
(2009) 03 CAL CK 0079
In the Calcutta High Court
Case No : Writ Petition No. 19059 (W) of 2005

Debasis Banerjee

APPELLANT

Vs

Hindustan Latex Limited

RESPONDENT

Date of Decision : 06-03-2009

Acts Referred:

Hindustan Latex Limited Conduct, Discipline and Appeal Rules, 1979 — Rule 23(d), 25(b)

Citation : (2009) 3 CALLT 516

Hon'ble Judges : Debasish Kar Gupta, J

Bench : Single Bench

Advocate : Sumya Mazumder and Mr. Anindya Lahiri, for the Appellant;

Final Decision : Dismissed

Judgement

Debasish Kar Gupta, J.—This writ application is filed by the petitioner assailing the charge-sheet dated June 4, 2003 enquiry report dated December 1, 2003, order of punishment dated February 23, 2004 and the order dated May 7, 2004 passed by the appellate authority.

2. The facts of the case in a nutshell is this the petitioner was sales officer of Hindusthan Latex Limited in its eastern region, Guwahati. He was served with charge-sheet dated June 4, 2003 by the respondent No. 4 for alleged misconduct, dishonestly and indiscipline in submitting bogus and forged bills claiming huge amounts with a view to cheat the respondent company. The petitioner submitted his reply dated 10, 2003 to the above charge-sheet refuting all the charges. After conducting an enquiry in the matter, the enquiry officer submitted his report dated December 1, 2003 to the disciplinary authority finding the petitioner guilty of misconduct under Rules 5(1), 5(5), 5(6), 5(9), 5(17) and 5(20) of the Hindusthan Latex Limited conduct, Discipline and Appeal Rules, 1979. The petitioner submitted his representation dated January 12, 2004 to the above enquiry report. The respondent No. 3 by an order dated February 23, 2004 dismissed the petitioner from the services of the respondent No. 1 in accordance

with the provisions of Clause(d) of Rule 23 of the Hindusthan Latex Limited Conduct, Discipline and Appeal Rules, 1979 (hereinafter referred to as the said Rules, 1979). The petitioner preferred an appeal against the above order of dismissal dated February 23, 2004 before the appellate authority. By an order dated May 7, 2004, the appellate authority dismissed the above appeal.

3. It is submitted on behalf of the petitioner that the above charge-sheet was issued by the respondent No. 4 with closed mind. According to the petitioner, the wording of the charges conveyed a sense of finality of the petitioner's guilt.

4. It is submitted on behalf of the petitioner that in accordance with the provisions of Rule 25(2) of the said Rules, 1979, the enquiry officer, being an officer of the respondent No. 1, was not eligible to be appointed as enquiry officer. According to the petitioner, objection was also raised by him with regard to the appointment of the enquiry officer in his letter of objection dated September 15, 2003. The other ground for challenging the enquiry proceeding is this, the enquiry officer did not consider the letter of objection dated September 16, 2003 and November 7, 2003 by which the allegation of procedural impropriety had been raised.

5. The validity of the enquiry report dated December 1, 2003 is also under challenge. According to the petitioner, the Chief Vigilance Officer deposed that the petitioner wrote the statement before him on his direction. Drawing the attention of the Court towards the enquiry report, it is submitted on behalf of the petitioner that the charges of criminal misconduct, dishonesty and indiscipline had been levelled against him. But as per enquiry report the negligence's on the part of the petitioner were proved and he was proved guilty under sub-Rule (a) of Rules 5 of the said Rules, 1979. Therefore, the enquiry report cannot be sustained in law.

6. According to the petitioner all the above violation of statutory provisions and procedural impropriety were raised in the representation dated January 12, 2004. But the disciplinary authority, while passing the impugned order of punishment dated February 23, 2004, did not consider those points. So, according to the petitioner, the impugned order of punishment suffered from non-application of mind.

7. According to the petitioner, all the aforesaid error of law and procedural improprieties were agitated in his statutory appeal. But the appellate authority did not deal with those points at the time of passing the impugned order dated May 7, 2004. Therefore, the order of the appellate authority dated July 7, 2004 is also liable to be set aside.

