

6 SCOB [2016] AD 65

APPELLATE DIVISION

PRESENT:

Ms. Justice Nazmun Ara Sultana

Mr. Justice Syed Mahmud Hossain

Mr. Justice Hasan Foez Siddique

CIVIL APEAL Nos.17 of 2012

(From the decision dated 26.01.2010 passed by the Administrative Appellate Tribunal, Dhaka in Appeal No.51 of 2005)

With

CIVIL APPEAL NO.21 of 2012

(From the decision dated 04.03.2010 passed by the Administrative Appellate Tribunal, Dhaka in Appeal No.67 of 2008)

Government of Bangladesh, represented by the Secretary, Ministry of Home Affairs and another.

.....Appellants.
(In all the appeals)

-Versus-

Md. Bellal Hossain Mollik.

.....Respondent.
(In C. A. No.17/12)

Md. Tareque Kamal.

.....Respondent.
(In C. A. No.21/12)

For the Appellants.
(In both the appeals)

Mr. Goutam Kumar Roy, Deputy Attorney General, instructed by Mr. Gias Uddin Ahmed, Advocate-on-Record.

For the Respondent.
(In C. A. No.17/12)

Mr. Abdur Rob Chowdhury, Senior Advocate, instructed by Mr. Syed Mahbubur Rahman, Advocate-on-Record.

For the Respondent.
(In C. A. No.21/12)

Mr. Abdur Rob Chowdhury, Senior Advocate, instructed by Mr. Md. Shamsul Alam, Advocate-on-Record.

Date of Hearing.

The 13th January, 2016.

Date of Judgment.

The 13th January, 2016.

Police Officers (Special Provisions) Ordinance, 1976

Section 3

read with

Bangladesh Public Service Commission (Consultation) Regulation, 1979

Regulation 6:

On consideration of section 3 of the Ordinance vis-a-vis regulation 6 of the Regulations, it is obvious that consultation with Public Service Commission is mandatory before

passing the order of dismissal in respect of each of the respondent as section 3 of the Ordinance has not ousted the operation of other laws, rules and regulations. ...(Para 22)

Opinion of Public Service Commission is not binding on the authority.

The consultation with the Public Service Commission is mandatory before passing the orders of dismissal of both the respondents though the opinion of Public Service Commission is not binding on the authority. ...(Para 25)

JUDGMENT

SYED MAHMUD HOSSAIN, J:

1. Both the appeals, by leave, are directed against the decisions dated 26.01.2010 and 04.03.2010 respectively passed by the Administrative Appellate Tribunal, Dhaka in Appeal Nos.51 of 2005 and 67 of 2008 dismissing the appeals and affirming the decisions dated 10.08.2004 and 23.04.2008 respectively passed by the learned Members, Administrative Tribunal No.2, Dhaka and Administrative Tribunal No.1, Dhaka, in Administrative Tribunal Case No.70 of 2000 (old) renumbered as Administrative Tribunal Case No.141 of 2003 (new) and Administrative Tribunal Case No.45 of 2006 allowing the cases of the petitioner-respondents on contest.

2. Both the appeals involving similar questions of laws and almost identical facts having been heard together are now disposed of by this single judgment.

3. The relevant facts for the purpose of disposal of Civil Appeal No.17 of 2012, in a nutshell, are:

The petitioner-respondent, Md. Billal Hossain Mallik, joined the police department as Sub-Inspector of Police on 10.01.1987. Subsequently, he was promoted to the post of Inspector of Police on 21.12.1993. While he was serving as the Inspector of Police under Khulna Range, the authority pressed a charge sheet against him on 19.07.1999 on the allegation of misconduct. The petitioner-respondent denied the charge and claimed innocence. After that, appellant No.2 passed the impugned order dated 09.09.1999 reducing the petitioner-respondent to the rank of Sub-Inspector of Police under section 5(e) of the Police Officers (Special Provision) Ordinance,1976. Being aggrieved, the petitioner-respondent preferred a departmental appeal on 19.09.1999 and the same was rejected on 26.01.2000.

