(2013) 05 CAL CK 0016

In the Calcutta High Court

Case No : Writ Petition No. 22670 (W) of 2012

Sri. Samiran Goswami	APPELLANT
Vs	
The National Institute of Technical Teachers Training and Research and Others	RESPONDENT

Date of Decision : 16-05-2013

Acts Referred:

Citation : (2013) 138 FLR 707 : (2013) LabIC 2706 : (2013) LLR 942

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Debasish Saha, Ms. Dipika Banu, for the Appellant;Sardar Amjad Ali and Ms. Sucharita Roy, for the Respondent

Final Decision : Allowed

Judgement

Prasenjit Mandal, J.—Challenge is to the actions/steps taken in the matter of disciplinary proceeding against the petitioner. The following facts are not in dispute and they are etymologized below:-

i) That the petitioner was appointed Accounts Officer in the office of the respondent no. 1 in 1998. A disciplinary proceeding was started against the petitioner in respect of four articles of charge as contained in Annexure P-22 at page no. 123. The petitioner was directed to specifically admit or deny each article of charge. He was informed that an enquiry would be conducted in respect of those articles of charge as were not admitted;

ii) That the petitioner submitted a written statement against each article of charge denying the material allegations raised therein;

iii) That thereafter, the petitioner was informed that pursuant to his written statement, an Inquiring Authority and a Presenting Officer on behalf of the prosecution were appointed for the purpose of the disciplinary proceeding;

iv) That thereafter, the Inquiring Authority explained the articles of charge to the petitioner to which the petitioner denied each article of charge;

v) That thereafter, the Inquiring Authority asked the petitioner certain questions and answers given by the Charged Officer, i.e., the petitioner, the same had been recorded in the form of questions and answers as the deposition of the Charged Officer;

vi) That thereafter, the Inquiring Authority started examination of the prosecution witnesses. The Presenting Officer presented the witnesses. The witnesses gave their statements and the Charged Officer was allowed to cross-examine the prosecution witnesses and he did; and vii) That at this stage, (i.e. recording of deposition of the P.W.s.) this application has been filed challenging the disciplinary proceeding and for other consequential reliefs.

2. Now, the question is whether the reliefs sought for in the application can be granted.

3. Upon hearing the learned Counsel for the parties and on going through the materials on record, I find that the articles of charge are over tampering of the figures to enhance from Rs. 6,89,630.87 to Rs. 9,05,419.00 by adding three more items subsequently without the approval or knowledge of the Purchase Committee in respect of furniture of the Office, generation of fictitious wage/ overtime bill, false statement and false declaration in Form No. 16 with regard to income tax matter. The Charged Officer denied each and every articles of charge by filing a written statement thereon. Thereafter, the Inquiring Authority explained the articles of charge to the Charged Officer and the Charged Officer had denied the articles of charge.

4. At that stage, the Inquiring Authority was expected to ask the prosecution to bring the witnesses/materials in respect of the articles of charge and the Charged Officer would be given an opportunity to cross-examine or explain those materials. After the completion of the evidence on behalf of the prosecution, the Inquiring Authority is to allow the Charged Officer to adduce defence evidence including the examination of the Charged Officer himself, if he desires to do so. After the closer of the evidence on behalf of both the sides, the Inquiring Authority is to hear out over the evidence on record, materials available etc., in the disciplinary proceeding and thereafter, he shall come to a definite finding whether the Charged Officer is guilty of any of the articles of charge or not by passing a reasoned order. This is, in short, called the natural justice.

5. Mr. Debasish Saha, learned Advocate appearing for the petitioner, has contended that in the instant case, the principle of natural justice had not been followed at the time of issuance of the memorandum dated May 25, 2011, i.e., issuance of the charge-sheet against the petitioner. The Disciplinary Authority had made an observation that an enquiry would be held in respect of those articles of charge as were not admitted. He should, therefore, specifically admit or deny each article of charge.

6. Thus, Mr. Saha has contended that the Disciplinary Authority was biased from the very beginning against the Charged Officer and for that reason the disciplinary proceeding should be revoked.

7. Mr. Saha has also contended that Dr. Samiran Mondal is not the Appointing Authority and so, the issuance of the charge-sheet by the Disciplinary Authority is invalid.

