

(2003) 08 CAL CK 0056
In the Calcutta High Court
Case No : W.P.S.T. No. 413 of 2003

Tamal Ghosh

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 07-08-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 226
Penal Code, 1860 (IPC) — Section 366, 376
Police Regulations of Calcutta, 1968 — Regulation 1, 880

Citation : (2004) 1 CALLT 51 : 108 CWN 818 : (2004) 101 FLR 509

Hon'ble Judges : Asok Kumar Ganguly, J; Amit Talukdar, J

Bench : Division Bench

Advocate : Pulak Ranjan Mondal and Bandana Das, for the Appellant; Tarun Roy and Aparna Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Ganguly, J.—The subject-matter of challenge in this writ petition is a Judgment and Order dated 8.5.2003 passed in O.A. No. 5667 of 1998 and O.A. No. 1005 of 2001. By the said Judgment and Order the West Bengal Administrative Tribunal (hereinafter referred as the "said Tribunal") dismissed the application filed by the petitioner.

2. The material facts of this case are, that the writ petitioner was appointed on temporary basis to the post of Sergeant in Calcutta Police, some time on 7th September, 1986 and thereafter he joined the regular post of Sergeant after completion of training.

3. At the material point of time, the petitioner was posted in Jorasanko Police Station of Calcutta Police. Such posting of the petitioner started in the month of May, 1995. On 8th of July, 1996, the petitioner was arrested in connection with Hare Street Police Station Case No. 315, dated 30.6.1996 under Sections 366/376 of the IPC. Thereafter, the petitioner was placed under suspension on 9th July, 1996 in connection with his arrest in the said criminal case. In the order

of suspension which was passed in which it was made clear that the continuance of the petitioner in office pending enquiry of his conduct is prejudicial to public interest. There was an order for giving the petitioner subsistence allowance during the period he was under suspension. Thereafter, a charge-sheet was issued against the petitioner for a departmental proceeding and the charge-sheet, issued in the said proceeding being Proceeding No. 46 dated 2.6.1997 is as follows:

CHARGE

You, Sergeant Tamal Ghosh of Jorasanko P.S., Central Division are charged with gross misconduct unbecoming of a member of Calcutta Police Force in that:

You left Jorasanko P.S. unauthorisedly on 30.6.96 at about 01.00 hours and conducted yourself in an unbecoming manner which led to your arrest by the police in connection with Hare Street P.S. Case No. 315 dt. 30.6.96 u/s 366/376 IPC. And detained in custody for 93 days in total i.e. PC/JC.

You are, therefore, directed to state in writing within seven days from the date of receipt of these charges whether you plead guilty to the charges or any part thereof or desire to be heard in person.

The statement of allegation on which the charges are based is enclosed.

4. It is not in dispute that along with the charge sheet there was a statement of allegation and lists of documents and list of witnesses. All these were served on the petitioner. Thereafter, by an order dated 22nd April, 1997 an Enquiry Officer was appointed to enquire into the charges against the petitioner. An enquiry took place in which the petitioner participated and he was represented by a lawyer of his choice. The enquiry Officer, in his report dated 28th June, 1994, held that of the two parts of the charge against the petitioner, the charge relating to leaving of Jorasanko Police Station unauthorisedly on 30th June, 1996, could not be proved. But so far as the other part of the charge is concerned, namely committing of gross mis-conduct which is unbecoming a member of the Calcutta Police Force and which led to his arrest by the Police in connection with Hare Street police Station Case No. 315 dated 30.6.1996, under Sections 366/376 IPC, stands proved. It has also been proved that in connection with the aforesaid criminal case, the petitioner was in custody from 8.7.1996 to 8.10.1996.

