
(2014) 12 CAL CK 0081
In the Calcutta High Court
Case No : WPST No. 189 of 2012

The State of West Bengal

APPELLANT

Vs

Asoke Bose

RESPONDENT

Date of Decision : 22-12-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 12 CAL CK 0081

Hon'ble Judges : J.K. Biswas, J; Ishan Chandra Das, J

Bench : Division Bench

Advocate : Ram Mohan Pal, Advocate for the Appellant; B.N. Roy, Advocate for the Respondent

Judgement

Jayanta Kumar Biswas, J.—The petitioners in the WPST under Article 226 of the Constitution of India dated May 16, 2012 are questioning an order of the West Bengal Administrative Tribunal dated September 7, 2011 allowing the respondent's OA No. 1316 of 2009.

2. The respondent was working as an SI in the West Bengal Police Force. The Howrah Superintendent of Police initiated a disciplinary proceeding against him by issuing a charge memo dated April 26, 2007. The allegation was that he had arrested a person illegally on March 18, 2009 and made false entries. The inquiring officer held him guilty.

3. Accepting the findings of the inquiring officer, the Superintendent of Police passed the final order dated July 23, 2007 inflicting the penalty of reduction of pay by an amount equal to one increment in the scale of pay for one year.

4. The respondent filed an appeal against the final order dated July 23, 2007. By an order dated June 16, 2008 the Spl. Inspr. Genl. of Police & Dy. Inspr. Genl. of Police, Presidency Range rejected the appeal.

5. Then the respondent filed the OA questioning the final order of the disciplinary authority dated July 23, 2007 and the order of the appellate authority dated June

16, 2008. The petitioners contested the OA by filing a reply dated May 10, 2010. The Tribunal allowed the OA on the grounds that the orders were passed in contravention of cls. (e) and (f) of reg. 861 of the Police Regulations, Bengal, 1943.

6. The relevant part of the Tribunal order is quoted below:--

"In Rule 861(e) of the P.R.B., each and every charge shall be discussed separately, but, in the final order passed by the Superintendent of Police, Howrah, there is no such specific findings/discussion in respect of each charge. Moreover, from the final order, it cannot be ascertained whether the opportunity was given to the delinquent for show cause before passing the final order. The final order lays a major punishment and as a result, the final order has suffered illegality. If we look into the appellate order page 172 to 174 of the application, in Disciplinary Proceeding No. 8/07, the appellate authority has also violated the mandatory provision of regulation 861 (e) PRB for not discussing each and every charge."

7. Mr. Pal appearing for the petitioners has argued as follows. The Tribunal was wrong in holding that the disciplinary authority and the appellate authority did not comply with the requirements of the Police Regulations, Bengal, 1943. Both the authorities extensively dealt with the charges against the respondent and the materials on the basis whereof the inquiring officer recorded the finding of guilt.

8. Mr. Roy appearing for the respondent has submitted as follows. It is not correct to say that the disciplinary authority and the appellate authority passed their respective orders in strict compliance with the provisions of the regulations. Though the Tribunal did not quash the inquiry report containing the finding of guilt recorded by the inquiring officer and the charge memo, it is evident that the Tribunal did not permit the disciplinary authority to proceed afresh and thus to make it an unending process.

9. Regulation 861 of the Police Regulations, Bengal, 1943 deals with proceedings in cases of major punishment.

10. After examining the orders of the disciplinary and the appellate authority the Tribunal formed an opinion that both the authorities did not discuss the charges against the respondent separately. The Tribunal also held that the order did not reveal whether the disciplinary authority had given the respondent an opportunity of showing cause before passing the final order.

11. The provisions of reg. 861(e) of the regulations are quoted below:--

"(e) After the evidence of the witnesses and the further statement, if any, in defence of the person charged have been placed on record, the officer conducting the enquiry shall in writing--

(i) discuss separately each charge,

(ii) arrive at a finding on each charge, and

(iii) make an order or recommend an order to the authority empowered to pass an order. When the enquiring officer belongs to a department other than the police, the proceedings shall always be forwarded to the parent district/unit for final order.

Note.--In case in which the enquiry officer does not pass the final order and recommends an order to the authority empowered to pass an order, the person charged shall be furnished with a copy of enquiring officer's finding and/or the recommendations of the forwarding authority, so that he may at the personal hearing be in a position to object to or refute anything therein stated which, in his opinion is incorrect."

