(2005) 3 CHN 385 : (2005) 4 ESC 2470 : (2005) 1 ILR (Cal) 27

Calcutta High Court

Case No: Writ Petition No. 5281 (W) of 2000

A.K. Mukhopadhyay @ Amiya Mukhopadhyay		APPELLANT
	Vs	
Union of India (UOI) and Others		RESPONDENT

Date of Decision: Nov. 23, 2004

Citation: (2005) 3 CHN 385 : (2005) 4 ESC 2470 : (2005) 1 ILR (Cal) 27

Hon'ble Judges: Jayanta Kumar Biswas, J

Bench: Single Bench

Advocate: Mihir Chakraborty and Suchitra Roy, for the Appellant; Gita Mukherjee, for the Respondent

Final Decision: Allowed

Judgement

Jayanta Kumar Biswas, J.
The petitioner, an Inspector in Central Industrial Security Force, was punished in a minor penalty disciplinary

proceeding, and the decisions given by the disciplinary authority dated August 30th 1999 and the appellate authority dated January 18th, 2000

have made him aggrieved. He challenges those decisions in this writ petition.

2. The English translation of the allegations made in the chargesheet dated July 15th, 1999, issued by the Assistant Commandant of the petitioner''s

unit in Hindi, is as under:-

CISF No : 871300085 Ins./Exe. A. K. Mukhopadhyay is at present working a Com/Comm in A. Coy. On 8.7.1999 at about 10-45 hrs. when

the Commandant Sri S. L. Prasad was travelling on the barrage, he noticed a mini bus parked near BPI near National Highway No. 34 near the

Security Zone. Inspector/Exe. A. K. Mukhopadhyay, despite being near the BPI did not take any action. Upon being asked by the Commandant

he gave no reply. Considering the present critical situation there is a standing order for extreme caution. In spite of being a Company Commander

and despite the mini bus having stopped near the Security Zone he had taken no action. Consequently it was the Commandant who had taken the

action against the driver and helper. This has amounted to a grave negligence of duty and disobedience to the lawful order of the superior. Hence

the charge.

3. The standing order referred to in the chargesheet was issued by the Deputy Commandant on June 23rd 1999, and para 7 of it provides :-

The duty officer shall not allow any cars or vehicles of any kind to stop within 150 meters of either end of the barrage. The driver of such vehicle

should be explained politely and told to move on. No indecent behaviour or physical violence should be resorted to.

4. It is not disputed that the chargesheet was issued on the basis of a report submitted by the Commandant of the unit on July 8th, 1999 to its

Deputy Commandant. It is also not disputed that copy of the report was never supplied to the petitioner, before this Court also it has not been

disclosed.

5. The petitioner submitted a detailed reply dated August 18th, 1999. In reply to the charges he said :

I would like to inform the following facts. Firstly the basis of the charges are totally ipse dixit and inconsequent. Thereby it is to be told that the .

charges framed against me are baseless, vindictive in nature, spiteful and ill-minded, because.

He gave the reasons in detail, and said :

That in the imputation it is told that when Commandant reached near the bus I was at BP-1 which is concocted story and blatant lie as the fact is

this that when Commandant''s car stopped all of a sudden in front of the mini bus near 12th Reserve Btn. I was in between BP3 and BP2 and

Commandant car was about 40 to 50 mtr. away from BP2 which can not be told very near to the mini bus.

That checking of entire post of the barrage having 3 km distance in one side on foot is a herculian task as the distance of each barrage post is

about 300 mtr. which can not be covered at the speed of car. On 8.7.99 I had checked BP3 at 10-40 hours after that I reached BP2 having cross

300 mtr. distance where according to chargesheet the incident happened at 10-45 hours. It is clearly shown that I was not present at BP1 as the

time of incident (the xerox copy of the beat book is attached for your kind perusal please).

In the reply he alleged :

The chargesheet was issued in a pre conceived manner knowingly to fix the undersigned.

e.g. on 7.7.1999 it was told to the IGINES that the undersigned is worthless one without any basis which is against the norms.

