

In the Supreme Court of Bangladesh (Appellate Division)

Civil Appeal No. 73 of 1997.

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Decided On:

The 8th June, 2002

Result:

Appeal allowed

Parties:

Government of Bangladesh and others vs Md. Sharifuddin Mollah

Hon'ble Judge(s):

Mahmudul Amin Choudhury, C.J., Md. Ruhul Amin and Syed J.R. Mudassir Husain, JJ.

Counsels:

For the Appellants:

Mr. A. J. Mohammad Ali, Addl. Attorney General (Mr. Feroz Shah, Assistant Attorney General with him), instructed by Mvi. Md. Wahidullah, Advocate-on-Record, for the appellants.

For the Respondent:

Mr. Md. Aftab Hossain, Advocate-on-Record, for respondent.

Subject Matter:

Police Officers (Special Provisions) Ordinance, 1976 (Ordinance No. LXXXIV of 1976), Section—3, Police Regulation of Bengal (PRB), Regulation—858(a)(1)

There are two parts of section 3 of the Ordinance. The second part indicates that the overriding provision in the first part of section 3 does not exclude the operation of the law, rules and regulations including PRB in force prior to the promulgation of the Ordinance. It is for the authority to decide whether a delinquent police personnel would be proceeded under the Ordinance or pre-existing law/rules. As pre-existing law remained valid, disciplinary proceedings under Regulation No. 858 of the PRB has been legally initiated. Moreover, Regulation 858 (a)(2) empowers the Superintendent of Police to award a police personnel, i.e. Sub-inspector of Police, any punishment, i.e. dismissal, removal, which may be awarded by the Inspector General or Deputy Inspector General of Police under Regulation No. 858(a)(1). Thus AT was in error in holding that Superintendent of Police can only award punishment to Sub-Inspector of Police can only award punishment to Sub-Inspector of Police under Regulation 858(a)(1)(iv), i.e. censure or reprimand.

(Para—14)

Jurisdiction:

Civil Jurisdiction

Related Acts/Rules/Orders:

Police Officers (Special Provisions) Ordinance, 1976 (Ordinance No. LXXXIV of 1976), Section—3, Police Regulation of Bengal (PRB), Regulation—858(a)(1)

Key words:

JUDGMENT

Md. Ruhul Amin, J: This appeal by leave, has been preferred against the judgment and order dated 9th August, 1998 of the Administrative Appellate Tribunal (AAT), Dhaka in Appeal No. 82 of 1997. The said appeal was preferred by the present

appellants against the judgment and order dated 10th June, 1997 of the Administrative Tribunal (AT), Bogra in Case No. 34 of 1996.

2. Respondent filed the aforesaid AT Case challenging legality of the order of his dismissal dated 30th December, 1995 passed by Superintendent of Police, Khulna (appellant No. 3) following a department enquiry in respect of 12 charges out of which 7 were found to have been proved. The respondent took an appeal to the Deputy Inspector General of Police, Khulna (Appellant No. 2) and the same was dismissed on 23rd April, 1996.

3. It may be mentioned the Respondent at the relevant time i.e. when the disciplinary proceeding was initiated against him and dismissed from service following said disciplinary proceeding, was a Sub-Inspector of Police.

4. The Respondent filed the herein above mentioned AT Case challenging the order of his dismissal. The AT although found that some of the allegations against the Respondent was proved during the Departmental enquiry but set aside the order of dismissal holding that the Superintendent of Police had no jurisdiction to dismiss the Respondent, who was a Sub-Inspector of Police, under the provision of Regulation No. 858(a)(1) of the Police Regulations, hereinafter referred to as the Regulations, but he could only under Regulation No. 858 (a) (1) (iv) censure or reprimand the Respondent.

