

(1965) 12 CAL CK 0008

In the Calcutta High Court

Case No : Civil Revision Case No. 163 (W) of 1965

Bibhuti Bhusan Paul

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 24-12-1965

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : AIR 1967 Cal 29 : (1969) 1 LLJ 300

Hon'ble Judges : A.C. Sen, J

Bench : Single Bench

Advocate : Arun Kumr Dutt Sr and Shyam Kumar Majumdar, for the Appellant; B.C. Dutt, Addl. Govt. Pleader and Sushil Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

A.C. Sen, J.—On the petition tiled by the petitioner under Article 226 of the Constitution a Rule was issued calling upon the opposite parties to show cause why a Writ in the nature of Mandamus should not be issued directing the opposite parties 1 to 6 to recall, rescind, withdraw or not to give effect to, the impugned order of opposite party No. 2, dated January 25, 1956. The Rule further required the opposite parties to show cause why a Writ in the nature of Certiorari should not be issued cancelling, setting aside or quashing the impugned order dated January 25, 1965.

2. By the said order the petitioner was demote and his increment was stopped for two years.

3. The petitioners complaints against the departmental proceedings culminating in the impugned order of demotion and postponement of increment are that the dismissing authority acted throughout mala fide, that rules of natural justice were violated at every step and that he was not given reasonable opportunity to make his representation against the charges or against the punishment proposed.

4. It is contended that there is internal evidence of want of good faith in the

charge-sheet in the direction given to the enquiring officer and in other documents.

5. The concluding portion of the charge-sheet runs thus: "Now, therefore, you are directed to file a written statement in your defence within two weeks from the date of receipt of this order by you with the P. A. to the Director of Agriculture, West Bengal, who is hereby appointed as the Enquiring Officer for this proceeding, showing cause why you will not be removed from the service of the Govt. or otherwise suitably punished." So, the petitioner was asked to show cause in the charge-sheet itself why he would not be removed from service or otherwise suitably punished. It is argued on behalf of the petitioner that this itself shows that the Director of Agriculture was determined either to remove the petitioner from service or to punish him otherwise and that the proceeding was initiated not with a view to ascertaining whether he was really guilty of those charges but with a view to awarding him suitable punishment including removal from service. Hence, it is contended, the enquiry was mala fide even at its inception.

6. I cannot accept this argument. A charge-sheet is given when a prima facie case is made out and a departmental proceeding is not initiated unless the punishing authority is satisfied that a prima facie case has been made out against the delinquent employee. The words quoted above from the charge-sheet merely suggest that in view of the charges made against the petitioner he is to show cause why he should not be awarded any of the three modes of punishment contemplated by Article 311 of the Constitution. If at the enquiry he can satisfy the enquiring officer that the charges are baseless, then there is no question of punishing him. It is absurd to suggest that the enquiry was started with the sole idea of punishing the petitioner and that the enquiry was an idle ceremony. That the sole object of the enquiry was to afford the petitioner an opportunity to defend himself and to prove that he was innocent will be clear from the last sentence in the charge-sheet which is set out below: "You are also directed to state to the above mentioned enquiring officer within the aforesaid time whether you desire to be heard in person in your defence and to produce witnesses, if any". If the only object of the enquiry was to punish the petitioner, he would not have been asked if he desired to be heard in person in his defence and to produce witnesses. Therefore, in my opinion, the enquiry was not tainted with bad faith at its inception.

7. My attention was drawn by the learned counsel for the petitioner to a memo, namely, memo No. 4562(2), dated Calcutta, the 24th March, 1964 forming part of Annexure "C" to the petition. In the said memo it is stated that the Personal Assistant to the Director of Agriculture who was appointed the enquiring officer, should communicate the orders containing the charges in original to the delinquent immediately and that on receipt of a written statement from the delinquent the enquiring officer should hold an enquiry. The comment on this memorandum is that the authorities were bent upon holding an enquiry without

