
(2019) 09 CAL CK 0181

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 9934 (W) Of 2019

Vijoy Kumar Shukla

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 06-09-2019

Acts Referred:

Indian Penal Code, 1860 — Section 306, 323, 452, 498A, 504, 506
Code Of Criminal Procedure, 1973 — Section 4
Railway Protection Force Rules, 1987 — Rule 146.3, 146.4, 146.6, 153
Constitution Of India, 1950 — Article 311(2)

Citation : (2019) 09 CAL CK 0181

Hon'ble Judges : Md. Nizamuddin, J

Bench : Single Bench

Advocate : Achin Kumar Majumder, Shankar Ranjan Sen

Final Decision : Disposed Of

Judgement

MD. Nizamuddin, J

Heard learned Advocates for the Parties.

This Writ Petition has been filed challenging the impugned order of suspension dated 21.12.2010 and charge-sheet dated 23.3.2011 passed by the respondents/ railway authorities.

Relevant facts in brief in this case are hereunder.

According to the petitioner, his case is that during his posting at RPF Post, Panagarh under Asansol Division as a Head Constable of Railway Protection Force of Eastern Railway, he was placed under suspension by an order dated 21.12.2010 on the ground of contemplating Departmental Proceedings.

Petitioner contends that he was served with a charge-sheet dated 10th January, 2011 along with memorandum of charges and was asked to reply within 10 days against the said charge-sheet dated 10th January, 2011 as appears from

Annexure 'P-2' to the Writ Petition, contents of the said charge-sheet is as follows;

"HC/4923 Vijoy Kumar Shukla of RPF Post/PAN is charged for discreditable conduct, falsehood and serious dereliction of duty in that-

(1) Case No. 81/2008 dated 26.2.2008 U/S 453, 3223, 504, 506 IPC was registered at Meza Police Station, District - Allahabad (UP) against HC/4923 Vijoy Kumar Shukla by his uncle and his family members for land dispute and its ownership which is to be allotted in the name of his relative. But he suppressed the fact and keeping the administration in darkness. Though he was asked to submit written declaration in respect of pendency of any Police/Criminal case but on 27.9.2010 he has given declaration mentioning therein no Police/Criminal case is pending against him.

(2) On another case vide No. 286/2010 dated 4.10.2010 U/S 147/506 IPC has been registered at Meza Police Station, District - Allahabad (UP) against him, but he did not bother to inform the matter to the administration and concealed the fact.

Thus by above omission and commission, he violated the code of behaviour from member of the Force as laid down in Rule 146.3, 146.4 and 146.6 of RPF Rules, 1987.

Hence the charge under Rule 153."

On perusal of the said charge-sheet it appears that it is based on a declaration made by the petitioner on 27.9.2010 that no criminal cases are pending against him and that he has suppressed the fact of pendency of the aforesaid criminal cases against him and according to the respondent authorities he has violated the Rule 146.3, 146.4 and 146.6 of RPF Rules, 1987.

Petitioner has vehemently objected to the aforesaid charges mainly on the ground that the alleged offences under Section 452, 323, 504, 506 etc. of the Indian Penal Code pending before Meza Police Station, District - Allahabad (UP) is not relating to or connected with his duties and responsibilities while discharging his duty and the alleged offences are absolutely related to personal affairs and domestic problem of the petitioner and he has been falsely implicated in the said criminal proceeding and he has not been held guilty in those charges and he has also strongly objected to the initiation of the aforesaid Disciplinary Proceedings on the ground that the very basis and foundation of the alleged charges is alleged declaration which he has never made and signature on the alleged declaration is forged and he has disowned those declarations which is handwritten in English by someone else while at the bottom of the said declaration the alleged signature of the petitioner in Hindi is not of him. Petitioner had filed reply to the said charge-sheet on 4th March, 2011. Petitioner contended that without considering and disposing the said reply of the petitioner and intimating the outcome of his reply/objection, respondent authority has

issued second charge-sheet on 23rd March, 2011 which is exactly similar and identical to the charge as contained in the earlier charge-sheet dated 10th January, 2011.

