

5 SCOB [2015] AD 94**APPELLATE DIVISION****PRESENT:**

Mr. Justice Surendra Kumar Sinha
-Chief Justice
Mr. Justice Syed Mahmud Hossain
Mr. Justice Hasan Foez Siddique

CIVIL APPEAL NO.99 of 2013

(From the decision dated 11.02.2010 passed by the Administrative Appellate Tribunal, Dhaka in A.A.T. Appeal No.01 of 2008)

Government of Bangladesh, represented by the :Appellant.
Secretary, Ministry of Establishment Bangladesh
Secretariat, Ramna, Dhaka.

Versus

S.M. Raiz Uddin Ahmed. :Respondent.

For the Appellant. : Mr. Goutam Kumar Roy, Deputy
Attorney General, instructed by Mr.
Haridas Paul, Advocate-on-Record.

For the Respondent. : Mr. Bivash Chandra Biswas, Advocate-
on-Record.

Date of Hearing. : The 4th November, 2015.

Date of Judgment. : The 4th November, 2015.

It is not permissible to take disciplinary action against a person solely on the basis of adverse remarks made by a Tribunal in a criminal case unless the allegations imputed in the adverse remarks are proved in disciplinary proceeding. ... (Para 14)

J U D G M E N T**SYED MAHMUD HOSSAIN, J:**

1. This appeal, by leave, is directed against the decision dated 11.02.2010 passed by the Administrative Appellate Tribunal, Dhaka in A.A.T. Appeal No.01 of 2008 affirming the decision dated 23.09.2007 passed by Administrative Tribunal No.1, Dhaka, in A.T Case No.151 of 2006.

2. The facts, leading to the filing of this appeal, are précised below:

The respondent instituted A.T. Case No.151 of 2006 for declaration that the letter communicated under Memo No.pj/n²2 (খ্জ ি)-23/95/233 ংিM10/7/1993, awarding punishment to him, which was served upon him on 28.09.2006 was illegal, void, collusive and the same was not binding upon him. The case of the respondent, in short, is that on 21.01.1986, he joined as Assistant Commissioner under the Ministry of Establishment. He was promoted as Senior Assistant Secretary on 14.09.1994 and thereafter as Deputy Secretary on 10.02.2003. While he was serving as Thana Nirbahi Officer at Atgoria, Pabna, the Secretary, Ministry of Establishment, framed charge against him stating that at the time of serving as Magistrate at Bagerhat, he, without writing the statements of the witnesses under section 164 of the Code of Criminal Procedure himself, allowed the Investigating Officer to write those statements and thereafter put his signatures in those statements. The respondent in his reply denied the allegation. It has further been stated in the petition before the Administrative Tribunal that being satisfied, the concerned Secretary, after hearing the respondent, informally told him that no action would be taken against him. Thereafter, the respondent got two promotions and selection grade. While searching his position to get promotion as Joint Secretary, the respondent came to know that in that proceeding punishment in the form of “censure” had been awarded to him. He filed an application addressing the Secretary of the concerned Ministry to get the order of ‘censure’ and got the said order on 18.09.2006. Thereafter, he preferred an appeal before the President of the Republic but did not receive any reply. Then he filed the instant Administrative Tribunal case.

3. The Government, represented by the Secretary, Ministry of Establishment, contested the case by filing a written objection contending, inter alia, that Eklas Khan, Mizan Khan and Yousuf Sheikh, the witnesses of G.R. No.57 of 1995 arising out of Bagerhat P.S. Case No.6 dated 18.05.1992 were produced by the Investigating Officer before the respondent for recording their statements under section 164 of the Code of Criminal Procedure. The respondent, without recording their statements himself, allowed Investigating Officer of the said case to write the statements of those witnesses and then he put his signatures in the said statements which were found in the judgment in S.T.C. Case No.36 of 1993 by the Tribunal. Bringing such allegation, a departmental proceeding was initiated against the respondent and the same was established on holding departmental inquiry. Accordingly, the respondent was awarded punishment. The order awarding punishment was duly communicated to the respondent. Therefore, the case should be dismissed.

4. The learned Member of Administrative Tribunal No.1, Dhaka, upon hearing the parties and considering the evidence on record, by the decision dated 23.09.2007 allowed the said case and declared the punishment awarded to the respondent void.

5. Being aggrieved by and dissatisfied with the decision dated 23.09.2007 passed by the learned Member, Administrative Tribunal No.1, Dhaka, the Government-respondent preferred A.A.T. Appeal No.01 of 2008 before Administrative Appellate Tribunal, Dhaka, which was dismissed by the decision dated 11.02.2010.