5. On the basis of such Enquiry Officer's report the petitioner was asked to give reply to a second Show Cause Notice by a memo dated 28.5.2003. By the said notice, he was asked to show cause why the punishment for dismissal from the service could not be awarded against him, relying on the Enquiry Officer's report. Prior to the issuance of the Said order dated 28.5.2003, the Tribunal was moved by the petitioner and the Tribunal, by its Judgment dated 8th May, 2003 dismissed the original application as noted above. While doing so, the Tribunal noted that during the pendency of the first proceeding being O.A. No. 5667 of 1998 another additional charge-sheet and fresh statement of allegation were

issued against the petitioner by the same Disciplinary Authority. The said additional charge-sheet was challenged and the same became the subject-matter of O.A. No. 1005 of 2001. In connection with the said additional charge-sheet also, the petitioner was arrested on 9.1.2001 vide Lake Police Station Petty Case No. 75 of 2001 under Kolkata Suburban Police Act. The petitioner, however, was released on P.R. bond and thereafter the learned Judicial Magistrate exonerated the petitioner of the said case. So far as this Court is concerned, argument has not been advanced on the additional charges and this Court is not making any pronouncement in respect of the said additional charge-sheet which was framed against the petitioner. However, the additional charge framed against the petitioner is to the following effect;

"ADDITIONAL CHARGES"

You, Sergeant Tamal Ghosh of D.R.C., C.D. (now under suspension) are further charged with gross mis-conduct unbecoming of a member of a disciplined force in that:

1. On 9.1.2001 at about 15.00 hrs. you wrongly entered inside the Monalisa Guest House of Sri Barin Dey, located at 172A, Sarat Bose Road, Kolkata, under influence of liquor with ulterior motive.

2. On being refused to be served with cold drink on your demand you created nuisance by uttering filthy languages and thereby caused annoyance to Sri Dey and others and conducted yourself in an unwarranted manner which led to your arrest by the local Police vide Lake P.S. Petty Case No. 75/2001 dated 9.1.2001 u/s 15B-11-66 Calcutta Suburban Police Act. Subsequently, you were released on P.R. Bond from the Police Station.

6. It may be noted that the Tribunal dismissed both the O.As. referred to above by holding that the mis-conduct alleged against the petitioner, is very grave and it assumes further gravity since the petitioner is a member of the disciplined force. The Tribunal also held that there can be no bar in continuing the departmental proceeding in the additional charge even in the context of exoneration of the petitioner by the Court in the criminal proceeding. The Tribunal, after delivering the Judgment, dismissing both the O.As., however, stayed the operation of its Judgment for a period of four weeks from date and thereafter the said stay order was continued by this Court. Thereafter, when the order of the Tribunal was challenged the said stay order of this Court was continued.

7. The learned counsel appearing in support of the petitioner challenged the departmental proceedings on various grounds. Firstly, he submitted that his client stands acquitted in connection with both the criminal cases. The Judgment of the sessions Judge of the Fifth Bench of the City Sessions Court at Calcutta in Sessions Case No. 45 of 1996 has been annexed to this writ petition.

8. The learned counsel also submitted that suspension order which was issued

against him had not been issued in accordance with the provisions of the Police Regulations of Calcutta (hereinafter called P.R.C.) and the said order of suspension should be quashed. He further submitted that enquiry which was held against him is influence and dictated by the Commissioner of Police who is a very high and Superior authority. Where an enquiry is dictated by such a Superior Authority, one cannot expect justice from the Enquiry Officer who is much subordinate to the Commissioner of Police. The documents which were prayed for, were not made available for the petitioner.

9. The petitioner wanted to re-examine Rupa Sardar, the lady, with whom he was alleged to have misbehaved and which lead to the criminal case. But he was not allowed to re-examine the said lady. The learned counsel further submitted that the Enquiry Officer has not given the report on the basis of the evidence-on-record. There are infirmities in the report. In other words, the learned counsel submitted that on the basis of such report no fair departmental proceeding can be held and the petitioner cannot be punished in connection with the said departmental enquiry.

10. The learned counsel for the respondent, however, refuted those allegations and urged that at every stage, the petitioner was given full opportunities of defence in this case. He was allowed to be represented by the Lawyer in course of the departmental proceedings. The Enquiry Officer also held the enquiry properly and he was not, in any way, influenced by anybody but he acted on his own discretion. In fact, of two parts of the charges levelled against the petitioner, the Enquiry Officer has held that a part of the charge has not been proved. This shows that the Enquiry Officer acted impartially and was not under the dictate of any Authority.