first trying to see whether the written statement itself was sufficient to establish innocence of the delinquent. The argument is that the written statement is first to be sent to the punishing authority, and if the punishing authority is satisfied from the written statement that there is no case against the delinquent, the enquiry is to be dropped then and there. In the instant case the enquiring officer was asked to hold an enquiry on receipt of the written statement. Therefore, it is contended, the authorities were determined to hold an enquiry, or for the matter of that, a show of enquiry, to justify the punishment, which, they were bent upon awarding even if the written statement itself was sufficient to establish that he was not guilty of the charges levelled against him. This also shows that the enquiry was tainted with bad faith at its inception. This argument too I cannot accept. No rule has been cited to me to show that the written statement of the delinquent is to be sent first to the punishing authority and that if the punishing authority on a perusal of the written statement is satisfied that the employee is innocent, he must drop the proceeding forthwith. Once the departmental proceeding is set in motion, it is on the report of the enquiring officer that the punishing authority decides whether the employee is to be punished; if so, in what manner. Therefore, after the written statement has been filed by the employee, the enquiring officer must hold an enquiry for the purpose of submitting his report. It is for the enquiring officer to decide whether the written statement is sufficient to disprove the charges and even when the written statement is so convincing that the charges automatically fall to the ground, even then the enquiring officer is required to hold an enquiry for the purpose of considering the written statement in the presence of the prosecutor and then to submit his report. Therefore, the words, namely, "on receipt of a written statement from the delinquent he should hold an enquiry," in the said memorandum dated the 24th March, 1964, do not, in my opinion, go to show that the enquiry was tainted with bad faith at its inception.

8. Another grievance of the petitioner is that the enquiring officer played me part of a prosecutor by collecting evidence against the petitioner on behalf of the department. This is what he has stated in paragraph 17 of the petition: "Thereafter the Enquiry Officer respondent No. 4 suo motu decided to hold proceedings at Darjeeling for the alleged purpose of examination of documents. Your petitioner was not informed as to what document would be inspected and no prior opportunity was granted to your petitioner for the said purpose. "From Annexure "F" to the petition it appears that the enquiring officer by his memo No. 7265/3E/I/523/63, dated the 14th May, 1964, informed one Dr. G. N. Das, Economic Botanist, that he proposed to go to Darjeeling on 23rd May, 1964 and hold an enquiry at the farm on 25th & 26th May in connection with the charge relating to the Stock Book of Rangbull farm and requested Dr. G.N. Das to see that all relevant documents be kept ready for inspection. By the said memo the petitioner and the then Inspecting Officer, Potatoes, were directed to attend the enquiry. A copy of the said memo was sent to the petitioner asking him to attend the enquiry to be held at Darjeeling on the 25th and 26th May, 1964. In

paragraph 18 of the petition it has been stated that the enquiring officer took statements of persons and inspected many books and papers and took note of a large number of entries in the stock book.

9. From the affidavit-in-opposition it appears that the petitioner was allowed advance travelling allowance for his journey to and from Darjeeling. The petitioner was also given timely intimation as to the venue of the enquiry. The witnesses were examined at Darjeeling in his presence. It is not the case of the petitioner that the books and papers were inspected at Darjeeling behind the back of the petitioner. In my opinion, there is no harm in taking notes of entries in the stock book if that is done after giving the petitioner an opportunity of inspecting those entries. It has not been stated by the petitioner that he was not allowed to inspect those entries. As some of the charges related to the stock book of the farm at Darjeeling, the enquiring officer was perfectly justified in holding the enquiry at Darjeeling relating to those charges. The learned Advocate for the petitioner makes much of the fact that the enquiring officer suo motu decided to hold proceedings at Darjeeling. In my opinion the enquiring officer did nothing wrong in deciding suo motu to hold the enquiry at Darjeeling when the charges related to the stock book of a farm at Darjeeling. There cannot be any hard and fast rules as to where the enquiry is to be held. Only thing to be seen is whether the petitioner was in any way denied the opportunity of defending himself by reason of such change of venue. The petitioner has not said that he was prejudiced in any way by reason of the enquiry being held at Darjeeling. His only grievance is that the enquiring officer decided suo motu to hold the enquiry at Darjeeling. It cannot be said that the enquiring officer held the enquiry at Darjeeling only to help the prosecution in collecting the evidence against the petitioner. There is no doubt that he did so in the interest of fair and proper enquiry. In my opinion, the holding of the enquiry at Darjeeling did not in any way vitiate the enquiry nor did it amount to a violation of the principles of natural justice.

