
(2019) 09 CAL CK 0227

In the Calcutta High Court

Case No : Civil Application (CAN) No. 11162 Of 2017 In Wp. State Admin Trib
(WPST) No. 35, 38 Of 2018

Udayan Majumdar

APPELLANT

Vs

State Of West Bengal & Ors r

RESPONDENT

Date of Decision : 18-09-2019

Acts Referred:

West Bengal Services (Classification Control And Appeal) Rules, 1971 — Rule 8(iv),
10(12), 10(13)

Citation : (2019) 09 CAL CK 0227

Hon'ble Judges : Saugata Bhattacharyya, J; Dipankar Datta, J

Bench : Single Bench

Advocate : Indranil Nandi, Deba Prasad Samanta, Sayak Konar, Tapan Kr.
Mukherjee, Pranab Halder

Final Decision : Disposed Of

Judgement

O.A. 1159 of 2012 was presented before the West Bengal Administrative Tribunal (hereafter the 'tribunal') by Sri Udayan Majumder (hereafter the 'petitioner') challenging the penalty imposed upon him by the Secretary to the Government of West Bengal, Personnel & Administrative Reforms Department by an order dated August 14, 2012 whereby his pay was reduced by five annual increments till his retirement and also that he would be debarred from promotion during the period he undergoes such penalty; however, such debarment from promotion would not be treated and imposed as a penalty.

By a detailed judgment and order dated December 20, 2013, the tribunal upheld the penalty imposed on the petitioner and dismissed the original application.

Aggrieved by the aforesaid judgment and order, the petitioner has invoked the writ jurisdiction of this Court.

We had the occasion to hear the parties on the merits of the writ petition at substantial length on previous occasions. However, we wish to dispose of the writ

petition on a short point without expressing any final opinion on the merits of the claim raised by the petitioner in regard to the alleged lack of materials in the records of inquiry to drive home the charge against him.

The inquiry against the petitioner was conducted by the Commissioner for Departmental Inquiries, Vigilance Commission, West Bengal (hereafter the 'Commissioner'). The report of inquiry dated March 07, 2011 prepared by the Commissioner found the petitioner guilty of the charge levelled against him. Upon receipt of such inquiry report, the disciplinary authority of the petitioner issued an order dated June 27, 2011, relevant portion whereof is quoted hereinbelow:

".....AND WHEREAS on consideration of the written statement submitted by the said Shri Udayan Majumder, WBCS (Exe), the report of the Inquiring Authority and the records of the case, the Disciplinary Authority is of the opinion that the said Shri Udayan Majumder, is guilty of the charge framed against him and the Disciplinary Authority tentatively decided that the charged officer, Shri Udayan Majumder, be punished with reduction of his pay by 05 (five) stages in the time scale of pay till his retirement.

NOW, THEREFORE, in pursuance of Rule 10 (12) of the W.B.S (C.C. & A.) Rules, 1971, the Governor is pleased hereby to call upon the said Shri Udayan Majumder, WBCS (Exe), to submit within fifteen days from the date of receipt of this order by him such representation as he may wish to make on the penalty proposed but only on the basis of the evidence adduced during the inquiry.

A copy of the report of the Inquiring Authority is enclosed."

By his representation dated July 18, 2011, the petitioner duly showed cause as to why the penalty proposed should not be imposed on him. After receiving the petitioner's representation, the records were sent to the Public Service Commission, West Bengal (hereafter the 'PSC') for obtaining its advice and recommendation. Upon receipt of advice from the PSC, the disciplinary authority of the petitioner issued a further order bearing no. 1053-P&AR (Vig.) December 09, 2011, relevant portion whereof reads as follows:

".....AND WHEREAS being advised by the Public Service Commission, West Bengal and considering all other aspects of the proceedings case the Disciplinary Authority further specifies that while the pay of the charged officer, Shri Udayan Majumder, will be reduced by five (05) annual increments as admissible in terms of W.B.S. (R.O.P.A.) Rules, 2009, till his retirement i.e. 31-01-2014, he will not be allowed to earn any increment during such period of reduction and his pensionary benefits will be determined on his actual last pay drawn on 31-01-2014.

NOW, THEREFORE, in pursuance of Rule 10(12) of the W.B.S. (C.C. & A.) Rules, 1971, the Governor is pleased hereby to call upon the said Shri Udayan Majumder, WBCS (Exe.) to submit within fifteen days from the date of receipt of

this order by him such representation as he may wish to make on the penalty proposed but only on the basis of the evidence adduced during the inquiry.

A copy of the report of the Inquiring Authority is enclosed."

Once again, by his representation dated December 21, 2011, the petitioner showed cause why he deserves no punishment. Although the final order of the disciplinary authority dated August 14, 2012 refers to the petitioner having duly submitted his reply on the question of penalty proposed by the department's order dated December 09, 2011, it does not appear from such final order imposing penalty that the same was at all considered. For better appreciation of how the disciplinary authority proceeded in the matter, we may quote the last five paragraphs of the order dated August 14, 2012 below :

".....AND WHEREAS Shri Udayan Majumder was again called upon this department's Order No. 1053-P&AR(Vig.) dated 7th/9th December, 2011 to submit such representation as he might wish to make on the proposed penalty within fifteen days from the date of receipt of the said order and he replied on the same;

AND WHEREAS in terms of Sub-Rule 13 of Rule 10 of the West Bengal Services (Classification, Control & Appeal) Rules, 1971 all papers as sought for by the Public Service Commission, West Bengal relating to the said Departmental Proceedings were again sent to the Public Service Commission, West Bengal for its opinion;

AND WHEREAS the Public Service Commission, West Bengal after examining the case records and all other aspects related to the case, recommended and advised to impose the penalty of reduction of pay of the Charged Officer by 5(five) annual increments till his retirement under rule 8(iv) of the West Bengal Services (Classification, Control & Appeal) Rules, 1971. The Public Service Commission, West Bengal has also advised that he will not be allowed to earn any increment till his retirement and he will be debarred from promotion during the period of his undergoing the penalty and such debarment from promotion should not be treated and imposed as a penalty and may be incorporated in the final order distinctly as direction.

