

(2008) 09 CAL CK 0001
In the Calcutta High Court
Case No : Writ Petition No. 8782 (W) of 2003

Om Prakash Yadav

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 15-09-2008

Acts Referred:

Citation : (2009) 121 FLR 151

Hon'ble Judges : Debasish Kar Gupta, J

Bench : Single Bench

Advocate : Achin Kr. Majumdar and Krishnadeo Das, for the Appellant; Bidisha Banerjee, for the Respondent

Judgement

Debasish Kar Gupta, J.—The Petitioner files this writ application challenging the charge-sheet dated April 30, 1998, report of the enquiry officer dated December 21, 1999 and the second show-cause notice dated August 2, 2002.

The Petitioner was an Inspector of the Railway Protection Force, Eastern Railway. While the Petitioner was posted as an Inspector at Railway Protection Force, Post-Maldah Town, he was served with a charge-sheet dated April 30, 1998. The charges levelled against him in the above charge-sheet were lack of supervision and negligence of duty resulting in theft of 445 bags of sugar. In the above charge-sheet dated April 30, 1998, the name of the enquiry officer was disclosed fixing the first date of enquiry. In reply, the Petitioner submitted his list of defence dated November 30, 1999. During the pendency of the enquiry proceeding the Petitioner was transferred by an order of inter-divisional transfer dated March 23, 1999. A representation was submitted to the Respondent-authorities with a prayer for withdrawal of the order of transfer. But the same was not considered by the Respondent authorities and the Petitioner had to accept his transferred assignment. The Petitioner further filed a representation dated June 18, 2002 to supply some documents to him but the same were not supplied to the Petitioner. After the conclusion of enquiry proceeding, the enquiry officer submitted his report dated December 21, 1999. The Respondent-

authorities served a show-cause notice dated August 2, 2000 together with the above enquiry report dated December 21, 1999 upon the Petitioner. The Petitioner submitted his reply dated September 25, 2002 to the above show-cause notice.

2. Appearing on behalf of the Petitioner, Mr. A.K. Majumdar learned Advocate submits that the aforesaid charge-sheet dated April 30, 1998 cannot be sustained in law. Because the name of the enquiry officer and the first date of enquiry was disclosed in the aforesaid charge-sheet. Therefore, the Respondent authorities made up the mind to draw the disciplinary proceeding against the Petitioner on the basis of the charges levelled against him in the above charge-sheet without giving him an opportunity to submit reply to the above charge-sheet.

3. It is further submitted on the behalf of the Petitioner that he had already retired from the above service on December 31, 2004. In accordance with the provisions of Sub-rule (1) of Rule 9 of the Pension Rules, the proceeding in question cannot be continued after his retirement from the above service.

4. Reliance is placed by the Petitioner on the decision of State of Punjab v. V.K. Khanna, AIR 2001 SC 343 to submit that when the name of the enquiry officer is disclosed in the charge-sheet, the same is liable to be set aside on the ground of biasness. Reliance is placed upon the unreported decision dated June 16, 2004 in the matter of Sri Jnanadhir Mohan Sen Sharma v. Union of India (In re: W. P. No. 8093 (W) 2003) to submit that it is the settled principles of law that the disciplinary proceeding cannot continue after the retirement of the delinquent employee in view of the provisions to Sub-rule (1) of Rule 9 of the Railway Service (Pension) Rules, 1993.

5. It is submitted on behalf of the Respondents that after submitting the reply to the charge-sheet and after participating in the enquiry proceeding, the Petitioner cannot pray for quashing of the charge-sheet on the ground of biasness of the Respondent authority. It is also submitted on behalf of the Respondent-authority that in view of the provisions of Rule 9 of the Railway Services (Pension) Rules, 1993, the Respondents were entitled to conclude the disciplinary proceeding and till it is concluded the Petitioner is not entitled to get his terminal benefit. No objection is raised with regard to the submission made on behalf of the Petitioner that the Petitioner already retired from the services.

6. I have given my anxious consideration to the submission made on behalf of the respective parties as also I have taken into consideration the facts and circumstances of the case. I find that admittedly the name of the enquiry officer was disclosed in the charge-sheet dated April 30, 1998. The fact of retirement of the Petitioner from the services under reference on attaining the age of retirement on superannuation with effect from December 31, 2004 has been admitted by the learned Advocate appearing for the Respondents.

