SUPREME COURT OF INDIA

Mohd.Yunus Khan

Vs.

State of U.P.

CIVIL APPEAL NO...../2010

(P. Sathasivam and Dr.B.S.Chauhan JJ.)

28.09.2010

JUDGEMENT

Dr. B.S. CHAUHAN, J.

1. Leave granted.

The facts of the present case reveal that a person who initiated the disciplinary proceedings against the appellant for disobeying his own orders; appointed his subordinate as an inquiry officer; appeared as a witness in the proceedings to prove the charges of disobedience of his orders; accepted the enquiry report; and further passed the order of punishment - i.e. dismissal of the appellant from service. The question does arise as to whether such a course is permissible in law.

2. This appeal has been preferred against the judgment and order dated 12th July, 2007 passed by the High Court of Allahabad (Lucknow Bench), dismissing the Writ Petition No. 782 of 2007 filed

by the appellant against the judgment and order of the U.P. State Public Services Tribunal, (hereinafter referred to as the `Tribunal') Lucknow dated 25th May, 2007, by which the Tribunal dismissed the Claim Petition No. 837 of 2003 filed by the appellant and upheld the order of dismissal of the appellant from service by the Statutory Authorities.

3. Facts and circumstances giving rise to this case are that the appellant was appointed as a Constable in the Provincial Armed Constabulary (hereinafter referred to as `PAC') on 10th February, 1969 and promoted to the post of Head Constable vide order dated 5th May, 1983. The appellant was posted with 30th Battalion PAC in G- Company in the year 2002. On 29th September, 2002, the appellant was on duty as Guard Commander along with another Head Constable named Rama Nand. At around 6.20 A.M., the appellant left his post and came back after 25 minutes after having tea and medicine in the canteen. His departure from his post was duly recorded in the register maintained for the purpose by the other guard, Head Constable Rama Nand. The Dal Nayak endorsed his comments in respect of the appellant's absence for the period of 25 minutes and placed it before the Commandant on 3rd October, 2002. The Commandant vide order dated 4th October, 2002 imposed the punishment of 10 days punishment drill. Upon protest by the appellant, the Commandant enhanced the punishment to 10 days confinement in a cell. The appellant refused to serve the punishment being not acceptable to him.

4. Refusal to serve the punishment so imposed by the appellant was considered to be a serious act of indiscipline and he was placed under suspension. The appellant was served with a chargesheet dated 2nd December, 2002 indicating that an enquiry was to be held against him under Rule 14(1) of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 (hereinafter referred to as `the Rules 1991). The appellant submitted his reply to the said chargesheet on 11th December, 2002. The inquiry officer concluded the enquiry and submitted the report on 28th March, 2003 with the finding that the appellant was guilty of negligence and disobedience and recommended his removal from service.

5. The Disciplinary Authority issued a notice dated 31st March, 2003 to the appellant to show cause as to why his services should not be terminated in view of the enquiry report. The appellant submitted his reply to the said show cause on 7th April, 2003. After considering the same, the Commandant passed the order dated 8th April, 2003 imposing the punishment of termination from service.

6. Being aggrieved, the appellant preferred an appeal against the order of termination. However, the said appeal was dismissed by the Appellate Authority vide order dated 25th August, 2003. The appellant challenged the said order of termination before the Tribunal by filing Claim Petition No. 837 of 2003. The Tribunal dismissed the said Claim Petition vide judgment and order dated 25th May, 2007 recording the finding that the absence from duty for 25 minutes on 29th September, 2002 was bona fide and permissible under Rule 21 of the Guard and Escort Rules, however, not obeying the order of punishment was a case of gross indiscipline and thus, order of termination of his

services was justified.

7. Being aggrieved of the said judgment and order of the Tribunal, the appellant preferred a Writ Petition before the High Court which was dismissed vide impugned judgment and order dated 12th July, 2007 in a cursory manner without considering the issues raised by the appellant, merely on the ground that charge of disobedience of the orders of the higher authority stood proved and the enquiry had been conducted in accordance with law. Hence, this appeal.

