(2012) 09 CAL CK 0008

Calcutta High Court

Case No: W.P.S.T. No. 258 of 2012

Nikhil Matabbar	APPELLANT
Vs	
State of West Bengal	RESPONDENT

Date of Decision: Sept. 13, 2012

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2013) 2 CHN 299

Hon'ble Judges: Nishita Mhatre, J; Anindita Roy Saraswati, J

Bench: Division Bench

Advocate: D.N. Roy and Atanu Biswas, for the Appellant; Amitesh Banerjee and Jyotsna Roy Mukherjee, for the Respondent

Final Decision: Dismissed

Judgement

1. The petitioner, being aggrieved by a notice issued by the Deputy Inspector General of Police, Railways, West Bengal on 17th June, 2011 calling upon him to show cause why a harsher punishment should not be imposed on him, challenged the same before the West Bengal Administrative Tribunal in O.A. No. 721 of 2011. The Original Application, filed by the petitioner, has been dismissed. The petitioner was charge sheeted for certain acts of misconduct for which the Disciplinary Authority passed an order imposing the punishment of stoppage of two increments without cumulative effect on 5th April, 2011. He preferred an Appeal before the Deputy Inspector General of Police, Railways, West Bengal, who is the Appellate Authority. This Appeal was preferred on 14th April, 2011. The Appellate Authority on 17th June, 2011 issued the aforesaid show-cause notice calling upon him to show cause why the punishment should not be enhanced.

2. The Tribunal has found that considering Regulations 882, 883 and 884 of the Police Regulations of Bengal, 1943 (hereinafter referred to as the P.R.B.) the Appellate Authority had the power to enhance the punishment by issuing a

show-cause notice. Taking exception to this decision of the Tribunal, the petitioner has approached this Court by preferring the Writ Petition under Article 226 of the Constitution of India.

3. Mr. Roy, the learned Counsel appearing for the petitioner, submits that by issuing a notice under Regulation 884 of the P.R.B., the petitioner has been deprived of his right to move the revisional authority in the event the order of the Appellate Authority is passed against him. According to the learned Counsel, such a power of revision ought to be exercised only after the Appellate Authority decides whether in an Appeal the Disciplinary Authority''s order should be substituted. He submits that since the petitioner was in carriage of proceedings, the Revisional Authority could not have passed any order issuing the notice for enhancement of the punishment as he could have withdrawn the Appeal and then the notice would automatically become infructuous. Mr. Roy has also submitted that in view of the judgment of a learned Single Judge of this Court in Basudeb Pal Chowdhury Vs. Dy. Inspector General of Police and Others, the power of revision can be exercised only after the period of Appeal is completed. Mr. Roy submits that the Deputy Inspector General of Police (hereinafter referred to as D.I.G.) cannot suo motu exercise the power of revision while the appeal is pending. He also places reliance on the judgments of the Supreme Court in the case of Indian Oil Corporation Ltd. v. J. Krishnamurthy, (1997) 11 SCC 467 and in the case of M.D. Maharashtra Cotton Growers Market Federation Ltd. vs. Choughule Popatrao Annasaheb and Another, reported in (2003) 6 SCC 247.

4. Per contra, Mr. Banerjee, appearing for the State Respondents, argues that the Appellate Authority always has a power to enhance the punishment imposed, provided a notice is issued to the delinquent employee. He submits that the power to issue such a notice and enhance the punishment is stipulated in Regulation 884 of the P.R.B. and there is no need to wait for the appeal to be decided. He stresses on the words "even when no appeal lies" used in Regulation 884 and submits that this expression would clearly mean that the power, which either the Inspector General or the D.I.G. can exercise, is not confined only to cases where an appeal lies but also to those where no appeal lies. He points out a judgment of this Court reported in 1958 CWN 952 where a learned Single Judge of this Court considered the interpretation of Regulation 884 of the P.R.B. He has also relied on the judgment of Patna High Court in the case of Makeshwar Nath Shrivastava Vs. State of Bihar and Others, and the judgment of the Supreme Court reported in 1983 SC 990.

