
(1996) 07 AHC CK 0120
In the Allahabad High Court
Case No : C.M.W.P. No. 30580 of 1993

Arun Kumar Tyagi and Others

APPELLANT

Vs

General Officer Commanding-In-Chief Central Command and Others

RESPONDENT

Date of Decision : 15-07-1996

Acts Referred:

Cantonments Act, 1924 — Section 280, 51, 51A
Cantonments Fund Servants Rules, 1937 — Rule 14
Constitution of India, 1950 — Article 226

Citation : (1996) 07 AHC CK 0120

Hon'ble Judges : R.K. Mahajan, J; Palok Basu, J

Bench : Division Bench

Advocate : K.K. Srivastava, for the Appellant;

Final Decision : Dismissed

Judgement

Palok Basu, J.—Arun Kumar Tyagi, K. A. Gupta and Madan Gopal are the three Petitioners in this petition. The challenge in this petition is to the two resolutions of the Cantonment Board (for short Board) dated 19.5.1993 and 18.6.1993 whereby all the Petitioners were made to face disciplinary proceedings and were suspended on various grounds. A further prayer has been made that a writ of mandamus be issued directing the Respondent No. 2, i.e., Cantonment Board, Meerut not to proceed with the inquiry against the Petitioners.

2. When this petition was initially filed in this Court on 2.9.1993, a learned single Judge granted an interim order to the extent that disciplinary proceeding was to go on against the Petitioners in accordance with law but final orders were not be passed therein. The Respondents came up to this Court with an application to vacate the interim order. After hearing both the parties, the interim order was vacated and it was held by a division Bench that the proceedings shall go on against the Petitioners and the result thereof shall also be pronounced but the same shall be subject to the result of this writ petition.

3. The present factual position is that the entire disciplinary proceedings against all the three Petitioners have been completed. Not only that, an appeal against the aforesaid order imposing certain punishment in those proceedings was filed by Petitioner No. 2 K. A. Gupta and also by Petitioner No. 3 Madan Gopal, the appeal of one of whom is pending while that of other stands finally disposed of. It is admitted to the parties that K. A. Gupta's appeal has been allowed to the extent that he has been held guilty though, the imposition of punishment of dismissal from service has been substituted. So far the appeal filed by Madan Gopal is concerned, it is still pending. Admittedly, Petitioner No. 1 Arun Kumar Tyagi has not filed any appeal so far. In these circumstances, Madan Gopal has filed an application praying therein that the writ petition should be dismissed as withdrawn in so far as Petitioner No, 2 is concerned and during the course of the argument, it was said that the appeal of Petitioner No. 3 Madan Gopal may be directed to be decided in accordance with law expeditiously. Concerning the matter of Petitioner No. 1 Arun Kumar Tyagi, it was strongly contended that in view of what has happened in this case in the meantime and further developments that took place, the conviction order against Arun Kumar Tyagi should be straightaway set aside by this Court. It was further contended during the course of arguments that in view of the aforesaid new developments and specific orders that have come into existence, there is no option left to this Court but to exercise powers under Article 226 of the Constitution of India and quash all the proceedings against Petitioner No. 1 Arun Kumar Tyagi.

4. Sri B. D. Mandhyan, learned Counsel for the Petitioners has filed several affidavits and has been heard at substantial length.

5. Sri Vivek Chaudhary has put in appearance on behalf of Cantonment Board, Meerut and has filed replies to each and every affidavit that was filed by the Petitioners and there was no lack of vehemence in placing the case of Respondent-Board. The writ petition is finally disposed of at the admission stage, as prayed by learned Counsel for the parties.

6. Before entering into the respective arguments of the learned Counsel for the parties, let it be clarified at the outset that none of the observations made in this writ petition shall be used by any party in any proceedings hereinafter and shall be confined only for the conclusions to which this judgment is arriving at.

7. The Cantonment Board, Meerut is one of the Boards established under the Cantonments Act, 1924. While many duties are entrusted to the Board in accordance with the provisions of the Cantonments Act, Section 280 thereof empowers the Board to frame rules. Admittedly, the internal administration of the employees' and employer's relationship is controlled by the provisions contained in the Cantonment Fund Servants Rules, 1937 (for short rules). It is admitted that proceedings between the Board and its employees, if ever, are to be taken, it shall be governed by the provisions of the rules.