Petitioner contends that such action on the part of the respondents authorities of not considering and disposing the objection/reply of the petitioner dated 4th March, 2011 and without intimating the outcome/decision of the said objection/reply, issuance of the second charge-sheet dated 23rd March, 2011 is illegal and in gross violation of principles of natural justice.

The petitioner contends that the respondent authorities cannot investigate or initiate any Departmental Proceedings on the basis of those alleged pending criminal cases which have nothing to do with his duty and based on a fake and forged declaration and in support of his contention he has relied upon the decision of a Division Bench of this Court in the case of Amit Biswas -vs- State of West Bengal reported in 2007 (2) CHN, paragraph 19 of the said judgment is as follows:

"..... (19) It is now settled law that parallel proceedings, both in criminal Court and by employer, are permissible only in cases where offence alleged is against the person or property of employer, co-employee, in course of employment, at the place of employment or in connection with the employment of the employee. In the aforesaid situation, even if an employee is acquitted in a criminal proceeding before the Court of Law, an employer can nevertheless proceed with the departmental enquiry. For instance, if on an allegation of defalcation of employer's money, in the criminal proceedings due to faulty police investigation the employee is acquitted, an employer can reasonably contend that he is not satisfied with the police investigation and he having suffered, he has the right to start parallel departmental enquiry against the employee. Similar is the cases where it relates to any offence against the property or person of the co-employees or if the incident occurred in the places of employment; but , in a situation like the present one, we cannot conceive of initiation of departmental enquiry which has nothing to do with the employment of the employee. If we accept the reason assigned by the Tribunal, then even in a murder case or a case of rape, after an employee is acquitted, the employer will get jurisdiction to probe those incidents which is specifically barred under Section 4 of the Code of Criminal Procedure.".....

Petitioner has also relied on another decision of the Division Bench of this Court on the similar proposition of law in the case of Swapan Kumar Maity -vs- South Eastern Railways & Ors. reported in 2007 (4) CHN page 616 on the following paragraphs of the said judgment:

"..... (29) If any duly-appointed railway employee of a sanctioned post is involved in an offence under Section 498A read with Section 306 of the Indian Penal Code which has nothing to do with his official duty as an employee of the railway, the Railway Administration cannot terminate the service of such an

employee so long the Criminal Court does not hold him guilty of such offence. Even in such a case, so long he will be detained under police custody or jail custody pending investigation or trial, he will be deemed to be under suspension and after he is released on bail, it is for the Railway Authority to decide whether he should be still kept under suspension till the disposal of the trial. Such decision depends upon the nature and the gravity of the offence alleged.

(30) Even in such circumstances, there is no scope of starting any parallel departmental enquiry against the indicted employee during investigation or trial as the offence is not alleged to have been committed either in course of employment or against the property or the person of the employer or any co-employee in course of or in connection with performance of the official duty. In this connection, it will be profitable to refer to the following observations of the Apex Court in the case of *Tata Oil Mill Ltd. v. Workmen* :

"The first point which calls for our decision in this appeal is whether the Tribunal was right in holding that the facts proved against Raghavan did not attract the provisions of Standing Order 22(vii) of the Certified Standing orders of the appellant. The said standing order provides that without prejudice to the general meaning of the term "misconduct", it shall be deemed to mean and including, inter alia, drunkenness, fighting, riotous or disorderly or indecent behaviour within or without the factory. It is common ground that the alleged assault took place outside the factory, and, in fact, at a considerable distance from it. The Tribunal has held that the assault in question can be treated as a purely private matter between Raghavan and Augustine with which the appellant was not concerned and as a result of which Standing Order 22(viii) cannot be invoked against Raghavan. Mr. Menon who has appeared for the respondent before us, has contended that in construing standing order of this character, we must take care, to see that disputes of a purely private or individual type are not brought within their scope. He argues that on many occasions, individual employees may have to deal with private disputes, and sometimes, as a result of these private disputes, assault may be committed. Such an assault may attract the relevant provisions of the Indian Penal Code, but it does not fall under Standing Order 22(viii). In our opinion, this contention is well- founded. It would, we think, be unreasonable to include within Standing Order 22(viii) any riotous behaviour without the factory which was the result of purely private and individual dispute and in course of which tempers of both the contestants became hot. In order that Standing Order 22(viii) may be attracted, the appellant should be able to show that his disorderly or riotous behaviour had some rational connection with the employment of the assailant and the victim."

