

UNION OF INDIA & ORS.

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v.

R. KARTHIK

(Criminal Appeal No. 831 of 2015)

JANUARY 21, 2020

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**[L. NAGESWARA RAO AND HEMANT GUPTA, JJ.]**

*Service Law:*

*Dismissal from service – Of a sailor in Naval forces – Pursuant to proceedings against the sailor – Upon complaint from superior officer alleging that the sailor used physical force against him – Application before Armed Forces Tribunal – Tribunal substituted the punishment of dismissal from service to the punishment of his detention for 75 days – Appeal by State to Supreme Court – Held: In the facts of the case, the order of Tribunal setting aside the dismissal order on the ground that the punishment was disproportionate to the misconduct, is within the jurisdiction of the Tribunal – Supreme Court in exercise of appellate jurisdiction would be slow in interfering with the substituted punishment, unless the order of Tribunal is found to be arbitrary, unreasonable or capricious – The view taken by the Tribunal in the present case is patently not illegal – Navy Act, 1957 – s. 45(a) – Armed Forces Tribunal Act, 2007 – ss. 15(6) and 30.*

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**Dismissing the appeal, the Court**

**HELD : 1.1 In terms of Section 15 of the Armed Forces Tribunal Act, 2007, the Tribunal exercises jurisdiction, powers and authority against any order, decision, finding or sentence passed by a court martial or any matter connected therewith or incidental thereto. Sub-section (6) of Section 15 of the Act empowers the Tribunal to substitute the findings of the court martial which includes the disciplinary proceedings under the said Act (Section 3 (f) of the AFT Act) and also to interfere if the sentence is found to be excessive, illegal or unjust. [Para 10] [110-D-F]**

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A       **1.2 The Commanding Officer who was on the high seas with the Sailor and the superior officer was aware of the extent of misconduct of the Sailor. None of the three witnesses have deposed regarding striking of the superior officer by the Sailor. The superior officer has not made himself available before the Investigating Officer or the Executive Officer. It has also come on record that the superior officer has been found to be guilty for using abusive language against the Sailor. Even though, the superior officer has used abusive language but the Sailor was not expected to retort and hit the superior officer. The conduct of the Sailor cannot be condoned in any manner. [Paras 9, 11 and 12] [110-D; 111-E-F]**

D       **1.3 The order passed by the Tribunal to set aside the dismissal is within the jurisdiction of the Tribunal finding that the punishment imposed is disproportionate to the misconduct. This Court in appellate jurisdiction under Section 30 of the Act would be slow in interfering with the substituted punishment, unless the order passed by the Tribunal is found to be arbitrary, unreasonable or capricious. The view taken by the Tribunal is not patently illegal warranting interference in the present appeal. [Para 13] [111-G-H; 112-A]**

E       **2. However, it is directed that the respondent shall be reinstated within two months but shall not be entitled to any back wages from the date of dismissal till reinstatement but he shall be entitled to computation of all consequential benefits including pay fixation. [Para 14]**

F       **CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 831 of 2015.**

G       **From the Judgment and Order dated 06.02.2015 of the Armed Forces Tribunal, Regional Bench, Chennai in O.A. (Appeal) No. 45 of 2014 and order dated 20.03.2015 in M.A. No. 53 of 2015 in O.A. (Appeal) No. 45 of 2014.**

**Anmol Chandan, Deepak Goel, Arvind Kumar Sharma, B.V. Balram Das, Mukesh Kumar Maroria, Advs. for the Appellants.**

**Ashok Panigrahi, Adv. (A.C.),**

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Anmol Tayal, S. Vinay Ratnakar, Nabab Singh, Advs. for the Respondent. A

The Judgment of the Court was delivered by

**HEMANT GUPTA, J.**

1. The orders passed by the Armed Forces Tribunal, Regional Bench, Chennai are subject matter of challenge by the Union of India. Vide the said orders, the verdict dated 24<sup>th</sup> July, 2013 of Summary Trial dismissing the respondent<sup>1</sup> from service was partly modified by setting aside the order of dismissal but substituting it with punishment of 75 days detention and maintaining second part of sentence i.e. deprivation of First Good Conduct Badge. B C

2. The Sailor entered in Naval service on 31<sup>st</sup> July, 2008 when he was about 19 years of age having born on 1<sup>st</sup> November, 1989. He was on board INS Gharial which started sailing on 29<sup>th</sup> May, 2013. He was Writer and assigned duties in the Pay Office for preparation of pay bills and payment of salaries and maintenance of records. An unfortunate incident happened on 29<sup>th</sup> May, 2013 at about 10:00 hours when Lt. Abhishek Vardhan made a complaint requesting strict possible action against the Sailor. The complaint dated 29<sup>th</sup> May, 2013 reads as under: D

