

(2021) 12 CAL CK 0066

In the Calcutta High Court

Case No : WPCT No. 124 Of 2014, IA NO: CAN/1/2018(Old No: CAN/7502 Of 2018)

Beauty Panja

APPELLANT

Vs

General Manager, Eastern Railway & Ors.

RESPONDENT

Date of Decision : 16-12-2021

Acts Referred:

Constitution Of India, 1950 — Article 226
Railway Servants (Discipline and Appeal) Rules, 1968 — Rule 9(a)(ii)
Railway Service Conduct Rules, 1966 — Rule 3(1)(i), 3(1)(ii), 3(1)(iii)]

Citation : (2021) 12 CAL CK 0066

Hon'ble Judges : Tapabrata Chakraborty, J; Sugato Majumdar, J

Bench : Division Bench

Advocate : Sandip Kumar Bhattacharya, Nirmalya Dasgupta, Anujit Biswas, Pallavi Pain, Rabindranath Bag, Soma Roy Choudhury

Final Decision : Disposed Of

Judgement

Sugato Majumdar, J

1. The instant writ petition has been preferred against the impugned order dated 31.12.2013 passed in OA No. 551 of 2012 by the Central Administrative Tribunal, Calcutta Bench.

2. In order to consider the question as to whether the order suffers from any infirmity requiring our interference, it may be just and proper to notice the relevant facts.

3. On 26/08/2005, while the petitioner was working in the post of Matron in Howrah Orthopedic Hospital, Eastern Railway, she was harassed and mentally tortured by the Chief Matron, namely, Smt. Sadhana Roy (in short, Sadhana) and such fact was duly reported to the authorities. On the same date Sadhana also lodged a complaint to the Officer-in- Charge, Howrah Police Station alleging inter alia that she had been assaulted by the petitioner. On the same day, another

joint petition was also submitted by sixty two staff of the Howrah Orthopedic Hospital, Eastern Railway against the petitioner alleging misbehavior. She was placed under suspension on 26/08/2005 itself. The suspension order was subsequently revoked by the respondent no.4 vide memo dated 24/01/2006. The petitioner was thereafter issued a charge sheet and on 07/09/2005 a punishment of compulsory retirement was imposed upon him. In revision the order of compulsory retirement was set aside by an order dated 20/6/2007 and she was reinstated with further direction to initiate proceedings from initial stage. In the said order it was also directed that the period starting from the date of effecting compulsory retirement to the date of reinstatement be treated as 'Dies Non'. More than four years thereafter and on the verge of retirement, the petitioner was charge sheeted for the second time vide memo dated 25/11/2011 issued by the respondent no.5 to which the petitioner replied on 17/12/2011. In the said proceeding, the enquiry officer submitted a report on 02/05/2012 to which the petitioner replied on 17/05/2012. Again a punishment of compulsory retirement was imposed upon the petitioner by the disciplinary authority with effect from 23/05/2012. The petitioner thereafter preferred a statutory appeal on 24/05/2012. By an order dated 30.05.2012, the Appellate Authority upheld the order of compulsory retirement. Aggrieved thereby, the petitioner preferred an original application before the Central Administrative Tribunal, Kolkata which was registered as OA No. 551 of 2012. Upon contested hearing the same was dismissed by the order impugned in this petition.

4. The first point argued by Mr. Bhattacharya was that the enquiry was conducted with a closed mind and with an ulterior motive to victimize the petitioner. The same charge sheet was issued for the second time without any application of mind and in a mechanical manner. There is no reason why after the order of de novo enquiry passed in revision on 20/06/2007, the disciplinary authority sat tight over the matter for more than four years and suddenly spurted into action and imposed the earlier punishment of compulsory retirement with effect from 23/05/2012, i.e., only eight days prior to her scheduled date of retirement on 31/05/2012. Such delay being unexplained, prejudice to the employee is writ large on the face of it. The delay is clearly attributable to the respondents and such delay maligns their actions. In support of such contention reliance has been placed upon the observations and decisions of the Supreme Court of India in the cases of *State of Madhya Pradesh vs Bani Singh* [1990 (Supp.) SCC 738], *State of Punjab vs Chaman Lal Goyal* [(1995) 2 SCC 570], *State of A.P vs N.Radhakishan* [(1998) 4 SCC 154].

