Pashupati Halder Vs State of West Bengal and Others

Court: Calcutta High Court

Date of Decision: March 21, 1996

Citation: (1996) 1 CALLT 448

Hon'ble Judges: V.N. Khare, C.J; Rabin Bhattacharyya, J

Bench: Division Bench

Advocate: Ashok Nath Ghosh, for the Appellant;

Final Decision: Dismissed

Judgement

R. Bhattacharyya, J.
This appeal is directed against an order passed by the learned Trial Judge dated 25.11.96, in connection with the two

Civil Rules being C. R. Nos. 8089(W) of 1982 and 11115(W) of 1980 respectively. By a common judgment, the learned Trial Judge disposed of

the Rules, upholding the dismissal order of the petitioner which became the battle ground in this litigation when this appeal has been preferred for

reversal of the order of dismissal.

2. However, to get a grip to the core controversy behind the dismissal, the case of the appellant can be get out in few wards, who is writhing in

agony.

3. The petitioner was inducted in the office of the Collector of 24-paraganas as a peon in the year 1948, by the Collector of the District. In view of

his unbecoming conduct, the District Magistrate triggered off a departmental proceeding against the petitioner within the realm of Rule 10 of the

West Bengal Services (Classification, Control and Appeal) Rules, 1971, by the reason of his acquisition of immovable properties for the period

between 1967 and 1968 in contravention of Rule 15(2) of the Govt. Servants'' Conduct Rules, 1959. It is needless to repeat, that the property

acquired by him was disproportionate to the known sources of his income. The petitioner, on being charge sheeted, solicited to be represented by

a Lawyer, which, however, stood rejected. The departmental proceedings ensued and that he was adjudged guilty of all the charges. A second

show-cause notice was issued consequent upon finding him guilty on the score as to why he should not be dismissed from service.

4. The petitioner approached the Writ Court assailing the second show-cause notice followed by issuance of a Rule on 19.7.1974 in C.R. No.

4328(W) of 1974, where the court directed maintenance of status quo till disposal of the Rule. This was followed by an order dated 15.7.74

issued by the respondent No. 2 which was served by the appellant on 19.7.74 dismissing him from service. An appeal taken against the order

before the Commissioner of Presidency Division which was abortive.

5. The petitioner challenged the order of dismissal in C.R. No. 13924(W) of 1975 which was made absolute by an order of the Court dated

16.9.78. The second show-cause notice dated 28.2.74 was set aside. He was allowed to continue afresh from the stage of the second show-

cause. The court directed to make fresh and effective determination of misconduct in accordance with law after giving opportunity to the appellant.

The second show cause dated 13.12.79 pushed the petitioner to the writ court to challenge the legality and validity of the second show cause

notice dated 13.12.79. Since the petitioner-appellant was dismissed from service, the appellant was constrained to move another writ which was

registered as C. R. No. 8088(W) of 1982.

6. The learned Trial Judge upon consideration of the materials on record upheld the order of dismissal, although the respondents did not contest or

resist the claim of the petitioner.

7. By an ex parte order, the dismissal front service was kept alive.

8. The case, therefore, reveals the formulation of a clot in the service vessel of the petitioner who through the medium of the writ has levelled the

claim aimed at to ensure protection of his right.

9. In professing the claim to tear off the order of dismissal from the service, the learned Counsel for the appellant has argued with much dexterity

and skill that the order of dismissal is a colourable exercise of power stemming from arbitratiness and infraction of natural justice. In his long stride,

he has argued with much industry and labour that the denial of an opportunity to present his case by a learned Counsel or by an Advocate

attributes to denial of natural justice and exposes the overwhelming bent of closeness of mind and bias.

10. To stimulate his claim, it has been debated at the Bar that the approach of the respondents does not enliven the purpose and the same is not

buttressed by any decision of the High Courts and the Apex Court. He has placed strong reliance on C.L. Subramaniam Vs. Collector of

Customs, Cochin, to contend that the order of dismissal is an apple warm eaten, as the appellant had no legal muscle to match against the trained

police inspector. The E. O. shrugged off his shoulder to the claim of the appellant. It was a warning shot within the fold of natural justice before the

real push and shove starts in earnest in the departmental proceedings.

11. To answer the claim when we shift our glance from the record and take a glimpse of the decision of the Apex Court, we are of the view, that

the case of the present appellant is not on all fours to the facts of the present case. The appellant is sought to have attempted to make a mountain

out of a mole hill by his emphatic argument that the appellant is not legally educated who is unevenly matched against the P.O. He is a trained S.I.

The appellant, as argued, is unable to go through the labyrinth of legal intricacies and that he would be mauled by him for his wide experience.

