

(2012) 05 CAL CK 0027

In the Calcutta High Court

Case No : Writ Petition No. 1237 (W) of 2007

Ambrish Prasad Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 02-05-2012

Acts Referred:

Constitution of India, 1950 — Article 136, 226, 227
Penal Code, 1860 (IPC) — Section 120B, 302

Citation : (2012) 3 CALLT 196

Hon'ble Judges : Debasish Kar Gupta, J

Bench : Single Bench

Advocate : Achin Kumar Majumdar, for the Appellant;

Judgement

Debasish Kar Gupta, J.—This writ application is filed by the petitioner assailing the order of suspension as communicated under D.O. No. 65/92 dated February 6, 1992. charge sheet issued under memo no. 50/PRO/153/03/92 dated March 3, 1992, inquiry report dated September 1, 1992, show-cause notice dated September 15, 1992, order of punishment issued under memo No. R.O. 161/03 dated March 4, 2003 and the order passed by the statutory appellate authority issued under memo No. S.C. 30/123/03 (APS) dated September 9, 2003. The petitioner was working for gain in the post of constable of Railway Protection Force, Eastern Railway and he was posted at Railway Protection Force, West Coast Asansol at the material point of time. By an order passed under memo No. D.O. 65/92 dated February 6, 1992 (hereinafter referred as the said order of suspension), the petitioner was placed under suspension, amongst other constables. A charge-sheet was issued under memo No. SO/PRO/153/03/92 dated March 3, 1992 (hereinafter referred to the said charge-sheet) proposing to hold an enquiry against him under Rule 153 of the Railway Protection Force Rules, 1987. The name of the respondent No.4 was disclosed in the said charge sheet fixing the first date of enquiry on March 9, 1992. The petitioner submitted a representation dated April 28, 1992 to the respondent No. 4 requesting him to supply 17 documents to enable him to submit reply to the said charge sheet. On

receipt of the above representation, the respondent No. 4 decided to make the documents mentioned in the above representation available to the petitioner in due course. The petitioner further submitted a statement of defence dated June 12, 1992 to the respondent No. 4 refuting all the charges levelled against him.

2. After conducting an enquiry in connection with the said charge-sheet, the respondent No. 4 submitted his enquiry report dated September 1, 1992 (hereinafter referred to as the said enquiry report) to the disciplinary authority. The Divisional Security Commissioner, Asansol, Eastern Railway served copy of the said enquiry report to the petitioner under his memo No. SO/PRO/153/03/92 dated September 15, 1992 to enable him to submit a representation to the same before the disciplinary authority. The respondent No. 3 in his capacity of disciplinary authority passed the impugned order of punishment under RO/161/03 dated March 4, 2003 (hereinafter referred to as the said order of punishment) removing the petitioner from the service of constable Railway Protection Force, Eastern Railway.

3. The petitioner preferred an appeal dated September 9, 2003. The respondent No.3 sat tight over the matter. The petitioner filed an application under Article 226 of the Constitution of India in the matter of Shri Ambrish Prasad Singh v. Union of India bearing W.P. No. 11997 (W) of 2003 challenging the aforesaid inaction on the part of the respondent No.3. During the hearing of the above writ application the respondent authorities produced an order passed by the respondent No.2 under memo No. SC. 30/213/Appeal/03 (ASP) dated September 9, 2003 (hereinafter referred to as the said order passed by the appellate authority) before the Court and the writ application was disposed of on December 4, 2006 giving liberty to the petitioner to take steps in accordance with law against the said order passed by the appellate authority. Necessary to point out that by virtue of the said order passed by the appellate authority the said order of punishment was set aside and the petitioner was awarded punishment of compulsory retirement from the date he had been removed from the service.

4. It is submitted by Mr. A.K. Majumder, learned Advocate appearing on behalf of the petitioner, that the said charge sheet was issued by the petitioner with closed mind. According to him, the above charge-sheet was issued initiating a disciplinary proceeding against the petitioner disclosing the name of the enquiry officer in the said charge-sheet without giving him an opportunity to give reply to the said charge sheet. It is further submitted by Mr. Majumder that from the language of the charge-sheet it appears that the respondent authority had drawn a positive conclusion against the petitioner and thereafter started the disciplinary proceeding in question against him.

5. It is also submitted by Mr. Majumder that the respondent No. 4 conducted the enquiry proceeding against the petitioner violating the principles of natural justice. According to him, the necessary documents were not supplied by the respondent No. 4 to the petitioner to deprive him from defending the case

properly in the enquiry proceeding. According to him, the respondent No. 4 collected evidence behind the back of the petitioner allowing some witnesses to adduce evidences without disclosing their names in the charge-sheet. It also submitted by Mr. Majumder that the enquiry officer relied upon some documents in preparing his report without those documents being corroborated by proper witnesses.

