
(2012) 07 CAL CK 0243
In the Calcutta High Court
Case No : Writ Petition No. 18148 (W) of 2001

Bhanu Charan Kuila

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 23-07-2012

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (2013) 2 WBLR 215

Hon'ble Judges : Ashoke Kumar Dasadhikari, J

Bench : Single Bench

Advocate : Mrinmoy Bhattacharyya, for the Appellant; Dilip Kr. Chatterjee, for the Respondent

Final Decision : Dismissed

Judgement

Ashoke Kumar Dasadhikari, J.—The subject-matter of challenge in this writ petition is the impugned order of penalty passed by the disciplinary authorities affirmed by the appellate forum. The writ petitioner was a bus driver working under the Calcutta State Transport Corporation. By and under a charge-sheet dated 9th May, 1997 the respondent authorities framed six charges against the writ petitioner which are as follows:

- i) Making flimsy entry in the job card at your sweet will.
- ii) Performing your duty in a most perfunctory manner which constitutes dereliction of duty.
- iii) Insisting the on-duty Cleaner for tampering the office records with an ulterior motive.
- iv) Making excess consumption of diesel oil in respect of vehicle No. WB/04A/2491.
- v) Expending corporation money of Rs. 60/- (Rupees sixty) only without approval of the competent authority,

vi) Violation of office order and discipline and all these acts on your part constituting gross mis-conduct.

The writ petitioner was directed to submit personally to the Depot Manager, Taratala Depot written explanation within 7 days on receipt of the charge-sheet and he was asked to inform whether he desires to be heard in person.

2. The writ petitioner was also suspended with immediate effect pending disposal of the case on payment of usual subsistence grant. A copy of the report of the Assistant Engineer, Taratala Depot was also supplied to the delinquent employee. The report submitted reads as follows:--

This is for the information of the DM/TD that the vehicle No. WB/04A/2491 was placed for Basirhat--Namkhana Route (N.H.) on 27.4.97. Dr. No. 2583 was the concern driver.

It appears from the record that the vehicle entered into the garage on 27.4.97 at 1416 hours and took 42 liters of diesel oil. It further appears from the record that the above mentioned vehicle was entered into the garage on 28.4.97 at 0828 hours and took 205 liters of diesel oil. Finally the vehicle garaged at 1500 hrs. on 28.4.97 and took 22 liters of diesel oil. PI. note in this connection that the vehicle bears big diesel tank (capacity approx. 300 liters) with full of diesel at the time of exist.

Under the above circumstances, in my opinion, the vehicle consumed excessive (42 + 205 + 22 = 269 Liters) diesel oil which may not be normal. A report of B/D on the ground of diesel not passing is furnished by the concern driver on the job card which may kindly be note.

Submitted to DM/TD for his kind consideration and necessary action please.

Sd/- S. Biswas 2.5.97 Asstt. Engineer/TD

3. The writ petitioner gave a reply to the charge-sheet on 4th August, 1997 denying all charges framed against him. However, in the reply he pointed out that in the event it is the intention of the concerned respondents for conducting domestic enquiry relevant to the impugned charge-sheet, they should supply all the relevant informations, copies of the relevant documents as mentioned in the reply and allow him legal defence assistance as permissible in the rules of equity to face enquiry conducted by a highly experienced and technical expert enquiry officer. The writ petitioner requested the concerned respondent to supply the following details and copies and documents for giving further reply and proper evidence at the enquiry.

4. The relevant information and documents which are required by the writ petitioner reads as follows:--

1. Names of the complainant and list of management witnesses.
2. Copy of the complaint/report on the basis of which the additional charges

brought except those based on impugned complaint of AE/TD.

3. Copy of the Job Card of the vehicle in question, copy of the slip for Rs. 60/- issued by the outside mechanic.

4. Copy of repairing record of the bus by the ok point mechanic on 27.4.97.

5. Booking report of the vehicle from 15.4.97 to 30.4.97. This vehicle had persistent report of diesel not passing and diesel line troubles for days together prior to 27.4.97 and the same were not properly rectified and the vehicle was placed for route service with temporary repairs.

6. Copy of the appointment letter of the Enquiry Officer.

7. Copy of relevant regulations of C.S.T.C. Employees Service Regulations alongwith the copies of office orders stated hereinabove.

5. It was submitted by the learned Counsel for the writ petitioner that the respondent authorities did not reply to this nor he was supplied with the copies of the relevant documents and/or details and/or particulars as disclosed in his reply nor they have disclosed the names of the management witness to be produced at the hearing.