Again on 8.7.1999 it was told to the undersigned that he would be suspended and the remarks regarding the looking of undersigned ''whether I

have seen my face in the mirror or not.''

Hence the above incidents proves the personal bias.

6. After receiving the reply the Assistant Commandant passed the final order dated August 30th, 1999. He while totally disbelieved the case of the

petitioner, believed the facts allegedly stated in his report by the Commandant. No regular enquiry was held, nor any evidence was adduced and

recorded. The entire matter was decided by the Assistant Commandant on the basis of the undisclosed report of the Commandant and the reply

submitted by the petitioner. The Assistant Commandant imposed on the petitioner the penalty of:

withholding of next increment for a period of one year which will not have effect on postponement of his future increment"".

7. Feeling aggrieved, the petitioner preferred an appeal. He requested the appellate authority to consider the reply filed by him in response to the

chargesheet while deciding the appeal. By the order dated January 18th, 2000 the appellate authority rejected the appeal. He did not mention

anything in his order why he disbelieved the case of the petitioner stated by him in his reply, nor did he refer to it in any sense while rejecting the

petitioner''s appeal.

8. Counsel for the petitioner submits that the decisions of the disciplinary authority and the appellate authority are liable to be set aside on the

ground that they are vitiated by bias. He points out that the Assistant Commandant, who acted as the disciplinary authority, was under the direct

control of the Commandant who submitted the undisclosed report that led to the initiation of the proceeding. He contends, on the strength of the

Supreme Court decisions in (1) Ashok Kumar Yadav and Others Vs. State of Haryana and Others, and (2) Rattan Lal Sharma Vs. Managing

Committee, Dr. Hari Ram (Co-education) Higher Secondary School and others, , that for establishing a plea of bias the petitioner has to show

only a reasonable likelihood of bias, and not actual bias.

9. Counsel for the respondents has referred me to a Single Bench decision of this Court in I.T.C. Ltd. v. Union of India, reported at AIR 1989 Cal

2947 and submits that since the matter also received the consideration of a highly placed official, who acted as the appellate authority in the matter,

the plea of bias, as raised by the petitioner, must not receive too much attention of the Court at this stage, particularly when under the relevant rules

the Assistant Commandant was the petitioner''s disciplinary authority, and, as such, he was legally empowered to initiate the proceeding.

10. Admittedly, the plea of bias was specifically raised by the petitioner in his reply dated August 18th, 1999. Nothing has been brought to my

notice to show that cognizance of the plea was at all taken by any of the authorities at any stage. The question put by the Counsel for the petitioner

is that if the Assistant Commandant was to initiate the proceeding and take the decision, then, why an Assistant Commandant, not under the direct

control of the complainant Commandant, was not chosen. I do not find any reason why I should ignore the situation, and the apparent significance

of the question raised.

11. Facts, as they are, eloquent by themselves; and they speak volume of a real likelihood of bias. Allegations made in the chargesheet, instructions

notified by the standing order, statements made by the petitioner in his reply, the secrecy maintained regarding the report of the Commandant, the

fact of complete non- consideration of the plea of bias raised by the petitioner at the earliest possible opportunity, the total non-consideration of the

case made out by him in his reply, and the nature of the allegations and counter-allegations,-and all of which culminated into an apparently

insignificant minor punishment,-lead me to the irresistible conclusion that the Assistant Commandant proceeded with a pre-disposed mind to punish

the petitioner, whatever might be his explanations to the charges.

12. The mechanical way in which the appellate authority disposed of the appeal, without even feeling the necessity of referring to and discussing the

case made out by the petitioner in his reply, compels me to think that the bias aspect did not see its end at the Assistant Commandant stage.

13. To my mind, this is a case where the facts lead a person of reasonable prudence to the inevitable conclusion of existence of a real likelihood of

bias against the petitioner. In my judgment, I think, no assistance of any authority is needed for it, when Counsel for the respondents does not

dispute the proposition regarding the test to be applied for determining a plea of bias the petitioner is fully justified in taking the plea that the

impugned decisions are vitiated by bias; and I am unhesitatingly minded to accept the plea.

