

8 SCOB [2016] AD 141

APPELLATE DIVISION

PRESENT

Mr. Justice Md. Abdul Wahhab Miah

Mr. Justice Muhammad Imman Ali

Mr. Justice A. H. M. Shamsuddin Choudhury

CIVIL PETITION FOR LEAVE TO APPEAL NO. 2735 of 2012

(From the order dated 2nd of August, 2012 passed by the Administrative Appellate Tribunal in A. A. T. Appeal No.49 of 2011)

The Government of Bangladesh and others ... Petitioners

Versus

Ranjit Krishna Mazumder ... Respondent

For the Petitioners

:Mr. Biswajit Deb Nath
Deputy Attorney General,
instructed by
Mr. B. Hossain
Advocate-on-Record

The Respondents

:Mr. A.M. Amin Uddin,
instructed by,
Mrs. Sufia Khatun,
Advocate-on-Record

Date of hearing & judgement

:The 15th of March, 2015

Acid Aparadh Daman Ain, 2002

Section 13:

The learned Judge of the Tribunal acted in accordance with the law in bringing the matter to the notice of the authority concerned in accordance with section 13 of the Acid Aparadh Daman Ain, 2002. We also note that the learned Judge of the Tribunal observed that all three Investigating Officers were negligent in their duties and a direction to the authority concerned was regarding all three of the Investigating Officers of that case. We find from the order of the Administrative Appellate Tribunal that it was observed that although no action was taken against the first Investigating Officer, namely Md. Akram Hossain and third Investigating Officer, Md. Mahfuzur Rahman for neglecting their duties, a departmental proceeding was started against the respondent Ranjit Krishna Mazumder, who was the second Investigating Officer. The Administrative Appellate Tribunal held that this was a discriminatory act and the respondent's application before the Administrative Tribunal was rightly allowed.

...(Para 11)

Judgment

Muhammad Imman Ali, J:

1. This civil petition for leave to appeal is directed against the order dated 02.08.2012 passed by the Administrative Appellate Tribunal, Dhaka in A.A.T. Appeal No. 49 of 2011 dismissing the appeal, thereby affirming the order dated 29.12.2010 passed by the Administrative Tribunal, Barisal, in A.T. Case No. 04 of 2010.

2. Facts of the case, in brief, are that while the respondent was working as a Sub-Inspector of Police he was entrusted with investigation of a case and ultimately he submitted final report. The informant of that case took objection against the said report and the trial Court took cognizance and after conclusion of trial convicted 7 FIR named accused persons and they were sentenced to suffer rigorous imprisonment for 14 years and to pay a fine of Tk. 20,000/- each, in default, to suffer rigorous imprisonment of 6(six) months more. The learned Judge made a remark against the petitioner for submitting false investigation report with intent to save the accused persons for illegal gain. The petitioner was charged under Rule 861 of the Police Regulations, Bengal (P.R.B.) and after completing a departmental proceeding, major penalty of "Black Mark" was imposed on 17.08.2009.

3. Being aggrieved by the said order of "Black Mark" dated 08.09.2009 the respondent filed a departmental appeal, but the authority did not dispose of the departmental appeal within six months. Thereafter, the respondent filed A.T. Case No. 4 of 2010 before the Administrative Tribunal, Barisal for setting aside the impugned order.

4. The petitioners contested the case by filing a written statement denying all the allegations made in the petition contending, inter alia, that the respondent did not properly investigate the case, and he was found by the Acid Oparadh Daman Tribunal to have been negligent in the investigation carried out in that case and in submitting a final report finding that the allegation was false. It was specifically pointed out that the respondent, who was the second Investigating Officer, only recorded the statements of three witnesses and did not investigate into any other aspect of the case and submitted a final report following the footsteps of his predecessor which was tantamount to neglect of his duties.

5. The Administrative Tribunal upon hearing the parties allowed the case of the respondent and set aside the order of major penalty of "Black Mark" dated 17.08.2009 passed by the petitioner No. 4, and a direction was given to the petitioners to take necessary steps for noting in his service book accordingly and to take necessary steps according to the rules of P.R.B to make the respondent permanent in his service as S.I.

6. Being aggrieved by the order of the Administrative Tribunal, the petitioners filed A.A.T. Appeal No. 49 of 2011 before the Administrative Appellate Tribunal, Dhaka, which upon hearing the parties concerned, was dismissed. Hence, the petitioners have filed the instant civil petition for leave to appeal.

