

(1974) 08 CAL CK 0022

Calcutta High Court

Case No: None

State of West Bengal

APPELLANT

Vs

Sati Prosad Roy

RESPONDENT

Date of Decision: Aug. 29, 1974

Acts Referred:

- Constitution of India, 1950 - Article 226(1), 311, 311(2)
- Government of India Act, 1935 - Section 240, 240(3)

Citation: 79 CWN 38

Hon'ble Judges: S.K. Dutta, J; B.C. Roy, J

Bench: Division Bench

Advocate: P.K. Sengupta and Paritosh Mukherjee, for the Appellant; Kasi Kanta Moitra and Nripendra Bhattacharjee, for the Respondent

Final Decision: Dismissed

Judgement

1. This is an appeal against the judgment and order of A. K. Sen, J. dated 11.9.73 in C.R. 1900W/69 whereby the Rule obtained by the petitioner was made absolute.

2. The facts according to the petitioner are as follows:

The petitioner was appointed in 1949 as a lower division clerk in the office of Civil Surgeon (the said office since designated as Chief Medical Officer of Health) at Burdwan. In 1958 the petitioner was posted at Jalpaiguri when Dr. Banerjee opposite party No. 4 was also transferred there and his relation with the petitioner was strained and actually Dr. Banerjee put the petitioner under suspension. The petitioner was thereafter transferred to Karimpore Health Centre, Nadia and Dr. Banerjee also came there in September 1968. The petitioner made complaints against the Medical Officer in-charge, Dr. S. Saha, opposite party No. 6, which infuriated him and along with others he raided the house of the petitioner on May 22, 1968 and tried to assault him for which police diary was lodged and there were also other incidents. On September 19, 1968, the petitioner was placed under

suspension and was charge-sheeted on allegations of the opposite parties Nos. 4 and 6. The charge-sheet as also the order of suspension were issued by the opposite party No. 2 the Director of Health Services. The orders are set out below :

Order of suspension.

Government of West Bengal,

Directorate of Health Services,

Writers' Buildings, Calcutta.

No. 22962 Calcutta, the 19.9.68.

ORDER

Sri Satiprosad Roy, clerk attached to Karimpore primary Health Centre, Nadia, is hereby, placed under suspension with immediate effect as he has been found prima facie guilty of several charges for which departmental proceedings are being drawn up separately.

Sri Roy is entitled to one half of his basic pay plus full D.A. and other admissible allowances in full as subsistence grant during suspension period, provided he submits a certificate to the Chief Medical Officer of Health, Nadia to the effect that he is not engaged in any other employment, business profession or vocation.

Sd/- K. C. Sarbadhikari, 19.9.68.

Director of Health Service,

West Bengal.

Charge Sheet.

Government of West Bengal,

Directorate of Health Services,

Writers' Buildings, Calcutta.

Calcutta, the 19.9.68.

No. 22963

To

Shri Sati Prosad Roy,

Clerk attached to Karimpore Primary Health Centre,

Nadia.

Whereas it has been made to appear to the undersigned that you Sri Satiprosad Roy, clerk attached to Karimpore Primary Health Centre, Nadia serving under the administrative control of the Directorate of Health Service, West Bengal have been found guilty of;

1. Cross misconduct :-

(a) by being in the habit of defying the order of the Medical Officer of Karimpur Primary Health Centres.

(b) by instigating the local people against the staff including medical officer of the said Health Centre.

(c) By lodging false complaints against the same Medical Officer and the other staff of the Health Centre to the local police.

(d) by removing hospital records without the knowledge of anybody.

(e) by refraining himself from his allotted duties since 31.7.68.

(f) Cross in subordination by not complying with the order No. HC/E/2/5712 dt. 23.7.68 of the Chief Medical Officer of Health, Nadia.

Details shown in the statement of allegations.

And whereas for the aforesaid reasons you are prima facie unsuitable to be retained in the service of Government;

And whereas on the grounds set forth above it is proposed to impose upon you the penalty of dismissal from the Civil Service of Government under Clause (vii) of Rule of the Bengal Subordinate Services (Discipline & Appeal) Rules, 1936.

Now, therefore, in pursuance of the Bengal Subordinate Services (Discipline & Appeal) Rules, 1936, the Undersigned hereby requires to put in before - Dr. M.L. Dutta Roy, Chief Medical Officer of Health, Jalpaiguri who has been appointed as an engineering officer for holding enquiry into the aforesaid charges against you within fifteen days from the date of receipt of this order, a written statement of your defence and representation that you may desire to make stating whether you desire to be heard in person or call any witness or to produce any document in your defence and showing cause why the penalty of dismissal from the Civil Service of Government or such other penalty as may be deemed fit shall not be imposed upon you.

