

**(1999) 07 CAL CK 0007**

**In the Calcutta High Court**

**Case No :** Civil Appellate Jurisdiction W.P.S.T. No. 167 of 1997

Tapan Kumar Dutta

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

**Date of Decision :** 29-07-1999

**Acts Referred:**

Constitution of India, 1950 — Article 136, 226, 227  
Criminal Procedure Code, 1973 (CrPC) — Section 161, 167(5)  
Penal Code, 1860 (IPC) — Section 307  
Police Regulations of Calcutta, 1968 — Rule 9(5)

**Citation :** (1999) 3 CALLT 122

**Hon'ble Judges :** Samarendra Nath Bhattacharjee, J; Ruma Pal, J

**Bench :** Division Bench

**Advocate :** Mr. Bikash Ranjan Neogi, for the Appellant; Mr. Tarun Roy and Miss Mitali Bhattacharya, for the Respondent

**Final Decision :** Dismissed

## Judgement

S.N. Bhattacharjee, J.—In the instant writ application under Article 226 of the Constitution of India, the order and judgment dated 9.7.97 passed in O.A. No. 617 of 1996 by the State Administrative Tribunal dismissing the application of the petitioner has been challenged.

2. The petitioner, a Constable of Special Branch of Calcutta Police was booked for security guard duty of Dr. Sudipta Roy, MLA with another constable Nishakar Panda. According to the petitioner, on 20.1.90 there was an altercation between them over morning shift duties. It degenerated into a scuffle between the two and Nishakar who had revolver with him received shot injuries on his person as the bullet went off the revolver in the melie and the petitioner took up revolver from the ground where it dropped and absconded. A criminal case was started against him for committing offence u/s 367 IPC which ended in the discharge of the petitioner u/s 167(5) Cr.PC as the IO failed to submit charge-sheet within statutory period. The departmental proceedings which was initiated simultaneously was also dropped. A fresh departmental proceedings was initiated

against the petitioner being proceeding No. 99 dated 14.11.94 by Dy. Commissioner of Police, Special Branch. Calcutta. That proceeding ended in a finding of guilt of the charges framed against the petitioner and second show cause notice was issued. The petitioner replied to the show cause notice but at the same time filed application before the Tribunal challenging the second show cause notice dated 24.7.91 (annexure K to the petition), inter alia, on the following grounds:

- i) That after the order of discharge being passed by the courts in the criminal case, the first departmental proceeding case No. 69 dated 5.7.93 against the petitioner was dropped and thereafter on the same question the second departmental proceeding case No. 99 dated 14.11.94 initiated against the petitioner and service of second show cause notice are bad in law; para xxxii. page 35-36 of P.B.)
- ii) That charges based on the same incident have been altered in the second departmental proceeding and some of the witnesses of the first departmental proceeding have been omitted in the subsequent proceedings (xxxiv, page 37-38 of P.B.)
- iii) That statements of Kalpana Das recorded u/s 161 Cr. PC during investigation of the criminal case was wrongly relied upon by the Enquiry Officer without serving a copy of the statement upon the petitioner and without examining her during enquiry;
- iv) That the report of the Enquiry Officer is in violation of the mandatory provision of Police Regulation Act as he had not discussed evidence of each of the charges and had travelled beyond the allegations under the charge.

The learned Tribunal dismissed the petition holding, inter alia,

- i) The departmental proceeding on the self-same facts are maintainable although the criminal case resulted in a discharge, or even acquittal.
- ii) Despite some discrepancy about the fact as to how the revolver changed hands from the possession of Nishakar Panda to that of the applicant, the broad fact remains that the applicant opened the fire from the said revolver aimed at Nishakar Panda causing serious injuries to the victim and there is ample material in the file of the departmental proceeding to support such a finding.
- iii) The evidence of Kalpana Das recorded in the criminal case during investigation under 161 Cr. PC was wrongly relied upon by the Enquiry Officer although she was not examined in the proceedings. Reception of illegal evidence does not vitiate the whole enquiry process and if the findings, devoid of such evidence, can be sustained, the applicant cannot have any cause for grievance.
- iv) The Tribunal will not interfere as an appellate authority over the departmental authority and if there is some evidence in support of the charges this Tribunal cannot interfere.

v) As no final, order has been passed as yet in the departmental proceedings the petition is premature and the applicant should have waited till the final order is passed.

