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Court : Allahabad

Decided On : Oct-06-1972

Reported in : (1973)ILLJ570All

Judge : G.C. Mathur, J.

Appellant : Brindaban

Respondent : State of Uttar Pradesh

Judgement :

G.C. Mathur, J.

1. The petitioner is a constable in the police force and in the year 1967 he was posted at out-post Surai in police station, Konch, district Jalaun. According to the petitioner his relations with the station officer, police station, Konch, were not cordial and he anticipated trouble from him. For this reason he sent an application to the Deputy Inspector-General of Police, Kanpur Range, Kanpur praying that he be transferred outside the district. In May, 1967 the petitioner was transferred to police station, Kotwali, Orai, On March 31, 1968 one Har Dayal Singh lodged an F. I. R. at police station, Kotwali against his brother Dwarka Singh and Anr. of a non-cognizable offence. It is alleged that the petitioner went to the village Rewa where the complainant resided, extracted a bribe of Rs. 50 from Har Dayal Singh and then compelled the parties to enter into compromise. On April 3, 1968 Har Dayal Singh lodged a report against the petitioner under Sections 161/419/420, Indian

Penal Code. On the basis of this report a case was registered against the petitioner and was investigated by Sri Karan Singh, Deputy Superintendent of Police. At this stage the petitioner sent another application to the Deputy Inspector-General of Police, Kanpur Range, requesting his transfer outside the district. In this application the petitioner mentioned that the Superintendent of Police, Jalaun was himself responsible for the report, that it had been decided to obtain a final report on the F. I. R. and to start departmental proceedings against the petitioner. The investigating officer, in fact, submitted a final report on April 23, 1968. Thereafter the petitioner was ordered to appear before the Superintendent of Police on June 1, 1968 at 9 A. M. to receive a charge-sheet under Section 7 of the Police Act. The petitioner in obedience of this order appeared before the Superintendent of Police on June 1, 1968. He was served with a charge-sheet by the Superintendent of Police. According to the petitioner the Superintendent of Police abused him and told him that he would get the petitioner removed from service. On the same day the Superintendent of Police passed an order confining the petitioner to the orderly room for the day for appearing in shabby uniform without turban before him. The petitioner, being apprehensive that he may not receive justice at the hands of the Superintendent of Police, made a third application to the Deputy Inspector-General of Police on June 1, 1958 requesting that he as well as the departmental proceedings be transferred out of the district. The enquiry was held by the Superintendent of Police himself. On June 4, 1968 the petitioner applied to the Superintendent of Police praying for a stay of the departmental proceedings pending the decision of the Deputy Inspector General of Police on his application for transfer of the departmental proceedings. This application was rejected by the Superintendent of Police and he continued with the enquiry proceedings. After completing the enquiry the Superintendent of Police recorded his findings against the petitioner finding him guilty of the main charge of accepting a bribe of Rs. 50 from Har Dayal Singh. The report of the Superintendent of Police is dated July 22, 1968. A copy of these findings was served on the petitioner and the petitioner was asked to show cause within eight days why the punishment of dismissal be not awarded to him. The petitioner submitted his explanation. By order dated August 7, 1968 the Superintendent of Police dismissed the petitioner from service. Against this order the petitioner

preferred an appeal and then a revision but both were dismissed. He has now come to this Court by way of petition under Article 226 of the Constitution.

2. The learned Counsel for the petitioner has challenged the disciplinary proceedings as well as the order of the Superintendent of Police dismissing the petitioner from service on the sole ground that the Superintendent of Police was biased against the petitioner,

3. Before considering the material on which the learned Counsel places reliance in support of this contention, it would be proper to notice the principles laid down by the Supreme Court for judging the question of bias. In *Manak Lai v. Dr. Prem Chand Singhvi* A.I.R. 1967 S.C. 425, the Supreme Court observed-

It is well-settled that every member of a tribunal that is called upon to try issues 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.

* * *But where pecuniary interest is not attributed but instead a bias is suggested, it often becomes necessary to consider whether there is a reasonable ground for assuming the possibility of a bias and whether it is likely to produce in the minds of the litigant or the public at large a reasonable doubt about the fairness of the administration of justice. It would always be a question of fact to be decided in each case.

The Supreme Court further observed that these principles applied not only to regular courts but to all tribunals and bodies which were given jurisdiction to determine judicially the rights of parties.