NOW, THEREFORE, considering all aspects of the instant departmental proceedings case and in exercise of the power conferred by Rule 8(iv) of the West Bengal Services (Classification, Control & Appeal) Rules, 1971, the Governor is pleased to order that the penalty of reduction of pay by 5(five) annual increments be imposed upon Shri Udayan Majumder, WBCS (Exe.) till his retirement and he will be debarred from promotion during the period of his undergoing penalty. But such debarment from promotion shall not be treated and imposed as a penalty.

A copy of the letter no. 1817-PSC dated 30.07.2012 containing recommendation and advice of the Public Service Commission, West Bengal is enclosed."

A couple of glaring illegalities would appear from the factual narrative, referred to above.

The first is that the disciplinary authority of the petitioner had found him guilty without even furnishing to him a copy of the inquiry report. Such action, in our view, appears to be in the teeth of the decision of the Supreme Court reported in A.I.R. 1994 SC 1074 : Managing Director, ECIL, Hyderabad vs. B. Karunakar Etc. Etc. Without offering an opportunity to the petitioner to submit his representation against the inquiry report, imposing penalty amounts to violation of the principles of natural justice.

The other illegality appears to be that without consideration of the points urged by the petitioner in his representation dated July 18, 2011 as well as the subsequent representation dated December 21, 2011, the disciplinary authority had decided to impose punishment on the petitioner. We are critical of the final order imposing penalty since it does not show application of mind and is also bereft of any reason.

These points assume significance on the face of a letter dated July 23, 2004, purportedly issued by the petitioner to the Cotton Corporation of India which, however, could not by reference to the records be clearly proved to have been despatched to the addressee.

On a previous occasion, we had requested the learned Advocate General for the State of West Bengal to appear for the respondents and consider the following points:

(i) The preliminary enquiry report of the Director, Handloom and Textiles dated 16th August, 2007 (Exhibit- P7) reveals that the petitioner had in fact issued a letter of cancellation dated 23rd July, 2004 addressed to the Cotton Corporation of India but it could not be proved to the satisfaction of the said director as to whether such letter was despatched and received by the addressee or not;

(ii) The enquiry officer held the petitioner guilty of the charge of dereliction of duty by holding that notwithstanding issuance of the letter dated 23rd July, 2004 by him, if at all, it was the duty of the petitioner to have enquired into the matter over phone as well as to send special messenger to cancel booking of 1164 cotton bales to save the financial interest of the company; and

(iii) If indeed the letter dated 23rd July, 2004 had been signed by the petitioner and a memo no. inserted therein, should the petitioner have been proceeded against for dereliction of duty to protect the financial interest of the company or failure to take follow up steps to ensure that such letter reached the addressee; and, therefore, was guilty of a lesser degree of misconduct."

Although the learned Advocate General had emphatically submitted that no credence ought to be given to the letter dated July 23, 2004, referred to above, we cannot simply brush it aside because such document was found to be in the records by the officer, who conducted the preliminary inquiry (the Director,

Handloom and Textiles) and the Commissioner held the petitioner guilty of dereliction of duty by not taking follow-up steps, if at all he had issued such letter. Therefore, it would be necessary to unearth how such letter could find place in the records and have a finding recorded in this behalf.

We do not consider that in course of hearing a writ petition, the writ Court should embark on such an inquiry. Interest of justice would be sufficiently served if the matter is left for determination of the disciplinary authority de novo.

For the reasons aforesaid, we set aside the order of penalty imposed by the disciplinary authority by the order dated August 14, 2012 as well as the orders by which the petitioner was called upon to show cause why penalty should not be imposed on him.

The matter is remitted to the disciplinary authority for continuing the disciplinary proceeding afresh from the stage of supply of the inquiry officer's report to the petitioner. We grant liberty to the petitioner to submit his representation against the inquiry report of the Commissioner by October 31, 2019.

Upon receipt of such representation, the disciplinary authority shall first decide the point of innocence or guilt of the petitioner. Should a finding be returned that the petitioner is guilty of the charge, a second show-cause notice shall be issued to him by December 31, 2019 proposing the penalty that the disciplinary authority wishes to impose on him. Such notice must also contain the advice or recommendation of the PSC.

The petitioner shall be at liberty to submit his representation to the second show-cause notice within 15 days of its receipt.

Within a period of a month thereafter, the disciplinary authority shall pass the final order.

Should the final order impose any penalty, the petitioner shall be at liberty to challenge such order in an appeal before the Governor.

We have ascertained that though the order dated August 14, 2012 was expressed in the name of the Governor, the Governor himself did not play any role in the matter. Therefore, any subsequent order passed by the disciplinary authority which is expressed in the name of the Governor without the Governor having any role to play in the decision making process affecting the petitioner's interest, an appeal shall lie thereagainst to the Governor of the State subject to what is provided in the extant rules.

In case, however, the disciplinary authority arrives at a finding that the petitioner is not guilty of the charge, he shall be entitled to all service benefits as if no disciplinary proceeding had been initiated against him.

With the aforesaid directions, the writ petition as well as the application (C.A.N. 11162 of 2017) stands disposed of. There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously.