

SUPREME COURT OF INDIA

Cantonment Board, Jammu

Vs.

Jagat Pal Singh Cheema

C.A.No.5820 of 2012

(P.Sathasivam and Ranjan Gogoi,JJ.)

09.08.2012

JUDGMENT

Ranjan Gogoi,J.

1. Leave granted.

2. This appeal is directed against the judgment and order dated 7.2.2007 passed by the High Court of Jammu and Kashmir whereby the High Court has allowed the Writ Petition filed by the respondent challenging the punishment of removal from service that was imposed on him by the Cantonment Board, Jammu. It may be noticed, at the outset, that the High Court had allowed the Writ Petition of the respondent on the ground that the order of the Officer Commanding-in-Chief, the Command, affirming the order of the Cantonment Board removing the respondent from service was passed on the basis of an invalid reference made to the Officer Commanding-in-Chief, the Command, under the provisions of the Cantonments Act, 1924 (hereinafter referred to as the 'Act').

3. A brief conspectus of the relevant facts would be necessary at this stage. The respondent, Jagat Paul Singh Cheema, was employed as a Section Officer with the Cantonment Board, Jammu. On various charges a departmental enquiry was held against the respondent, whereafter he was removed from service by an order dated 6.9.1997. The appeal filed against the said order was dismissed. The respondent, therefore, moved the High Court of Jammu & Kashmir challenging the order of removal from service, inter alia, on the ground that the report of the enquiry held against him was not furnished to him at any stage. The High Court by its order dated 4.4.2001 allowed the writ petition and directed the 'Punishing Authority' to re-decide the matter after affording an opportunity of hearing to the respondent. In compliance with the said directions the report of enquiry was furnished to the respondent and the matter was reconsidered by the Cantonment Board in its meeting held on 18.5.2001. In the said meeting while the non-official members (five in number) were of the view that the

order of punishment imposed on the respondent should be set aside and he should be reinstated in service, the President of the Cantonment Board and two other ex-officio members supported the initial decision of the Cantonment Board to impose the punishment in question. Thereafter, it appears, that at the instance of the Chief Executive Officer of the Cantonment Board the matter was referred to the Officer Commanding-in- Chief, the Command.

4. The said authority issued a show cause notice dated 6.8.2001 to the Cantonment Board and on receipt of its reply, by order dated 22.11.2001, affirmed the penalty of removal of service imposed on the respondent.

5. Aggrieved by the aforesaid order dated 22.11.2001, the respondent again moved the High Court. The writ petition filed (WP No. 3039 of 2001) was allowed by an order dated 15.2.2006 passed by a learned Single Judge holding that the Officer Commanding-in-Chief, the Command, was not vested with any power under the Act to annul the decision of the Cantonment Board and the power of the said authority under the Act only extended to giving of directions to the Cantonment Board for reconsideration of the matter. Aggrieved by the said order of the learned Single Judge, the Cantonment Board filed a Letters Patent Appeal before a Division Bench of the High Court which was answered by the impugned order dated 7.2.2007. The Division Bench, by its aforesaid order, took the view that under the provisions of the Act, upon a reference made to him, the Officer Commanding-in-Chief, the Command, was duly empowered to annul a decision of the Cantonment Board after giving an opportunity of showing cause to the Board. However, in the present case, the reference made was not authorized and in consonance with the provisions of Section 51 of the Act. The power to annul the decision of the Board, though vested in the Officer Commanding-in-Chief, the Command, therefore, could not have been legitimately exercised in the present case. Accordingly the Division Bench affirmed the conclusions of the learned Single Judge, though for reasons different.

6. Shri Luthra, learned Additional Solicitor General, appearing for the appellant- Board has urged before us that the power of the Officer Commanding-in- Chief, the Command to deal with matters decided by the Cantonment Board is set out in the provisions contained in Section 52 of the Act. It is submitted that Section 52 is in two parts. While the first part deals with the power of the Officer Commanding-in-Chief, the Command, in respect of decisions of the Board which are not covered by a reference made under Section 51 of the Act, the later provisions of Section 52 specifically deals with matters referred to the Officer Commanding-in-Chief, the Command, under Section 51(1) of the Act. According to Shri Luthra the power of the Officer Commanding-in-Chief, the Command, under the first part of Section 52 is broad and expansive and capable of authorizing a decision to annul any

resolution of the Board. The exercise of power under the first part of Section 52, according to Shri Luthra, is not contingent on the manner in which the decision of the Board may have come to be placed before the Officer Commanding-in-Chief, the Command. In other words, according to Shri Luthra, the power under Section 52 can be exercised not only in situations where no reference is made under Section 51 but such power will be available to strike down a decision of the Board even in cases where such a decision may have come before the Officer Commanding-in- Chief, the Command, by way of an invalid or incompetent reference. Shri Luthra has further submitted that such a view would not be inconsistent with the provisions of Section 52 (2) inasmuch as the said provision specifically deal with the power of the Officer Commanding-in- Chief, the Command to deal with the decisions of the Board in cases where a specific reference is validly made by the Board under Section 51 of the Act. Shri Luthra has further buttressed his arguments by relying on the well-established proposition of law that so long as the power to perform an act in a particular manner is vested under the statute, the exercise of such power cannot be faulted on the ground of a wrong recital of the specific provision of the statute. In support, Shri Luthra has relied upon several decisions of this Court which will be noticed at a later stage of the present order.

