

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :-

The Hon'ble Justice Moushumi Bhattacharya

WPA 9996 of 2019

Dipak Kumar Dutta

vs.

Union of India & Ors.

For the petitioner : Mr. Souvik Nandy, Adv.
Mr. Susanta Kumar Gangopadhyay, Adv.
Mr. Arun Kumar Chakraborty, Adv.
Ms. Subhasree Banerjee, Adv.

For the respondent no. 2 : Mr. Santanu Singha, Adv.
Mr. Amit Kumar Roy, Adv.

Last Heard on : 13.09.2023

Delivered on : 04.10.2023

Moushumi Bhattacharya, J.

1. The petitioner seeks quashing of an order dated 9.5.2017 of the Director and Disciplinary Authority and an order passed by the

Appellate Authority on 27.11.2018 and a communication dated 29.01.2019. By the impugned orders, the Disciplinary Authority, in exercise of the powers conferred under Rule 43 Chapter VI of the Institute Bye-Laws read with Rules 13 and 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, imposed the penalty of compulsory retirement on the petitioner from the service of Maulana Abul Kalam Azad Institute of Asian Studies with immediate effect.

2. The petitioner was working in the post of Administrative-cum-Finance Officer in Maulana Abul Kalam Azad Institute of Asian Studies (MAKAIAS), an autonomous Institute under the Ministry of Culture, Government of India on the date of issue of the impugned letter.

3. The case sought to be made out by the petitioner, as argued by the learned counsel appearing for the petitioner, is that the petitioner registered several complaints against the then Director of MAKAIAS, Dr. Sreeradha Dutta. The petitioner made the complaints against Dr. Sreeradha Dutta to the Secretary, Ministry of Culture with regard to financial irregularities committed by the Director.

4. The primary grievance is that Dr. Sreeradha Dutta, acted as the Disciplinary Authority and issued the Memorandum of Charges against the petitioner. Counsel submits that the Director (Dr. Sreeradha Dutta)

could not have acted as the Disciplinary Authority since the petitioner levelled charges against her for financial irregularities. Counsel submits that the Director acting as the Disciplinary Authority is contrary to Rule 12 of the CCS (CCA) Rules, 1965. Counsel submits that the Articles of Charge framed against the petitioner violates Rule 3 of the Central Civil Services (Conduct) Rules, 1964 and further that the penalty of compulsory retirement could not have been imposed on the petitioner. Counsel submits that the entire disciplinary proceedings have thus been vitiated. It is further submitted that the Appellate Authority adopted the decision of the Disciplinary Authority without application of mind.

5. Learned counsel appearing for the respondent no. 2 being the Director, MAKAIAS, takes a point of maintainability of the writ petition on the ground that although there is a provision for revision and review under the CCS (CCA) Rules, the petitioner has invoked the writ jurisdiction of this Court without exercising the remedy of revision or review. Counsel submits that the petitioner refused to participate in the disciplinary proceedings despite repeated requests and that the enquiry Officer hence proceeded to submit his Report finding the petitioner guilty of all the charges. Counsel also seeks to sustain the order of the Appellate Authority on the ground that the petitioner was given a personal hearing.

6. The brief facts leading to filing of the present writ petition should first be stated.

7. The writ petitioner joined service of MAKAIAS, an autonomous Institute under the Ministry of Culture, Government of India, on 2nd March, 2009 in the post of Administrative –cum- Finance Officer. The petitioner's service condition was governed by the service Rules applicable to the employees of the Government of India which was specifically stated in the petitioner's appointment letter. The petitioner made several complaints against the Director of MAKAIAS, Dr. Sreeradha Dutta, who was then functioning as the Director of the Institute. The complaints related to alleged financial irregularities committed by Dr. Sreeradha Dutta from 26.10.2015 – 6.11.2015. The Director/Dr. Sreeradha Dutta issued an order of suspension against the writ petitioner on 6.11.2015. The Director issued a Memorandum of Charges containing the specific Articles of Charges and statement of imputation of misconduct and misbehaviour on 7.12.2015. The writ petitioner objected to the initiation of disciplinary proceedings on the ground of the personal involvement of the Director and challenged the validity of the disciplinary proceedings and the order passed by the Disciplinary Authority on 6.11.2015. The said writ petitions were dismissed by a learned Single Judge of this Court, as His Lordship then was, on 7.4.2017. The Court was of the view that the disciplinary proceedings would continue and disagreed with the contention of the petitioner that the disciplinary proceeding is without jurisdiction or in violation of principles of natural justice.

