
(2013) 11 MEG CK 0009

In the Meghalaya High Court

Case No : Writ Petition (C) No. 398 and 400 of 2010

Prabhat Chandra Das and Another

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 11-11-2013

Acts Referred:

Citation : (2013) 11 MEG CK 0009

Hon'ble Judges : Prafulla C. Pant, C.J.; T. Nandakumar Singh, J

Bench : Division Bench

Advocate : M. Chanda, Mr. S. Choudhury, Mr. P. Nongbri, Mr. N. Mozika and Mr. U. Dutta, for the Appellant; S.C. Shyam, Mr. Bijoy Deb, Ms. Zonunmawii and Ms. Madhumita Singha, for the Respondent

Final Decision : Dismissed

Judgement

Prafulla C. Pant, C.J.—By means of these 2(two) writ petitions, the writ petitioners have challenged a common order dated 24.9.2010 passed by Central Administrative Tribunal (CAT), Guwahati Bench in O.A. No. 73 of 2010 and O.A. No. 74 of 2010 whereby the Tribunal has dismissed the 2(two) applications filed by the petitioners before it. In said applications, the writ petitioners had challenged the validity of charge sheets memo dated 11.7.2001, inquiry reports dated 7.7.2003 and 10.7.2003, penalty orders dated 15.4.2005 and orders of the Departmental Appellate Authority dated 6.2.2010. Petitioners also sought their reinstatement in service with consequential benefits. Heard learned counsel for the parties and perused the affidavits filed in both the writ petitions.

2. Brief facts of the case are that the writ petitioner, Shri Prabhat Chandra Das was engaged as "mazdoor" (labour) in the year 1982 by the Electrical Mechanical Engineers (EME), Eastern Command and later promoted as Vehicle Mechanic (Mate) in 1991. Thereafter, he was promoted to the post of Mechanic (Motor Vehicle) in the year 2000, but reverted. He was Vice President of the Civilian Workers Union, Shillong at the Station Workshop of EME. As far as writ petitioner, Shri Bihari Singha is concerned, he was appointed as Civilian Electrician (Motor

Vehicle) on 13.9.1982 in 1 Advance Base Workshop. He was working on said post at Station Workshop of EME. He was General Secretary of Civilian Workers Union of Station Workshop of EME, Shillong. Both of them were served with the charge sheets dated 11.7.2001 arising out of the same incident dated 1.6.2001. The charge sheet served on the writ petitioner, Shri Prabhat Chandra Das contained 5(five) allegations, while the one served on writ petitioner, Shri Bihari Singha contained 6(six) allegations. It was alleged in the charge sheets against them that on 1.6.2001, Naib Subedar, Shri R.C. Nath (respondent No. 8) of the workshop went to civilian rest room at 8.30 hours and requested the workers to come to the floor for work. Both of the writ petitioners declined to come to join the work on the pretext that they wanted to discuss about the proposed picketing by the Khasi Students Union on 2.6.2001. Naib Subedar, R.C. Nath after waiting for about an hour again went to civilian rest room at 9.30 hours when all others came to join work except the 2(two) petitioners who declined to comply the instructions of Naib Subedar, R.C. Nath to come to shop floor, and they started shouting slogans against Naib Subedar, R.C. Nath. The writ petitioner, Shri Bihari Singha after reading a letter said--"Yeh Col Tewari Gandu (un-parliamentary word) Officer Tha, Jisne Is letter ko Sign Kiya hai, Hamara Koi Claim Nahin pass Hota". Writ petitioner, Shri Prabhat Chandra Das also shouted at Naib Subedar, R.C. Nath and said--

"Hamara Claim Pass Nahi Hota, Yahan Par Sab Gandu (un-parliamentary word) Officers Aur JCO Hai, Hum Bharat Varash Ke Employee Hain Jahan Par Dil Karega Bathengi". Both the writ petitioners allegedly raised their hands to assault Naib Subedar, R.C. Nath. It is also alleged in the charge sheet that writ petitioner, Shri Prabhat Chandra Das shouted at Naib Subedar, R.C. Nath - "AAP Chor Ho, FIP Ka Paisa Khaya Hai". When Naib Subedar, R.C. Nath saw assaulting hands of the writ petitioners, he ducked and saved himself.

