
(2001) 01 CAL CK 0008
In the Calcutta High Court
Case No : C.O. No. 9041 (W) of 1991

Prabir Kumar Dutta

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-01-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226

Citation : (2001) 2 CALLT 54

Hon'ble Judges : Ashim Kumar Banerjee, J

Bench : Single Bench

Judgement

Ashim Kumar Banerjee, J.—The petitioner challenged the charge-sheet appearing at Page 31 of the writ petition.

2. The relevant paragraph of the said charge-sheet is quoted below as well as the order of suspension served by the respondents.

"Statement of Charge. Discreditable conduct and indulgence in corrupt practice, in that Constable-8873, P.K. Dutta of RPY-Post/SRC(E), found demanding a copy from a passenger, Sri R.C. Choraria of 5/1, Motilal Mallick Lane, Calcutta-35, of 2652 UP. at H.H Station on P. No. 13, at about 22-40 Mrs. of 29-3-91, on the present of allowing him to carry un-backed luggage, as reported by Dr. S.C. Sahu, D.S.C/RPF/HRH Divn./E. Rly."

3. The principal ground of challenge are briefly as follows:

Under Rule 135 Second Proviso the delinquent will have to be served with the charge-sheet within 30 days from the date of suspension wherein in the instant case the charge-sheet was submitted beyond 30 days and hence the order of suspension is liable to be revoked on the said ground alone. 135 Second Proviso is quoted below:

"Provided further that charge on which a member has been placed under suspension shall be furnished to him within a period of thirty days from the date

of suspension after which the incumbent shall be deemed to have been reinstated if no such charge is made available to him."

4. In terms of the charge-sheet specially in the quoted portion as above, it would appear that charge has been framed on the basis of a report of Dr. S.C. Sahu, Divisional Security Commissioner, no copy of the report of the Divisional Commissioner has been served upon the writ petitioner.

5. Mr. Mazumdar, appearing for the writ petitioner submits that in accordance with the order of suspension the writ petitioner has to report thrice a day to its higher authority despite such fact the charge-sheet has been served upon the writ petitioner beyond 30 days although the same has been, according to him, antedated to fit in the second proviso of Section 135. The learned Advocate Mr. Mukherjee appearing for the respondent-authority could not give any satisfactory explanation as to this ground as well I find substance in the contention of the writ petitioner. I hold that the order of suspension is liable to be revoked on the expiry of the 30 days as there was no charge-sheet served on the writ petitioner on the said date and the writ petitioner was entitled to be reinstated immediately after 30th April, 1991.

6. With regard to the second ground, Mr. Mazumdar has relied on two un-reported decisions of this Court, the first one is of Monoranjan Mullick, J. (As His Lordship then was) passed on December 4, 1991 in C.O. 6894 (W)/91 (Tarapada Chowdhury v. Union of India and Ors) and the other one is by S.B. Sinha, J. (As His Lordship then was) dated May 10, 1996 in the case C.O. 2600(W)/1992 (Bijoy Kr. Singh v. D.P. Saha and Ors.). In the first judgment M.R. Mullick, J. (As His Lordship then was) struck down Rule 153(18) of the Railway Protection Force Rule, 1987 holding the same as arbitrary and violative of Article 14 of the Constitution of India.

7. The relevant portion of the said Judgment is quoted below:

"In my view the sub-rule (8) suffers from the vice of arbitrariness. It is also makes the reasonable opportunity of a charge officer to a mockery. Any legislative enactment in view of series of Supreme Court decisions will have to be fair and reasonable. In the matter of disciplinary enquiry the charge officer is to get reasonable opportunity to defend himself properly. Even if, legal assistance may be ruled out, an assistance from a colleague of the same rank or even of higher rank is very desirable and if such friend cannot get the opportunity to cross-examine the witnesses or the address the enquiry officer, then it is not understood as to how effectively he will be able to assist the charged officer. In that view sub rule(8) of Rule 153 is struck down as arbitrary and violative of Article 14 so far as it puts restrictions upon the rank of the "friend" of the charged officer as well as upon such friend cross-examining the witness or addressing the enquiry officer".

