

(2013) 09 CAL CK 0047

In the Calcutta High Court

Case No : Writ Petition No. 18664 (W) of 2011

Sri Sanjeeva Roy

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 19-09-2013

Acts Referred:

Citation : (2013) 4 CALLT 467

Hon'ble Judges : Sambuddha Chakrabarti, J

Bench : Single Bench

Advocate : Debjani Sengupta, Mr. Sandipan Banerjee and Mr. S. Majumder, for the Appellant; Anwar Ali and Mr. Subrata Sarkar for the Union of India, for the Respondent

Final Decision : Allowed

Judgement

Dr. Sambuddha Chakrabarti, J.—Aggrieved by the issue of a charge memo on March 10, 2011 by the Deputy Inspector General (CR & Vigilance) the petitioner has filed the present writ petition inter alia praying for a writ in the nature of Mandamus commanding the respondents to forthwith rescind and cancel the said charge memo, to dispose of the representations, a writ in the nature of Prohibition prohibiting the respondents from giving any effect or further effect to the said charge memo and for other reliefs. The case of the petitioner inter alia is that he is an employee of the Central Reserve Police Force (CRPF, for short) and while working as a Commandant a sum of Rs. 1,40,000/- was allotted by the respondent No. 3 herein on January 22, 2008 for conducting Civic Action Programme 2007-08 (the Programme, for short) with a direction to utilize the said amount before completion of the current financial year and to get the accounts audited by a board of officers.

2. According to the petitioner he planned for conducting coaching camp of football, volleyball, martial arts etc. An additional sum of Rs. 32,000/- was allotted to the said battalion for conducting the CRPF Friendship Tournament. After the completion of the programme the accounts were audited and it was

found to be in order by the board of the officers.

3. The petitioner alleges that the Deputy Inspector General of Police lodged a complaint with the Inspector General of Police and a Special Audit Team was directed to audit the total proceedings and expenditure of the programme. The Special Audit Team had observed about the confusion on the issue of approval for conducting the tournament. The petitioner has alleged that he was not given an opportunity of being heard. A formal enquiry thereafter was started. The petitioner's grievance is that despite his seeking certain documents at the enquiry as well as the change of the Presiding Officer the same were not acceded to.

4. According to the petitioner on January 20, 2011 a signal came from the Inspector General (Personnel) drawing the panel for promotion from Commandant to the Deputy Inspector General of Police. The petitioner's name was at serial No. 19 of the said panel. On March 10, 2011 the respondents had issued a charges-sheet. Consequently persons junior to the petitioner have been promoted.

5. Challenging the charge memo the present writ petition was filed in which an order was passed not to take any final decision by the disciplinary authority till the disposal of the application. According to the petitioner there had been enormous delay in issuing the charge memo inasmuch as the incident had taken place in February, 2008 and the charge memo was issued on March 10, 2011, i.e., after three years and this delay has never been explained by the respondents.

6. Ms. Debjani Sengupta, the learned Advocate for the petitioner submits that the authorities had taken overlapping steps by simultaneously conducting special audit, Court of enquiry and departmental proceedings. According to her when the first enquiry has failed a second enquiry on the self-same charge is not permissible as it is hit by the principle of double jeopardy. The petitioner submits that after a full fledged enquiry by the court of enquiry the case of the petitioner was recommended for displeasure due to his alleged negligence. But after that on the same charges the present charge-sheet dated March 10, 2011 was issued without issuing any second show-cause notice.

7. The further case of the petitioner is that the officer he who was appointed as the Enquiry Officer in respect of the charges levelled against the petitioner had in fact affirmed the affidavit-in-opposition on behalf of the respondents. According to Ms. Sengupta nothing can be more obvious a pointer of the biased attitude taken by the respondents.

8. The further point of the petitioner is that the charge memo discloses a closed mind as if the disciplinary authority had already come to a definite opinion about the acts committed by the petitioner.

9. The petitioner has thus prayed for the setting aside of the charge memo.

10. The respondents have in turn contested this petition by filing an affidavit-in-opposition. According to them the petitioner had in fact committed an act of serious misconduct in connection with the funds allotted to the concerned battalion for execution of the programme in north-eastern region. The petitioner had failed to adhere to the directions and instructions of the higher authorities and misappropriated a sum of Rs. 12,000/- out of Rs. 1,72,000/- allotted for the said programme. A special audit of accounts of the said programme was conducted and during the examination of the entire case the misconduct on the part of the petitioner was found to be prima facie established.

11. Since a prima facie case for misappropriation of the fund for the concerned programme transpired in the Special Audit report the highest authority initiated major penalty proceedings against the petitioner. Thereafter, the petitioner was charge-sheeted on March 10, 2011. The said memo of charge was received by the petitioner and he had in fact submitted his written statement of defence. The same was examined in terms of rule 14 of the concerned rules. Sri Bidyut Sengupta was appointed as the enquiring authority.

12. According to the respondents the writ petition is premature and a mere charge-sheet does not violate any of the rights of the petitioner. It is only when a formal order imposing punishment or anything else is passed affecting the petitioner he can be said to have any grievance. The petitioner cannot have any grievance against the issue of the charge-sheet.

