

(2023) 10 CAL CK 0060
In the Calcutta High Court
Case No : WP.ST No. 157 Of 2023

State Of West Bengal & Ors.

APPELLANT

Vs

Dipak Kumar Roy

RESPONDENT

Date of Decision : 16-10-2023

Acts Referred:

West Bengal Services (Classification, Control and Appeal), Rules, 1971 — Rule 1(iv), 2(1)(iv)

Citation : (2023) 10 CAL CK 0060

Hon'ble Judges : Debangsu Basak, J;Md. Shabbar Rashidi, J

Bench : Division Bench

Advocate : Tapan Kr. Mukherjee, Sangeeta Roy, G. P. Banerjee, M. N. Roy, B. Nandy

Final Decision : Disposed Of

Judgement

Debangsu Basak, J

1. The writ petition is at the behest of the State.
2. The writ petition is directed against an order dated June 21, 2023 passed by the West Bengal Administrative Tribunal in O.A.178 of 2023.
3. Learned Senior Advocate appearing for the writ petitioners submits that, private respondent was a Sub-Inspector of West Bengal Police. A departmental proceeding was initiated as against him. The departmental proceeding is governed by the provisions of the Police Regulations of Bengal, 1943. In particular, he draws the attention of the Court to the Regulation 861. He submits that, such Regulation does not enjoin a duty upon the authorities to appoint a presenting officer in a disciplinary proceeding. He points out that in the facts and circumstances of the present case, the enquiry report was accepted by the disciplinary authority. Disciplinary authority imposed punishment. A statutory appeal was carried. Revision was also preferred by the private respondent. Thereafter, the private respondent approached the Tribunal.

4. Learned Senior Advocate appearing for the State points out that, the Tribunal, relied upon a Notification dated September 19, 2014. He submits that, such notification relates to West Bengal Services (Classification, Control and Appeal), Rules, 1971. Such Rules of 1971 do not apply to Sub-Inspector of Police and members of subordinate police force in terms of Rule (1)(iv) of the Rules of 1971.

5. Learned Senior Advocate appearing for the State submits that, the Tribunal, misconstrued and misapplied the ratio of (2018) 7 Supreme Court Cases 670 (Union of India and others versus Ram Lakhan Sharma). He also relies upon an unreported judgment and order dated June 28, 2023 passed in W.P.S.T. 57 of 2016 (Hemayet Mia vs. The State of West Bengal & ors.).

6. Learned advocate appearing for the private respondent draws the attention of the Court to the recordings made in the enquiry proceeding. He submits that, oral evidence of prosecution witnesses were taken without any presenting officer. He points out that, documents were marked as Exhibits through prosecution witness without any presenting officer being present. Consequently, he submits that, the enquiry proceeding stood vitiated in absence of presenting officer.

7. A departmental proceeding was initiated as against the private respondent on June 26, 2020. At that point of time, the private respondent was a Sub-Inspector working with the West Bengal Police.

8. An enquiry report was submitted on February 2, 2020 finding the private respondent guilty of the charges framed.

9. The disciplinary authority passed final order dated August 31, 2020 as against the private respondent. The private respondent preferred an appeal therefrom. Such appeal was dismissed by an order dated October 12, 2020. A revision was preferred against the order of the appellate authority which was dismissed by an order dated January 15, 2021.

10. Thereafter, the private respondent approached the Tribunal by way of O.A.178 of 2023 in which the impugned order dated June 21, 2023 was passed.

11. The Tribunal in the impugned order notes that there is no specific mention regarding the appointment of a presenting officer in the Police Regulations of Bengal, 1943 but such Regulation does not stop the disciplinary authority from engaging a presenting officer. The Tribunal referred to the Ram Lakhan Sharma (supra) and the Notification No.4956/1(500)-F(P) dated September 19, 2014 of the Finance Department and found that such notification makes it obligatory on the disciplinary authority to appoint a presenting officer during the enquiry.

12. The Notification dated September 19, 2014 bearing no.4956-F(P) of the Finance Department introduces amendments specified therein to the West Bengal Services (Classification, Control and Appeal) Rules, 1971.

13. Rule 2(1)(iv) of the Rules, 1971 is as follows:-

"2. Application.- (1) These rules shall apply to all Government servants except -

.....
.....
.....
(iv) Inspectors of Police and members of the Subordinate Police Force; and
.....
....."