8. The second judgment is of same line and I do not wish to discuss the same in detail. My attention has been drawn to the defence filed before the authority,

concerned by the writ petitioner on March 5, 1992 wherein it appears that the writ petitioner has urged this point, the authority concerned despite such point being taken and despite Rule 153(8) is no more there, denied the writ petitioner the service of the "friend" i.e. defence counsel of his choice and thereby vitiated the entire proceeding. Mr. Mukherjee, appearing for the respondents tried to contend that no formal request was made such contention is not tenable in view of the fact that since the written defence filed by the writ petitioner dated March 5, 1992 continued such ground the respondent-authority should have granted opportunity to the writ petitioner in that regard. Instead the authority concerned proceeded on the basis of the said rule being Rule 135(8) which was no more available to the authority on the relevant date.

9. With regard to the third ground Shri Mazumdar submitted that since the charge-sheet is based upon the report filed by the Security Commissioner for the ends of justice and following the principle of natural Justice the writ petitioner was entitled to a copy thereof, denial of such request would amount to violation of the fundamental right and the proceeding is vitiated by such denial. In support of the case Mr. Mazumdar cited two decisions one is of the apex Court reported in 1882 I SLR 263 and other one is of this Court reported in 1983 I CLJ 8 .

10. The relevant paragraph of the apex Court decision is quoted below:

"After hearing counsel appearing for the State, we are satisfied that both the Appeal Court and the High Court were right in holding that the plaintiff had no reasonable opportunity of defending himself/against the charges levelled against him and he was prejudiced in the matter of his defence. Only two aspects need to be mentioned in this connection. Admittedly, in the charge-sheet that was framed and served upon the plaintiff no particulars with regard to the date and time of his alleged misconduct of having entered Government Forest situated in P.C. Thatia District Farrukhabad and hunting a bill in that forest and thereby having injured the feeling of community by taking advantage of his service and rank were not mentioned. Not only were these particulars with regard to date and time of the incident not given but even this location of the incident in the vast forest was not indicated with sufficient particularity. In the absence of these plaintiff was obviously prejudiced in the matter of his defence at the inquiry. Secondly, it was not disputed before us that a preliminary inquiry had preceded the disciplinary inquiry and during the preliminary Inquiry statements of witness were recorded but copies of these statement were not furnished to him at the time of disciplinary inquiry. Even the request of the plaintiff to inspect the file pertaining to preliminary inquiry was also rejected. In the face of these facts which are not disputed it seems to us very clear that both the first appeal Court and the High Court were right in coming to that conclusion that the plaintiff was denied reasonable opportunity to defend himself at the disciplinary Inquiry. It cannot be gainsaid that in the absence of necessary particulars and statements of witnesses he was prejudiced in the matter of his defence. Having regard to the aforesaid admitted position it is difficult to accept the contention urged by the

counsel for the appellant that the view taken by trial Court should be accepted by us. We are satisfied that the dismissal order has been rightly held to be illegal, void and inoperative. Since the plaintiff has died during the pendency of the proceedings the only relief would be available to the legal heirs of the deceased is the payment of arrears of salary and other emoluments payable to the deceased".

11. Following the apex Court decision I find substance in the contention of Mr. Mazumdar and I hold that by denial of copy of the said report subsequent to the issuance of charge sheet is also bad and is vitiated by the principle of natural justice. In the conclusion the writ petition succeeds.

12. The entire proceeding subsequent to the issuance of the charge-sheet appearing at page 31 is quashed and set aside.

13. The order of suspension appearing at page 28 is also deemed to have been revoked on the expiry of 30th April, 1991. The writ petitioner is deemed to have been in service with effect from 1st May, 1991. All pecuniary benefits available to the writ petitioner must be paid as early as possible by the respondent authority preferably within six weeks from the date of communication of this order.

14. The respondent-authority will, however, be at liberty to proceed with the said charge-sheet upon giving adequate opportunity to the writ petitioner to defend himself in the said proceeding by appointing defence counsel of his choice. However, it is made clear that the said defence counsel must be person working under the same authority.

15. Then this application was initially moved this Court passed an order on July 11, 1991 restraining the respondent-authority to give effect to the final order without the leave of this Court. I am told that by this time proceeding is over and the order of dismissal has been communicated to the writ petitioner since I have quashed the entire proceeding, final order of dismissal is also quashed and is set aside and the writ petition is disposed of.