8. He has also contended that the Inquiring Authority, instead of calling for the witnesses on behalf of the prosecution after explanation of the charge to the Charged Officer, began to record the deposition of the Charged Officer and he himself had cross-examined the Charged Officer and recorded the same in the questions and answers in the form of deposition of the Charged Officer and such a procedure had been adopted even before tendering the evidence on behalf of the prosecution. The Disciplinary Authority and the Inquiring Authority had proceeded with the matter with a biased mind. Thus, the principle of natural justice has not been followed.

9. In support of his contention, Mr. Saha has referred to the decisions of Meenglas Tea Estate Vs. Its Workmen, , State of Punjab Vs. V.K. Khanna and Others, Hindusthan Steel Ltd. Vs. Rourkela Mazdoor Sabha and Others, and Prasanta Kumar Basu Vs. Burn Standard Co. Ltd. and Others, (HC)particularly the paragraph no. 18 and thus, he has submitted that according to these decisions, since the principle of natural justice had been violated, the enquiry had been vitiated and so, the reliefs as sought for should be granted.

10. Mr. Saha has also contended that the Rules relating to suspension had not been followed. The enquiry was not completed within three months from the date of initiation. Though, the petitioner was placed under suspension, he was not paid the suspension allowance at first. He was subsequently granted suspension allowance. Such a procedure is not correct and so, the suspension has been vitiated for non-observance of the Rules of suspension.

11. On the other hand, Mr. Sardar Amjad Ali, learned Senior Advocate appearing for the respondents, has contended that steps/actions in respect of the disciplinary proceeding against the petitioner had been duly taken by following the CCS (CCA) Rules.

12. So far as the appointment of the Disciplinary Authority is concerned, it is to be considered who is the Appointing Authority of the petitioner. The Director of the respondent no. 1 is the formal head and he cannot act as Disciplinary Authority. The Rule 12 of the said Rules lays down who are the Disciplinary Authorities.

13. So far as biased mind on behalf of the Disciplinary Authority is concerned, Mr. Ali has pointed out that as per Annexure P-22 at page no. 123 the charge-sheet was served upon the Charged Officer directing him to submit his representation within 10 days of the receipt of the memorandum, a written statement of his

defence and also to state whether he deserved to be heard in person. He was also informed that the enquiry would be held in respect of those articles of charge as were not admitted and so, the Charged Officer would specifically admit or deny each article of charge. Adequate opportunity was given to the Charged Officer to present his written statement on his prayer so that appropriate steps might be taken according to the written statement. The Charged Officer was simply reminded that the enquiry would be conducted in respect of those articles of charge as were not admitted. This does not mean that the Disciplinary Authority dealt with the petitioner in a closed mind or in a biased manner.

14. Mr. Ali has pointed out that after the appointment of the Inquiring Authority and the Presenting Officer, the articles of charge were explained to the Charged Officer as per materials on record and thereafter, when the Charged Officer denied the articles of charge, he was specifically asked to explain about the articles of charge to decide whether the prosecution witnesses should be called for to establish the articles of charge. That is why the Charged Officer was interrogated by the Inquiring Authority and it had been recorded as deposition. After the interrogation, when the Inquiring Authority was satisfied that the examination of the prosecution witness was necessary, he called the prosecution witnesses and the Presenting Officer examined the witnesses in chief and the Charged Officer was allowed to cross-examine the witnesses. The examination of the witnesses in the disciplinary proceeding is not complete and so, there is no wrong and this application should be dismissed.

15. Mr. Ali has also pointed out the materials to show how the Charged Officer had changed the figure from Rs. 6,89,630.87 to Rs. 9,05,419.00 and he had made initial thereon to show that actually lowest bid was to the extent of Rs. 9,05,419.00.

16. Mr. Ali has thus contended that the Inquiring Authority did not act as the Presenting Officer at all and that there was a Presenting Officer. But, before calling the witnesses for the prosecution, the interrogation was made by the Inquiring Authority. This does not mean that the Inquiring Authority is not an independent person and that he is biased.

17. He has placed reliance on the decision of State of U.P. and Others Vs. Saroj Kumar Sinha, nd thus, he has contended that the allegation of closed mind or biasness against the Inquiring Authority has no relevance at all.