6. It is further submitted by Mr. Majumder that the disciplinary authority passed the order of punishment without considering the representation of the petitioner to the enquiry report properly. It is also submitted by Mr. Majumder that the respondent No. 2 passed the order dated September 9, 2003 in violation of the provisions of Rule 217.3 of the Railway Protection Force Rules, 1987 and without applying his mind to the grounds taken by the petitioner in his statutory appeal.

7. I have heard the learned counsel appearing for the petitioner at length and I have given my anxious consideration to the facts and circumstances of this case. On a bare reading of the said charge-sheet it is evident that the name of the respondent No. 4 was mentioned as enquiry officer in the said charge sheet and the first date of enquiry was also fixed in the said charge-sheet. It is settled proposition of law that the disciplinary authority has to apply its mind upon receipt of reply to the charge sheet as to whether a further enquiry in the matter is called for. In the event upon deliberations and due considerations it is in the affirmative, the enquiry follows but not otherwise. Reference may be made to the decision of *State of Punjab v. B.K. Khanna*, reported in (2001) 2 SCC 330 and the relevant portions of the above decision are quoted below:

34. The High Court while delving into the issue went into the factum of announcement of the Chief Minister in regard to appointment of an enquiry officer to substantiate the frame of mind of the authorities and thus depicting bias what bias means has already been dealt with by us earlier in this judgment, as such it does not require any further dilation but the factum of announcement has been taken note of as an illustration to a mindset viz.: the inquiry shall proceed irrespective of the reply - is it an indication of a free and fair attitude towards the officer concerned? The answer cannot possibly be in the affirmative. It is well settled in service jurisprudence that the authority concerned has to apply its mind upon receipt of reply to the charge-sheet or show-cause as the case may be as to whether a further inquiry is called for. In the event upon deliberations and due considerations it is in the affirmative - the inquiry follows but not otherwise and it is this part of service jurisprudence on which reliance was placed by Mr. Subramaniam and on that score, strongly criticised the conduct of the respondents (sic appellants) herein and accused them of being biased. We do find some justification in such a criticism upon consideration of the materials on record.

8. That apart, upon consideration of the statement of allegation and statement of charges I find that the respondent authority arrived at a positive and firm view that since the theft of 41 Nos. GI Pipes took place at Asansol Jn. Home Signal in

brought day light on February 5, 1992. all the five staff including the petitioner, had connived in the same. In other wards, the respondent authority had really drawn a positive conclusion against the petitioner and thereafter started a disciplinary proceeding by issuing charge sheet in question only to afford him an opportunity to dispel the conclusion drawn against him. Such an action cannot be sustained in law in view of the settled principles of law decided in the matter of Surendra Chandra Das v. State of West Bengal, reported in 1981 (3) SLR 737 and the relevant portions of the above decision are quoted below:

5. After giving my anxious consideration to the submissions of the respective Counsels on this aspect, it appears to me that whether a charge sheet has been issued with a closed mind or not cannot always be decided by a mere reference to the charge sheet itself. The language used in the charge-sheet certainly renders a very important indiction in the matter but other attending circumstances may at times throw light on the real intent and import of the charge-sheet. It is true that the charges levelled against a delinquent officer must be clear and unambiguous, but at the same time the charge sheet should not be issued with a biased and closed mind. The real purpose of initiating a disciplinary proceeding is to enquire as to whether the facts, prima facie ascertained against a delinquent officer and to form a positive and firm view about his complicity in the alleged misconduct and thereafter to give him an opportunity to dispel the conclusion already drawn against him. If therefore from the attending circumstances and also from the language of the charge sheet. It appears that the disciplinary authority has really drawn a positive conclusion against a delinquent officer and thereafter has started a disciplinary proceeding by issuing a charge sheet only to afford him an opportunity to dispel the conclusion drawn against him, then such disciplinary proceeding must be held to be bad, being vitiated by bias and a closed mind and having been all intents and purposes to started complete a formality in law.

9. In view of the above the said charge-sheet is liable to be set aside.

10. From the said charge-sheet and the said enquiry report I find that names of 11 witnesses were disclosed in the said charge-sheet to prove the charges against the petitioner and the list of documents disclosed in the said charge sheet seven documents to prove the charges against the petitioner. But, from the said enquiry report it appears that nine witnesses were examined and 28 documents were taken into consideration to come to a finding in the enquiry proceeding. It a settled proposition of law that the disciplinary authority cannot rely upon an enquiry report which is prepared placing reliance on additional documents and additional witnesses without disclosing those documents and witnesses in the charge-sheet without supplying the copies of those documents to the petitioner. Reference may be made to the decision of Committee of Management, Kisan Degree College Vs. Shambhu Saran Pandey and Others, the relevant portion of the decision are quoted below:

