

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.15443 of 2014

ORDER:

Heard Sri P.S.P. Suresh Kumar, learned counsel for the petitioner and Sri B. Narayana Reddy, learned Assistant Solicitor General, appearing for respondent Nos.1 to 4.

2. The petitioner is employed as a Constable in the CRPF. He was posted as Assistant Cashier in Group Centre, CRPF, Hyderabad.

3. On 09-04-2014, he was issued a charge memo alleging that petitioner committed an act of gross negligence and remission in discharge of duty, that he failed in preparation of remittance particulars to ensure proper and correct disbursement of amounts to actual payee after ascertaining the bank remittance particulars of each payee from records,; that because of this, one U.Durga Prasada Rao, a Constable/General Duty, who was performing the duties in the cash section as helping hand to the cashier and assistant Cashier, fraudulently tampered transaction of Government money of Rs.14,83,104/- by depositing GPF, GIS final payments, Death-cum-Retirement Gratuity etc relating to various retired personnel on different dates in the account of his wife Smt.U.Sharada from 3.4.2012 to 13.6.2013. It is alleged that he had concealed his misdeeds from the Assistant Cashier, Cashier and other supervisory staff.

4. Petitioner has filed this Writ Petition raising the following contentions;

a) The Commandant, Group Centre, CRPF, Chandrayanagutta, Hyderabad (4th respondent) is the Head of Institution and he signed all the documents and bank registers but he was not issued any charge memo by 3rd respondent;

b) As per Rule 27 (d) (i) of CRPF Rules, if two or more employees are involved in any enquiry, then a joint enquiry has to be conducted and the petitioner had requested 5th respondent-enquiry officer to do so on 19-04-2014 itself but the latter has not taken any action.

5. Counter affidavit has been filed by 3rd respondent (the appellate authority) on behalf of the respondents categorically stating that the petitioner failed in preparation of disbursement sheet, to ensure prompt and correct disbursement of amount to the actual payee and that by taking advantage of negligence of petitioner, U.Durgaprasada Rao, who was the Constable on general duty and who was performing duties in the cash section as helping hand to the cashier and Assistant Cashier, fraudulently transferred a sum of Rs.66,79,155/-, which should have been paid to various retired personnel, into the account of his wife U.Sarada. It is stated that if the

petitioner had shown devotion towards his job, this embezzlement of Government money would not have happened.

6. The filing of this counter affidavit by 3rd respondent, who is superior in rank to 5th respondent (enquiry officer) and to the 4th respondent, the disciplinary authority that the petitioner is guilty of the charge is, in my considered opinion, amounts to pre-judging the issue thereby vitiating the entire proceedings. In the light of the stand taken by 3rd respondent, it cannot be expected that either the enquiry officer or the disciplinary authority, who are both subordinates to the 3rd respondent, would take a different stand from 3rd respondent and independently consider the issue. This vitiates the entire proceedings.

7. That an administrative body, which would take a decision causing civil consequences, has to act without bias is settled law. The disciplinary authority is required to be impartial and unbiased and the predisposition to decide for or against one party without proper regard to the true merits of the dispute is bias as held in **Secretary to Government, Transport Department Vs. Muniswamy Mudaliar**¹.

8. In **Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-Education) Higher Secondary School and others**², the above decision of the Supreme Court was followed and it was reiterated that the test is whether litigant could reasonably apprehend that a bias would operate against him and that the maxim *justice must*

¹ 1988 Supp SCC 651

² (1993) 4 S.C.C. 10

not only be done, must also appear to be done, would apply. In the said case, one of the charges was that a particular sum on account of amalgamated fund for the month of December was given to the appellant therein by one Maru Ram who was teacher in charge of the amalgamated fund. In the enquiry committee comprising Three Members, the said Maru Ram was taken as one of the members and he also deposed to establish the said charge and again joined enquiry committee and submitted a report holding the appellant guilty of the said charge as well as other charges. The Court held that the said individual was interested in establishing the said charge and from the charge itself, it was apparent that he had a pre-disposition to decide against the appellant, and the objection raised by the appellant to the Constitution of the enquiry committee that Maru Ram was inimical towards him, was erroneously rejected. The Court set aside the order of dismissal of the appellant passed by the employer.

9. In **Kumaon Mandal Vikas Nigam Limited Vs. Girja Shankar Pant and others**³ also, the Supreme Court reiterated that the test is as to whether there is a real danger of bias, and if it is found to exist, the administrative action cannot be sustained. In that case, the Managing Director of the appellant was not well disposed of towards the respondent and had denuded the respondent of the financial power and also administrative management of the department. The same Managing Director leveled thirteen charges against respondent,

³ (2001) 1 S.C.C. 182

appointed the enquiry officer, but afforded a pretended hearing himself late in the afternoon on 26-11-1993 and communicated the order of termination consisting of eighteen pages by early evening on the same day. The High Court held that there was a miscarriage of justice since prejudice was apparent and bias stood proved. The Supreme Court upheld the said finding and confirmed the decision of the High Court and also held that fair procedure was not followed. It also held that there was also justification to say that the contents of the charge memo indicated a mind set against the respondent.

10. Similar view was taken in **Union of India and others Vs. B.N.Jha**⁴. In that case an official who described himself as Commandant, Basic Training Centre, Training Centre and School of the Border Security Force, wrote to an officer subordinate to him to initiate disciplinary action against the respondent who was working under the said person. The Court held that an authority, who is higher than the Commandant, in exercise of his power conferred on him under Rule 46 of the Rules framed under the BSF Act, could not have directed the Commandant of a wing of his own unit to initiate disciplinary proceedings; that it was the disciplinary authority alone who was required to apply his independent mind to the materials on record so as to enable him to arrive at the conclusion as to whether a disciplinary action is necessary or not; and he cannot do so at the

⁴ (2003) 4 S.C.C. 531

instance of a higher authority who had not only no role to play in the matter but was also admittedly biased.

11. In view of the above precedents, it is clear that the disciplinary proceedings should be conducted in an unbiased manner against a delinquent officer.

12. But when the 3rd respondent, who is the appellate authority had filed a counter affidavit asserting that the petitioner is guilty of mis-conduct, it is highly unlikely that the disciplinary authority or the enquiry officer would take a different view since they are administratively subordinate to 3rd respondent. Thus there is a real likelihood of bias.

13. In these circumstances, the only possible conclusion which the Court can draw is that the conduct of the enquiry by 5th respondent would not be an independent enquiry and that he would be forced to arrive at a conclusion in conformity with that of the 3rd respondent and there is there is a very strong likelihood of the petitioner being found guilty of the misconduct by 5th respondent.

14. In these circumstances, I am of the opinion that the charge memo dt.09-04-2014 and the subsequent office order dt.08-05-2014 have to be quashed and they are accordingly quashed. The Writ Petition is allowed accordingly. W.V.M.P.No.2941 of 2015 is dismissed. No costs.

15. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 01-12-2016
kvr