14. By virtue of Rule 2(1)(iv) of the Rules, 1971, the disciplinary proceeding as against the private respondent herein is not governed by the Rules of 1971. Consequently, the Notification dated September 19, 2014 is not attracted so far as the disciplinary proceeding as against the private respondent is concerned.

15. Ram Lakhan Sharma (supra) deals with principles of natural justice and effect of non appointment of presenting officer in an enquiry proceeding. It is of the following view:-

"33. The Division Bench after elaborately considering the issue summarised the principles in para 16 which is to the following effect:

"16. We may summarise the principles thus:

(i) The Enquiry Officer, who is in the position of a Judge shall not act as a Presenting Officer, who is in the position of a prosecutor.

(ii) It is not necessary for the disciplinary authority to appoint a Presenting Officer in each and every inquiry. Non-appointment of a Presenting Officer, by itself will not vitiate the inquiry.

(iii) The Enquiry Officer, with a view to arrive at the truth or to obtain clarifications, can put questions to the prosecution witnesses as also the defence witnesses. In the absence of a Presenting Officer, if the Enquiry Officer puts any questions to the prosecution witnesses to elicit the facts, he should thereafter permit the delinquent employee to cross-examine such witnesses on those clarifications.

(iv) If the Enquiry Officer conducts a regular examination-in-chief by leading the prosecution witnesses through the prosecution case, or puts leading questions to the departmental witnesses pregnant with answers, or cross-examines the defence witnesses or puts suggestive questions to establish the prosecution case employee, the Enquiry Officer acts as prosecutor thereby vitiating the inquiry.

(v) As absence of a Presenting Officer by itself will not vitiate the inquiry and it is recognised that the Enquiry Officer can put questions to any or all witnesses to elicit the truth, the question whether an Enquiry Officer acted as a Presenting Officer, will have to be decided with reference to the manner in which the evidence is let in and recorded in the inquiry.

Whether an Enquiry Officer has merely acted only as an Enquiry Officer or has also acted as a Presenting Officer depends on the facts of each case. To avoid any allegations of bias and running the risk of inquiry being declared as illegal and vitiated, the present trend appears to be to invariably appoint Presenting Officers, except in simple cases. Be that as it may.”

16. The private respondent is governed by the Police Regulations of Bengal, 1943. Regulation 861 thereof is silent on the requirement of appointment of a presenting officer in an enquiry proceeding.

17. In the facts and circumstances of the present case, the private respondent is unable to demonstrate any prejudice being caused to him by non appointment of a presenting officer in the enquiry proceeding. Attention of the Court was drawn to the fact that, in the enquiry proceeding, documents were introduced and marked as Exhibits by the prosecution witnesses.

18 We perused the records made available to us with regard to the enquiry proceeding. We find therefrom that, prosecution witnesses made statements before the enquiry officer which were recorded by the enquiry officer. In course of making such statements, the prosecution witnesses produced certain documents which were marked as Exhibits. Nothing is on record to show or suggest that, the enquiry officer placed leading statements to the prosecution witnesses.

19. The issue of prejudice being caused by absence of a presenting officer was not taken at the time of the enquiry proceeding. In fact, it was not taken till the Tribunal stage.

20. That apart, the prosecution witnesses were allowed to be cross-examined by the private respondent. The cross-examination was recorded in the question answer format.

21. In such circumstances, we are unable to return a finding that, the introduction of documents through the prosecution witnesses and recording of the statements by the enquiry officer of the prosecution witnesses, caused any prejudice to the private respondent, in the facts and circumstances of the present case.

22. The ratio laid down in Ram Lakhan Sharma (supra) was followed and applied in Hemayet Mia (supra) .

23. In view of the discussions made above, it would be appropriate to set aside the impugned order of the Tribunal.

24. Learned advocate appearing for the private respondent submits that, the private respondent raised other points before the Tribunal in the Original Application and therefore, it is appropriate that, the Original Application be heard and disposed of by the Tribunal on merits.

25. The contention of the private respondent in this regard being reasonable is

accepted.

26. The Tribunal is requested to hear and dispose of the Original Application on merits save and except the issue with regard to the prejudice and breach of principles of natural justice as decided herein. Tribunal is requested to hear and dispose of O.A.178 of 2023, preferably within a period of four months from the date of communication of this order to it.

27. WP.ST 157 of 2023 is disposed of without any order as to costs.

28. I agree.