

(2022) 01 GAU CK 0044

In the Gauhati High Court

Case No : Review Petition No. 115 Of 2018

Sagar Chandra Das

APPELLANT

Vs

North Eastern Electric Power Corporation Limited (Neepco)
And 4 Ors

RESPONDENT

Date of Decision : 18-01-2022

Acts Referred:

Citation : (2022) 01 GAU CK 0044

Hon'ble Judges : Sudhanshu Dhulia, CJ;Soumitra Saikia, J

Bench : Division Bench

Advocate : M Chanda

Final Decision : Allowed

Judgement

1. The matter is taken up through video conferencing.
2. This review petition has been filed by the petitioner seeking review of the order dated 22.05.2017, passed by a Division Bench of this court in WA 259/2015.
3. The brief facts of the case are that a writ petition, being WP(C) 3462/2009, was filed by the present review petitioner, who at the relevant point of time was working as a security guard under the NEEPCO, at Kopili Hydro Electric Project, Umrangso, in the district of Dima Hasao. In the writ petition the petitioner had challenged the order dated 08.01.2004 passed by the NEEPCO authorities, whereby a major penalty of removal from service was imposed upon the petitioner. The learned Single Judge was of the opinion that in this case copy of the enquiry report was not furnished to the petitioner and, hence, there has been violation of principle of natural justice and fair play. Consequently, the learned Single Judge allowed the writ

petition by order dated 27.04.2015, with the following observations and directions:

36. Having regard to the discussions made above, Court is of the considered opinion that the departmental proceeding initiated against the petitioner till the stage of rejection of his appeal stood vitiated by violation of the principles of natural justice and non-observance of procedural fairness. In the ordinary course, Court would have remanded the matter to the disciplinary authority to proceed from the stage of furnishing a copy of the inquiry report to the petitioner and seeking his response, but in the present case, Court is reluctant to follow this course of action for two reasons. Firstly, petitioner was dismissed from service on 08.01.2004, which is more than 11 years ago; remanding the matter back to the disciplinary authority at such a belated stage will only prolong the agony of the petitioner. Secondly, remand to the disciplinary authority would be a useless formality when the head of the organization i.e., the CMD, NEEPCO has already taken the view in the appellate order, though not communicated, that the penalty imposed was justified. In such circumstances, it would meet the ends of justice, if the order of penalty is set aside and the petitioner is directed to be reinstated in service.

37. In a recent decision, a Division Bench of this Court in Commissioner & Ors. Vs. Shri Haren Chandra Das (WP(C) No.5310/2008), decided on 04.03.2015 held that when the initiation of inquiry and imposition of penalty is arbitrary and there was no basis to initiate any inquiry in the matter, the rule of no work no pay cannot be applied. In the facts of that case, it was held that the employee would be entitled to full back wages on reinstatement with continuity of service till superannuation.

38. In the present case, this Court has not gone into the merit of the 3 charges framed against the petitioner. Interference has been made because of violation of the principles of natural justice and lack of procedural fairness. In such circumstances, Court is of the view that it will meet the ends of justice, if petitioner is paid 50% of the back wages. Accordingly, impugned order of penalty dated 08.01.2004 and order of the appellate authority dated 20.03.2009 are set aside and quashed. Petitioner shall be reinstated in service with continuity of

service and all other benefits. He shall be entitled to 50% of the back wages.

Writ petition is accordingly allowed. No costs.â??

4. Aggrieved by the order passed by the learned Single Judge, the employer NEEPCO filed a writ appeal, being WA 259/2015, before a Division

Bench of this Court and the Division Bench of this Court was of the opinion that merely because a copy of the enquiry report had not been served

upon the delinquent employee that itself cannot be a cause for reinstating the employee in service. Relying upon the decision of the Honâ??ble Apex

Court in the case of Managing Director, ECIL, Hyderabad vs. B.I Karunakar, reported in (1993) 4 SCC 327, the Division Bench held that the enquiry

should have been continued from the stage of providing a copy of the enquiry report to the delinquent employee. The relevant portion of the order of

the Division Bench reads as under:

â??6. The decision of the Supreme Court in Managing Director, ECIL, Hyderabad vs. B Karunakar (supra) is directly on the point. The

relevant paragraph 31 of t he decision reads as under:

â??31. Hence, in all cases where the enquiry officerâ??s report is not furnished to the delinquent employee in the disciplinary proceedings,

the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it

before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-

supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have

made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment.

