

(2015) 04 CAL CK 0016
In the Calcutta High Court

Case No : M.A.T. No. 2097 of 2014 and C.A.N. 11742 of 2014

Ruknuddin

APPELLANT

Vs

The Hon"ble High Court at Calcutta and Others

RESPONDENT

Date of Decision : 02-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Information Technology Act, 2000 — Section 66A(b)

Citation : (2015) 5 CHN 157 : (2015) 146 FLR 256 : (2015) 4 WBLR 122

Hon'ble Judges : R.K. Bag, J.; Nishita Mhatre, J.

Bench : Division Bench

Advocate : M.M. Verma and Abhisekh Verma, for the Appellant; Saptangshu Basu and Ananya Das, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Nishita Mhatre, J.—The present appeal is directed against the order of the learned Single Judge in WP No. 29139(W) of 2014 dated 13th November, 2014. The appellant is a Civil Judge (Junior Division) and at the relevant time was posted at Gangarampur/Buniadpur in the district of Dakshin Dinajpur. The allegation against the appellant is that he opened a Facebook account in the name of his colleague, a Judicial Magistrate at Gangarampur. He, without her consent, posted her photographs with an intention to harass and defame her. A complaint was received from Judicial Magistrate by the High Court on its administrative side. It appears that the Judicial Magistrate, Gangarampur, lodged a complaint with the Banshihari Police Station, Dakshin Dinajpur being FIR No. 194 of 2012 dated 20th September, 2012. The case was investigated by the Cyber Crime Cell, CID, West Bengal. After investigation, a charge-sheet was submitted by the Investigating Officer before the competent Court on 15th January, 2014. The charge framed was under Section 66A(b) of the Information Technology Act, 2000.

2. The Administrative Committee of this Court resolved on 26th August, 2014

that a disciplinary enquiry should be initiated against the appellant for harassing/ annoying a lady Judicial Officer. The decision of the Administrative Committee was ratified by the Full Court on 5th September, 2014.

3. On 18th September, 2014 the appellant was served with a copy of the order of suspension, the memorandum of charge with imputations and a letter indicating that the Registrar (Listing) of the Calcutta High Court had been appointed as Enquiry Officer with the Registrar (Vigilance and Protocol), High Court at Calcutta as the Presenting Officer to enquire into the charge levelled against the appellant.

4. The appellant was informed that he was required to submit his written statement under Rule 11(4) of the West Bengal Judicial Service (Classification, Control and Appeal) Rules, 2007 [hereinafter referred to as "the Rules"] within 30 days from the receipt of the memorandum of charge. He was also expected to indicate whether he desired to be heard in person.

5. The appellant submitted his reply/written statement on 17th October, 2014. In his written statement he answered the charges levelled against him in the charge-sheet.

6. The criminal case started against the appellant resulted in his acquittal on the basis of a statement made by the complainant. By a judgment dated 23rd July, 2014, the appellant was acquitted of the charge punishable under Section 66A(b) of the Information Technology Act.

7. The decision to initiate disciplinary action against the appellant was taken only after he had been acquitted by the criminal Court. Without waiting for the disciplinary authority to take any action in respect of the reply submitted by him, the petitioner preferred a writ petition being WP No. 29139(W) of 2014 on 29th October, 2014. In his writ petition, the appellant prayed for the withdrawal or revocation of the orders dated 18th September, 2014 issued to him by the High Court through the Registrar (Judicial Service) which were the order of suspension, memorandum of charge together with imputation and the letter appointing an enquiry officer. He also prayed for a stay of the aforesaid orders.

8. By the decision of 13th November, 2014 which is impugned in the present appeal, the learned Single Judge dismissed the writ petition as he was of the opinion that there was no need to quash the disciplinary proceedings at that stage. The appellant was granted liberty to renew his prayer for revocation of the order of suspension before the appropriate authority. It appears from the order of the learned Judge that the main contentions raised on behalf of the petitioner were (i) that he was continued on suspension despite the fact that he had been acquitted by the criminal court, and (ii) that the departmental proceedings would be an empty formality as he had already been acquitted by the criminal court in respect of same charge which was to be enquired into by the Enquiry Officer.

