

(2011) 08 CAL CK 0002

Calcutta High Court

Case No: F.M.A. No. 1337 of 2009

Union of India and Others

APPELLANT

Vs

Shri Om Prakash Yadav

RESPONDENT

Date of Decision: Aug. 25, 2011

Citation: (2012) 132 FLR 226

Hon'ble Judges: Kalyan Jyoti Sengupta, J; Joymalya Bagchi, J

Bench: Division Bench

Advocate: Mintu Kumar Goswami and Arijit Dey, for the Appellant; Durga Prasad Datta and Ashis Kumar Pal, for the Respondent

Judgement

Kalyan Jyoti Sengupta and Joymalya Bagchi, JJ.

This appeal is preferred against the judgment and order dated 15th September, 2008 by which the learned trial Judge has been pleased to allow the prayer of the writ petitioner. In the writ petition the petitioner/respondent challenged the charge-sheet dated 30th April, 1998, the report of the enquiry officer dated 21st December, 1999 and the second show-cause notice dated 2nd August, 2002. Therefore, it is clear that the writ petitioner came to this Court at a stage when enquiry officer has recorded fact finding and held him guilty.

2. In the charge-sheet the following imputation of misconduct has been levelled.

3. Gross neglect of duty and slack supervision in theft while working as Inspector-in-charge of RPF Post, Malda Town, having failed to prevent and detect theft of 445 bags of sugar from wagon during its stabling at Gour Malda Railway Station from 10/05 hrs. of 4.1.1998 to 16/57 hrs. of 6.1.1998 due to slack supervision failure to connect the affected wagon and submitting slip shod reports being informed by the O/C Kaliachak P.S.

4. The writ petitioner/respondent replied to the said charge-sheet and denied all allegations. However, it was not specifically urged at that stage charge-sheet was issued with a biased mind as in the charge sheet the name of the enquiry officer was

indicated. He participated in the domestic proceedings without any objection whatsoever. Upon hearing him, the enquiry officer found him guilty on both counts of charges. On receipt of the said second show-cause notice together with the report of the enquiry officer, the writ petition was filed.

5. Before the learned trial Judge two basic points were canvassed:

(i) the charge-sheet was issued in gross violation of principle of natural justice, as it was an act of biased mind as the enquiry officer was appointed before hand meaning thereby the disciplinary authority has proceeded in a closed mind to enquire into alleged charges, and without waiting for reply and further without taking any decision independently on receipt of the reply.

(ii) the disciplinary proceedings could not continue after his retirement as on retirement, the relationship of employer and employee is severed. Therefore, the employee cannot be subjected to disciplinary control of the employer after retirement.

6. The learned trial Judge was persuaded to accept both the said grounds.

7. Mr. Mintu Kumar Goswami, learned Counsel appearing for the appellants submits that the learned trial Judge has gone wrong both on fact and law as the plea of bias, as alleged, is an afterthought by reason of the fact that the writ petitioner at no point of time raised such plea, rather participated in the domestic proceedings and took a chance to see the result in his favour. When the result was unfavourable, this plea has been taken at the belated stage desperately. The allegation of biasness, according to him, is absolutely false and legally untenable. The petitioner is not at all prejudiced even after knowing the fact that the enquiry is to be held even before his reply reached. Therefore, the decision relied on by the learned trial Judge to support the plea of the writ petitioner/respondent is not applicable in this case. As far as continuation of the disciplinary proceedings is concerned, he submits that the alleged misconduct was committed by the writ petitioner/respondent when he was in employment and charge-sheet was also issued in course of employment. However, unfortunately, the disciplinary proceedings continued even after his retirement. In this case, the disciplinary proceedings cannot abate because it was pending on the date of his retirement.

8. Mr. Durga Prasad Dutta, learned Counsel, appearing for the respondent/writ petitioner submits that the learned trial Judge has taken correct decision as it is settled position of law that without considering the reply to the charge-sheet one cannot make up mind whether any enquiry is required to be held.

