
(2014) 05 CAL CK 0056
In the Calcutta High Court
Case No : W.P. No. 1237 (W) of 2007

Sri Ambrish Parasad Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 07-05-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 3 CALLT 21 : (2014) 5 CHN 448 : (2014) LabIC 2702 : (2015) 1 WBLR 1046

Hon'ble Judges : Tapabrata Chakraborty, J

Bench : Single Bench

Advocate : Achin Kumar Majumder and Mr. Pratik Majumder, Advocate for the Appellant; Partha Sarathi Bose and Mr. Udayan Dutta, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Tapabrata Chakraborty, J.—This writ application had been preferred challenging the entire disciplinary proceedings including the order of suspension dated 6th of February, 1992, the Charge Sheet dated 3rd of March, 1992, the enquiry report dated 1st of September, 1992, the second show-cause notice dated 15th of September, 1992, the order of punishment dated 10th of July, 1995, a memorandum dated 4th of March, 2003 and the Appellate Authority order dated 9th of September, 2003.

2. The facts, in a nutshell, are that while working in the post of constable under Railway Protection Force, the petitioner was issued an order of suspension dated 6th of February, 1992 in contemplation of a disciplinary proceeding and subsequent thereto the Charge Sheet was issued vide memorandum dated 3rd of March, 1992. Challenging the said charge sheet, the petitioner preferred an application under Article 226 of the Constitution of India being C.O. No. 2710 (W) of 1992. During the pendency of the said writ application, the petitioner participated in the proceeding and the Enquiry Officer submitted a report vide

memorandum dated 1st of September, 1992 to which the petitioner replied on 22nd of September, 1992 and the final order of punishment was issued on 10th of July, 1995 but the same could not be communicated due to an order passed in C.O. No. 2710 (W) of 1992 on 3rd April, 1992. The said writ application was disposed of by an order dated 12th September, 2002 and only thereafter the order of the Disciplinary Authority was communicated vide memorandum dated 4th of March, 2003. Aggrieved by the said order of punishment, a statutory appeal was preferred by the petitioner, alleging inaction on the part of the respondents to dispose of the statutory appeal. The petitioner again preferred an application under Article 226 of the Constitution of India being W.P. No. 11997 (W) of 2003. During pendency of the writ application the statutory appeal was rejected by an order dated 9th of September, 2003 and subsequent thereto the said writ application was dismissed by an order dated 4th of December, 2006, granting leave to the petitioner to take out a fresh writ application and accordingly the instant writ application was filed and the same was admitted with direction towards exchange of affidavits and the same was finally disposed of by an order dated 2nd of May, 2012.

3. Subsequent thereto, the respondents preferred a recalling application being CAN 4877 of 2012 and upon contested hearing the said application was disposed of recalling the earlier ex-parte order dated 2nd of May, 2012.

4. Mr. Majumder, learned advocate appearing for the petitioner submits that the Disciplinary Authority had incorporated the name of the Enquiry Officer in the charge sheet and had fixed the date of enquiry with a direction that in the event the petitioner does not attend the said enquiry, the same will be conducted ex-parte. From such sequence it was explicit that the petitioner was granted no opportunity to reply to the Charge Sheet and without calling for such reply from the petitioner and without formation of an opinion to the effect that an enquiry was called for, the Disciplinary Authority appointed the Enquiry Officer and such action is violative of the principles of natural justice.

5. Mr. Majumder, learned advocate appearing for the petitioner drew the attention of this Court to the statement of allegations pertaining to the charges wherein it had been, inter alia, observed that "it is evident from the records that all the above-named staff made over charge of their duties to their reliever at 09/00 hrs. on 05.02.1992 which clearly indicates that the theft of pipes from above wagon took place during their duty period" and to the observation that "since above theft of 41 Nos. G.I. Pipes took place at Asansol Junction Home Signal in broad-daylight on 05.02.1992 all the five staff named above had connived in the same."

6. Mr. Majumder submits that the said observations clearly reveal that the Disciplinary Authority had already made up its mind to inflict punishment upon the petitioner prior to enquiry and establishment of the charges and that the Disciplinary Authority was biased.