5. It was further argued by Mr. Bhattacharya that the enquiry officer himself was the presenting officer. The said fact vindicates and reinforces the allegations of actual biasedness and a closed mind enquiry. The enquiry officer himself put all the questions to the petitioner on behalf of the disciplinary authority. Relying upon the ratio of *M. V. Bijlani vs. Union of India & Ors* [(2006) 5 SCC 88] and *State of U.P & Ors. Vs Saroj Kumar Sinha* [(2010) 2 SCC 772], it was argued that enquiry proceeding is quasi-judicial in nature where an enquiry officer

should act without any bias and shall come to conclusion on the basis of documents on record in impartial manner. In the instant case the whole proceeding is vitiated as the enquiry officer himself acted as a prosecutor throwing away all the canons of natural justice. Mr. Bhattacharya pointed out the deposition of the witness Sadhana who stated that 'as per the instruction of steno and guidance of Dr. U. Mukherjee, the written complaint was framed out against Beauty Panja'. The said statement was not taken into consideration by the enquiry officer while coming to the conclusion as regards the guilt of the petitioner. The entire disciplinary proceeding is a product of mala fide and colourable exercise of power to victimize the petitioner.

6. The next point argued by Mr. Bhattacharya was that there was a gross procedural irregularity in the disciplinary proceedings. The appointment of an Assistant Nursing Officer as an enquiry officer is de hors the rule 9 (a) (ii) of the Railway Servants (Discipline and Appeal) Rules, 1968. In view of such jurisdictional error the entire proceeding is non est in the eye of law. Reliance has been placed upon the judgments delivered in the cases of Pasupuleti Venkateswarlu vs The Motor & General Traders [(1975) 1 SCC 779] and Harshad Chimanlal Modi vs DLF Universal Ltd. & Anr. [(2005) 7 SCC 791].

7. Drawing the attention of this Court to the averments and annexures of an application for appropriate orders, being CAN 7502 of 2018 filed in connection with the writ petition, Mr. Bhattacharya submits that the pension booklet supplied to the petitioner was duly filled up and submitted to the authorities but the pensionary benefits including provident fund and gratuity have been withheld.

8. Per contra, Mr. Bag submitted that the genesis of disciplinary action against the petitioner is not only the complaint lodged by Sadhana but a mass petition which was signed by more than sixty staff. Disciplinary action was taken against the petitioner because her alleged acts were subversive to the discipline of the establishment and violative of Rule 3.1 [(i), (ii), (iii)]. Railway Service Conduct Rules, 1966. The initial inquiry was set aside on the ground that principles of natural justice were violated. Complying with the order in revision dated 20/06/2007, the petitioner was again charge sheeted and disciplinary action was initiated against her. She was served with copies all relevant documents; she was given hearing and opportunity to present her case; defense helper was provided to her and as such it cannot be said that there occurred any breach of the principles of natural justice and as such the learned Tribunal rightly did not interfere with the same.

9. Next it was argued by Mr. Bag that the enquiry officer may have put certain questions to the delinquent which is permissible under the Indian Evidence Act. Neither the petitioner nor her representative did raise any question in the enquiry against the procedure adopted by the enquiry officer nor as regards absence of presenting officer. Since principles of natural justice were followed, minor deviation from rules, if any, does not constitute any patent error warranting interference. In support of the arguments advanced, reliance was

placed upon the decisions in the cases of State Bank of Patiala & Ors vs. S. K. Sharma [(1996) 3 SCC 364] and B. C. Chaturvedi vs. Union of India [(1995) 6 SCC 749].

10. It was further argued by Mr. Bag that the competent authority quashed the enquiry proceeding on the ground that natural justice was violated but the petitioner was not exonerated of the charges. The petitioner also did not challenge the second charge-sheet but submitted reply and subjected herself to the jurisdiction of the authority without any challenge. The penalty of compulsory retirement has not caused any colossal financial loss to the petitioner. The punishment imposed is thus not disproportionate and as such the learned Tribunal rightly did not interfere.

