

(2007) 04 CAL CK 0048
In the Calcutta High Court
Case No : W.P.S.T. No. 116 of 2004

Purnendu Sekhar Nanda

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 24-04-2007

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Arms Act, 1959 — Section 25, 27
Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 379, 399, 402
Police Regulations — Regulation 861

Citation : (2007) 2 CHN 690 : 111 CWN 588

Hon'ble Judges : Bhaskar Bhattacharya, Acting C.J.; Kishore Kumar Prasad, J

Bench : Division Bench

Advocate : Kashi Kanto Moitra and Animesh Majumder, for the Appellant; Murari Mohan Das, for the Respondent

Final Decision : Allowed

Judgement

Bhaskar Bhattacharya, A.C.J.

1. This application under Article 226/227 of the Constitution of India is at the instance of an applicant before the West Bengal Administrative Tribunal and is directed against the order dated 27th November, 2003 passed by the Tribunal in T.A. No. 118 of 1998 by which the writ petitioner challenged the departmental proceeding, the second show-cause notice as well as the subsequent order of reversion.

2. The facts giving rise to filing of this application may be summed up thus:

(a) The writ petitioner was a police officer and has in fact retired from service on 31st May, 2002 during the pendency of the application before the Tribunal.

(b) During his service tenure as a Sub-Inspector of Police, on 31st October,

1985, a truck bearing Registration No. PUM-5303 was seized in connection with Bishnupur Police Station Case No. 8 dated 31st October, 1985 u/s 399 / 402 of the Indian Penal Code and Section 25 / 27 of the Arms Act.

(c) On the allegation of theft of four new tyres of the said truck and replacement of those by four worn out ones, a First Information Report was lodged by the then Officer-in-Charge on 13th February, 1986. On the basis of the said report, the Sub-divisional Judicial Magistrate on 14th February, 1986 started a case u/s 379 of the Indian Penal Code against unknown persons" but ultimately, the same ended as per final report of the Circle Inspector dated 27th August, 1994.

(d) The four alleged new tyres of the said truck, suspected to be stolen, were recovered from the house of one Mohan Bauri and a General Diary bearing the Entry No. 574 dated 15th February, 1986 was recorded to that effect.

(e) By an order dated 20th February, 1986 passed by the Superintendent of Police, Bankura, the writ petitioner was placed under suspension. The basis of such suspension was a report of the Sub-divisional Police Officer, Bishnupur suspecting involvement of the writ petitioner and some other police personnel attached to the Bishnupur Police Station in connection with the alleged theft of the four tyres of the said truck. In the said order of suspension, it was alleged that the removal of four tyres had been made at the connivance of the writ petitioner and other police personnel and such conduct constituted misconduct unbecoming of a member of the disciplined force. The said order of suspension was intended to be effective from 21st February, 1986 pending enquiry into the conduct of the petitioner and the other police personnel in the contemplated disciplinary proceedings and completion of investigation of Bishnupur Police Station Case No. 6(2) of 1986 u/s 379 of the Indian Penal Code.

(f) Thereafter, a chargesheet dated 5th March, 1986 in connection with the disciplinary proceeding was served upon the petitioner. In the said chargesheet, the petitioner had been accused of gross misconduct and dereliction of duty unbecoming of a police officer and it was alleged that the petitioner connived at the removal of those seized tyres and wanted to hush up the matter.

(g) The writ petitioner subsequently made representation for withdrawing the suspension order and ultimately, the suspension order was withdrawn in the month of May, 1986. As the Enquiring Officer did not supply the necessary papers and documents which were vital before recording the evidence, the writ petitioner made written prayer by his application dated March 30, 1986 before the said officer but no step was taken to supply the same.

(h) As no step was taken to supply the essential documents on the basis of his application dated March 30, 1986, the writ petitioner made further prayer before the Superintendent of Police, Bankura on 9th April, 1986, but even then no step was taken to supply those documents. The writ petitioner thereafter made further prayer before the Deputy Inspector General of Police, Bankura Range, which was duly received by the said officer on May 28, 1986 but in spite of

receiving those three applications, the employer did not care to supply those documents.

(i) During the pendency of the proceedings, the writ petitioner was transferred from Bankura to Midnapore and up to the date of retirement, viz., May 31, 2002, he served in Midnapore since 1986. The respondents concerned kept themselves silent regarding the disciplinary proceedings being Disciplinary Proceeding No. 6 of 1986. Ultimately, the Reserve Officer of Midnapore Police Line by his Memo No. 8337/R.O. dated December 18, 1989 had served a copy of the Enquiry-Report and/or findings dated October 17, 1987 submitted by the Enquiring Officer in connection with Bankura District Proceeding Case No. 6 of 1986. The charges made against the petitioner were shown to be proved beyond reasonable doubt in the said report. The writ petitioner received the said report on January 1, 1990.

(j) After receiving the report, he asked the respondent No. 4, the Superintendent of Police, Midnapore for personal hearing on 24th January, 1990. The petitioner, however, had already appeared before the said authority and submitted that the enquiry-report had not been submitted in accordance with law. But surprisingly, on 15th February, 1990 he received a letter dated 5th February, 1990 issued by the Reserve Officer, Midnapore by which he was directed to reply to the show-cause in writing within seven days on receipt of the show-cause notice as to why he should not be dismissed from service.

(k) Challenging the said notice, a writ application being C.O. No. 10549 (W) of 1990 was moved before this Court. The said application was entertained by a learned Single Judge by passing direction for filing affidavit-in-opposition and reply and the learned Single Judge was further pleased to direct that if any final order was passed that would abide by the result of the pending writ application.

(1) During the pendency of the said writ application, on 24th December, 1990, the writ petitioner came to know that the respondent No. 4, the Superintendent of Police, Midnapore by his order dated 18th December, 1990 had passed the final order in the Proceeding No. 6 of 1986 by reverting him to the rank of Assistant Sub-Inspector of Police from the rank of Sub-Inspector of Police. A further affidavit was affirmed by the writ petitioner challenging the said order of demotion in the pending writ application, which was subsequently transferred, to the Tribunal after the constitution of the same.

(m) By the order impugned herein, the Tribunal has dismissed the application thereby affirming the enquiry report as well as the final order of dismissal.

3. Being dissatisfied, the has come up with the present writ application.

4. Mr. Moitra, the learned senior Advocate appearing on behalf of the writ petitioner has taken three-fold submission in support of the application. First, according to Mr. Moitra, in terms of Regulation 861 of the Police Regulations, when more persons than one are proceeded against on the same charge or charges as a result of joint delinquency at the same place and time, it shall be

proper for the Enquiring Officer to hold a joint enquiry in the same proceeding file but each delinquent shall have the right of examining and cross-examination witnesses, submitting written defence and to be heard in person separately. By relying upon the said provision, Mr. Moitra contends that in this case although the five different police personnel were allegedly involved in the same act, viz. removal of new tyres and replacing those with the old once, five different disciplinary proceedings were initiated and those were separately conducted. Mr. Moitra contends that the aforesaid procedure was wrong and it has prejudicially affected his client's right particularly in view of the fact that in the enquiry report, the Enquiring Officer has relied upon the statement of PWs, the alleged eyewitnesses, even given in the proceedings other than the one in which the writ petitioners was involved viz. the Proceeding No. 6 of 1986. Mr. Moitra submits that his client is not supposed to know what are the statements of the said PWs in other proceedings and had no occasion to cross-examine them relating to the statements made in other proceedings. Mr. Moitra, therefore, submits that the report of the Enquiring Officer was patently erroneous and the punishment given based on such report was invalid.

5. Mr. Moitra next contends that in the case before us, admittedly, the four alleged new tyres of the said truck were recovered from one Mohan Bauri but the said Mohan Bauri was not examined. According to Mr. Moitra, Mohan Bauri was the best witness in this case who could throw light as to the alleged incident, but the employer not having examined the said person, his client could not get the opportunity of cross-examining the said person; nevertheless, Mr. Moitra continues, his client was found to be guilty based on the fact that the tyres recovered from Mohan Bauri were those very articles stolen by the petitioner. Mr. Moitra points out that no criminal case of recovery of stolen goods was even initiated against the said Mohan Bauri.

6. Mr. Moitra next contends that in the case before us, although a criminal case was initiated over the self-same incident, in the said criminal case, the writ petitioner was not even named as the accused and at the same time, the said case ended in final report given by the Investigating Officer without framing any charge. Such being the position, Mr. Moitra contends that it was apparent that the so-called disciplinary proceedings were the outcome of mala fide intention of the employer. He, therefore, prayer for setting aside the enquiry report and the consequent punishment.

7. Mr. Moitra lastly relies upon the decision of the Supreme Court in the case of State of Assam and Another Vs. Bimal Kumar Pandit, and contends that the second show-cause notice itself indicates that the authority had already taken decision to punish his client. Mr. Moitra, therefore, prays for setting aside the order passed by the Tribunal and for quashing of the entire proceedings.

8. Mr. Das, the learned Counsel appearing on behalf of the State-respondent, has, on the other hand, supported the order passed by the Tribunal and has contended that the points raised by Mr. Moitra were not at all agitated before the

Tribunal and the only point argued before the Tribunal was that the relevant documents were not supplied to the writ petitioner. Mr. Das submits that it will appear from the materials on record that all the relevant papers were submitted to the writ petitioner and therefore, there was no illegality in the order of reversal.

9. Mr. Das next contends that in the original writ application, which was transferred to the Tribunal, there was no prayer for setting aside the punishment and the order of punishment being an appealable one, there was no scope of moving the Tribunal against the order of punishment so long the other remedies are not exhausted. Mr. Das further submits that merely because the criminal case was dropped, that fact did not stand in the way of the employer in proceeding with the departmental enquiry and at the same time, this Court sitting in a writ jurisdiction should not re-appreciate the materials on record as if this Court is sitting as a Court of First Appeal. Mr. Das, therefore, prays for dismissal of the writ application.

10. After hearing the learned Counsel for the parties and after going through the materials on record, we find that five different proceedings were initiated against five different persons including the writ petitioner before us. Those proceedings were described as Proceedings Nos. 5 of 1986- 9 of 1986. The writ petitioner was involved in case No. 6 of 1986.

11. According to the provision contained in Regulation 861(p)(iii) of the Police Regulation, when more persons than one are proceeded against on the same charge or charges as a result of joint delinquency at the same place and time, it shall be proper for the Enquiring Officer to hold a joint enquiry in the same proceeding file but each delinquent shall have the right of examining and cross-examining witnesses, submitting written defence and to be heard in person separately. In the case before us, all the five delinquent persons were proceeded against for the self-same allegation, namely, removal of four new tyres from the rare wheels of the seized truck. In such a situation, in our view, it was the duty of the respondent authority to conduct joint enquiry instead of initiating separate five disciplinary proceedings. As a result of these separate five disciplinary proceedings, the same set of witnesses are examined in five different proceedings but the delinquent persons did not know the contents of the evidence given by the witnesses in the other proceedings. What has been the most prejudicial to the interest of the writ petitioner is that the Enquiring Officer while summing up the proceedings and in arriving at the conclusion that the writ petitioner was guilty, relied upon not only the evidence given by the prosecution witnesses in the Proceeding No. 6 of 1986 but also gave references to the evidence given by the self-same witnesses in other proceedings. In other words, the ultimate findings of the Enquiring Officer that the petitioner was guilty was based on evidence not only restricted to the Case No. 6 of 1986 but also on the basis of evidence given by the PWs in other cases, viz., Case No. 5 of 1986 and Case No. 7-9 of 1986 although the writ

petitioner had no opportunity to know the materials placed in those proceedings and at the same time, had also no occasion to deal with the evidence given by the witnesses in the proceedings other than the Case No. 6 of 1986.

12. In our view, on that ground alone, the proceeding initiated against the writ petitioner is liable to be set aside as the findings of the Enquiring Officer which has since been approved by the disciplinary authority are based not only by relying upon the evidence recorded in Case No. 6 of 1986 but also in other cases where the writ petitioner was not made party.

13. Apart from the aforesaid ground, according to the employer, the theft had occurred on the midnight of 2nd February, 1986 and all the delinquent employees participated in the process of removal of the tyres. The further case of the employer was that those new tyres were recovered from the house of one Mohan Bauri, but curiously enough, the said Mohan Bauri who was the best witness in support of the case of the employer was not examined. Because of such withholding of the best evidence, the writ petitioner had no opportunity of cross-examining the said Mohan Bauri, although the Enquiring Officer has relied upon the fact that those tyres were recovered from the house of Mohan Bauri.

14. It further appears from the report of the Enquiring Officer that the writ petitioner on several occasions wanted to rely upon the various statements made by the witnesses u/s 161 of the Code of Criminal Procedure in the connected criminal case, most probably for the purpose of showing that those are in conflict with the case made out by the employer. Nevertheless, the Enquiring Officer did not permit the writ petitioner to bring on record those statements on the allegation that those are sub-judice. It further appears that in the self-same police station a criminal case u/s 379 of the IPC was initiated on 13th February, 1986 on the basis of complaint lodged by one of the delinquents. In the present proceedings, the Enquiring Officer, however has relied upon the evidence of one Narayan Banerjee who allegedly saw the writ petitioner to participate in the process of removal of the tyres on the midnight of 2nd February, 1986. Now a vital question arises, if PW-1, a constable attached to the self-same police station had seen the writ petitioner in the process of removing the tyres on the midnight of 2nd February, 1986, what was the reason for not initiating the criminal case or lodging any General Diary alleging such fact on that very day. On 13th February, 1986, long after ten days, the FIR was lodged and that too against unknown persons. The criminal proceedings have been subsequently dropped and from the final report given by the police, which is annexed to this writ application, we find that the owner of the truck could not prove that the recovered tyres really belonged to him. In such circumstances, in our view, the Enquiring Officer deliberately did not permit the writ petitioner to rely upon the statements of the witnesses made u/s 161 of the Code of Criminal Procedure for the purpose of contradiction lest the allegation made by the employer is proved false.

15. We, therefore, find that the findings of the Enquiring Officer that the petitioner was guilty was really a perverse findings of fact as he relied upon the

evidence of the witnesses given in other proceedings where the writ petitioner was not party and at the same time, did not permit the writ petitioner to rely upon the documents in connection with the investigation of the police itself in connection with the criminal proceedings for the purpose of showing contradiction.

16. Regarding the other point advanced by Mr. Moitra that in the second show-cause notice there was a preconceived idea of giving punishment to the petitioner, we do not want to make any observation in view of our finding that the petitioner was proved to be guilty on the basis of a perverse report based on a proceeding vitiated by denying proper opportunity of hearing to the writ petitioner.

17. Moreover, we find substance in the contention of Mr. Moitra that when all the five persons were allegedly involved in the process of removal, what was the reason for letting off the other three persons that the delinquents in Case Nos. 6 and 5. If all the persons participated in the process according to case made out by the employer, there was no justification of giving reprieve to three of them and if those three persons are absolved, the employer's case that all five persons conjointly committed the offence collapses.

18. We, however, do not find any substance in the contention of Mr. Das, the learned Advocate appearing on behalf of the State-respondent that all these points not having been specifically argued before the Tribunal, we cannot, for the first time, entertain these points.

19. All the aforesaid points advanced by Mr. Moitra are pure questions of law based on materials on record and thus, do not require any investigation of new fact. From the report of the Enquiring Officer itself, it is apparent that he took into consideration the evidence of the PWs in other proceedings. The Enquiring Officer himself has recorded that the writ petitioner tried to rely upon the statements made u/s 161 of the Code of Criminal Procedure in the connected criminal case and that he had not permitted those questions to be raised. The Tribunal has also relied upon the fact that the tyres were recovered from the house of Mohan Bauri and it is apparent that Mohan Bauri was not examined. Therefore, those are undisputed facts and if the result of the irregularity complained of stretches the case to the extent of perversity, a High Court sitting under Article 226 of the Constitution of India is entitled to interfere even though this specific question was not raised before the Tribunal. This is not a mere case of wrong appreciation of evidence but the findings recorded having reached the stage of perversity and that too in violation of the principles of natural justice and that of the Police Service Rules, the writ petitioner is entitled to agitate all these questions in this jurisdiction.

20. Regarding the other question that the punishment imposed upon the writ petitioner was appealable one and that the writ petitioner ought to have pursued the remedy before departmental forum, we find little substance in such

submission. This writ application does not arise out of an original proceeding u/s 19 of the Administrative Tribunal act but is fact, a writ application was filed when second show-cause notice was issued and a learned Single Judge of this Court directed that if further order was passed the same would abide by the result of the writ application. The said writ application was transferred to the Tribunal after its constitution. Since, we have arrived at the conclusion that the enquiry proceeding was vitiated and that tainted enquiry resulted in manifest injustice, we quash the finding of the Enquiry Officer by disapproving the manner in which he arrived at such findings. Therefore, the moment we quash the finding of the Enquiring Officer and the decision of the disciplinary authority to issue the second show-cause notice based on such finding, we find no substance in the previously mentioned contention of Mr. Das.

21. Moreover, the allegation of the writ petitioner that various documents called for by him were not supplied has not been answered either by the Enquiring Officer or by the Tribunal. All that they have recorded was that the enquiry-report and the documents mentioned in the charge sheet were supplied. But the fact that various other relevant documents asked for by the petitioner were not supplied was not disputed and in our view, for non-supply of the documents mentioned in Annexure P-4 has definitely prejudiced the defence of the petitioner.

22. We, therefore, set aside the finding of the Enquiring Officer and hold that the charge against the writ petitioner has not been proved and the proceeding was initiated by not following the provision contained in 861(p)(iii) of the Police Service Rules causing immense prejudice to the writ petitioner.

23. Since the proceeding is pending for more than twenty years, no purpose will be served by now directing the respondents to start fresh enquiry after the retirement of the writ petitioner.

24. The writ application, thus, is allowed. The consequential punishment of reversal is also set aside. The respondents are directed to give the retirement benefit to the writ petitioner as if he suffered no punishment. The amount of pension should be calculated accordingly and the entire arrears should be paid within three months from today. In default, the amount will carry interest at the rate of 8% per annum from the date the same became payable till actual payment.

25. In the facts and circumstances, there will be, however no order as to costs.

Kishore Kumar Prasad, J.

26. I agree.