

(2022) 04 CAL CK 0029

In the Calcutta High Court

Case No : MAT No. 1315 Of 2021, IA No. CAN 1 Of 2021

Pradip Banerjee

APPELLANT

Vs

High Court Of Calcutta & Ors.

RESPONDENT

Date of Decision : 13-04-2022

Acts Referred:

Constitution Of India, 1950 — Article 311(3)

West Bengal Judicial Service (Classification, Control And Appeal) Rules, 2007 — Rule 11(19)

Citation : (2022) 04 CAL CK 0029

Hon'ble Judges : Subrata Talukdar, J

Bench : Single Bench

Advocate : Surojit Samanta, Balai Lal Sahoo, S. N. Mookherjee, Subhabrata Dutta, Shayak Chakraborty, Ranajit Chatterjee, L.K. Gupta

Final Decision : Disposed Of

Judgement

The appellant has preferred the instant appeal against the Order passed in W.P.A. No. 19237 of 2021 dated 06.12.2021 wherein the Hon'ble Single Judge has passed the following order:-

"After hearing the submissions made by the parties and considering the materials on record, I find that there is no scope of passing any interim order. The Courts are loath in interfering with the disciplinary proceedings either at the stage of issuance of charge-sheet or even thereafter till the disciplinary proceedings is brought to a logical conclusion unless patent illegality is explicit on face of record. I, prima facie, do not find any such patent illegality at this stage to interfere with the disciplinary proceedings. The disciplinary proceedings are required to be brought to a logical conclusion as expeditiously as possible. The petitioner, if ultimately succeeds, will get all his benefits and as such the contention of the petitioner on this count is also not acceptable."

The facts leading to the present appeal in a nutshell are as under:

The appellant is a member of the West Bengal Judicial Service in the Cadre of District Judge (Entry Level) and posted as Additional District and Sessions Judge, Third Court, Berhampore in the District of Murshidabad. The High Court, Calcutta initiated a departmental proceeding against the appellant vide Charge Memorandum dated 15.12.2020 containing the following charges:-

"That you, being an officer of West Bengal Judicial Service, in the rank of District Judge (Entry Level), have passed two judgments, that, too, contains two completely opposite findings and results in the same case (T.A 28/2012), one dated 28-08-2015 and the another dated 31-08-2015 and that you have drawn up two separate and completely opposite decrees on the same date (07-09-2015)

That you have "dismissed" the said Title Appeal vide Judgment dated 28-08-2015 and you have "allowed" the same vide judgment dated 31-08-2015

That in the Case Record there is no trace of the Judgment and decree dated 31-08-2015 & 07-09-2015 respectively but the original Xerox-certified copy of the said judgment and decree, which was processed under Process no. 9936 dated 08-09-2015, shows that you have passed the judgment on 31-08-2015 and had allowed the said appeal and you have drawn up the decree on 07-09-2015.

That the particular entries in the Cause List and the Register of Certified copy maintained in your court, were found neatly torn (details of which were mentioned in the previous paragraphs) in order to disappear and tamper evidence of the above discrepancies.

That you did so deliberately with dishonest/malafide intention and on extraneous considerations unbecoming of a Judicial Officer.

And that your activities, as mentioned above, as a whole on your part is also one which amounts to gross illegality and gross misconduct as an officer of West Bengal Judicial Service and tampering of the Judicial Record and the same will necessitate disciplinary action against you."

After receipt of the Memorandum of Charges, the appellant had submitted detailed written statement of defence by denying the charges and prayed for dropping of all the charges levelled against him after taking all possible scientific enquiry to find out the truth and to take punitive measures against the person/ persons who tarnished the image of the judiciary by doing such illegal activities and exonerate him from the Departmental Proceeding.

On receipt of the written statement of defence of the appellant, the respondents were not satisfied with the said defence and have decided to proceed with the Departmental Proceeding further against the appellant and have appointed the Inquiry Officer as well as the Presenting Officer.

