

(2016) 12 CAL CK 0005
In the Calcutta High Court

Case No : Mat No. 1961 of 2015 Can 288 of 2016 and Can 287 of 2016

Union of India

APPELLANT

Vs

Barun Kumar Malla

RESPONDENT

Date of Decision : 08-12-2016

Acts Referred:

Central Industrial Security Force Rules, 2001 — Rule 36(21)III

Citation : (2017) 152 FLR 658 : (2017) 2 WBLR 215

Hon'ble Judges : Mr. Nishita Mhatre, ACJ. & Mr. Tapabrata Chakraborty, J.

Bench : Division Bench

Advocate : Mr. Subir Sanyal, Mr. Anirban Mitra, and Mr. Tapas Kumar Chatterjee, Advocates, for the Appellant; Mr. K.V.S. Mahapatra, and Mr. Kashinath Bhattacharyya, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Tapabrata Chakraborty, J. - The short point which arises for consideration in the instant appeal is as to whether the denial of personal hearing to the charged officer in a proceeding, initiated under the provisions of the Central Industrial Security Force Rules, 2001 (hereinafter referred to as the said Rules of 2001), has maligned the decision making process towards issuance of the final order of punishment by the disciplinary authority upon disagreeing with the Inquiry Officer.

2. The said issue needs to be decided in the backdrop of the facts that initially a disciplinary proceeding was initiated against the writ petitioner/respondent through issuance of a charge sheet dated 15th October, 2007. The respondent contested the said proceedings and upon conclusion of enquiry, a report was filed to the effect that the allegations levelled do not stand proved. Thereafter the disciplinary authority issued a disagreement note disagreeing with the Inquiry Officer. The respondent was not given any opportunity to show cause in defence of the "not guilty" finding in his favour returned by the Inquiry Officer. Without granting any such opportunity of personal hearing, a final order of punishment

was passed on 16th December, 2009. Challenging the said order of punishment the respondent preferred a writ petition being which was allowed by an order dated 4th August, 2015 setting aside the disagreement note and the final order of punishment. Aggrieved thereby, the present appeal has been preferred.

3. The learned advocate appearing for the appellants argues that in the absence of any provision towards grant of an opportunity of personal hearing under Rule 36(21)(III) of the said Rules of 2001, the learned Judge ought not to have set aside the disagreement note and the final order of punishment on the ground of denial of personal hearing to the respondent. The respondent submitted a written representation in response to the disagreement note and upon due consideration of the same, in strict consonance with the rules, the final order of punishment was passed and that as such there is no error in the decision making process warranting interference of the Hon'ble Court. Rule 36(21)(III) only speaks of grant of an opportunity of hearing by way of a written representation or submission to the disagreement note. Such written representation was called for and the respondent duly submitted the same and upon consideration of the same the final order was passed. In the writ petition the said Rule 36(21)(III) was not challenged and after submitting a representation to the disagreement note, the respondent could not have challenged the final order of punishment on the ground of denial of personal hearing. In support of such argument reliance has been placed upon a judgment delivered in the case of *Ganesh Santa Ram Sirur v. State Bank of India and another*, reported in (2005) 1 SCC 13.

4. He further argues that the disciplinary authority has been conferred the jurisdiction to consider the records of the inquiry and to record its findings on the charges and to remit the case to the inquiring authority for further hearing and even to submit a disagreement note, for reasons to be recorded by it in writing. In exercise of such jurisdiction the disciplinary authority upon recording appropriate reasons had issued the disagreement note and had issued the final order of punishment upon considering the representation filed by the respondent. The competent authority, upon due application of mind over the grievances of the respondent, had passed a reasoned order and in the facts and circumstances of the case, it cannot be held that before rejecting the contention of the respondent, the said authority was mandatorily bound to grant an opportunity of personal hearing. When principles of natural justice require an opportunity to be heard before an adverse order is passed, it does not in all circumstances mean a personal hearing. In support of such argument reliance has been placed upon a judgment delivered in the case of *Union of India and another v. M/s. Jesus Sales Corporation*, reported in AIR 1996 SC 1509.

