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**(2002) 07 CAL CK 0070**  
**In the Calcutta High Court**  
**Case No : C.A.J.A.S.F.M.A. No. 349 of 2001**

Tapan Sikdar and Others

APPELLANT

Vs

Hindusthan Fertilizer Corporation Ltd. and Another

RESPONDENT

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**Date of Decision :** 25-07-2002

**Acts Referred:**

**Citation :** (2002) 3 LLJ 949

**Hon'ble Judges :** Ashok Kumar Mathur, C.J.; Jayanta Kumar Biswas, J

**Bench :** Division Bench

**Advocate :** Bikash Ranjan Bhattacharyya and Santi Das, for the Appellant; Partha Bhanja Choudhary and Basanta Kumar Sen, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Jayanta Kumar Biswas, J.—The six writ petitioners are the appellants before us. The appeal was filed against a judgment dated February 2, 2001 whereby a learned Judge of this Court dismissed the appellants' writ petition being Civil Order No. 948(W) of 1993. All the appellants are employees of Haldia Division of Hindustan Fertilizer Corporation Limited (hereafter referred to as "the respondent corporation") located in Midnapore district of the State of West Bengal. Six separate charge-sheets all dated September 28, 1991, containing substantially identical allegations, were issued by the respondent corporation against appellants. The allegations made in the charge sheet issued against the appellant No. 1 are reproduced below:

"It has been reported that Sri Tapan Sikdar, Sr. Operator, C/E No. 431/ 2120, Production Department HFCL, Haldia Division has committed following acts of misconduct in terms of Standing Orders, 1982 of HFC Ltd., Haldia Division.

1. Sri Tapan Sikdar, Senior Operator, Production Department went to the HFC hospital along with others in a group which is situated in the township and forcibly entered the chamber of Dr. B.K.S. Azad, Senior Medical Officer when he was on duty. He assaulted Dr. Azad, Senior Medical Officer and instigated others

to do the same. Dr. Azad, Senior Medical Officer was subjected to physical assault and filthy abuses. Sri Tapan Sikdar, Senior Operator created the violent scene in the hospital thereby endangering the very life of Dr. B.K.S. Azad, Senior Medical Officer and other hospital staff patients.

2. Sri Tapan Sikdar, Senior Operator assaulted Dr. B.K.S. Azad, Senior Medical Officer on the alleged incident of molestation of one Smt. Bani Marik, wife of Sri G.C.Marik, Tech. Gr. (USS) in the morning about 10 AM on August 31, 1991, It has also been reported that Sri Marik, husband of the said lady had already lodged a FIR with Haldia Police Station against Dr. B.K.S. Azad, Senior Medical Officer for the said alleged misbehaviour with the lady. HFC Management for Haldia Division has not received any written complaint from the said lady. Even the husband of the said lady viz. Sri G.C.Marik did not give any written complaint either to General Manager or Chief Medical Officer till 6.00 P.M. of August 31, 1991.

3. Even other doctors of the hospital and two employees (at the hospital) who tried to pacify the situation were also abused and threatened which amounts to indecent behaviour.

4. When Dr. K.K. Maity, Dy. CMO, entered the room of Dr. Azad, Sr. MO and asked the unruly employees and Dr. Azad, Senior Medical Officer to come to his (Dr. Maity's Chamber), it was noticed that Sri Tapan Sikdar, Senior Operator was pulling Dr. B.K.S. Azad, Senior Medical Officer by his hand from one side of the room causing personal injury to Dr. Azad, Senior Medical Officer. When Dr. Azad was going to the chamber of Dy. CMO he also abused in most unparliamentarily utterances/ gestures and filthy languages with the intention to cause personal injury to Dr. Azad, Sr. MO besides humiliation.

5. Sri Tapan Sikdar, Sr.Opdr. by taking the law in his hand and personally assaulting Dr. Azad, Senior Medical Officer while on duty, ransacking his chamber and causing serious disruption in the normal functioning of the hospital, has committed a gross misconduct which amounts to subversive of discipline. His above wrongful acts thus constitute a gross misconduct in terms of the Standing Orders, 1982 of HFCL, Haldia Division."

2. On the basis of similar allegations similar charges were framed against the, appellants, who pleaded not guilty. A departmental enquiry was directed. On November 9, 1991 the Manager (Co-ordination) of CPLO was appointed as the enquiry officer. Before he could complete the enquiry he retired from service on April 30, 1992. Then on October 19, 1992 the respondent corporation's Chief Manager (T&C) was appointed the new enquiry officer.