9. The learned Counsel for the appellant has submitted before us that the issuance of the charge-sheet and the order appointing an Enquiry Officer

simultaneously is contrary to and in breach of the provisions of the Rules of 2007. He pointed out that under Rule 11, the procedure for imposing major penalties on a Judicial Officer has been prescribed from which there could be no deviation. He urged that under Rule 11(4), the appellant has a right to have his written statement of his defence to the charge-sheet issued to him considered by the disciplinary authority before the disciplinary authority appoints an Enquiry Officer. The learned Counsel submitted therefore that by not waiting to read the reply of the appellant to the charge-sheet and appointing an Enquiry Officer simultaneously, the disciplinary authority has breached the Rules of 2007 and therefore the enquiry proposed to be held against the appellant must be quashed. The learned Counsel also submitted that the appellant had been acquitted of the charge under Section 66A(b) of the Information Technology Act and consequently the charge-sheet issued by the disciplinary authority ought to be withdrawn. The learned Counsel pointed out that Section 66A(b) has now been held ultra vires by the Supreme Court in its judgment dated 24th March, 2015 in the case of Shreya Singhal v. Union of India in Writ Petition (Criminal) No. 167 of 2012 along with other writ petitions. A charge-sheet based on a provision of law which has been held to be ultra vires must be quashed by this Court, urged the learned Counsel. He submitted further that the appellant has been under suspension from 18th September, 2014 whereas the Supreme Court has deprecated such long suspensions. He, therefore, submitted that suspension order must be revoked.

10. Mr. Saptangshu Basu, learned Counsel for the Respondent No. 1/High Court submitted that the charge-sheet is not merely based on the provisions of Section 66A(b) of the IT Act and therefore, the enquiry can continue with respect to the other charges. The learned Counsel further submitted that the appellant has been unable to point out any prejudice which has been caused by appointing an Enquiry Officer simultaneously with the issuance of the charge-sheet to him. He submitted that the disciplinary authority had considered the reply of the appellant and had sent the same to the Enquiry Officer. The Enquiry Officer would naturally consider that reply before concluding the enquiry, according to the learned Counsel. As regards the revocation of the order of suspension, the learned Counsel pointed out that the learned Single Judge has granted liberty to the petitioner to renew his prayer for the revocation of the order of suspension before the appropriate authority and therefore, this Court need not consider that aspect of the case at all.

11. It would be appropriate to set out certain provisions of the Rules which are relevant for deciding the present case. These provisions are as follows:

11. Procedure for imposing major penalties.-

(1) No order imposing any of the penalties specified in items (i) to (v) of clause (b) of rule 10, shall be made except after an enquiry held, as far as may be, in the manner provided in this rule.

- (2) The Disciplinary authority shall draw up or cause to be drawn up-
- (a) the substance of the imputations of misconduct or misbehavior into definite and distinct articles of charge;
 - (b) a statement of imputations of misconduct or misbehavior in support of each articles of charge which shall contain-
 - (i) a statement of relevant facts including any admission or confession made by the Judicial Officer;
 - (ii) a list of documents by which and a list of witnesses by whom, the articles of charge are proposed to be substantiated.

(3) The Disciplinary authority shall deliver or cause to be delivered to the Judicial Officer a copy of the articles of charge and the statement of imputations of misconduct or misbehavior prepared under clause (b) of sub-rule (2) and shall require the Judicial Officer to submit to the disciplinary authority within 30 (thirty) days a written statement of his defence and to state whether he desires to be heard in person.

(4) Where the Judicial Officer submits a written statement of his defence and the Disciplinary authority, having regard to the articles of charge and the written statement of defence thereto, is of the opinion that-

- (a) any of the penalties specified in items (i) to (iii) of clause (a) of rule 10 shall be imposed, it may pass appropriate orders in the case;
- (b) in any other penalties specified in rule 10, the Disciplinary authority shall appoint an enquiring Officer, not being below the rank of a District Judge or an Additional District Judge for the purpose of holding an enquiry into the charges and forward to it-
 - (i) a copy of the articles of charge and the statement of imputations or misbehavior,
 - (ii) a copy of the written statement of defence;
 - (iii) copies of the statement of witnesses, if any.

(5)

to

(20)

16. Appeal - (1) An aggrieved Judicial Officer may prefer appeal before the Governor against any order made by the Disciplinary authority including an order imposing any of the penalties specified in items (i) to (v) of clause (b) of rule 10.

(2)

to

(6)

12. Rule 16 makes it clear that the aggrieved Judicial Officer can prefer an appeal before the Governor in respect of any order passed by the disciplinary authority. Thus, if the appellant was aggrieved by the issuance of the charge-sheet simultaneously with the appointment of the Enquiry Officer, the appellant ought to have challenged those orders in appeal before the Governor. Instead of exhausting that remedy the appellant approached this Court directly by filing a writ under Article 226 of the Constitution of India. Unfortunately, this Rule does not appear to have been pointed out to the learned Single Judge when the impugned order was passed as we are sure that the petition would not have been entertained in view of the alternate remedy being available to the appellant.

13. However, as the petition was entertained and an order was passed thereon, we will proceed to consider whether the impugned order has been justifiably passed.