3. Lt. Col J.S. Bains (respondent No. 7) on receiving the report of the incident issued the charge sheets in question to the writ petitioners. Both the employees were placed under suspension and departmental inquiries were initiated against them. As against writ petitioner, Shri Bihari Singha, there was also charge of absence from duty from 1st February 2001 to 1st June 2001. It is pleaded by the writ petitioners that Col. J.S. Bains was an interested person and he should not have issued the charge sheets. It is denied by writ petitioner, Shri Bihari Singha that he was absent from 1st February 2001 to 1st June 2001. It is pleaded by both the petitioners that the allegations in the charge sheets against them are false. It is further pleaded that the documents relied in the charge sheets were not supplied to the petitioners. It is stated by the petitioners that vide order dated 20th September, 2001 Shri Bidyut Panging, Assistant Executive Engineer (respondent No. 6) was appointed as Inquiry Officer/Authority in the 2(two) departmental inquiries against the 2(two) petitioners. It is alleged by the petitioners that the said Inquiry Officer mis-conducted and did not give proper opportunity to them as he declined to appoint Shri M.P. Singha, UDC as their Defence Assistant. It is also alleged by the petitioners that though they are

shown on the record as absentee during the proceedings of inquiry on several dates, but the letters alleged to have been sent to them were not received on time. As to the refusal to cross examine the witnesses in the inquiry, it is stated in the writ petitions that the petitioners had valid reasons as their request to appoint Shri M.P. Singha, UDC as Defence Assistant was declined. It is further alleged by them (petitioners) that on certain dates they were forced to sign the daily order sheets in the inquiry proceedings in absence of their Defence Assistant. Ex-parte hearing in the inquiries in November 2001 was in violation of the programme fixed by the Inquiry Officer. It is admitted by the petitioners that they received the inquiry reports prepared by the Inquiry Officer against them. They have further stated that after their services were dismissed, they preferred departmental appeals before Director General, EME (Civil) Army HQ, New Delhi, but the Appellate Authority also failed to appreciate the irregularities said to have been committed by the Inquiry Officer, and vide its order dated 8.5.2006, he dismissed the 2(two) appeals. Consequently, the writ petitioner, Shri Prabhat Chandra Das filed O.A. No. 134 of 2006 and writ petitioner, Shri Bihari Singha filed O.A. No. 149 of 2006 before CAT, Guwahati.

4. In said round of litigation (O.A. No. 134 of 2006 and O.A. No. 149 of 2006) vide order dated 27.3.2009, CAT directed the Departmental Appellate Authority to consider certain circumstances afresh in deciding the departmental appeals. The Appellate Authority, according to the petitioners, acted casually and vide impugned order dated 6.2.2010 dismissed the departmental appeals again ignoring the allegations of personal bias on the part of Col J.S. Bains and Shri Bidyut Panging. (Before that in the first round of litigation, O.A. No. 150 of 2003 was filed by the petitioners which was dismissed vide order dated 20.11.2003 by the CAT whereafter WP(C) No. 3(SH) of 2004 was filed and the same was dismissed on 13.2.2006 as departmental appeals were pending before the Appellate Authority).

5. In the present i.e. 3rd round of litigation, the writ petitioner, Shri Bihari Singha filed O.A. No. 73 of 2010 and writ petitioner, Shri Prabhat Chandra Das filed O.A. No. 74 of 2010, before the CAT, Guwahati, both of which were dismissed vide impugned order dated 24th September, 2010 upholding the subsequent orders of the Departmental Appellate Authority challenging the same. It is pleaded in the present writ petitions that the Central Administrative Tribunal has erred in law in ignoring the irregularities committed by the Inquiry Officer, pointed out by the petitioners.

