

Before G. C. Mital, A.C.J. & H. S. Bedi, J.

LACHHMAN DASS,—Appellant.

versus

UNION OF INDIA AND OTHERS,—Respondents.

Letters Patent Appeal No. 1179 of 1982

18th April, 1991.

Cantonment Fund Servants Rules, 1937—Rl. 11—Enquiry—Dismissal—Natural Justice—Bias—Executive Officer of Cantonment Board on surprise inspection discovering employee asleep on duty—Executive Officer ordering and holding domestic enquiry himself and passing order of dismissal—Justice requires that action against the employee should have been taken by the Board itself as provided by Rl. 11—Under Rl. 11, powers of the Board must be exercised by the Executive Officers and power of removal or dismissal vests in the Board and can be exercised by the Executive Officers also—Dismissal, therefore, held bad.—Rl. 11 making Board punishing authority for employees in receipt of monthly pay exceeding Rs. 100 and for employees in receipt of monthly pay less than Rs. 100 the Executive Officer—Appellant drawing basic pay of Rs. 80 p.m. Word 'pay' used in second proviso to Rl. 11 means only basic salary drawn excluding allowances.

Held, that the word, 'pay' used in the second proviso to rule 11 of the Cantonment Fund Servants Rules would mean only basic salary drawn excluding allowances payable. It has, therefore, to be held, that where the appellant was drawing a basic pay of Rs. 80 per month, his case would be covered by the first proviso to rule 11 and his punishing authority would be Executive Officer of the Board.
(Para 3)

Held, that first proviso to rule 11 says that the powers of the Board under rule 11 may be exercised by the Executive Officer in respect of any servant appointed by him. An analysis of this rule would indicate that the power of removal or dismissal vests in the Board but it can also be exercised by the Executive Officer. The reasoning adopted by the learned single Judge that it is only the Executive Officer who can pass the order in the matter is, therefore, prima facie untenable. It is undoubtedly true that a statute may require that a particular action be taken by a person identified in the statute and no other person. In this situation perhaps, it would not be open to an aggrieved party to say that the person named in the statute should not hold an enquiry or pass any order against him as he was biased. Where, however, the statute itself provides that the action can be taken against an individual either by one person or another acting as a delegate, the rules of natural justice

would certainly operate and would require that the proposed action should not be taken by any person who had a real or apprehended bias. (Paras 4, 5)

Held, that as in this case, the Executive Officer conducted the surprise inspection, issued the charge-sheet, held the enquiry and passed the order of dismissal, the proper course would have been that the action against the appellant should have been taken by the Board itself, as provided by rule 11 of the Rules. (Para 5)

Letter Patent Appeal under Clause X of the Letters Patent against the order, dated 28th April, 1982 passed by Hon'ble Mr. Justice I. S. Twana in Civil Writ Petition No. 4321 of 1974.

Sarup Singh, Advocate, for the Petitioner.

A. Mohunta, Advocate, for the Respondents.

JUDGMENT

H. S. Bedi, J.

(1) The present Letters Patent Appeal is directed against the judgment of the learned single judge, dismissing the writ petition.

(2) The facts relevant to the case are as under :—

The appellant, who was in the employment of the Cantonment Board, Jalandhar as an octroi peon was found asleep during his duty hours on a surprise inspection made by the Executive Officer of the Board. As this matter constituted grave misconduct, an enquiry was ordered and held by the Executive Officer himself and the impugned order, dated July 14, 1973 (Annexure P4) was also passed by him whereby the appellant was ordered to be dismissed from service. The order of the Executive Officer P4 was affirmed in appeal by the Cantonment Board and thereafter by the General Officer Commanding-in-chief, Western Command, Simla,—vide orders Annexure P5 and P6, respectively.

(3) The only argument raised by Mr. Sarup Singh, counsel for the appellant, is that the Executive Officer himself being a witness to the non-performance of the duty by the appellant on the date of the inspection should not have conducted the enquiry himself nor passed the impugned order of dismissal P4. It is urged that the

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rules of natural justice require that a person should not be allowed to act as a witness and also a judge in his own cause. It is further urged that the first proviso to rule 11 of the Cantonment Fund Servants Rules, 1937 provides that the powers of the Board under the said rule may be exercised by the Executive Officer in respect of any servant appointed by him, and the second proviso to the said rule stipulates that in the case of a servant who is in receipt of a monthly pay exceeding Rs. 100, the powers relating to reducing or removal or dismissal from service shall be exercised only by the Board. Same argument had been raised before the learned single judge that the word, "pay" used in the second proviso to rule 11 of the Rules would include allowances payable to the official concerned. After examining the legal position the learned single judge found that the pay would mean only the basic salary drawn. Admittedly, on the relevant date, the appellant was drawing a basic pay of Rs. 80 p.m. only and, as such, his case should be covered by the first proviso to rule 11 and the second proviso would not come into operation. We are in agreement with the learned single judge on this aspect of the matter.