7. Mr. Majumder further drew the attention of this Court to a representation of the petitioner dated 28th April, 1992 by which the petitioner prayed for supply of the documents mentioned therein and that though the Enquiry Officer endorsed a note in the said reply to the effect that "the documents will be given in due course during proceeding enquiry", the concerned respondent did not supply the documents to the petitioner and such action on the part of the respondents was violative of the principles of natural justice.

8. Mr. Majumder further drew the attention of this Court to the enquiry report and the depositions tendered particularly to the deposition of Awadh Kishor Singh, Chulhai Mondal, Bishwanath Murmu and S.K. Chatterjee. Mr. Majumder submitted that the petitioner was not supplied the documents at serial nos. 14 to 17 at internal page 8 of the enquiry report, as relied upon by the prosecution. According to Mr. Majumder the Enquiry Officer was subordinate to the prosecution witness no. 1, namely, Shri R.K. Mondal and that as such the Enquiry Officer was swayed by the deposition tendered by his senior.

9. Drawing the attention of this Court to the order of punishment dated 10th of July, 1995, Mr. Majumder submits that the same suffers from total non-application of mind and that the Disciplinary Authority had not considered the specific defence taken by the petitioner.

10. According to Mr. Majumder, the Appellate Authority also did not apply its mind and did not consider the specific grounds of challenge as incorporated in the appeal petition. The Appellate Authority, however, modified the order of removal from service to that of compulsory retirement from the date the petitioner was removed from service.

11. In support of the contention to the effect that the respondents had proceeded with a premeditated intent to penalize the petitioner and had arrived at a positive finding of guilty against the petitioner at the time of issuance of the charge sheet, Mr. Majumder had relied upon the following judgments:-

a) ORYX Fisheries Private Limited Vs. Union of India (UOI) and Others, .

b) Kumaon Mandal Vikas Nigam Ltd. Vs. Girja Shankar Pant and Others, .

12. Mr. Majumder further argues that by denying to supply the copies of the documents relied upon by the Enquiry Officer, in course of the enquiry, respondents have acted in blatant violation of principles of natural justice and in support of such argument Mr. Majumder had relied upon the following judgments:-

a) Surendra Chandra Das vs. State of West Bengal & Ors., reported in 1981(3) SLR 737.

b) Sanjoy Kumar Singh vs. Union of India & Ors., reported in 2002(2) SLR 266.

c) Unreported judgment delivered in the case of Union of India & Ors. vs. Dilip Kumar Palit, M.A.T. No. 580 of 2008.

d) Committee of Management, K.D. College vs. Shambhu Saran Pandey, reported in 1995 (I) SCC 404.

13. According to Mr. Majumder, the Enquiry Officer had made a searching cross-examination and in support of such contention, Mr. Majumder had relied upon the judgment delivered in the case of Radha Krishna Setty vs. Deputy General Manager Indian Overseas Bank & Anr., reported in 1999 (VI) SLR 235.

14. Mr. Majumder had also placed reliance upon the judgment delivered in the case of Anil Kumar Vs. Presiding Officer and Others, , in support of his contention to the effect that non-application of mind leads to non-establishment of a correlation between the charge and the delinquent and that the lack of such nexus maligns the impugned proceeding.

15. In support of the contention to the effect that the enquiry stands vitiated as the Enquiry Officer was subordinate to the prosecution witness no. 1, namely, Shri R.K. Mondal, Mr. Majumder relied upon an unreported judgment delivered in the case of Utpal Kumar Biswas Versus Union of India and Others. Mr. Majumder further submits that the said judgment was affirmed by the Hon'ble Appeal Court. Reliance was also placed on the judgment delivered in the case of Anandram Jiandrai Vaswani vs. Union of India & Ors., reported in 1983 (I) CLJ 8.

16. Mr. Partha Sarathi Bose, learned senior advocate appears on behalf of the respondents and submits that a Charge Sheet has to be construed in a reasonable manner and unhappy expression and or words used in the Charge Sheet and or in the statement of allegation cannot be regarded as the outcome of closed and prejudged mind of the Disciplinary Authority without considering other relevant factors. Mr. Bose further submits that the closed and prejudged mind of the Disciplinary Authority, cannot be comprehended only from the language and or expression used in the Charge Sheet.