8. Shri Tripurari Ray, learned counsel appearing for the appellant has raised large number of submissions, inter-alia, the absence from duty for a short - specified period, when other guard is present on duty, is permissible under the Guard and Escort Rules. The appellant had left his duty for only 25 minutes and it was so recorded in the register at the spot. If such an absence is permissible in law, imposing the punishment of 10 days' punishment drill was unwarranted. More so, it had been awarded without giving a proper opportunity of hearing to the appellant. The appellant's protest against such an arbitrary imposition of punishment could not be the ground for enhancing the punishment to 10 days confinement in a cell; depriving him of his personal liberty was totally unwarranted and uncalled for, particularly, in view of the fact that the imposition of the very first punishment was in contravention of the statutory rules. The disciplinary authority did not consider the reply submitted by the appellant against the show cause notice wherein it had specifically been submitted that in case the Commandant was of the view that his orders had been violated, he should have referred the matter to his superior officer to transfer the disciplinary proceedings to another coordinate officer and that officer should have conducted the enquiry.

The Disciplinary Authority himself appeared as a witness in the enquiry. Thus, the enquiry itself stood vitiated. The punishment of dismissal remained disproportionate to the proved delinquency; the Appellate Authority considered while passing the order, the past conduct of the appellant for the purpose of confirming the order of punishment passed by the Disciplinary Authority. The appellant's past conduct had never been the part of the chargesheet or the show cause notice; nor had the appellant ever been informed that his past conduct was likely to be considered at the time of passing the order of punishment. The High Court failed to consider that, in a case where there had been a violation of the statutory provisions, or principles of natural justice, power of judicial review required to be exercised. The appeal deserves to be allowed.

9. Per contra, Shri Ameet Singh, learned counsel appearing for the State of U.P., has opposed the appeal contending that the appellant had been the member of a disciplined force. Indiscipline therein, amounts to a very serious misconduct. Therefore, it is intolerable.

Once the charge of absence and further charge of disobedience stood proved, the matter does not deserve to be considered by this Court.

The appeal lacks merit and is liable to be dismissed.

10. We have considered the rival submissions made by learned counsel for the parties and perused the record.

11. An enquiry was initiated against the appellant by the Commandant, for disobedience of the order of punishment by the Commandant himself. The charge-sheet contained two basic charges which read as under:- "1. Your duty was as a Guard Commander in the Vahini Quarter Guard from 22.9.2002 to 29.9.2002. On 29.9.2002 in the morning at 06.30 a.m., inspection of the Vahini Quarter Guard was made by the Platoon Officer of "G" Platoon, when you were found absent. With regard to this absence the Second Guard Commander H.C.39074 Rama Nand told that you have gone to take tea and medicine. This was mentioned by the Platoon Officer "G" Platoon in the Inspection Book. With regard to this absence your explanation was sought by the Platoon Officer "G" Platoon, when you did not give satisfactory explanation and you sought that your explanation be placed before the Senanayak, in your explanation you alleged violation of rules and standing orders by the Platoon Officer "G" Platoon, which was submitted by the Platoon Officer "G" Platoon on 3.10.2002 with his comments before the Senanayak to produce you in his chamber.

2. On 4.10.2002 when you appeared before the Senanayak in the Orderly Chamber, after the hearing 10 days' P.D. was awarded to you which you declined. On this you were punished by the Senanayak for violation of his order passed in the Orderly Chamber with 10 days cell punishment, which you the H.C. did not accept and after saluting the Commandant you voluntarily went out of the chamber."

12. The inquiry officer conducted the enquiry and on its conclusion held that the appellant was guilty on both counts. The Disciplinary Authority accepted the report and held that:

"Mohd. Yunus Khan has been found to be violating orders and bleak chances of improvement, not fit to be retained in a disciplined force like PAC as his continuance in the force will have adverse effect on other personnel. He is guilty of negligence in duty, indiscipline and disobedience of orders."

The Commandant awarded the punishment - dismissal from service.

13. The Appellate Authority, while affirming the said order of 8 punishment, considered the past conduct of the appellant wherein it had been mentioned that the appellant had been given petty punishments; 3 censure entries; and a penalty of reversion for six months from the post of Head Constable to the post of Constable. He was also reduced to the lowest pay scale of Rs.975/- for one

year after he had been found guilty in a departmental enquiry.