3. The enquiry was conducted during the period from October 17, 1991 to December 4, 1992. The charged workmen participated with their defence assistants. The management examined 8 (eight) witnesses and exhibited 14 (fourteen) documents. The witnesses were cross examined. The workmen gave a list of 106 (one hundred and six) defence witnesses. The number was later on

reduced to 69 (sixty nine). Out of said 69 defence witnesses 11 (eleven) were outsiders, 21 (twenty one) were wives of employees of the respondent corporation, and remaining 37 (thirty seven) were employees of respondent corporation. The enquiry officer decided not to allow examination-in-chief and cross-examination of those defence witnesses, who were not employees of the corporation; but directed that written statements, if any, filed by them would be taken into consideration by him.

4. After completion of the enquiry, the enquiry officer submitted his report dated December 18, 1992. He found the charges proved against all the appellants. His recommendations were as follows:

"10.0 The acts and omissions constitute misconduct alleged to have been committed by S/Shri Satinath Bhattacharjee, Tapan Sikdar, S. Pal, T.K. Das, Subrata Dey and T. K. Sarkar are similar in nature, therefore, Enquiry Officer is not submitting separate Findings/recommendations, individually-10.4 Abatement of, or attempt of, commit, or commission or any act of indiscipline or misconduct or any act subversive of discipline: It has been established by the evidence of Shri P.K. Mazumder that the charged employees have forcibly entered into the chamber of Dr. B.K.S. Azad, Sr. Medical Officer, when he was on duty. The unauthorized presence of charged employees in the chamber of Dr. B.K.S. Azad had also been confirmed by Dr. K.K. Maity. Charge established against all charged employees.

8. Interference with the work of other employees:- It has been established that the above mentioned charged employees, along with others, have forcibly entered into the chamber of Dr. B.K.S. Azad at about 5.30 P.M. (approximately) on August 31, 1991 and stopped him from working. The disturbances created by these employees have affected the working of entire hospital. This has been confirmed by the evidence given by Shri P.K. Mazumder and Dr. S.R. Adak & Dr. P. Bhowmick. Charge established against all charged employees.

10.13 Taking recourse to any wrongful and unparliamentarily utterance/gestures, interference or disturbance single or in group within the factory premises and in residential areas which is detrimental to the normal working of the corporation in violation of the laid down law or rules which are brought in force from time to time:-

It is confirmed by the evidence given by Shri P.K. Mazumder, Materials Officers that they have indulged in recourse of unparliamentarily utterance/gestures and disturbances in a group within the chamber of Dr. B.K.S. Azad, in HFC Hospital at Haldia Township. This is considered detrimental to the normal working of the Corporation in violation of the laid down law or rules which are brought in force from time to time. Charge established against all the charged employees.

10.14 Inciting others within corporation establishment, estate or premises whilst on duty, or to commit or attempt to commit or commit act of misconduct or any act subversive of discipline or efficiency:- The charged employees were

responsible for collection of mob and instigated them to shouting and creating disturbance while they were indulging in assault of Dr. Azad.

The employees have indulged in acts subversive of discipline or efficiency by forcibly entering the chamber of Dr. B. K. S. Azad, abusing using unparliamentarily language and physically assaulting him which ultimately affected the efficiency of Dr. B.K. S. Azad because he remained on Medical Leave for 11 days. Charge established against all employees.

10.17 Drunkenness or fighting or riotous or disorderly or indecent behaviour within the work premises or within the Corporation's Estate or property or premises:- The charged employees have indulged in disorderly as well as indecent behaviour with Dr. B.K.S. Azad, which was confirmed by the evidence of Mr. P.K. Mazumder, Dr. S.R. Adak and Dr. K.K. Maity. Charge established against all the charged employees.

10.42 Any act subversive of discipline:- The entire episode involving all the six charged employees and their conduct during that period was subversive of discipline. Charge established against all the charged employees.

10.50 Taking recourse to or inciting others to take recourse to any action or activity which causes harm or is likely to cause harm or injury to any employee or employee's family members or to the person or property of any employee or any family members of an employee or causing coercion of any kind:- Assaulting of Dr. B.K.S. Azad by the charged employees confirmed by the witness Shri P.K. Mazumder proved the above act of misconduct. Charge established against all the charged employees."

5. Thereupon the disciplinary authority passed six orders all dated January 7, 1993. All the orders were substantially identical in language and contents. The disciplinary authority imposed on all the charged workmen the penalty of "Demotion to the next lower post and lower scale of pay".

6. The six punished workmen filed six appeals all dated January 14/18, 1993. The language and contents of all the six appeals were also substantially identical. The appeal preferred by the appellant No. 1 is reproduced below:

"To

The General Manager,

H.F.C. Ltd.

Haldia Division.

