
(2020) 10 UK CK 0053

In the Uttarakhand High Court

Case No : Writ Petition (S/B) No. 282 Of 2020

Kanwar Amninder Singh

APPELLANT

Vs

Hon'ble High Court Of Uttarakhand

RESPONDENT

Date of Decision : 31-10-2020

Acts Referred:

Citation : (2020) 10 UK CK 0053

Hon'ble Judges : Sudhanshu Dhulia, J;Alok Kumar Verma, J

Bench : Division Bench

Advocate : P.S. Patwalia, Sachin Sharma, Rakesh Thapliyal, Bhagwat Mehra

Final Decision : Dismissed

Judgement

Sudhanshu Dhulia, J

1. The petitioner who is presently facing departmental proceedings has filed the above writ petition with more than one prayers, including a writ in the nature of certiorari and mandamus for quashing of certain orders passed by the enquiry officer, but it is primarily with a prayer to change the enquiry officer on grounds of bias.

2. The petitioner is a judicial officer. At the relevant time, he was Ist Additional District and Sessions Judge, Haridwar. He is presently facing a disciplinary proceeding before an Enquiry Officer, who is a sitting Judge of this Court. By means of the present writ petition he has challenged firstly the charge-sheet which has been filed against him. His second challenge is regarding the order dated 01.10.2020, by which the defence of the Delinquent Officer has been closed by the Enquiry Officer as he was not prepared to place his defence on the date fixed and sought adjournment. The third challenge of the petitioner which is in fact the main challenge, is to change of the Enquiry Officer.

3. It all started with a complaint dated 19.03.2018, made against the petitioner by one Mohit Kumar Saini (a Class IV employee) alleging that the petitioner

made an attempt to sodomise him. This ultimately led to a departmental proceeding against the petitioner.

4. A charge-sheet dated 01.08.2018 was served on the petitioner. A written statement dated 30.08.2018 was submitted by the petitioner. In the Full Court meeting dated 11.09.2018, a Committee comprising of three Judges of this High Court was constituted to consider the reply of the petitioner, in the light of the charges against him. The Committee recommended regular disciplinary proceedings. Consequently the Full Court unanimously decided to hold a departmental inquiry to probe the said charge and a Judge of this High Court was appointed as the Enquiry Officer, who is presently conducting the enquiry.

5. On 08.10.2020, this Court passed an order in the present petition, wherein this Court did not interfere in the ongoing departmental proceeding as was being prayed by the petitioner. Against the said order, the petitioner filed a Special Leave Petition (C) No. (S) 12202 of 2020. In the said Special Leave Petition, the Hon'ble Supreme Court passed an Order on 14.10.2020, "we are not inclined to interfere with the order passed by the High Court. The Special Leave Petition is, accordingly, dismissed. Pending application(s), if any, stands disposed of accordingly.

However, the High Court is requested to finally dispose of the writ petition when the matter is listed on 31.10.2020 along with amendment application No. CLMA No.8241 of 2020."

6. Today (i.e. on 31.10.2020), we heard Mr. Paramjit Patwalia, learned Senior Advocate assisted by Mr.Sachin Sharma, who are for the petitioner and Mr. Rakesh Thapliyal, learned Senior Advocate assisted by Mr. Bhagwat Mehra, learned counsel for the respondent, through video conferencing.

7. As far as the first challenge of the petitioner is concerned, the learned Senior Advocate for the petitioner Sri P.S. Patwalia submits that he is not pressing his challenge to the charge-sheet but liberty may be given to the petitioner to challenge the same, in case the occasion so arises. We grant him that liberty.

8. The learned Senior Advocate appearing for the petitioner submits that in the Committee, constituted by the Full Court dated 11.09.2018, also had the present Enquiry Officer as its member and therefore the Enquiry Officer is biased against him, since he recommended for a full Departmental proceeding. Under these circumstances, the petitioner moved an application dated 15.05.2019 to change the Enquiry Officer. The said application was rejected by the learned Chief Justice on the administrative side vide order dated 17.05.2019. The learned Senior Counsel appearing for the petitioner fairly admits that the said order dated 17.05.2019 was never challenged by the petitioner. Mr. Paramjit Patwalia, further submitted that five applications of the petitioner, including the application for recusal were rejected by the Enquiry Officer and this shows that the Enquiry Officer is biased against the petitioner. Learned counsel for the petitioner submitted that the order dated 01.10.2020 passed by the Enquiry Officer, itself