5. Per contra, Mr. Mahapatra, learned advocate appearing for the writ petitioner/respondent submits that the issue agitated by the appellants is no longer res integra inasmuch as the same has already been decided through a judgment dated 7th July, 2015 passed by the Hon'ble Division Bench of this Court in the case of *The Inspector General, Central Industrial Security Force (North), Eastern*

Sector & Another v. G. C. Bilarwan, Deputy Commandant & Others. In the said judgment it has been categorically held that where there is no specific provision for grant of any opportunity of hearing to the delinquent, it has to be read into the rules. It had also been observed that even a post-decisional hearing is not sufficient to correct the mistake of not affording a pre-decisional hearing. The said judgment has been duly complied with by the appellants. The disciplinary authority committed an error by not granting an opportunity of personal hearing to the respondent to meet the findings in the disagreement note and such error would have earned immunity had it not been interfered with.

6. Placing reliance upon the judgments delivered in the cases of Punjab National Bank & Ors. v. Kunj Behari Misra, reported in (1998) 7 SCC 84, Yoginath D. Bagde v. State of Maharashtra & Anr., reported in (1999) 7 SCC 739, Lav Nigam v. Chairman & Md. ITI Ltd & Anr., reported in (2006) 9 SCC 440 and S.K. Ajmer v. Union of India & Ors., Mr. Mahapatra submits that when a finding of "not guilty" is sought to be overturned to one of "guilty", the delinquent or the accused has a right of being heard in the matter of such consideration overturning the finding. Furthermore, the presenting officer in the written brief submitted in the inquiry, concluded that the charges could not be proved and that as such the disciplinary authority could not have taken a view different from what the presenting officer took before the inquiring authority.

7. He further argues that the judgment delivered in the case of Ganesh Santa Ram Sirur (Supra) is distinguishable on facts inasmuch as in the same seven charges were levelled against the delinquent out of which the Inquiry Officer dropped one charge and out of the remaining six charges five charges were proved whereas in the instant case none of the charges levelled against the respondent were found to have been proved by the Inquiry Officer. Such finding of the Inquiry Officer had been totally overturned by the disciplinary authority and that too without granting an opportunity of personal hearing to the respondent. The subject matter of challenge in the case of M/s. Jesus Sales Corporation (Supra) was an order of an appellate authority passed in respect of an import licence and is thus distinguishable on facts. Whether a personal hearing is required to be granted depends upon the facts of the case and to ensure fairness.

8. Heard the learned advocates appearing for the respective parties and considered the materials on record. There was delay of 125 days in preferring the appeal and for condonation of such delay an application has been filed. We are satisfied with the explanation given towards the delay which occasioned towards preference of the appeal and accordingly the application for condonation of delay being CAN 288 of 2016 is allowed.

9. Indisputably, the charges levelled against the respondent by the charge sheet dated 15th October, 2007 did not stand proved through the inquiry conducted by the Inquiry Officer. The presenting officer in his written submission filed before the Inquiry Officer, concluded that the charges could not be proved but the

disciplinary authority took a different view and that too without granting an opportunity of personal hearing.

10. There is no dispute as regards the proposition of law that whether personal hearing is required to be granted depends upon the facts of the case and to ensure fairness. Everything that affects a citizen in his civil life inflicts a civil consequence. In the instant case findings in favour of the respondent as arrived at upon inquiry have been overturned by the disciplinary authority and a person initially found not guilty had been inflicted a major punishment and that too without grant of an opportunity of personal hearing and such action of the disciplinary authority is violative of the principles of natural justice and cannot be construed as "a fair crack of the whip". In the instant case there is also no provision in the said Rules of 2001 debarring grant of personal hearing. The judgments, as relied upon by the appellants, are totally distinguishable on facts and have no manner of application in the facts of this case.

11. It is trite that rules of "natural justice" are not embodied rules. The phrase "natural justice" is also not capable of a precise definition. The underlying principle of natural justice, evolved under the common law, is to check arbitrary exercise of power by the State or its functionaries. Therefore, the principle implies a duty to act fairly and the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. This rule cannot be sacrificed at the altar of administrative convenience or celerity. When the decision taken by the authority involves civil consequences of a grave nature, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a personal hearing. The requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute. Even written arguments are no substitute for an oral hearing. A personal hearing enables the authority concerned to watch the demeanour of the parties to the proceedings and also to clear up his doubts during the course of the arguments.

12. Applying such proposition of law to the facts of this case we do not find any cogent reason to differ with the views of the learned Single Judge. The learned Single Judge, upon dealing with all the factual issues, arrived at specific findings in consonance with the judgments of the Hon'ble Supreme Court and we do not find any error in the judgment impugned. The stay application and the appeal are, accordingly, dismissed.

13. There shall, however, be no order as to costs.

14. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.