14. The Tribunal dismissed the Claim Petition filed by the appellant, however, it recorded the finding that the absence of the appellant for 25 minutes was bona fide and legally permissible in view of the provisions of Rule 21 of the Guard and Escort Rules.

However, his subsequent misconduct, i.e., disobedience in carrying out the punishment was a serious matter. The Tribunal also took note of the order of the Appellate Authority wherein the past conduct of the appellant had been taken into consideration. The High Court dismissed the Writ Petition without realising the gravity of the legal issues involved in the case.

15. We have to proceed, keeping in mind the trite law that holding disciplinary proceedings against a government employee and imposing a punishment on his being found guilty of misconduct under the statutory rules is in the nature of quasi-judicial proceedings.

Though, the technical rules of procedure contained in the Code of Civil Procedure, 1908 and the provisions of the Indian Evidence Act, 1872 do not apply in a domestic enquiry, however, the principles of natural justice require to be observed strictly. Therefore, the enquiry is to be conducted fairly and reasonably and the enquiry report must contain reasons for reaching the conclusion that the charge framed against the delinquent stood proved against him. It cannot be an ipse dixit of the inquiry officer. Punishment for misconduct can be imposed in consonance with the statutory rules and principles of natural justice. (See Bachhittar Singh v. State of Punjab & Anr., AIR 1963 SC 395; Union of India v. H.C. Goel, AIR 1964 SC 364;

Anil Kumar v. Presiding Officer & Ors., AIR 1985 SC 1121;

Moni Shankar v. Union of India & Anr. (2008) 3 SCC 484; and Union of India & Ors. v. Prakash Kumar Tandon, (2009) 2 SCC 541).

16. The Tribunal has categorically held that absence of the appellant from duty for such a short span of time was permissible in view of the statutory rules and was bona fide. That finding was not challenged by the respondents any further and attained finality. This finding of the Tribunal leads us to the questions that in case the first punishment of 10 days punishment drill was unwarranted and illegal;

whether any protest against such punishment, authorised the Commandant to enhance the

punishment to 10 days confinement in a cell; and whether further disobedience thereof, ought to have enabled the Commandant to initiate the disciplinary proceedings against the appellant. These questions have to be considered keeping in mind that the appellant was a member of disciplined force and the Appellate Authority as well as the Tribunal had very heavily relied on the past conduct of the appellant for considering the proportionality of the punishment, though it had not been a part of the charge-sheet nor was the appellant informed of the same while issuing the second show cause notice, giving him the opportunity to make his representation against the enquiry report.

17. In Union of India & Ors. v. L.D. Balam Singh, (2002) 9 SCC 73, this Court observed as under:

"....the extent of restrictions necessary to be imposed on any of the fundamental rights in their application to the armed forces and the forces charged with the mainte- nance of public order for the purpose of ensuring proper discharge of their duties and maintenance of discipline among them would necessarily depend upon the prevail- ing situation at a given point of time and it would be in- advisable to encase it in a rigid statutory formula. The Constitution-makers were obviously anxious that no more restrictions should be placed than are absolutely necessary for ensuring proper discharge of duties and the maintenance of discipline amongst the armed force personnel". (Emphasis added)

18. In Lt. Col. Prithpal Singh Bedi v. Union of India & Ors., AIR 1982 SC 1413, this Court observed:

"It is one of the cardinal features of our Constitu- tion that a person by enlisting in or entering armed forces does not cease to be a citizen so as to wholly de- prive him of his rights under the Constitution....

Persons subject to Army Act are citizens of this an- cient land having a feeling of belonging to the civilised community governed by the liberty-oriented constitution.

Personal liberty makes for the worth of human being and is a cherished and prized right. Deprivation thereof must be preceded by an enquiry ensuring fair, just and rea- sonable procedure and trial".

19. In R. Viswan & Ors. v. Union of India & Ors., AIR 1983 SC 658, Constitution Bench of this Court observed:

"Morale and discipline are indeed the very soul of an army and no other consideration, howsoever important, can outweigh the need to strengthen the morale of the Armed Forces and to maintain discipline amongst them.

Any relaxation in the matter of morale and discipline may prove disastrous and ultimately lead to chaos and ruination affecting the well being and imperilling the hu- man rights of the entire people of the country".

20. Thus, the requirements of morale, discipline and justice have to be reconciled. There is no scarcity of examples in history, and we see it in day-to-day life also, that even in disciplined forces, forced morale and discipline without assured justice breeds defiance and belligerency. Our Constitution protects not only the life and liberty but also the dignity of every person. Life convicts and hardcore criminals deprived of personal liberty are also not wholly denuded of their Constitutional rights. Arbitrariness is an anathema to the principles of reasonableness and fairness enshrined in our constitutional provisions. The rule of law prohibits the exercise of power in an arbitrary manner and/or in a manner that travels beyond the boundaries of reasonableness. Thus, a statutory authority is not permitted to act whimsically/arbitrarily. Its actions should be guided by the principles of reasonableness and fairness. The authority cannot be permitted to abuse the law or to use it unfairly.

21. Rule 13 of the Rules 1991 reads as under:

"Officer not competent to conduct disciplinary proceedings- A gazetted officer of the Police Force who is either a prosecution witness in the case or has either conducted a preliminary enquiry in that case shall not conduct inquiry in that case under these rules. In case the said gazetted officer is the Superintendent of Police himself, the Deputy Inspector-General concerned shall be moved to transfer the case to some other district or unit as the case may be." (Emphasis added) It is evident from the aforesaid rule that a person who is a witness in a case can neither initiate the disciplinary proceedings nor pass an order of punishment.

22. A Constitution Bench of this Court in State of U.P. v. Mohd. Noor, AIR 1958 SC 86, rejected a submission made on behalf of the State that there was nothing wrong with the Presiding Officer of a Tribunal appearing as a witness and deciding the same case, observing as under:

"The two roles could not obviously be played by one and the same person.....the act of Shri B. N. Bhalla in having his own testimony recorded in the case indubitably evidences a state of mind which clearly discloses considerable bias against the respondent. If it shocks our notions of judicial propriety and fair play, as indeed it does, it was bound to make a deeper impression on the mind of the respondent as to the unreality and futility of the proceedings conducted in this fashion. We find ourselves in agreement with the High Court that the rules of natural justice were completely

discarded and all canons of fair play were grievously violated by Shri. B.N. Bhalla continuing to preside over the trial. Decision arrived at by such process and order founded on such decision cannot possibly be regarded as valid or binding."

23. A similar view was taken by this Court in Rattan Lal Sharma v. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School & Ors., AIR 1993 SC 2155, observing that a person cannot be a witness in the enquiry as well as the inquiry officer.

24. The legal maxim "nemo debet esse judex in propria causa" (no man shall be a judge in his own cause) is required to be observed by all judicial and quasi-judicial authorities as non-observance thereof is treated as a violation of the principles of natural justice. (Vide Secretary to Government, Transport Department v. Munuswamy Mudaliar & Anr., AIR 1988 SC 2232; Meenglas Tea Estate v. The Workmen, AIR 1963 SC 1719; and Mineral Development Ltd. v. The State of Bihar & Anr., AIR 1960 SC 468).

25. This Court in A.U. Kureshi v. High Court of Gujarat & Anr., (2009) 11 SCC 84, placed reliance upon the judgment in Ashok Kumar Yadav & Ors. v. State of Haryana & Ors., (1985) 4 SCC 417, and held that no person should adjudicate a dispute which he or she has dealt with in any capacity. The failure to observe this principle creates an apprehension of bias on the part of the said person. Therefore, law requires that a person should not decide a case wherein he is interested. The question is not whether the person is actually biased but whether the circumstances are such as to create a reasonable apprehension in the minds of others that there is a likelihood of bias affecting the decision.

26. The existence of an element of bias renders the entire disciplinary proceedings void. Such a defect cannot be cured at the appellate stage even if the fairness of the appellate authority is beyond dispute. (Vide: S. Parthasarthy v. State of Andhra Pradesh, AIR 1973 SC 2701; and Tilak Chand Magatram Obhan v. Kamla Prasad Shukla & Ors., 1995 Supp. (1) SCC 21).

27. In Arjun Chaubey v. Union of India & Ors., AIR 1984 SC 1356, a Constitution Bench of this Court dealt with an identical case wherein an employee serving in the Northern Railway had been dismissed by the Deputy Chief Commercial Superintendent on a charge of misconduct which concerned himself, after considering by himself, the explanation given by the employee against the charge and after thinking that the employee was not fit to be retained in service.