A statement of allegations on which the charges are based, is enclosed.

Sd/- Illegible 19.9.63

Director of Health Services - West Bengal.

3. Dr. M. L. Dutta Roy opposite party No. 7 was appointed enquiry officer who directed him to file his written statement of defence. The petitioner filed his defence on September 27, 1968 denying the allegations made against him. Thereafter the petitioner was informed on October 30, 1968 by the Director of Health Services that in place of opposite party No. 7 the Opposite party No. 8 Dr. J. Nath was appointed the enquiry officer. The petitioner made a representative stating that his relation with Dr. Nath was strained while both of them were at Jalpaiguri and Dr. Nath had expressed his vendetta and personal displeasure against him. As the petitioner apprehended no fair trial in hand of such biased officer, he made representations against the appointment of Dr. Nath as enquiry officer but the representations were rejected. The petitioner was duly informed of the dates of enquiry but he did not attend the enquiry as he raised questions of legality and propriety of the said enquiry by a prejudiced officer. The enquiry was held by Dr. Nath ex parte on December 10, 11 and 12, 1968 when it appears witnesses were examined and documents were marked exhibits. The petitioner was thereafter served with the following order:

Government of West Bengal,

Directorate of Health Services,

Writers' Buildings, Calcutta.

ORDER

No. 2315

Calcutta, the 10th February, 1969. Whereas departmental proceedings were drawn up against Sri Satiprosad Roy, clerk (under suspension) attached to Karimpore Primary Health Centre, Nadia in this directorate Memo. No. 22963 dated 19.9.68 read with this Directorate Memo No. 259660 dated 30.09.68 on the charges contained therein.

And whereas the charges were enquired into by Dr. J. Nath Chief Medical Officer or Health, Hooghly, who after enquiry submitted his report wherein he has recommended that Sri Roy is not suitable to be retained in service any longer and the period from 31.7.68 to 29.8.68 should be treated as extra ordinary leave without pay.

And whereas after careful examination of the Enquiring Officer's report and other evidence or record including statement of witness I the Director of Health Services, West Bengal agree with the enquiring officer to his findings and find him guilty of the charge contained in this. Directorate Memo. referred to above beyond all reasonable doubt.

Now, therefore, I the Director of Health Service, West Bengal being the appointing authority propose to impose upon him the following penalties.

- 1) That he shall be dismissed from Govt. service with immediate effect.
- 2) The no pay and allowances beyond subsistence grant be paid to him during the period of his suspension.
- 3) That the period of suspension shall be treated as the period spent on suspension.
- 4) That the period from 31.7.68 to 29.8.68 shall be treated as Extraordinary leave without pay.

Sri Roy, is therefore, directed to show cause as to why the proposed penalties should not be imposed upon him, within fifteen days from the date of receipt of this order. The reply should be submitted through proper channel.

A copy of the enquiring officer's report is enclosed.

Sd/- Illegible, 10.2.69

Director of Health Services, West Bengal.

To

Sri Sati Prosad Roy, Clerk,

(Under suspension),

Karimpore Primary Health Centre,

Nadia.

4. The petitioner showed cause to the same but it appears no copy thereof was annexed to the petition. Thereafter on March 21, 1969, order was passed removing the petitioner from service which is set out below:

Government of West Bengal

Directorate of Health Services

Writer's Buildings, Calcutta.

Calcutta, the 1st March, 1969

No. 4961

ORDER:

I, the Director of Health Services, West Bengal after careful examination of the representation submitted on 25.2.69 by Sri Sati Prosad Roy, Clerk (under suspension), Karimpore, Primary Health Centre, Nadia in reply to this Directorate Order No. 2314 dated 10.2.69 the enquiring officers report and other documents on record, find no reason to alter the previous decisions that he is guilty of the charges contained in this Directorate Memo. No. 22963 dated 19.9.68.

Now, therefore, I the Director of Health Services, West Bengal being the appointing authority do hereby impose upon him the penalty of "Removal" from the service of the Government with immediate effect and further order.

1) That no pay and allowances beyond subsistence grant during such pension period be paid to him.

2) That the suspension period shall be treated as the period spent on suspension.

3) That a note to this effect shall be recorded in his service book.

Sd/- Illegible.