6. In the affidavits-in-opposition filed on behalf of the respondents, it is pleaded that the allegations made against the Inquiry Officer and the Commanding Officer are not correct. It is stated that the registered letter sent to the petitioners in the inquiry was received back with an endorsement "refused" on 15.9.2001. The petitioner vide his letter dated 27.9.2001 sought 30(thirty) days time to arrange Defence Assistant which itself shows that the petitioner was in the know of the inquiry proceedings. As to the rejection of Shri M.P. Singha as

Defence Assistant it is stated in the counter affidavit that the petitioners wanted to engage an employee who was working in Guwahati, 100 kms. away from Shillong with a motive to delay the proceedings of the inquiry, and it was open for the petitioners to engage other Defence Assistant. It is further stated that the petitioners made themselves unavailable on the addresses given by them which made the communication difficult. It is denied that Shri Bidyut Panging was connected in any way before entering into the inquiry. In the compelling circumstances when the petitioners did not cooperate with the inquiry proceedings, the same started ex-parte on 15.11.2001. However, the petitioners did attend there after in the inquiry on the dates fixed in 2002. It is also stated that during the inquiry proceedings, the relevant documents were produced and which the petitioners "refused" to see without providing Defence Assistant. It is further stated on behalf of the respondents that the inquiries were conducted against the petitioners by complying the rules contained in the Central Civil Service (CCA) Rules, 1965. It is pleaded by the respondents that the findings recorded by the Inquiry Officer were based on the evidence on record. Defending the impugned orders, it is pleaded that the writ petitions are liable to be dismissed.

7. On behalf of the writ petitioners, it is argued that neither the petitioners were allowed services of Defence Assistant, Shri M.P. Singha nor were they supplied with the documents relied in the charge sheets. It is also contended that letters sent to them during the inquiry were received by them after expiry of the dates fixed for the inquiry.

8. In reply to this, learned counsel for the respondents submitted that the documents relied were shown to the petitioners which they refused to see. It is also contended that, considering that the letters were received by the delinquent officials after expiry of the date fixed in inquiry, further dates were fixed in the inquiry and the petitioners participated in the subsequent dates. As such, no prejudice was caused to them. Regarding the refusal to appoint Shri M.P. Singha as Defence Assistant, it is argued that the petitioners sought his services only to delay the inquiry proceedings.

9. In the writ jurisdiction, this Court cannot go into the correctness of the decision taken by the respondent authorities or the Central Administrative Tribunal. It can only examine whether or not the decisions were taken in violation of the rights of the petitioners or in violation of the principles of natural justice.

10. Perusal of annexure-3 to both the writ petitions shows that the petitioners after receiving the charge sheets did not file their written statements giving their version of the story of the incident dated 1.6.2001 in question. They have replied to the charge sheets dated 11.7.2001 by merely saving in one line that they denied the allegations in the charges. In the circumstances, what is now being pleaded after conclusion of inquiry can be said to be an afterthought on the part of the writ petitioners. From the record, it appears that neither the writ petitioners made any effort to reply the charge sheets nor cooperated in the

inquiry proceedings till it started proceeding ex-parte, whereafter they turned up in the inquiry and participated. It is relevant to mention here that from the record it does not appear that either Col. J.S. Bains, Officer in Command (Disciplinary Authority) or Shri Bidyut Panging, Inquiry Officer had any prejudice against the petitioners. As per the charge, it was Naib Subedar, R.C. Nath who was assaulted and insulted and unparliamentary language was used against him and one Col. Tewari.

11. Copy of inquiry report (Annexure-28) filed in the WP(C) No. 398 of 2010 of Shri Prabhat Chandra Das shows that Nb. Subedar, R.C. Nath (SW-1), N.K. Puran Singh (SW-2), Nb. Sub Jayaprakashan K. (SW-3), N.K. Sub S.C. Singh (SW-4) and Hav J. Kushwah (SW-5) were orally examined during the inquiry. Copy of inquiry report (Annexure-27) filed in WPC No. 400 of 2010 relating to petitioner, Shri Bihari Singha shows that SW-1 (R.C. Nath), SW-2 (N.K. D. Palani), SW-3 (Nb. Sub U.P. Mishra), SW-4 (N.K. Puran Singh), SW-5 (Nb. Sub Jayaprakashan K.), Sw-6 (N.K. S.C. Singh) and SW-7 (Hav J. Kushwah) were orally examined during the inquiry. The Inquiry Officer has given all the details in his report showing that sufficient opportunity was given to the delinquent officials on several dates to defend themselves and to cross examine the witnesses. The Inquiry Officer has discussed the evidence against the delinquent officials and held them guilty after finding that the charges were proved. It is admitted by the petitioners that the inquiry reports were served on them before the penalty was imposed.