12. The provisions of reg. 861(f) of the regulations are quoted below:--

"(f) The authority empowered to pass the orders of punishment shall grant a personal hearing to the person charged if prayed for and then pass the final orders. When the enquiring officer himself passes the final order, no personal hearing is necessary as the person charged is present throughout the enquiry.

After the enquiry has been completed and after the punishing authority has arrived at a provisional conclusion in regard to the penalty to be imposed the accused officer shall, if the penalty proposed is dismissal, removal, or reduction in rank, be supplied with a copy of the report of the enquiring officer and be called upon to show cause within a reasonable time not ordinarily exceeding one month against the particular penalty proposed to be inflicted except in the following cases-

(i) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge;

(ii) where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to give that person an opportunity of showing cause; or

(iii) where the Governor is satisfied that in the interest or the security of the State it is not expedient to give to that person such an opportunity.

Explanation.-If any question arises whether it is reasonably practicable to give to any person any opportunity of showing cause against the action proposed to be taken in regard to him, the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank, as the case may be, shall be final.

Note.-Where the provisional conclusion is different from the finding and recommendation of the enquiring officer grounds for such conclusion shall be recorded."

13. It is evident from the provisions of reg. 861(e) that they had no manner of application to the disciplinary authority and the appellate authority; and that the

obligations created by the provisions were of the officer conducting the inquiry. It is, therefore, evident that the Tribunal quashed the orders of the disciplinary authority and the appellate authority applying the provisions of a clause of the regulation which had no manner of application to the two authorities.

14. In view of the provisions of cl. (f) of reg. 861 of the regulations (applicable only to the disciplinary authority, not to the appellate authority), the disciplinary authority was required to give the respondent a personal hearing, if he had prayed for it and the authority was required to give the respondent an opportunity of showing cause, if after considering the findings of the enquiring officer he (the authority) had arrived at a provisional conclusion that it was a case for imposition of the penalty of dismissal, removal or reduction in rank.

15. Here it is nobody's case that the disciplinary authority had arrived at a provisional conclusion that it was a case for imposition of the penalty of dismissal, removal or reduction in rank. As noted hereinbefore, here the disciplinary authority inflicted the penalty of deprivation of an approved service increment for one year.

16. Regulation 857 of the regulations deals with the major and minor punishments, and the regulation is quoted below:--

"857. Major and minor punishments. [? 7, Act V, 1861, read with ? 243 of the Government of India Act, 1935].--Punishments are divided into major and minor. Major punishments include dismissal, removal from service, reduction, deprivation of approved service increment, removal from any office of distinction or special emolument and award of black marks. Minor punishments include censures (reprimands for misconduct), extra drill, extra fatigue duty and confinement to quarters with or without punishment drill, extra guard, fatigue or other duty."

17. It is evident from the provisions of reg. 857 that deprivation of approved service increment is one of the major punishments; but that it is clearly distinct from the major punishments dismissal, removal or reduction in rank. As noted hereinbefore, the disciplinary authority would have been under an obligation to give the respondent an opportunity of showing cause, only if he had arrived at a provisional conclusion that the penalty to be imposed was dismissal, removal or reduction in rank.

18. In view of the above-noted factual and legal positions, we are unable to see how the Tribunal could reach the conclusion that in the case the disciplinary authority and the appellate authority both had not followed "the norms" stated in cls. (e) and (f) of reg. 861 of the regulations.

19. The report of the enquiring officer was quite an exhaustive one and it reveals that the enquiring officer dealt with every aspect of the allegations made against the respondent and the evidence taken down by him.

20. The final order of the disciplinary authority reveals that he accepted the

findings of the enquiring officer based on eight prosecution witnesses and gave the respondent an opportunity of personal hearing as well. He recorded in his order that the respondent "prayed for mercy." Considering all aspects and the respondent's past service records, he inflicted the penalty. The appellate authority dealt with the matter in detail and found no merit in the appeal.

21. In the facts and circumstances stated hereinbefore, we are unable to sustain the order of the Tribunal. The allegations against the respondent were that he had arrested a person illegally and made false entries. It is evident that the disciplinary authority took a rather lenient view. An illegal arrest amounts to an infringement of a fundamental right of a person. The order of the Tribunal clearly reveals that it granted the respondent a partial relief on wrong basis.

22. For these reasons, we set aside the Tribunal order, allow the WPST and dismiss the OA. No costs. Certified xerox.