17. In reply to the contention of the petitioner to the effect that he was not supplied the documents though the concerned respondent categorically incorporated a remark in the petitioner's letter dated 28th April, 2012 to supply the said documents in due course during the enquiry, Mr. Bose submits that no demand for such supply of documents was made by the petitioner in course of the enquiry in terms of the provisions of the Railway Protection Force Rules, 1987 (hereinafter referred to as the said Rules).

18. In reply to the petitioner's contention to the effect that the Enquiry Officer was subordinate to the PW No. 1 and that as such, the Enquiry Officer was subdued and influenced, Mr. Bose submits that there is no such embargo under the said rules towards appointment of an Enquiry Officer superior to the witnesses to be examined in the proceeding.

19. In reply to the petitioner's contention to the effect that he was not granted any opportunity to reply to the Charge Sheet and that there was no formation of an opinion on the part of the Disciplinary Authority that an enquiry was called for,

Mr. Bose submits that under the provisions of the said rules there is no absolute criterion to the effect that prior to appointment of an Enquiry Officer, the Disciplinary Authority is required to form an opinion that an enquiry is called for, upon calling for a reply to the Charge Sheet.

20. In dealing with the judgments relied upon by the petitioner, Mr. Bose submits that there is no dispute as regards the principles of law as laid down in the same and that he does not disagree with the said principles but the facts involved in the said judgments are distinguishable and that accordingly the said judgments have no manner of application in the instant case.

21. In support of his argument, Mr. Bose places reliance upon the following judgments:-

a) B.C. Chaturvedi Vs. Union of India and others, in support of the contention to the effect that the punishment imposed by the disciplinary authority as modified by the appellate authority is not in any manner disproportionate and through exercise of the power of judicial review, the writ court cannot substitute its own conclusion.

b) The High Court of Judicature at Bombay, Through Its Registrar Vs. Shashikant S.Patil and Another, , in support of the contention to the effect that as there had been no violation of the relevant rules, question of interference by the writ court does not occasion.

c) State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya, , in support of the contention to the effect that the writ court cannot act as an appellate court and cannot reassess the evidence.

d) D.G. Railway Protection Force and Others Vs. K. Raghuram Babu, , in support to the contention to the effect that right to represent can be granted only as a restricted or controlled right.

e) Patel Engineering Limited Vs. Union of India (UOI) and Another, , in support of the contention to the effect that there is no inviolable rule to the effect that the personal hearing of the affected party should be granted.

f) Haryana Financial Corporation and Another Vs. Kailash Chandra Ahuja, , in support of the proposition that it is for the delinquent employee to plead and prove that the non-supply of report had caused prejudiced.

g) South Bengal State Transport Corporation Vs. Ashok Kumar Ghosh and Others, , in support of the contention to the effect that as an absolute proposition of law, it cannot be said that before appointing the enquiry officer reply is required to be obtained and considered unless it is the requirement of the rules.

22. I have heard the submissions of the learned advocates appearing on behalf of the respective parties and I have considered the materials on record.

23. A perusal of the record reveals that at the juncture of issuance of the charge sheet to the petitioner, the authority decided to hold the enquiry and named the Enquiry Officer on the body of the charge sheet and fixed the date of enquiry with a categoric stipulation that the enquiry will be conducted ex-parte, if the petitioner fails to attend the enquiry proceedings. A perusal of the statement of allegation also reveals that at the stage of issuance of the charge sheet the respondents arrived at a positive finding to the effect that the theft of pipes took place during the duty period of the petitioner. From these facts, it appears that the authorities had acted in a biased manner. The proposition that the Disciplinary Authority has to apply its mind upon receipt of reply to the charge sheet stands reflected in the judgment delivered in the case of *State of Punjab Vs. V.K. Khanna and Others*, . The judgment delivered in the case of *South Bengal State Transport Corporation Vs. Ashok Kumar Ghosh and Others*, , as relied upon by the respondents, is distinguishable on facts inasmuch as in the said matter the charge sheet was issued on the basis of a checking conducted by the Flying Squad of the corporation itself and in the backdrop of such facts and the nature of the charges, it was held that the Disciplinary Authority was not required to avail any reply from the delinquent employee.

