
(2007) 06 CAL CK 0003
In the Calcutta High Court
Case No : W.P.C.T. No. 1433 of 2001

Santosh Kumar Mondal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-06-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2007) 114 FLR 894 : (2007) 1 LLJ 119

Hon'ble Judges : Prasenjit Mandal, J; Girish Chandra Gupta, J

Bench : Division Bench

Advocate : Diptakshi Sarkar, for the Appellant;

Judgement

Prasenjit Mandal, J.—This writ application is directed against the order dated June 29, 2001 passed by the Hon''ble Mr. Justice S. Narayan, Vice-Chairman and Hon''ble Mr. L.R.K. Prasad, Member (Administration), Central Administrative Tribunal, Additional Bench, Calcutta in O.A. No. 1091 of 1993 whereby and whereunder the application filed by the writ applicant had been dismissed.

2. The fact of the case in brief is that the writ applicant was appointed as lineman with external maintenance, 46 Exchange, Calcutta Telephones on April 1, 1971. He was charge-sheeted on November 19, 1971 for committing gross misconduct by demanding a sum of Rs. 250/- only as an illegal gratification from Sri H.N. Ghosal for speedy installation of a telephone at his garden house at Dakshin Jagaddal, Rajpur, District South 24 Parganas. The writ applicant denied the charge. The enquiry officer submitted his report on January 6, 1979. Then the Disciplinary Authority passed the order of dismissal from service by his order dated July 30, 1979. The writ applicant preferred a writ petition before the High Court at Calcutta and the Hon''ble High Court at Calcutta quashed the order of dismissal with liberty to proceed with the enquiry in accordance with law. Accordingly, a fresh enquiry was held. But, no final order was passed owing to an interim order of the Hon''ble High Court, Calcutta. In the meantime, the case pending before the Hon''ble High Court at Calcutta was transferred to the Central

Administrative Tribunal and the Tribunal asked the respondents to communicate the final order to the writ applicant in accordance with law. Then the Disciplinary Authority imposed the penalty of removal from service on March 24, 1992. The writ applicant filed an appeal before the Appellate Authority and then the Appellate Authority reduced the penalty of removal from service to compulsory retirement with effect from March 27, 1992. Being aggrieved by the order of the Disciplinary Authority as well as the Appellate Authority, the writ applicant preferred the instant O.A. case which was dismissed by the Central Administrative Tribunal by the impugned order. So the writ applicant has filed the present writ application.

3. Having considered the entire record and the submissions made by the learned advocate for the writ applicant, we find that the writ applicant was appointed as lineman on April 1, 1971 and he was charge-sheeted on November 19, 1971 for demanding an illegal gratification of Rs. 250/- only from Sri H.N. Ghosal for speedy installation of a telephone at his garden house at Dakshin Jagaddal, Rajpur, District-South 24 Parganas on persuasion and, negotiation by Sri Mihir Kumar Ghosh, Engineering Supervisor attached to Narendrapur Exchange. We find that the Departmental proceedings had been conducted according to the provisions of the CCS. (CCA.), Rules, 1965 and the principles of natural justice had been followed. The directions of the Hon'ble High Court, Calcutta had also been followed. Ultimately the Disciplinary Authority imposed the penalty of removal from; service with immediate effect by the order dated March 24, 1992. We find that the writ applicant preferred an appeal before the Appellate Authority and then the Appellate Authority reduced the penalty of removal from service to compulsory retirement with effect from March 27, 1992.

4. The writ applicant participated in the Departmental proceedings and he was given all the kinds of facilities that were required for the purpose of the Departmental proceedings. Even he examined one defence witness. We do not find that the findings of the Disciplinary proceedings suffer from any inherent defect. There is overwhelming evidence to sustain guilt of the writ applicant. The Central Administrative Tribunal has elaborately discussed the entire matter step by step from the stage of charge-sheet up to the end of the order by the Appellate Authority in the final form against the writ applicant. We do not find any perversity in the findings of the Tribunal. Therefore, we are of the view that there is nothing to interfere with the findings of the Tribunal and consequently the writ application is devoid of merits so far as the order of the Tribunal is concerned.

5. The writ applicant has contended that, another employee namely, Sri Mihir Kumar Ghosh, co-accused, was exonerated from the charge in the joint trial against them, but he was found guilty in the Departmental proceedings. He has also contended that if one person could get stand to be exonerated, on the same charges the other person cannot be victimized of the charges and this amounted to discrimination and thereby violation of Articles 14 and 16 of the Constitution

of India. Such contention, we hold, cannot stand because the case of each of the charged officers shall be decided according to its own merits. Moreover, we have observed that there is overwhelming evidence against the writ applicant in the departmental proceedings and that the findings of the enquiry officer are not perverse. Therefore, even if Sri Mihir Kumar Ghosh was exonerated from charges, the writ applicant still could be held guilty separately in the same Departmental Proceedings. The principles of equality as claimed by the writ applicant does not stand in the matter of Departmental Proceedings lodged against the writ applicant and another just as in the case of joint criminal trial of more than one accused persons. So such contention cannot be accepted.

6. The writ applicant has also contended that the tape cassettes had not been produced before the Court and so the writ applicant was deprived of verifying the statement recorded in the tape/cassettes. In this respect, we hold that such contention does not stand. We find that the prosecution did not rely on the tape/cassettes and such material had not been shown in the charge-sheet as evidence to be adduced against the writ applicant. Therefore, non-production of the tape/cassettes had not affected the merits of the case.

Thus, we find that the learned Tribunal has observed that the O.A. has no merits at all. The order of dismissal of the O.A. by the Tribunal is supported by us.

7. The writ applicant has filed the writ application praying for the following relief amongst others:

Issue a writ in the nature of mandamus commanding the respondents/their agents/servants/subordinates and men to pay up the outstanding dues and to; safe-guard the interests, rights of the petitioner and to look into the retiral benefits and other as would be reasonably justify and adequately available to the petitioner where sufferings knew no bounds at the hands of the respondents.

8. Paragraph 10 of the judgment under challenge reads as follows:

It is noted from a letter dated January 12, 1993 (Annexure A-3) that the applicant was advised to file formal application for pension. Accordingly, he filed the said form which is at Annexure A-4. He has also made a representation dated July 14, 1993 (Annexure A-5) requesting the Chief General Manager, Calcutta Telephones to sanction his pension and other retiral benefits. There is nothing to indicate in the pleadings with regard to further development in respect of grant of pension. It is presumed that necessary action in this regard has already been taken by the concerned respondents, if not/the same should be done with utmost expedition. In normal course, the applicant would have retired on (sic) 1995.

9. It would appear that the petitioner has not only accepted but has also acted upon the order of compulsory retirement. There is now no going back.

10. We are satisfied that no interference is called for. We however hasten to add that appropriate relief in accordance with paragraph 10 quoted above be made available to the petitioner, if not already done, within three months from the date

of communication of this order. The writ application is, thus, disposed of. There will be no order as to costs.

Urgent Xerox certified copy of this order, if applied for, be supplied to the learned advocate for the parties upon compliance of all formalities.

Girish Chandra Gupta, J.

I agree.