
(1988) 03 CAL CK 0003
In the Calcutta High Court
Case No : F.M.A.T. No. 360 of 1988

The Calcutta Dock Labour Board and Others	APPELLANT
Vs	
Saroj Kumar Dutta and Others	RESPONDENT

Date of Decision : 01-03-1988

Acts Referred:

Citation : (1988) 2 CALLT 204 : 92 CWN 963

Hon'ble Judges : K.M. Yusuf, J;G.N. Ray, J

Bench : Division Bench

Advocate : Sukumar Guha, Ms. Pritisri Maiti, Ms. Swapna Bhunia, for the Appellant; R.M. Chatterjee and C.R. Chakraborty, for the Respondent

Judgement

G.N. Ray, J.—This appeal is directed against the judgment passed by the learned trial Judge on 14th January, 1988 in a writ proceeding initiated on the basis of the application made by the writ petitioner respondent.

2. It appears that against a departmental proceeding initiated against the said writ petition or by the Calcutta Dock Labour Board, the aforesaid writ petition was moved and various points were taken inter alia challenging the initiation of the disciplinary proceeding by issuing a charge-sheet and conduction of such disciplinary proceeding. It was contended by the writ petitioner in the said writ petition that the charge-sheet was issued with a closed mind and the disciplinary proceeding. It was contended by the writ illegally and in contravention of fairplay and natural justice.

3. The learned trial Judge disposed of the writ petition, inter alia, to the effect that the respondents to the writ petition namely, the appellants herein will supply all the documents as demanded by the writ petitioner within three weeks from the date of communication of that order. The writ petitioner will be at liberty to be represented by an Advocate of his own choice in the domestic enquiry, and raise objections relating to the proceedings in the domestic enquiry. The respondents will enhance 25% more of the subsistence allowance on completion

of one year period of suspension of the writ petitioner. It was further directed that the respondents to the writ petition would conclude the enquiry within a period of four months from the date of communication of that order, but in the event the writ petitioner would ask for any adjournment, the period thereof should be treated as extended.

4. Being aggrieved by the aforesaid order, the instant appeal has been preferred by the Calcutta Dock Labour Board and Mr. Guha, learned counsel appearing for the appellants has contended before us that the subsistence allowance cannot be increased as a matter of course. In appropriate cases, if the proceeding is delayed for more than one year from the date of initiation, the subsistence allowance can be enhanced upto the limit of 50%. It has been contended by the appellants that in the facts of the case the proceeding had been delayed not because of any dilatory action adopted by the appellants, and as such, the learned trial Judge should not have directed the enhancement of the subsistence allowance by 25%.

5. Mr. Guha has further contended that the learned trial Judge has gone wrong in directing the respondents to the writ petition to supply all the documents, as demanded by the writ petitioner within three weeks from the date of communication of that order. It has been contended by Mr. Guha that such direction is unjust because all the documents which were not necessary for the purpose of disposal of the enquiry proceeding cannot be demanded by the writ petitioner. In this connection our attention has been drawn to a decision of the Supreme Court in the case of Chandrama Tewari Vs. Union of India (UOI) (through General Manager, Eastern Railways), . It has been held as follows in the said decision :

It is now well settled that if copies of relevant and material documents including the statement of witnesses recorded in the preliminary enquiry or during investigation are not supplied to the delinquent officer facing the enquiry and if such documents are relied in holding the charges framed against the officer, the enquiry would be vitiated for violation of principles of natural justice. Similarly, if the statement of witnesses recorded during the investigation of a criminal case or in the preliminary enquiry is not supplied to the delinquent officer that would amount to denial of opportunity of effective cross-examination. It is difficult to comprehend exhaustively the facts and circumstances which may lead to violation of principles of natural justice or denial of reasonable opportunity of defence. This question must be determined on the facts and circumstances of each case. While considering this question it has to be borne in mind that a delinquent officer is entitled to have copies of material and relevant documents only which may include the copy of statement of witnesses recorded during the investigation or preliminary enquiry or the copy of any other document which may have been relied in support of the charges. If a document has no bearing on the charges or if it is not relied by the enquiry officer to support the charges, or if such document or material was not necessary for the cross-examination of

witnesses during the enquiry, the officer cannot insist upon the supply of copies of such documents, as the absence of copy of such document will not prejudice the delinquent officer. The decision of the question whether a document is material or not will depend upon the facts and circumstances of each case.

6. Mr. Guha has submitted that the writ petitioner has demanded a number of documents. All such documents have not been taken into consideration or intended to be considered by the disciplinary authority for the purposes of disposal of the disciplinary proceeding. In the circumstances, the learned Judge should not have given a blanket order by directing to supply all the documents as demanded by the writ petitioner.

7. Mr. Guha has further contended that according to the service rules, a delinquent officer can get the assistance of a dealing assistant, as a defence helper and in the instant case, such an opportunity was given to him to be represented by an employee of the Dock Labour Board as a defence assistant. Under the rules of domestic enquiry, a lawyer cannot be engaged as a matter of course, simply on the asking for the same. Only in an appropriate case if the authority feels that engagement of a lawyer is necessary then on the request of the delinquent officer a lawyer of his choice may be appointed. Mr. Guha has submitted that the petitioner has given no reason for engagement of a lawyer. He only submitted that one lawyer is almost as his guardian and hence he may be given permission to assist him. But since the department has not engaged any lawyer, the department has rightly rejected the prayer for appointment of a lawyer and the learned trial Judge was not justified in directing the engagement of a lawyer without giving any reason whatsoever- for such engagement of a lawyer particularly when the delinquent officer has not assigned any reason for engagement of a lawyer excepting that the lawyer happens to be his local guardian

8. The learned counsel for the appellant has further contended that the delinquent officer has intended to refer to a number of documents and examine about 18 witnesses. In such circumstances, it was not practicable to complete the ,domestic enquiry within the period of four months from the date of communication of the order, and as such, that part of the order of the learned trial Judge requires suitable modification.