8. The disciplinary proceedings thereafter culminated in the order of 9.5.2017 of the Disciplinary Authority. The Disciplinary Authority agreed with the findings of the enquiry officer and imposed the penalty of Compulsory Retirement on the petitioner from the service of MAKAIAS with immediate effect. The petitioner wrote to the Chairman and Members of the Executive Council of MAKAIAS on 15.11.2018 stating that the petitioner would challenge the order of the Disciplinary Authority before the Appellate Authority. The petitioner re-submitted the appeal in proper format in October, 2018. The Appellate Authority dismissed the said appeal by an order dated 27.11.2018 which was communicated to the petitioner under cover of a letter dated 29.1.2019.

9. The petitioner has challenged the order of the Disciplinary Authority of 9.5.2017 as well as the order of the Appellate Authority of 27.11.2018 in the present writ petition.

10. Before the Court proceeds to arrive at the conclusion from the material disclosed by learned counsel appearing for the petitioner and MAKAIAS, the substance of the first impugned order of 9.5.2017 is stated below.

11. The order of Compulsory Retirement was passed by the Disciplinary Authority of MAKAIAS, namely, Dr. Sreeradha Dutta in the capacity of Director and Disciplinary Authority of the Institute. The impugned order is based on the Articles of Charges contained in the

Memorandum of Charges dated 7.12.2015. The Memorandum contains a total of seven charges, three of which were concerned with the petitioner's letter to the Joint Secretary, Ministry of Culture containing complaints of financial irregularities committed by the Director/Disciplinary Authority. The other four charges involved complaints of sexual harassment against the petitioner.

12. The impugned order considers the charges and concludes that there was no merit in the petitioner's allegation of financial irregularities against the Director and that the petitioner had intentionally maligned and defamed the Director/Disciplinary Authority. The Disciplinary Authority also found gross insubordination on the part of the petitioner (Charged Officer) for questioning of propriety and competence of the superior authority (the Director of MAKAIAS). The Disciplinary Authority further agreed with the findings of the Enquiry Officer and concluded that all the charges in the Articles were proved and proceeded to impose the penalty of Compulsory Retirement on the petitioner in exercise of the powers conferred under Rule 43 Chapter VI of the Institute Bye-Laws read with Rule 13 Sub-Rule 2 and Rule 15 Sub-Rule 5 of the CCS (CCA) Rules, 1965.

13. The Appellate Authority after hearing the petitioner came to the conclusion that the penalty of Compulsory Retirement imposed by the Disciplinary Authority was justified in the interest of the organisation and accordingly upheld the decision of the Disciplinary Authority.

14. It is undisputed that Dr. Sreeradha Dutta, who was the Director of MAKAIAS at the relevant period of time, was an interested party in the proceedings right from the very beginning. The order of suspension dated 6.11.2015 was signed by Dr. Sreeradha Dutta, the Memorandum of Charges of 7.12.2015 was signed by Dr. Sreeradha Dutta and the order of 9.5.2017 imposing the penalty of Compulsory Retirement on the petitioner was signed by Dr. Sreeradha Dutta.

15. The Court's finding of Dr. Sreeradha Dutta is an interested person is not only on account of her signing these orders as the Director of the Institute but also because she featured in three of the seven charges in the Memorandum forming the substance of the impugned order of 9.5.2017 of Compulsory Retirement. This would be evident from Articles I, IV ad V of the statement of Articles of Charge framed against the petitioner which specifically deal with the petitioner's complaints to the Joint Secretary, Ministry of Culture on the financial irregularities committed by Dr. Sreeradha Dutta, the Director of the Institute. The Director was Dr. Sreeradha Dutta who later doubled-up also as the Disciplinary Authority and proved the charges against the petitioner. Dr. Sreeradha Dutta proceeded to issue the penalty against the petitioner by invoking the powers under the Bye-Laws of the Institute and the CCS (CCA) Rules in the form of maximum penalty of retirement on the petitioner.

16. It is significant that the Director Dr. Sreeradha Dutta was the sole Disciplinary Authority who considered and decided on the charges framed against the petitioner and came to specific findings on the complaints of financial irregularities made against her. It is even more significant that the complaints were found to be without merit and the Disciplinary Authority found gross insubordination on the part of the petitioner. The Disciplinary Authority also found the writ petitions filed by the petitioner before this Court to be “frolicsome” and filed on “absolutely brainless grounds” (words used by the Disciplinary Authority).

17. The respondent MAKAIAS has not been able to dispute the personal interest of the Director-cum-Disciplinary Authority in passing the impugned order of Compulsory Retirement. The only defense taken is that not all charges concerned the Director. The Institute also points to the petitioner’s refusal to cooperate and participate in the disciplinary proceedings. The other defense is that the petitioner has an adequate alternative remedy available to him in the form of Rules 29 and 29A of the CCS (CCA) Rule which provide for Revision and Review from an order imposing penalty.