(4) On the main argument raised by the learned counsel for the appellant, the learned single judge relying on rule 11 aforesaid held as under :—

"A reading of the above noted two provisions together makes it amply clear that it is only in the case of employees of the Board who are in receipt of a monthly pay exceeding Rs. 100 that the Board is the authority competent to order their removal or dismissal. In the case of other employees, that is, those drawing pay less than Rs. 100 per month and who have been appointed by the Executive Officer, it is only the Executive Officer who is the punishing authority. The petitioner, as already pointed out, falls in the category 'having been appointed by the Executive Officer and drawing a monthly pay of Rs. 80 only' and thus could be dealt with by the Executive Officer only. In that situation even if the Executive Officer had entrusted the enquiry against the petitioner to somebody else, the matters may not have improved for the petitioner for the reason that the Executive Officer being the punishing authority was to pass the final order."

We are of the view that the reasoning of the learned single judge in this respect is erroneous. The first proviso to rule 11 is quoted below :—

“Provided that the powers of the Board under this rule may be exercised by the Executive Officer in respect of any servant appointed by him.”

This proviso clearly says that the powers of the Board under rule 11 may be exercised by the Executive Officer in respect of any servant appointed by him. An analysis of this rule would indicate that the power of removal or dismissal vests in the Board but it can also be exercised by the Executive Officer. The reasoning adopted by the learned single judge that it is only the Executive Officer who can pass the order in the matter is, therefore, *prima facie* untenable.

(5) It is undoubtedly true that a statute may require that a particular action be taken by a person identified in the statute and no other person. In this situation perhaps, it would not be open to an aggrieved party to say that the person named in the statute should not hold an enquiry or pass any order against him as he was biased. Where, however, the statute itself provides that the action can be taken against an individual either by one person or another acting as a delegate, the rules of natural justice would certainly operate and would require that the proposed action should not be taken by any person who had a real or apprehended bias. To use the cliché, justice should not only be done, but must also appear to have been done. In the present case we find that the Executive Officer conducted the surprise inspection, issued the charge-sheet, held the enquiry and passed the order of dismissal P4. We are of the view that the proper course would have been that the action against the appellant should have been taken by the Board itself, as provided by rule 11 of the Rules.

(6) We are not oblivious of the fact that the appellant is likely to secure a wind fall as a result of this appeal being allowed but the legal position being as it is, we have no choice but to restore the appellant into service with all consequential benefits. In the result, this appeal is allowed, orders Annexure P4 and P6 are hereby quashed and the appellant is ordered to be reinstated forthwith. The appellant shall also be entitled to the arrears of pay and all other service benefits which would have accrued to him had he

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not been dismissed from service. The amount due to the appellant shall be paid to him along with interest @ 6 per cent per annum within a period of four months from the date of communication of this order. Should the amount be not paid within the stipulated period, it shall carry interest @ 12 per cent p.a.

There will, however, be no order as to costs.

R.N.R.

Before Ashok Bhan, J.

LEELU RAM,—Petitioner.

versus

SARDARA SINGH AND OTHERS,—Respondents.

Civil Revision No. 479 of 1991.

15th May, 1991.

Code of Civil Procedure, 1908—O. 1, rl. 10—Punjab Pre-emption Act, 1913—S. 28—Impleadment in pre-emption suits—Separate suits filed by two pre-emptors for possession of property—Such pre-emptors not impleaded by each other as party in their respective suits—Where pre-emptors possess equal qualifications in respect of same suit property, they should be impleaded as parties to the suits.

Held, that where more than one pre-emptor possessing equal or varying qualifications separately or individually without awaiting of others, then the Courts experience difficulties in dealing with number of suits arising out of the same cause of action. In such eventuality, the plaintiff in one case can apply to be joined as defendant in another suit filed by the other pre-emptor and the Court under the circumstances has no option but to allow such a plaintiff to be joined as a defendant in the other suit and further consolidating the suits thus pending simultaneously and decide upon the respective and varying claims of the parties

(Paras 5)

Held, further, that S. 28 of the Punjab Pre-emption Act, 1913 deals only with procedural aspect. By providing that plaintiff in each case shall be joined as defendant in each of the other suits, all the pre-emptors are enable to come before the Court in the same suit in presence of each other and the Courts are also placed in a better position to adjudicate upon the claims of rival pre-emptors.

(Para 5)