7. Mr. Biswajit Deb Nath, learned Deputy Attorney General appearing on behalf of the petitioners submits that the Administrative Appellate Tribunal erred in law in dismissing the appeal in a slipshod manner without properly discussing the respective case of the parties relying on the finding of the Administrative Tribunal. He further submits that the Acid Aparadh Daman Tribunal having clearly found that the respondent was guilty of neglecting

his duties, rightly brought the matter to the notice of his superior authorities in accordance with the provisions of Acid Aparadh Daman Ain.

8. Mr. A.M. Amin Uddin, learned Advocate appearing for the respondent made submissions in support of the order of the Administrative Appellate Tribunal.

9. We have considered the submissions of the learned Advocates for the parties concerned, perused the impugned order as well as the evidence and materials on record.

10. The Acid Aparadh Daman Case No. 01 of 2007 ended in conviction of the accused who preferred Criminal Appeal No. 3863 of 2008, which is now pending before the High Court Division. We have taken the opportunity to call and peruse the records of the said criminal appeal and have gone through the judgement of Acid Aparadh Daman Tribunal. We find from the said judgement that the learned Judge observed as follows:

"" তলঃ এজিমিঃ অঃলিঃ লিঃলাইনেঃ অঃলিঃ চৌ ফকিমিঃওঃইঃ এঃমিঃ কিঃ
 ঃক, EŞ² অঃলিঃ লিঃলাইনেঃ জঃজঃমিঃ অঃলিঃ ফকিঃ-ইঃ এঃইঃ উঃ উঃ উঃ লিঃলিঃ অঃলিঃ
 উঃলিঃরেঃ জঃজঃমিঃ অঃলিঃ হঃইঃইঃ অঃলিঃ লিঃলাইনেঃ হঃ দিঃইঃ জঃইঃ ইঃ ফঃইঃ
 উঃলিঃ অঃইঃদের ইঃছাঃ মাঃগঃ জঃইঃইঃ অঃলিঃ উঃইঃ পঃইঃইঃ জঃইঃইঃ এঃইঃইঃ উঃইঃইঃ I Bনিঃ
 উঃইঃইঃ ইঃইঃ HC জঃজঃমিঃ অঃলিঃ লিঃলাইনেঃ অঃইঃইঃ ' a j pঢ়æ qJu i pতাঊ
 অঃইঃইঃ লিঃলাইনেঃ অঃইঃইঃ জঃজঃমিঃইঃ অঃলিঃ পঃইঃইঃ cঃইঃইঃ fঃইঃইঃ চৌঃইঃ
 চঃইঃইঃ ! Hদিঃইঃ অঃইঃইঃ বঃইঃইঃ পঃইঃইঃ জঃইঃইঃ B চেঃইঃ চৌঃইঃ হঃইঃইঃ E ফিঃ
 B ঊঃইঃ ইঃইঃইঃ ঃগঃইঃইঃ কঃইঃইঃ ঃনঃইঃ S i a f l S e f j %m S e L e u z H j a i হঃইঃইঃ, A ঃ
 জঃজঃমিঃ অঃলিঃ পঃইঃইঃ চৌঃইঃইঃ লিঃলাইনেঃ ইঃইঃইঃইঃ ঃইঃইঃইঃইঃ B হঃইঃইঃইঃ B ঃ
 জঃইঃ উঃইঃইঃ হঃইঃইঃইঃ, I z u l A e m c f A i c . t S . t f , Y i L i J t X , B C , t S , h c i n i m
 h l i h t l ঃ f E Z L i i t p উঃইঃইঃ e J u i ঃ N m "" (underlining added)

11. It is clear, therefore, that the learned Judge of the Tribunal acted in accordance with the law in bringing the matter to the notice of the authority concerned in accordance with section 13 of the Acid Aparadh Daman Ain, 2002. We also note that the learned Judge of the Tribunal observed that all three Investigating Officers were negligent in their duties and a direction to the authority concerned was regarding all three of the Investigating Officers of that case. We find from the order of the Administrative Appellate Tribunal that it was observed that although no action was taken against the first Investigating Officer, namely Md. Akram Hossain and third Investigating Officer, Md. Mahfuzur Rahman for neglecting their duties, a departmental proceeding was started against the respondent Ranjit Krishna Mazumder, who was the second Investigating Officer. The Administrative Appellate Tribunal held that this was a discriminatory act and the respondent’s application before the Administrative Tribunal was rightly allowed.

12. In the facts and circumstances detailed above, we do not find any illegality or infirmity in the decision arrived at by the Administrative Appellate Tribunal. Evidently there was discrimination practiced by the petitioners in taking departmental action against the respondent alone when the Acid Aparadh Daman Tribunal highlighted neglect of duties of all three Investigating Officers, who were all on the same footing. The impugned order does not call for any interference by this Division.

13. Accordingly, the civil petition for leave to appeal is dismissed.