(31) According to Article 311 (2) of the Constitution of India, if a Criminal Court passes an order of conviction, that itself is a ground for termination of his service and there is no necessity of initiating any departmental proceedings against a regular employee.

(32) From the aforesaid position of law it is clear that at the most, a regular

employee, in a situation like the present one, can be kept under suspension till the disposal of the criminal proceedings even if he is released on bail in the event the offence alleged has nothing to do with his duty in the capacity as an employee of the railway and not committed in course of or in connection with the employment but he cannot be at any rate dismissed from service before he is found to be guilty by a competent Court.".....

Respondent authorities have filed their affidavit-in-opposition to the Writ Petition defending the impugned action of suspension and issuance of charge-sheet by the respondent authorities. On perusal of the said affidavit-in-opposition from nowhere it appears that the respondent authorities have disposed of the aforesaid objection/reply of the petitioner dated 4th March, 2011 and has communicated their decision on the said objection/reply before issuing second charge-sheet dated 23rd March, 2011 which is exactly copy of the first charge-sheet dated 10th January, 2011 and at least they should have annexed the same to their affidavit-in-opposition if at all they have considered and disposed of the petitioner's said objection. Learned Advocate for the respondent authorities contends that the allegation of the petitioner that the charge-sheet issued on 23rd March, 2011, is not the second charge-sheet and the allegation of the petitioner that on 10th January, 2011, the first charge-sheet issued was not a charge-sheet rather it was a show-cause notice. Even assuming that earlier one was not a charge-sheet and it was a show-cause notice even then nowhere in the affidavit-in-opposition respondents have stated that reply/objection of the petitioner to the said show-cause notice was considered and disposed of by the respondent authorities by giving opportunity of hearing to the petitioner and their decision on the said objection/reply was communicated to the petitioner before issuing the charge-sheet dated 23rd March, 2011 at least this much formality of observing principles of natural justice should have been observed by the statutory authority. In my view inviting the petitioner to submit the written statement to memorandum of charge/show-cause dated 10.01.2011 issued by the respondent authorities could not be an empty formality and without disposing the reply/objection to the said show-cause notice, issuing further memorandum of charge and charge-sheet having the same contents is bad in law and in violation of principles of natural justice.

Respondent authorities have not annexed to their affidavit-in-opposition any document particularly the alleged disputed declaration which is the sole basis of initiation of the disciplinary proceeding against the petitioner, genuineness and authenticity of which has been seriously disputed by the petitioner, and it should have been put on record of the Court by the respondents at least by annexing the same to their affidavit-in-opposition.

Learned Advocate for the respondent authorities has relied on a decision enclosed to their written notes of arguments, in the case of Kendriya Vidyalaya Sangathan & Ors. -vs- Ram Ratan Yadav reported in (2003) 3 SCC 437.

Before proceeding in this matter one important fact which is required to be

considered is that during the pendency of the Writ Petition the aforesaid impugned suspension order has been withdrawn by the respondent authorities. So, the issue of suspension and relief against the said order of suspension does not require any consideration in this case.

Considering the submission of the parties, perusal of record and decisions cited by the parties, according to me following issues arise for adjudication in the instant writ petition;

Firstly, whether issuance of the second charge-sheet/charge-sheet dated 23rd March, 2011 by the respondent authorities against the petitioner without considering and disposing the objection/reply dated 4th March, 2011 to the show-cause/first charge-sheet dated 10th January, 2011 which the respondent authorities themselves have asked the petitioner to submit and proceeding with Disciplinary Proceedings is justified in the facts and circumstances of the case?

