

(2014) 02 CAL CK 0031
In the Calcutta High Court
Case No : W.P. No. 3762 (W) of 2006

Jagannath Adhikary

APPELLANT

Vs

The West Bengal State Electricity Board and Others

RESPONDENT

Date of Decision : 28-02-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Citation : (2014) 02 CAL CK 0031

Hon'ble Judges : Tapabrata Chakraborty, J

Bench : Single Bench

Advocate : Swapan Kumar Dutta and Dipankar Das Gupta, Advocates for the Appellant; Bhaskar Kumar Mitra, Advocates for the Respondent

Judgement

Tapabrata Chakraborty, J.—This writ application had been preferred challenging the show-cause notice dated 05th March, 2003, the Charge Sheet dated 22nd April, 2003, the Enquiry Report dated 31st May, 2004, the second show-cause notice dated 10th July, 2004, the final order of punishment dated 12th August, 2004 and the Appellate Authority order dated 15th March, 2005.

2. The facts, in a nutshell, are that the petitioner initially entered into service as a Trainee Station Superintendent/Junior Supervisor, (Elec.) and subsequent thereto he availed promotions to the post of Junior Station Superintendent and thereafter to the post of Senior Station Superintendent. While posted as a Senior Station Superintendent at Nanda Kumar Group Electric Supply Office, the petitioner was served a show-cause notice dated 5th March, 2003 issued by the respondent No. 4 stating inter alia that upon an inspection on 18th January, 2003, some irregularities had been observed in the Blue Card of consumer No. C-54034 and as the said service connection was in the name of the petitioner and as he was also the Station-In-Charge of Nanda Kumar Group Electric Supply, at that material time, the petitioner was asked to submit a statement of defence.

3. The irregularities incorporated in the said show-cause notice dated 5th March, 2003 are as follows:--

- "(a) Years after years the consumer is enjoying electricity with low consumption.
- (b) On 30.09.2000 meter was declared stop. Again meter was declared sticky on the same date as per Blue Card.
- (c) During the period from 01.01.2001 to 05.02.2002, average 40 units were charged against the said consumer.
- (d) Meter replaced on 06.02.2002. Supplementary bills had been raised for last six months at the rate of 20 units per month only.
- (e) Whereas after replacement of Meter, consumption comes 263 units in between 08.04.2002 to 15.07.2002, 179 units in between 16.07.2002 to 18.10.2002 and 156 units in between 19.10.2002 to 18.12.2002."
4. The petitioner duly replied to the said show-cause notice on 19th March, 2003 and subsequent thereto a Charge Sheet was issued by the respondent No. 4 vide memorandum dated 22nd April, 2003 incorporating the irregularities mentioned in the show-cause notice, as charges against the petitioner. The petitioner replied to the said Charge Sheet by a representation dated 6th July, 2003 and subsequent thereto vide memorandum dated 25th June, 2003 the respondent No. 5 was appointed as the Enquiry Officer to conduct an enquiry pertaining to the Charge Sheet dated 22nd April, 2003.
5. The said inquiry was hurriedly concluded upon conducting hearing on 21st January, 2004 and 23rd March, 2004 and in the said enquiry, written arguments were filed by the Presenting Officer and the petitioner and the respondent No. 5 filed the Enquiry Report on 31st May, 2004 and the same was communicated to the petitioner by a memorandum dated 11th June, 2004.
6. The petitioner duly replied to the said Enquiry Report through a representation dated 30th June, 2004 and subsequent thereto the petitioner was issued a second show-cause notice dated 10th July, 2004 to which the petitioner replied on 27.07.2004 and the final order of punishment was passed vide memorandum dated 12th August, 2004 issued by the respondent No. 4 imposing a punishment of "Reduction of Two increments in his existing scale with cumulative effect".
7. Aggrieved by the said order of punishment the petitioner preferred a statutory appeal but the same was dismissed by the Appellate Authority vide memorandum dated 26th April, 2005 upholding the order of punishment.
8. Mr. Swapan Dutta, learned Senior Advocate, appearing on behalf of the petitioner submits that the respondent No. 4 did not consider the petitioner's reply to the show-cause notice and issued a Charge Sheet which is a replica of the show-cause notice and that the said Charge Sheet does not contain any imputation pertaining to the alleged charges and the list of documents and the list of witnesses were also not disclosed by the Disciplinary Authority.
9. Mr. Dutta submits that in the Charge Sheet there was no specific charge to the effect that the petitioner had taken 16 months time to replace his own meter and

that such action on the part of the petitioner was an act of misconduct.

