

V. Abusali Vs. the Commandant and ors.

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Court : Kerala

Decided On : Nov-04-1993

Reported in : (1995)ILLJ547Ker

Judge : M. Jagannadha Rao, C.J. and; K. Sreedharan, J.

Acts : Central Reserve Police Act, 1949; Central Reserve Police Rules - Rules 27 and 27(7)

Appeal No. : W.A. Nos. 780 and 811/1993

Appellant : V. Abusali

Respondent : The Commandant and ors.

Advocate for Def. : George C.P. Tharakan, S.C.G.S.C.

Advocate for Pet/Ap. : P.C. Chacko and; Roy Chacko, Advs.

Disposition : W.A. No. 780/1993 dismissed. W.A. No. 811/1993 allowed

Judgement :

Jagannadha Rao, C.J.

1. These two writ appeals arise out of the same judgment in Writ Petition, O.P. No. 107 of 1991. W.A. No. 811 of 1993 is filed by the writ petitioner Sri, Abusali, while W.A. No. 780 of 1993 is filed by the Commandant CISF, FACT (CD), who was the

first respondent in the writ petition.

2. The grievance in the writ petition was in regard to an order of punishment of removing the writ petitioner from service. Ext. P4 is the said order dated May 31, 1990 issued by the Commandant. The writ petitioner contended before the learned Single Judge that the Enquiry Officer in this case was a subordinate officer under the defacto complainant, and therefore the whole proceedings were vitiated. In fact, the complaint was made against the writ petitioner by the Assistant Commandant, and the person appointed to inquire into the matter was an Inspector working under the Assistant Commandant. The Enquiry Officer found that charge No. 1 was established in part and Charge No. 2 in full. The first charge related to unauthorised absence on December 2, 1989 and misbehavior towards an autorikshaw driver under the influence of intoxication. This charge was proved partially in so far as unauthorised absence was concerned. The rest of the charge was not proved. The second charge related to the appellant (writ petitioner) questioning the authority of the Assistant Commandant at 22.15 hrs, on December 2, 1989. The learned Single Judge rejected the contention of the writ petitioner that the enquiry was vitiated because of the fact that the Enquiry Officer was a subordinate of the complainant himself. It may be noted that the Enquiry Officer, Sri P.A. Shaji, was an Inspector working under Sri R. Muthuswamy, the Assistant Commandant, who was the complainant. Even so, the learned Single Judge held that the enquiry was not vitiated. This was because of the fact that there was nothing in the evidence to show that the Enquiry Officer was influenced by the superior officer, the complainant. The contention for the disciplinary authority that the writ petitioner ought to have raised the said objection during the enquiry if he felt that there was real likelihood of bias, was accepted by the learned Single Judge. The learned Single Judge observed as follows:

'The counsel for the petitioner contended that there was a likelihood of bias and from the various circumstances the likelihood of bias is to be presumed. If the petitioner was very much aggrieved by the appointment of P.A. Shaji as enquiry officer, he should have raised some objection. But, I do not think that there are any circumstances warranting a conclusion that there was a 'real likelihood of bias' in the proceedings of enquiry against the petitioner.'

Having thus rejected the contention of the writ petitioner relating to real likelihood of bias, the learned Single Judge however felt that there was a defect in the impugned order in the sense that under Rule 27 (7) of the Rules made under the Central Reserve Police Act, 1949 the major penalty of removal could be imposed only after giving a show cause notice to the delinquent officer. In as much as the said procedure was not followed, the learned Single Judge quashed the penalty and directed the Commandant to give a fresh notice to the petitioner under Rule 27(7) of the Rules made under the Central Reserve Police Force Act, 1949;

3. In so far as the learned Single Judge refused to quash the entire enquiry proceedings on the basis of real likelihood of bias, the writ petitioner has preferred W.A. No. 811 of 1973. In so far as the learned Single Judge quashed the penalty and issued a direction for giving an opportunity to the writ petitioner in regard to punishment as required under Rule 27 of the Rules, the Commandant has come up in appeal in W.A. No. 780 of 1993.

4. We have heard learned counsel on both sides. In our view the learned Single Judge ought to have accepted the contention of the writ petitioner (appellant in W.A. No. 811 of 1993) that the Enquiry Officer, being a subordinate officer to the complainant, the entire proceedings relating to enquiry were vitiated. The only ground on which the learned Single Judge rejected the case of the writ petitioner was that the writ petitioner ought to have raised an objection into the enquiry that the Inspector, who was conducting the enquiry, was a subordinate of the Asst. Commandant, the complainant. In the recent decision of the Supreme Court in *R.L. Sharma v. Managing Committee. Dr. Hari Ram (Co-edn.) H.S. School*, AIR 1993 S.C. 2155, it has been pointed out by the Supreme Court that in cases of bias, all that the Court has to consider is whether there was a real likelihood of bias. The Supreme Court also pointed out that the question of real likelihood of bias should be judged not from the point of view of the Court, but from the point of view of the delinquent officer. The Supreme Court also specifically and expressly laid down that the fact that such an objection was not taken in the enquiry is not a ground for refusing to hold that the enquiry was vitiated. In paragraph 12 of the above said decision, the Supreme Court pointed out that the Division Bench of the High Court was in error in not allowing the point to be taken by the petitioner in

that case before it. Such a question of prejudice or bias would go to the root of the case and make the entire proceedings a nullity.

5. Following the aforesaid decision of the Supreme Court, we hold that the learned Single Judge was wrong in coming to the conclusion that the writ petitioner could not be permitted to raise the question of real likelihood of bias, as he did not raise the same during the course of the enquiry proceedings. Admittedly, the Inspector, who conducted the enquiry, was the immediate subordinate of the complainant in the case. The real likelihood of bias is writ large on the face of the enquiry. We therefore disagree with the view of the learned Single Judge and hold that the entire enquiry was vitiated. Therefore W.A. No. 811 of 1993 is allowed and the entire enquiry proceedings, including the penalty, are quashed. This, however, will not preclude the authorities, if they so desire, to have a fresh enquiry conducted in accordance with law by a competent enquiry officer. While doing so, they will, however, consider whether at this distance of time, a fresh enquiry is to be conducted or not.

6. So far as the other appeal W.A. No. 780 of 1993 is concerned, that appeal has been preferred by the Commandant being aggrieved by the learned Single Judge's direction to give a fresh notice to the petitioner in regard to the punishment. Inasmuch as we have held in W.A. No. 811 of 1993 that the entire enquiry is vitiated, there is no need to go into the question raised in this appeal. For this reason, W.A. No. 780 of 1993 is liable to be dismissed.

7. In the result, W.A. No. 811 of 1993 is allowed as stated above, and W.A. No. 780 of 1993 is dismissed.