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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 20th DAY OF JANUARY, 1995

HON. MR. JUSTICE B.C. SAKSENA, V.C.

HON. MR. K. MUTHUKUMAR, MEMBER(A)

Original Application No. 327 of 1988

Iqrar, alias Kalloor, son of Sri Allanoor,
Tailor-BC(Skilled), Shift-A, Ticket No.
10282/P Ordnance Clothing Factory,
Shahjahanpur

BY ADVOCATE SHRI G.D. MUKHERJI

.... Applicant

Versus

1. The Union of India, through the Secretary, Ministry of Defence Central Secretariat, New Delhi
2. The General Manager, Ordnance Clothing Factory Shahjahanpur
3. The Works Manager/Administration-I Ordnance Clothing Factory, Shahjahanpur
4. Shri Ajai Shanker, Deputy General Manager/Engineering, Ordnance Clothing Factory Shahjahanpur
5. Sri S.K. Sharma, Deputy General Manager Ordnance Clothing Factory, Shahjahanpur

BY ADVOCATE SHRI ASHOK MOHILEY

.... Respondents

O R D E R (Reserved)

JUSTICE B.C. SAKSENA, V.C.

Through this O.A. the applicant ^{who} was working as a tailor-(skilled) in the Ordnance Clothing Factory, Shahjahanpur had challenged an order of suspension dated 16.11.87. Two charge-sheets dated 26.11.87 and 15.2.88 and also the inquiry proceedings held on the basis of the said charge-sheets have been challenged. It appears that on the 21st December, 1989 a Division Bench consisting of Hon'ble ^{Mr.} Justice A. Banerjee, the then Chairman and Mr. Ajai Johri, A.M.

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had passed an interim order that meanwhile the disciplinary proceedings shall remain stayed till further orders.'

2. The respondents filed a counter affidavit and a misc. application No. 363/90 for vacation of the said interim order. In the said application it was indicated that after passing the order of suspension subsequently on the request of the applicant made through his application dated 2.5.88 the case was reviewed and the suspension order was revoked vide order dated 14.5.88.

3. Shri G.D. Mukherji, the learned counsel for the applicant did not dispute this factual position. Thus no orders are required to be passed on the relief for quashing of the suspension order. The two charge-sheets and the inquiry proceedings thereon have been challenged on the ground that the charges relate to some misbehaviour alleged to have been committed by the applicant during the course of the General Manager Mr. S. Ramaswamy's Production review round in the shop on 4.11.87. It is therefore submitted that since the allegations pertain to alleged misconduct by the applicant and misbehaviour with the General Manager who is respondent no.2, the respondent no.2 could not have been a judge in his own cause and institution of disciplinary proceedings by him against the applicant violate that principle.

4. A further ground taken is that respondent no.4 who has been appointed as Enquiry Officer being subordinate to respondent no.2 cannot be expected to be fair and unbiased. We may also note that the interim order has continued and the disciplinary proceedings have been held up. The learned counsels for the parties on our query categorically stated

:: 3 ::

that Shri S. Ramaswamy, the then General Manager has since retired.

5. As far ^{as} the first ground of challenge is concerned, the learned counsel for the respondents has cited before us the following decisions.

(i) A.I.R 1962 Alld. 117 ' Lakshmi Chandra Agrawal Vs. State of U.P.

(ii) 1969 Vol-II L.I.C 929 Ramanand Sadanand Gairola Vs. Union of India and Ors.

In support of his submission that in a case of necessity the principles of natural justice would not apply and if the statute or the service rules make a person judge for his own cause that would not vitiate the proceedings or the decision taken. This submission is clearly fortified by the observations made in Para 6 of the first case and Para 12 of the second case, referred above.

6. The learned counsel for the applicant has not cited any decisions to the contrary ^{for} or/that matter in support of any of his submissions.

7. On the plea that since the Enquiry Officer is an employee and a subordinate of the General Manager, the disciplinary authority and he is bound to decide the matter in favour of the superior officer.

8. Shri Ashok Mohiley, learned counsel for the respondents cited before us the following decisions:

(i) 1970 Vol-I Labour Law Journal pg 23(SC)

Delhi General Mills Co; Vs. Labour Court

(ii) 1964 Vol-I LLJ 139(SC)= 1964 IX FLR pg-7

Saran Motors Pvt. Ltd Vs. Vishwanand

(iii) 1970 Vol-II LLJ pg 416 Dalmia Dadri Cement Ltd Vs. Murari Lal Bikaneria. This decision

:: 4 ::

is also reported in A.I.R 1971 S.C pg 22.

(iv) 1970 L.I.C pg 1201 Udhamp Singh Kehar Singh Vs.

State of U.P.

9. At page 26 the Supreme court had negatived such a plea in the case of Delhi General Mills Co; Ltd Vs. Labour Court (Supra) it held that no such assumption of 'bias' can be made if the inquiry officer is a subordinate of the management. In the case of Saran Motors Pvt. Ltd (Supra) from the observations on page 8 & 9 of the Factory Law Reports the plea that an inquiry would be incompetent if it is entrusted to a person employed as a lawyer and paid renumeration for holding inquiry was considered and negatived.

10. In Dalmia Dadri Cement Ltd (Supra) in para 19 the plea that the Enquiry Officer being a Junior Advocate and at times having appeared on behalf of the management 'bias' should be inferred was rejected. The same view has been taken by the Allahabad High court at pg 1203 in the case of 'Udhamp Singh Kehar Singh (Supra).

11. Thus we are not persuaded, in the light of these decisions, to agree with the learned counsel for the applicant that the respondent no.4 being subordinate to respondent no.2 an inference of bias should be drawn. We reject the said contention.

12. Shri Ashok Mohiley, learned counsel for the respondents has further submitted that making false and defamatory allegations against the management by an employee would amount to an act subversive of discipline and would be a misconduct.

13. The applicant alleges that as a Member of the Executive of the Workers Union, he had been victimised ~~and~~ due to irk caused by his alleged protests and communications sent to

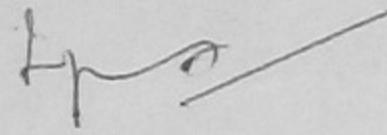
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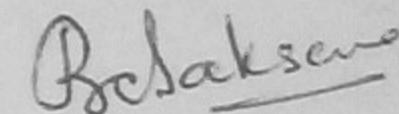
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the higher authorities, the charge-sheets have been issued and disciplinary proceedings have been instituted against him.

14. In the decision in 'Mysore Lamp Works Workmen Vs. Management of Mysore Lamp works and another, reported in 1971 Vol-22 FLR pg-53, a similar question was considered and it was held that an employee does not cease to be so merely because he holds important position in the union of workmen. He has, it was observed as much duty and responsibility as any other workman not to do any act subversive of discipline and act subversive of discipline does not assume a different complexion merely because it is done on behalf of the employees association. This decision clearly meets the submission raised by the learned counsel for the applicant. No other points have been raised. After hearing the learned counsel for the parties by an order dated 14.12.94 for detailed reasons to follow the O.A was dismissed and the interim order was vacated. The above are the reasons for the said order dated 14.12.94.



Member (A)



Vice Chairman

Dated: January 20, 1995

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