

(2003) 09 CAL CK 0024

Calcutta High Court

Case No: C.A.J.M. No. 1012 of 2001

Indian Iron and Steel
Co. Ltd.

APPELLANT

Vs

Bhabesh Chandra
Dutta and OthersRESPONDENT

Date of Decision: Sept. 16, 2003**Citation:** 107 CWN 978 : (2004) 1 LLJ 1001**Hon'ble Judges:** Ashok Kumar Mathur, C.J; Ashim Kumar Banerjee, J**Bench:** Division Bench**Advocate:** Ajit Kumar Chakraborty, for the Appellant; Tapan Roy Chowdhury, for the Respondent

Judgement

Ashim Kumar Banerjee, J.

The respondent No. 1 was a watchman of the appellant. He was appointed on September 9, 1954 when the company was in the private sector. The letter of appointment was issued by the then Labour and Welfare officer of the appellant company.

2. The service of the respondent No. 1 was guided by the standing order dated October 22, 1948.

3. The appellant company was subsequently taken over by the Government. After the appellant company was nationalized the regular service rule was prepared and was put to operation in 1985. Hence, although the respondent No. 1 became the employee of the Government Company after nationalisation his service was governed by the 1948, standing orders while he was dismissed from service by an order dated July 10, 1984.

4. While the writ petitioner was in duty on October 23, 1983 a theft took place by breaking open the padlock of the room of the locker and materials worth Rs. 1.6 lacs was stolen. The writ petitioner was proceeded with departmentally on the charge of negligence of duty resulting in theft of the concerned materials as well as for failing to apprehend the

criminals and to prevent the theft as also to attract the attention of others. The writ petitioner replied to the charge sheet. The enquiry officer after detailed enquiry found him guilty and ultimately the writ petitioner/ respondent No. 1 was dismissed from service by the additional chief security officer by his order dated July 10, 1984.

5. The appellate authority affirmed the order of dismissal by his order dated September 21, 1994. The order of the appellate authority was reviewed by an order dated October 21, 1995. The order of dismissal was also affirmed by the order of review.

6. Challenging the order of dismissal the writ petitioner/respondent No. 1 filed the instant writ petition which was disposed of by the learned single Judge by his judgment and order dated March 5, 2001 appearing at page 185 to 195 of the paper book. By the impugned judgment and order under appeal the learned single Judge quashed the order of dismissal and directed reinstatement of the writ petitioner/respondent No. 1 with all back wages. However, since the writ petitioner in usual course attained the age of superannuation on July 28, 1991 the learned Judge directed financial benefit to be given to the writ petitioner/respondent No. 1 treating him as in service from the date of superannuation being dated October 31, 1983.

7. Being aggrieved by the said decision of the learned single Judge the appellant company preferred the instant appeal.

8. From the detailed study of the judgment we find that the learned Judge quashed the order of dismissal on the ground that since the writ petitioner/respondent No. 1 was acquitted by the criminal Court the appropriate authority should have considered such fact and should not have passed the order of dismissal.

9. The learned Judge while deciding the issue in favour of the writ petitioner/respondent No. 1 relied on various decisions of the Apex Court wherein the Apex Court held that in case it is found that the charges in the criminal case and the departmental enquiry are identical the departmental proceeding should take note of the result of the criminal proceeding. Before the learned single Judge the writ petitioner/respondent No. 1 raised the following issues:

(1) No copy of the proceeding was tendered before the enquiry officer;

(ii) No copy of the enquiry report was given;

(iii) The order of acquittal by the Criminal Court was not taken into account while passing the order of dismissal;

(iv) The concerned authority who passed the order of dismissal was not properly authorised.

The learned Judge however quashed the order of dismissal only on the ground No. (iii).

10. It was contended on behalf of the appellant before us that the charges in the criminal proceedings are totally different from the charges brought against the writ petitioner/respondent No. 1 in the disciplinary proceeding. In the criminal case the writ petitioner/respondent No. 1 was prosecuted in the theft case initiated at the instance of the appellant whereas in the disciplinary proceeding the writ petitioner was charged for negligence of duty.

11. It was further contended on behalf of the appellant that the allegations raised by the writ petitioner/respondent No. 1 were not true. Proper opportunities were given to the respondent/writ petitioner to defend himself from the charges. Due care was taken by the concerned authorities while passing the order of dismissal and while affirming the order of dismissal by the appellate and reviewing authority.

12. Hence the learned Judge should not have allowed the writ petition and should not have directed reinstatement with all back wages. Reliance was placed by and on behalf of the following decisions:

[State of Andhra Pradesh Vs. Sree Rama Rao,](#)

[Nelson Motis Vs. Union of India and another,](#)

[Union of India and others Vs. Mohd. Ramzan Khan,](#)

[Gopalji Khanna Vs. Allahabad Bank and others,](#) .