The appellant had participated in the Departmental Proceeding. During the inquiry altogether 06(six) witnesses were examined on behalf of the prosecution

and 31(Thirty One) documents were exhibited. The appellant has examined two witnesses, including himself and 16 (Sixteen) documents were exhibited.

On completion of evidence the Presenting Officer has submitted prosecution brief to the Inquiry Officer and the appellant has also submitted his defence brief to the Inquiry Officer but the Inquiry Officer has not yet submitted the Inquiry Report.

The appellant apprehends that the Inquiry Officer is proceeding with a pre-conceived notion to hold the appellant guilty and will submit such a report before the Disciplinary Authority. The apprehension of the appellant is based on Rule 11(19) of the West Bengal Judicial Service (Classification, Control and Appeal) Rules, 2007 which, reads as follows:-

"The Disciplinary Authority on receipt of the report from the Enquiring Officer, shall forward a copy of such report to the Judicial Officer intimating the punishment proposed for making representation within 30 (thirty) days from the date of receipt, on the findings of the said report:

Provided that in case the Disciplinary authority does not agree with the findings of the Enquiring Officer, it may record separately the reasons and those reason shall be communicated to the Judicial Officer along with the report of the Enquiring Officer or otherwise, for filling representation within 30 (thirty) days from the date of show cause notice."

The appellant has filed the writ application praying for the following reliefs:-

"a) Writ/Order/Direction in the nature of Mandamus do issue quashing and/or setting aside the impugned departmental proceeding initiated under the charge memorandum dated 05.12.2020, being Annexure "P/2" hereto and thereupon to allow the petitioner all consequential service benefits as if there had been no such departmental proceeding and further commanding them to act and proceed strictly in accordance with law;

b) Writ/Order/Direction in the nature of Prohibition do issue prohibiting the respondent authorities and / or their men/ agents/ subordinates from acting in any manner or any further manner on the basis of the impugned departmental proceeding initiated under the charge memorandum dated 05.12.2020, being Annexure "P/2" hereto and further prohibiting them from acting otherwise than in accordance with law;

c) Writ/Order/Direction in the nature of Mandamus do issue directing the Disciplinary Authority to initiate a full-fledged investigation by an appropriate authority into the complaint dated 16.09.2021 of the petitioner and thereupon initiate proceedings in accordance with law against the errant persons and further commanding them to act and proceed strictly in accordance with law;

d) Writ/Order/Direction in the nature of Mandamus do issue quashing and/ or setting aside Rule 11(19) of the West Bengal Judicial Service (Classification,

Control and Appeal) Rules, 2007 and further commanding the respondents to act and proceed strictly in accordance with law;

e) Writ/Order/Direction in the nature of certiorari do issue upon the respondent authorities to produce the respondent authorities to produce and/ or cause to be produced the entire records of the case and upon such production being made to render conscionable justice by passing necessary orders thereon;

f) Rule Nisi in terms of prayers (a), (b), (c), (d), and (e) above;

g) INJUNCTION do issue restraining the respondent authorities and / or their men and / or agents and / or subordinates from acting in any manner or any further manner on the basis of the impugned departmental proceeding pending disposal of the instant petition;

h) DIRECTION do issue directing the Disciplinary Authority to initiate a full-fledged investigation by an appropriate authority into the complaint dated 16.09.2021 of the petitioner and thereupon initiate proceedings in accordance with law against the errant persons pending disposal of the instant petition;

i) DIRECTION do issue directing the Disciplinary Authority to refrain from acting in any manner or any further manner on the basis of Rule 11 (19) of the West Bengal Judicial Service (Classification, Control and Appeal) Rules, 2007 pending disposal of the instant petition;

j) Interim order in terms of prayers (g), (h) & (i) above;

k) Ad-interim order in terms of prayers (g), (h) & (i) above;

l) Rule absolute should the respondents fail to give sufficient answer or return;

m) Cost and costs incidental hereto;

n) And/ or to pass such other or further order or orders as to your Lordships may seem fit and proper;”

Learned Counsel for the appellant submitted that the Disciplinary Authority initiated the Departmental Proceeding against the appellant without a thorough investigation of a forensic nature by a competent authority well conversant with the modalities of such an investigation.

