
(2000) 05 CAL CK 0012
In the Calcutta High Court
Case No : C.R. No. 1605 (W) of 1990

Mohd. Mia

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 10-05-2000

Acts Referred:

Citation : (2000) 86 FLR 1 : (2000) 3 LLJ 1147

Hon'ble Judges : D.P. Kundu, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.P. Kundu, J.—The petitioner, a workman, in this writ proceeding has challenged the award passed by the 1st Labour Court, West Bengal on October 4, 1989 in case No. VIII-C-9/86. By an order dated July 22, 1999. I requested Mr. Dipak Kumar Ghosh, advocate to act as Amicus Curiae without any remuneration and Mr. Ghosh very kindly agreed to act as Amicus Curiae. At the time of final hearing of the matter the learned advocate for the workman did not appear but Mr. Ghosh, advocate assisted the Court by arguing the case. None appeared to argue the case on behalf of the respondents.

2. The petitioner while working as a workman in National Jute Manufactures Corporation (A Government of India Undertaking) (hereinafter referred to as the Corporation) in Winding Department, by a charge-sheet dated April 17, 1998 the following charges were levelled against the petitioner:

"You are hereby charged with disobedience and disorderly behaviour during working hours at the establishment in that on April 15, 1982 at 6 A.M. Shri P.K. Bakshi (Sn. Asst.) your superior officer instructed you to operate the Cop Winding M/c. No. 10 but inspite of his instructions you did not deliberately comply and refused to obey the said order. Moreover when Shri P.K. Bakshi wanted to know the reasons for which you did not operate the M/c No. 10, you gave arrogant and insolent reply in a very rough manner in presence of some

other workmen and you said that "I will not operate the M/c as per your order. I will operate the M/c according to my own choice and if you do not allow me to operate the M/c as per my choice, I will assault you in the department".

Again at 2 P.M. when you resumed your duty, you were instructed to operate the said M/c No. 10 by your superior Shri Tapan Das (Assistant) but you repeated your same conduct of- denying to comply with the reasonable instructions. Further, when under instruction of Shri P.K. Bakshi and Tapan Das Shri Kurban MK/2785 counselled you to comply with the said instructions, you abused the said Shri Kurban and also assaulted him inside the department in presence of other workers.

You are charged with the above offence. which is to be treated as misconduct under Rule 14 (c) (i) and (viii) of the Standing Orders. You are hereby required to explain the said circumstances alleged against you within 48 hours."

It appears that the charge-sheet was issued by the Senior Assistant of the Corporation. It further appears that on April 20, 1982 the workman in his reply to the charge-sheet stated as follows:

"Most respectfully and humbly I beg to draw your kind attention to the following facts for your kind and favourable consideration:

On August 15, 1981 I was admitted in the N.R.S. Medical College\\Hospital (Emergency Room), Calcutta due to stab injuries and remained there fifteen days for treatment. Again I was admitted to S.S.K.M. Hospital for further proper treatment. I possess all the documents in connection with my treatment.

Since the date of injury and still now I am feeling too much weak for which I am really unable to operate the heavy machines.

On April 15, 1982 when Shri P.K. Bakshi advised me to operate the machine No. 10, I very politely requested him that due to my weakness I am unable to operate the same.

I am always bound to carry out the order of my superior officer, and I cannot refuse to perform my duty. I explained politely before the officer to consider my present physical condition. I hope you will kindly realise my position as stated above. Further I hope and pray that your honour would be pleased to withdraw suspension and for this act of your kindness I shall remain ever grateful to you."

3. By a letter dated July 6, 1983 the workman was dismissed from service. The relevant portion of the order of dismissal reads as follows:

"Further to the charge-sheet and letter of suspension issued to you on April 17, 1982, an enquiry has been instituted about the charges levelled against you on April 25, 1983 and April 27, 1983.

I have carefully gone through the proceedings of the enquiry, all connected papers and findings of the enquiry officer and find that you fully participated in

the enquiry by cross-examining Management, witnesses and examining your witnesses in defence.

I being the disciplinary authority, now concur with the findings of the enquiry officer that the charges levelled against you for misconduct u/s 14 (c)(i) and (viii) of the Standing Orders of the company have been adequately proved.

The charges levelled against you and proved against you at the enquiry, being grave and serious and in consideration of your past record of misconduct, the punishment warranted in terms of the Standing Orders of the company is that of dismissal from the Company's service.

You are therefore dismissed from the services of the company with effect from August 1, 1983.

You are advised to collect all your dues, if any from the Mill Security Office on any working day with prior intimation to the Management."