(Through proper Channel)

Sir,

Sub: Request for withdrawal of punishment order

Ref: Your Order No. HD/Prod/PA/Con/ 1785 dated January 7, 1993.

Your kind attention is invited to the fact that I was levelled with the charges of "Misconduct" vide order No. HD/Prod/ PA/CON/1375 dated September 28, 1991 and subsequently HD/Prod/PA/CON/ 1397 dated January 11/12, 1991 and on the basis of my reply dated October 4, 1991 a domestic enquiry was conducted. Initially, Sri R.P. Sinha, the then Manager (Coordination), HFCL, CPLO, Calcutta was appointed as Enquiry Officer and subsequently Sri J.M. Saxena, Chief Transportation Manager, HFCL, Marketing Division, Gauhati was appointed to enquire into the Article of charges.

On January 7, 1993 I was issued an order vide Ref No. HD/ Prodn/PA/CON/1785 dated January, 7, 1993 wherein I have been imposed the penalty of demotion to the next lower post and lower scale of pay without letting me know the reasons and basic foundations of imposing of such penalty.

I record my strong protest against imposition of the penalty upon me as the charges brought against me are fabricated one and far from the truth and there was no material before you to inflict such a penalty.

I earnestly urge upon you to advise your good office to quash away the charges brought against me within a week from the date of receipt of this letter. I would also request you to pass order to Finance Department not to give effect to the punishment order till my appeal to you is disposed of. Since no papers/reports have been supplied to me, I am not in a position to annexe those in this appeal.

Thanking you,

Yours faithfully,

(T. Sikdar)

Sr. Operator

C/E No. 431/2120"

7. During pendency of the departmental appeals, the writ petition dated February 3, 1993 was filed by all the six punished workmen jointly. This writ petition was dismissed by the judgment impugned in the present appeal.

8. The appellants' case in the writ petition was: They were active trade unionists. In the departmental enquiry conducted against them none of the witnesses made any statement in support of the allegations made against them. Copy of the enquiry report was not supplied to them. On the face of the defence evidence that none of them were involved in the physical assault of Dr. Azad, the enquiry officer could not have arrived at the finding of guilt. The facts that one common enquiry had been held and identical punishments had been imposed were sufficient evidence to show that the disciplinary authority did not apply its mind to the individual cases. Enquiry officer's findings were perverse. In any event the punishment was disproportionate to the gravity of misconduct. Till

disposal of the departmental appeals the punishments could not be imposed. Since before disposing of the appeals the punishments were being imposed, the appellants were constrained to file the writ petition. Therefore, the entire enquiry proceedings should be quashed.

9. The respondent corporation contested the writ petition by filing an opposition. Its case was: All the appellants were workmen governed by the certified standing orders of the corporation; so their remedy against the punishment orders, if any, lay only before the appropriate forum established under the Industrial Disputes Act, 1947. None of the appellants were protected workmen. There was no provision in the standing orders for supplying copy of enquiry report to the delinquent. In any case, none of the appellants had asked for a copy of the enquiry report; and therefore, without showing that they had suffered prejudice for the non-supply of the report, appellants were not entitled to take the plea that the non-supply of enquiry report before passing of the punishment orders rendered such orders bad. In fact, even before filing the writ petition the departmental appellate authority had directed the respondent corporation to supply copy of the enquiry report to the appellants. But the appellants had chosen to rush to the Writ Court even before the appellate authority could dispose of the appeals. So, the writ petition, besides being premature, was totally without any merit.

10. By filing an affidavit-in-reply appellants contended that the enquiry, the report whereof had not been served on them, was a sham enquiry, and the enquiry officer's report was based on wrong assessment of evidence; that the Writ Court was empowered to sit in appeal over the decision of the disciplinary authority; that since the respondent corporation was a Government Company, there was no bar in approaching the Writ Court despite availability of alternative remedy before the forum established under the Industrial Disputes Act, 1947; and that since the departmental appeals had not been disposed of within 15 (fifteen) days from the date of submission, as was required under the standing orders, there was no alternative but to approach the Writ Court.

11. While dismissing the writ petition by the impugned judgment the learned Judge held that the appellants did not make any averment anywhere as to what prejudice they had suffered for the non-supply of the copy of the enquiry report; and that during pendency of the departmental appeals the appellants should not have approached the Writ Court. The learned Judge, however, directed the appellate authority to complete the proceeding within four weeks from the date of his judgment.

12. The learned counsel for the appellants has contended before us that the writ petition should not have been dismissed on the ground of pendency of the departmental appeals; that the incident of mere non-supply of the enquiry report itself had vitiated the order of disciplinary authority; and that the principles laid down by the Apex Court in the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., were wrongly applied by the learned Judge in the case,

because the Apex Court had laid down said principles only for governing those cases where the delinquents are awarded the penalty of termination of service.