10. Mr. Dutta had further argued that the petitioner had explained the allegation of 16 months delay towards replacement of the meter by stating that there was a shortfall in supply of single phase meter for domestic consumers and that the shortage during the particular period was 37% and that by considering the revenue recovery for Board's benefit and for giving service to the consumers, a priority was accorded, as a matter of policy, to utilize the meters available for the needs of the consumers and that such action on the part of the petitioner cannot be said to be a misconduct and furthermore the respondents did not suffer any pecuniary loss for such alleged delay towards replacement of meter by the petitioner.

11. Mr. Dutta further submits that the enquiry was hurriedly concluded in a mechanical manner by fixing two dates of hearing on 21st January, 2004 and 23rd March, 2004 and that in the said enquiry the Presenting Officer did not produce any witness and that the Blue Card and the Yellow Card which were respectively marked as Exhibit A and Exhibit B were also not corroborated through any evidence.

12. Mr. Dutta further submitted that the documents produced by the petitioner through the written argument were also not considered by the Enquiry Officer and the enquiry was abruptly concluded through filing of a report on 31st May, 2004.

13. As regards the said Enquiry Report, Mr. Dutta submitted that even after arriving at a conclusion to the effect that the charge towards enjoyment of electricity with low consumption could not be proved against the petitioner, the Enquiry Officer observed that the petitioner had taken 16 months time to replace his own meter and that such type of irregularity was unbecoming of the petitioner being the Station-In-Charge. The reply to the Enquiry Report was submitted by the petitioner on 30.06.2004 but according to Mr. Dutta there is no reflection in the second show-cause notice that the same was considered by the Disciplinary Authority.

14. According to Mr. Dutta the detailed reply filed by the petitioner to the second show-cause notice was also not considered by the respondent No. 4 and the final order of punishment dated 12th August, 2004 reflects no independent application of mind on the part of the respondent No. 4. Mr. Dutta also points out that the irregularities and the charges as featuring in the show cause notice and the charge sheet respectively do not tally with the charges incorporated in the second show-cause notice and the final order of punishment which begin through incorporation of a paragraph as follows:--

"By the Charge sheet, issued under memo. No. PD/493(03)/530 Dt. 22.04.2003, the following charges, in brief, were levelled against Sri Jagannath Adhikary:

1. The charged employee being a Station-In-Charge has taken 16 months time

to replace his own meter. On 30.09.2000 the meter was declared stop & sticky, whereas on 6.2.2002 the meter was replace.

2. During the period from 01.01.2001 to 05.02.2002, average 40 units were charged against the service connection of Shri Jagannath Adhikary. Supplementary bills have been raised for last six months before 06.02.2002 @ 20 units per month only. Thus Sri Adhikary, being the Station-In-Charge was enjoying electricity on low consumption."

15. Mr. Dutta further submits that a perusal of the second show-cause notice and the final order of punishment would reveal that the contents of the same are identical which supports the contention of the petitioner to the effect that there had been no independent application of mind on the part of the respondent No. 4 and no consideration of the reply to the second show-cause notice and the impugned order of punishment had been issued mechanically.

16. Mr. Dutta further submits that the Appellate Authority had proceeded on the basis that the petitioner effected a service connection in his name and took 16(sixteen) months to replace his stop and sticky meter and availed undue benefit of enjoying low consumption by raising average bill during the period of stop meter.

17. According to Mr. Dutta the service connection was effected in the year 1989 when the petitioner was not the Station-In-Charge of Nanda Kumar Group Electric Supply and that the delay of 16 months to replace the meter was not at all a specific charge and that the finding of the Appellate Authority to the effect that the petitioner had availed undue benefit of enjoying low consumption by raising average bills during the period of stop meter, is absolutely fallacious inasmuch as the Enquiry Report would reveal that the said charge of low consumption had been failed to be proved and established and that in the backdrop of such contradiction, the order of the Appellate Authority is unsustainable in law.