shows that the Enquiry Officer is prejudiced and by any means wants to conclude the matter in a hasty and biased manner by deciding the enquiry proceedings against the petitioner. Learned counsel for the petitioner also emphasised that justice should not only be done but it should also appear to have been done, which according to him is not the case in the proceeding before the Enquiry Officer. During arguments, Mr. P.S. Patwalia relied upon the judgments in *Indrani Bai vs. U.O.I.*, 1994 SCC Suppl (2) 256 and *State of Uttaranchal and others vs. Kharak Singh*, (2008) 8 SCC 236. These two cases, however, would have no application to the facts and circumstances of the present case.

9. Mr. Rakesh Thapliyal, learned Senior Advocate appearing for the High Court rebutted the submissions of the petitioner being erroneous, misleading and misconceived. He states that the petitioner had earlier filed two writ petitions before this High Court, where no grievance regarding bias of the Enquiry Officer was raised. It is now being raised when the enquiry itself is coming to an end.

10. As far as the main challenge of the petitioner is concerned, it is regarding the change of the Enquiry Officer. We are of the considered view that it would not be proper for this Court to change the Enquiry Officer at this stage of the inquiry. We also say this because there are already observations of the Division Bench of this Court about the change of Enquiry Officer in Writ Petition (S/B) No. 442 of 2019, where the earlier petition of the petitioner (which was primarily for seeking a writ of certiorari to quash the order passed by the Enquiry Officer dated 23.08.2019), was dismissed on 25.09.2019. The observations of the Division Bench of this Court, however, in para 28 of the judgment dated 25.09.2019 passed in Writ Petition (S/B) No. 442 of 2019 reads as under:-

"28. Since the claim of the petitioner that he has suffered prejudice on the failure of the Enquiry Officer to defer cross-examination of PW2 is required to be examined by the Disciplinary Authority in the first instance after completion of the inquiry, and as this Court would ordinarily not interfere with the inquiry proceedings at an interlocutory stage, we see no reason to entertain this Writ Petition. While declaring the law in this regard on whether or not prejudice is suffered on the failure of the Enquiry Officer to defer cross-examination of a witness, suffice it to make it clear that it is open to the petitioner on completion of the inquiry, and on his being afforded an opportunity to put forth his objections to the inquiry report, to also raise this contention of having suffered prejudice, on the failure of the Enquiry Officer to defer cross-examination of PW2. We have no reason to doubt that, on any such objection being raised, the Disciplinary Authority would consider such contentions uninfluenced by any observations made in this order."

11. In Writ Petition (S/B) No.543 of 2018, *Kanwar Amninder Singh vs. High Court of Uttarakhand at Nainital* and another, the Division Bench of this High Court passed an order dated 06.03.2020, in which the Division Bench observed :

"After arguing for some time, Mr. Aditya Singh, learned counsel for the petitioner,

states that, instead of adjudicating the validity of the suspension order, it would suffice if this Court were to direct that the inquiry proceedings be concluded within a specified time frame.

2. When we asked learned counsel for the petitioner regarding the stage at which the enquiry proceedings are pending, he would state that the last witness, on behalf of the prosecution, is being examined; thereafter the petitioner is required to adduce evidence in his defence; the petitioner has only one witness to examine on his behalf; he would co-operate with the inquiry, even if held on a day to day basis; and the inquiry proceedings be completed at the earliest.

3. While the submission, urged on behalf of the petitioner by Mr. Aditya Singh, learned counsel, that the disciplinary proceedings should be completed at the earliest, has considerable force, it would be inappropriate for this Court to issue a mandamus to the Enquiry Officer to complete the inquiry proceedings within a specified time frame.

4. Suffice it, in such circumstances, to request the Enquiry Officer (a sitting Judge of this Court) to complete the inquiry with utmost expedition, preferably within two months from the date of production of a certified copy of this order.

5. Needless to state, that the petitioner shall co-operate in the early completion of the inquiry, and shall not seek unnecessary adjournments.