11. The learned counsel further submitted that in course of enquiry he was given all opportunities to cross-examine the witnesses and the three attempts were made to call Rupa Sardar for re-examination and all the three attempts failed and then the enquiry proceeded without further waiting for Rupa. He further submitted that after the conclusion of the enquiry proceeding and presentation of examination and cross-examination of the witnesses by the Enquiry Officer, the petitioner never prayed for examination of any defence witness and he never gave a list of defence witnesses. There fore, the contention that the petitioner was not allowed to adduce evidence in his defence, which has been made before this Court, cannot be accepted.

12. The learned counsel further submitted that in the instant case, despite repeated opportunities, the petitioner did not give his written arguments. Time to file written argument was fixed by the Enquiry Officer by his order dated 24.7.1998 on the prayer of the defence lawyer who wanted to file it by 21.8.1998. The said time was further extended till 1.9.1998. Then the case was closed by the Enquiry Officer on 8.2.1999 by passing the following order:

"The C.O. is present. I was informed that C.O. came at about 14.00 hrs. and left

but the time was fixed at 15.00 hrs. Hence several dates were given but the C.O. has held for submit his argument. Hence, no further time is allowed. The hearing is closed."

13. Therefore, it is clear that the case was closed on 8.2.1999. So, the written arguments filed by the petitioner on 25.3.1999, after such date, could not be taken into consideration by the Enquiry Officer.

14. These are the rival contentions of the parties.

15. The first attack of the petitioner's learned lawyer in respect of the departmental proceeding is that the charges are vague. In support of such contention he relied on the decision of the Supreme Court in the case of Sawai Singh Vs. State of Rajasthan, .

16. The question of vagueness of a charge is essentially a question of fact. There is no uniform standard or guideline on the basis of which a charge can be called vague. Before the Court comes to the conclusion that the charges in a particular case are vague, the Court must, in my Judgment, consider (a) the broad facts of the case, (b) the particular class of service in which the delinquent is employed and (c) the post held by him, (d) the materials which are indicated in the charge sheet as well as, (e) the particulars which are mentioned in the statement of allegation. Apart from that the Court must read the charges keeping the factual context in mind. Both the charge sheet and the statement of allegation must be read with a common sense approach and not in a pedantic manner.

17. In the instant case the petitioner is a Police Officer. The charge sheet, read with the statement of allegation, contains sufficient particulars about the criminal case. The name of the Police Station was disclosed. The number of the particular case and the section under which the case was instituted was disclosed and it was also disclosed that the petitioner was arrested in connection with the said case and was kept in custody in connection with the said case for a number of days. It has been made clear that his unbecoming conduct led to his arrest in connection with the said case. Therefore, the particulars of the case, given to the petitioner in the charge sheet, had sufficient indication. He was arrested and kept in custody in connection with the said case. The facts of the case were also known to him. Therefore, there is no difficulty on the part of the petitioner in understanding the charges against him. The background of these details and particulars have been given in the charge sheet and it cannot be said that the charges against the petitioner are vague.

18. The decision in Sawai Singh was rendered against a totally different situation. Sawai Singh was not a member of a highly disciplined force like the Police. Apart from that in the charges which were framed against him, there were certain gaps in the factual aspect. In view of those gaps, the Court found that the charges being vague, no fair enquiry is possible.

19. But in the instant case, as pointed out, all the particulars of the criminal case

which led to the arrest of the petitioner, were given and the petitioner was kept arrested in connection with the said case of about 90 days and the petitioner as a Police Officer, is aware of the facts of the case. The petitioner therefore did not suffer any prejudice in answering the charges. The ratio in Sawai Singh is therefore not attracted to the facts of this case.

