

(2014) 12 DEL CK 0261

In the Delhi High Court

Case No : WP (C) No. 8453/2014 and CM Appl. 19518/2014

Sanjay Bhatia

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 02-12-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 12 DEL CK 0261

Hon'ble Judges : Najmi Waziri, J; Kailash Gambhir, J

Bench : Division Bench

Advocate : Maninder Acharya, Senior Adv., Vinay Mohan, Bharat Mohan and Yashish Chandra, Advocate for the Appellant; Barkha Babbar, Advocate for the Respondent

Judgement

Kailash Gambhir, J.—By this petition filed under Article 226 of the Constitution of India, the petitioner seeks quashing of the impugned order dated 29th August, 2014 passed by the learned Armed Forces Tribunal (AFT) in O.A. No. 402/2014.

2. Arguing for the petitioner, Ms. Maninder Acharya, learned Senior Advocate submitted that there is a clear bias on part of the Enquiry Officer, which is reflected in the letter dated 11th August, 2014 addressed by the petitioner to Brig Arjun Rawat wherein the petitioner clearly alleged that when he was advised rest (SIQ) by Col Balani, Surgical Specialist, then the DMO, 155 Base Hospital asked the him to produce the Medical Sheet signed by Col Balani and when the same was handed over to her, to the utter shock of the petitioner, the DMO took out a pen and suddenly started crisscrossing the SIQ advice which was made by Col Balani.

3. The learned Senior Counsel further submits that when the petitioner pointedly asked the DMO as to what she had done, she told the petitioner that she had prior instructions from the Commandant, 155 Base Hospital that in case an officer by the name of Col Sanjay Bhatia turns up for medical examination and is actually found to be serious enough to be advised SIQ, then she needed to speak

to the Commandant before sending the officer back.

4. She further submits that after these facts were revealed by the DMO to the petitioner, the petitioner called up the Commandant, 155 Base Hospital and asked him as to how he could direct the DMO to cancel and over rule an expert opinion merely on telephone without having himself even seen or physically examined him. In response, the Commandant had said that he had instructions from the Presiding Officer (PO) , Brig. Arjun Rawat of the Court of Inquiry that the petitioner was not to be advised and allowed any SIQ under any circumstances.

5. The contentions raised by the learned senior counsel for the petitioner is that in the response to the said letter, no denial had been made by the PO to the allegations levelled by the petitioner. She submits that this clearly shows that the Enquiry Officer had given such directions to the Commandant and in turn the Commandant so instructed the concerned DMO.

6. Another contention raised by the learned senior counsel appearing for the petitioner is that a second Court of Inquiry was set up against the petitioner and in the second convening order it has been recommended that a copy of the preliminary Court of Inquiry proceedings, which were earlier conducted against the petitioner, may be asked for from the Project concerned by the PO for reference and to inquire into the lapses wherever found committed by the petitioner. Although, on the request made by the petitioner, the said convening order was deleted by the convening authority, yet, considering the fact that the earlier/preliminary inquiry proceedings were placed before the PO, therefore, right from the inception, a bias developed in the mind of the PO against the petitioner.

7. The learned senior counsel for the petitioner also submits that although the learned AFT observed that "para 7 forming basis of the apprehension of bias has already been deleted at the initial stage of the proceedings of the Court of Inquiry, moreover, the petitioner has finally availed of the opportunity to cross examine all the material witnesses and the date fixed for recording of his statement has been adjourned considering that he was not in a medically fit condition. These facts and circumstances of the case are sufficient to conclude that there is no cogent evidence to infer bias on the part of the PO or any member of the Court of Inquiry" yet, the AFT did not appreciate the facts and the legal position in its right perspective and dismissed the OA filed by the petitioner only on the ground that para 7 of the convening order already stood deleted at the initial stage of the proceedings.

8. She contends that bias develops in the mind of a person and therefore, later deletion of para 7 of the convening order could not have effaced the impression which had already crept the mind of the PO.

9. She further submits that an apprehension of bias in the mind of the petitioner is good enough to seek a fresh Court of Inquiry. Reliance was placed on the

decision of the Supreme Court in the case of State of Gujarat and Another Vs. Hon"ble Mr. Justice R.A. Mehta (Retd.) and Others, .

10. We have heard the learned senior counsel for the petitioner and Ms. Barkha Babbar, CGSC, who appears on advance notice.

11. The contentions which have been raised by the learned Senior Counsel for the petitioner have been convincingly dealt with by the learned AFT in the impugned order and we find no justifiable reasons or grounds to differ with the same.

12. The learned AFT has rightly observed that the facts and circumstances do not spell out any cogent evidence to infer bias on part of the Presiding Officer or any member of the Court of Inquiry. The allegations of bias as have been canvassed by the petitioner before the learned AFT and this Court do not appear to us, can afford a reasonable ground to infer any kind of bias on part of the Presiding Officer of the Court of Inquiry. To say that the DMO of the 155 Base Hospital was given any kind of instructions by the Commandant of the Base Hospital and the Commandant had received the instructions from the Presiding Officer, Brig. Arjun Rawat of the Court of Inquiry not to give advice of SIQ, do not find any support from any material on record and prima facie appears to be a self-creation of the petitioner looking into the fact that no further date had been fixed by the Presiding Officer of the Court of Inquiry falling into consideration the medical condition of the petitioner.

13. So far the apprehension of the petitioner that the Presiding Officer had developed a bias against him because of the earlier inquiry proceedings which were placed before him, the observation of the learned AFT are well founded when it is stated that para 7 of the second convening order had already been deleted at the initial stage of the proceedings of the Court of Inquiry itself and the fact that the petitioner had finally availed the opportunity to cross-examine the material witnesses and the date fixed for recording his statement had been adjourned, considering, that he was not medically fit.

14. In Kumaon Mandal Vikas Nigam Ltd. Vs. Girja Shankar Pant and Others, , the Supreme Court while dealing with the concept of bias, which is one of the limbs of natural justice, took a view that there must be some cogent evidence available on record to come to the conclusion as to whether in fact there was a bias existing which resulted in miscarriage of justice. We refer the following para from the said judgment with benefit:

"10. The word "Bias" in popular English parlance stands included within the attributes and broader purview of the word "malice," which in common acceptation mean and imply "spite" or "ill-will" (Strouds Judicial Dictionary (5th Ed., Volume 3) and it is now well settled that mere general statements will not be sufficient for the purposes of indication of ill-will. There must be cogent evidence available on record so come to the conclusion as to whether in fact there was existing a bias which resulted in the miscarriage of justice."

15. The apprehension of bias in the mind of an aggrieved person must be reasonable i.e., an apprehension which a reasonable person would likely to form from the surrounding circumstances. If the Court finds that the circumstances are such so as to create a reasonable apprehension of bias or that there is a real danger of bias, then even in the absence of any actual proof, interference in the administrative action or in any inquiry would be a justified step.

16. On the other hand, if allegations pertain to fanciful apprehension or are based on merely general and vague statements, without any basis and does not qualify the test of any reasonable person entertaining a bias in such circumstances, then interference in any administrative action or any inquiry would not be warranted, interference in proceedings at the whims and fancies of an employee, attempting to scuttle the proceedings of the Court of Inquiry set up against him, would be unjustified.

17. In the light of the above discussion, we find no ground to interfere with the impugned order passed by the AFT. There is no merit in the present petition. It is hereby dismissed.