5. Before we proceed to consider the judgments before us, it should be appropriate to set out the relevant Regulations. Regulation 882 speaks of the Appellate authorities and the instances where an appeal lies. Regulation 883 provides the procedure for preferring appeals and revisions and the limitation for preferring these proceedings. Regulation 884 reads as under:

The Inspector General or the Deputy Inspector General may call for the proceedings of any case, even where no appeal lies, and pass such orders as may seem fit

provided that no order under this regulation shall be made to the prejudice of any person unless he has had an opportunity of showing cause against the proposed order. If he so desires he shall be granted a personal hearing and this fact should be recorded in the proceedings.

6. Thus, Regulation 884 clearly and unambiguously provides that the Inspector General or the D.I.G. can call for proceedings of any case and pass appropriate orders. However, in case an order of enhancement of punishment, which would prejudice the delinquent employee, is to be passed, an opportunity must be given to the employee concerned to show-cause against the proposed order and a personal hearing has to be given to such an employee if he asks for the same. Under Regulation 882 an appeal cannot lie against certain orders of punishment, such as censure (except in the case of Inspectors) reprimand, confinements to quarters, punishment drill extra guard or other duty. Even in such cases, the D.I.G. or I.G. can call for the proceedings and impose a harsher penalty after giving a show-cause notice to the delinquent.

7. However, an appeal is maintainable against an order of dismissal, removal, reduction, black mark, deprivation of approved service increment or removal from any office of distinction or special emolument and in the case of censure of Inspectors, an appeal is maintainable. In such cases although an appeal has not been filed the D.I.G. or I.G. can exercise powers under Rule 884 and enhance the punishment by following the procedure stipulated therein.

8. Thus, since the petitioner was imposed of punishment of stoppage of two increments without cumulative effect, he filed an appeal under Regulation 883. The appeal has been preferred to the D.I.G. Under Regulation 884 the D.I.G. can call for proceedings in any case whether an appeal lies or not before him. It is only if the punishment is to be enhanced that an opportunity must be given to the delinquent to show-cause and a personal hearing should also be given. Regulation 884 does not, in any way, curtail the right of the delinquent, granted to him under Regulation 883. In our opinion, it would be an empty formality to wait till the appeal is disposed of by the Appellate Authority before the punishment can be enhanced by the D.I.G. or I.G. It would merely prolong the proceedings as if the Appellate Authority has decided to enhance the punishment, he would reject the appeal and then should issue a show-cause notice to the delinquent calling upon him to show-cause why the punishment should not be imposed. The Deputy Inspector General and the Inspector General, thus, wear two hats, one as an Appellate Authority and the other as a Revisional Authority.

9. In the case of Sisir Kumar vs. State of West Bengal, a learned Single Judge of this Court, while considering the provisions of Regulation 884, has repelled the arguments submitted on behalf of the delinquent that the D.I.G. could not call for the proceedings of any case and pass an order, which he thinks fit. The learned Single Judge has held that such a power can always be exercised for altering the

punishment and imposing a higher punishment.

10. The Patna High Court, in the case of Makeshwar Nath vs. State of Bihar, (supra) was considering the provisions of Rule 851(b) of the Police Manual where the Court observed that it was manifest that the power of hearing an appeal under the aforesaid Rule was vested in the State Government and, therefore, the Appellate Authority had the same power to inflict the punishment which was open to the Original Authority to inflict. The Court observed that while hearing an appeal, the State Government had the power to enhance the punishment imposed upon the delinquent even if the appeal preferred by the delinquent was for reducing the punishment. Sounding a note of caution, the Division Bench of the Patna High Court observed that while deciding to enhance the punishment, the State Government must give fresh notice to the delinquent, clearly affording an opportunity to the delinquent of being heard before the quantum of punishment is enhanced. The Court noted that in the absence of any express provision on this point in the Police Manual, the law implies that a notice should be given to a police officer before the Government enhances the punishment imposed on him by the Disciplinary Authority.