8. Before entering into any factual controversy, it may be mentioned that the Act

was amended in 1983 by virtue of Act No. 15 of 1983 and Section 51A was added after Section 51. The Central Government has been empowered to review any decision or order of the Board or the officer Commanding-in-Chief, the Command, and pass such orders thereon as it may deem fit. By a proviso, it has been made imperative for the Central Government to extend reasonable opportunity to the Board if the Central Government ever chose to take action u/s 51A for the modification or upsetting a decision of the Board.

9. Two main arguments have been advanced by Sri B. D. Mandhyan in order to protect the interest of Petitioner No. 1 from orders in the disciplinary proceedings. First, that Arun Kumar Tyagi was appointed by the Executive Officer of the Board and, therefore, the Board was not empowered to proceed with the matter in disciplinary proceedings against a person whom it had not appointed. It was contended that the Executive Officer alone was empowered to do that. Second, that in pursuance of an order said to have been passed on 18.1.1996 which purports to have been signed by one Shri R. Srinivasan, Director General, Defence Estates representing the Government of India, Ministry of Defence, the proceedings against Arun Kumar Tyagi should be deemed to have been brought to an end. A copy of this order dated 18.1.1996 has already been filed by way of Annexure 6 to the second supplementary affidavit. The legality of the proceedings of the Board conducting the enquiry and passing the impugned order was seriously challenged on the added ground that two of the members of the Board, namely, Sri Dinesh Goel and Sri V.K. Ajad, could not participate in the deliberations for various reasons as they were biased against Petitioner No. 1 Arun Kumar Tyagi. In this very connection, while placing reliance on the aforesaid letter dated 18.1.1996, it was strongly contended that the enquiry under Rule 14 was completed and the effect thereof should also be interpreted in favour of Petitioner Arun Kumar Tyagi.

10. Serious objections were raised on behalf of Respondents by Sri Vivek Chaudhary, its counsel. He argued that neither on the principle of judicial parity nor in order to maintain high standard in disciplinary proceedings, is it permissible to permit bifurcation of the departmental proceedings into two sets--one by permitting some of the Petitioner to go in appeal, for the matter to be adjudicated upon by the appellate authority and on the other permitting one of those employees to initiate writ proceedings for exercising powers under Article 226 of the Constitution of India ignoring the entire procedure laid down for the departmental proceedings. The other forceful argument advanced on behalf of the Respondents was that the alleged order under Rule 14 is seriously under challenge and there was failure to comply with the rules by the competent authority. It was also said that the alleged order dated 18.1.1996, if at all passed by the authority, has been passed ignoring the proviso to Section 51A of the Act inasmuch as the Board was not afforded any opportunity to place its view before the Central Government and, therefore, the order cannot be sustained. None of the arguments is to be finally decided in this petition. Only one point which requires to be determined is as to whether the Petitioner No. 1 should now be

permitted to file appeal against the final order in the departmental proceedings or not. It may be mentioned that the Petitioner No. 1 Arun Kumar Tyagi has been found guilty in the disciplinary proceedings and punishment has been awarded. Statutory appeal lies against those findings. It must, therefore, be held that the delinquent employee, who wishes to challenge those findings of fact has a remedy available under the Statute. He could file appeal in accordance with law and rules and if dissatisfied, only then may knock at the door of this Court. Since the appeal by one of the Petitioners is already pending, it is to be directed that if Petitioner No. 1 Arun Kumar Tyagi files his appeal, both the appeals should be decided together.

11. It was contended by Sri B. D. Mandhyan, learned Counsel for the Petitioners, that the period of limitation of filing the appeal has now gone and thus appeal may not be permitted. In view of the special facts and circumstances indicated above, it is directed that if the Petitioner No. 1 Arun Kumar Tyagi files appeal within three weeks from today, the Respondents shall not dismiss the same on the ground of being barred by time and shall deal with the matter on questions of merit in accordance with law. It is further directed that for a period of one month from today, the appeal of Madan Gopal shall not be taken up for hearing in order that if Petitioner No. 1 Arun Kumar Tyagi files his appeal, both the appeals may be heard together. Further, the appeals shall be disposed of by the appellate authority expeditiously, preferably within three months from the date of production of a certified copy of this order.

12. The writ petition of K. A. Gupta stands dismissed as not pressed. The writ petition of Madan Gopal and Arun Kumar Tyagi stands finally disposed of with the aforesaid directions.

The parties shall bear their own costs.