnel (COP) has been delegated the powers of withdrawal of officers and cadets under training. Hence, no fault can be found with the action of withdrawal on the ground that the approval of the Government was not taken.

18. A perusal of the impugned judgment of the Tribunal shows that the entire material has been carefully examined by 16 the Tribunal. The Tribunal consisted of an administrative member who is an expert in the field as he was a Lieutenant General. The entire conduct of the appellant during training at INA has been considered in the context of the qualities which an officer of the Navy must possess and the discipline required to be maintained in the Navy. While taking action of withdrawal, the competent authority has ensured that the service of the appellant with Navy is not affected in any manner and even the Degree of

University of Goa has been conferred on the appellant.

19. We find that the appeal is devoid of merit and therefore, it must fail. Accordingly, appeal is dismissed with no order as to costs.

20. Pending IAs, if any, shall stand disposed of. ..J.

(ABHAY S. OKA) ..J.

(M. M. SUNDRESH) New Delhi; August 5th, 2022. 17

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com