13. On the other hand the learned counsel appearing for the respondent corporation has submitted that the learned Judge was perfectly justified in dismissing the writ petition. His contentions are that the fact of mere non-supply of the enquiry report was not sufficient for treating the punishment order, passed by the disciplinary authority, bad; and that position of law in this regard is settled to the effect that while challenging the action of the disciplinary authority the appellants were required to satisfy the Writ Court as to what prejudice they had suffered for non-supply of the enquiry report. He has further submitted that besides making a bald statement that the enquiry report had not been supplied, the appellants did not make any averment anywhere regarding the nature of prejudice they had suffered for the non-supply of the enquiry report. In support of his contentions he has relied on the Supreme Court decisions given in the case of H.H. Shri Swamiji of Shri Amar Mutt and Others Vs. Commissioner, Hindu Religious and Charitable Endowments Department and Others, ; Bharat Singh and Others Vs. State of Haryana and Others, ; S.K. Singh Vs. Central Bank of India and Others, ; Union Bank of India Vs. Vishwa Mohan, ; State of U.P. v. J. Harendra Arora and Anr., reported in 2001 2 CLR 905 SC; and the case of Karunakar (supra).

14. We find that the learned Judge rightly dismissed the writ petition. We have arrived at such conclusion for the reasons mentioned hereinafter. The contention that appellants' remedy lay only before the forum established under the Industrial Disputes Act, 1947, it appears, was not agitated before the learned Judge; nor has it been raised before us. So, we find no reason to dwell on it.

15. It is true that during pendency of a departmental appeal, a writ petition challenging the same action which is the subject matter of the pending appeal, should not be entertained. But once a writ petition is entertained, at the stage of final hearing thereof, it cannot be rejected on the ground that during pendency of a departmental appeal it had been entertained. The hurdle is only at the stage of admission. Therefore, on this ground the appellants' writ petition cannot fail.

16. The only point on which the parties have actually fought is: the non-supply of the enquiry report. According to appellants they have suffered prejudice for the non-supply, and this is apparent from the findings of the enquiry officer and the decision of the disciplinary authority. According to respondent corporation the appellants have suffered no prejudice as will appear from the conspicuous absence of pleading in the affidavits filed by the appellants. According to the appellants the learned Judge wrongly applied the principles laid down by the Supreme Court in Karunakar's case (supra), because those are applicable only to a case of termination of service.

17. We do not find any merit at all in the contention that the principles laid down by the Supreme Court in Karunakar's case (supra) apply only to cases

concerning termination of service. The law laid down by the Supreme Court is absolutely clear. The proposition is: non-supply of enquiry report by disciplinary authority before imposing punishment ipso facto does not render the decision liable to be quashed. The delinquent is required to plead specifically and demonstrate convincingly the nature and extent of the prejudice suffered for the non-supply of the enquiry report. This principle is not confined only to the cases of termination of service as contended by the learned counsel for the appellants, but applies to all cases where an enquiry is held.

18. In the present case in the writ petition a statement was made that before imposing punishment the disciplinary authority had not supplied copies of the enquiry report. Admittedly a copy of the enquiry report was supplied to the appellants as an annexure to the opposition filed by the respondent corporation. In terms of principles laid down in Karunakar's case (supra) the appellants were required to show how they had been prejudiced because of the non- supply of the report. They were required to satisfy the Court that the supply of the report would have made a difference to the ultimate findings and the punishment given. Only on such satisfaction the Court could have interfered with the punishment order-But we have seen that in their affidavit-in-reply the appellants did not insert even a sentence about the question of prejudice there was no statement about prejudice anywhere. On the contrary in their affidavit-in-reply appellants went to the extent of contending that the Writ Court was competent to sit in appeal over the decision of the disciplinary authority. This being the factual position, we unhesitatingly hold that the learned Judge was perfectly justified in dismissing the writ petition relying on the ratio of Karunakar's decision (supra).

19. In view of our above conclusion the several authorities cited by the learned counsel for the respondent corporation do not require any detail examination, for the simple reason that the principles laid down in Karunakar's case (supra) were only reiterated with greater force in some of them; and the aspects of pleadings in writ petitions discussed in the rest are not germane to the present case.

20. Thus we find no merit in this appeal and accordingly the same is dismissed without any order as to costs. Just for the purpose of record we note that the appellants by an affidavit dated October 1, 2001 has brought on records of this appeal the fact of dismissal of their appeals by the departmental appellate authority with the modification that the punishment orders would take effect from February 20, 2001.

Ashok Kumar Mathur, C.J.

I agree.