6. He submits that by and under a memo dated 23rd September, 1997 the writ petitioner was informed that his case has been fixed for hearing on 21st October, 1997 at about 12.30 hours and the writ petitioner was directed to attend the above hearing on the scheduled date and time positively before the discipline and enquiry officer at Central Discipline Section, Belghoria failing which the case would proceed ex parte as per available materials on records.

7. On 20th October, 1997 the writ petitioner wrote a letter to the discipline officer and enquiry officer (C.S.T.C.), Belghoria wherein he informed the enquiry officer that in his reply dated 4th August, 1997 he prayed for permitting him legal defence assistance for his proper defence at the enquiry and also prayed for supplying him the copies of relevant documents, names of complainant, list of management witness etc. and the copies of other related documents before starting the enquiry and there is no whisper on their side.

8. He also informed that in spite of his prayer as contained in the reply dated 4th August, 1997 the enquiry notice was issued thereby denying the copies of documents as asked for.

9. It was also pointed out that as per the principle of enquiry he must be given a reasonable opportunity of hearing for his defence in the interest of principle of natural justice and he again requested that he should be supplied with copies of relevant documents and other relevant papers before he is compelled to attend the enquiry.

10. He further pointed out that he has been denied legitimate prayer and right for his defence and as such he also requested the enquiry officer to keep the

enquiry pending till decision on the pertinent points raised in the reply dated 4th August, 1997 is arrived at and till supply of copies of relevant documents and relevant information etc. are allowed in favour of the writ petitioner.

11. Although a reply was issued by the Senior Discipline Officer on 24th October, 1997 but the concerned officer did not take step for supplying the required documents as asked for. However, he assured the writ petitioner that he will be given reasonable opportunity to defend himself at the enquiry.

12. Learned Counsel submits that the concerned respondents are withholding the documents which are relevant and important for conducting the enquiry proceeding and which are very essential for the writ petitioner to get before the enquiry proceeding is started.

13. Learned Counsel submitted that the concerned respondent remained silent and neither they have given the inspection of the documents nor they have allowed copies of those documents to be relied on by them in the disciplinary proceeding.

14. He also submitted by another letter dated 22nd October, 1997 the writ petitioner was asked to appear in the enquiry on 19th November, 1997 at 12.30 hours. The writ petitioner again replied to the said notice and he pointed out that the concerned enquiry authority although assured him for giving all reasonable opportunities at the time of hearing but he did not deal with the prayers made in his letter dated 20th October, 1997 wherein the petitioner requested for supplying the copies of required documents, list of management witness before enquiry and granting legal defence etc. at the enquiry categorically. But the concerned enquiry officer remained silent on these pertinent issues. The petitioner requested to decide the issue raised by him and to reply. He also made prayer to keep the proceedings pending till such decision is taken by them.

15. He also urged that the natural justice is violated. The writ petitioner was prevented from taking appropriate steps for his self-defence since the respondent authorities have denied him reasonable opportunity of hearing at the enquiry.

16. The writ petitioner again issued a letter dated 17th November, 1997 and he reiterated his grievances. He also informed the concerned enquiry authority that in the notice dated 22nd October, 1997 the enquiry officer did not acknowledge receipt of his letter dated 21st October, 1997 nor there is any whisper about the consideration of his prayer contained in the said letter nor communicated the result of ex parte enquiry held on 21st October, 1997 as threatened in the notice.

17. He also mentioned in the letter that both the first and second hearing notices threatening of holding ex parte enquiry are indicative of pre-decided intention of holding enquiry without affording reasonable opportunities of hearing in contravention of rules of enquiry. He raised various other issues in that letter and also raised his doubt about fairness of conducting the enquiry.

18. Learned Counsel then submitted on 24th November, 1997 another intimation was issued for hearing the writ petitioner's case peremptorily on 9th December, 1997 at 12.30 hours by the discipline officer and enquiry officer.

19. Against that the writ petitioner also gave reply on 6th December, 1997 and requested to consider and decide the objections.

The contents of the letter reads as follows:--

(a) Non-disclosure of the documents to be relied on by the management and non-supply of copies thereof with list of management witness to be examined, before enquiry.

(b) Non-granting legal defence assistance at enquiry being conducted by highly qualified, technically expert E.O. with legal knowledge of enquiry proceedings.

(c) Cause for discriminatingly sending this charge-sheet case to central discipline section for enquiry whereas simultaneously enquiring into the charge-sheet case of my partner conductor, arising out of same cause of action on same duty of same bus, by the A & P.O. Taratala Depot.

(d) Not summoning and allowing me to adduce evidence at domestic enquiry of above charge-sheet case of any partner conductor.

