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Kamta Prasad Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Oct-14-1998

Reported in : 1999(1)AWC521; [1999(81)FLR394]

Judge : D.K. Seth, J.

Appeal No. : C.M.W.P. No. 8367 of 1991

Appellant : Kamta Prasad

Respondent : State of U.P. and Others

Advocate for Def. : K.R. Singh, S.C.

Advocate for Pet/Ap. : P.N. Saksena, Adv.

Judgement :

D.K. Seth, J.

1. The order dated 31.7.1990 contained in Annexure-7 to the writ petition, has since been challenged in this writ petition.

2. Mr. P. N. Saxena, learned counsel for the petitioner, had assailed the said order on the ground that the alleged charges in respect whereof the petitioner was subjected to disciplinary proceedings, were based on the complaint of the disciplinary authority being Mr. S. N. Srivastava. Sub-Divisional Officer, Bindaki,

therefore, he having been the complainant, he could not have passed the order as disciplinary authority on the principle that both the complainant and the disciplinary authority had combined in one. He secondly contends that in the enquiry report dated 29.6.1990 the petitioner was found not guilty in respect of charge Nos, 1, 2 and 4. The petitioner was found guilty only of charge No. 3. According to the learned counsel, said charge No. 3 was not grave enough so as to warrant an order of removal from service. He also contended that none of the charges were so serious to warrant major penalty to removal from service. He next contended that the disciplinary authority had disagreed with the enquiry report and passed the order of punishment without giving any notice and opportunity of hearing of the petitioner. Since the disciplinary authority had disagreed with the enquiry report, it was not open to it to pass the order of punishment without affording an opportunity to the petitioner to show cause against the proposed punishment. He then contended that even the order of punishment is perverse inasmuch as from the impugned order, it appears that the disciplinary authority had relied on certain other materials which were thoroughly absent in the enquiry proceedings and had purported to have examined some witnesses behind the back of the petitioner. He further contended that those witnesses were not examinedduring the enquiry proceedings by the prosecution, neither they were called on by the delinquent. Therefore, it was not open to the disciplinary authority to examine those witnesses even without notice to the petitioner.

3. Mr. Saxena had also furnished English translation of both Annexures-6 and 7 to the writ petition, a copy whereof was also handed over to Mr. K. R. Singh, learned standing counsel, who has not disputed correctness of the said English transiation.

4. Mr. K. R, Singh. learned standing counsel, on the other hand, contended that it is always open to the Disciplinary Authority to disagree with the findings recorded in the enquiry report. The only requirement for the purpose is that he should assign reasons therefor. It is not necessary that a fresh opportunity is to be given to the delinquent when the disciplinary authority disagrees with the enquiry report. He further contends that there is nothing perverse or illegal in the impugned order of punishment. The charges were grave enough to attract major punishment of removal from service. According to him, there were sufficient materials to prove

the guilt of the petitioner against respective charges. He then contends that the question being a question of fact and the findings of the disciplinary authority being findings of fact, the same cannot be interfered with in writ Jurisdiction unless the same is perverse. According to him. there is no perversity in the impugned order and therefore, the writ petition is liable to be dismissed.

5. 1 have heard both Mr. Saxena and Mr. K. R. Singh at length.

6. Admittedly, a complainant himself cannot be the disciplinary authority on the settled principle that one cannot be a Judge in his own cause. If the enquiry proceeding is initiated on the basis of the complaint made by the disciplinary authority, in that event the disciplinary authority cannot be a Judge in his own cause and pass the order of punishment. One Sri S. N.Srivastava, S.D.O. had passed the order of punishment. He himself was the complainant. Thus, the present case appears to be hit by the principle of 'nemo debet esse judex in propria causa' (no man shall be a Judge in his own cause). The above principle is based on the concept of bias. It is difficult to prove the state of mind of a person. The real question is not whether he would be biased or was biased. The question is of reasonable likelihood of bias. It is a question of human probabilities and ordinary course of conduct. The deciding authority must be impartial and without bias. A predisposition to decide for or against one party without proper regard to the merits of the dispute is bias. Personal bias is one of the three limbs of bias, viz., pecuniary bias, personal bias and official bias. For appreciating personal bias or bias to the subject-matter, the test is whether there was a real likelihood of bias even though such bias may not in fact was present. A real likelihood of bias means at least substantial possibility of bias. It is not dependent upon what actually was done but upon what might appear to be done. The test is whether a reasonable intelligent man, fully apprised of all circumstances, would feel a serious apprehension of bias. Whether the delinquent could reasonably apprehend a bias attributable to the disciplinary authority. It is in the sense that justice must not only be done but must also manifestly and undoubtedly seem to have been done. It is a principle based on the doctrine of natural justice.

