
(2007) 12 CAL CK 0033
In the Calcutta High Court
Case No : W.P.C.T. No. 784 of 2006

Amal Chowdhury

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 06-12-2007

Acts Referred:

Central Civil Services (Conduct) Rules, 1964 — Rule 3(1)
Constitution of India, 1950 — Article 226, 227

Citation : (2008) 1 CALLT 319 : (2008) 117 FLR 846

Hon'ble Judges : Pratap Kumar Ray, J;Prasenjit Mandal, J

Bench : Division Bench

Advocate : Arunavo Ghosh and Swapan Banerjee, for the Appellant;Ashoke Kumar Das Adhikary and Sudipta Panda, for the Respondent

Final Decision : Dismissed

Judgement

Pratap Kumar Ray, J.—Let affidavit filed by the respondents be kept with the record.

Heard the learned Advocates appearing for the parties.

2. This writ application has been moved under Articles 226/227 of the Constitution of India assailing the order of Central Administrative Tribunal, Calcutta Bench dated 25th September, 2006 passed in O.A. No. 186 of 1996. By the impugned order, Tribunal rejected the application which was moved assailing the final order of dismissal departmental proceeding.

3. The writ petitioner admittedly was served with a copy of charge sheet to face the departmental proceeding on the factual charge of suppression of actual date of birth and furnishing of a false date of birth to gain the service. The charge as framed reads such:

...that Shri Amal Chowdhury was appointed as Sepoy w.e.f. 12.7.76.

That the time of his appointment in Custom House, Calcutta as Sepoy Shri

Chowdhury suppressed his actual date of birth and furnished a false date of birth inasmuch as he produced his 1975 Higher Secondary Supplementary Examination Admit Card which indicated his date of birth as 25.10.54, whereas he suppressed his actual date of birth which is 25.3.42 recorded in the Board of Secondary Education during his earlier appearance in School Final Examination in the year 1962, 1963 & 1964 and whereas the date of birth of his youngest brother, Shri Sadananda Chowdhury is 25.8.46 as per his S.F. Certificate. On the strength of the said false date of birth Shri Chowdhury established his eligibility and illegally got his appointment as Sepoy w.e.f. 12.7.76 when he was actually overaged and not eligible for such appointment. These acts of Shri Chowdhury reflect his gross misconduct.

Shri Chowdhury thus acted in a manner highly unbecoming of a Government servant and contravened the provisions of Sub-rule (iii) of Rule 3(1) of Central Civil Services (Conduct) Rules, 1964.

4. The disciplinary authority got the documents from the West Bengal Board of Secondary Education, who confirmed that the date of birth of the petitioner as recorded in his Admit Card issued due to his appearance first time in the year 1962 in the Board's Examination as 25th March, 1942. It was informed by the Board further that the petitioner subsequently appeared in the year 1963-64 in the Board's Examination by mentioning the same date of birth and being unsuccessful in the said examination, the petitioner again appeared in the Higher Secondary Examination (Supplementary) in the year 1975 disclosing his date of birth as 25th October, 1954. On assessing those documents, the Board certified that the date of birth of delinquent should be considered as 25th March, 1942 when he first appeared in the year 1962 in the Board's examination disclosing it. In the departmental proceeding the delinquent got all opportunities of hearing. The Xerox copies of the original documents were annexed with the charge-sheet and it was duly accepted by the delinquent. The delinquent's own younger brother one Shri Sadananda Chowdhury submitted a written complaint disclosing the fact of suppression of date of birth by his elder brother and in such complaint Shri Chowdhury annexed his School Final Examination certificate to prove his date of birth as 25th August, 1946. So far as the document as submitted by the delinquent's younger brother to contend that when younger brother's date of birth was 25th August, 1946, naturally delinquent elder brother's date of birth should not be 25th October, 1954, such contention has not denied by the delinquent as it appears from his letter dated 24th February, 1992 annexed at page 45 of this application wherein in fourth paragraph of this letter it was simply contended that due to family quarrel his younger brother filed such an application. The delinquent did not ask to cross examine the brother and did not file any application to that effect. The Board's original certificate was lost from the file when a duplicate copy of the same duly authenticated by the Board was further sent to the disciplinary authority, copy of which also was served upon the delinquent.

5. Considering all the relevant materials the disciplinary authority held that the charge was proved on account of false information manipulating date of birth and suppression of the original one and thereby imposed a punishment of dismissal from service, a major penalty by the decision dated 7th June, 1995. This order of disciplinary authority became the subject matter of challenge before the Central Administrative Tribunal. The learned Tribunal rejected the application by holding, inter alia, that the delinquent got every opportunity and as the delinquent got xerox copies of all the documents, there was no case of prejudice. With that view, the original application filed before the Central Administrative Tribunal was dismissed.