13. On behalf of the writ petitioner/ respondent No. 1 it was contended that since the charges were identical in dealing with the disciplinary proceeding as well as in criminal Court the learned Judge rightly quashed the order of dismissal so merged in the order of the appellate authority and the order of the review authority.

14. Written note of submission was filed by the writ petitioner/respondent No. 1 relying on various decisions of the Apex Court on the scope of the Division Bench while deciding mandamus appeal to consider the other issues raised by the writ petitioner/respondent No. 1 before the learned single Judge and not decided by him.

15. On the plain reading of the charges brought against the writ petitioner respondent No. 1 by the appellant company it would ex facie show that those charges could not have been the issue in the criminal proceeding. If a watchman on duty became negligent which resulted in a theft it would not necessarily infer that he was involved in the said theft case unless such negligence was deliberate. On the bare perusal of the enquiry report appearing at pages 133-142 it would appear that the respondent No. 1 was found negligent in his duties. It is true that there was no direct evidence to show that the writ petitioner/respondent No. 1 was involved in the theft. In any event that was not the charge in disciplinary enquiry. On perusal of the appellate order appearing at pages 119-132 it would appear that the appellant was a habitual defaulter. At least on 13 occasions he was

either warned or suspended for 1 to 3 days for various acts of negligence fully enumerated at pages 127 to 128 of the paper book. Hence, the charges brought by the disciplinary authority against the writ petitioner/respondent No. 1 were totally different from the charges in the criminal case and the learned Judge was wrong in quashing the order of dismissal on the said ground. The decision cited by the parties referred to above consistently infer that when charges are identical the disciplinary authority should take note of the decision of the criminal Court. The writ petitioner was a watchman. His duty was to guard assets. If the assets were lost during the duty hours of the writ petitioner/respondent No. 1 he was responsible for such loss, be it for his deliberate attempt or be it for his negligent act. It might be true that the criminal case brought against the writ petitioner/respondent No. 1 implicating him in the theft did not succeed, but that did not absolve the writ petitioner/respondent No. 1 from the charges brought against him by the appellant company for negligence of duty. Hence the decision of the learned single Judge on that score being erroneous is liable to be set aside.

16. In normal course since there is no decision on the other issues we would have remanded the matter back to the learned single Judge for hearing afresh on the other issues. However, on perusal of the records brought in the paper book we are of the view that we should effectively dispose of the other issues for the ends of justice to bring to end the protracted litigation.

17. The writ petitioner/respondent No. 1 also contended that no copy of the proceeding of the enquiry report was given. It was contended by the appellant that no such copy was asked for by the writ petitioner/ respondent No. 1. In any event, copy of the enquiry report was given by the appellant in Court at the initial stage as recorded in the order of the learned single Judge appearing at pages 81 to 83 of the paper book. On the basis of the said enquiry report the writ petitioner/respondent No. 1 was granted an opportunity to file an appeal on all points available to him including the points on merits after looking into the enquiry report. The appellate authority was directed to dispose of the appeal by passing a reasoned order. Accordingly the writ petitioner/respondent No. 1 accepted the said order and filed a detailed appeal. The appeal was disposed of by an order dated September 21, 1994. Hence the ground of non-supply of the enquiry report at this stage in the present proceeding is not tenable and the same is rejected.

18. On the issue of delegation of power as we have initially recorded that the concerned employee was covered by the 1948 standing order, the disciplinary authority was properly appointed through delegation of power and such issue is also not tenable at this stage in view of the order of the single Judge granting liberty to the writ petitioner/respondent No. 1 to prefer an appeal on merits before the appellate authority being the Managing Director of the Company and the supreme authority in this regard.

19. Hence, we hold that adequate opportunity was given to the delinquent being the writ petitioner/respondent No. 1 was appropriately dealt with by the appellant company in accordance with the prevalent disciplinary rules and we do not find any scope of

interference in this regard. We are conscious of the fact that we cannot sit on appeal over the decision of the disciplinary authority so merged with the orders of the appellate authority and the review authority. We are only to see whether appropriate opportunity was given to the concerned workman in defending the charges brought against him. Since we are satisfied that reasonable opportunity was given to the writ petitioner by the appellant company either initially or at the direction of this Court we do not propose to interfere with the order of the disciplinary authority so merged with the orders of the appellate authority and review authority and we hold that the learned Judge erroneously interfered by quashing the order of dismissal.

20. In the result the appeal succeeds. The order of learned single Judge dated March 8, 2001 is quashed and set aside.

21. Writ Petition being C.R. No. 11990(W) of 1984 is dismissed. The rule issued therein is discharged.

22. There would be no order as to costs. Urgent xerox certified copy would be given to the parties, if applied for.

Ashok Kumar Mathur, C.J.

23. I agree.