18. In support of his argument to the effect that if the finding of guilt is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny, Mr. Dutta had relied upon the judgment delivered by the Hon"ble Supreme Court in the case of Kuldeep Singh Vs. The Commissioner of Police and Others, wherein the Hon"ble Supreme Court observed:

"It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the Enquiry Officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the Appellate Authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusion reached therein if there was no evidence to support the findings or the findings recorded were such as could not

have been reached by an ordinary prudent man or the findings were perverse or made at the dictate of the superior authority."

19. To fortify his argument to the effect that evidence adduced in course of departmental enquiry must have nexus with the allegation, Mr. Dutta relied upon the judgment delivered by the Hon"ble Supreme Court in the case of Sher Bahadur Vs. Union of India (UOI) and Others, wherein the Hon"ble Supreme Court observed:

"it may be observed that the expression sufficiency of evidence postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence, however, voluminous it may be, which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer, is no evidence in law. The mere fact that the enquiry officer has noted in his report, in view of oral, documentary and circumstantial evidence as adduced in the enquiry, would not in principle satisfy the rule of sufficiency of evidence."

20. In reply to the submissions made on behalf of the petitioner to the effect that in the Charge Sheet there was no charge to the effect that the petitioner had taken 16 months time to replace his own meter, Mr. Mitra, learned advocate appearing on behalf of the respondents, submits that though there is no specific incorporation in the Charge Sheet to the effect that the petitioner had taken 16 months time to replace his own meter, the petitioner had not been prejudiced in any manner inasmuch as a perusal of the written argument submitted by the petitioner before the Enquiry Officer would reveal that the said point had been categorically dealt with by the petitioner.

21. Mr. Mitra further submits that taking advantage of his position as Station-In-Charge of the Nanda Kumar Group Electric Supply, the petitioner illegally withheld the replacement of the defective meter and in the process the petitioner caused financial loss to the Board.

22. According to Mr. Mitra, the totality of the circumstances needs to be taken into consideration and that the charge of low consumption stands established inasmuch as the petitioner took 16 months time to replace the defective meter and that such delinquency on the part of the petitioner warranted imposition of the punishment of reduction of two increments in the existing scale with cumulative effect and that such punishment cannot be construed to be disproportionate. Mr. Mitra further submits that there is no perversity in the findings arrived at by the Enquiry Officer and that the linkage and nexus between the alleged misconduct and the charged officer stands established on the rudiments of the evidence on record.

23. In reply to the petitioner's argument to the effect that the Appellate Authority had mechanically rejected the appeal without any independent application of mind and without incorporating the reasons towards dismissal of the appeal, Mr. Mitra submits that if the order of the Appellate Authority is an

order of affirmation then it is not obligatory on the part of the Appellate Authority to pass a speaking order.

24. Mr. Mitra, in course of his argument had drawn the notice of this Court to the averments made in the affidavit-in-opposition to the effect that the sinister motive and deceitful conduct of the petitioner was explicit from the fact that the petitioner continued to keep installed at the premises in question in which he was the recorded consumer, a defective/stopped meter for about 16 months and that thereby the petitioner prevented the Board from collecting electric charges as per actual consumption and compelling the Board to realize lesser charges on average estimated consumption of earlier months and that such intention and action of the petitioner was to defraud to the Board.

25. I have heard the learned advocates appearing for the respective parties and I have considered the facts and circumstances of the case. It is well-settled in service jurisprudence that authority concerned has to apply its mind upon receipt of reply to the show-cause as to whether a further enquiry is called for but in the instant case there had been no such application of mind on the part of the Disciplinary Authority inasmuch as there is no semblance of any consideration of the petitioner's reply to the show-cause notice and the Charge Sheet issued is a replica of the show-cause notice.

26. In my opinion, "approval for issuing charge memo" and "approval of charge memo" are distinct actions at distinct stages and that the decision at both stages has to be taken by the Disciplinary Authority but in the instant case, no such decision was taken prior to issuance of the Charge Sheet upon consideration of the reply of the petitioner to the impugned show-cause notice and such inaction on the part of the respondents tantamount to blatant violation of the principles of natural justice.