4. It is in the light of these principles that the contention of the petitioner has to be examined. What has to be seen is whether the facts and circumstances of the case show that there is a reasonable ground for the petitioner to apprehend that the Superintendent of Police was biased against him. There are four circumstances on which the petitioner has relied : The first circumstance is that the petitioner had made three applications to the Deputy Inspector-General of Police, Kan pur Range. In each one of them he had expressed that the Superintendent of Police, Jalaun was prejudiced against him. In the first application which was sent more than a year before the present proceedings started, it was stated that the Superintendent of Police was not prepared to listen to the petitioner's complaint against the station officer and that the petitioner was compelled to send the application directly to the Deputy Inspector-General of Police as he apprehended that if it was sent through the Superintendent of Police, it would never reach the Deputy Inspector-General. In this application the petitioner prayed that he might be transferred outside the district. The second application was sent after investigation of the report lodged against him by liar Dayal Singh had started. In this application the petitioner had complained that the Superintendent of Police, Jalaun had got a case against the petitioner registered under Sections 161/419/420, Indian Penal Code and had expressed his apprehension that after getting a final report made the Superintendent of Police would start departmental proceedings against the petitioner. He again prayed that he might be transferred outside the district and that if departmental proceedings were started against him they should also be transferred to some other district. Again after the charge-sheet had been served on him on June 1, 1968, he sent a third application to the Deputy Inspector-General of Police again requesting that the petitioner as well as the disciplinary proceedings under Section 7 of the Police Act be transferred outside the district. In this application also he stated that the Superintendent of Police was prejudiced against him and had abused him and had confined him to the orderly room even though the petitioner was properly dressed. These three applications leave no room for doubt that there was certainly serious apprehension in the mind of the petitioner that the Superintendent of Police was prejudiced against him and was out to punish him.

5. The second circumstance on which reliance has been placed by the petitioner is that on the very day when the charge-sheet was served on him by the Superintendent of Police, the S. P. thought fit to punish him for not being properly dressed and confined him to the orderly room. The fact that the petitioner was punished for being shabbily dressed and confined to the orderly room is not denied. This punishment, even though not a very serious one, was inflicted at the time of the service of the charge-sheet and it could lead the petitioner to apprehend that the Superintendent of Police was prejudiced against him and that the enquiry would not be fair.

6. The third circumstance on which reliance is placed is that though normally the fact finding enquiry is entrusted to the Deputy Superintendent of Police, in this case the Superintendent of Police chose to, conduct this enquiry himself. This departure from the normal practice particularly in the light of the various applications which the petitioner had addressed to the Deputy Inspector-General of Police against the Superintendent of Police, was bound to cause apprehension in the mind of the petitioner that the Superintendent of Police was out to punish him.

7. The last circumstance on which reliance is placed is the rejection of the application made by the petitioner to the Superintendent of Police for staying the proceedings till his application for transfer of the proceedings to some other district, was decided by the Deputy Inspector-General of Police. The Superintendent of Police was apprised of the fact that the petitioner had made an application for transfer of the case to the higher authorities and it would have been proper for him to stay the proceedings. His refusal to do so must naturally have caused more apprehension in the mind of the petitioner.

8. From all these circumstances, it is clear that the petitioner could reasonably have an apprehension that the Superintendent of Police was biased against him and had made up his mind to punish him. This bias vitiates the entire enquiry proceedings.

9. The learned standing counsel, however, urged that even if the Superintendent of Police was biased against the petitioner this bias cannot vitiate the proceedings

as the Superintendent of Police, Jalaun was the authority empowered to conduct the disciplinary proceedings. He has relied upon the rule of necessity under which Judges or officers otherwise disqualified by bias may conduct proceedings if the statute or the rules provide for only one authority which can conduct the proceedings and if that authority is biased against the person against whom the proceedings are conducted, then the bias will not vitiate the proceedings. But the rule of necessity is not applicable where an alternative authority can be found to conduct the proceedings.

10. In Administrative Law Treatise by Kenneth Gulp Davis, Volume 2, it is observed at page 163:

the rule of necessity is held inapplicable when a way can be found to provide a qualified tribunal, as by excluding from the tribunal the disqualified members, by appointing a tribunal with a different membership, by counting only the votes of (sic) to another tribunal already available.

11. Under the Police Regulations, normally, it is the Superintendent of Police of the district who is empowered to punish a head constable subordinate to him. (See para 479 (e) U. P. Police Regulations). Thus the Superintendent of Police, Jalaun was empowered to conduct the disciplinary proceedings against the petitioner. But there is power under Regulation 490(13) and (14) of the Police Regulations in the higher authorities to withdraw the proceedings from the Superintendent of Police and to either conduct them themselves or to transfer them to some Superintendent of Police of another district. Therefore, it cannot be said that of necessity the proceedings had to be conducted by the Superintendent of Police, Jalaun. The petitioner had applied for transfer of the proceedings and the proceedings could have been transferred to the Superintendent of Police of some other district. In this situation the rule of necessity is not applicable to the present case. Therefore, on account of bias of the Superintendent of Police, Jalaun the entire proceedings must be held to be vitiated.

12. The writ petition is accordingly allowed. The order passed by the Superintendent of Police, Jalaun, dismissing the petitioner from service as well as the orders dismissing the petitioner's appeal and revision, are quashed. The

authorities may, if they consider fit, start the proceedings against the petitioner afresh from the stage of the service of the charge-sheet. The petitioner is entitled to his cost of this petition from the respondents.

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