7. In reply, Shri Banerjee, learned senior counsel appearing for the respondent has contended that it is not in dispute that in the present case the decision of the Board taken in the meeting held on 18.5.2001 was referred to the Officer Commanding-in-Chief, the Command, by the President of the Board under Section 51(1) of the Act. Pointing out the provisions of Section 51, Shri Banerjee, has urged that under Section 51(1) a reference can be made to the Officer Commanding-in-Chief, the Command, only in a situation where the President of the Cantonment Board dissents from any decision of the Board on the ground that such a decision, in the view of the President, is prejudicial to the health, welfare, discipline or security of the forces. The reasons for such dissent on the grounds spelt out by Section 51(1), according to learned counsel, is required to be recorded in the Minutes of the meeting of the Board. In the present case though a reference has been made by the President to the Officer Commanding-in-Chief, the Command, the reasons why such a reference was considered necessary by the President have not been recorded. Therefore, according to Shri Banerjee, the reference to the Officer Commanding-in-Chief, the Command, was not a valid reference authorized by the provisions of Section 51(1). It is contended that as Section 52(2) is exhaustive of the powers of the Officer Commanding-in-Chief, the Command, in considering a decision of the Board that has been referred to him under Section 51(1), the said authority cannot proceed to exercise the power vested in him under Section 52(1) while in seisin of a matter referred to him by the Board under Section 51(1). According to learned counsel, the power under Section 52(1) will be available for exercise only in a situation where the

decision of the Board is before the Officer Commanding-in-Chief, the Command, otherwise than by way of a reference.

8. Before adverting to the respective submissions advanced on behalf of the parties, it will be convenient to extract the provisions contained in Sections 51 and 52 of the Act which are extracted below:

“51. Power to override decision of Board -”

(1) If the President dissents from any decision of the Board, which he considers prejudicial to the health, welfare or discipline of the troops in the cantonment, he may, for reasons to be recorded in the minutes, by order in writing, direct the suspension of action thereon for any period not exceeding one month and, if he does so, shall forthwith refer the matter to the Officer Commanding-in-Chief, the Command, the reference being made, save in cases where the Officer Commanding the District is himself the Officer Commanding-in-Chief, the Command, for the purposes of this Act, through the Officer Commanding the District, who may make such recommendations thereon as he thinks fit.

(2) If the District Magistrate considers any decision of a Board to be prejudicial to the public health, safety or convenience, he may, after giving notice in writing of his intention to the Board, refer the matter to the Government; and, pending the disposal of the reference to the Government no action shall be taken on the decision.

(3) If any Magistrate who is a member of a Board, being present at a meeting, dissents from any decision which he considers prejudicial to the public health, safety or convenience, he may, for reasons to be recorded in the minutes and after giving notice in writing of his intention to the President, report the matter to the District Magistrate; and the President shall, on receipt of such notice, direct the suspension of action on the decision for a period sufficient to allow of a communication being made to the District Magistrate and of his taking proceedings as provided by sub-Section (2).

52. Power of Officer Commanding-in-Chief, the Command, on reference under Section 51 or otherwise -

(1) The Officer Commanding-in-Chief, the Command, may at any time-

(a) direct that any matter or any specific proposal other than one which has been referred to the Government under sub-Section (2) of Section 51 be considered or re-considered by the Board; or

(b) direct the suspension, for such period as may be stated in the order, of action on any decision of a Board, other than a decision which has been referred to him under sub-Section (1) of Section 51, and thereafter cancel the suspension or after giving the Board a reasonable opportunity of showing cause why such direction should not be made, direct that the decision shall not be carried into effect or that it shall be carried into effect with such modifications as he may specify.

(2) When any decision of a Board has been referred to him under subsection (1) of Section 51, the Officer Commanding-in-Chief, the Command, may, by order in writing,-

(a) Cancel the order given by the President directing the suspension of action; or

(b) Extend the direction of the order for such period as he thinks fit; or

(c) After giving the Board a reasonable opportunity of showing cause why such direction should not be made, direct that the decision shall not be carried into effect or that it shall be carried into effect by the Board with such modifications as he may specify.”

9. Section 51 authorizes the President of the Cantonment Board to dissent from a majority decision of the Board, if he considers the decision of the Board to be prejudicial to the health, welfare, discipline or security of the forces. If the President of the Board arrives at any such conclusion, he has been vested with the power to suspend the decision of the Board for a specified period, not exceeding one month, for reasons to be recorded in writing. However, Section 51 of the Act requires the President to make a reference of the matter to the Officer Commanding-in-Chief, the Command. Section 52 of the Act deals with the power of the Officer Commanding-in-Chief, the Command in respect of the decisions of the Board. Section 52, really, is in two parts. The first part deals with the powers of the Officer Commanding-in-Chief, the Command, in respect of decisions of the Board that may have come to his notice or placed before him otherwise than by way of a reference made by the President of the Board under Section 51(1). The second part of Section 52 specifically deals with the power of the Officer Commanding-in-Chief, the Command, to deal with the decisions of the Board which have come before him by way of a reference made under Section 51(1) of the Act. Both parts of Section 52 authorize the Officer Commanding-in-Chief, the Command, to annul a decision of the Board. However, before doing so a show cause notice to the Board is required to be issued.