27. A perusal of the Charge Sheet reveals no incorporation of a charge to the effect that the petitioner had taken 16 months time to replace his own meter and no imputation in support thereto and no accusation that such act tantamount to an act of misconduct in terms of the service regulations and such infirmities render the charges to be absolutely vague and indefinite. It is well-settled that an infirm Charge Sheet is violative of the principles of natural justice and that it vitiates the entire decision making process. From such sequence it is explicit that the Charge Sheet suffers from patent legal infirmities.

28. In the reply to the Charge Sheet the petitioner categorically answered the charge of low consumption as contained in Clause (a) of the Charge Sheet and the instances pertaining to the said charge as contained under Clauses (b), (c) and (d) of the Charge Sheet and upon consideration of such defence the Enquiry Officer categorically observed as follows:--

"The other charge against Shri Jagannath Adhikary is that during the period from 01.01.01 to 05.02.02, average 40 Units were charged but again a supplementary bill was raised for last 6 months @ 20 Units per month after replacement of

meter on 06.02.02. It evident that after replacement of meter consumption comes to 263 Units in between 08.04.02 to 15.07.02, 179 Units in between 16.07.02 to 18.10.02 & 156 Units in between 19.10.02 to 18.12.02.

The Presenting Officer failed to submit any documents or any analysis showing the consumption pattern of the same type of consumer in the above locality of Nandakumar Gr. E/S so that it can be proved that the consumption as claimed i.e., 60 Units (40 Units + 20 Units) was very low. Hence the above charge has not been substantiated beyond reasonable doubt."

In the Enquiry Report, however, it had also been observed that "the charged employee being a Station-in-Charge has taken 16th Months time to replace his own meter. Such type of irregularities in his own service connection are very much unbecoming being a Station-In-Charge and that hence the above charge has been substantiated beyond any reasonable doubt."

29. Such observation of the Enquiry Officer is absolutely perverse inasmuch as such finding does not stand fortify through any evidence on record. In the report itself the said Enquiry Officer had observed that no prosecution witness was produced by the prosecution side. The records further reveal that the report of the inspection dated 18.01.2003 on the basis of which alleged charges were framed was also not exhibited and the Blue Card and the Yellow Card as marked as Exhibit-A and Exhibit-B were also not proved by producing any witness and furthermore, the enquiry was abruptly concluded by conducting hearing only on two dates, i.e., on 21.01.2004 and 23.03.2004, with direction towards filing of written arguments by the respective parties. An enquiry consisting merely of putting questions and inviting written arguments, without examination of any witness and without tendering any document in support of the charges, is unsustainable and such infirmities in the decision making process warrants intervention of this Court.

30. In the Enquiry Report there is no finding that the petitioner had caused loss to the Board and that as such the misconduct alleged against the petitioner in terms of Regulation 61 (e) is based on no evidence.

31. The expression "sufficiency of evidence" postulates existence of some evidence which links the charged officer with the misconduct alleged against him but the instant case no such nexus stands established.

32. So far as the contention of Mr. Mitra to the effect that though the factum of non-replacement of a defective meter was not incorporated in the Charge Sheet, the same was implied in the backdrop of the charges levelled. I find that the Enquiry Officer had not also considered the explanation given by the petitioner towards the alleged delay in replacement of the meter and the specific contention of the petitioner to the effect that there was a shortage of meters and the documents in support thereto as disclosed by the petitioner, were also not considered by the Enquiry Officer and in the backdrop of such infirmities, the Enquiry Officer could not have arrived at a conclusion to the effect that the

petitioner had delayed the replacement of meter by 16 months.

33. A perusal of the second show-cause notice and the order of punishment reveals that the alleged charges quoted in the same are different from the charges quoted in the Charge Sheet itself and a comparison reveals that a charge to the effect that the petitioner "being a Station-In-Charge had taken 16 months time to replace his own meter" had been specifically incorporated for the first time and neither the second show-cause notice nor the final order reveals that the explanation given by the petitioner, fortified through appropriate documents, had been considered by the Disciplinary Authority and such non-consideration tantamount to blatant the violation of the principles of natural justice.