5. On the facts and circumstances, we are of the view that at the earliest the

respondent sought for the inspection of documents mentioned in the charge sheet and relied on by the appellant. It is settled law that after the charge-sheet with necessary particulars, the specific averments in respect of the charge shall be made. If the department or the management seeks to rely on any documents in proof of the charge, the principles of natural justice require that such copies of those documents need to be supplied to the delinquent. If the documents are voluminous and cannot be supplied to the delinquent, an opportunity has got to be given to him for inspection of the documents. It would be open to the delinquent to obtain appropriate extracts at his own expense. If that opportunity was not given, it would violate the principles of natural justice. At the enquiry, if the delinquent seeks to support his defence with reference to any of the documents in the custody of the management or the department, then the documents either may be summoned or copies thereof may be given at his request and cost of the delinquent. If he seeks to cross-examine the witnesses examined in proof of the charge he should be given the opportunity to cross-examine him. In case he wants to examine his witness or himself to rebut the charge, that opportunity should be given. In this case, at the earliest, the delinquent sought for inspection of the documents. It is now admitted in the affidavits filed in this Court and in the letter written by the enquiry officer, that some of the documents were seized by the police after the murder of the Manager of the appellant-institution on 31.7.1980 for investigation. In that case the respondent was also one of the accused charged for the offences u/s 302 read with section 120-B IPC. It is now an admitted fact that in Sessions Trial No. 228 of 1981 dated 31.7.1986 he was convicted for the said offence and was sentenced to undergo imprisonment for life. It would appear that he filed an appeal in the High Court and bail was granted to him.

(Emphasis supplied)

10. In view of the above settled principles of law the said enquiry report is liable to be set aside.

11. After considering the said order of punishment I find that the respondent No. 3 did not take into consideration that the documents disclosed in the charge sheet were not given to the petitioner and additional documents and additional documents as also additional witnesses were entertained by the enquiry officer. Therefore, the decision making process of the respondent No. 3 in passing the impugned order of punishment suffered from procedural impropriety.

12. After considering the said order passed by the respondent No. 2 in connection with the statutory appeal of the petitioner, I find that though the petitioner had incorporated the aforesaid grounds in his statutory appeal dated March 21, 2003, the respondent no. 2 did not take into consideration any of the aforesaid grounds while disposing of the appeal of the petitioner. It is the settled principles of law that in the event the arguable point raised in an appeal are not taken up for consideration by the appellate authority, the final order passed in that appeal vitiates on the ground of procedural impropriety. Reference may be

made to the decision of Bharat Raja Vs. The Union of India (UOI) and Others, and the relevant portion of the above decision are quoted below:

9. Let us now examine the question as to whether it was incumbent on the Central Government to give any reason for its decision on review. It was argued that the very exercise of judicial or quasi Judicial powers in the case of a tribunal entailed upon it an obligation to give reasons for arriving at a decision for or against a party. The decisions of tribunals in India are subject to the supervisory powers of the High Courts under Article 227 of the Constitution and of appellate powers of this Court under Article 136. It goes without saying that both the High Court and this Court are placed under a great disadvantage if no reasons are given and the revision is dismissed curtly by the use of the Single word "rejected", or, "dismissed". In such a case, this Court can probably only exercise its appellate jurisdiction satisfactorily by examining the entire records of the case and after giving a hearing come to its conclusion on the merits of the appeal. This will certainly be a very unsatisfactory method of dealing with the appeal. Ordinarily, in a case like this, if the State Government given sufficient reasons for accepting the application of one party and rejecting that of the others, as it must, and the Central Government adopts the reasons given are sufficient for the purpose of upholding the decision. But when the reasons given in the order of the State Government are scrappy or nebulous and the Central Government makes no attempt to clarify the same, this Court, in appeal may have to examine the case de novo without anybody being the wiser for the review by the Central Government. If the State Government given a number of reasons some of which are good and some are not and the Central Government merely endorses the order of the State Government without specifying those reasons which according to it are sufficient to uphold the order of the State Government, this Court, in appeal, may find it difficult to ascertain which are the grounds which weighed with the Central Government in upholding the order of the State Government. In such circumstances, what is known as a "speaking order" is called for.

13. In view of the discussions and observations made hereinabove the said charge sheet dated March 3, 1992. the said enquiry report dated September 1, 1992, said order of punishment dated March 4, 2003 and the said order passed by the appellate authority are quashed and set aside. Since it appears from the materials on record that the petitioner already attained the age of retirement on superannuation, the respondent authority is directed to release all terminal benefits in favour of the petitioner in accordance with law within a period of two months from the date of communication of this order taking into consideration his date of birth for calculating the age of his retirement on superannuation.

14. This writ application is thus, disposed of. There will be, however, no order as costs.

Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.