(e) Signing impugned hearing notices dated 23.9.97 and 22.10.97 bearing your name as Mr. B.B. Banerjee, D.O. & E.G., fixing dates of enquiry on 21.10.97 and 17.11.97 respectively, by some unauthorised and unidentified- person, rendering the enquiry inherently defective and bad-in-law.

(f) Reason for replying to my letter dated 20.10.97 addressed to the D.O. & R.O. by Sr. Discipline Officer, instead of D.O. & R.O. through his memo No. 1568 CETC(S) dated 24.10.97 inter alia directing me therein to attend enquiry on next date with threatening of holding ex parte enquiry for my failure to attend, which is indicative of holding enquiry of same case by two E.Os which is impermissible and in violation of rules of law.

(g) My shattered faith on your not acting as fair; impartial and open minded E.O., by conducting enquiry in perverse manner without complying with the formalities.

(h) Seeking your change because of above reasons, by an impartial E.O. with a request to place my submission in this regard, before competent authority.

Non compliance with above requirements/formalities you will appreciate is against the rules of enquiry and principles of natural justices.

Non-acknowledging receipt of my reply and letters aforesaid not replying thereto but issuing hearing notices forcing my attendance at enquiry, defenceless, are as I apprehend, aimed at my illegal victimisation with mala fide intention. You will agree that I cannot be snatched of my proper defence at the fake enquiry which repeatedly objected to.

In enclosing a copy of my reply dated 17.11.97 addressed to Sr. Disc. Officer, in response to his above memo dated 24.10.97, I request you to kindly withhold the impugned enquiry and go through my reply and letters as above, for complying with the requirements requested therein and till you are changed by an open minded, fair and impartial I.O. as I lost faith in you as E.O, to conduct this enquiry for above reason. I also request you to kindly refer my prayer to higher authority for decision.

20. However, the discipline officer on 12th December, 1997 issued same type of letter as was issued earlier wherein he was asked to appear on the date fixed, i.e. 22nd December, 1997 failing which the disciplinary proceedings, started against him, would be proceeded on usual course without further reference and the same way one line was added that he will be given reasonable opportunities to defend himself in the hearing in accordance with law and the principle of natural justice will be followed to hold the enquiry.

21. Learned Counsel submits that neither the discipline officer nor the respondent authorities have ever responded properly as regards supply of copies of the documents and details and the names of witness to be relied on the disciplinary proceeding.

22. He submitted that the respondent authorities pretended that they will afford by reasonable opportunity but in their conduct they did not do as per the rules. They have acted unfairly and illegally. They did not give answer to the question raised by the writ petitioner nor they supplied the documents or the details which are relevant for the purpose of conducting enquiry against the writ petitioner.

23. The writ petitioner again wrote a letter to the Chairman on 20th December, 1997 wherein he again reiterated, he was not supplied copies of relevant documents and he was not allowed legal defence assistance as prayed for and the prayer were not considered by the disciplinary authority nor any decision was taken in that regard.

24. Learned Counsel submitted that the Chairman was informed about the proceeding and the unfair conduct of the respondent authorities including the enquiry authority by his letter dated 20th December, 1997. However, there are several correspondences in between the discipline officer and the writ petitioner but no fruitful result was available to the writ petitioner. The respondent were adamant and confident that they will not cooperate with the writ petitioner, they will not allow him to legal assistance and they will not also supply the copy of the documents which are relevant and necessary for self defence of the petitioner.

25. Learned Counsel submitted that on 18th April, 1998 the writ petitioner again wrote a letter to the Senior Discipline Officer complaining all these unreasonable actions and denial of least reasonable opportunity of hearing to the writ petitioner. Ultimately the concerned enquiry officer submitted a report dated 29th July, 1998 holding that the driver failed cross-examine the statement of P.Ws., to adduce his defence witness, to inspect the documents and to record his

statements in the hearing for his non-participation in the hearing.

26. He also recorded that charge No (i) is established as per record and as per statements of Sri M. Pasu, P.W.2 in the hearing. Charge No.(ii) is also established with regard to the charge No. (i) which has been established. Charge No.(iii) is also established as per, depositions of Sri B.B. Bhattacharjee, cleaner, P.W.3 in the hearing. Charge No. (iv) is also established as per record and as per depositions of S. Biswas, A/E, P.W.1 in the hearing. Charge No. (v) is not established beyond doubt for want of positive evidence of prosecution witness in the hearing. Charge No. (vi) is also established with regard to the charge Nos. (i) to (iv) which have been established against the delinquent driver.