4. Against the order of rejection dated 26.01.2000 passed by the concerned departmental authority, the petitioner-respondent filed Administrative Tribunal Case No. 70 of 2000 (old) renumbered as Administrative Tribunal Case No.141 of 2003 (New) before the learned Member, Administrative Tribunal No.2, Dhaka,

5. The respondents-appellants contested the case by filing written objection denying all the material statements made in the application filed before the Administrative Tribunal, contending, inter alia, that on the basis of convincing materials on record, the impugned penalty was rightly awarded to the petitioner-respondent and as such, the impugned order of punishment suffered from no legal infirmity to call for any interference by the Tribunal.

6. The Administrative Tribunal by its decision dated 10.08.2004 allowed the case of respondent on setting aside the order dated 09.09.1999 reducing the petitioner-respondent to the rank of Sub-Inspector of Police from the rank of Inspector of Police.

7. Being aggrieved by and dissatisfied with the decision dated 10.08.2004 passed by the learned Member, Administrative Tribunal, Dhaka, the appellants preferred Appeal No.51 of 2005 before the Administrative Appellate Tribunal, Dhaka. The Administrative Appellate Tribunal, upon hearing the parties, by its decision dated 26.01.2010 dismissed the appeal on contest affirming the decision of the Administrative Tribunal.

8. The relevant facts for the purpose of disposal of Civil Appeal No.21 of 2012, in a nutshell, are:

The respondent herein, Md. Tareque Kamal joined Bangladesh Police as Sub-Inspector of Police on 27.03.1990 and subsequently, he was promoted to the post of Inspector for his satisfactory service. While the respondent had been serving as the Officer-in-Charge at Savar Police Station, Dhaka, appellant No.2 herein most illegally placed the respondent under suspension on 11.01.2005 and served a notice upon him for showing cause on 01.12.2005 under the provision of the Police Officers (Special Provisions) Ordinance, 1976 (in short, the Ordinance). In that notice, it has been alleged that the respondent committed offence under section 4(I),(II)(IV) and (VII) of the Ordinance for misconduct, dereliction of duty, corruption and inefficiency. The respondent submitted his reply denying all the allegations under the charge. Appellant No.2 not being satisfied with the written reply of the respondent served provisional order on 09.01.2006 proposing major penalty of dismissal from service. The respondent submitted his reply in time claiming innocence. But appellant No.3 most illegally and arbitrarily passed the final order of dismissal of the respondent from service on 24.01.2006. The respondent preferred an appeal to appellant No.1 on 30.01.2006 but getting no response from the appellate authority, the respondent filed the case before Administrative Tribunal.

9. The appellant herein contested the case by filing written objection denying all the material statements made in the application filed before the Administrative Tribunal. Their case, in short, is that the impugned order dismissing the respondent from service was rightly passed and there was no necessity of consultation with the Public Service Commission in awarding punishment to the respondent under the said Ordinance. There was no illegality or irregularity in the proceeding. As such, the case is liable to be dismissed.

10. The Administrative Tribunal by its decision dated 23.04.2008 allowed the case of the respondent and directed the appellants to reinstate the respondent in service from the date of his suspension with all attending benefits.

11. Being aggrieved by and dissatisfied with the decision dated 23.04.2008 passed by the learned Member, Administrative Tribunal, Dhaka, the appellants preferred Appeal No.67 of 2008 before the Administrative Appellate Tribunal, Dhaka. The Administrative Appellate Tribunal, upon hearing the parties, by its decision dated 04.03.2010 dismissed the appeal on contest affirming the decision of the Administrative Tribunal.

12. Feeling aggrieved by and dissatisfied with the decisions respectively passed by the Administrative Appellate Tribunal, Dhaka, the respondents as the leave-petitioners have filed Civil Petitions for Leave to Appeal Nos.1433 of 2010 and 1555 of 2010 before this Division

and obtained leave respectively in both the civil petitions on 08.01.2012 and 11.12.2011, resulting in Civil Appeal Nos.17 and 21 of 2012.

13. Mr. Goutam Kumar Roy, learned Deputy Attorney General, appearing on behalf of the appellants of both the appeals, submits that the Administrative Appellate Tribunal failed to appreciate that as per section 3 of the Police Officers (Special Provisions) Ordinance, 1976 no consultation is necessary with Public Service Commission (PSC) and as such, the decision of the Administrative Appellate Tribunal affirming the decision of the Administrative Tribunal should be set aside.