7. In the case of Crescent Dyes and Chemicals Ltd. v. Ram Naresh Tripathi, 1993 (2) SCO 115, it was held that the doctrine of natural justice embodies two principle viz., (i) no one can be a Judge in his own cause, (ii) a judicial or quasi-judicial tribunal ought not and shall not condemn any person unheard. In the case of Ratan Lal Sharma v. Managing Committee Dr. Hari Ram (Co-Education) Higher Secondary School, AIR 1993 SC 2155, it was held that one of the cardinal principle of natural justice is 'nemo debet essejudex in proprta causa (no man shall be a Judge in his own cause). In the case of GuIIappalli Nageshwar Rao v. Slate qfAndhra Pradesh. AIR 1959 SC 176. It was held that the principle governing the doctrine of bias are well-settled and they are (i) no man shall be judge in his own cause (ii) justice should not only be done but manifestly and undoubtedly seem to be done. In the present case, the facts reveals as discussed hereafter, manifestation of bias.

8. So far as the question of giving opportunity of hearing to the petitioner by the Disciplinary Authority while disagreeing with the enquiry report is concerned, it is well-settled that it is not necessary to give opportunity to the delinquent afresh in such a situation, but at the same time while disagreeing with the enquiry report, the disciplinary authority is required to assign reasons for such disagreement with the enquiry report and that too on the basis of the materials on record. The disciplinary authority cannot rely upon anything which is not part of the record nor can he examine any witness who was not examined at all in the enquiry proceedings. Even if he proposes to examine any witness, he cannot al all do so while disagreeing with the enquiry report since he was not holding an enquiry. He cannot rely on any additional evidence to base his reasons to disagree with the enquiry report nor can he go beyond the scope and ambit of the materials which were produced before the enquiry officer.

9. In the present case, it appears that the disciplinary authority had examined some people though he was not supposed to hold a fresh enquiry. At best, he could have directed holding of a fresh enquiry if he was not satisfied with the enquiry report or if there was something else, it was open to him to remand the matter back to the inquiry Officer or to appoint another Inquiry Officer, but in no case it was within his jurisdiction to hold an enquiry himself and examine the

witnesses by himself.

10. in the present case, the disciplinary authority had not onlyexamined witnesses but had also examined them behind the back of the delinquent. It is apparent from the order passed by him that some people had complained that though lands were allotted to them but possession was not delivered to them. The delinquent had relied on some written statement of those persons which were used before the Inquiry Officer, on which the enquiry officer had placed reliance. The disciplinary authority had recorded that those witnesses were not examined in the enquiry, therefore, their evidence cannot be relied upon. But at the same time, he proposes to analyse the said statements which is wholly unwarranted inasmuch as when he discards evidence as Inadmissible, it is not open to him to discuss or analyse the same. Thereafter he proceeds to record that he had called those witnesses and put certain questions and they said something to him which is not recorded anywhere on the materials on record. It appears that relying on those statements, he had disagreed with the enquiry report and thereby came to a different finding that the petitioner was guilty of the charges. These facts lead not only to reasonable apprehension of bias but manifest actual bias.

11. That apart, it appears that there are some other lacuna in the whole order which are not necessary to be gone into in view of the discussion made above.

12. In that view of the matter, the impugned order dated 31.7.1990 contained in Annexure-7 to the writ petition is hereby quashed. Let a writ of certiorari do accordingly issue.

13. This order will not prevent the respondents from considering the question afresh, if they are so advised, in accordance with law.

14. At this stage. Mr. P. N. Saxena, learned counsel for the petitioner, submits that by reason of the interim order passed in this writ petition, the order impugned dated 31.7.1990 was not given effect to and the petitioner had been continuing in service and in the meantime he hasalso been promoted to the higher post.

15. It is not necessary to go into the question about continuance of the petitioner since the order impugned dated 31.7,90 stands set aside. It is no more necessary to deal with the question of interim order as the same merges in the final order. The petitioner's promotion or continuance may not have any bearing in case his case is considered afresh in the light of this order.

16. The writ petition thus stands allowed. There will however be no order as to costs.

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