It was also considered whether in such a case, the court should deny the relief to the employee, even if the court comes to the conclusion that order of punishment stood vitiated on the ground that the employee had been guilty of habitual acts of indiscipline/ misconduct.

This Court held that the order of dismissal passed against the employee stood vitiated as it was in utter disregard of the principles of natural justice. The main thrust of the charges against the employee related to his conduct qua the disciplinary authority itself, therefore, it was not open to the disciplinary authority to sit in judgment over the explanation furnished by the employee and decide against the delinquent. No person could be a judge in his own cause and no witness could certify that his own testimony was true. Any one who had a personal stake in an enquiry must have kept himself aloof from the enquiry. The court further held that in such a case it could not be considered that the employee did not deserve any relief from the court since he was habitually guilty of acts subversive of discipline. The illegality from which the order of dismissal passed by the Authority concerned suffered was of a character so grave and fundamental that the alleged habitual misbehaviour of the delinquent employee could not cure or condone it.

28. Thus, the legal position emerges that if a person appears as a witness in disciplinary proceedings, he cannot be an inquiry officer nor can he pass the order of punishment as a disciplinary authority.

This rule has been held to be sacred. An apprehension of bias operates as a disqualification for a person to act as adjudicator. No person can be a Judge in his own cause and no witness can certify that his own testimony is true. Any one who has personal interest in the disciplinary proceedings must keep himself away from such proceedings. The violation of the principles of natural justice renders the order null and void.

29. In the instant case, Shri Arvind Kumar Upadhyaya, IPS, Commandant, 30th PAC Battalion, Gonda, appeared as a witness and proved the disobedience of his orders of imposition of punishment, first as of punishment drill and subsequently of confinement to a cell.

However, after appearing as a witness in the enquiry, he also passed the order of punishment, i.e., dismissal of the appellant from service on 8.4.2003. This issue has been agitated by the appellant throughout but none of the authorities or the courts below had taken it into consideration. Appellant has made crystal clear pleadings before this Court also in this regard and the same have not been denied in the counter affidavit by the respondents, rather a very vague and evasive reply has been filed stating that the disciplinary proceedings had been concluded strictly in accordance with law.

30. An order in violation of the principles of natural justice may be void depending on the facts and circumstances of the case. (Vide Raja Jagdambika Pratap Narain Singh v. Central Board of Direct Taxes & Ors., AIR 1975 SC 1816; Smt. Maneka Gandhi v. Union of India & Anr., AIR 1978 SC 597; Krishan Lal v. State of J & K, (1994) 4 SCC 422; State Bank of Patiala & Ors. v. S.K. Sharma, AIR 1996 SC 1669; Union of India & Anr. v. M/s. Mustafa &

Najibai Trading Co. & Ors., AIR 1998 SC 2526; and Vishnu Dutt & Ors. v. State of Rajasthan & Ors., (2005) 13 SCC 592).

31. In case the very first order of imposition of punishment for remaining absent from duty for 25 minutes was bad in law, the appellant's protest against the said punishment could not be said to be unjustified. In Nawabkhan v. State of Gujarat, AIR 1974 SC 1471, this Court dealt with the issue and held as under:

"In the present case, a fundamental right of the petitioner has been encroached upon by the police commissioner without due hearing so the Court quashed it - not killed it then but performed the formal obsequies of the order which had died at birth. The legal result is that the accused was never guilty of flouting an order which never legally existed." (Emphasis added)

32. We are of the considered opinion that the initiation of disciplinary proceedings against the appellant and the conclusion thereof by the imposition of the punishment by the Commandant, who had himself been a witness, was in flagrant violation of the principles of natural justice and thus, stood vitiated. "Principles of natural justice are to some minds burdensome but this price-a small price indeed-has to be paid if we desire a society governed by the rule of law." All other consequential orders passed in appeal etc. remained inconsequential. More so, a protest/disobedience against an illegal order may not be termed as misconduct in every case. In an appropriate case, it may be termed as revolting to one's sense of justice. In view of the above, we are of the considered opinion that the protest raised by the appellant against the punishment imposed for his absence could not give rise to a cause of action for initiating the disciplinary proceedings.