14. Mr. Abdur Rob Chowdhury, learned Senior Advocate, appearing on behalf of the respondent of in both the appeals, on the other hand, submits that before imposing major penalty upon a class-I and Class-II Government Officers, the authority must consult the Public Service Commission and as the impugned decision does not call for any interference.

15. We have considered the submissions of the learned Deputy Attorney General for the appellants of both the appeals and the learned Senior Advocate for the respondent of both the appeals, perused the impugned judgment and the materials on record.

16. Before entering into the merit of the appeals, it is necessary to go through the common grounds, for which, leave was granted. The grounds are quoted below:

I. Whether both the Administrative Appellate Tribunal and the Administrative Tribunal failed to appreciate that the authority which framed charge against the respondent and eventually awarded the impugned penalty was the controlling authority of the respondent at that time and as such the decision of the Administrative Appellate Tribunal affirming the decision of Administrative Tribunal is liable to be set aside.

II. Whether both the Administrative Appellate Tribunal and the Administrative Tribunal failed to appreciate that as per section 3 of the Police Officers (Special Provisions) Ordinance, 1976 no consultation is necessary with the Public Service Commission and as such the decision of the Administrative Appellate Tribunal affirming the decision of the Administrative Tribunal should be set aside.

17. Admittedly, the respondents of both the appeals were dismissed from service by imposing the major penalty on them. The question to be resolved in these appeals is whether before awarding the punishment of dismissal from service consultation with the Public Service Commission is necessary. Admittedly, in both the appeals no consultation was made with the Public Service Commission before awarding punishment of dismissal from service.

18. In order to resolve this issue, it is necessary to go through section 3 of the Police Officers (Special Provisions) Ordinance, 1976. Section 3 runs as follows:

“3. This Ordinance shall have effect notwithstanding anything contained in any law, rules and regulations relating to police-force nor shall prejudice the operation of any other law, rules and regulations including the service conditions of the said police-force.”

19. Having gone through the section, it appears that this section in no uncertain terms states that the provision of this Ordinance shall have effect notwithstanding anything

contained in any law, rules and regulations relating to the Police Service but at the same time this section also states that this Ordinance shall not prejudice the operation of any other law, rules and regulations including the service conditions of the said police officers.

20. Regulation 6 of the Bangladesh Public Service Commission (Consultation) Regulation, 1979 states that it shall not be necessary to consult the Commission in any disciplinary matter except before passing any order of imposing the penalty of removal, dismissal, compulsory retirement from service, or reduction in rank of a class-I and Class-II Gazetted Officer.

21. Considering regulation 6, it appears that before passing any order of imposing penalty of removal, dismissal, compulsory retirement from service, or reduction in rank of a Class-I and Class-II Gazetted Officer consultation with Public Service Commission is mandatory.

22. On consideration of section 3 of the Ordinance vis-a-vis regulation 6 of the Regulations, it is obvious that consultation with Public Service Commission is mandatory before passing the order of dismissal in respect of each of the respondent as section 3 of the Ordinance has not ousted the operation of other laws, rules and regulations.

23. Admittedly, the respondents of both the appeals were Class-II officers. When they were dismissed from service, no consultation was made with Public Service Commission. Because of this inherent defect in the orders of dismissal of both the respondents, we are of the view that the impugned decisions were passed in accordance with law.

24. In this connection, reliance may be placed on the case of *Government of Bangladesh vs. A.A.M. Salakuzzaman and another (2000)5 MLR (AD)281*, in which, it has been held that before imposing major penalty upon Class-I or Class-II Government officer, the authority must consult the Public Service Commission. The opinion of the Public Service Commission is not binding upon the Government which can take contrary view in an appropriate case.

25. Having gone through the case cited above it appears that the consultation with the Public Service Commission is mandatory before passing the orders of dismissal of both the respondents though the opinion of Public Service Commission is not binding on the authority.

26. In the light of the finding made before, we do not find substance in these appeals. Accordingly, both the appeals are dismissed.