On such findings the learned Tribunal dismissed the petition.

3. It has been argued by the learned counsel appearing for the petitioner that the Enquiry Officer in his report did not discuss separately each charge nor did he arrive at a finding on each charge as required under rule 9(5)(a)(b) of Police Regulation Act, Calcutta and as such the report is bad in law. The Enquiry Officer relied upon the evidence of Kalpana Das recorded u/s 161 Cr. PC although she was not produced before the Enquiry Officer for recording her evidence and for cross-examination by the petitioner. The copy of her statement u/s 161 Cr.PC has also not been supplied to the petitioner. It has been further argued that the Disciplinary Authority out of bias did not arrive at a conclusion as to which of the charges have been proved against the petitioner although he wanted to dismiss the petitioner. Lastly, he has argued that the learned Tribunal failed to appreciate the above points and the Judgment/Order under challenge is liable to be set aside.

4. Mr. Roy, the learned counsel, appearing for the respondents while supporting the order of the Tribunal has argued that the defects in the enquiry report as mentioned hereinabove as well as the final order of the Disciplinary Authority cannot be said to be vitiated only on the ground of non-compliance of the rules particularly when the petitioner has virtually admitted the charges in his statement and the charge No. 1 has been established by the medical report. The Enquiry Officer as also the Disciplinary Authority have categorically stated that all charges have been established and it, therefore, cannot be said that they did not apply their mind discussing the evidence. The writ Court in exercising its power of Judicial review over the Tribunal's finding will not act as a court of appeal. The writ Court and Tribunal would only interfere with the findings of the domestic authorities when natural Justice is denied to the petitioner and the findings appear to be perverse not being supported by materials on record or only when serious prejudice has been occasioned thereby to the petitioner. In this case, he continues, natural Justice was not violated at all as the petitioner was given opportunity to show-cause before the enquiry was started and he was represented by his lawyer to cross-examine the witnesses. He was given the copies of material documents relied upon by the Disciplinary Authorities barring the statement of Kalpana Das u/s 161 Cr.PC by the IO during criminal investigation. He has argued that the statement of Kalpana Das was relied upon in order to ascertain the motive behind the action of the petitioner. It does not form the basis of the finding inasmuch as the motive behind the alleged acts of misconduct of the petitioner is not at all relevant in arriving at a finding of guilt in the departmental proceeding. In view of the matter the petitioner cannot be said to have been prejudiced by the reliance being placed on it by the Enquiry Officer.

5. The writ application is being heard by us by exercising a power of Judicial

review over the decision of the Tribunal and not as a court of appeal. The parameters for exercising of supervisory jurisdiction of the High Court under Article 226 of the Constitution while examining the decision of an inferior Tribunal have been laid down in In the Matter of the Appropriate Authority and Another Vs. Smt. Sudha Patil and Another, by apex Court as under;

" The power being supervisory in nature, in exercise of such power, a finding/ conclusion of an inferior Tribunal can be interfered if the High Court finds that in arriving at the conclusion, the Tribunal has failed to consider some relevant material or has considered some extraneous and irrelevant materials or that the finding is based on no evidence or the finding is such that no reasonable man could come to such a conclusion on the basis of which the finding has been arrived at."

The first point that was raised before the Tribunal is that there was a criminal case on the self-same incident which resulted in the discharge of the delinquent and a departmental proceedings of the self-same charges is not warranted under the law. The Tribunal rejected this objection by holding that the law is well-settled that the departmental proceedings on the self-same facts are maintainable although the criminal case resulted in a discharge or even acquittal.

6. In Corporation of the City of Nagpur, Civil Lines, Nagpur and another Vs. Ramchandra and others, Supreme Court held,

"The other question that remains is if the respondents are acquitted in the criminal case whether or not the departmental enquiry pending against the respondents would have to continue. This is a matter which is to be decided by the department after considering the nature of the findings given by the criminal court. Normally where the accused is acquitted honourably and completely exonerated of the charges it would not be expedient to continue a departmental enquiry on the very same charges or grounds or evidence, but the fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental enquiry is not taken away nor is its direction in any way fettered."

