



THE HIGH COURT OF SIKKIM : GANGTOK

WRIT PETITION (C) NO.19 OF 2004

In the matter of a petition under Article 226 of
the Constitution of India

and

in the matter of

ASI Driver Dhaney Rai,
Sikkim Armed Police,
Pangthang,
East Sikkim. **... Appellant**

Versus

1. Chief Secretary,
Government of Sikkim,
Tashiling Secretariat,
East Sikkim.
2. The Secretary,
Home Department,
Government of Sikkim,
Tashiling Secretariat,
East Sikkim.
3. The Director General of Police,
Police Head Quarters,
Gangtok,
East Sikkim.
4. The Commandant,
Sikkim Armed Police,
Pangthang,
East Sikkim.
5. Thakur Thapa,
Deputy Commandant,
Sikkim Armed Police,
Pangthang,
East Sikkim.
6. Akshay Sachdeva, I.P.S.
Deputy Commandant,
Sikkim Armed Police,
Pangthang,
East Sikkim. **... Respondents**

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For the appellant : Messrs N. B. Khatiwada,
Narendra Rai and Jyoti
Kharga, Advocates.

For the respondents no.1 to 6: J. B. Pradhan, Government
Advocate.

**PRESENT : THE HON'BLE SHRI JUSTICE R. K. PATRA, CHIEF JUSTICE
THE HON'BLE SHRI JUSTICE N. SURJAMANI SINGH, JUDGE**

Date of judgment : 7th October, 2004.

J U D G M E N T

R. K. PATRA, C.J.

By this writ petition the petitioner seeks quashing of the memorandum no.1780/SAP/2004 dated 8.7.2004 (annexure PIV) proposing to hold an enquiry against him under Rule 7 of the Sikkim Police Force (Discipline & Appeal) Rules, 1989 read with the Amendment Rules, 1995. According to the petitioner, the article of charge proposed to be enquired into is "materially and substantially the same charge" which was the subject matter of the departmental enquiry conducted pursuant to memorandum no.2102/SAP/2003 dated 14.3.2003 (annexure PII) which was closed and therefore the disciplinary authority has no power to re-open it.

2. In the counter-affidavit filed on behalf of the disciplinary authority (respondent no.4) it has been contended that departmental enquiry was held vide memorandum no.2102/SAP/2003 dated 14.3.2003 (annexure PII) on the basis of a complaint received from the

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public of Bojoghari, East Sikkim to the effect that the petitioner obtained certificate of identification by fraudulent means by posing himself as the son of Kirti Raj Rai of Naitam, East Sikkim. During the said enquiry, it came to light from his service records that he is the son of LATE BAL BAHADUR RAI and not that of Kirti Raj Rai as alleged in the public complaint. It was further revealed in the inquiry that he obtained the certificate of identification by describing himself as the son of LATE BAL BIR RAI and grandson of late Kirti Raj Rai of Naitam. In view of emergence of the aforesaid new facts, it was considered that they necessitate fresh inquiry and accordingly the earlier departmental proceeding was dropped and a fresh departmental enquiry is proposed to be held as per the impugned memorandum at annexure PIV.

3. Learned counsel for the petitioner by referring of the averments made in paragraph 18 of the writ petition submitted that the subject matter of charge in both the proceedings is "materially and substantially" the same and once the earlier departmental enquiry was closed the disciplinary authority has no legal authority or power to re-open it for fresh inquiry by appointing a different enquiry officer.

4. Law is well-settled that if a departmental enquiry is closed by exonerating a delinquent on the merits no


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further enquiry can be commenced against him on the self-same charge but if the enquiry is closed on some ground other than the merits, there is no bar for the disciplinary authority to start fresh proceedings in respect of the same charge or different charge. If any authority is required, one may profitably refer to the decision of the Supreme Court in Anand Narain Shukla vs. State of Madhya Pradesh AIR 1979 SC 1923.

5. In order to get the hang of the issue involved, it is relevant to examine the gravamen of the charge in the first departmental enquiry conducted vide memorandum no.2102/SAP/2003 dated 14.3.2003 (annexure PII). The subject matter of charge in that enquiry was that the petitioner by giving false information i.e. posing himself as the son of one Kirti Raj Rai obtained certificate of identification from the District Collector in the year 1991. In the present enquiry, the gravamen of the charge is that he obtained a false certificate of identification for himself by influencing late Kirti Bahadur Rai of Naitam, East Sikkim to falsely represent himself as his grandfather and father of LATE BAL BIR RAI whereas in his service records he has described himself as the son of LATE BAL BAHADUR RAI with permanent address as resident of Gumba Hatta, 10th Mile, Kalimpong, West Bengal.

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On bare perusal of the aforesaid two charges, we have no hesitation to hold that the first charge is not the same as that of the second charge. The second charge is quite different from the first charge *inasmuch* as the gravamen of second charge is that the petitioner in the year 1991 obtained false certificate of identification portraying late Kirti Bahadur Rai of Naitam as his grandfather and LATE BAL BIR RAI as his father. In his application dated 16.12.1978 for the post of driver (annexure R1) he stated BAL BAHADUR RAI as his father's name and not BAL BIR RAI as mentioned in the certificate of identification. Counsel for the petitioner in his submission tried to explain the discrepancies found in different documents. He submitted that the petitioner's father was also known by the name of BAL BAHADUR RAI as well as BAL BIR RAI. Learned Government Advocate on the other hand disputed the aforesaid submission. According to him that Kirti Bir Rai of Naitam, East Sikkim has only two sons who are both living, one of them as a Panchayat member and other son whose name is BAL BAHADUR RAI who is employed in the Sikkim Armed Police. We need not delve into rival factual submissions of counsel for parties at this stage because those facts are the subject matter of the impugned proposed enquiry.

6. For the reasons stated above, the gravamen of the impugned charge being not the same or materially same




as that of the first charge we do not find any legal bar for the enquiry proposed to be held pursuant to the memorandum no. 1780/SAP/2004 dated 8.7.2004.

7. In the result, there is no merit in this writ petition which is accordingly dismissed. No costs.

8. With the dismissal of the writ petition the interlocutory applications (C.M.A. no. 61 of 2004 and C.M.A. no. 63 of 2004) stand disposed.


(**R. K. Patra**)
Chief Justice
07.10.2004

I agree.


(**N. Surjamani Singh**)
Judge
07.10.2004

Dictation taken
&
typed by me
Dipak Saha