24. The petitioner admittedly did not get any opportunity to reply to the charges. According to the respondents, such opportunity was not given to the petitioner as he did not pray before the concerned authority for grant of an opportunity to file a reply to the charge sheet. Such contention of the respondents would be explicit from the averments made in paragraph 10 of the affidavit-in-opposition. Question of praying for any opportunity before the Disciplinary Authority to reply to the charge sheet did not occasion since by the charge sheet, the departmental enquiry was straight away initiated and an Enquiry Officer was appointed and date was fixed with a rider to the effect that in the event the charged officer fails to appear on the said date, the enquiry would be conducted ex-parte. From such facts and discussion it appears that the Disciplinary Authority acted in a biased manner and with a closed mind. In view of the above, the charge sheet is liable to be set aside.

25. Fact that the authority had not supplied the documents as sought for by the petitioner would be explicit from the representation dated 28th April, 1992 made by the petitioner in Annexure "P-3" to the writ application and such fact had also not been disputed by the respondents. It had, however, been their stand that the petitioner did not pray for production of any documents in terms of the rules. Such contention is not acceptable as the noting in Annexure "P-3" reveals that the Enquiry Officer himself had stated that the documents will be given in due course during the enquiry proceeding. Thus, the non-supply of the documents as sought for by the petitioner, maligns the impugned proceeding being violative of the principles of natural justice.

26. A perusal of the charge sheet would reveal that the respondents sought to rely upon 7 documents but while conducting the enquiry, the Enquiry Officer had

relied upon 28 documents amongst which 21 documents were not even supplied to the petitioner. Furthermore, the statements of Gobind Singh, S.K. Prasad, B.B. Ghosh, Chulhai Mondal as appearing at serial Nos. 14 to 17 under the caption "documents produced by the prosecution", could not have been relied upon since the said statements did not stand prove upon calling the persons who were the authors of the said respective statements. Such fact fortifies the contention of the petitioner to the effect that there had been blatant violation of the principles of natural justice on the part of the respondents while conducting the enquiry.

27. The alleged theft of 41 pieces of G.I. pipes at Asansol on 5th February, 1992 was allegedly detected almost after a month on 2nd March, 1992 when the wagon was checked at Andal and admittedly a month after the train had left Asansol on 5th February, 1992 and had been stationary at Andal Yard for the period from 5th February, 1992 till 2nd March, 1992. According to the respondents the shortage of pipes and alleged theft was detected upon checking of the wagon at Andal Yard on 2nd March, 1992 and the charge sheet was thereafter issued on 3rd March, 1992 but surprisingly, the order of suspension, in contemplation of a proceeding, was issued on 6th February, 1992, i.e., even prior to detection of the alleged theft on 2nd March, 1992. Such sequence reveals that the respondents had conducted the proceedings in a biased manner.

28. A perusal of the enquiry report would further reveal that the Enquiry Officer had categorically contended as follows:-

The reporting officer (PW-6) stated that he did not find any evidence of criminal interference anywhere but at the said yard. But at the places where he had conducted enquiry, the subject BOX wagon was not noted down in the seal checking book vide Ext. No. 21 and 22. So when these wagons were not checked, it is not conclusive that the theft of said G.I. pipes had not taken place at those other places. The particulars of the open wagons, as the PW-9 has deposed, are not recorded as the checking of the contents is highly risky due to very high voltage in OHE wire. The prosecution did not produce any other evidence to establish that the theft of all the 41 Nos. of G.I. pipes were taken place at the said yard.

29. Upon arriving at such finding, the Enquiry Officer at the conclusive portion of the report had categorically stated that "the prosecution could not conclusively prove that all the pipes were stolen at the Dn. Receiving Yard, Asansol on 5th February, 1992." Thus, the charge of theft of 41 G.I. pipes could not be established by the respondents. Furthermore, the finding to the effect that about 20 G.I. pipes were definitely stolen also does not stand fortified through appropriate evidence on record.

30. Prior to arrival at Asansol, the train reached Gomoh at about 22:30 hrs. on 4th February, 1992 and from Gomoh the train left at 1:50 hrs. on 5th February, 1992 and that the train guard, namely D.K. Modak had categorically deposed that it was not known as to whether there was any criminal interference with the

load during the period when the train was standing at Gomoh Yard and that no back tracking enquiry was made at Gomoh to ascertain the actual condition of the wagon.