Learned Counsel for the appellant submitted that without even examining scientifically documents found to be overwritten by white ink (fluid), Departmental Proceeding have been initiated against the appellant alone.

Learned Counsel for the appellant further submitted that Rule 11(19) of Rule 2007 does away with the right of the appellant to represent against the findings of the Enquiry Report- a procedural safeguard in service jurisprudence. It is submitted that under this Rule, the appellant has a right to represent only after the proposal for punishment is received by the Disciplinary Authority.

In reply, Learned Counsel for the respondents submitted that on receipt of the written complaint dated 12.3.2020 from the Ld. Advocate of Smt. Mira Dutta, an appropriate Preliminary Inquiry was conducted and during the Preliminary Inquiry it was found that the appellant, being the officer of the West Bengal Judicial Service in the rank of District Judge (Entry Level), has passed two judgments in the same appeal containing opposite findings. As a result (T.A. No. 28 /2012) had been dismissed on 28.08.2015 and allowed by Judgement and Decree dated 31.08.2015 and two separate and opposite Decrees have been drawn up on the same date, i.e. on 07.09.2015.

It was further submitted that after the Preliminary Inquiry the respondents have initiated regular enquiry against the appellant with proper opportunity to the appellant to submit his statement of defence and, on receipt of reply, the Enquiry Officer and the Presenting officer were appointed. The appellant has participated in the enquiry and had cross-examined the witnesses, including adducing evidence himself as Defence Witness No.2 or, DW2.

It was submitted that the appellant had also submitted his written notes of arguments on completion of evidence. Learned Counsel for the respondent also pointed out that the appellant has admitted that he has passed the Judgement and Decree on 31.08.2015 and has denied the judgment dated 28.08.2015. However, during cross examination of the appellant as DW2, when a specific question was put to the appellant, whether he denies his signature in the Judgement dated 28.08.2015 and Decree dated 07.09.2015, the reply of the appellant is stated to be as follows:- "It resembles my style of signature", which means that the appellant did not strongly deny his signature in the judgement dated 28.08.2015.

Learned Counsel for the respondents further submitted that the appellant has never prayed for sending the Judgement dated 28.08.2015 for comparison of his signature. It is pointed out that in one place the appellant prayed for scientific investigation connected to the use of white ink in the cause-list dated 17.07.2015 to ascertain the actual fact and, on the other hand, the appellant had admitted that the handwriting is not of the Bench Clerk.

Learned Counsel for the respondents further submitted that the writ application filed by the appellant is premature as, without receipt of the Enquiry Report from the Disciplinary Authority, the appellant' apprehension that punishment will be imposed is baseless.

Learned Counsel for the respondents relies upon Sub-Clause (3) of Article 311 of the Constitution of India which reads as follows:-

(3) " If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such enquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final".

Learned Counsel for the respondents submits that proper opportunity of hearing was given to the appellant in the enquiry and the Enquiry Report will be forwarded to the appellant. Thus there is no violation of the principles of natural justice as alleged by the appellant.

The respondents have relied upon the Judgment reported in (2000) 5 Supreme Court Cases 467 (AIR INDIA LTD. – Versus- M. Yogeshwar Raj) and have submitted that this Court should not pre-empt a factual decision of the Disciplinary Authority and no stay can be granted as the competence of the Disciplinary Authority is not in doubt.