7. In view of the above admitted facts of the case in adjudicating the question of

legality of the charge-sheet disclosing the name of the enquiry officer, I find that it is the settled principles of law that after issuing the charge-sheet the principles of natural justice is required to be followed by giving an opportunity to the delinquent employee to submit a reply to the same. On receipt of such reply the disciplinary authority is to decide as to whether the enquiry proceeding is required to be conducted. In the event the decision is taken by the disciplinary authority to conduct enquiry proceeding without giving opportunity to the delinquent employee to give reply to the charge-sheet, the decision making process suffers from the violation of the principles of natural justice on the ground of biasness. In this regard the relevant portions of the decision *State of Punjab v. V.K. Khanna* (supra) are quoted below:

34. The High Court while delving into the issue went into the factum of announcement of the Chief Minister in regard to appointment of an Inquiry Officer to substantiate the frame of mind of the authorities and thus depicting bias. What bias means has already been dealt with by us earlier in this judgment, as such it does not require any further dilation but the factum of announcement has been taken note of as an illustration to a mindse viz. the inquiry shall proceed irrespective of the reply. Is it an indication of a free and fair attitude towards the concerned officer? The answer cannot possibly be in the affirmative. It is well settled in Service Jurisprudence that the concerned authority has to apply its mind upon receipt of reply to the charge-sheet or show-cause as the case may be, as to whether a further inquiry is called for. In the event upon deliberations and due considerations it is in the affirmative the inquiry follows but not otherwise and it is this part of Service Jurisprudence on which reliance was placed by Mr. Subramaniam and on that score, strongly criticised the conduct of the Respondents here and accused them of being biased. We do find some justification in such a criticism upon consideration of the materials on record.

8. In view of the settled principles of law the charge-sheet dated April 30, 1998 is liable to be quashed and set aside.

9. With regard to the continuation of the disciplinary proceeding under reference after the admitted fact of retirement of the Petitioner on attaining the age of retirement on superannuation, the provisions of the Rule 9 of the Railway Services (Pension) Rules, 1993 are quoted below:

9. Right of the President to withhold or withdraw pension:

(1) The President reserves to himself the right of withholding or withdrawing a pension or gratuity or both, either in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Railway, if in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement:

Provided that the Union Public Service Commission shall be consulted before any final orders are passed: Provided further that where a part of pension is withhold or withdrawn, the amount of such pension shall not be reduced below the amount of rupees three hundred seventy five per mensem.

(2) The departmental proceedings referred to in sub-rule:

(a) If instituted while the railway servant was in service whether before his retirement or during his re-employment, shall after the final retirement of the railway servant, be deemed to be proceeding under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the railway servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the president, that authority shall submit a report recording its findings to the President;

(b) If not instituted while the railway servant was in service, whether before this retirement or during his re-employment:

(i) shall not be instituted save with the sanction of the President;

(ii) shall not be in respect of any event which took place more than four years before such institution; and

(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to, departmental proceedings in which an order of dismissal from service could be made in relation to the railway servant during his service.

(3) In the case of a railway servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under Sub-rule (2), a provisional pension as provided in Rule 96 shall be sanctioned.

(4) Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a railway servant.

(5) For the purpose of this rule:

(a) Departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the railway servant or pensioner, or if the railway servant has been placed under suspension from an earlier date, on such date; on such date; and

(b) Judicial proceedings shall be deemed to be instituted,

(i) in the case of criminal proceedings; on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognizance; is made, and

(ii) in the case of civil proceedings, on the date the plaint is presented in the Court.

10. From a bare reading of provisions of Rule 9 of the Railway Services (pension) Rules, 1993 (hereinafter referred to as the said pension rule), it clearly appears that the same has no manner of application to a department proceeding initiated under Rule 153 of the Railway Protection Force Rules, 1987. A proceeding can be initiated by the president for the purposes mentioned in Sub-rule (1) of Rule 9 of the said pension rule either during the period when the delinquent employee is in employment or in re-employment, or after his retirement from services.

11. Admittedly, in the instant case the disciplinary proceeding was not initiated under Sub-rule (1) of Rule 9 of the said pension Rules. It was initiated under Rule 153 of the Railway Protection Force Rules, 1987.

12. There was no allegation of any pecuniary loss in the instant case. No charge-sheet was issued against the Petitioner for recovering any pecuniary loss which might have been caused to the Railway by act of misconduct or negligence of the Petitioner. Therefore, the Respondent did not have the power and authority to continue the disciplinary proceeding against the Petitioner after he was permitted to retire from the services.

13. Once the employer chooses to permit the delinquent employee to retire from the services unconditionally, the relationship of master and servant ceases to exist and the relationship between the two exists only in the limited purpose of liability and payment of terminal benefits. In the absence of any statutory provision the pending departmental proceeding cannot be deemed to be continued after retirement.

14. In this regard I find substance in the submission made on behalf of the Petitioner that the ratio laid down in the unreported decision dated June 16, 2004 the matter of Sri Jnanadhir Mohan Sen Sharma v. Union of India (In re: W. P. No. 5093 of 2003) is applicable in this case.

15. In view of the above the impugned charge-sheet dated April 30, 1998 and all subsequent steps taken in the disciplinary proceeding in relation thereto are quashed and set aside.

16. This writ application is, thus, disposed of. There will be, however, no order as to costs.

Urgent xerox 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.