9. By issuing the charge-sheet and without waiting for the reply, the department has started the proceedings in a closed mind to hold an enquiry. This shows the vindictiveness on the part of the enquiry officer. According to him, though the point was not specifically taken in the reply, it is a question of principle of natural justice

and in case of breach of principle of natural justice, question of waiver or the concept of suffering prejudice do not and cannot arise. This point can be taken at any stage wherever it is required to be urged for. If the charge-sheet is issued in violation of the principle of natural justice, the foundation of disciplinary proceedings is vitiated and cannot be sustained in the eye of law. It is also emphasized that the learned trial Judge was not at all wrong in holding that the disciplinary proceeding could, not continue after the retirement since retirement results in severance of master and servant relationship consequently employee cannot remain under disciplinary control of the master. This basic concept has been followed by the learned trial Judge.

10. We have heard the learned Counsel for the parties and we have gone through the impugned judgment and order of the learned trial Judge. The points, which are involved for decision in this appeal, are as follows:

(i) Whether the learned trial Judge is justified in quashing the charge-sheet and enquiry report on the ground of bias even after participation of the writ petitioner/respondent in disciplinary proceedings?

(ii) Whether on the facts and circumstances of this case the learned trial Judge is justified in concluding continuation of disciplinary proceedings after his retirement is untenable under law?

11. Admittedly, from the records we do not find the writ petitioner at the threshold recorded protest with the plea that issuance of charge-sheet is in violation of principle of natural justice as the enquiry officer has been appointed with an intention to proceed against him. If such point was not taken, it can be presumed that the writ petitioner was not prejudiced even if enquiry officer's name is indicated. Mere indicating the name of the independent enquiry officer without waiting for the reply to record satisfaction for holding enquiry does not affect any one's right ordinarily, but if the rule demands that disciplinary authority shall wait till the reply is received, then the authority may take a decision after considering the reply.

12. We do not find any such situation here. According to us, whole object is whether issuance of this kind of charge sheet really affects petitioner's right or not.

13. In a case of this nature, we find that there was no possibility of petitioner being affected or prejudiced; otherwise the writ petitioner's first reaction would have been to protest at the threshold. In stead, he participated and took chance. Therefore, he had supreme confidence in the enquiry officer.

14. According to us, this plea is an afterthought and the learned trial Judge, in our view, in the facts and circumstances of this case, should not have accepted this plea. Reliance placed by the learned trial Judge on a Supreme Court decision, as we notice from the recording of the learned trial Judge, is totally misplaced in the facts and

circumstances of this case. In that decision, as we read from the text of the order the Supreme Court has laid down the principle of natural justice in the matter of domestic enquiry. This aforesaid proposition of law laid down by the Supreme Court, in our view, would be applicable on the facts mentioned in the said judgment and not in all cases.

15. As far as the continuation of the disciplinary proceedings is concerned, we find that said misconduct was committed and the disciplinary proceedings was initiated in course of employment. Unfortunately disciplinary proceedings was not concluded before his retirement. According to us, the continuation of proceedings is not impermissible under the law; because the disciplinary proceedings was governed by Rule 157 of the R.P.F. Rules and it nowhere provides irrespective of the date of issuance of the charge-sheet on the date of retirement the disciplinary proceedings shall abate.

16. An unreported decision has been relied on by the learned trial Judge on this issue but this decision has not been placed before us. The learned trial Judge discussed the facts and ratio in detail. In this case we hold that order of discontinuance of disciplinary proceeding by the learned trial Judge is not sustainable under the law.

17. In view of the subsequent development the Court has to take pragmatic view so that no one is prejudiced. The report of the second show-cause notice has been issued long after his retirement, now the railway authority has to decide whether they will proceed with the matter and whether it is practically possible to proceed. If at this stage the disciplinary proceeding on second round is allowed to be proceeded whether any fruitful and desired result would be achieved or not is needed to be decided. Such decision shall be taken by the railway authority within two weeks from the date of communication of this order. If decision is taken to proceed with, the same may be communicated within fortnight from the date of taking such decision. If no decision is taken, nor any communication is made as above, this issue is a closed chapter.

18. If the appellants decide that action shall be taken, then it would be open for the respondent/writ petitioner to make representation. Keeping in view the fact that the writ petitioner has retired, if any punishment is contemplated, the same may not be recorded in such a manner that retiral benefits of the appellant are affected. Everything shall be finalized within a period of six weeks from the date of taking such decision and all retiral benefits, after decision is taken, will be released as permissible under the law.

The appeal is, thus, disposed of.

There will be no order as to costs.

Urgent xerox certified copy of this order be supplied to the applicants.