This Court has considered the rival submissions of both the parties and the documents available on record. On receipt of written complaint from the Ld. Advocate for Smt. Mira Dutta, a Preliminary Inquiry was conducted and during the inquiry it was found that the appellant, while holding the post of Additional District Judge, 2nd Court, Barrackpur, District 24-Parganas (North), had disposed of Title Appeal No. 28 of 2012 (arising out of Title Suit No. 326 of 2003) but had passed two contradictory judgments-first, on 28.08.2015 wherein the appeal was dismissed and, second on 31.08.2015 wherein the appeal was allowed and, in both the judgments on 07.09.2015 Decrees were drawn up.

On receipt of the Preliminary Enquiry report, the Disciplinary Authority had decided to initiate a regular inquiry against the appellant and accordingly Charge Memo was issued to the appellant. On receipt of the Charge Memo, the appellant had submitted his detailed written statement of defence and had participated in the regular enquiry. On completion of evidence the Presenting Officer has submitted the prosecution brief and the appellant had also submitted his defence brief.

The next step as per the procedure provided in Rule 11 (19) of the 2007 Rules (supra) is for the Disciplinary Authority to supply the Enquiry Report to the appellant. However, without waiting for the Enquiry Report the appellant has filed the writ application praying for quashing the Disciplinary Proceeding, challenging Rule 11(19) of the 2007 Rules and for initiation of scientific investigation by the appropriate competent authority on the complaint of the appellant dated 16.09.2021.

Disciplinary proceeding was initiated against the appellant on 05.12.2020 and, on receipt of the Memorandum of Charge, the appellant has submitted his detailed reply. In the said reply the appellant had prayed for acceptance of his written statement, dropping of all the charges against him and for initiating scientific enquiry. The Disciplinary Authority was not satisfied with the written statement submitted by the appellant. Accordingly, the Disciplinary Authority had appointed the Enquiry Officer and Presenting Officer and the appellant had participated in the said enquiry by cross examining the witnesses. The appellant had also adduced evidence himself as DW2 and another witness (DW1). On completion of evidence the appellant had also submitted his defence brief.

The appellant had therefore participated in the full-fledged enquiry and now only the Enquiry Officer has to submit his report on the basis of the evidence available on record. The appellant will get an opportunity to reply to the report and thus this Court finds that the Hon'ble Single Bench has not committed any error by denying grant of an order of stay of the Departmental Proceeding.

However, at this stage, this Court is also required to answer the contention of the Appellant/the Writ Petitioner connected to his demand for a scientific and/or forensic examination.

The appellant has submitted that the process of delivery of a judgement in open Court and making available copies of the same to the parties after its actual delivery by the Judicial Officer (JO) concerned involves a multi-tiered process. The process, inter alia, covers the staff attached to the office of the concerned JO who has delivered the Judgement.

The staff named by the appellant, in the facts and circumstances of this case, cover the appellant' the then Stenographer-cum-Typist, the then Bench Clerk of the Court, the then Peon of the Court as well as Dealing Officer of the alleged corrupt file being Title Appeal 28/2012 in the Copying Section of the Learned Court at Barrackpore. In his written submission in the Departmental Proceeding, the appellant, being the Charged Officer (CO) has, inter alia, narrated as follows:-

"44. It is found from the Table-II, that the Judgement dated 31.08.2015 is the original judgement passed by the PO in official capacity. The Table-II shows that the judgement dated 28.08.2015 is a corrupt copy from the judgement dated 31.08.2015. While the judgement dated 31.08.2015 is reasonable, speaking, meaningful, sensible and legally tenable with harmonious outcome, the judgement dated 28.08.2015 is no judgement at all as it suffers from inherent contradiction, insufficiency of legal reasoning the antithetical outcome. In all probability judgement dated 31.08.2015 is impossible to be built on the linguistic structure of the judgement dated 28.08.2015. Such judgement dated 28.08.2015 is the deformed offspring of the mother judgement dated 31.08.2015. No person having rudimentary legal sense can subscribe to the judgement dated 28.08.2015. the judgement dated 31.08.2015 is authored by me as PO."