5. The appellants took appeal before AAT as against the judgment and order of the AT. The AAT dismissed the appeal and set aside the order of dismissal of the Respondent on a ground different from the one upon which AT set aside the order of dismissal of the respondent. The AAT placing reliance upon the provision of Section 3 of the Police Officers (Special Provisions) Ordinance, 1976 (Ordinance No. LXXXIV of 1976), hereinafter referred to in short as the Ordinance, was of the view that because of the provision of the said Section of the Ordinance "the discipline matter involving the Inspector of Police or Officers below is concerned, the overriding clause squarely bars the application of the provisions of the PRB and provides for steps only under the provisions of the Ordinance. Under the Ordinance it is the DIG of Police who is the competent authority to proceed against the Petitioner" and as such Superintendent of Police was quite incompetent to deal with the Petitioner-Respondent as regard the disciplinary matter and thus the order of dismissal passed by the Superintendent of Police was illegal and void.

6. Leave was granted to consider the contention of the appellants that the Administrative Appellate Tribunal misconstrued Section 3 of the Police Officers (Special Provisions) Ordinance 1976 and wrongly held that it was only D.I.G of Police who could proceed against the respondent and not the Superintendent of Police under the PRB, that the Ordinance of 1976 has not excluded the operation of the PRB in respect of disciplinary matters of the Police force and that it ought to have been held that the proceeding against the Respondent and the order of dismissal passed by the Superintendent of Police were quite competent and legal.

7. For appreciation of the appellants it is better to quote the Provisions of Regulation No. 858 of the PRB and Section 3 of the Ordinance.

8. The provision of Regulation No. 858 (a) (1) is as follows:-

858(a) The following are the powers of officers in regard to punishments:-

(1) The Inspector-General may suspend, reduce, dismiss or remove any police officer of or below the rank of Inspector, or award to any such police officer any one or more of the following punishments, namely:-

(i) deprivation of approved service increment;

(ii) removal from any office of distinction or special emolument;

(iii) entry of black mark against his name according to regulation 874;

(iv) censure or reprimand; and

(v) confinement to barracks for a term not exceeding 15 days with or without punishment drill, extra guard, fatigue or other duty. Provided that the punishment mentioned in sub-clause (v) shall not be awarded to any Inspector, Sergeant, Sub-Inspector or Assistant Sub-Inspector nor shall punishment drill be awarded to any head constable or naik.

9. A Deputy Inspector-General has similar power except that in the case of removal or dismissal of Inspectors, he shall forward the proceedings to the Inspector-general for orders."

(the rest of the Provisions of the clause are not relevant for the present purpose) and the Provision of Clause (2) of Regulations No. 858 runs as:

"(2) A Superintendent may suspend any Inspector subordinate to him, pending enquiry into his conduct and may award to him the punishment mentioned in (a) (iv) and enter it at his discretion in the officer's service record, reporting every case to the Deputy Inspector-General of the Range, giving details explanatory of the necessity for his action. He may award to any police officer subordinate to him below the rank of Inspector any punishment which may be awarded to such officer by the Inspector-General or Deputy Inspector-General under this regulation" (rest of this clause and the provisions in the remaining clauses are not necessary for the disposal of the appeal).

Section 3 of the Ordinance runs as follows:

"3. Ordinance to override all other laws, etc-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."

10. Disciplinary proceeding against the Respondent, a Sub-Inspector of Police, was initiated upon serving show cause notice under the signature of the Superintendent of Police. It is seen from the judgment of the AT as well as AAT that disciplinary proceeding against the Respondent was proceeded quite in accordance with law and that the Respondent was found guilty of some of the charges³-brought against him and thereupon he was dismissed from service.

11. The AT set aside the order of dismissal on the view that under Regulations No. 858 the Superintendent of Police was incompetent to pass an order of dismissal in respect of the respondent, a Sub-inspector of Police and that the Superintendent of Police could only censure or reprimand the Respondent under Regulations No. 858(a)(1)(iv). In the appeal by the appellants herein to the AAT, the AAT set aside the judgment and order of the AT on a ground different from the ground upon which AT set aside the order of dismissal of the Respondent. The AAT was of the view that overriding provision of Section 3 of the Ordinance bars the application of the provision of PRB and that disciplinary proceeding could only be taken against the respondent under

the provision of the Ordinance and that under the Ordinance, Deputy Inspector General of Police was the competent authority to proceed against the Respondent and as such Superintendent of Police, Khulna was not competent to deal with the Respondent and to pass the order of dismissal in respect of the Respondent.

