SUPREME COURT OF INDIA

Cantonment Executive Officer

Vs.

Vijay D.Wani

C.A.No.18 of 2007

(A.K.Mathur and Lokeshwar Singh Panta,JJ.,)

16.04.2008

JUDGMENT

A.K.Mathur,J.,

1. This appeal is directed against the order dated 10.1.2005 passed in Writ Petition No.966 of 1995 by the High Court of Judicature at Bombay whereby the Division Bench has set aside the resolution of the Cantonment Board, Pune dated 29.10.1991 removing the respondent from service which is completely vitiated on account of the participation of the three members of the Enquiry Committee and the orders of the 1st and 2nd Appellate authorities dated 8.7.1992 and 22.12.1994 and allowed the writ petition of the Vijay D. Wani respondent(herein) and directed the Cantonment Board to reinstate the petitioner (respondent herein) into service with 50% backwages and continuity of service.

2. Brief facts which are necessary for disposal of this appeal are that the respondent was appointed as Junior Engineer (Electrical) with Pune Cantonment Board with effect from 9.3.1977. Later on he was redesignated as Sectional Engineer (Electrical). In 1987, the Cantonment Board decided to purchase N.C.T. pies for street lighting and directed the respondent to prepare an estimate. Similarly he was also directed to prepare estimates for electrification of S.V.P. Cantonment General Hospital, for the purpose of air conditioning of the Operation Theater and for purchase of transformer for the same hospital. The Contonment Board also wanted him to prepare estimates of sewerage pumps for Ghorpadi and Wanawadi Bazar Draining Scheme and also estimates for cables and street lights at Price of Wales Drive. The respondent as a Sectional Engineer (Electrical) prepared all those estimates. But on 11th August, 1987, the office of the Cantonment Board through the Chief Executive Officer served him a memorandum alleging that the estimates prepared by the respondent suffered from total non-application of mind. The respondent offered his explanation dated 25.8.87 to the said memorandum but that was not accepted by the Board. A charge-sheet containing the same charges was issued to the respondent on 13.1.1988. The respondent was put under suspension and the Cantonment Board appointed an Enquiry Committee to enquire into the alleged misconduct of the respondent. The Enquiry Committee found the charges proved by majority of two versus one the third member

differed on items 2 and 4. By a resolution dated 25.10.1991 the Cantonment Board considered the Enquiry Committee's report and accepted it and passed the order of removal of the respondent from service. The respondent filed an appeal to the GOC-in-Chief, Southern Command, Pune and the same was dismissed on 8.7.1991. The respondent preferred second appeal before the Government of India, Ministry of Defence, which was also dismissed on 22.12.1994.

3. Aggrieved against this order the respondent preferred an appeal before the High Court. The High Court rejected the first contention of the respondent that all the three members of the Enquiry Committee happened to be the members of the Board in which capacity they had scrutinized, approved and accepted the estimates prepared by the respondent when the estimates were placed before the Cantonment Board. Since they were interested in the matter, therefore, the enquiry should have been quashed on the ground of bias. Secondly, it was contended that the alleged misconduct of the respondent themselves participated in the meeting of the Cantonment Board and voted in favour of the report while considering the issue of inflicting punishment on the respondent. It was also contended that the participation of the members of the Enquiry Committee in the Board meeting when the report was under consideration completely vitiates the inquiry. In support of this, the learned counsel for the respondent relied on the decision of this Court; Institute of Chartered Accountants of India v. L.K. Ratna and Ors. reported in 1986(4) SCC 537. So far as first contention is concerned, the High court did not find any fault that the petitioner/respondent (herein) had not made any specific allegation against any Board member of the Enquiry Committee nor had imputed any malafide or illwill to any members of the Enquiry Committee. Therefore, the contention of the learned counsel appearing on behalf of the petitioner/respondent (herein) of bias was rejected. So far as second contention is concerned, it was held that there was violation of principles of natural justice in as much as all the three members of the Enquiry Committee participated in the Board meeting and voted in support of their Enquiry report and held the respondent guilty of misconduct and dismissed him from service. That vitiated the decision making process as all the three members of the Enquiry Committee was part of the decision making process and since they were interested to see that their report be upheld by the Committee. Therefore, there was a legitimate apprehension in the mind of the respondent that the three members of the committee who were inquiring against the respondent and found him guilty were interested to see that their report should be confirmed by the Board and this seriously prejudiced and biased the process of decision making him guilty. This contention was upheld by the Division Bench and consequently the Division Bench set aside the order Cantonment Board as well as the order on appeal by the GOC-in-Chief, Southern Command, Pune and the order passed by the Secretary, Government of India, Ministry of Defence. Aggrieved against the order passed by the Division Bench of the High Court, this appeal was filed by the Cantonment Board.

4. We have heard learned counsel for the parties and have gone through the records.

5. The question of a bias is always the question of fact. The court has to be vigilant while applying the Principles of bias as it primarily depends on the facts of each case. The court should only act on real bias not merely on likelihood of bias. In the present case, so far as the

members of the committee who conducted a disciplinary inquiry was also the members of the Cantonment Board where the report was to be considered, decided and whether to accept it or not & finding the respondent(herein) guilty or not. The very fact that these three persons who conducted inquiry were also the members of the Board and that Board was to take a decision in the matter whether the report submitted by the Enquiry Committee should be accepted or not. Therefore, the participation of these three members in the committee is given a real apprehension in the mind of the respondent that he will not get a fair justice in the matter because of the three members who submitted the report would be interested to see that their report should be accepted. This bias in this case cannot be said to be unreal it is very much real and substantial one that the respondent is not likely to get a fair deal by such disciplinary committee.