18. He has also contended that the decisions referred to by Mr. Saha relating to natural justice are not applicable as there is no violation of natural justice and in fact, the recording of the evidence in respect of the disciplinary proceeding against the Charged Officer had been started only when the examination of Dr. Dipankar Bose appearing as Annexure P-36 at page no. 189 was started on behalf of the prosecution and that had been done by the Inquiring Authority, when the Presenting Officer presented the witness, Dr. Dipankar Bose in presence of the Charged Officer and each of them had signed in the record of the

proceeding and so, natural justice had been followed.

19. Having due regard to the submissions of the learned Advocates of both the sides and on perusal of materials on record, I am of the view that while dealing with the departmental enquiry, it is to be seen that the rules of natural justice are being followed. This fact has been affirmed in the decision of Meenglas Tea Estate (supra) and this decision is followed in other cases. The decision of Hindusthan Steel Ltd. (supra) is also based on the decision of Meenglas Tea Estate (supra). The decision of State of U.P. (supra) also lays down that the rules of natural justice must be followed and an employee be given a reasonable opportunity of being heard in any proceeding which may culminate in a punishment being imposed on the employee or holding not guilty.

20. In the instant case, so far as the issuance of the charge-sheet, giving an opportunity on several occasions to file a written statement against the charge-sheet, examination of the Charged Officer by explaining to him the articles of charge and recording that the Charged Officer had denied the articles of charge and the recording of evidence on behalf of the prosecution, in my view, had been done by following the rules of natural justice and that adequate opportunities had been given to the Charged Officer in each of the step of the disciplinary proceeding.

21. But, so far as the recording of statement of the Charged Officer appearing as Annexure P-32 at page no. 166 onwards is concerned, I find that the Inquiring Authority himself had put questions to the Charged Officer in presence of two witnesses and the questions and answers had been recorded in the question-answer form describing the same as the deposition sheet meaning thereby that those are nothing but the deposition on behalf of the Charged Officer.

22. So far as this part of the disciplinary proceeding is concerned, i.e., recording the statement of the Charged Officer in the form of deposition sheet appearing at Annexure P-32 before the examination of the P.W.s. in my view, is contrary to the natural justice. The Inquiring Authority cannot put such questions over the main matter in issue in the disciplinary proceeding in such a fashion before the examination of the P.W.s.

23. The argument of Mr. Ali that those questions were put only to verify whether the examination of the prosecution witnesses was necessary or not, in my view, cannot be accepted at all. If those deposition sheets are made part of the record, those may be used against the Charged Officer causing violation of the natural justice. Accordingly, in my view since the examination of the prosecution witnesses is going on and it is not complete and save and except, those portions, i.e., Annexure P-32 relating to deposition sheet of the Charged Officer, other matters had been observed by following the principle of natural justice as decided by various decisions referred to above. I am of the view that the other portions of the disciplinary proceeding should not be interfered with.

24. Therefore, the deposition sheets in respect of the statement of the Charged

Officer shall not be considered by the Inquiring Authority as the evidence of the Charged Officer.

25. So far as suspension allowance is concerned, I find though the petitioner was not granted suspension allowance at first, he was given suspension allowance @ 50% first and then to 75%. So, the petitioner cannot have any grievance now.

26. So far as other contentions as raised by Mr. Saha in support of the application are concerned, in my view, such contentions cannot be accepted. When there is a violation of natural justice, the writ court may interfere if the disciplinary proceeding is not conducted following the rules of natural justice. So, this Court is competent to give the appropriate directions to the Inquiring Authority to deal with the matter.

27. Accordingly, the Inquiring Authority is directed not to treat the deposition sheets of the examination of the Charged Officer appearing as Annexure P-32 at page no. 166 onwards as the evidence of the petitioner. Barring this portion, there is no other defect in the procedural aspect of the disciplinary proceeding or the violation of the natural justice. So, the Inquiring Authority is directed to proceed with the disciplinary proceeding thereafter in accordance with law as indicated earlier.

28. The reliefs sought for by the petitioner cannot, therefore, be granted, but, the appropriate directions as noted above, can well be given to the Inquiring Authority.

29. The application is, therefore, allowed to the extent indicated above.

30. Considering the circumstances, there will be no order as to costs. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.