14. As seen from the provision of Rule 11(1), the enquiry is to be held in respect of the charges under Clause (b) of Rule 10 which constitute major penalties only after an enquiry is held "as far as may be in the manner provided in this rule". Obviously therefore the procedure laid down in this Rule is not sacrosanct but would have to be adhered to as far as possible in order to comply with the rules of natural justice while dealing with the misbehavior or misconduct of a Judicial Officer. It is true that the Judicial Officer is expected to be given 30 days to submit a written statement of defence and to state whether he desires to be heard in person after he has been delivered a copy of the articles of charge and the statement of imputation or misconduct or misbehavior prepared under Clause (b) of Sub-Rule (2) of Rule 11. If after considering the written statement of defence, the disciplinary authority is of the opinion that any minor penalty specified in Clauses (i) to (iii) of Sub-Rule (a) of Rule 10 is to be imposed, the disciplinary authority may pass an appropriate order. These minor penalties are censure, withholding of increment of pay or promotion, recovery from pay of the whole or part of any pecuniary loss caused to the State and/or properties in the custody or under the control of the Court concerned by negligence or breach of rules or orders provided that the loss or damage is quantified and charged for. It is apparent that these punishments would be imposed when the misconduct alleged against the delinquent is not grave or serious. Clause (b) of Sub-Rule (4) of Rule 11 stipulates that in respect of other penalties specified in Rule 10 which means major penalties, the disciplinary authority shall appoint an enquiry officer not below the rank of a District Judge or an Additional District Judge for the purpose of holding an enquiry into the charges. Considering the charge levelled against the appellant, the disciplinary authority found it to be a case where a major penalty would have to be imposed if the appellant was found guilty of the charge levelled against him. It is in these circumstances that the Enquiry Officer has been appointed simultaneously with the issuance of the charge-sheet. However, this does not mean that the written statement in defence filed by the

appellant will not be considered by the Enquiry Officer while arriving at a conclusion or by the disciplinary authority in order to ascertain whether any punishment should be imposed if the Enquiry Officer has found the delinquent Judicial Officer to be guilty.

15. In our opinion, there is no need to quash the enquiry at this stage. The appellant has not been able to demonstrate the prejudice which has been caused to him by this procedure being adopted. It would be open for him to show that he has been prejudiced by the aforesaid procedure being followed when the enquiry is conducted. This aspect will be considered by the Enquiry Officer while concluding the enquiry and by the disciplinary authority in case any punishment is to be imposed on the appellant.

16. We must mention here that the appellant has not raised this issue regarding the nonconformity in the procedure followed by the disciplinary authority in his written statement. This aspect has been raised in the writ petition but it appears that the contention was not pursued while arguing the writ petition. Considering all aspects of the matter, in our opinion, there is no need to quash the enquiry. The learned Counsel for the appellant has pressed into service several judgments, including the judgments of the Supreme court in *State of Punjab Vs. V.K. Khanna and Others*, , *G.M. Tank Vs. State of Gujarat and Another*, , and *S. Bhaskar Reddy Vs. Superintendent of Police*, , the judgment of a learned Single Judge of the Madras High Court in the case of *Baliah David A. Vs. Regional Manager, Central Bank of India and Others*, and the decision in WPST 677 of 2009 of a Division Bench of this Court dated 3rd May, 2010 in support of his contention that once the appellant has been found not guilty and acquitted by the criminal Court, the disciplinary enquiry should not be held. A careful reading of these judgments does not, in our opinion, fortify the argument of the learned Counsel. It is now well-settled by a catena of judgments of the Supreme Court that criminal proceedings and a disciplinary enquiry are two different aspects of a case. The evidence in a criminal proceeding has to be proved against the accused to their hilt and beyond reasonable doubt whereas in the case of disciplinary enquiries the evidence has to be assessed on the basis of preponderance of probabilities. It is not incumbent on the disciplinary authority to discontinue a disciplinary enquiry merely because a delinquent has been acquitted by the same charge by a criminal court. The acquittal may have been because there was no evidence or because witnesses did not testify before the Court or for a myriad other reasons. It would no doubt be true that the disciplinary authority must consider the effect of an acquittal by a competent criminal court and conclude whether any action should be taken against the delinquent.

17. The case of *Ajay Kumar Chaudhary v. Union of India* through its Secretary and Anr (Civil Appeal No. 1912 of 2015 decided on February 16, 2015), in our opinion, has no application in this case as the learned Single Judge has granted leave to the appellant to move the appropriate authority for revocation of the suspension order. If any such application is submitted by the appellant the

disciplinary authority would surely take into consideration the observations of the Supreme Court in the aforesaid decision.

18. Considering all aspects of the matter, in our opinion, the order of the learned Single Judge deserves to be upheld. The appeal is dismissed. No order as to costs. Consequently the application being CAN No. 11742 of 2014 is also dismissed.

19. Urgent certified photocopies of this judgment, if applied for, be given to the learned Advocates for the parties upon compliance of all formalities.