6. In this connection a reference may be made to the decision in the case of Institute of Chartered Accountants of India (Supra) in which a member, accused of misconduct is entitled to a hearing by the Council. In this case Enquiry Committee composed of the President and the Vice-President and three other members of the council who constituted as members of the disciplinary committee, was also members. Their Lordships held as under:

> "Accordingly, the finding of the council holding the respondent members guilty of misconduct was vitiated by the participation of the members of the Disciplinary committee."
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> This was on the basis of the Principle of apprehension of a bias. Their Lordships observed in the case of *Manek Lal v. Prem Chand reported in*[1] wherein it was observed:
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> It is well settled that every member of a tribunal that is called upon to try issue in judicial or quasi-judicial proceedings must be able to act judicially; and it is of the essence of judicial decisions and judicial administration that judges should be able to act impartially, objectively and without any bias. In such cases the test is not whether in fact a bias has affected the judgment the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the Tribunal might have operated against him in the final decision of the tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done."
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> Similarly in the judicial review of the administrative action by Professor S.A. de Smith has also observed:" a report will normally include a statement of findings and recommendations, which may be controverted before the parent body; and in such a case, the participation of members of the sub-committee in the final decision may be of dubious validity. The problem is not merely one of strict law; it is also one of public policy."
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> Similarly, in the case of Pinochit Ugarta No.2, reported in 1999 (1) All ER 577 (HL), it was observed that a judge is automatically disqualified from hearing a matter

in which he has a pecuniary interest in the outcome as also when the decision would lead to promotion of a cause in which he is involved, together with one of the parties.

Similarly, in the case of *Amar Nath Chowdhury v. Braithwaite & Co. Ltd reported in*[2] it was observed that Managing Director dismissing an employee cannot sit in the Board of Directors to hear the employee's appeal. Doctrine of necessity was inapplicable as the Board could have delegated its appellate power to a committee.

Similarly in Sir Bloom-Cooper's Comment on "Bias in appeal", 2005 Public Law 225 in which he quotes at page 227 a very illuminating judgment of Judge Jerome Frank in the case of Rt.J.P. Linhan Inc., (138 F20 650) a brief excerpt from which reads:

"Democracy must, indeed, fail unless our courts try cases fairly, and there can be no fair trial before a judge lacking in impartiality and disinterestedness. If, however, 'bias' and 'partiality' be defined to mean the total absence of preconceptions in the mind of the judge, then no one has ever had a fair trial and no one ever will"

It was observed in the Ninth edition of Administrative Law by H.W.R. Wade & C.F. Forsyth that Twentieth-century judges have generally enforced the rule against bias in administrative proceedings no less strictly than their predecessors as exemplified by the following cases:

The mere presence of a non-member while a tribunal is deliberating is enough to invalidate the proceedings. Thus the proceedings of a Watch Committee, hearing an appeal by a police sergeant against his dismissal by his chief constable, were fatally flawed by the presence of the chief constable, whose mind was made up and who was in effect the respondent, during the committee's deliberations. For similar reasons the court quashed the decision of a disciplinary committee which had consulted privately with the chief fire officer who had reported a fireman for indiscipline."

7. Therefore, the ratio of all these cases is that a person cannot be a Judge in his own case. Once the disciplinary committee finds the incumbent guilty; they cannot sit in the judgment to punish the man on the basis of the opinion formed by them. The objectivity is the hallmark of a judicial system in our country. The very fact is that the disciplinary committee who found the respondent (herein) guilty participated in decision making process for finding the respondent (herein) guilty and to dismiss him from service is bias which is apparent & real. Consequently, the view taken by the Division Bench of the High Court cannot be faulted.

8. However, learned counsel for appellants submitted that since the respondent did not work, therefore, he should not be paid any salary under the Rule "no work no pay". In this connection he invited our attention to the following cases:

"1. *Baldev Singh v. Union of India & Ors. Reported in*[3]

2. *India Literacy Board & Ors. V. Veena Chaturvedi & Ors. Reported in*[4]

3. *Badrinath v. Government of Tamil Nadu & Ors. Reported in*[5]

In the case of Baldev Singh (Supra), the appellant was held in a criminal case and thereafter on his acquittal a question arose with regard to his back wages, their Lordships held that it did not arise as he was lawfully confined. Therefore, this case is distinguishable. In the case of India Literacy Board & Ors. (Supra), An SLP was filed against the interim order and their Lordships held that no opinion need to be expressed on merits of the rival contentions and directed the High Court to hear the main writ petition and dispose of the same on merits including the question of maintainability of the petition. And in the case of Badrinath (Supra), question was of non-communication of adverse remarks and no question of 'no work no pay' was involved. Hence, this case also does not support the case of the appellant.

9. So far as grant of back wages is concerned, it depends upon case to case. But in the present case as the respondent was found guilty by the Cantonment Board but the order of Cantonment Board was set aside because it suffered from bias and it will be unfair to deny 50% back wages to the respondent (herein). The Division Bench also directed that more than 13 years have passed therefore it did not permit the respondent to proceed against the petition afresh. The Division Bench decided the matter on 10th January, 2005 and now more than 16 years have lapsed. Therefore, it would not be fair to permit the respondent to proceed afresh in the matter. Consequently, we do not find any merit in this appeal and the same is dismissed.

10. The respondent be reinstated with the benefit of 50% back wages and continuity of service.

11. No order as to costs.

Judgment Referred.

[1]*AIR 1957 SC 425*
[2]*(2002 2 SCC 290*
[3]*(2005) 8SCC 0747*
[4]*(2005) 3 SCC 0079*
[5]*(2000)8 SCC 395*