10. The next grievance of the petitioner is that though the enquiring officer took into consideration the investigation report of one S.C. Chatterjee made in 1963, the said S. C. Chatterjee was not examined by the enquiring officer and that consequently the petitioner had no opportunity to cross-examine him. His further complaint is that he was not supplied with the full text of the said report nor was he given any opportunity to inspect the same during the enquiry. In my opinion, this grievance of the petitioner is without any foundation. The report of S.C. Chatterjee was not, in fact, taken into consideration. The petitioner was merely confronted by the enquiring officer with certain statements alleged to have been made by him before S.C. Chatterjee in 1963. The petitioner denied having made those statements. The matter ended there. Those statements related to charge No. 3. The petitioner was found guilty of the said charge solely on the materials placed before the enquiring officer. Therefore, no question of examining S. C. Chatterjee arose. Moreover, there is nothing to show that the petitioner wanted the production of S.C. Chatterjee for cross-examination.

11. It is next argued that the punishing authority being the Director of Agriculture, he did not apply his mind to the report of the enquiring officer; he merely adopted the decision of the Joint Director of Agriculture (Administration), who had no locus standi to make such decision. To appreciate this argument it is necessary to state certain facts. The petitioner, in course of the inspection of the records of the enquiring officer, discovered that S.N. Ghosh, Joint Director of Agriculture (Administration) by his note dated 28-8-1964 considered the findings of the enquiring officer and suggested the punishment to be inflicted. Annexure "J" to the petition is the note of the Joint Director of Agriculture (Administration) on the report of the enquiring officer. The Joint Director suggested that the petitioner might be demoted and his two increments might be stopped. On this note there is the endorsement of one H.K. Nandi, who, it is not disputed, is the Director of Agriculture. The endorsement is to the following effect: "I agree. He should not be kept in the Office of P.D.O." It is suggested on behalf of the petitioner that the Director of Agriculture, instead of applying his mind to the report submitted by the enquiring officer in order to ascertain what punishment, if any, is to be awarded to the petitioner, merely adopted the opinion expressed by the Joint Director. I cannot accept the suggestion. The punishing authority, in the instant case the Director of Agriculture, is to decide on the report of the enquiring officer what action is to be taken against the delinquent. How the punishing authority arrives at the decision is no concern of the delinquent. Even if the punishing authority makes his decision in consultation with any officer, the decision, in my opinion, is not open to challenge. As soon as the punishing authority adopts the opinion of any other officer it becomes his opinion. Moreover, in the instant case it cannot be said from the endorsement on noting by the Joint Director of Agriculture ((Administration) that the Director of Agriculture did not apply his mind to the report of the enquiring officer before deciding what action was to be taken against the petitioner. It is absurd to suggest that the principle of natural justice has been violated, even if it be assumed that the Director merely adopted the opinion of the Joint Director. Nor can it be said that any established rule or practice had been violated by allowing the Joint Director to consider the report of the enquiring officer in the first instance. Agricultural Manual being a collection of orders and circulars of the Government of West Bengal relating to the Agricultural Directorate may be regarded as embodying the administrative practice in the Agricultural Directorate even if it be assumed, as suggested by the petitioner, that the orders and circulars contained therein have no statutory force. From the said Manual it appears that the Joint Director of Agriculture (Administration) is competent to deal with appointment and promotion of non-gazetted staff of all branches of whom the Director of Agriculture is the appointing authority. I, therefore, cannot accept the argument of the petitioner on this point.

12. The next point for consideration is whether the petitioner was given reasonable opportunity of showing cause against the action proposed to be taken in regard to him. The Director of Agriculture asked the petitioner on or about the

15th September, 1964, to show cause within two weeks from the date of the receipt of the order why the proposed punishment, namely, demotion and postponement of increment for two years, should not be awarded to him. The petitioner made a representation to the Director on the 28th September, 1964, the material portion of which is quoted below: "In order to enable me to submit my replies to show cause notice issued under your orders No. 13657 dated 15-9-64 I would request you kindly to make available attested copies of the statements recorded by the enquiring Officer and accepted by the parties concerned. I would further pray to your honour to be kind enough to let me know the points in respect of the charges on which I am required to furnish my replies. I may also kindly be permitted the period of 15 days with effect from the date from which the above papers are supplied to me. It may be noted that he did not ask for a copy of the report of the enquiring officer.