8. Reliance is placed on the decision of State Bank of India v. Tapen Kumar Das, reported in 1993 (2) CHN 103 to submit that the charge-sheet under reference is liable to be set aside on the ground of issuing the same with closed mind. Relying upon the decisions of Sur Enamel and Stamping Works (P) Ltd. Vs. Their Workmen, , it is submitted on behalf of the petitioner that the enquiry

proceeding under reference is liable to be set aside on the ground of denial of opportunity to cross-examine one of the witnesses in the proceeding under reference. Reliance is placed on the decision of Anil Kumar Vs. Presiding Officer and Others, to submit that non-application of mind on the part of the enquiry officer made the enquiry report bad in the eye of law. Reliance is placed on the decisions of Managing Director, ECIL v. Karunakar, reported in AIR 1994 SC 1076 and Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Others, to submit that the impugned order of punishment and the impugned order passed by the appellate authority, cannot be sustained in law.

9. The attention of the Court is drawn towards the charge-sheet dated June 4, 2001 to submit on behalf of the respondents that the charge-sheet contended that if the charges framed against the petitioner had been found to be proved if then the petitioner would have been guilty of violating clauses 5(1), 5(5), 5(6), 5(9), 5(17) and 5(20). With regard to the appointment of an officer of the respondent No. 1, it is submitted that clause 25(2) of the said Rules, 1979 was amended on July 20, 2008. By virtue of the above amended provisions, officers of the respondent company were also made eligible to hold an enquiry. According to the respondents, the petitioner himself was satisfied with the fair and non-bias enquiry as stated in his representation dated October 26, 2003. Though the petitioner alleged in his representation dated November 7, 2003 that the opportunity of cross-examining Shri Kaushik Roy, proprietor of M/s. Kamrup Glow Sign, was not given to him, it appeared from the enquiry report that by an order dated August 13, 2003, the enquiry officer allowed the prayer of the petitioner to examine the aforesaid Shri Kausik Roy. It is further submitted that charges of negligence under Rule 5(a) was levelled against the petitioner, amongst other charges. That was proved in the enquiry with regard to the admission of the Chief Vigilance Officer it is submitted on behalf of the respondents that picking up a word out of the context is not permissible. Therefore, according to the respondents, the enquiry proceeding under reference did not suffer from any procedural impropriety.

10. According to the respondents, the disciplinary authority passed the impugned order of punishment after considering the enquiry report, evidences which had been adduced during enquiry and the representation of the petitioner. So, the same is sustainable in law.

11. It is further submitted on behalf of the respondents that the appellate authority concurred with the decision of the disciplinary authority. Therefore, the points raised in the appeal may not be dealt with.

12. The learned counsel appearing for the respondent relied upon the decision of Nripendra Nath v. Union of India, reported in 1981(1) SLR 533, to submit that to avoid any vagueness in the charge-sheet the authority must clearly state the imputation against the delinquent. Reliance is placed on the decision of the State of Assam v. Bimal Kumar Pandit, reported in 1963 SC 1612, to submit that failure to state expressly that the disciplinary authority has accepted the findings

recorded in the report against the delinquent employee, justifies the conclusion that the notice given in that behalf afford a reasonable opportunity. Relying upon the decision of Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI), to submit that what is essential is that reasons should be given by an appellate authority expressly or by reference to those given by the disciplinary authority. The learned counsel for the respondents further relies upon the decisions Government of Andhra Pradesh v. Mohd. Narullah Khan, reported in (2006) SCC 373 to submit that High Court exercising powers under Article 226 of the Constitution of India cannot re-appreciate evidences as an appellate authority.

13. I have heard the learned advocates appearing for the respective parties I find that in the charge-sheet dated June 4, 2003 contained that the petitioner had committed misconduct, if the charges framed against him were proved. Therefore, I have no hesitation to hold that the charges were required to be specific and not vague, so that the petitioner was informed of the charges - against him.

14. With the eligibility of the enquiry officer I find that the Rule 25(b) of the said Rules, 1979, was amended on September 20, 2002, i.e. before the appointment of the enquiry officer in this case. The amended provision of Rule 25(b) of the said Rules, 1979, permitted the respondent authority to appoint enquiry officer though he was an employee of the Hindustan Latex Limited. The amended provision of Rule 25(b) of the said Rules is not under challenge. So, the respondent authority acted in accordance with law in appointing the enquiry officer in the instant case.