27. The enquiry report was supplied to the writ petitioner. The writ petitioner filed his objection before the chairman on 2nd September, 1998. In the reply against the enquiry report the writ petitioner submitted that the entire proceedings were carried out against rules of law and he was not granted proper opportunity of hearing and the proceeding suffered from wilful inherent defects for which he was unable to reply to the said frivolous enquiry report. In view of the fact that he was not supplied the relevant documents etc.

28. He has given an elaborate reply to the enquiry report submitted by the enquiry officer. In that reply he again reiterated that at every stage his prayer for copies of documents, information etc. relevant to the charge-sheet and permission of legal defence assistance were not supplied and/or granted in spite of repeated representation to the Depot Manager, Taratala Depot.

29. However, the objection was not considered and replied. The discipline officer after considering the enquiry report has imposed punishment recording therein the order of disciplinary authority that on weighing the gravity of offence as per evidence on record with an eye to all aspects in the matter and after meditating into the case it is ordered that the pay of the delinquent driver of Taratala Depot be reduced to with immediate effect of four stages in the time-scale of pay in terms of regulation 36(iii) of the C.S.T.C. Employees Service Regulations without having any chance of restoration during the next 10 years but this will not hamper with annual increment.

30. The writ petitioner was allowed to resume his duties forthwith but he was not allowed to have the benefit excepting the usual subsistence grant during the period of his suspension. Against the impugned order of the discipline officer, the writ petitioner preferred an appeal before the appellate forum under rule 41 raising various illegalities committed both by the enquiry officer and the discipline authorities.

31. However, by an order dated 12th October, 1999 the appellate authority rejected the appeal preferred by the writ petitioner recording that the records revealed that he was given ample opportunities of defending himself. There is no denial of natural justice in the disciplinary proceeding. The punishment imposed is proportionate to gravity of the offences and therefore the appellant authority

finds no justification to interfere with the punishment imposed upon him by the competent authority.

32. Learned Counsel for the writ petitioner submits that the appellate authority has decided the appeal in a very casual manner without deciding and taking a proper decision as regards the ground of appeal made out in the appeal submitted by the writ petitioner.

33. He submitted that at all stages performance of natural justice was violated and in effect the respondent authorities remained silent as regards his prayer for legal assistance which is permissible under the rules as well as for supplying the copies of relevant and necessary documents relied on by the respondent authorities at the disciplinary proceeding and also the names of the witness produced in support of the management.

34. Learned Counsel submitted that Rule 39 has been violated. Rule 38 of the C.S.T.C. Employees' Service Regulation reads as follows:--

R. 39. No order of dismissal, removal or reduction shall be passed on an employee of the Corporation (other than an order based on facts which had led to his conviction in a criminal Court) unless he has been informed in writing of the grounds on which it is proposed to take action, and has been afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case. He shall be required, within reasonable time, to put in a written statement of his defence and to state whether he desires to be heard in person. If he so desires or if the authority concerned so directs, and oral inquiry shall be held. At that inquiry oral evidences shall be heard as to such of the allegations as are not admitted, and the person charged shall be entitled to cross-examine the witness, to give evidence in person and to have such witnesses called, as he may wish, provided that the officer conducting the inquiry may, for special and sufficient reason to be recorded in writing, refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and a statement of the findings and the grounds thereof.

This regulation shall not apply where the employee concerned has absconded, or where it is for other reasons impracticable to communicate with him. All or any of the provisions of this regulation may, in exceptional cases, for special and sufficient reasons to be recorded in writing, be waived, where there is difficulty in observing exactly the requirements of the regulation and those requirements can be waived without injustice to the person charged.

35. Learned Counsel submits that as per rules unless the delinquent employee has been afforded adequate opportunity to defend himself no order of dismissal, removal or reduction shall be passed on an employee of the Corporation.

36. In the instant case the rules governing the service condition of the writ petitioner has been violated and he was imposed with the penalty by the discipline authority which was upheld by the appellate authority without taking note and consideration of the points and/or allegation raised by the writ petitioner.

37. Learned Counsel for the writ petitioner cited a judgment reported in Kashinath Dikshita Vs. Union of India (UOI) and Others, wherein it was held that in spite of the appellant's requisition for supply of copies of all the statements made by the witness at a pre-enquiry stage as also for copies of the documents on which reliance was placed in support of the charges, the disciplinary authorities turned down the request but permitted the appellant to inspect copies of the statements and/or documents in question and make notes without taking help of the stenographer. As a result of the enquiry the appellant was dismissed from service by the impugned order. Special leave was granted on the limited question whether there was any violation of Article 311(2) on failure to supply the statements and documents in question.

38. The Supreme Court in that case allowing the appeal with costs held that the impugned order of dismissal rendered by the disciplinary authority is violative of Article 311(2) of the Constitution of India inasmuch as the appellant has been denied reasonable opportunity of defending himself and the impugned order is on that account null and void.