“The ship left harbour on 29 May 13 at about 0830 hrs. We were to receive Seaking C-560 onboard at 1000 hrs and so flying stations was piped & Aviation Core Team was mustered on helo deck. Being the Aviation Officer of the ship, I went to helo deck to prepare the deck for flying. When I mustered the Aviations Core Team, Karthik, WTR I was missing. I called up bridge and requested SSD OOW to announce for him. After about 15-20 minutes and 2 more announcements Karthik, Writer, I, finally came to helo deck. When I asked him about the delay, he said that he had closed for SSD. When I told him that Aviation Core Team was mustered & he should have come, he said that his name is not in Aviations Core Team & that he is standby for Prasad, Cook II. I asked him if he was aware that Prasad was on leave. He said he was aware of it. I asked him again that as he was standby for Prasad and he knew he was on leave, he should have closed up. To this he replied that Chief Writer has told him that as there are only 2 writers onboard, they will not do any duty. I told him to E F G

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<sup>1</sup> for short, ‘Sailor’ H

A get Chief Writer to helo deck. He then replied that Chief Writer is not onboard & is admitted in hospital. Then I told him to remain on helo deck & once Aviations Core Team is secured, write a statement saying “he came late to helo hanger because Chief Writer had told him not to do any duty”. He then became more aggressive & shouted upon me that “I will not write any statement, Chief Writer is hospitalized.” I told him again that it does not make any difference whether Chief Writer is onboard or not, he must write a statement at end of Flying Stations. He now shouted on the top of his voice saying “Chief Sahab is admitted”. I then lost my cool and shouted back at him abusing him. He then hit me with his fist on my left cheek & abused me. I did not shout at him further or even touch him, I called a Regulating Sailor who was in Helo Hanger & told him to take Karthik, Writer to Executive Officer in bridge. I told the whole episode to the Executive Officer & EXO took us to Commanding Officer and I apprised him of the situation. After this I was asked to go to helo deck by EXO & ensure safe recovery of SC-560. I composed myself & went to the helo deck for recovering SC-560. After this when at 1400 hrs. Aviation Core Team was asked to muster in helo deck again, Karthik, Writer I did not come to helo deck once again. I asked POA (AH) Gupta to announce for him & went to oversee the ground run of SC-560. Post ground run, I was told by POA(AH) Gupta that Karthik, Writer did not come for Aviation Core Team again. I do not think that such an offence should be accepted by anyone and the most strict possible action be taken against the sailor. It was with this faith in Indian Navy that I did not hit the sailor back and I hope that my faith in the system remains so.”

F 3. On the basis of such complaint, the investigations were conducted by Lt. Cdr. Ishwar Chandra, Investigating Officer. The accused was brought before the Investigating Officer on 29<sup>th</sup> May, 2013 at 16:00 hrs. Ganesh Kumar Tiwari, Tara Chand Nehra and Vikash Sharma were examined as witnesses. The Investigating Officer referred the case to Executive Officer. The Executive Officer conducted the proceedings on 1<sup>st</sup> June, 2013 wherein the abovenamed three witnesses were again examined. Lt. Vivek Rajput was provided to the Sailor as a Defending Officer. They were not cross-examined by the Defending Officer. Jenish George, Lt. Cdr., acting as Executive Officer, referred the case to the

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Commanding Officer on 1<sup>st</sup> June, 2013. It may be stated that the three witnesses examined either before the Investigating Officer or before the Executive Officer have denied the incident as alleged. Lt. Abhishek Vardhan was neither cited as a witness nor was examined either by the Investigating Officer or by the Executive Officer. A

4. The Commanding Officer found the charges to be proved of an offence under Section 45(a) of the Navy Act, 1957<sup>2</sup> and recommended the detention for a period of 60 days and deprivation of First Good Conduct Badge. However, the Chief of Naval Staff on 19<sup>th</sup> July, 2013 passed an order of dismissal of Sailor from Naval Service and deprivation of First Good Conduct Badge. It is the said order which was challenged by the Sailor by way of an Original Application before the Tribunal. B C

5. The Tribunal found that the Sailor was a member of Aviation Core Team and was on actual duty. He did not report for duty when called upon to do so. The Sailor has sought to justify his action on the ground that he was not required to do so as ordered by his Chief Writer. The Tribunal found that the statement of Suraj Pradhan in respect of a past incident in August, 2012 was not made before the Sailor and no opportunity was given to him to cross-examine the witness. The Tribunal found the use of force by the Sailor was not premeditated or deliberate but was a consequence of provocation in the form of use of abusive language by a superior officer. It was admitted by the Sailor that it was a reflex action to the provocation and he immediately cooled down and owned up his mistake voluntarily. The officer has handled situation poorly and the use of abusive language to subordinates is an unbecoming act of an officer. It is also found that Lt. Abhishek Vardhan was found guilty of an act of using profane/abusive language under Section 74 of the Act and was given a punishment of one-month loss of seniority. The Tribunal held as under: D E F