In Nelson Motis v. Union of India. (1992) 2 LLJ 744 (SC) a three Judge Bench of Supreme Court held, that irrespective of the acquittal of the appellant the disciplinary proceedings would have been continued. We, therefore, do not notice any infirmity in the finding of the Tribunal on this point.

The second point urged before the Tribunal was that the earlier chargesheet in departmental proceedings No. 69 dated 5.7.93 annexure "C" and the charges in the proceeding No.99 dated 14.11.94 reflect discrepancy. The learned Tribunal held,

"Second about withdrawal of the original chargesheet. Exhibit "C" and issuance of the second chargesheet. Exhibit "G" it is no doubt true that there is some discrepancy about the fact as to how the revolver changed hands from the

possession of Nishakar Panda to that of the applicant. But the broad facts remains that the delinquent applicant opened fire from the said revolver aiming at Nishakar Panda causing serious injury to the victim. There is ample material in the file of the departmental proceeding to support such a finding".

It would be noticed that the first charge in both the proceeding is same in substance. In both the charges the petitioner has been accused of opening fire at Nishakar Panda from the service revolver belonging to the latter. There cannot be any- occasion of prejudice being caused to the petitioner on this score as the factual basis of the charge was to be borne by the testimony of the witnessess which was subject to cross-examination by the petitioner.

7. The next point that was argued before the Tribunal was that one Kalpana Das whose name did not figure in the charge-sheet as a witness was not presented for cross-examination although her purported statement u/s 161 Cr.PC recorded by the investigating officer in the criminal case was illegally relied upon by the Enquiry Officer. The learned Tribunal has dismissed this objection by holding that reception of illegal evidence does not vitiate the whole enquiry process and if the findings, devoid of such evidence, can be sustained, the applicant cannot have any cause for grievance. The learned counsel appearing for the petitioner assailed this finding by arguing before us that by placing reliance upon this statement purportedly made by Kalpana Das, the Enquiry Officer has acted in gross violation of natural justice. The learned counsel for the respondent in supporting the finding of the Tribunal has argued that the evidence of Kalpana Das virtually supplied the motive behind the firing by the petitioner although such motive is not at all necessary in a departmental proceeding and the Enquiry Officer need not search such motive behind the commission of the offence. It cannot be disputed that the statement of Kalpana Das cannot form the basis of the finding on the charge No. 1 The basis of the finding on charge No. 1 was the evidence of the injured and subsequent conduct of the petitioner. In this view of the matter we are of the opinion that by placing reliance upon statement u/s 161 Cr. PC purportedly made by Kalpana Das the Enquiry Officer did not borrow credence on the point of firing but the circumstances which have propelled the petitioner to take resort to firing. It might be an additional cause of firing but it is not an evidence on the act of firing.

8. The learned counsel for the petitioner next submitted that the learned Tribunal has not considered a very serious and arguable point that the report of the Enquiry Officer not being in accordance with the rule 9(5) of Police Regulation Act is violative of natural justice and denial of the effective opportunity to the petitioner to defend his case.

It is evident from the report of the Enquiry Officer that the evidence collected during enquiry on each of the charges has not been discussed. In arriving at the conclusion of guilt, although rule 9(5) of the Police Regulations requires the Enquiry Officer to do so. It is also true that the learned Tribunal has not considered this point although it was specifically pleaded in para 26 of the

petition before the Tribunal. When the learned Tribunal playing a supplementary role to the writ jurisdiction of the High Court has not addressed itself to this controversy we are inclined to advert to the dispute in the light of the judicial pronouncements of the apex Court.

In *Anil Kumar Vs. Presiding Officer and Others*, apex Court laid down the law as follows:

"It is well-settled that a disciplinary enquiry has to be a quasi-Judicial enquiry held according to the principles of natural justice and the Enquiry Officer has a duty to act judicially. The Enquiry Officer did not apply his mind to the evidence. Save setting out the names of the witnesses, he did not discuss the evidence. He merely recorded his ipse dixit that the charges are proved. He did not assign a single reason why the evidence produced by the appellant did not appeal to him or was considered not credit-worthy. He did not permit a peep into his mind as to why the evidence produced by the management appealed to him in preference to the evidence produced by the appellant. An enquiry report in a quasi-judicial enquiry must show the reasons for the conclusion. It cannot be an ipse dixit of the Enquiry Officer. It has to be a speaking order in the sense that the conclusion is supported by reasons.