15. Regarding consideration of representations of the appellant, I do not agree with the submissions that the above representations were not considered by the enquiry officer in the instant case.

16. I find that the amendment of the said Rules, 1979, permitted the disciplinary authority to appoint an existing employment. That amended provision was not a ground for preferring of an appeal. Regarding the allegation of evidence adduced by the Chief Vigilance Officer, I fully agree with the submissions made on behalf of the respondents in this regard that picking up of a word which was out of context was not permissible.

17. The scope of interfering with the report of the enquiry officer is limited on the basis of the settled principles of law, I do not find any material on record to accept the submissions of the petitioner that the report suffered from procedural impropriety.

18. With regard to the allegation of non-application of mind by the disciplinary authority, I find that the impugned order of punishment contended that the disciplinary authority examined the entire proceeding and applied its mind thereto before concurring with the enquiry officer.

19. Therefore, the order of punishment does not require interference.

20. From the appeal preferred by the appellant, I find that the points raised therein had been decided at the earlier stages of the proceeding under reference. Or in other words no fresh arguable point was raised the statutory appeal while passing the impugned order dated May 7, 2004, the appellate authority concurred with the findings of the disciplinary authority. In this regard, I find substance in the submissions made on behalf of the respondents that law has been settled in the matter of the Madhya Pradesh Industries Ltd. (Supra) and the relevant portions of the above decision are quoted below:

9. It is said that this principle is not uniformly followed by appellate Courts, for appeals and revisions are dismissed by appellate and revisional Courts in limine without giving any reasons. There is an essential distinction between a Court and an administrative tribunal. A Judge is trained to look at things objectively, uninfluenced by consideration of policy or expediency; but, an executive officer generally looks at things from the stand point of policy and expediency. The habit of mind of an executive officer so formed cannot be expected to change from function to function or from act to act. So it is essential that some restrictions shall be imposed on tribunals in the matter of passing orders affecting the rights of parties; and the least they should do is to give reasons for their orders. Even in the case of appellate Courts invariably reasons are given, except when they dismiss an appeal or revision in limine and that is because the appellate or revisional Court agrees with the reasoned judgment of the subordinate Court or there are no legally permissible grounds to interfere with it. But the same reasoning cannot apply to an appellate tribunal, for as often as not the order of the first tribunal is laconic and does not give any reasons, we do not prescribe any particular form or scale of the reasons. The extent and the nature of the reasons depend upon each case. Ordinarily, the appellate or revisional tribunal shall give its own reasons succinctly; but in a case of affirmance where the original tribunal gives adequate reasons, the appellate tribunal may dismiss the appeal or the revision, as the case may be, agreeing with those reasons. What is essential is that reasons shall be given by an appellate or revisional tribunal expressly or by reference to those given by the original tribunal. The nature and the elaboration of the reasons necessarily depend upon the facts of each case. In the present case, neither the State Government's nor the Central Government's order discloses the reasons for rejecting the application of the appellant. In the circumstances the Central Government's order is vitiated, as it does not disclose any reasons for rejecting the revisional application of the appellant.

(Emphasis supplied)

21. Therefore, none of the points raised in this writ application requires interference of this Court.

22. I do not find that on the basis of the settled principles of law as decided in the matter of State Bank of India v. Tapan Kumar Das (supra), the charge-sheet under reference in the instant case is liable to be set aside. Because, the wordings of the charge-sheet were taken into consideration by a Division Bench

of this Court to set aside the charge-sheet while in the instant case the wording of the charge-sheet are examined to arrive at a conclusion that the same has not been prepared with closed mind. On the basis of facts of the instant case, I find that the decision of Sur Enama and Stamping Works Ltd. (supra) is not applicable in this case. Similarly on the basis of the observations made hereinabove, I do not find that the decision of Anil Kumar (supra) has any manner of application in this case. I do not find that in view of the facts and circumstances involved in this case, the ratio laid down the matter of Managing Director, EC/L (supra) or Narindar Mohan Arya (Supra) helps the petitioner in any way.

23. This writ application is, therefore, dismissed. There will be no order as to costs.

Urgent xerox certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible.