
(1989) 07 CAL CK 0057
In the Calcutta High Court
Case No : C.O. No. 6760 (W) of 1988

Ram Chandra Ram

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 06-07-1989

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : 94 CWN 574

Hon'ble Judges : Kalyanmay Ganguli, J

Bench : Single Bench

Advocate : Nanda Lal Pal and Swapan Banerjee, for the Appellant; Chandan Samaddar, for the Respondent

Judgement

Kalyanmay Ganguli, J.—In this application, under Article 226 of the Constitution of India the petitioner challenges an order of suspension dated 6th January, 1988 issued by the Assistant Security Commissioner (Railway Protection Force), Assansol, Eastern Railway which is annexure "B" to the writ petition and the charge sheet dated 2nd may 1988 which is annexure "C" to the writ petition. So far as the order of suspension is concerned the authorities under the rules has right to suspend any employee in contemplation of a disciplinary proceeding. So on the whole the order of suspension should not be interfered with. But it is common knowledge now part an order of suspension cannot have any retrospective effect. The order of suspension impugned in the application is dated 6th January, 1988 by which the petitioner is sought to be put under suspension with effect from 1st January, 1988. The order is clearly bad so far as the retrospective aspect of the order is concerned. The order shall take effect from the date of the order namely 6th January, 1988 and the petitioner shall be deemed to be in service upto 5th January, 1988 and all his emoluments must be paid minus what has already been paid upto 5th January, 1988 as if he was in service upto that date.

2. The charge-sheet, according to the learned advocate appearing for the

petitioner discloses a closed and biased mind inter alia in as much as it states that the petitioner failed to prove and detect the theft of 57 bags of Atap rice and that he stands responsible for supplying faulty seed. The learned advocate for the petitioner urges that in the charge sheet itself the petitioner has been found guilty of the charges and as such the charge sheet should be quashed and set aside.

3. In support of his contention Mr. Nandalal Pal. has cited first the case of Meena Janah v. Deputy Director of Tourism & Ors., reported in 1974 (2) SLR 466 in which S. C. Ghosh, J. as his Lordship then was inter alia held that in the facts of the case the charge sheet shows prejudging of the annual issue by the punishing authority. It may be noted here that in the said case the charge sheet also proposed the punishment to be meted out to the petitioner. The facts of the said case are distinguishable from the facts of the present case.

4. Mr. Pal also referred to the case of Sunil Kumar Mukherjee v. State of West Bengal & Ors., reported in 1977 CHN 1014 (D.B.). In that case the petitioner was asked to explain disproportionate income alleged to have made by him. In that case the detailed calculation was made and the exact quantum of the excess of the asset which was said to be disproportionate to the known sources of the income of the petitioner was spelt out. The said case or for the matter of that ratio the said case is also distinguishable from the facts of the present case inter alia inasmuch as from detailed accounts were given in the charge sheet itself.

5. Mr. Pal next referred the case of Bimala Kanta Mukherjee v. State of West Bengal & Ors., reported in 1980(2) CHN 35 (D.B.) in which case also it was held that in the case the charge sheet shows that the Delinquent Officer was found to have been guilty of a specific amount which was arrived at on a detailed calculation of income and expenditure during a particular period. It was held in the facts of that particular case that the charge sheet was issued with a closed (sic) mind even at the stage of framing the charge and as such the charge sheet was quashed.

6. The last case cited by Mr. Pal is the case of Subrata Bhattacharjee v. Bharat Process and Mechanical Engineers & Ors., reported in 1984(2) CHN 185 there also it was held, relying on the sentence "By or above mentioned acts and omissions you have committed fraud, dishonesty, agitating, breach of trust and misappropriation of the company's money", that the charge sheet itself had decided the issue even at the stage of framing charge according to that judgment the charge sheet shown a state of mind which was opposed to justice, equity and fair play.

7. In all the 4 cases it appears that only a part of the charge sheet was examined and the charge sheet in its entirety was not considered and this aspect of the matter was neither urged nor decided in any of those cases.

8. It may be noted that a charge sheet consists of broadly 2 parts viz., formal part and the part dealing the specific allegations.

9. In the instant case the charge sheet begins at page 29 wherefrom it would appear that the authorities concerned proposed to hold an enquiry in respect of the allegations enumerated in the latter portion of the charge sheet and the petitioner was given the opportunity to rebut the same in a duly constituted proceeding. Unless the allegations are specifically spelt out in the body of the charge sheet the authorities would be accused of having issued a mass of vagueness which it would be contended would be impossible to answer in the absence of a clear and specific charge. In some way or other the charges must be spelt out exactly and distinctly at same places of the charge sheet to enable the charged employee to answer to the same if charges are fact it is not possible to deny the same. Even in criminal cases charges are specific. The thing to see is as to whether the authorities concerned had finally made up their mind or would give the delinquent employee an effective opportunity of rebutting the charges and whether any prejudice has been caused to the delinquent employee by the recital made in charge sheet. If no prejudice is caused by the recital made in the charge sheet and if adequate and effective opportunity is given to the petitioner to rebut the charges in a duly constituted disciplinary proceeding which is normally conducted by an officer otherwise than the officer issuing the charge sheet the question of either prejudice or of violation of the principles of natural justice will not normally arise.

10. In this connection reference may be made to the case of Sudhir Chandra Chakraborty v. State of West Bengal & Ors., reported in 1976 (1) CLJ 483 (D.B.). In the said case also in the charge sheet itself a proposal of punishment was incorporated. Till then it was held that the opportunity to show cause against the proposed punishment included the right to show the formalities in the evidence of the enquiry reported in the procedure at such enquiry and accordingly by its nature the opportunity of showing cause against the proposed punishment must imply only a provisional acceptance of the findings of the enquiry report. Otherwise there is no meaning for the opportunity to show cause against the enquiry report which would mean that the enquiry report was never conclusively accepted by the appointing authority. The finding of guilt was therefore a provisional finding in the circumstances and the appellant having availed of the opportunity to show cause against the report has also proposed the penalty has no reason to complain.

11. The case under discussion was a stronger case for the petitioner and even then the Division Bench of this Court rejected the plea of the appellant petitioner in that case. In the instant case only some allegations have been made against the petitioner and is sought to be given an adequate opportunity of rebutting the allegations. I do not think that any prejudice has been caused to the petitioner by the recital of the allegations or that the principle of natural justice have been violated in the instant case or that the petitioner is prevented from contesting the allegations made in the charge sheet. The petitioner in the instant case will have opportunity by production of evidence oral and documents to rebut the charges in the proceeding to be held and it is quite likely that the petitioner may

succeed in rebutting the charges at the enquiry.

12. In that view of the matter I am of the opinion that it would be too premature to strike down the charge sheet merely because of the specific allegations have been made in the body of the charge sheet. In the circumstances, this application fails and is rejected inter alia orders are vacated. The authorities concerned is directed to proceed with the enquiry in accordance with law after giving the petitioner an adequate opportunity of hearing and of making an effective representation. The enquiry is to be made on day to day basis and should not be adjourned except under compelling circumstances. If the petitioner does not cooperate the enquiry may proceed ex parte I further make it clear that I have expressed no opinion on the merits of the case and all the points taken in the petition can be urged before the Enquiry Officer both on question of law and on question of facts.

There will be no order as to costs.