18. None of these defenses however can provide a satisfactory answer to the blatant violation of the principles of natural justice. The Director who was at the receiving end of the petitioner’s complaints of financial impropriety, donned the robes of the Disciplinary Authority at the same

time and passed the maximum penalty of compulsory retirement against the petitioner. In essence, the Disciplinary Authority/Director became a Judge in her own cause which is one of the fundamental violations of principles of fair play in action. It would not be an exaggeration to say that the Disciplinary Authority directly benefitted from the order of compulsory retirement since the Disciplinary Authority/ Dr. Sreeradha Dutta was an interested party in the proceedings.

19. This was precisely the issue in *Arjun Chaubey v. Union of India*; (1984) 2 SCC 578 which was a Full Bench decision of the Supreme Court wherein it was held that the roles of a Judge and a witness cannot be played by one and the same person as it would be difficult for the Judge to evenly hold the scales when the roles are combined. This decision was followed in *Mohd. Yunus Khan v. State of Uttar Pradesh*; (2010) 10 SCC 539 where the Supreme Court found that existence of an element of bias vitiates the entire disciplinary proceedings and such defect cannot be cured at the appellate stage. The Supreme Court further opined that no person could certify his/her own testimony in a dispute in which he / she has a personal interest or has dealt with the dispute in any capacity.

20. The element of bias may not be based on actual state of affairs or a substantiated instance of a lack of objectivity but on the apprehension of the person who would be at the receiving end of any decision taken by the authority whose decision may be coloured by bias. If the authority proceeds to decide, disregarding the complaints or allegation made by

the person who would have to face the consequence of the decision, the decision would be vulnerable on the principles of natural justice. Any subsequent decision confirming the decision of the first authority would also be similarly-vitiated since the element of bias goes to the root of the decision-making process and cannot be cured at a subsequent stage.

21. In essence, the rule operates against any person who has a personal stake in the disciplinary proceedings; that person must keep himself/herself out of such proceedings. An apprehension of bias operates as a disqualification of the person to act as an adjudicator as no person can answer in his/her own defense or certify his/her conduct where the person is adjudicating a disciplinary proceeding. Rule of law demands transparency and fairness in proceedings where the Charged Officer would be visited with penal consequences. If the Charged Officer has an iota of apprehension of the fairness or objectivity of the Disciplinary Authority, the latter must recuse himself/herself from the proceedings.

22. The material disclosed in the present case shows that the petitioner made several allegations of bias based primarily on the personal involvement of the Director / Disciplinary Authority and even filed a writ petition before this Court. However, the concerns raised were not addressed by the Disciplinary Authority who proceeded to decide the disciplinary proceedings bolstered by the order dated 7.4.2017 passed by a learned Single Judge of this Court, as his Lordship then was.

23. The Appellate Authority's order dated 27.11.2018 communicated to the petitioner on 29.1.2019, which is the second order impugned, loses relevance and becomes of little consequence since the first order is completely vitiated on the issue of actual bias. As stated by the Supreme Court in *Mohd. Yunus Khan* the defect or bias cannot be cured at the appellate stage even if the fairness of the Appellate Authority is beyond dispute: *S. Parthasarathi v. State of A.P; (1974) 3 SCC 459*.

24. The argument made on behalf of the Institute on the alternative remedy of Revision and Review under Rule 29 and 29A of the CCS (CCA) Rules is not relevant and is accordingly rejected.

25. The issue of bias in the facts of the present case is not even an apprehension but is a case of actual bias where the Director and Disciplinary Authority of MAKAIAS participated in the disciplinary proceedings as an interested party. The Institute has not been able to refute this allegation. The Single Bench order of 7.4.2017 will not assist the Institute as that order was passed at the stage of suspension.

26. This Court is therefore of the firm view that the impugned order dated 9.5.2017 of Compulsory Retirement should be set aside and quashed. The order of the Appellate Authority dated 27.11.2018 which also stands compromised and vulnerable is also liable to be declared as void.

27. WPA 9996 of 2019 is accordingly allowed and disposed of by setting aside the orders dated 9.5.2017 and 27.11.2018 communicated to the petitioner on 29.1.2019. MAKAIAS shall set aside the order of penalty and reinstate the petitioner to the post occupied by the petitioner before the order dated 9.5.2017. The decision of the Executive Council dated 28.11.2018 to the extent of the fact of the impugned order, is similarly quashed.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)