“16. It appears that the punishment given to the officer was light in nature and, therefore, given the extenuating circumstances under which the whole episode occurred, the applicant’s plea for mitigation ought to have been considered. G

17. Viewed in light of the above, we are of the considered opinion that the sentence of dismissal from service awarded to the applicant by the Chief of Naval Staff is disproportionate and excessive.”

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<sup>2</sup> for short, ‘Act’

A        6. After holding so, the punishment of dismissal was set aside by substituting it with a punishment of 75 days detention which detention the Sailor has since undergone.

B        7. The Sailor is not aggrieved against the order passed by the Tribunal substituting punishment of deprivation of First Good Conduct Badge.

8. Learned counsel for the appellants vehemently argued that as per admission of the Sailor, he has hit his superior officer, therefore, he is guilty of an offence under Section 45(a) of the Act.

C        9. We find that none of the three witnesses have deposed regarding hitting of superior officer by the Sailor. The superior officer Lt. Abhishek Vardhan was not examined either before the Investigation Officer or the Executive Officer nor he has been made available for cross-examination as per the proceedings produced before us. It has also come on record that the superior officer has been found to be guilty for using abusive language against the Sailor.

D        10. In terms of Section 15 of the Armed Forces Tribunal Act, 2007<sup>3</sup>, the Tribunal exercises jurisdiction, powers and authority against any order, decision, finding or sentence passed by a court martial or any matter connected therewith or incidental thereto. Sub-section (6) of Section 15 of the AFT Act empowers the Tribunal to substitute the findings of the court martial which includes the disciplinary proceedings under the said Act (see Section 3 (f) of the AFT Act) and also to interfere if the sentence is found to be excessive, illegal or unjust. Section 15(6) of the AFT Act reads as under:

F        “15 (6) Notwithstanding anything contained in the foregoing provisions of this section, the Tribunal shall have the power to—

G        (a) substitute for the findings of the court martial, a finding of guilty for any other offence for which the offender could have been lawfully found guilty by the court martial and pass a sentence afresh for the offence specified or involved in such findings under the provisions of the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or the Air Force Act, 1950 (45 of 1950), as the case may be; or

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H        <sup>3</sup> for short, ‘AFT Act’

(b) if sentence is found to be excessive, illegal or unjust, the Tribunal may— A

(i) remit the whole or any part of the sentence, with or without conditions;

(ii) mitigate the punishment awarded;

(iii) commute such punishment to any lesser punishment or punishments mentioned in the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950), as the case may be; B

(c) enhance the sentence awarded by a court martial: Provided that no such sentence shall be enhanced unless the appellant has been given an opportunity of being heard; C

(d) release the appellant, if sentenced to imprisonment, on parole with or without conditions;

(e) suspend a sentence of imprisonment; D

(f) pass any other order as it may think appropriate.”

11. We find that the Commanding Officer who was on the high seas with the Sailor and the superior officer was aware of the extent of misconduct of the Sailor. None of the three witnesses have deposed regarding striking of the superior officer by the Sailor. The superior officer has not made himself available before the Investigating Officer or the Executive Officer. E

12. Even though, the superior officer has used abusive language but the Sailor was not expected to retort and hit the superior officer. The conduct of the Sailor cannot be condoned in any manner. F

13. In terms of provisions of the AFT Act, the Tribunal is competent to substitute the findings in the disciplinary proceedings leading to dismissal of the Sailor and to substitute and/or mitigate the punishment awarded. Therefore, the order passed by the Tribunal to set aside the dismissal is within the jurisdiction of the Tribunal finding that the punishment imposed is disproportionate to the misconduct. This Court in appellate jurisdiction under Section 30 of the AFT Act would be slow in interfering with the substituted punishment, unless the order passed by the Tribunal is found to be arbitrary, unreasonable or capricious. We find that the view taken G

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- A by the Tribunal is not patently illegal warranting interference in the present appeal. The appeal is accordingly dismissed.

14. However, it is directed that the respondent shall be reinstated within two months but shall not be entitled to any back wages from the date of dismissal till reinstatement but he shall be entitled to computation

- B of all consequential benefits including pay fixation.

Kalpana K. Tripathy

Appeal dismissed.