39. It was held specifically that the Government servant is facing a disciplinary proceeding, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner and no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies the concerned employee cannot prepare his defence, cross-examine the witnesses and point out the inconsistencies with a view to show that the allegations are incredible.

40. Learned Counsel relying on the judgment submits that in the instant case the disciplinary authority neither disclosed the names of the witnesses before the enquiry was started nor even supplied the copies of statement given by those witnesses before the enquiry authorities. He submitted that at all stages there is violation of principle of natural justice as well as violation of Rule 39 which is applicable in the instant case of the writ petitioner.

41. Learned Counsel appearing for the writ petitioner submits that the respondent authorities are determined to victimize the writ petitioner without giving proper and reasonable opportunity of hearing and also not allowing him to have a legal expert to defend him although it is permissible under the rules.

42. Mr. Chatterjee, learned Counsel for the respondents pointed out the letters issued by the respondent authorities wherein the writ petitioner was assured that he will be given all opportunities to defend his case. He submitted that the writ

petitioner although issued letters and asked for documents etc. but he was never inclined to appear before the enquiry authority in fact he was avoiding the disciplinary proceeding and the enquiry officer. Although he asked the disciplinary authority for providing the necessary and relevant documents but since he did not appear before the enquiry officer the documents was not given to him and no inspection was given to him, also the copies of the deposition was not supplied.

43. Mr. Chatterjee submitted that it is true under Article 311(2) a public servant should have reasonable opportunity to meet the charges framed against him but in the instant case proper opportunity was given. He was issued several notices to come and appear before the concerned enquiry officer and he was assured that, all reasonable opportunity would" be given to him. However, he was not responding to that but issuing letters. Therefore, there is no violation of the requirement of Article 311(2). He cited a judgment reported in State of M.P. Vs. Chintaman Sadashiv Waishampayan He further cited another judgment reported in Pradip Kumar Das Vs. State of Tripura and Others,

44. Mr. Chatterjee submitted that this Hon"ble Court should see that for non-supply of the documents if the writ petitioner was suffered any prejudice or not. The other judgment cited by Mr. Chatterjee is reported in The State of West Bengal and Others Vs. Sallendra Nath Bose, .

45. Mr. Chatterjee submits that in view of the aforementioned judgment the punishment imposed upon the writ petitioner who was found guilty by the enquiry authority as well as by the disciplinary authority should not be interfered with. He submitted that the writ petition should be dismissed.

46. Heard the learned Counsel appearing for the respective parties and considered the materials on record. It appears that the writ petitioner repeatedly asked the disciplinary authority as well as enquiry authority to supply copies of documents to be used by the respondents and also to supply the names of witness and further made a prayer for assistance of a legal expert but all are in vain. The respondents, although gave assurance of giving reasonable opportunity to the petitioner, did not consider the prayers made and in fact remained silent at all stages.

47. Thus it is evident that the documents relied on by the respondent authorities have never been supplied nor inspection was offered nor the writ petitioner was allowed to have a legal expert to get himself represented properly before the enquiry officer. Moreover, the enquiry officer also did not supply the statements recorded before him by the management witnesses. The petitioner was served with notices on different occasions with a caution that unless he appears on the date fixed the matter would be heard ex parte and decision would be taken. Therefore, the way the enquiry proceedings started, continued and concluded by the impugned order of dismissal is not only violative of principles of natural justice but also violative of Rule 39 of the Rules governing the service conditions of the petitioner.

48. It is now well settled that when a Government servant is facing disciplinary proceeding, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner. No one facing a departmental enquiry can effectively meet the charges unless copies of the relevant document and statements to be used against him are made available to him. In absence of such copies the concerned employee cannot prepare his defence, cross-examine the witness, etc. In my view, non-supply of the copies of documents, statements and not allowing the petitioner assistance of legal expert have certainly prejudiced the petitioner. Therefore, the impugned order of penalty rendered by the disciplinary authority as well as appellate authority is violative of Article 311(2) inasmuch as the petitioner had been denied all reasonable opportunity at all stages and is on that account null and void.

49. The judgments cited by Mr. Chatterjee are not at all applicable in the facts and circumstances of this case.

50. In view of my aforementioned findings, I set aside the impugned enquiry report and the impugned order of dismissal by the disciplinary authority as well as the by the appellate authority.

51. The respondents are directed to pay the entire amount of salary by deducting the suspension allowance to the writ petitioner and to give all service benefits in favour of the writ petitioner. The writ petition is, thus, allowed. There would be no order as to costs.