The said order of dismissal was issued by the Manager of the Corporation. From paragraph 8 of the affidavit-in-opposition filed on behalf of the respondents No, 2 and 3 it appears that Shri P.K. Bakshi, Senior Assistant of the Corporation was present at the enquiry all along, first as a witness and thereafter as company's representative. The respondents No. 2 and 3 in their affidavit-in-opposition in paragraph 8, inter alia, stated: "Shri P.K. Bakshi, Senior Assistant of the Company was also present at the enquiry all along, first as a witness and thereafter as Company's representative." It appears from the charge-sheet that Shri P.K. Bakshi, Senior Assistant issued the charge-sheet against the workman.

4. Mr. Dipak Kumar Ghosh, advocate as Amicus Curiae argued the following points:

- (1) The charge-sheet was issued without jurisdiction.
- (2) After submission of reply to the charge-sheet for about one year no step had been taken to proceed with the departmental proceeding and this was prejudicial to the workman.
- (3) When prejudice is caused there is inherent infirmity in the process of conducting enquiry.
- (4) The statement made by the respondents No. 2 and 3 in their affidavit-in-opposition in paragraph 8 which has already been quoted hereinabove clearly show violation of principles of natural justice.
- (5) No reasonable person would have arrived at such conclusion as that of the Tribunal.
- (6) Employer should accept the certificate of ESI Doctor unless the same is found to be mala fide.
- (7) When a workman expresses his physical disability to perform heavy work

being supported by Doctor certificate it cannot be said that he refused to perform heavy duty which he is asked by the employer to perform.

(8) The charge-sheet is vague.

(9) During the disciplinary proceeding principles of natural justice had been violated.

(10) No conclusion of blame-worthy conduct of the workman can be inferred.

(11) Punishment imposed upon workman is shockingly disproportionate which amounts to victimisation.

(12) Tribunal failed to apply its mind and also resorted to double standard.

Re: Point No. 1

5. Mr. Ghosh, advocate argued that service condition of the workman is guided by Standing Orders and Order 14 of Standing Orders, deals with disciplinary action for misconduct. Relying upon Order 14 (e) of the Standing Orders it was argued that Senior Assistant had no jurisdiction to initiate the disciplinary proceeding by issuing charge-sheet. Order 14 (e) of the Standing Orders is quoted hereinbelow:

"(e) No order of dismissal shall be made unless the workman concerned is informed in writing of the alleged misconduct and is given an opportunity to explain the circumstances alleged, against him. The approval of the Manager of the establishment and, where there is no Manager, of the employer, is required in every case of dismissal, and when circumstances appear to warrant it, the Manager of the employer may, whether an appeal has or has not been preferred, institute independent enquiries before dealing with the charges against a workman."

From above quoted Order 14(e) it does not appear that only Manager and where there is no Manager the employer is authorised to initiate departmental proceeding. The said Order 14 (e) laid down that a workman should not be dismissed without the approval of the Manager of the establishment and where there is no Manager, of the employer. There is no expressed or implied provision in the said Order 14 (e) which prohibits Senior Assistant to issue charge-sheet. If it is construed that no officer below the rank of Manager is authorised to initiate a disciplinary proceeding then Court has to re-write the said Order 14 (e), which the Court cannot. In my opinion, an officer can initiate a disciplinary proceeding against his subordinate workman. There is no dispute that the petitioner, at the material time, was a workman subordinate to Senior Assistant who issued the charge-sheet. Under these circumstances I hold that the charge-sheet against the petitioner was issued by a competent officer.

Re: Points No. 2 and 3.

6. It is apparent on the face of the record that on April 15, 1982 the petitioner

was directed by the Senior Assistant to operate heavy Cop-Winding Machine and the petitioner expressed his inability as per advice of the doctor. On April 17, 1982 the charge-sheet was issued against the petitioner for alleged misconduct under Rule 14 (c) (i) and 14 (c) (viii) of the Standing Orders. On April 20, 1982 the petitioner submitted his reply to the charge-sheet denying the charges levelled against him and stating his physical condition. On April 21, 1983 i.e. after a lapse of one year the petitioner was communicated with the decision that the enquiry will be held against him in respect of the charges levelled against him and the enquiry was held on April 25, 1983 and April 27, 1983. By a letter dated July 6, 1983 the petitioner was dismissed from service. Thus it is apparent that after submission of reply to the charge-sheet by the petitioner the disciplinary authority did not take any decision to proceed with the enquiry for a period of one year. The respondents No. 2 and 3 in their affidavit-in-opposition, in paragraph 7, inter alia, stated:

"I say there is no specific clause regarding schedule time in the Standing Orders for holding the said enquiry after submission of the explanation to the charge-sheet. The management ordered for holding the enquiry within a reasonable period after taking into consideration the prevailing situation which existed at the mill at that point of time. I say, to hold the enquiry after a period of one year was very normal under the circumstances which existed at the mill at that point of time."

