

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Md. Nuruzzaman
Mr. Justice Borhanuddin
Ms. Justice Krishna Debnath

CIVIL APPEAL NO. 57 OF 2015

(From the judgment and order dated 16.02.2010 passed by the Administrative Appellate Tribunal, Dhaka in A.A.T. Appeal No.201 of 2006)

The Government of Bangladesh
represented by Home Affairs,
Bangladesh Secretariat, Dhaka
and others : Appellants

=VERSUS=

Sree Kazal Chandra Sutradhar Respondent

For the appellants :Mr. Mohammad Shaiful
Alam, Assistant Attorney
General, instructed by
Mr. Haridas Paul,
Advocate-on-Record

For the Respondent :Mr. Shahidul Islam,
Advocate, instructed by
Mr. Md. Abdul Hye
Bhuiyan, Advocate-on-
Record

Date of hearing :The 1st June, 2022

Judgment on :The 7th June, 2022

J U D G M E N T

MD. NURUZZAMAN, J:

This Civil Appeal, by leave, has arisen out of the judgment and order dated 16.02.2010 passed by the Administrative Appellate Tribunal, Dhaka in A.A.T. Appeal No.201 of 2006 allowing the appeal and thereby setting aside the judgment and order dated 29.08.2006 passed by the learned Member of the Administrative Tribunal Khulna in A.T. Case No.24 of 2004.

The respondent herein, as petitioner, filed A.T. case No.24 of 2004 under section 6 of the Administrative Tribunal Act, 1980 before the Administrative Tribunal, Dhaka challenging the order dated 18-12-2003 passed by the opposite party No.2, the superintendent of Police, Magura. Subsequently, the petitioner preferred departmental Appeal before the

opposite party No.3, the D.I.G. of Police, Khulna Range, Bangladesh Police, Khulna which was rejected on 22-01-2004.

Facts leading to filing of this civil appeal, in short, are that the present respondent, Nayek of Police, No.332, was deputed as guard-in-charge of Police at Deputy Commissioner's Banglow, Magura. A departmental proceeding under the provisions of Police Officers (Special Provisions) Ordinance, 1976 was started against him for the allegation of moral turpitude. After holding inquiry, the authority dismissed him from service by an order dated 18.03.2003. Against the order of dismissal, he unsuccessfully preferred appeal.

Thereafter, he filed the administrative tribunal case.

The opposite parties as petitioners herein contested the case by filing written statement denying the material allegations of the petition contending, inter-alia that holding inquiry, the respondent was found guilty and consequently, he was dismissed from service. He was given opportunity of being heard personally. There was no illegality in the order of dismissal.

On conclusion of the trial, the Administrative Tribunal, Dhaka considering the evidences and documents on record dismissed the A.T. Case No.24 of 2004 by its judgment and order dated 29.08.2005.

Feeling aggrieved, by the judgment and order of the Administrative Tribunal, Dhaka, the petitioner as appellant preferred A.A.T. Appeal No.201 of 2006 before the Administrative Appellate Tribunal, Dhaka, which upon hearing the parties, by its judgment and order dated 16.02.2010 allowed the appeal and thereby set aside the judgment and order of the Administrative Tribunal, Dhaka and directed the appellant-petitioner to reinstate the respondent in his service.

Feeling aggrieved by the impugned judgment and order dated 16.02.2010 passed by the Administrative Appellate Tribunal, Dhaka, the respondents as petitioners herein filed the instant civil Petition for leave to appeal

before this Division and obtained leave which, gave, rise to the instant appeal.

Mr. Mohammad Shaiful Alam, the learned Assistant Attorney General appearing on behalf of the appellants submits that the Police Officer's (Special Provisions) Ordinance, 1976 does not contemplate formal inquiry to be held before imposing penalty under the said Ordinance, the learned Administrative Appellate Tribunal erred in law in allowing the appeal holding that since no formal inquiry has been held before imposing punishment, the order of dismissal is bad in law and, as such, the impugned judgment and order passed by the Administrative Appellate Tribunal, Dhaka is liable to be set aside.

Mr. Shahidul Islam, the learned Advocate appearing on behalf of the respondent made submissions in support of the impugned judgment and order of the Administrative Appellate Tribunal, Dhaka. He submits that no enquiry was ever held against the respondent in accordance with the provision of law, despite, non-consideration of the same has caused serious miscarriage of justice, inasmuch as the record demonstrated that the authority used informal preliminary enquiry report and *ex-parte* statements of the witnesses as evidence against the respondent and as a clandestine technique imposed punishment of dismissal from service and, as such, the Administrative Appellate Tribunal rightly passed the impugned judgment.

Hence, the instant appeal may kindly be dismissed.

We have considered the submissions of the learned Assistant Attorney General for the appellants and the learned Advocate for the respondent. Perused the impugned judgment of the Administrative Appellate Tribunal and connected other materials available on record.

Leave was granted to examine the following grounds-

"Because in Police Officer's (Special Provisions) Ordinance, 1976 does not contemplate formal inquiry to be held before imposing penalty under the said Ordinance, the Administrative Appellate Tribunal erred in law in allowing the

appeal holding that since no formal inquiry has been held before imposing punishment, the order of dismissal is bad in law".