6. The Writ Petition is, accordingly, disposed of. No costs".

12. Learned counsel for the petitioner fairly concedes that the order dated 25.09.2019, passed in Writ Petition No.442 of 2019 (S/B) and order dated 06.03.2020, passed in Writ Petition (S/B) No.543 of 2018 were not challenged by the petitioner. He further conceded that plea of bias and prejudice against the Enquiry Officer were not raised in the above two writ petitions.

13. After perusing the order dated 21.09.2020, passed by Enquiry Officer, it is also clear that after completion of the evidence of the department, the petitioner moved an adjournment application, instead of leading his evidence. After considering the request of the petitioner, the enquiry was adjourned for a period of four weeks. Thereafter, another adjournment application was moved by the petitioner and further four weeks' time was granted. Again on 12.08.2020, another adjournment application was moved by the petitioner and further six weeks' time was sought on grounds that he has pain in his lower back. As a last opportunity, 10 days time was given to the petitioner to adduce defence evidence. Again on 24.08.2020, the petitioner did not adduce his defence evidence and moved an adjournment application. On the said application, the inquiry proceeding was again adjourned. But later on the date fixed, the petitioner again moved an adjournment application, though last opportunity was given earlier, further four weeks' time was granted. After taking several time on 21.09.2020, the petitioner moved an application before the Enquiry Officer stating for the first time that he was not expecting fair and impartial inquiry from

the enquiry officer.

14. On 01.10.2020, the Enquiry Officer observed that "Delinquent Officer has not adduced the evidence despite the opportunities granted to him on 17.06.2020, 16.07.2020, 13.08.2020 and 24.08.2020. By order dated 13.08.2020, a last opportunity was granted to the Delinquent Officer to adduce his evidence and 24.08.2020 was fixed. Again on 24.08.2020, adjournment was sought by the delinquent officer, which was considered purely in the interest of justice and 21.09.2020 was fixed. As many as six dates have been granted to the Delinquent Officer to adduce the evidence. Despite the sufficient opportunities granted to the delinquent officer, evidence was not adduced. Finally when the petitioner did not come forward again to give his evidence and yet once again sought adjournment, the opportunity was closed on 01.10.2020.

15. Under these circumstances, we find that the learned Enquiry Officer has shown a lenient approach in giving opportunity to the petitioner, considering the numbers of adjournments granted to the petitioner. There is nothing to show as to how the petitioner is at any disadvantage, if he participates in the inquiry. It seems to us that the Enquiry Officer afforded enough opportunity to the petitioner. Moreover, the present matter is covered by the order dated 25.09.2019 passed by the Division Bench of this Court in Writ Petition No.442 of 2019 (S/B)

16. Learned counsel for the petitioner submits that the Enquiry Officer had himself put questions to the witness of department and it shows that the Enquiry Officer has a prejudice against him. This submission of the petitioner has no legal force. We do not think that there was prejudice or disadvantage caused to the petitioner.

17. After completion of the department's evidence and after availing sufficient opportunity to adduce his evidence, the petitioner filed this writ petition in the month of September, 2020. Therefore in our opinion it is too late in the day for the petitioner to make allegations of bias against the Enquiry Officer. Needless to say that it will always be open for the petitioner to raise objection of bias, should he chooses to do so, after the inquiry is completed, that too in case such occasion arises. We must note that similar observations were also made by the Division Bench earlier in the orders already referred above.

18. Be that as it may, to remove any grievance as to the closing of the defence of the present petitioner and purely in the interest of justice, we hereby request the Enquiry Officer that before proceeding in the matter on the next date which is fixed for 04.11.2020, the defence of the petitioner may be examined. This, however, depends on the fact that the petitioner must place all his possible defence on 04.11.2020 itself, and at the maximum he may be given one more date or opportunity for placing the remaining defence. Nothing further needs to be said on this.

19. We have absolutely no doubt as to any question of bias as alleged, nor do we

feel that any principles of natural justice and fair play will be violated if the learned Enquiry Officer continues to hear the matter.

20. We though make it very clear that any observations made by us here in this order or even the dismissal of the present writ petition on the aforesaid plea of bias would not in any manner hold back the learned Enquiry Officer from recusing in the matter, should he consider making that choice.

21. With the aforesaid observations, the writ petition is dismissed. No order as to costs.