14. The other point raised by Counsel for the petitioner is that the impugned decisions are perverse. He has read the petitioner''s reply in detail,

and has concluded by saying that no reasons are available to justify the process of decision in which the petitioner''s case received little attention

and scrutiny. Counsel for the respondents, as natural for her, sounded her disagreement, and she pointed out that in his reply the petitioner not only

used disrespectful language against the Commandant, but also stated things and facts which he had not been called upon to dwell on in response to

the chargesheet.

15. I am unable to appreciate the criticism of the petitioner''s reply in the manner as has been made by the Counsel for the respondents. I asked

her : whether the petitioner was not entitled to speak the truth in his defence ? I did not get any comment other than the repetition of what she

already said. To my mind, the reply of the petitioner rather raised a very serious issue, and his case, stated even without the knowledge of the

contents of the report submitted by the Commandant, could not have been brushed aside only for the purpose of punishing him by some means or

other.

16. He never admitted the allegations regarding grave dereliction of duty or regarding disobedience of lawful orders of his Commandant.

Statements made by him in his reply, if are believed, would lead a person of reasonable prudence to the only conclusion that the complaining

Commandant framed a false charge for glozing the incident in which he was the active and powerful person. I mean that under the standing order

the corporeal punishment that had been inflicted by him on the persons connected with the mini bus concerned was not permissible, and the

incident, per chance, had come to the notice and knowledge of the petitioner who was supposed to act according to the standing order, only at the

appropriate moment; that is to say, on his noticing the stoppage of the mini bus and arrival at the spot in question.

17. I do not find any reason, because there is nothing except allegations and counter-allegations, to say that the Commandant was to be believed

regarding the facts allegedly stated by him, and the petitioner was to be disbelieved regarding the ones stated in his reply. On the basis of the

allegations and counter-allegations it is neither possible nor desirable to reach a conclusion regarding the correctness of either of the cases. So

unless one is pre-determined to disbelieve one of the cases, one cannot possibly reach a fair conclusion of fact without the help of other

corroborating evidence. Here the corroborating evidence, if any, was only the logbook, the contents whereof rather supported the case made out

by the petitioner.

18. On these facts, I am unable to feel persuaded into holding that since it was a minor penalty proceeding, the question of perversity in the

decisions must not be entertained. It seems to me that the facts on their own lead me to the conclusion that the decision of the Assistant

Commandant is perverse. The appellate authority decided the appeal only by observing the rituals, and hence the observance of formalities by him

does not lend any extra weight to his order that also is the ultimate result of a perverse decision.

19. The reasons already indicated by me, in my view, are sufficient to hold that the decisions impugned cannot be sustained. On the facts, I do not

see any reason, at this distance of time, to grant liberty to the respondents to proceed in the matter afresh. In ordinary course, I would have

granted liberty to proceed afresh by holding a regular enquiry. But the facts of the case do not persuade me into passing an order for the purpose,

since the incident took place sometime in July, 1999 and with the passage of time necessary evidence and witnesses are likely to be not available.

It seems to me that liberty if granted would serve the purpose of formality once more, and not of justice.

20. For these reasons I allow this writ petition and set aside the decisions dated August 30th, 1999 given by the disciplinary authority and dated

January 18th, 2000 given by the appellate authority. I further order that the proceedings initiated by the minor penalty chargesheet dated July 15th,

1999 shall be deemed to be closed and nothing connected with it shall ever be used for any purpose against the petitioner. It is my further order

that the benefits to which the petitioner would be entitled because of this judgment and order, shall be made available to him within three weeks

from the date of receipt of a copy of this judgment and order by the respondents.

21. In the facts and circumstances of the case, I am not inclined to make any order for costs in favour of the petitioner. Hence there will be no

order for costs in the writ petition.