6. Feeling aggrieved by and dissatisfied with the decision passed by the Administrative Appellate Tribunal, Dhaka, the appellant as the leave-petitioner moved this Division by filing Civil Petition for Leave to Appeal No.794 of 2010, in which, leave was granted on 21.07.2013, resulting in Civil Appeal No.99 of 2013.

7. Mr. Goutam Kumar Roy, learned Deputy Attorney General, appearing on behalf of the appellant, submits that there is a specific finding by the Special Tribunal that while acting as

Magistrate of Rampal, Bagerhat, the respondent put his signatures in the statements of three witnesses recorded under section 164 of the Code of Criminal Procedure which were alleged to have been written by another person and on such allegation, the Government initiated a departmental proceeding against the respondent and that as there was no specific denial on behalf of the respondent, the Administrative Tribunal and Administrative Appellate Tribunal committed an error of law in interfering with the punishment awarded to the respondent and as such, the impugned decision should be set aside.

8. Mr. Bivash Chandra Biswas, learned Advocate-on-Record, appearing on behalf of the respondent, on the other hand, supports the impugned judgment delivered by the High Court Division.

9. We have considered the submissions of the learned Deputy Attorney General for the appellant and the learned Advocate-on-Record for the respondent, perused the impugned decision and the materials on record.

10. Before entering into the merit of the appeal, it is necessary to go through the ground, for which, leave was granted. The ground is quoted below:

“There is a specific finding by the Special Tribunal that while acting as Magistrate of Rampal, Bagerhat, the respondent put his signatures in the statements of three witnesses recorded under section 164 of the Code of Criminal Procedure alleged to have been written by another person and on such allegation, the Government initiated a departmental proceeding against the respondent and that as there is no specific denial on behalf of the respondent, the Administrative Tribunal and Administrative Appellate Tribunal committed an error of law in interfering with the punishment awarded to the respondent and as such, the impugned decision should be set aside.”

11. Having gone through the record, we find that while performing the function of the Magistrate, First Class, the respondent recorded the statements of some of the witnesses under section 164 of the Code of Criminal Procedure. It is alleged that the respondent did not record the statements of Eklas Khan, Mizan Khan and Yousuf Sheikh with his own hand and that he signed those statements alleged to have been written by another person. Unless the allegations brought against the respondent are inquired into, it is difficult to believe that the allegations brought against him are true. In reply to the show cause notice, the respondent in writing denied the allegations brought against him and as such, the allegations could not be established without any inquiry. The respondent also alleged that the allegations were brought against him out of a conspiracy at the instance of a vested quarter. Therefore, the censure made by the appellant against the respondent cannot be said to be legal.

12. The case in hand has similarity with *Ridge v. Baldwin, [1964] AC 40*. In the cited case, the Chief Constable of Brighton has been tried and acquitted on criminal charge of conspiracy to obstruct the Court's justice. Two other Police Officers were convicted and the Judge took opportunities to comment adversely on the Chief Constable's leadership of the force. Thereupon, the Brighton Watch Committee, without giving any notice or offering any hearing to the Chief Constable, unanimously dismissed him from service. His Solicitor then applied for a hearing and was allowed to appear before a later meeting. The committee confirmed their previous decision, but by a vote of nine against three. The Chief Constable exercised his right of appeal to the Home Secretary, but his appeal was dismissed. Finally, he

turned to the Courts of law, claiming a declaration that his dismissal was void since he had given no notice of any charge against him and no opportunity of making his defence. This was refused by the High Court and by a unanimous Court of appeal. The House of Lords by a majority of 4 to 1 held that the initial dismissal was not only a breach of principle of natural justice, it was contrary to the express provisions of the statutory regulations governing police discipline which in cases of misconduct required notice of the charge and an opportunity for self-defence. The hearing given to the Chief Constable's Solicitor was held to be irrelevant since even no notice of specific charge was given and natural justice was again violated.

13. In the case in hand, relying only on the adverse remarks of the Tribunal, the respondent herein was censured without giving him any opportunity of being heard.

14. The Administrative Tribunal and the Administrative Appellate Tribunal rightly found that the allegations brought against the respondent could not be substantiated. It is not permissible to take disciplinary action against a person solely on the basis of adverse remarks made by a Tribunal in a criminal case unless the allegations imputed in the adverse remarks are proved in disciplinary proceeding.

15. In the light of the findings made before, we do not find any substance in this appeal. Accordingly, this appeal is dismissed.