
(2018) 05 CAL CK 0148
In the Calcutta High Court
Case No : W.P.C.T. No.25 of 2018

Swapan Kumar Bankura

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision : 08-05-2018

Acts Referred:

Employees' Provident Fund Staff (CC & A) Rules, 1971 — Rule 8(2)

Citation : (2018) 05 CAL CK 0148

Hon'ble Judges : DEBASISH KAR GUPTA, J; SHAMPA SARKAR, J

Bench : Division Bench

Advocate : S. K. Datta, Sujit Mitra, Barun Chatterjee

Final Decision : Allowed

Judgement

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This writ application is directed against a final order dated March 22, 2018 passed by the Central Administrative Tribunal, Calcutta Bench in the

original application bearing O.A. No.1740 of 2016. The operative portion of the order impugned to this writ application is quoted below:

“Hence, we conclude that the disciplinary authority had erroneously passed his orders concluding the disciplinary proceedings. The disciplinary

authority acted beyond the authority that was delegated to him under EPF Staff (CC & A) Rules, 1971 and hence the entire order of disciplinary

authority deserves to be set aside. Since, however, the order is being quashed on technical grounds, based on the settled legal proposition that once the

Court sets aside the order of punishment on the ground that the enquiry was not properly conducted, we remit the case back to the disciplinary

authority to conduct the proceedings from the point wherefrom it stood vitiated and to conclude the same. Hence, we set aside the order of the

disciplinary authority and we remand it back to the disciplinary authority to initiate the proceedings afresh and in accordance with rules.

IX. The O.A. is hereby allowed to the extent of the above decision. Parties will bear their respective costs.â? The background of this case, in a nutshell, is as follows:

While the petitioner was working for gain in the post of Assistant Provident Fund Commissioner (Compliance), received a charge sheet dated

September 4, 2012. The charge sheet contained alleged misconduct of the petitioner during his services under the respondent authority for the period

from June 12, 2007 to July 7, 2010. The petitioner refuted those charges in his reply dated September 24, 2012. Thereafter, departmental enquiry was

conducted against the petitioner and the Enquiry Officer submitted his report to the authority on July 9, 2015. The petitioner submitted his

representation to the above enquiry report on April 27, 2016. An order of punishment was passed by the Central Provident Fund Commissioner by an

order dated June 22, 2016 in exercise of powers purportedly conferred upon him under Rule 8(2) of the Employeesâ?? Provident Fund Staff (CC &

A) Rules, 1971 imposing a major penalty of â??reduction of a lower stage of pay in the time scale for two years without cumulative effect and

without effecting incrementsâ? upon the petitioner. The petitioner preferred an appeal against the above order of punishment before the Statutory

Appellate Authority and it was rejected by the Statutory Appellate Authority by an order dated November 2, 2016.

The subject matter of challenge before the learned Tribunal was the validity and propriety of the disciplinary proceeding initiated against the petitioner

from the stage of issuance of charge sheet till the rejection of his statutory appeal. By the order impugned to this writ application, the above original

application was allowed partially setting aside the order of punishment and remitting the case back to the disciplinary authority to conduct the

proceeding from the point wherefrom it stood vitiated and to conclude the same. It is necessary to point out that according to the final order impugned

to this writ application, the disciplinary proceeding was vitiated only to the extent of passing the order by the Central Provident Fund Commissioner

without the authority vested upon him under Rule 8(2) of the Employeesâ?? Provident Fund Staff (CC & A) Rules, 1971.

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It is submitted by the learned Counsel appearing before us on behalf of the petitioner that the petitioner was not discharging the function as an

Assistant Provident Fund Commissioner (Compliance) at the concerned place during the period mentioned in the charge sheet, i.e. from June 12, 2007

to July 7, 2010. It is also submitted by him that an attempt was made by the respondent authority by way of filing a reply to the original application

before the learned Tribunal to rectify the error that the period of commission of offence was some time for the period from 2008-2009. It is the

contention of the learned Counsel appearing for the petitioner that the charge framed against the petitioner does not constitute misconduct in view of

the fact that no mala fide was detected either from the report of the Enquiry Officer or in the order of punishment.

It is also submitted by him that the order of punishment issued against the petitioner was not based on evidence. According to him, the documents

relied upon by the respondent authority in course of the enquiry proceeding, were not proved in accordance with law. It was the specific allegation of

the petitioner made in his representation to the enquiry report that the Enquiry Officer himself was discharging the function of the Presenting Officer

in taking the materials on record and to rely upon the same after arriving his conclusion. He further submits that the provision of Rule 8(2) of the

Employees' Provident Fund Staff (CC & A) Rules, 1971 does not confer any power upon the Central Provident Fund Commissioner to pass the

order of punishment in question.

It will not be out of context to point out herein that the last contention of the learned Counsel appearing for the petitioner was accepted by the learned

Tribunal. Ultimately, it is submitted by him that the order impugned to this writ application suffers from nonapplication of mind. Though all the

aforesaid points were pleaded in the original application and argued before the learned Tribunal, either those were not taken into consideration and/or

part of the same were considered with erroneous observations.

At the cost of repetition, let it be observed that in absence of the learned Counsel on behalf of the respondent authority, this Court is deprived of

getting the assistance of the learned Counsel on behalf of the respondent authority. Be that as it may, having heard the learned Counsel appearing on

behalf of the respective parties and after giving our thoughtful considerations of the facts and circumstances of the case, we find that it was not in

dispute before the learned Tribunal that the period of commission of offence was wrongly mentioned in the charge sheet as June 12, 2007 to July 7,

2010. Admittedly, the petitioner was not discharging the function at the concerned place at the above point of time. This was admitted by the

respondent authority in its reply to the original application. Therefore, the disciplinary proceeding was initiated against the petitioner on a wrong footing

and it was liable to be set aside from the state of issuance of the charge sheet.