Where a disciplinary enquiry affects the livelihood and is likely to cast a stigma and it has to be held in accordance with the principles of natural justice, the maximum expectation is that the report must be a reasoned one. The court then may not enter into the adequacy or sufficiency of evidence. But where the evidence is annexed to an order sheet and no correlation is established between the two showing application of mind we are constrained to observe that it is not an enquiry report at all. Therefore, there was no enquiry in this case worth the name and the order of termination based on such proceeding disclosing non-application of mind would be unsustainable."

In *S.N. Mukherjee Vs. Union of India*, , a Constitutional Bench of the Supreme Court authoritatively pronounced on this subject after an exhaustive review of earlier pronouncements:

"The decisions of this court referred to above indicate that with regard to the requirement to record reasons the approach of this court is more in line with that of the American Courts. An important consideration which has weighed with the court for holding that an administrative authority exercising quasi-judicial functions must record the reasons for its decisions is that such a decision is subject to the appellate jurisdiction of this court under Article 136 of the Constitution as well as the supervisory jurisdiction of the High Courts under Article 227 of the Constitution and that the reasons, if recorded, would enable this court or the High Courts to effectively exercise the appellate or supervisory power. But this is not the sole consideration. In other considerations which have also weighed with the court in taking this view are that the requirement of recording reasons would (i) guarantee consideration by the authority: (ii)

introduce clarity in the decisions; and (iii) minimise chances of arbitrations in decision making.

Having considered the rationale for the requirement to record the reasons for the decision of an administrative authority exercising quasi-judicial functions we may now examine the legal basis for imposing this obligation. While considering this aspect the Donoughmore Committee observed that it may well be argued that there is a third principle of natural justice, namely, that a party is entitled to know the reason for the decision, be it Judicial or quasi-Judicial."

9. It is significant to note that in subsequent decisions after 1990 the "omnipresence and omniscience" of the doctrine of natural justice and the theory of fulfilment of procedural obligations in all domestic enquiries has discernibly undergone a process of change making the doctrine restrictively applicable against the touchstone of prejudice and facts and, circumstances of each case.

10. In *Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others*, , the apex Court held :

"But the applicability of the principal of natural justice is not a rule of thumb or a strait-Jacket formula as an abstract proposition of law. It depends on the facts of the case, nature of the inquiry and effect of the order/decision on the rights of the person and attendance circumstances."

"If the facts are disputed, necessarily the authority or the Enquiry Officer, on consideration of the material on record, should record reasons in support of the conclusion reached. Since the facts are admitted, the need for their reiteration was obviated and so only conclusion have been stated in the reports. The omission to record reasons in the present case is thus neither illegal, nor is violative of the principle of natural justice."

11. In *State Bank of India and Others Vs. Samarendra Kishore Endow and Another*, and *B.C. Chaturvedi Vs. Union of India and others*, , the apex Court held that a Tribunal cannot appreciate the evidence and substitute its own conclusion to that of the disciplinary authority. It was made clear that the Tribunal cannot embark upon appreciation of evidence to substitute its own findings of fact to that of a disciplinary/appellate authority. In *State Bank of Bikaner and Jaipur and others Vs. Prabhu Dayal Grover*, the apex Court dealt with a case where disciplinary authority who was in agreement with the findings of the Enquiry Officer did not record reasons for arriving at a conclusion of guilt although regulation 68(3) laid down the procedure that the disciplinary authority was required to follow. Their Lordships held "even if we proceed on the basis that such an obligation is implicit, still the order of the Disciplinary Authority cannot be held to be bad as, on perusal thereof, we find that before concurring with the findings of the Enquiry Officer it has gone through the entire proceeding and applied its mind thereto. In our considered opinion, when the Disciplinary Authority agrees with the findings of the Enquiry Officer and accepts the reasons given by him in support of such findings, it is not necessary for punishing

authority to re-appraise the evidence to arrive at the same findings. We are, therefore, unable to accept the contention of Mr. Dutta that the order of punishment was Hable"to be struck down as it was a non-speaking order and did not contain any reason.