11. Another Single Judge of this Court in the case of Basudeb Pal Chowdhury vs. Deputy Inspector General of Police & Ors. (supra) while considering regulations 883 and 884 of the P.R.B., has held thus:

In my view the said observation indicates that the power of revision can be exercised only after the completion of the original proceeding and also the appeal proceeding where appeal lies and appeal has been preferred. I am also of the view that Regulations 883 and 884 if read together, make it clear that the power of revision can only be exercised when the appeal preferred by a party has come to an end and the appellate authority has passed an order. So long the time for preferring an appeal does not expire, the revisional power cannot be exercised because a party cannot be deprived of his statutory right to prefer an appeal. Regulation 884, in my view, speaks that a revision can be made although no appeal lies and the expression "even if no appeal lies" indicates that such revisional power can be exercised although there is no provision for appeal. In my view, the expression "even if" has been used in the sense "even when" in Regulation 884. Hence, no revisional power can be exercised under Regulation 884 depriving a party to prefer an appeal under Regulation 883. In the instant case, an appeal against the order of the Superintendent of Police lies before the Deputy Inspector General of Police. Under Regulation 88, against the appellate order of the Deputy Inspector General, a revision may be made by the Inspector General. Hence, exercise of revisional power by the Deputy Inspector General before expiry of the period to prefer an appeal will not only amount to deprivation of the statutory right to prefer an appeal but also deprivation of an opportunity to get the appellate order revised by the Inspector General of Police because once a revisional power is exercised by the Deputy

Inspector General, there cannot be any further revision of the revisional order. Mr. Bhattacharjee the learned Counsel for the respondents has also contended that as the ex parte order setting aside the punishment awarded by the Superintendent of Police is to the benefit of the petitioner, the Deputy Inspector General of Police is justified in passing the said ex parte order but since he proposes to pass a harsher punishment he has asked the petitioner to show cause. Hence there has not been any violation of the provision of Regulation 884. I am, however, unable to accept this contention of Mr. Bhattacharjee. In this proceeding the revisional order setting aside the punishment inflicted on the petitioner by the Superintendent of Police has been passed ex parte not for giving any benefit to the petitioner but for inflicting a harsher punishment. In the said circumstances, the Deputy Inspector General of Police could not set aside the order of punishment inflicted by the Superintendent of Police without hearing the petitioner. When the Deputy Inspector General of Police had intended to pass a harsher punishment, he ought to have initiated a show cause proceeding and after hearing the delinquent officer could set aside the order and pass the proposed harsher punishment. In the circumstances, the orders passed by the Deputy Inspector General of Police in setting aside the punishment and initiating the said show cause memo are bad and are therefore quashed. The consequential order passed by the Superintendent of Police placing the petitioner as Assistant Inspector of Police and thereafter placing him under suspension with retrospective effect is also bad and the said order is also quashed. It is, therefore, directed that the original order of punishment inflicted on the petitioner should remain operative and the petitioner will be entitled to prefer any appeal, if he so desires, against the said order of punishment, within a period of 37 days from today.

12. The facts, in this judgment, were completely different from the facts before us, and, therefore Mr. Roy''s attempt to persuade us to set aside the decision of the Tribunal based on the observations in Basudeb Pal Chowdhury''s case must fail. In that case the Court found that no show cause notice was issued to the delinquent by the Deputy Inspector General of Police indicating that he intended to impose a harsher punishment. The Court observed that no revisional power can be exercised under Regulation 884 by depriving a party his right to prefer an appeal under Regulation 883. However, this observation must be read in context of the facts before the Court. The learned Judge has clearly held that the revisional power cannot be exercised till the time for preferring an appeal has expired. This is because the petitioner cannot be deprived of his statutory right of appeal. There can be no quarrel with this proposition. The Appellate Authority can always enhance the punishment imposed by the Disciplinary Authority while hearing the appeal. However, the proper procedure of issuing a show-cause notice to the delinquent must be followed.

13. The Appellate Authority and the Revisional Authority in the present case being the same, we see no reason why the decision of the D.I.G. to issue a show-cause notice for enhancing the punishment can be faulted. We have been informed that

pursuant to the order of the Tribunal, the petitioner was heard and an order enhancing the punishment has already been passed.

14. In these circumstances, the petition is dismissed.

15. No order as to costs. Photostat certified copy of this order, if applied for, be given to the learned Advocates for the appearing parties on compliance of all necessary formalities.