So far as the next contention of the petitioner is concerned, we find that no materials on record nor it was in the pleading that the charge framed

against the petitioner, did not constitute any misconduct. It was a subsequent development before the learned Tribunal. Since we find that the period of

commission of offence was mentioned in the charge sheet erroneously, this issue does not require our consideration. However, we find some force in

the observations made by the learned Tribunal in this regard that the commission of offence was in violation of the departmental circular. With regard

to the next contention of the petitioner, it is the settled principles of law as decided in the matter of Secretary to the Government, Transport Deptt.,

Madras *vs* Munuswamy Mudaliar & Anr. reported in 1988 (Supp) SCC 651 that the onus is upon the person to prove a case, who makes the

allegation. The relevant portion of such decision is quoted below:

13. This Court in *International Authority of India v. K.D. Bali* held that there must be reasonable evidence to satisfy that there was a real

likelihood of bias. Vague suspicions of whimsical, capricious and unreasonable people should not be made the standard to regulate normal human

conduct. In this country in numerous contracts with the government, clauses requiring the Superintending Engineer or some official of the Government

to be the arbitrator are there. It cannot be said that the Superintending Engineer, as such, cannot be entrusted with the work of arbitration and that an

apprehension, simpliciter in the mind of the contractor -without any tangible ground, would be a justification for removal. No other ground for the

alleged apprehension was indicated in the pleadings before the learned Judge or the decision of the learned Judge. There was, in our opinion, no

ground for removal of the arbitrator. Mere imagination of a ground cannot be an

excuse for apprehending bias in the mind of the chosen arbitrator.â??

In the matter of Eastern Coalfields Ltd. & Ors. â?"Vs Amaresh Roy & Ors. reported in 2000 (3) SLR 202, it was observed by the court that the

charge sheet must accompany the list of witnesses and unless those are supplied to the delinquent employee with the charge sheet, the enquiry

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proceeding vitiates from that stage. The operative portion of the- said decision is quoted below:

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â?? 37. It appears that the Disciplinary Authority already formed an opinion and was bent upon taking an action against the writ petitioner/respondent

no.1. It appears that the Authorities proceeded on the basis of the preconceived idea or notion and was completely biased against the writ

petitioner/respondent no.1. Moreover, in the reply to the charge sheet it was specifically stated that the copy of the preliminary enquiry report was not

furnished along with charge sheet which was required for submitting explanation. It appears that along with the chargesheet a list of documents by

which and a list of witnesses by when the articles of charges are proposed to be sustained, shall be communicated in writing to the employee and who

shall be required to submit a written statement thereafter.

38. In our view, the procedure prescribed in the Rules is mandatory. It is well settled when power has been conferred upon an authority under certain

Rules and the procedure has been prescribed therein that power has to be exercised in that particular manner only and not otherwise; the same must

be done in that particular manner or not at all.â??

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It is noteworthy that in the matter of Rama Kanta Dubey â?"Vs Union of India & Ors. reported in 2004 (2) CHN 462, this Court observed that in

case the enquiry officer acts as presenting officer for tendering witness/evidence on behalf of the prosecution, denial to cross examination of a

witness in the enquiry proceeding vitiates on the ground of violation of the principles of natural justice and the relevant portion of the above decision is

quoted below:

1. It appears from the report of the Enquiry Officer that he himself examined the witnesses tendered on behalf of the prosecution. As a matter of

fact, there was no Presenting Officer. He, therefore, took upon himself the burden of proving the case on behalf of the prosecution. If the Enquiry

Officer was to do this, I am afraid he cannot be expected to act impartially or even dispassionately.

The above decision was based on the decision of Abdul Wahid *vs* State of Karnataka reported in (1981) 1 SLJ 388. The factual matrix of the

case of the petitioner which has not been denied before the learned Tribunal is that no material was proved before the Enquiry Officer in accordance

with law. The Enquiry Officer acted as a Prosecutor in producing those materials and bringing them on record to rely upon and for formation of the

opinion to prepare his enquiry report. Though it was pleaded in the original application that there was gross negligence on the part of the learned

Tribunal in dealing with that aspect of the matter while examining the validity of the decisionmaking process of the employer, i.e. the respondent

authority in imposing punishment against the petitioner as also that of the Statutory Appellate Authority in affirming that decision in the Statutory

Appeal. It will also not be out of context to remember the decision in the case of Whirlpool Corporation *vs* Registrar of Trade Marks reported in

(1988) 8 SCC 1, that it is within the jurisdiction of a court sitting in the writ jurisdiction and to deal with the cases in the following contingencies:

i) Where the writ petition seeks enforcement of any of the fundamental rights; ii) where there is failure of principles of natural justice; or iii) where the

orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. In the present case, the right of livelihood of the petitioner

was under consideration of the learned Tribunal and the right to livelihood is a fundamental right. So, we disapprove the conduct of the learned

Tribunal in the way it has dealt with the same in the instant case.

In view of the discussions and the observations made hereinabove, we are of the opinion, that no useful purpose will be served in relegating the matter

back either to the learned Tribunal or to the Disciplinary Authority for consideration of the matter afresh. As a consequence, the charge sheet dated

September 4, 2012, the enquiry report dated July 9, 2015, the order of punishment dated June 28, 2016, the order passed by the Statutory Appellate

Authority on November 2, 2016 and the order of the learned Tribunal impugned to this writ application are quashed and set aside. The writ application accordingly stands allowed. There will, however, be no order as to costs. Urgent photostat certified copy of this order, if applied for, be given to the parties at an early date.