12. Having gone through the entire record of the case and the reasons mentioned by the Departmental Appellate Authority and Central Administrative Tribunal, this Court finds itself in agreement with said authorities that the petitioners were given sufficient opportunity to defend themselves. They were also given opportunity to cross examine the witnesses. They did not care even to file the written statement after the charge sheets were admittedly served on them. In the above facts and circumstances of the case, this Court finds that the inquiry proceedings conducted against the petitioners did not suffer from any illegality.

13. In

M.V. Bijlani Vs. Union of India (2006) 5 SCC 88

, it is held by the Apex Court that the jurisdiction of the Court in judicial review in the matters of enquiry proceedings is limited. However, it is further held in said case that the Inquiry Officer cannot look into the allegations in respect of which delinquent officials is not charged. In this case, this Court finds that the inquiry officer did not held delinquent officials guilty of any allegations for which they were not charged.

14. On behalf of the writ petitioners, reliance is placed in the case of

Union of India Vs. Prakash Kumar Tandon (2009) 2 SCC 541

and it is argued that the person having prejudice against the delinquent official should not have been appointed as Inquiry Officer. In the present case, we have already discussed above that the Inquiry Officer had no prejudice against the petitioners. In the case referred (Union of India vs. Prakash Kumar Tandon Supra) Chief of Vigilance Department was appointed Inquiry Officer in a matter in which raid was conducted by said department.

15. Attention of this Court is also drawn to the case of

Roop Singh Negi Vs. Punjab National Bank (2009) 2 SCC 570

and it is contended that in departmental proceedings, though the same are quasi-judicial in nature but the charge must be proved on the basis of evidence adduced before the Inquiry Officer. We agree with the principle of law laid down by the Apex Court and find that in the present case the Inquiry Officer has found the charge proved on the basis of oral evidence adduced by the eve witnesses of the incident.

16. Also reference was made to the case of

Cantonment Executive Officer Vs. Vijay D. Wani (2008) 12 SCC 230

and it is submitted on behalf of the petitioners that the Court must examine the real bias of the authority/officer even if apparently no such bias is shown. We have carefully gone through the law laid down by the Apex Court. The observations of the Apex Court in said case were given in the circumstances where some members of the Cantonment Board conducted disciplinary inquiry and the same Board (including the members who conducted the inquiry) considered the report, as such it was gathered that the Board was influenced by its members. In the present case, no such bias can be gathered from the papers on record.

17. Lastly, learned counsel for the petitioners read out para 9 of

Govt. of A.P. Vs. A. Venkata Raidu (2007) 1 SCC 338

and it is submitted that due to non-supply of documents relied in the charge sheet, it cannot be stated that the respondents complied with the principles of natural justice. We have gone through the said case law in which the charge mainly related to documentary evidence. In the present case, the main charge relates to using filthy/un-parliamentary language against Senior Officers and assault on Naib Subedar (Senior Officer) and in such an incident oral evidence of the eve witnesses recorded by the Inquiry Officer, can not be lightly discarded merely for the reason that some documents regarding making of the report by the eve witnesses was not supplied to the petitioners. In our opinion, it does not cause any prejudice to the petitioners particularly when the petitioners were shown the documents at the time of inquiry but they did not cooperate with the Inquiry Officer (as stated in the counter affidavit). For the reasons as discussed above, we find no force in these writ petitions. Accordingly, both the writ

petitions WP(C) No. 398 of 2010 and WP(C) No. 400 of 2010 are hereby dismissed. No order as to costs.