When we walk through the bosom of the pleading in particular paragraph 10 of the application together with the materials it is notorious that the

appellant petitioner nowhere recited that the presenting officer was a legally trained person. Instead, it has been averred without any ambiguity that

the presenting officer was a ""trained police sub-inspector"". The words and expressions used by him in the averments that the presenting officer was

a trained police sub-inspector cannot be equated by stretch of imagination with the ""legally trained presenting officer."" If one does, it will raise a

gulf. The expressions trained presenting S. I. and trained Prosecutor is not synonym for each other nor a substitute for each other. It is an axiomatic

truth that a police sub-inspector is required to undergo a training dwelling on performance of law and order duty disassociated from the duty of a

prosecutor. Besides, we have ploughed the record and it does not show its head that he sought for the aid of any defence assistant or any

Government official of his own choice to defeat his action. The right since not explored by the appellant, it is now too late in the day to cry over the

spilt milk under the pretence that natural justice had been violated. The decision of the apex Court therefore, does not come to the aid of the

appellant.

12. The misconduct that has been perpetrated by the appellant in acquiring the property disproportionate to his own source of income has been

established which cannot be whittled down by mere arithmetical error. It is a mere miscalculation of figure due to over-sight, but that does not

postulate any disagreement between the findings of the E.O. and the disciplinary authority on the question of unbecoming conduct. It is well settled

by the apex court in Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others, that in a enquiry before a

domestic tribunal the delinquent officer is pitted against the legally trained officer, if he seeks permission to appear through the legal practitioner, the

refusal to grant this request would amount to denial of a reasonable opportunity to defend himself and the principle of natural justice would be

violated. As we have already indicated above that on the anvil of the pleadings the case of the petitioner does not verge on the factual premises of

the aforenoted Supreme Court decision. The appellant was vainly lamenting over the issue that he was pitted against a legally trained sub-inspector

and that he was asked to fend for himself which is a major dent of his argument. It exposes the infirmity of his claim as there is a variation between

the proof and the pleadings, the contention of the learned Counsel for the appellant, therefore, is a cry in despair.

13. The learned Counsel for the appellant has also challenged the propriety of the penalties imposed on the appellant on the ground that the

misconduct committed by the appellant does not commensurate with the quantum of penalties inflicted on him. In attacking the penalties, he has

most sedulously cultivated that there is no reflection of reason in the order to respect of penalties imposed by the disciplinary authority, as it does

not spell out from there that the disciplinary authority agreed with the findings of the Enquiry authority. Reflection of reason is a sine qua non for

acceptances or rejection of the report of the Enquiry Officer and the penalty passed by the disciplinary authority. The penalty that has been passed

by the disciplinary authority is mechanical where absence of reason is patent. How did they wield jurisdiction in consideration of the misconduct ?

What weighed with the disciplinary authority to accept the report of the Enquiry Officer followed by infliction of penalty ? It is an untold suffering

for the appellant concerning his livelihood.

14. The learned counsel has invited our attention to Rule 10, 12(a) (b) of the West Bengal Services (Classification, Control and Appeal) Rules

1971 to contend that the requirements of the Rule have been consciously violated and the imposition of penalty for dismissal is extraneous to the

provisions of the said Rule. To boost his claim, he has laid much emphasis on the State of Assam & Another v. Bimal Kumar Pandit, AIR 1961

Ass 88, where the apex court held that an enquiry must be conducted according to Rule prescribed in that behalf and consistently with the

requirements of natural justice. The acceptance or rejection of the report of the Enquiry Officer is a part of the disciplinary proceedings and it is

obligatory, according to the above decision, that the second show cause notice must state clearly that findings of enquiry officer are accepted. In

our view, the imposition of penalty when becomes a part of the proceedings, there must be faithful, adherence to the Rules by which the parties are

governed. He has again relied on Union of India v. Achin Kumar Dey, 1990 (2) CHN 256 to contend that the punishment imposed by the

disciplinary authority must contain reasons therefore. The enquiry was commenced under the railway Servants (Discipline and Appeal) Rule 1968,

where the questions arose, apart from others, that for failure to supply copies denying the inspection of document, if constituted fatality or illegality.

The case at hand is not identical with the factual premises of the case under reference. Therefore, the facts of the case are inapplicable to the

present case. But it is applicable to the extent that the order of punishment, if does not contain any reason, the same should not be allowed to

stand. However, considering the points raised in the background of the case, we are of the view, that the infliction of the punishment is totally

foreign to the provisions of the Rules governing the relationship between the parties. There cannot be two opinion that higher the punishment-higher

the reasons. The imposition of penalty is a futile wristwork of the disciplinary authority. It is always expected that higher punishment must be loaded

with reasons. Therefore, in all fitness of things, since the imposition of penalty is devoid of reason, the writ court certainly can interfere with respect

to the quantum of penalty, as we do, for its being disproportionate to the known sources of income. Accordingly, for the forgoing reasons we

direct the respondent authorities to consider the penalty afresh in accordance with the provisions of law, rules and regulations after affording

opportunities to the appellants. But, we make it clear that we have not accepted the other contentions of the appellant that natural justice was

attended while denying the opportunity to accord the prayer of the appellant to be defended by a legal practitioner. In the result, the appeal is

allowed in part, hence ordered :-

That the order of dismissal of the appellant is hereby set aside. The respondents are to proceed afresh on the question of penalty which must

commensurate with the misconduct after affording notice to the appellant. The proceedings must be concluded as expeditiously as possible

preferably within six weeks in accordance with law.

V.N. Khare, C.J.

15. I agree