13. By memo No. 15123/3D/1/528 dated 22-10-1964 the petitioner was supplied with a copy of the report of the enquiring officer. He was directed to submit his reply within 15 days from the date of the receipt of the memo.

14. The petitioner sent his reply to the said memo dated 22nd October, 1964 on 9th November, 1964. This is what he said in the first two paragraphs of the said reply: "Sir, the report of Enquiring Officer is supplied to me but the depositions recorded by him have not been supplied. On the other hand I am directed not to submit my replies on particular points but to do so only on the final show cause notice. I make it clear to you that I have not followed the directions contained in memo No. 152123 dated 22-10-64. To me the directions, appear to be contradictory. I, therefore, according to my humble understanding reiterate my demand to be supplied with copies of all the papers and recorded depositions forming the basis of the findings of the Enquiring Officer and the second show cause notice. After making the above demand and after recording my due protest I offer the following replies on the several charges which were levelled against me The rest of the reply dealt with the charges. His contention was that even on the materials on which the enquiring officer relied the charges could not be sustained.

15. The petitioner was informed by memo No. 17213/3D/1/523/63-Apptt dated 5-12-1964 that he might come to the office of the Director of Agriculture during office hours and take down copies of the evidence himself. On 28th December, 1964, the petitioner asked for further time fo take down copies. He sought permission to attend the office of the Director of Agriculture for three clays more. On 12th January, 1965, he wrote to the Director that while looking into the records he found certain false and declamatory statements made against him by three persons. He requested the Director to supply him with the attested copies of the deposition made by those three persons before the enquiring officer because be proposed to file a suit for defamation against them. In the said letter of 12th January 1965 this is what he wrote about showing cause against the proposed action: "I am trying to formulate my replies against the charges upon

which you have decided provisionally to demote me. I shall take 15 days time to get me advised in the matter of formulating my replies. I, therefore, pray that 15 days" time may be allowed to me for the purpose." There is nothing on record to show that the prayer for further 15 days" time was allowed. But I find that the final order for demotion and postponement of increment for two years was passed on 25th January, 1965.

16. The petitioner was supplied with a copy of the report of the enquiring officer on or about 22nd October, 1965, and the final order was passed on the 25th January, 1965. In my opinion the petitioner was given sufficient time to show cause against the action proposed to be taken against him. Therefore, his grievance that he did not get reasonable opportunity to show cause against the proposed action is imaginary. I have not been shown any authority which has gone to the length of laying down that for showing cause against the proposed action the delinquent is entitled to copies of the depositions and documents considered by the enquiring officer.

17. Lastly a point was taken that the punishment actually awarded was in excess of the punishment proposed, against which he was asked to show cause. The order of demotion says that the petitioner is demoted to a post of Lower Division Clerk in the scale of Rs. 125-3-140-4-200 and posted as Lower Division Clerk (J.A D.P.) to the office of the Block Development Officer, Jamalpur, in the district of Burdwan vice Shri Brojo Gopal Sarkar transferred. The concluding portion of the order is to the following effect: "The transfer of Shri Paul is made in the interest of public service." It is argued that the order of transfer in the instant case having been made a part of the order of demotion, must be regarded as an order for punishment. I cannot accept this argument, because every demotion involves transfer from a higher post to a lower post and such transfer in its turn may entail transfer from the place to another. So, the order of transfer, I understand, is merely consequential to the order of demotion. Therefore, it cannot be regarded as by way of punishment.

18. From what has been stated above, it is clear that it cannot be said that the enquiry proceeding was tainted either with bias or want of good faith or that the rules of natural justice were not complied with or that the petitioner was not given adequate opportunity to make his representation either against the charges framed against him or against the action that was proposed to be taken on the report of the enquiring officer.

19. In the result, the petition fails. The Rule is accordingly discharged. There will be no order for costs.