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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA-1503-2013 [O&M]

Date of Decision : December 8th, 2015

Union of India and others

.... Appellants

Versus

Dr. V.L.N. Thakur

.... Respondent

**CORAM : HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE SHEKHER DHAWAN**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present Mr. Vishal Gupta, Advocate,
for the appellants.

Mr. Rajeev Anand, Advocate,
for the respondent.

SHEKHER DHAWAN, J.

Present intra-court appeal under Clause X of the Letters Patent has been filed by the appellants against the order dated 19.11.2012 passed by learned Single Judge, whereby writ petition filed by Dr. V.L.N. Tkahur, respondent herein, was allowed.

2. Though there is delay of 175 days in filing the appeal and the appellants have filed application (CM No. 3822-LPA of 2013) for condoning the said delay, yet we have heard learned counsel for the appellants on merits and have gone through the impugned order passed by the learned Single Judge.

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3. Respondent – Dr. V.L.N. Thakur was working as a Veterinary Surgeon and was serving as an Assistant Commandant in Indo Tibetan Border Police Force [for short “ITBPF”] and challenged the proceedings of General Force Court [for short “GFC”] and the consequential punishment. Initially, he was sentenced to be removed from service by GFC, but the said sentence was commuted to loss of seniority for two years at the time of confirmation.

4. Respondent while working as such had helped his colleague, a senior officer holding the rank of Deputy Commandant Medical Officer, who was being forcefully taken to Mental Health Care Centre due to a vindictive attitude of Inspector General, ITBPF, Zonal Headquarter, ITBPF Dehradun, appellant No. 4 herein and pointed out some deficiencies in the health related issues concerning the new recruits, which offended appellant No.4. Respondent came to his rescue while he was being dragged and thrown into ambulance. Respondent had also spoken to the higher authorities for release of his colleague officer, but he was charge-sheeted. As per the respondent-petitioner, his role in the entire incident was merely to help Dr. Amitabh Kumar against use of force and manhandling being done to a senior officer and on that account, he was charge-sheeted. As per the respondent, the superior authority in a biased manner, concluded the proceedings and the evidence was ordered to be prepared by the superior authority of the Commanding Officer by prejudging the matter through order dated 3.10.2007 without any application of mind or without giving any opportunity of hearing to the respondent. The respondent made a representation on 1.5.2008 for revocation of his suspension, but to no effect.

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5. Respondent had challenged the proceedings on the ground that charge sheet dated 3.10.2007 issued by Inspector General [Training Zone] was on the basis of disciplinary proceedings and the Inspector General usurped the power of Commanding Officer and prejudged the matter/allegations. The charge sheet was issued without any opportunity of hearing being granted to the respondent and without application of judicious mind. During the pendency of charge sheet dated 3.10.2007 issued by Inspector General [Training Zone], another charge sheet was issued to the respondent on 15.2.2008 by Commandant, 12th Battalion, ITBPF, who was not the Commanding Officer of the respondent at the relevant time. As per sub-rule [2] of Rule 45 of ITBPF Rules, 1994 [for short, "the Rules"], a discretion has been given to the Commanding Officer to issue charge sheet in case of any charge against a subordinate officer being of serious nature and the said power is to be exercised by the Commanding Officer only.

6. Learned Single Judge, after considering all these facts, allowed the writ petition and the finding of guilt and the sentence passed against the petitioner-respondent were quashed. Hence, the present appeal before this Court by the appellants-Union of India and others.

7. Learned counsel for the appellants submitted that the charges against the respondent were of 'serious nature' and the directions were issued by the next superior authority i.e., Inspector General [Training Zone] for preparation of record of evidence in terms of provisions of Rule 45 of the Rules and learned Single Judge has not appreciated this fact. The said proceedings were just at pre-trial stage. Only tentative charge sheet was issued by Inspector General [Training Zone], but the trial was

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conducted on the charge sheet which was issued by the competent authority, i.e., Commanding Officer. Learned counsel for the appellants placed reliance upon the judgment of Hon`ble Supreme Court of India in **Major G.S.Sodhi Vs. The Union of India, 1991 [5] JT 55.**

8. Learned counsel for the respondent submitted that the learned Single Judge has rightly decided the controversy in favour of the respondent on the basis of correct appreciation of material on record.

9. We have considered the submissions made by learned counsel for the parties and are of the view that the learned Single Judge has rightly observed that as per provisions of Rule 45 of the Rules, the charge sheet could be issued only by the Commanding Officer. In the present case, tentative charge sheet was admittedly issued by the superior authority to the Commanding Officer and thereafter, the Commanding Officer simply endorsed the said charge sheet as the same is having approval of the senior officer. The requirement of law is that the Commanding Officer has to form his own independent opinion, whether to proceed with the charge or not, and if some higher authority applies the mind and issues tentative charge sheet, then the mind of Commanding Officer is bound to be biased as the Commanding Officer is subordinate to him and could not dare to disobey the order of his superior. This shows non application of mind of the Commanding Officer. There was no question of disobeying the order of Inspector General by the Commanding Officer. In the present case, the power of the Commanding Officer was usurped by Inspector General.

10. As regards decision in **Major Sodhi's case [supra]**, relied upon before learned Single Judge on behalf of the appellants and the same has already referred to and learned Single Judge has rightly been distinguished

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on facts because in the present case, issue was that the summary of evidence was to be recorded under the directions of proper Commanding Officer. Rather the emphasis was more on non-compliance of Rule 25 read with Rule 22 of the Army Rules, which is parallel to Rule 45 of the Rules. The real controversy in the present case is that the powers were not actually exercised by the proper Commanding Officer. More so, the respondent has been punished as the sentence was commuted to loss of seniority for two years at the time of confirmation.

11 In view of the above, we are of the considered view that the learned Single Judge has rightly decided the controversy in favour of the present respondent and impugned order dated 19.11.2012 passed by learned Single Judge does not call for any interference by way of this appeal. Resultantly, the present appeal stands dismissed being devoid of any merit.

(SATISH KUMAR MITTAL)
JUDGE

(SHEKHER DHAWAN)
JUDGE

December 8th, 2015
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