20. On the question of vague charges, the learned counsel for the petitioner also relied on the decision in the case of State of Uttar Pradesh Vs. Mohd. Sharif (Dead) through Lrs., . In that case the petitioner, Md. Sharif was proceeded against on the charges that he committed the misconduct of hunting bull in a Government forest by taking advantage of his post and rank. The learned Judges found that the charge sheet did not mention the date and time of alleged misconduct nor even the location of the vast forest. Coupled with that the copies of statement of witnesses recorded during the preliminary enquiry, were also not furnished to Md. Sharif. The Court held that in the absence of these particulars in the charges and the statement of witnesses the delinquent was prejudiced in the matter of his defence.

21. But in the instance case as pointed out above all the details of the criminal case are made known to the accused who is a Police Office. The name of the Police Station, the date of the incident, the particular provision of the Penal Code which are stated to have been violated, have been brought to his notice and he was admittedly kept arrested in connection with the said case for about 90 days. Therefore, the facts of this case are totally different and cannot be compared with the facts in the case of Md. Sharif.

22. The next point urged by the petitioner is that the suspension order should be quashed since the suspension order was passed against him under the relevant provisions of PRC, which do not provide for suspension of Police officer in contemplation of an enquiry. The learned counsel submitted that in the instant case, the suspension order was passed against the petitioner under Chapter XIX of Regulation 1 of Police Regulation, Calcutta (hereinafter called PRC). This in "pari materia" with Regulation 880 of Police Regulations of Bengal (hereinafter called as "PRB").

23. The petitioner relied on a single Bench decision of this Court in the case of Dharendra Kumar Saha v. The State of West Bengal and Ors. Reported in 1976(2) CLJ 497 and contended that on the authority of the decision in Dharendra Kumar Saha, the suspension order in the instant case, should be quashed.

24. This Court is unable to accept the said contention. The suspension order in Dharendra Kumar's case, on the face of it, contained the recital that the suspension was made by way of punishment. The learned Judge, if I may say so, with respect, was entirely correct in holding that this is not permissible in law. The learned judge also recorded in paragraph 2 of the Judgment that there was no enquiry against the petitioner prior to the passing of the suspension order. But the present controversy which is debated in this case, that whether or not in

contemplation of an enquiry a suspension order can be passed against a Police Officer, was not considered in Dhirendra Kumar. Therefore, the decision in Dhirendra Kumar is not relevant in the facts of the present case.

25. On the other hand, in *Sudhir Kumar Banerjee v. Superintendent of Police, Midnapore*, reported in (1979)2 CHN 178 a learned Judge of this Court dealt with the said question of suspension under regulation 880 of PRB. In paragraph 4, relying on the decision of this Court in *Sisir Kumar Chattopadhyaya v. State of West Bengal* (reported in *Sisir Kumar Chattopadhyaya Vs. The State of West Bengal and Others*,) the learned Judge held that an enquiry in contemplation of a disciplinary proceeding is an enquiry under this Rule in the absence of any express or implied provision to the contrary. The learned counsel for the petitioner himself accepted that Rule 1 of Chapter XIX of PRC and Regulation 880 of PRB are on identical terms.

26. In a Division Bench judgment of this Court rendered in the case of *Dulal Krishna Kanjilal v. The State of West Bengal and Ors.* reported in 92 CWN 425, a similar question arose. In that case also an order of suspension was challenged by a Police Officer who was a Sub-Inspector of Police on duty in the Anti-Hijacking section of the Calcutta Airport. There was an allegation that the Officer had taken bribe and he was placed under suspension. The writ application challenging the suspension order was dismissed. Then before the appeal Court it was contended that under PRB, a delinquent employee could be placed under suspension only when a disciplinary enquiry is initiated. The same contentions have been raised here. Repelling those contentions, Justice G.N. Ray, speaking for the Division Bench, held that the expression "enquiry, should be understood in a broader sense including probing enquiry and it will not be proper to limit it on the initiation of a departmental proceeding on the issuance of a formal charge-sheet". Here also following the said interpretation of Rule 1 of Chapter XIX of PRC, this Court holds that by 9.7.1998 a probing enquiry, in a broader sense, was pending against the writ petitioner as he was arrested in connection with the criminal case on 8.7.98. Apart from that in *Dulal Krishna Kanjilal's* case, the Division Bench held as follows:

That apart, the writ Court is a Court of equity and interference by the writ Court is not always of course or must even if there is some infraction of rules and procedures.