13. In reply to the petitioner's allegation that the articles of charge were issued on the same charges the respondents had answered that the initiation of departmental enquiry is quasi judicial in nature as the evidence or document available in the Court of enquiry and others are to be examined thoroughly by the disciplinary authority before seeking advice of the Vigilance Commission. It is the further case of the respondents that the departmental enquiry is already in progress and that the petitioner will get reasonable opportunity to defend himself at the enquiry proceedings.

14. It is true that the departmental enquiry is in progress and the settled principles of law is not to abort such enquiry in the midst unless circumstances justifying the same exist. The petitioner had very specifically mentioned that the board of the officers of the Court of enquiry could not find any irregularity and recommended the award of displeasure against the petitioner for his negligence. This allegation has not been specifically denied by the answering respondents. On the other hand their stand is that the competent authority is bound to accept all recommendations as all the evidence available before the Court of enquiry and other documents are also required to be examined thoroughly before taking a future action.

15. In the case of Kanailal Bera Vs. Union of India (UOI) and Others, it has been held that once a disciplinary proceeding has been initiated the same must be brought to its logical end, meaning thereby that a finding is required to be

arrived at as to whether the delinquent officer is guilty of charges levelled against him. The Supreme Court had observed that in a given situation further evidence may be directed to be adduced but the same would not mean that despite holding a delinquent officer to be partially guilty of the charges leveled against him another enquiry would be directed to be initiated on the self-same charges which could not be proved in the first enquiry.

16. This judgment is based on the principle of double jeopardy. The Court of enquiry had occasion to go through the charges against the petitioner and had examined the same. Issuing a fresh charge memo containing charges against the petitioners based on the self-same facts amounts to subjecting the petitioner twice over to go through the same procedure which is against all principles of service as well as penal jurisprudence. The respondents authorities by issuing the charge-sheet had initiated a departmental proceeding on the identical facts which had once been gone into. In the case of *State of Andhra Pradesh Vs. N. Radhakishan*, a question cropped up before the Supreme Court whether delay in holding the disciplinary proceedings vitiated the same. While reiterating the difficulties in laying down any predetermined principle applicable to all cases where there is delay in concluding the disciplinary proceedings the Supreme Court held that the essence of the matter is that the Court has to take all relevant features into consideration and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceeding should be allowed to terminate after delay particularly when the delay is abnormal and there was no explanation for the same. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. The Supreme Court had further observed that normal disciplinary proceedings should be allowed to take its course as per the relevant rules but then delay defeats justice. It may be mentioned that in the case the Supreme Court had before it, the charge memo was issued on July 31, 1995. The Supreme Court found that there was hardly any explanation why the delay occurred and by judgment and order dated April 7, 1998 the said memo was quashed.

17. The ratio decided in the said case may be sufficiently applied to the facts of the present one. In this case the incident took place in the year 2008 and the charge memo was issued in 2011 after passing through several stages. On this ground alone the charged memo should not be allowed to stand. The respondents have relied on the case of *Union of India (UOI) and Another Vs. Kunisetty Satyanarayana*, for a proposition that a writ petition ordinarily impugning a show cause or a charge-sheet is not maintainable and the High Court can quash a charge-sheet inter alia in exceptional cases. This point is far too well settled. But this judgment also lays down the principle of law which is in line with the case of *Kanailal Basu (supra)*. In this case also it has been held that if a charge is enquired into by a regular enquiry and if the employee is exonerated on that charge a second enquiry on this charge will not be maintainable. For the reasons aforesaid I hold the charges to be not maintainable.

18. One more aspect needs special mention. The affidavit-in-opposition has been affirmed by Sri Bidyut Sengupta who has affirmed it on behalf of the respondents. It may be mentioned that he has been appointed the Enquiry Officer by the respondents. An Enquiry Officer is duty bound to act fairly and impartially. He must be an independent person. If he is authorized by the answering respondents to affirm the affidavit during the pendency of the departmental enquiry while simultaneously acting as the Enquiry Officer as well there is undoubtedly a very grave failure of justice. In the affidavit-in-opposition the deponent has controverted the allegations made by the petitioner in the writ petition and has made out a case for the respondents and has also given details of the acts which the respondents considered to be misconduct on the part of the petitioner. He has even gone to the extent of asserting on oath that a prima facie case of misappropriation of funds has been established against the petitioner from various reports and has alleged various things against the petitioner in the affidavit by way of setting up a counter case on behalf of the respondents. This clearly indicates a closed mind of the Enquiry Officer. The Enquiry Officer who on oath asserts the alleged misdeeds committed by a delinquent employee during the pendency of the enquiry proceeding cannot be credited for his impartiality. On this ground also the pending proceeding is liable to be dismissed. I am of the view that by changing the Enquiry Officer the problem may not be resolved. For what is brought out in the process is the attitude of the respondents and the appointment of the Enquiry Officer is just an example of the same.

19. The writ petition is thus allowed. Let there be a Mandamus directing the respondents to rescind and cancel the impugned charge memo and all steps taken subsequent thereto and consequent thereupon. With this the connected application being CAN 2474 of 2013 also stands disposed of. There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all requisite formalities.