Secondly, whether on the facts and in the circumstances of the case respondent authorities were justified in proceeding with the disciplinary proceedings under Section 153 of the R.P.F. Rules, 1987 on the basis of the alleged false declaration dated 27th September, 2010 made by the petitioner about pendency of the criminal case in question against him not related to his duty which is the sole basis of issuance of show-cause/charge-sheet without establishing the genuineness and authenticity of the said declaration?

In my view action of the respondent authorities in issuing charge-sheet and proceeding with the disciplinary proceeding without considering and disposing the objection/reply of the petitioner to the aforesaid show-cause notice issued by them and without communicating the petitioner their decision on the said reply to the show-cause notice is in violation of principles of natural justice and is bad in law.

So far as the second issue of issuance of the second charge-sheet/charge-sheet dated 23rd March, 2011 is concerned, foundation or basis of which is on the alleged offence of making false declaration contents of which is in hand written by someone else in English on a plain paper and not in any printed form and signature on it which is in Hindi is not his signature and is forged according to the petitioner and genuineness and authenticity of which is highly disputed by the petitioner, considering such facts and circumstances, according to me it goes to the root of the matter and since petitioner has seriously disputed his signature which is in Hindi and alleged it as forged and he is also disowning the contents of the alleged declaration which is not in a specified printed pro-forma and which has not been annexed by the respondent authorities in their affidavit-in-opposition and now Xerox copy of the same has been placed before me for the first time at the time of hearing which is not in a printed form and is in a plain sheet and is undated and it has been admitted by the respondent authorities that the contents of that declaration which is in English was written by some other officer on the request of the petitioner but signature on the same in Hindi is of

the petitioner.

According to me in view of such facts and circumstances of the case without establishment of the genuineness and authenticity of the said document/declaration by examining it by an independent handwriting expert and without disposing the aforesaid objection of the petitioner to the show-cause, by the respondent authorities by passing a reasoned and speaking order after giving opportunity of hearing to the petitioner it was not proper on the part of the respondent authorities to issue the charge-sheet dated 23rd March, 2011. Apart from the fact that the offence under the criminal provisions referred by the respondent authorities in the said declaration are not related to the duty of the petitioner and more so when the said criminal cases are pending before the appropriate criminal forum and has not been finally adjudicated and petitioner has not been held guilty in those offences, merit of those criminal cases cannot be adjudicated by the respondent authorities separately. In this case limited scope of initiating disciplinary proceeding against the petitioner can be only on the basis of the alleged false declaration after the authenticity and genuineness of the same is established on examination by an independent hand writing expert and after it is found that the contents of the said declaration and signature therein is genuine and after the aforesaid objection/written submission of the petitioner is disposed of by passing a reasoned and speaking order and only then any further action of disciplinary proceeding can be justified or any further appropriate action in accordance with law can be taken by the respondents against the petitioner.

The judgment relied upon by the respondents in the case of Kendriya Vidyalaya Sangathan (*supra*) is distinguishable and is not applicable to the facts of the present case since in that case employee was not a permanent employee and he was on probation and genuineness of the contents and signature of the employee on the declaration was not disputed by the employee and the issue of non consideration of objection/reply of employee, by the employee was not involved in the said case.

Considering the discussion made above I pass the order directing the respondent authorities concerned to consider and dispose the written statement/objection of the petitioner dated 4th March, 2011 being Annexure 'P- 3' to the Writ Petition to the charge-sheet/show-cause dated 10th January, 2011 issued by the respondent authority concerned by passing a reasoned and speaking order in accordance with law after giving an opportunity of hearing to the petitioner and also to get the alleged false declaration dated 27th December, 2010 by the petitioner examined by an independent handwriting expert within three months from the date of communication of this order and after the authenticity and genuineness of the said declaration is established, respondent authorities will be free to proceed with the disciplinary proceeding against the petitioner in accordance with law.

The Writ Petition W.P No. 9934 (W) of 2011 is accordingly disposed of.

There will be no order as to costs.

Urgent certified photocopy of this judgment, if applied for, supplied to the parties upon compliance with all requisite formalities.