34. The order of punishment contained in the memorandum dated 10th July, 2004 is absolutely cryptic and having concurred with the findings of the Enquiry Officer, there is no explanation as to how, the Disciplinary Authority in the second show-cause notice proposed to the effect that "the charges established against him warrants severe punishment" though the alleged second charge incorporated in the said second show-cause notice was found not to have been proved.

35. According to the respondents the charge of enjoyment of electricity with low consumption is attributable to the delayed replacement of the meter but the said charge of low consumption itself had not been established by the respondents in course of the enquiry as would be explicit from the Enquiry Report and that as such the primary charge of enjoyment of electricity with low consumption having not been established, in my opinion, the punishment imposed is unsustainable in law.

36. A comparison of the second show-cause notice and the final order of punishment would reflect that the contents of the same are absolutely identical and in the latter there is only an additional line to the effect that "the reply, dated 22nd July, 2004 of the second show-cause notice of Sri Jagannath Adhikary has been received and carefully examined."

37. The Disciplinary Authority, at the time of passing the final order, should have considered the representations submitted by the petitioner to the second show-cause notice. Non-consideration of the same at the time of passing final order, clearly establishes non-application of mind on the part of the Disciplinary Authority.

38. In the facts of the present case the petitioner had specifically demonstrated the actual prejudice suffered by him due to the violation of the principles of natural justice on several occasions at the instance of the Enquiry Officer and the Disciplinary Authority which I had discussed hereinabove.

39. A perusal of the order passed by the Appellate Authority reveals that the said authority had misdirected itself by proceeding on the basis as follows:--

"I. Petitioner effected a service connection in his name.

II. Petitioner took 16 months time to replace his stop and sticky meter.

III. Petitioner availed undue benefits of enjoying low consumption by raising average bills during the period of stop meter."

40. Such findings at Clauses I and II are absolutely unfounded inasmuch as the petitioner's service connection was effected in 1989 and he joined in Station-In-Charge in 1994 and that as such the date of effect of the service connection has no nexus with the alleged delay of 16 months pertaining to a period in the year 2001. The finding at clause III had also not even been established by the respondents as would be explicit from the Enquiry Report. The words "undue benefit" had been incorporated for the first time in the Appellate Authority order.

41. In spite of the failure on the part of the respondents to establish and prove the charge of enjoyment of electricity with low consumption against the petitioner, as reflected in the Enquiry Report, the Disciplinary Authority imposed a major penalty by modifying the charges at the juncture of issuance of second show-cause notice and that too without considering the detailed reply to the second show-cause, as a comparison of the second show-cause notice and the final order would reveal that the same are absolutely identical save and except inclusion of a line in the latter to the effect that the reply to the second show-cause notice had been examined. Most surprisingly the Appellate Authority thereafter proceeded on the basis that the petitioner had availed undue benefit for the alleged delay towards replacement of the meter though there was no whisper and no accusation in the entire proceeding to the effect that the petitioner had availed undue benefit for alleged delay towards replacement of the meter. From such sequence it is explicit that the entire proceeding suffers from procedural irregularity, infirmities in the decision making process and perversity. It is well-settled that in such circumstances, the Court, in exercise of the power of judicial review, can interfere with the disciplinary proceedings.

42. The entire proceedings against the petitioner smacks of bias and closed mind. The Enquiry Authority, the Disciplinary Authority and the Appellate Authority had been swayed by a preconceived notion that the petitioner had delayed the replacement of the defective meter standing in his name. Furthermore, though the charge of enjoyment of electricity with low consumption could not be established by the respondents, the same had been taken into consideration by the Disciplinary Authority while imposing the punishment and by the Appellate Authority while affirming the said order of punishment. Such error in the decision making process warrants intervention of the Hon'ble Court, in exercise of its power of judicial review.

43. In such circumstances, I quash the Charge Sheet, the Enquiry Report, the final order passed by the Disciplinary Authority and the order passed by the Appellate Authority and as a matter of fact the entire disciplinary proceedings initiated on the basis of aforesaid Charge Sheet dated 22nd April, 2003 against the petitioner.

44. The respondents are directed to grant the admissible service benefits to the petitioner, which had been denied to the petitioner pursuant to the order of the punishment, within a period of eight weeks from the communication of this order. The writ application is, accordingly, is allowed.

45. In the facts of the present case, there shall be no order as to costs.

46. 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.