From the statements of the respondents No. 2 and 3 it appears that since there was no specific clause regarding schedule time in the Standing Orders for holding a disciplinary enquiry after submission of the explanation to the charge-sheet, the disciplinary authority thought that it can wait for one year and according to the disciplinary authority holding the enquiry after a period of one year under the circumstances which existed at the mill at the material time was reasonable. The respondents did not disclose the circumstances which existed at the mill at the material time for which there was a delay of one year to start enquiry into the charges. Thus this delay remained unexplained. Mr. Dipak Ghosh, advocate argued that this delay was prejudicial to the petitioner. Mr. Ghosh, advocate argued when prejudice is caused there is inherent infirmity in the process of conducting enquiry. Mr. Ghosh, advocate in support of his contention relied upon State of Andhra Pradesh Vs. N. Radhakishan, wherein Supreme Court in paragraph 19 of the reported decision observed as follows:

"It is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the Court has to take into consideration all relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when delay is abnormal

and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. "Ultimately, the Court is to balance these two diverse considerations."

The respondents No. 2 and 3 in their affidavit-in-opposition did not state that the petitioner caused delay to start the enquiry into the charges levelled against the petitioner. The petitioner is not to be blamed for the delay. In the facts and circumstances I am of the view that the unexplained delay of one year had caused prejudice to the petitioner and vitiated the disciplinary proceeding. I am also of the view that Mr. Ghosh, advocate is correct in arguing that when prejudice is caused there is inherent infirmity in the process of conducting enquiry. Therefore, I am of the opinion that for the reasons aforesaid the entire disciplinary proceeding against the petitioner had been vitiated.

Re: Point No. 4.

7. The respondents No. 2 and 3 in their affidavit-in-opposition, in paragraph 8, inter alia, stated--"Shri P.K. Bakshi, Senior Assistant of the company was also present at the enquiry all along first as a witness and "thereafter as Company"s representative". It is apparent from the charge-sheet that said Shri P.K. Bakshi, Senior Assistant issued the charge-sheet against the petitioner. Mr. Ghosh, advocate argued that the fact that the authority who issued the charge-sheet also functioned as Company"s representative at the enquiry and also appeared as a witness, at the time of enquiry clearly shows that principles of natural justice had been violated. In support of his contention Mr. Ghosh, advocate relied upon *Sarajit Coomer Mazumdar v. The Calcutta Dock Labour Board and Ors.* 1988 (1) CLT 431 wherein a single Bench of this High Court in paragraph 8 of the reported decision held -

"Turning back to the facts and circumstances of the case as also to the respective submissions of the learned advocates for the parties, it is proper for the Court to examine them. It is an admitted fact that the Presenting Officer appeared as

witness. Mr. De, learned advocate could not justify the action of the authority in adducing the Presenting Officer as a witness in the departmental proceedings. It should be borne in mind that the criterion should be that the prosecutor cannot be witness applies in a departmental proceedings. The act of the Presenting Officer in having his own testimony recorded in the case beyond any shadow of doubt evidences a state of mind which clearly demonstrates a considerable bias existed. It is completely foreign to the fundamentals of the Service Rules and Service jurisprudence that a Presenting Officer should be allowed to participate as witness. Whatever could not be said otherwise before the Enquiry Officer was sought to be filled up by the deposition of the Presenting Officer as a supplemental to the case of fee prosecution. In my view, the participation of the Presenting Officer as witness rendered the enquiry and the entire proceedings inoperative and without jurisdiction."

I respectfully agree with the view expressed in the above quoted paragraph. Following the decision of the Single Bench of this High Court in *Sarajit Coomer Mazumder v. The Calcutta Dock Labour Board and Ors.* (supra) I hold that the participation of the Presenting Officer as a witness in the instant case rendered the enquiry and the entire proceedings inoperative and without jurisdiction.

8. In view of the discussions made hereinabove I do not want to deal with the other submissions made by Mr. Ghosh, advocate and I hold that the enquiry against the petitioner had been vitiated for the reasons discussed hereinabove. I am also of the view that the Tribunal erred in law in upholding the punishment of dismissal imposed upon the petitioner. I set aside and quash the award passed by the Tribunal. I set aside and quash the order of punishment dismissing the petitioner and I also set aside and quash the entire disciplinary proceeding. The writ petition is allowed. However, there shall not be any order as to costs.