The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is

regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their

judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal

appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable

opportunity. It is only if the Court/Tribunal finds that the furnishing of the report

would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any, and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law.â??

7. From the above quoted decision, it is clear that the Supreme Court has mandated all the courts that when the order of punishment is set aside on the ground that non-furnishing of enquiry report has caused prejudice to the employee, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The Supreme Court has also held that the question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement, if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. According to the Supreme Court if the employee succeeds in the fresh inquiry and is

directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal

till the reinstatement and to what benefits, if any, and the extent of the benefits he will be entitled. The Supreme Court has further declared

that the reinstatement made as a result of setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement

for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held and this is

the correct position in law.

8. Thus, in view of the clear position of law laid down by the Supreme Court, the order passed by the learned Single Judge cannot be

sustained. We also disagree with the learned Single Judge that merely because the appeal of the respondent has been dismissed by the

appellate authority remanding the enquiry to the disciplinary authority would be a useless formality. We accordingly direct the appellants to

proceed with the enquiry from the stage of furnishing him with the copy of report. We hope and trust that after receiving all the objections

raised by the respondent against enquiry report, the disciplinary authority will decide the same in accordance with law by a speaking order.

As seen above, since the appellant has already attained the age of superannuation on 30.4.2016, he now cannot be directed to be

reinstated and then to be placed under suspension till the completion of enquiry.

9. The appeal is allowed to the extent mentioned above.

5. It is reflected from the above order itself that at the time when such order was passed and directions were made by the Division Bench to continue

with the enquiry proceedings against the employee, the employee i.e. the review petitioner before this court had already retired from service having

reached the age of superannuation on 30.04.2016. The employee, i.e. the review petitioner before this court thereafter filed a Special Leave Petition

(No. 23511/2017) before the Hon'ble Apex Court, which was disposed of by the Hon'ble Apex Court on 22.05.2017 by the following order:

Upon hearing the counsel the court made the following order:

It is submitted by learned counsel for the petitioner that the petitioner had superannuated on 30th April, 2016. He says that under the Rules

the disciplinary enquiry against the petitioner cannot be continued. We find that

this submission was not made before the High Court even though the High Court had heard the matter and decided it on 22nd May, 2017. Since this question goes to the very root of the continuance of the enquiry, we are of the view that the petitioner may be permitted to file a review petition in this regard and the High Court may take a decision. We may mention that learned counsel for the petitioner has referred to Dev Prakash Tewari vs. Uttar Pradesh Cooperative Institutional Services Board, Lucknow & Ors. (2014) 7 SCC 260, to contend that the enquiry against the petitioner could not be continued. We do not make any comment on the decision. Liberty is granted to the petitioner to file a review petition before the High Court which may be considered without reference to the period of limitation.

The special leave petition is disposed of accordingly.â??

6. In the light of the above directions given by the Honâ??ble Apex Court, this review petition has been filed with a prayer to review the order passed by the Division Bench.

7. We have heard Mr. S. Nath, learned counsel for the review petitioner as well as Mr. D. Senapati, learned Standing Counsel, North East Electric Power Corporation Limited (NEEPCO), appearing for respondent nos. 1 to 4, at length.

8. Learned counsel for the review petitioner has relied upon the decision of the Honâ??ble Apex Court in Dev Prakash Tewari vs. U.P. Cooperative Institutional Service Board, Lucknow & Ors, reported in (2014) 7 SCC 260, wherein the Honâ??ble Apex Court had held that a departmental proceeding cannot be initiated or continued after retirement of the employee concerned unless there is such a provision in the service rules.