31. The petitioner was charged for gross misconduct and active connivance inasmuch as on 5th February, 1992 in course of his duty from 20:00 hrs. on 4th February, 1992 to 9:00 hrs. on 5th February, 1992, the petitioner could not prevent or detect the theft of 41 Nos. of G.I. pipes from the wagon nor did report the theft to RPF post, Asansol (West). As it could not be conclusively proved that all the pipes were stolen at the Dn. Receiving Yard, Asansol, on 5th February, 1992, question of connivance of the petitioner towards the theft of all the G.I. pipes does not occasion. The finding of the Enquiry Officer to the effect that "the theft took place in his presence and in his full knowledge", is absolutely perverse. The expression "sufficiency of evidence" postulates existence of some evidence which links the charged officer with the misconduct alleged against him. In the instant case, no such nexus stands established and after arriving at a finding to the effect that the prosecution, could not conclusively prove as to whether the theft of all G.I. pipes took place at Asansol, the Enquiry Officer could not have been observed that the theft took place in presence of the petitioner. Such observation does not stand fortified through the evidence on record. Such infirmity and procedural impropriety renders the enquiry report to be unsustainable in law and the same is accordingly liable to be set aside and quashed.

32. The order of punishment issued by the Disciplinary Authority on 10th July, 1995 reveals that the same had been passed reiterating the contention of the Enquiry Officer. The Disciplinary Authority had also erroneously observed that the theft of G.I. pipes took place when the wagon was standing at the Dn. Receiving Yard, Asansol, where the delinquent was on duty. Such finding of the Disciplinary Authority juxtaposed to the finding of the Enquiry Officer in the last paragraph of internal page 12 of the enquiry report at page 76 of the writ application would reveal that there had been no independent application of mind on the part of the Disciplinary Authority. A perusal of the order of punishment also reveals that there had been no consideration of the specific contention of the petitioner to the effect that the documents sought for by him, in course of the enquiry, had not been supplied though the Enquiry Officer himself stated that the said documents would be supplied to the petitioner. The Disciplinary Authority also did not take into consideration that the additional documents, upon which reliance was placed by the Enquiry Officer, were also not supplied to the petitioner. The non-consideration of the said issues constituted an error in the decision making process. The order of punishment dated 10th July, 1995 is accordingly liable to be set aside and quashed.

33. The order dated 9th September, 2003 passed by the Appellate Authority reveals that the said authority had categorically observed that "The fact that the theft of G.I. pipes from the Railway wagon during the duty period of the

delinquent Sri A.P. Singh took place with his active connivance and gross misconduct has been proved beyond any iota of doubt and as such he has rightly been held guilty and awarded the punishment of his removal from service by Sr. DSC/Asansol." But such observation is unsustainable in the backdrop of the finding of the Enquiry Officer to the effect that the prosecution could not conclusively prove that all the pipes were stolen at the Dn. Receiving yard, Asansol, on 5th February, 1992. Such contradiction reveals that the Appellate Authority had proceeded with a preconceived notion that the petitioner was guilty of connivance and theft. Furthermore, rule 217.3 categorically provides that the Appellate Authority should consider as to whether the procedure prescribed in the said Rules of 1987 had been complied with and if not whether such non-compliance had resulted in violation of any constitutional provisions or in miscarriage of justice and as to whether the findings are warranted and based on evidence on record. But the order of the Appellate Authority does not reveal that the said provisions of the Rule 217.3 had been complied with. Such infirmity in the decision making process renders the impugned order of the Appellate Authority to be unsustainable in law and the same is, accordingly liable to be set aside and quashed.

34. For the foregoing reasons, the Charge Sheet dated 3rd of March, 1992, the enquiry report dated 1st of September, 1992, the second show-cause notice dated 15th of September, 1992, the order of punishment dated 10th of July, 1995, a memorandum dated 4th of March, 2003 and the Appellate Authority order dated 9th of September, 2003 are set aside and quashed. Since the petitioner had already attained the age of retirement on superannuation, the respondents are directed to release all terminal benefits of the petitioner in accordance with law and after taking into consideration the date of birth of the petitioner for calculating the age of retirement on superannuation. The said benefits should be released by the respondents within a period of 8 weeks from the date of communication of this order.

35. The writ application is accordingly disposed of.

36. In the facts of the present case, there will be no order as to costs.

37. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.