6. This writ application has been moved by the delinquent-petitioner. The learned Advocate for the petitioner submits that as the original certificate of the Board was not produced, enquiry was vitiated. We cannot accept such argument as advanced for the simple reason that the procedure in a departmental proceeding is not alike to a proceeding in civil suit or criminal proceeding wherein all steps as provided in the CPC and/or Cr. PC are required to be followed. Furthermore, we are of the view that in a departmental proceeding preponderance of probability is the main guiding factor to assess the evidentiary value of any document and it does not require a strict proof thereof. Reliance may be placed to the Judgment passed in the case Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya, etc., . So far as the original document, namely, certificate of the Board, it is on record that same was inspected by the delinquent and thereafter it was lost from the file and, as such, the disciplinary authority wanted an authenticated duplicate copy of the original document from the said Board and in response thereof that was supplied. Copy of the said xerox copy was also served upon the delinquent. From the record it appears that the delinquent's own younger brother disputed the date of birth as recorded in the service record of delinquent by producing his School Final Examination Certificate as a proof of his date of birth. Considering that document applying the test of preponderance of probabilities thereof and in view of the conduct of the delinquent as he did not cross-examine his own brother and declined to participate in the departmental proceeding, the disciplinary authority passed a decision of dismissal from service, by holding that charge was proved.

7. Having regard to all the material facts, we are of the view that the delinquent did not suffer any prejudice so far as the fair procedure of the departmental proceeding is concerned. Mere non-production of the original document of the said Board but authenticated duplicate copy of the said document as produced, ipso facto will not vitiate the departmental proceeding. No challenge made on such document and its authenticities. The petitioner brother's Contention also was not challenged save and except a case of family quarrel as urged.

8. In that view of the matter, we are of the view that there was no breach of principle of natural justice to complete the departmental proceeding. Furthermore, it is a settled legal position that even a mere breach of natural

justice unless some one is prejudiced by such breach, could not be considered as a ground to quash the departmental proceeding on exercising the power of judicial review. Now, the law has been settled that natural justice principle is contoured with the prejudice theory and until and unless some one satisfies the Court about the prejudice for breach even if in the domain of natural justice principle, no remedy is available. Reliance may be placed to the Judgment passed in the case Divisional Manager, Plantation Division, Andaman and Nicobar Islands Vs. Munnu Barrick and Others, . In the said case the Apex Court dealt with the matter in details on prejudice theory and useless formality theory which are the two riders as are required to be satisfied before granting any relief on allegation of violation of natural justice principle. The relevant paragraphs of the said Judgment being 17, 19 and 21 read such:

17. The principles of natural justice cannot be put in a straitjacket formula. It must be viewed with flexibility. In a given case, where a deviation takes place as regards compliance with the principles of natural justice, the court may insist upon proof of prejudice before setting aside the order impugned before it.

19. In Karunakar this Court has clearly held that the employee must show sufferance of prejudice by non-obtaining a copy of the enquiry report.

21. Referring to a large number of decisions, it was observed that a court will refrain from interfering with an order, having regard to "useless formality theory", in a given case. It was opined: (SCC p. 578, para 27)

27. It is to be noted that at no stage the employee pleaded prejudice. Bath learned single Judge and the Division Bench proceeded on the basis that there was no compliance with the requirement of Regulation 6(18) and, therefore, prejudice was caused. In view of the finding recorded supra that Regulation 6(18) has not been correctly interpreted the conclusions regarding prejudice are indefensible.

9. While deciding the said issue, the Apex Court considered the earlier Judgments, namely, Bar Council of India Vs. High Court of Kerala, , Managing Director, Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., and the Judgment passed in the case Canara Bank and Others Vs. Shri Debasis Das and Others, . In the case Bar Council of India (supra) the Apex Court held that the natural justice principle is not a straitjacket formula and flexibility of such application is permissible particularly in the angle of prejudice theory. In the case B. Karunakar (supra) the Apex Court held that the delinquent must show sufferance of prejudice by breach of natural justice as alleged.

10. In the instant case, it is an admitted fact that Board's original documents and other documents as relied not only was inspected, but copy of such was received by the delinquent including the documents under annexure (iii) of the charge-sheet. Such acceptance of the xerox copy from original document was properly endorsed by the delinquent as it appears from the record as produced before us today. The relevant portion of that reads such:

Inspected the original documents against which charge has been framed as shown in the annexure III (I-II) of charge sheet and received the xerox copies of all those documents. Received - A. Chowdhury 28.12.92.

11. Considering the balance of the entire scenario, hence we are of the view that there was no breach of principle of natural justice and even if there was any technicality of non-supply of original document of the Board aforesaid as the delinquent did not suffer any prejudice, natural justice principle has no applicability herein. We are not inclined to interfere with the impugned decision of the learned Tribunal below.

The writ application accordingly stands dismissed. There will be no order as to costs.

Prasenjit Mandal, J.

12. I agree.