9. Learned counsel for the respondent NEEPCO has candidly admits before this court that in the service rules applicable to the review petitioner, there is no provision under which NEEPCO authorities can continue, or even initiate a departmental proceeding against a retired employee. That being the position, we are of the opinion that the order of the Division Bench directing continuance of the disciplinary proceeding against the review petitioner was passed as this relevant aspect was not placed before the Division

Bench, nor was the judgment of the Honâ??ble Apex Court in Dev

Prakash Tewari (supra) was not placed before the Division Bench of this Court while the matter was taken up by the Division Bench in writ appeal.

Thus we find that there is an error apparent on the face of record and there are grounds for our interference even under this limited jurisdiction of

â??reviewâ??.

10. Apart from the above, there is another aspect of the matter which needs to be considered. While the review petitioner was serving under the

NEEPCO as a security guard, he was charge-sheeted by the NEEPCO authorities with three charges, which are as follows:

â??(i) That he made allegations against the doctors of appellantsâ?? hospital regarding denial of treatment to him by them at the behest of

senior officers of the Security Wing (HQ) and that he tried to incite other Security Guards by spreading rumour that the doctors were

indifferent towards him;

(ii) That he failed to pay respect to superiors by not saluting them; and

(iii) That he failed to report on duty at the Guest House despite order of the Manager (Security) to do so.â??

11. Even looking at the charges above, we do not find that the charges were so grave in nature that, even if proved, it would have called for removal

of the employee from service, which is one of the major punishments. The case of the writ petitioner before this court was that he had to face the

charges and the departmental enquiry as the petitioner had formed a trade union of security guards working under NEEPCO, which was not to the

liking of the NEEPCO authorities. The NEEPCO authorities had even filed application for deregistration of the trade union, which was rejected by the

Registrar. In this background, the disciplinary proceeding was initiated against the petitioner. In any case, whatever be the merit of the case, the

learned Single Judge came to the conclusion that there had been violation of the principles of natural justice and fair play and the writ petition was

allowed with the directions as already referred above.

12. As to the question why the court did not find it proper to remand the matter back to the disciplinary authorities to proceed from the stage of

furnishing copy of the enquiry report to the petitioner, we find that this was not done as the petitioner was dismissed from service in the year 2004,

which was eleven years ago from the date when the learned Single Judge passed the order and then the learned Single Judge was of the opinion that

remanding the matter back to the disciplinary authority at this belated stage will only prolong the agony of the petitioner. The relevant portion of the

observations made by the learned Single Judge on this aspect is reproduced below:

“36.....In the ordinary course, Court would have remanded the matter to the disciplinary authority to proceed from the stage of

furnishing a copy of the inquiry report to the petitioner and seeking his response, but in the present case, Court is reluctant to follow this

course of action for two reasons. Firstly, petitioner was dismissed from service on 08.01.2004, which is more than 11 years ago; remanding

the matter back to the disciplinary authority at such a belated stage will only prolong the agony of the petitioner. Secondly, remand to the

disciplinary authority would be a useless formality when the head of the organization i.e., the CMD, NEEPCO has already taken the view in

the appellate order, though not communicated, that the penalty imposed was justified. In such circumstances, it would meet the ends of

justice, if the order of penalty is set aside and the petitioner is directed to be reinstated in service.”

13. Considering all the relevant aspects of the matter, we are of the opinion that the while the Division Bench passed the order, the judgment of the

Hon’ble Apex Court in Dev Prakash Tewari (supra) was not placed before the Division Bench nor was any rule relating to NEEPCO, when there

was no provision for continuation or initiation of disciplinary proceeding against a retired employee.

14. In view of the above, we allow the review petition. The order dated 22.05.2017, passed by a Division Bench in WA 259/2015 is hereby recalled.

Let the order of the learned Single Judge dated 27.04.2015 passed in WP(C) 3462/2009 be implemented in accordance with law.