
(1955) 08 CAL CK 0022
In the Calcutta High Court
Case No : Civil Rule No. 3560 of 1954

Ashutosh Das

APPELLANT

Vs

State of West Bengal and Another

RESPONDENT

Date of Decision : 01-08-1955

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Citation : AIR 1956 Cal 278 : 60 CWN 106

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : Binayak Nath Banerjee and Arun Kishore Das Gupta, for the Appellant; Nirmal Chandra Chakraborty and Smriti Kumar Roy Choudhary, for the Respondent

Judgement

Sinha, J.—The petitioner was appointed in 1945 as a Storeman in the office of the Regional Controller of Procurement. In April, 1951 he was promoted to the rank of a junior assessor and at the relevant date was posted as a junior assessor in charge of the main procurement godown at Bhatar, Burdwan, under the Government of West Bengal, Department of Food, Relief and Supply (Food Branch office of the A.R.C.P. Burdwan. On or about 15-6-1954, the petitioner was served with a charge sheet in which the charge was that he had issued W.Q.S. certificates for a certain amount or "Aman" paddy in favour of the Chief agent Messrs. Shaw Wallace and Company, as stocks purchased from Nasigram centre, although the stock was purchased from Bhatar.

What happened was that some of the bags contained markings of Nasigram but the authorities considered that the original Bhatar marking's had been obliterated and the Nasigram markings Were illegally stenciled on the bags. The charge sheet accuses the petitioner of either actively conniving with the dealer or showing gross negligence. On or about 30-6-1954, the petitioner showed cause. On or about 1-7-1954 the petitioner was served with a notice by the A.R.C.P. Burdwan, to the effect that an enquiry will be held on 9-7-1954.

There was an enquiry and various witnesses were called and cross-examined by the petitioner. On 28-7-1954 the A.R.C.P. as an enquiring officer submitted, his report to the Deputy Director of Procurement and Supply in which he found the petitioner guilty of gross negligence but recommended that he should be demoted. There are two passages in his report which are the foundation of this application and I will now proceed to consider them. The first passage runs as follows:

"I had also found during my visit to Bhatar on 22-5-1954 that the bags on the top layer almost invariably had the markings changed whereas bags below generally had the markings of Bhatar although there might be one or two bags with changed markings in the lower layers. This perhaps indicates that after the stacking had been made the markings were changed from above".

2. Here the enquiring officer was considering whether the markings had been changed inside the godown after they were stacked, or before the bags entered the godown. In doing so, he relied on certain evidence placed before him, but he also relied on the evidence of himself. It is to be noted that the petitioner denied this fact. In his show cause petition, he had said that so far as the bottom layers are concerned, they contained quite a large number of Nasigram markings. It is clear that the enquiring officer not only imported his personal knowledge, but treated it as part of the evidence but which the petitioner had no opportunity of testing.

3. The next passage in the report which is relevant runs as follows:

"These changes were made after the bags had been stacked. That is why the changed markings were found mostly on the top layers. The menials, however, had denied having changed the marks in the godown when I had asked them during my visit to the M.P.G. on 22-5-1954".

4. Here again, the enquiring officer relies on the evidence of certain menials, evidence which was not taken at the enquiry but taken before it. He does not mention the particulars as to which menials he meant or referred to and of course, no such menials were produced at the enquiry. The only thing that can be said in this instance is that the evidence of the menials referred to, is perhaps in favour of the petitioner. In my opinion, however, that does not excuse the incorporation of such evidence in the report.

5. The question as to whether the enquiring officer can rely on his own evidence is a matter which I have considered in several cases, viz. "Bejoy Chandra v. State of West Bengal" 58 Cal WN 983 (A); "Shiva Nandan Sinha v. State of West Bengal" 59 Cal WN 794 (B); and Amiya Prosad Das Gupta Vs. Director of Procurement and Supply and Another, (C). In some of these cases, the enquiring officer had actually given evidence but in others he had relied on his own testimony.

I have held that this is contrary to the Rules of natural justice, because a man

who is entrusted with the enquiry cannot, both be a judge and a witness. It is, therefore, unnecessary to reiterate the principles laid down in the above cases viz., that while there was no objection to an official having personal knowledge of the matter being entrusted with the enquiry, he cannot be permitted to import his personal knowledge and treat it as evidence in deciding the matter:

6. The learned Government Pleader argues that it was the common case that certain bags on the top layer of the stock had Nasigram markings and therefore the enquiring officer in importing his personal knowledge of an admitted fact had done nothing wrong, and that in any event, it has not prejudiced the petitioner. I regret to say that I cannot accept this argument. It may be that the petitioner had not contested the fact that some of the bags bore Nasigram markings, but the way these markings came to be effected and the responsibility of the petitioner in respect thereof, were all disputed questions of fact and constituted the issues in the enquiry.

Under the circumstances, it cannot be said that the petitioner was not in any way prejudiced. It is not disputed that the enquiry was conducted according to Rule 55 of the C.S.C.C.A. Rules read with Article 311 of the Constitution. If that be so, in my opinion, the enquiry has not been made in accordance with law, and the petitioner did not have a reasonable opportunity of defending himself. But the matter does not rest here. It so happened that after the report was made to the D.P.S. recommending that the petitioner should be demoted, that officer did not agree with the recommendation.

On 20-8-1954, the petitioner was directed to meet the D.P.S. and the petitioner accordingly met the D.P.S. who went into the matter himself. It is a matter of dispute as to what happened at that conference. But I shall accept what is stated in affidavit in opposition filed in this matter (Para 13). It is stated there that at the conference the petitioner had suggested that one Adwait Charan Choudhury, a local influential man, and the Inspector-Assessor, had got up the case against the petitioner.

It is admitted that the D. P. S. thereafter contacted this Adwaita Charan Choudhury and tried to verify the truth or otherwise of this allegation, behind the back of the petitioner, and came to the conclusion that the petitioner's allegation was untrue. It is also admitted that the D. P. S. contacted one Tarasankar Bhattacharjee who had actually given evidence before the enquiry committee, and in this instance also, it was done behind the back of the petitioner. The explanation given is that Tarasankar was contacted to find out whether the markings had been made by him and that it did not concern the petitioner. This, to my mind, is a surprising explanation.

If Tarasankar had been guilty of marking the bags, the petitioner would be to that extent exonerated from, the blame. In any event, when the enquiry was to determine as to who had done it and the authorities themselves were charging somebody who was a witness to the enquiry with having a hand in it, such a

witness should not have been heard behind the back of the petitioner. The petitioner does not know and had no opportunity of knowing what these two persons had said to the D. P. S. behind his back, evidence which has admittedly influenced his decision.

In my opinion, therefore, the whole proceedings have been conducted against the rules of natural justice and also in a manner which gives rise to the conclusion that the petitioner had not been given a reasonable opportunity of meeting the accusation made against him and that the departmental enquiry was not held in accordance with the rules. It, is therefore unnecessary to deal with the second point made by Mr. Banerjee that the D. P. S. could not lawfully delegate the enquiry to the A. R. C. P. That is a point which might be decided in some other proceedings.

7. In the circumstances, this Rule must be made absolute. There will be a writ in the nature of certiorari quashing the order dated 2-11-1954 and there will be a writ in the nature of mandamus directing the respondents to forbear from giving effect to it. The petitioner must be put in the same position as if the order had not been made. It will not, however affect the order of suspension and if the authorities so like, they will be at liberty to proceed with the departmental enquiry de novo.

8. There will be no order for costs.