In S.K. Singh Vs. Central Bank of India and Others, Their Lordships of the apex Court did not find fault with the decision taken by the High Court that although copy of the Enquiry Officer's report was not supplied, on the facts, as no prejudice was proved, it was not a warranting interference. Their Lordships of Supreme Court stated as follows :

"The only controversy raised in the High Court was that as he was not supplied with the copy of the enquiry report, the order of dismissal was bad in law. The learned single Judge as well as the Division Bench of the High Court have considered the effect of the judgment of the Constitution Bench of this Court in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., . The learned single Judge as well as the Division Bench of the High Court had asked the petitioner as to what prejudice the petitioner had suffered for non-supply thereof. Since there was no adequate explanation offered by the petitioner, the High Court came to the conclusion that though the copy of the report was not supplied, on the facts, as no prejudice was proved, it was not a case warranting interference".

In Union Bank of India Vs. Vishwa Mohan, , the facts of the case were that a copy of the Enquiry Officer was not furnished to the respondent until the disciplinary authority passed the order of dismissal of 7.1.1991. But, however, the said copy appears to have been served on the respondent when he filed the statutory representation/appeal under the Regulations before the appellate authority. The Allahabad High Court set aside the disciplinary proceeding, reinstated the respondent and directed to hold fresh enquiry. Their Lordships of Supreme Court set aside the findings of the High Court and observed;

"The High Court was required to apply its judicial mind to all the circumstances and then form its opinion whether on furnishing on the report would have made in reference to the result of the case and thereupon pass an appropriate order." in para 31 this court in Managing Director. ECIL v. V. Karunakar reported in (1990) 4 SCC 727 has very rightly cautioned :

"The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts."

Keeping in view of the catena of decisions discussed above, we have to examine whether the failure on the part of the Enquiry Officer to record the reasons for coming to the conclusion has caused prejudice to the petitioner in the facts and circumstances of this case. The Enquiry Officer has stated the documents perused by him. He has stated that after going through the relevant documents and statements of the PWs he was of the opinion that of the charges made

against Tapan Kumar Datta are proved leaving not an iota of doubt to his credit. He has also discussed the motive behind the incident. The Disciplinary Authority relied upon the report and came to the similar finding without discussing the evidence.

It is to be noted that the petitioner submitted his reply to the second show cause challenging the findings and thereafter filed a petition before the Tribunal. The learned Tribunal has held that as to the first charge, there are enough materials on record. We also find that the materials on record disprove the story of accidental firing only for once during scuffle and the statement of injured suffering multiple injuries is on record. The petitioner was cross-examined with the help of his advocate. The petitioner was confronted in cross-examination with the fact of multiple injuries on the person of Nishakar Panda and his reply is on record. The other two charges are virtually admitted. The petitioner admittedly had no service revolver with him. But Nishakar Panda had the same. It was never denied by the petitioner that he did not withdraw the service revolver from the office concerned. He also never stated that he surrendered the service revolver before going on leave.

As to the third charge he himself admitted that he left the revolver with 5 Bn. CAP inside his box and absconded and out of fear of arrest although he innocently, as his case was, picked up revolver from the grounds for security reasons.

It is also admitted that he got the enquiry report on demand before filing reply to second show cause notice. The petitioner, therefore, failed to show that he was prejudiced in any way on account of the failure of the Enquiry Officer to record the reasons supporting his conclusion. In fine, the petitioner was given opportunity to deny his charges. He was given the copies of documents and names of the witnesses, he was allowed to cross-examine the witnesses, he was allowed to represent his case by a lawyer in the departmental proceedings and he was not prejudiced by the Enquiry Officer report. The learned Tribunal was, therefore, justified in not interfering with the findings of the Disciplinary Authority.

In view of the discussions made above I do not find any reasons to interfere with the decisions of the Tribunal impugned before us. The writ petition, therefore, is dismissed on contest but under the facts and circumstances of the case without any order as to costs.

Ruma Pal, J.

12. I agree.

13. Petition dismissed