27. This Court, having regard to serious nature of the charges is also of the same view. So there is no infirmity in the order of suspension.

28. The learned counsel for the petitioner raises the question of bias of the Commissioner of Police just on the ground that in the record of proceeding it has been recorded that "C.P. has ordered for starting of the enquiry." Relying merely on this recording in the proceeding, learned counsel for the petitioner urged the ground of bias.

29. It is difficult for this Court to appreciate this contention. The question of bias

against the Commissioner of Police, if made, must be seriously pleaded with sufficient particulars and the Commissioner should be made a party in individual capacity in order to give him an opportunity to deny such an allegation which is made against him personally.

30. In the instant case, the Commissioner has not been made a party in his individual capacity. Apart from that if the Commissioner has merely passed an order for starting the enquiry which does not show that he is biased. By just passing an order for starting an enquiry, if at all done by the Commissioner, the Commissioner has merely discharged his duty as the head of the organisation and no bias can be attributed to his for giving a simple direction for starting an enquiry.

31. While making the aforesaid submission the learned counsel relied on the decision of the Supreme Court in the case of Kumaon Mondal Vikash Nigam Ltd. v. Girija Shankar Panth and Ors. reported in 2001(1) SCC 182. In the said judgment the learned Judges elaborately dealt with the question on what is meant by bias. Referring to various case laws, the learned Judges in paragraph 34 of the Judgment held that the question of bias ought to be decided on the facts and circumstances of each case. The learned Judges held if allegations relating to bias are fanciful or are made to avoid a particular Court, Tribunal or Authority, such allegations are unsustainable (See paragraph 34). Following the aforesaid test laid down by the Supreme Court in the case of Kumaon Mondal, this Court is of the view that the allegations of bias in this case are more fanciful than real.

32. The learned counsel has also argued that the Enquiry officer closed the enquiry without giving him any opportunity to cite witnesses in support of his defence. In support of the aforesaid contention, the learned counsel relied on the decision of the Supreme Court in the case of the Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee, . In U.P. Warehousing Corporation's case. Vijay Narayan Vajpayee, on being proceeded against, in a disciplinary proceeding, submitted an explanation in which he demanded that he wanted to cross-examine the witnesses to be produced in that enquiry and he further gave the names and particulars of some witnesses stating therein that he wanted to examine, them in his defence. Thereafter nothing was heard from the Managing Director of Corporation and the order of dismissal was passed. Then challenging the dismissal order Vajpayee filed a writ petition before the High Court and the learned Judge dismissed the writ petition. The Division Bench of the High Court reversed the judgment of the learned single Judge and the Corporation took the appeal before the Hon'ble Supreme Court. In the background of those facts the learned Judges of the Supreme Court held that the Corporation must follow rules of natural justice which would demand an opportunity to be given to Vajpayee to lead evidence in defence and the Court found that such an opportunity was denied in that case as Vajpayee was not allowed to lead evidence in his defence. Nor was he allowed to

cross-examine. On the basis of those facts the learned Judges of the Supreme Court held that reasonable opportunities of defence were not given to Vajpayee and further held that the impugned order of dismissal is bad in law.

33. In the instant case, in the course of enquiry proceeding, the petitioner was given opportunity to cross-examine the witnesses. At no stage of the enquiry, the petitioner gave a list of persons who he wanted to cite as his defence witnesses. Even when the examination or cross-examination of witnesses was completed, the list of defence witnesses was not given by the petitioner. Therefore, if no request is made by the petitioner for producing defence witnesses, subsequently, such a complain cannot be made that he was denied the opportunity of producing witnesses in his defence. Therefore, the criticism of the departmental proceedings on this ground is not tenable and the ration in the case of U.P. Warehousing is also not attracted.