It has been further stated by the appellant as follows:-

"46. That to get the copy of the judgement dated 31.08.2015 an application was preferred on 08.09.2015. The copy of such judgement was supplied to the concern applicant on 18.09.2015. The case record T.A. 28/2012 was definitely checked by the Bench Clerk while sending the related documents under the requisitions/application. And by itself it indicates that at least till 08.09.2015 and 18.09.2015/21.09.2015 there was no existence of judgement dated 28.08.2015 in case record. Consequently, as a PO, I have never written and delivered that judgement dated 28.08.2015."

Finally, the appellant has stated as follows:-

"In the above facts and circumstances, I humbly pray that Your Honour may graciously be pleased to acknowledge and accept this Written Statement in defence, drop all the charged levelled against me in the present proceeding after taking all possible scientific enquiry to find out the truth and to take punitive measure against the person/persons who has tarnished the image of the judiciary by doing such illegal activities and exonerate me from the Departmental Proceeding and for this act of kindness I shall be ever grateful and obliged."

It would be now relevant to quote the evidence of Defence Witness (DW1) in the DP. DW1 is Smt. Sujata Dutta, Advocate-on-record and a relative of the complainant/the appellant in TA 28 of 2012, Smt. Mira Dutta. It would be of further relevance to this discussion to quote the summary of the evidence of the said DW1 in the DP as made available from the materials on record:-

"D.W.1, Sujata Dutta, the Advocate on Record (AOR) of Mira Dutta admitted that she along with Sri Subodh Ranjan Dutta, Advocate and her senior accepted the case on behalf of client Mira Dutta. She admitted that she had attended on all dates of hearing in Title Appeal 28/2012 before the Court of ADJ 2nd Court, Barrackpore on behalf of her client Mira Dutta. She has further deposed that she has been defending the case Title Suit 302/2018 on behalf of Mira Dutta pending in the court of Civil Judge (Jr. Div) Bidhannagar, North 24 Parganas. She candidly deposed that no judgement was passed by ADJ 2nd Court, Barrackpore in T.A. 28/2012 on 28.08.2015. (unchallenged testimony)

She has further deposed that she was present in the Court of ADJ 2nd Court, Barrackpore on 31.08.2015 and after obtaining judgement of T.A. 28/2012 vide judgement dated 31.08.2015 her client Mira Dutta filed at least nine (09) numbers of Caveats before the Hon"ble High Court, Calcutta and she has proved all such application of caveats before the Hon"ble High Court, Calcutta and she has proved all such application caveats along with the original receipts as Exhibit-L collectively.

She has proved photocopy of Order Sheet dated 03.11.2017; 27.11.2017 & 25.04.2018 passed by the BL&LRO Barrackpore-II in Mutation Case No. 2485/2017 as Exhibit-M.

She has proved Memo of Appeal filed by Mira Dutta before DL&LRO Barasat against the Order dated 25.04.2018 passed by BL&LRO Barrackpore-II as Exhibit-N.

She has proved photocopy of the Order Sheet dated 29.11.2019 passed by SDLLRO Barrackpore in Mutation Appeal No. 397/2018 as Exhibit-O."

The materials connected in the DP also record as follows:-

"To accommodate such disputed document in the form of judgement dated 28.08.2015, the Cause list and Court Diary were defaced by white ink. In Exhibit-

P the Charged Officer specifically demanded scientific measure to remove the white ink to reveal the original writing (Paragraph 23, 24, 30 and in the prayer portion of Exhibit-P). The Original Documents are kept with the custody of the Hon'ble High Court Administration and it was the duty of the Prosecution to take such measure to unearth the truth. When P.W.6 in his cross examination has given a hint that T.A. 28/2012 was defaced, it was the duty of the prosecution to take all measure to unearth such defaced writing. It was suggested by the defence that in all such places of defacing, T.A. 28/2012 was written. No one from the prosecution has categorically denied such suggestion. Applying logical and investigative mind, any person with common prudence can say comparing the Court Diary dated 17.07.2015 can Cause List dated 17.07.2015 that in the Cause List, T.A. 28/2012 was defaced and Mat-806/2013 was written on the same. It gets it supports from Cross Examination of P.W. 6 (Q-38). Further, it is clear from the evidence of P.W. 6 that the entry T.A. 28/2012 in the Court Diary dated 28.08.202 was not written by him. Even the general practice of writing the previous date within bracket has not been mentioned. And in Court Diary dated 31.08.2015, white ink has been used to deface the entry T.A. 28/2012 by white ink and Mat 806/2013 is written thereon. Paragraph 31 to Paragraph 36 that summarized in Table-I in the Written Statement (Exhibit-P) filed by the Charge Officer proved how the Court Diary and Cause List were compromised without the knowledge of the PO. And the same must have been done after the expiry of reasonable time. Therefore, in all probability it is proved that no judgement was passed by the PO on 28.08.2015 in T.A. 28/2012."

It transpires from the record that the appellant/the CO has raised the following questions in the DP:-

"III. In the instant case few matters are interconnected.

Those are as follows;

- a) Where is the original judgement dated 31.08.2015?
- b) Who has removed the same from the record?
- c) Who has inserted the disputed judgement dated 28.08.2015?
- d) Who has tampered the Case Diary and Cause List dated 17.07.2015 with white ink?
- e) Who caused entry of T.A. 28/2012 on the Case Diary dated 28.08.2015?
- f) Who tried to erase using white ink, "T.A. 28/2012-Allowed on Contest" written in red ink by the Bench Clerk on the Court Diary dated 31.08.2015 which is clearly visible by using light from the back side of the page? (Court may take judicial notice of the same)
- g) Who has changed the original Order Sheet and inserted another one containing dated 17.07.2015 and 28.08.2015 to accommodate the judgement dated 28.08.2015?

h) Who has prepared two Decree both dated 07.09.2015?

i) Who has misplaced the concern Decree Drawn up Register (M-5)?

And all the above happenings (a to i) are interrelated. There is one mastermind that is the then stenographer-cum-typist behind such activities. The evidence on record is clear, convincing and direct.”

From a combined reading of the materials collected in the Departmental Proceeding and the issues raised by the appellant, this Court is of the view that the Hon’ble Single Bench requires the assistance of a forensic examination report on the circumstances connected to the birth of the alleged corrupt judgement dated 28.08.2015.

Such forensic examination would undoubtedly include within its scope the staff attached to the appellant at the material point of time namely, the then Stenographer-cum-Typist, Bench Clerk, Peon and the Dealing Officer/Officers of the Copying Department, attached or connected to the Court of the Learned 2nd ADJ, Barrackpore.

In the above view of the matter, the Forensic Examination (supra) is referred to the Regional Director, Serious Fraud Investigation Office (SFIO), Government of India having office at 5, Esplanade East, 2nd Floor, Kolkata 700069. The Registrar (Vigilance), High Court at Calcutta shall co-ordinate the necessary assistance required by the SFIO. The SFIO shall be entitled to visit the Court of the Learned 2nd ADJ, Barrackpore for inspecting records and interview concerned persons who, in the opinion of the SFIO, are necessary to be interviewed. The SFIO shall be entitled to seek further appropriate directions from the Hon’ble Single Bench. It will be open to the Hon’ble Single Bench to add the SFIO as a Proforma Party Respondent to the Writ Petition.

The SFIO shall submit its report preferably within four weeks from this date. The SFIO shall be entitled to pray for appropriate orders before the Hon’ble Single Bench including extension of time to file its Report, as and if necessary.

Needless to clarify, the Hon’ble Single Bench shall take into consideration the findings of the SFIO at the time of ultimate adjudication of the writ petition.

MAT No. 1315 of 2021 with IA No. CAN 1 of 2021 stand accordingly disposed of.

Parties shall be entitled to act on the basis of a server copy of this Judgement and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.