10. In the present case the order dated 22.11.2001 passed by the Officer Commanding-in-Chief, the Command, which was under challenge before the High Court

specifically recites that power is being exercised under Section 52(1) of the Act. The said provision deals with matters/decisions of the Board that may have come before the Officer Commanding-in-Chief, the Command, otherwise than by way of reference under Section 51. The aforesaid conclusion reasonably follows from a reading of the provisions of Section 52(2) of the Act which deals with the powers of the Officer Commanding-in- Chief, the Command, in respect of the matters/decisions of the Board that may have come before him by way of reference under Section 51(1) of the Act. The question that confronts the Court is whether the two shades of power under Section 52 has to be understood to be available for exercise in specific water tight compartments which are mutually exclusive and inconsistent to each other.

11. Certain facts not in dispute and which may have a relevant bearing to the issue arising for determination as noticed above may now be taken note of. The President of the Board while referring the decision of the Board dated 18.5.2001 to the Officer Commanding-in-Chief, the Command, did not record any satisfaction that the majority decision of the Board was prejudicial to the health, welfare, discipline or security of the forces and the reasons therefor. There may, therefore, be substance in the argument raised on behalf of the respondent that the reference made in the present case was invalid. The second undisputed fact that will be required to be noticed is that the Officer Commanding-in-Chief, the Command, before passing the Order dated 22.11.2001 had issued show cause notice to the Board as required by either of the limbs of Section 52.

12. The power vested in the Officer Commanding-in-Chief, the Command, by the two limbs of Section 52, though at first blush, may appear to be intended to apply and operate in specific fields, in our considered view, such an interpretation of Section 52 would run contrary to the legislative intent behind the conferment of the power in the Officer Commanding-in- Chief, the Command under Section 52. The power conferred by Section 52 in the Officer Commanding- in-Chief, the Command, is a power to correct the decisions of the Cantonment Board. The necessity for such corrections may arise in myriad situations and the difference in the mode and manner in which such matters may reach the Officer Commanding-in-Chief, the Command, namely, by way of reference under Section 52 or otherwise cannot be determinative of the contours for exercise of the power. It is a power vested in a high functionary of the Cantonment to be exercised for the reasons spelt out by the statute. If that is the purpose for which power has been vested by the statute, in our considered view, the power conferred by the first part of Section 52 should not be, in any manner, curtailed by reading a limit thereon so as to exclude from its purview matters that may have reached the specified authority by way of an invalid or incompetent reference. To read the provisions of Section 52(1) to cover situations where the decision of the Board may have reached the Officer Commanding-in- Chief, the Command, otherwise than by way of a

valid reference, as in the present case, apart from suo moto exercise of the power by the said authority, according to us, would effectuate the legislative intent behind enactment of Section 52. The above manner of reading the power conferred by Section 52(1) will also not render the provisions of Section 52(2) nugatory inasmuch as Section 52(2) deals with situations where decisions of the Board have reached the Officer Commanding-in-Chief, the Command, by way of a valid reference.

13. The power to interfere with any decision of the Board is vested in the Officer Commanding-in-Chief, the Command, and the provisions of Section 52 merely enumerate the slightly different modes of exercise of the power in the different circumstances contemplated therein. The principle of law relied upon by the learned counsel for the appellant, namely, that if the power to perform a particular act is traceable to a specific provision of the statute the Court must lean in favour of the action taken, therefore, appears to be correct. In this regard support can be drawn from the decision of this Court in *State of Sikkim v. Dorjee Tshering Bhutia*[1]; *Municipal Corporation of the City of Ahmedabad v. Ben Hiraben Manilal*[2]; *N. Mani v. Sangeetha Theatre*[3] and *B.S.E. Broker's Forum, Bombay v. Securities and Exchange Board of India*[4].

14. In view of the above discussion we are of the opinion that the conclusions reached by the High Court ought not to be sustained. We, accordingly, allow this appeal and set aside the order of the High Court passed in the LPA.

15. We have noticed that certain questions with regard to the merits of the order dated 22.11.2001 passed by the Officer Commanding-in-Chief, the Command, were raised in the writ petition. As the writ petition as well as the LPA arising therefrom were decided on the question of jurisdiction of the Officer Commanding-in-Chief, the Command, to pass the impugned order dated 22.11.2001, the High Court had no occasion to go into the said questions raised. We, therefore, remand the matter to the High Court for consideration of all the other contentions raised in the writ petition by the respondent herein which issues will now be decided by the High Court as expeditiously as possible.

Judgment Referred

[1](1991)4SCC 0243

[2](1983)2SCC 0422

[3](2004)12 SCC 278

[4](2001)3SCC 0482