34. The learned counsel for the petitioner also made a grievance that his prayer for re-examination of Rupa Sardar was declined. This Court has already noted that three attempts were made to produce Rupa Sardar after she came and was examined and cross-examined by the petitioner. The prayer for re-examination of Rupa was of course made by the petitioner's learned Advocate. But the reason why such re-examination is necessary has not been stated in the letter of the petitioner's Advocate given on 22.04.1998.

35. Nobody has vested right to re-examine a witness especially when the witness was not called by him. Here Rupa is not the witness of the petitioner. In the application filed on behalf of the petitioner to summon Rupa for re-examination, no reason has been disclosed how such re-examination is necessary. The prejudice of the petitioner, if any, in the absence of such re-examination, has not been disclosed. A departmental enquiry is not governed by Evidence Act but its broad principles are attracted. Such broad principle must be understood in the context of fairness in procedure. This Court is unable to appreciate if a witness does not turn up for re-examination, even if she is called thrice, and where no discernible prejudice for her non-appearance is shown and if the Enquiry Officer, instead of waiting further, proceeds with the enquiry, how does it become unfair. So this point raised on behalf of the petitioner is without any substance.

36. The learned counsel also relied on the decision in the case of Sulekh Chand and Salek Chand Vs. Commissioner of Police and Others, in order to urge that his exoneration in the criminal case on self same facts should automatically lead to his exoneration in departmental proceeding. In that case the criminal prosecution, suspension and departmental charges were based on same facts and the criminal prosecution ended in an acquittal on merits. The departmental proceeding was also dropped. Under those circumstances it was held that denial of promotion, with effect from the date of promotion of the immediate junior to the appellant, was not permissible. The decision in the said case instead of supporting the petitioner's contention, goes against the petitioner's case. In Sulekh Chand it has been stated by the Supreme Court that whether a

delinquent Officer gets an acquittal on technical ground, the Authorities are entitled to conduct disciplinary proceeding on the self-same facts.

37. In the instant case, the acquittal of the petitioner is on the benefit of doubt and against the said judgment of acquittal, an appeal is pending before this Hon"ble Court. Therefore, the said Judgment is not final. So, in the facts of this case the decision of the Supreme Court in Sulekh Chand is not of much assistance to the petitioner.

38. The learned counsel for the respondent, on the other hand, relied on the decision of the Supreme Court in the case of High Court of Judicature at The High Court of Judicature at Bombay, Through Its Registrar Vs. Shashikant S.Patil and Another, . In that case the Supreme Court held that the scope of interference by Writ Court with the decision of the disciplinary authority is limited. There can be no dispute about this principle. Following the aforesaid principle in the case of High Court of Judicature at Bombay, this Court is also of the view that it does not find any reason to interfere with the departmental enquiry held against the petitioner. This Court further finds that opportunity, at each stage, was given and the petitioner has not been able to prove his prejudice in the manner in which departmental proceeding has been held against him.

39. The applicability of the principle of natural justice in the context of the departmental enquiry has been summarised by the Hon"ble Supreme Court in the case of State Bank of Patiala and others Vs. S.K. Sharma, . Summarising the principle in para 32 of S.K Sharma, the learned Judges held that the complain of non-compliance with natural justice should be considered by Court keeping in view the nature of the enquiry. In a case where there has been "no enquiry" or "no notice" or "no opportunity", in such a case the denial of principle of natural justice completely vitiates the proceeding. But in a case where there has been an enquiry in which the delinquent has participated, and complains of non-compliance with the principle of natural justice such a complain should have to be decided, on the touch-stone of the prejudice which the delinquent suffered as a result of such non compliance. (See paragraph 32).

For the reasons aforesaid, this Court does not find that in the instant case the reasonable opportunities of defence have been denied to the petitioner at all in the departmental enquiry. Therefore, this Court is of the view that the departmental enquiry was held in a proper manner. The final order has not been passed. But the proceeding as has been disclosed before this Court, does not contain any infirmity. Therefore, this writ petition is dismissed. All interim orders are vacated.

There will be no order as to costs.

After the judgment is delivered Mr. Mondal prays for stay of operation of the judgment. The said prayer to considered and refused.

S.P. Talukdar, J.

40. I agree.