12. There are two parts of Section 3 of the Ordinance. The first part of the Ordinance provides for that provision of the Ordinance shall have overriding effect notwithstanding anything contended in any law, rules and regulations relating to police force and the other part is that inspite of overriding provision in the first part of the Section the same shall not prejudice the operation in other law, rules and regulations including the service conditions of the "said police force". So it is seen although the first part of Section 3 of the Ordinance provides for that the provision of the Ordinance shall have precedence over the existing law, rules and regulation relating to the police force but in the other part of the said Section of the Ordinance the overriding provision of the first part has been excepted as to "the operation of any other law, rules and regulations including the service conditions of the said police force".

13. In our view the provision in the 2nd part of Section 3 of the Ordinance "nor shall prejudice the operation of any other law, rules and regulation" relating to the police force shows that overriding provision in the 1st part of the Section 3 of the Ordinance has not excluded the operation of the law, rules and regulations, including PRB in force prior to the promulgation of the Ordinance and that pre-existing law, rules and regulations remained valid law relating to police force and that under the pre-existing regulation, as in the instant case Regulations No. 858 of the PRB, disciplinary proceedings has legally been taken inspite of the provision in the first part of Section 3 of the Ordinance. The provision in the first part of Section 3 of the Ordinance although is of overriding nature relating to the existing laws but the provision in 2nd part of Section 3 of the Ordinance has excepted the overriding provision in the first part of Section 3 of the Ordinance as to the operation of the said part relating to existing law, rules and regulations relating to the police force. In that view of the matter in our opinion it is for the authority to decide or other words it the option of the authority, as to whether a delinquent police personnel would be proceeded with under the provision of the Ordinance or under the provision of law, rules and regulations in existence prior to the promulgation of the Ordinance. If the authority chooses to proceed in action against a police personnel in any matter, including disciplinary matter, under the law, rules and regulations (like PRB) in existence or in operation prior to the promulgation of the Ordinance, the proceeding so initiated in law can not be considered invalid or incompetent because of the provision as in the first part of Section 3 of the Ordinance. In that view of the matter we are of the opinion that the contention of the appellant that the AAT was not on correct footing in the way it has considered the provision of Section 3 of the Ordinance and there upon in holding that provision of Section 3 of the Ordinance "bars the application of the provision of the PRB and provides for steps only under the provisions of the Ordinance" and that only the law, rules and regulations relating to the matters, other than the disciplinary matters, including service conditions of police force have been kept by the second part of Section 3 of the Ordinance outside the operation of the overriding provision as in the first of Section 3 of the Ordinance appears to be of substance and that AAT was not correct in considering the provision of section 3 of the Ordinance in the manner it did.

14. There is other aspect of the matter. The AT was of the view that Superintendent of Police, Khulna under Regulations No. 858(a)(1)(iv) of the PRB could only censure or reprimand the respondent and that he was incompetent to make an order of dismissal in respect of the Respondent. As it appears to us the AT has arrived at the said view without taking notice that provision of 858 (a)(2) empowers the Superintendent to award a police personnel like the Respondent any punishment which may be awarded to a police personnel like the Respondent by the Inspector General or Deputy Inspector General under Regulation No. 858(a)(1) of PRB. Under Regulation No. 858(a)(1) the Inspector General of Police may amongst other dismiss or remove any police officer of or below the rank of Inspector award to any such police, any one or more of the punishment as are in 858(a)(1)(i-iv). So it is seen from the provision of Regulation No. 858(a)(1) that punishment like dismissal or removal in respect of a police personnel like the Respondent, a Sub- Inspector of police, which can be awarded by the Inspector General of Police, can

also be awarded under Regulations No. 858(a)(2) by the Superintendent of Police. In that view of the matter we are of. the view that AT was quite in error in holding that Superintendent of Police can only award punishment in respect of the Respondent, Sub-Inspector of police, as are in regulations No. 858(a)(1)(iv) i.e. can only censure or reprimand.

15. In the light of our discussion herein above we find merit in this appeal. Accordingly the same is allowed. The judgment and order of the AAT is set aside. The order of dismissal in respect of the respondent is maintained.

SMZH