The respondent was dismissed from the service through imposing penalty under section 5(ka) of the Police Officer's (Special Provisions) Ordinance, 1976 for an offence of 'moral turpitude' under section 4(iii) of the aforementioned Ordinance. For this the concerned police authority have completed inquiry procedure established by the said Ordinance and the procedures are articulated in the provisions of section 6 and there's provisions of appeal, review and revisions thereof under section 7 and 8 respectively. Section 6 is as follows:

"Inquiry-

6. (1) When a police-officer is to be proceeded against any of the offences mentioned in section 4, the authority concerned shall frame a charge and specify therein the penalty proposed to be imposed and communicate it to the police-officer, hereinafter called the accused, requiring him to show cause within a specified time which shall not be less than seven days and not more than ten days from the date the charge has been communicated to him why the penalty proposed to be imposed on him shall not be imposed and also to state whether he desires to be heard in person.

(2) If, after consideration of the cause shown, if any, under sub-section (1) and hearing the accused in person, if he so desires, the authority concerned finds the accused guilty of the charge, or, if no such cause is shown within the specified time, the authority concerned shall, within twenty-one days of the cause shown or, as the case may be, on the expiry of the said time, by notice specifying the penalty proposed to be imposed, require the accused to show cause within a specified time which shall not be less than seven days nor more than ten days from the date of service

of the notice why the proposed penalty shall not be imposed on him.

(3) If after consideration of the cause shown, if any, under sub-section (2), or, where no such cause is shown within the specified time, the authority concerned decides to impose any penalty on the accused, it shall, within fifteen days of the showing of the cause or, as the case may be, on the expiry of the said time, impose on him the penalty specified in the notice under sub-section (2) or any other lesser penalty.

(4) For the purpose of this section, a notice shall be deemed to have been validly served if it is served by

delivery to the accused or by affixing it to a conspicuous place of his last known residence or by publication in at least two newspapers."

There is no provision of a "formal inquiry' before inflicting penalties prescribed under the Ordinance within the four corners of the Police Officer's (Special Provisions) Ordinance, 1976.

Moreover, there is an ouster clause in the said Ordinance under section 8 as follows:

"Court's jurisdiction barred

8. No order passed under any of the provisions of this Ordinance shall be called in question in any Court."

Nevertheless, even where there is ouster clause barring court's jurisdiction, it is an

established principle of law that court still possesses authority to examine whether the concerned authority followed the procedures established in any Act or law.

It appears that Superintendent of Police, Magura, by his order dated 01-12-2003 issued a show cause notice and informed the proposed charge to the respondent Sree Kazal Chandra Sutradhar. It is apparent from that letter that inquiry officer was appointed and respondent Sree Kazal Chandra Sutradhar was asked to appear before the Inquiry Officer to give reply and submit his written statement within specified time and started the Departmental Case No.01 of 2003.

Respondent Sree Kazal Chandra Sutradhar on 07-12-2003 submitted his written statement

and on 08-12-2003 appeared in personal hearing. The concerned authority was found that his written statement and personal hearing were not satisfactory, hence on 08.12.2003, another letter under signature of Superintendent of Police, Magura, was issued which is deemed to be second show cause notice, the said letter dated 08.12.2003 has been submitted by the respondent through additional paper book dated 25.05.2022 wherefrom the above facts were admitted.

On perusal of the letter dated 08.12.2003, it is apparent that Sree Kazal Chandra Sutradhar has been given an opportunity to issuing 2nd show cause notice to explain his position and given further reply to the police Superintendent, Magura. Thereafter, on hearing

him on 18.12.2003, the Police Superintendent, Magura passed the impugned order of dismissal.

On careful perusal of the documents submitted through additional paper book dated 25-05-2022 our considered view is that the concerned authority not only strictly followed the procedure of section 6 but also they inquired the incident through one learned Magistrate and one police officer of Assistant Superintendent of Police (ASP) in addition.

According to section 6 of the Police Officer (Special provisions) Ordinance, 1976, we are of the view that the provisions of the said Ordinance does not contemplate formal inquiry to be held before imposing penalty under the said Ordinance save and except follow

the provisions as expressly provides in the said Police Ordinance.

The procedure of enquiry against the police officer should be conducted according to the provisions of the Ordinance, 1976 (Special Provisions), the Administrative Tribunal and Administrative Appellate Tribunal will not sit as a Court of appeal against domestic enquiry unless its decision is tainted with illegality, malafide and it acted without jurisdiction.

As such, we are, therefore, of the view that the Administrative Appellate Tribunal has miserably failed to notice the expressed provisions of law erred in law in viewing that formal inquiry was not held for which call for interfering with the judgment and order of the Administrative Tribunal.

In the result, this appeal is allowed. The judgment of the Administrative Appellate Tribunal is set aside and the judgment of the Administrative Tribunal is restored without any order as to cost.

J.

J.

J.

The 7th June, 2022
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