9. Mr. Chatterjee, learned counsel appearing for the writ petitioner respondent has contended that in the domestic enquiry serious charges have been levelled against the delinquent officer and there is a charge of misappropriation of money. Since the charges are quite serious and the personal reputation of the delinquent officer is involved in the matter, a lawyer should have been allowed by the department and since that was not done, the learned Trial Judge has directed for engagement of a lawyer according to the choice of the delinquent officer and no exception should be taken in respect of such direction.

10. Mr. Chatterjee has also submitted that under the rules, suspension allowance

can be increased upto the 50% of the subsistence allowance if the departmental proceeding is not completed within a reasonable time and the suspension continues for more , than one year. In the instant case it cannot be said that the delay in disposing of the departmental proceeding was attributable to the delinquent officer. Hence the direction given by the learned trial Judge is only appropriate in the facts of the case and no interference is called for.

11. So far as the direction for giving all the documents asked for by the delinquent officer is concerned, Mr. Chatterjee, as contended that the delinquent officer has asked only such documents , as may be necessary for the purpose of his defence and meeting the charges in the departmental proceeding. In such circumstances, the direction passed by the learned Trial Judge is only reasonable and the Appeal Court should not interfere with the same.

12. Mr., Chatterjee has contended that the disciplinary proceeding is pending for a long time and the delinquent officer is suffering an order of suspension. In the circumstances, the direction of the learned Trial Judge to complete the disciplinary proceeding within a period of four months is certainly reasonable and just and interference by the Appeal Court is not called for.

13. After considering the respective contentions made by the learned counsel appearing for the parties, it appears to us that in the facts of the case it cannot be contended that the delay to complete the disciplinary proceeding is attributable to the delinquent officer. In the facts and circumstances, the direction of the learned Trial Judge for increasing 25% more of the subsistence allowance is in accordance with the rules and no interference is called for in the instant appeal. We, therefore, endorse the said direction of the learned Trial Judge.

14. So far as the engagement of a lawyer is concerned, it appears to us that the delinquent officer has not made out any case for engagement of a lawyer on the footing that the matter was a complicated one and he was not in a position to conduct the case by himself or with the assistance of an employee as a defence assistance, In the circumstances, we do not think that the department was unjust in rejecting the ground shown by the delinquent officer to engage a lawyer of his choice. The submissions made by Mr. Chatterjee unfortunately are not the contentions made by the delinquent officer and we are, therefore, not prepared to accept such contentions made from the bar. It is, however, made clear that if during the pendency of the proceeding, the writ petitioner can make out a proper case for engagement of a lawyer by making application to that effect, the concerned department will take into consideration the same and pass appropriate order in the matter of engagement of a lawyer. It. appears to us that simply because at the initial stage no lawyer was engaged, it cannot be contended very seriously that even in future such engagement of lawyer cannot be allowed even though the delinquent officer can make out a just case for appointment of such a lawyer at a subsequent stage. By way of abundant caution we may however add here that we have not expressed any opinion on the

requirement of the help of a lawyer because the department concerned will consider such prayer if made.

15. It also appears to us that Mr. Guha is justified in his submissions that all the documents demanded by the delinquent officer need not be given to him a matter of course. We may add here that the question requires to be determined in the facts and circumstances of each case. The authorities concerned should determine the question by allowing the delinquent officer to get such material and relevant documents as are relevant for proper and effective defence of the delinquent in the light of the decision of the Supreme Court in the case of Chandrama Tewari Vs. Union of India (UOI) (through General Manager, Eastern Railways), : The appellants and its officers will consider the application of the delinquent officer for supply of such documents in the light of the above observations and will give copies and/or extract of such documents as will be relevant and necessary for the purpose of defending the case by the delinquent officer. The appellants will supply the delinquent officer the relevant documents within a period of four weeks from today. If it is not possible to give copies of some of the said documents, the delinquent officer should be given reasonable opportunity to inspect records or such documents and to take extracts of such documents for the purpose of defence and the delinquent officer should be informed for taking inspection and extracts of such document within two weeks from today. We feel that the proceeding should be concluded as quickly as possible. It is, therefore, directed that within a period of six months from today the disciplinary proceeding should be concluded. If for any unsurmountable difficulty the disciplinary proceeding cannot be completed within the period of six months, liberty is given to either of the parties to mention the matter before this court for getting extension of the same. Such mentioning should be made before expiry of the period upon notice to the other side. Subject to the aforesaid leave, the appeal is disposed of accordingly treating the same as on day's list.

16. It is, however, made clear that we have not expressed any opinion about the legality and the validity of the charge-sheet and/or the conduction of the disciplinary proceeding and the delinquent officer will be free to take such objections as may be available to him and the points agitated in the writ petition are kept open.

17. There will be no order as to costs in this appeal.

K.M. Yusuf, J.

18. I agree.