11. Relying upon the ratio of the decisions in the cases of State of A.P vs. S. Sree Rama Rao [(1963) 3 SCR 25], State of A.P & Ors. Vs. Chitra Venkata Rao [(1976) 1 SCR 521] and Indian Oil Corporation & Anr. Vs Ashok Kumar Arora [(1997) 3 72] it was next argued by Mr. Bag that being a writ court, Hon'ble High Court has no jurisdiction to reappraise evidence tendered in the enquiry proceeding and it is not a court of appeal under Article 226 of the Constitution of India over a decision of an authority holding enquiry against a public servant. Therefore, evidentiary aspects of the enquiry cannot be reopened by the Hon'ble High Court and the reasoned order passed by the learned Tribunal cannot be interfered with.

12. We have heard the rival submissions and considered the materials on record.

13. In terms of the order dated 20/06/2007 issued by the Additional General Manager, service of the petitioner was restored with a direction to initiate the proceeding from the initial stage. The second charge memo dated 25/11/2011 was issued after lapse of more than four years. There is no explanation why it took more than four years to issue the second charge memo. The proposition of law that can be culled out from the decisions cited is that unexplained delay may create room for allegations of biasness, mala fide and misuse of power. However, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances and that delay causes prejudice to the charged officer unless it can be shown that he is to be blamed for the delay. Coming to the case in hand, delay for more than four years in issuing the second charge memo is unexplained. It is not a case that the whole exercise involved collection of voluminous evidences or documents or that the witnesses were far away or were not available. Only three documents were annexed to the charge memo namely medical report, report of the Chief Matron and joint petition made by the staff, which was used on the earlier occasion also. The learned Tribunal glossed over the said issue as urged and did not return any finding and accordingly did not exercise the jurisdiction vested upon it as the Court of first instance. Such practice is fraught with undesirable consequences.

14. There is no dispute as regards the proposition of law laid down by the

judgments cited on behalf of the respondents but they are distinguishable on facts. In the present case, the respondents have miserably failed to prove the alleged charges which could justify the punishment imposed. The expression "sufficiency of evidence" postulates existence of some evidence which links the charged officer with the misconduct alleged against him. In the instant case no such nexus stands established. No presenting officer was appointed. The enquiry officer herself cross-examined the witnesses with leading questions suggesting answers. It is not a case that the enquiry officer asked some questions for clarification or for eliciting the truth. The enquiry report does not reveal that there was any consideration of the oral testimony of Sadhana who stated that she framed the complaint against the petitioner under guidance of Dr. U. Mukherjee. The enquiry report contains:

"Although the other witnesses did not disclose anything, the reason is not known but fact remains that Smt. Beauty Panja is found guilty of the charges." (underlined for emphasis). The enquiry officer concluded that the petitioner is guilty of the charges on the basis of "relevant enquiry report" and report submitted by the authority concerned to the police. Nothing is there on record to show that either such reports were served upon the petitioner or produced in the enquiry proceeding so as to enable the petitioner to deal with the same. The enquiry officer, in our opinion, deviated from discharging quasi judicial function in proper manner and conducted and completed the enquiry in a perfunctory, unfair and biased manner. The enquiry officer considered extraneous materials without considering available materials in coming to the conclusion. The learned Tribunal proceeded being oblivious of such errors apparent on the face of record and as such a gross failure of justice has occasioned warranting interference of this Court.

15. For the reasons discussed above, the impugned order dated 31st December, 2013 passed by the learned Tribunal in OA 551 of 2012 is set aside. The charge sheet dated 25/11/ 2011, the enquiry report dated 02/05/2012, the final order passed by the disciplinary authority on 22/05/2012 and the order passed by the appellate authority on 30/05/2012 are quashed.

16. The respondents are directed to treat the petitioner to have retired on 31/05/2012 and to release all her pensionary benefits including provident fund, gratuity, leave salary, the arrears of pension and other admissible financial benefits, in accordance with law within a period of four weeks from the date of communication of this order.

17. The writ petition, being WPCT No. 124 of 2014 and the connected application, being CAN 7502 of 2018 are, accordingly, disposed of.

18. There shall, however, be no order as to costs.

19. 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.