33. The courts below and the statutory authorities failed to appreciate that if the disciplinary authority wants to consider the past conduct of the employee in imposing a punishment, the delinquent is entitled to notice thereof and generally the charge-sheet should contain such an article or at least he should be informed of the same at the stage of the show cause notice, before imposing the punishment.

34. This Court in Union of India & Ors. v. Bishamber Das Dogra, (2009) 13 SCC 102, considered the earlier judgments of this Court in State of Assam v. Bimal Kumar Pandit, AIR 1963 SC 1612; India Marine Service (P) Ltd. v. Their Workmen, AIR 1963 SC 528; State of Mysore v. K. Manche Gowda, AIR 1964 SC 506;

Colour-Chem Ltd. v. A.L. Alaspurkar & Ors., AIR 1998 SC 948;

Director General, RPF v. Ch. Sai Babu, (2003) 4 SCC 331, Bharat Forge Co. Ltd. v. Uttam Manohar Nakate, (2005) 2 SCC 489; and Govt. of A.P. & Ors. v. Mohd. Taher Ali, (2007) 8 SCC 656 and came to the conclusion that it is desirable that the delinquent employee be informed by the disciplinary authority that his past conduct could be taken into consideration while imposing the punishment. However, in case of misconduct of a grave nature, even in the absence of statutory rules, the Authority may take into consideration the indisputable past conduct/service record of the delinquent for "adding the weight to the decision of imposing the punishment if the fact of the case so required."

35. The appellant joined the service on 10.2.1969 and his services stood terminated vide order dated 8.4.2003. Therefore, the benefit of service rendered by the appellant for more than 34 years stood forfeited. At the time of his removal from service, the appellant was 54 years of age. Thus, he had been visited with serious punishment on the verge of retirement.

36. In view of the above, we reach the following inescapable conclusions:- I. Absence of appellant from duty as Guard Commander for 25 minutes was bona fide and permissible under the statutory rules.

II. Imposition of punishment of punishment drill for 10 days for the said absence was unwarranted.

III. Protest by the appellant against the imposition of the said punishment could not warrant enhancement of punishment of the appellant for confinement in cell for ten days.

IV. Disobedience of the enhanced punishment could not, in this case, warrant initiation of disciplinary proceedings by the Commandant concerned against the appellant.

V. The Commandant could not himself become the Judge of his own cause.

VI. The Commandant could not appoint his own subordinate as the inquiry officer.

VII. The Commandant could have referred the matter to his superior officer for appropriate action in terms of Rules 1991.

VIII. Once the Commandant concerned appeared as a witness himself in the enquiry, he could not pass the order of punishment.

IX. The Authority who initiated the disciplinary proceedings against the appellant became a witness before the inquiry officer appointed by him, who is subordinate to him in his office and also accepted the enquiry report and passed the order of punishment.

Thus, the order of punishment stood vitiated.

X. The Appellate Authority could not consider the past conduct of the appellant to justify the order of punishment passed by the disciplinary authority without bringing it to the notice of the appellant.

XI. As the punishment order had been passed in violation of the statutory rules and the principles of natural justice as well, it is rendered null and void. Thus, it remained inexecutable.

XII. Past conduct of an employee should not generally be taken into account to substantiate the quantum of punishment without bringing it to the notice of the delinquent employee.

XIII. The error of violating the principles of natural justice by the Disciplinary Authority has been of such a grave nature that under no circumstance can the past conduct of the appellant, even if not satisfactory, be taken into consideration.

37. In view of the above, we are of the considered opinion that the present case is squarely covered by the decision of the Constitution Bench in Arjun Chaubey (supra). The order of punishment is null and void and therefore, cannot be given effect to. The appeal deserves to be allowed. The appellant had already reached the age of superannuation and no fresh enquiry can be initiated in the matter if the earlier proceedings are rendered null and void for the violation of the statutory provisions and principles of natural justice. In the facts and circumstances of the case and in order to meet the ends of justice, it is desirable that the appellant be paid 50% of the wages from the date of removal from service till the date of reaching the age of superannuation and he be granted retiral benefits in accordance with law from the date of his retirement.

In view of the above, appeal stands disposed of. No order as to costs.