5. The petitioner submitted that the entire disciplinary proceeding was vitiated with fatal irregularities-even in the charge-sheet punishment was indicated, a biased officer was made the enquiry officer in spite of objection and the second show cause notice was bad in view of the decision to dismiss the petitioner which was already taken by the Director. On these allegations and contentions the petitioner moved this application under Article 226(1) of the Constitution and the connected rule was issued on the respondents to show cause why a writ in the nature of certiorari should not issue quashing the said order of suspension, order of punishment and final order, charge-sheet and all connected proceedings. There was also a prayer for issuance of a writ in the nature of mandamus calling upon the respondents to forbear from giving effect to the said order. An affidavit-in-opposition was filed by Bharat Ch. Dutta, Deputy Assistant Director of Health Services (Administration Branch) affirmed on May 16, 1972, on behalf of the respondents denying all material allegations made in the petition in particular the allegations of malafides and bias against the opposite parties Nos. 4 and 8. It was stated that the petitioner was a trouble-some person and the reports submitted by him to the police were without basis. It was further stated that there was no illegality in the disciplinary proceeding which was held in accordance with law. Further there was no want of jurisdiction or procedural irregularity or bias or violation of principles of natural justice. The petitioner accordingly was not entitled to any relief. The petitioner filed an affidavit-in-reply reiterating his allegation and contentions made in the petition.

6. On hearing the parties the learned judge found that charges (a) to (d) were vague, as no particulars were given. It was however held that the charges (e) to (f) were not vague and no prejudice was caused to the petitioner in respect thereof. Following the decisions in (1) [State of Orissa Vs. Bidyabhushan Mohapatra](#), it was held that the order based on some of the grounds would otherwise be valid if they are serious enough to warrant the punishment. It was noticed that the petitioner had trouble in all places. Further Dr. Nath was not at Jalpaiguri when trouble started involving the petitioner nor did he suspend the petitioner while at Jalpaiguri. In the contemporaneous representation, there was no case of bias or prejudice against Dr. Nath was made by the petitioner. As to the charge-sheet, which the learned Judge called a strange order, it was held the director opened the said charge-sheet with his

conclusion that he found the petitioner guilty of misconduct set out in the charge-sheet. It was further stated in the charge-sheet that the petition was consider unsuitable retention in service. The learned Judge was of opinion that if the enquiry officer who was a subordinate officer was faced with concluded or express decision of his superior officer it was not possible for him to hold an unbiased enquiry. The question was not how the authority is "likely to taken the thing" the real question was whether there was reasonable ground for apprehending that the enquiry office would be seriously embarrassed or prejudiced by the express view of the Director. It was accordingly held that the enquiry was not fair. The learned Judge further held that the inclusion of the proposed punishment in the charge-sheet did to vitiate the proceeding nor such grievance was made in this case. It may however be mentioned here that before us Mr. Kashi Kanta Maitra learned Advocate for the petitioner respondent has made serious grievance on the inclusion of the proposed punishment in the charge-sheet itself which we shall consider in due course.

7. Mr. Paritosh Mukherjee learned Advocate for the appellant State Government and its officers submitted that the leaned Judge was in error in holding that the disciplinary authority had already prejudged the case so that it could be said that the enquiry officer was put in an inconvenient and embarrassed situation. It was further submitted that the finding that the other charges in the charge-sheet were vague was also untenable and it was evident that the petitioner was not thereby in any way prejudiced on that ground. It was contended that there was a fair and proper enquiry and the misconduct was established by evidence. It was submitted that the order quashing the charge- sheet and the entire proceeding was bad in law and the order under appeal should not be upheld. Mr. Maitra submitted on the other hand that the charge-sheet was bad in that it contained the proposed punishment when at that stage the petitioner's guilt was yet to be established and the same seriously prejudiced the petitioner as there was bias in the disciplinary authority even against the petitioner at the inception of the hearing. Further as most of the charges were found vague, the finding and order following could not be sustained as such finding and order was the result of cumulative effect on the disciplinary authority. It was further submitted that the enquiry officer found that the petitioner guilty which was obviously the result of the positive finding of guilty of the petitioner by the superior officer of the department and in the context of the attending circumstances there was reasonable apprehension in the mind of the petitioner that justice was not done to him.

8. We shall now consider the respective contentions on behalf of the parties. It is strange that even after the amendment of Article 311 of the Constitution on October 6, 1963 such charge-sheet should be issued by the authorities. Article 311(2) as amended provides:

No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him

and given a reasonable opportunity of being heard in respect of the charges and where it is proposed after such enquiry, to impose on him any such penalty, until he has been given a reasonable opportunity or making representation on the penalty proposed but only on the basis of the evidence adduced during such enquiry.

9. It has been held in judicial decisions that the unamended Article 311 contemplated the similar procedure which has now been provided expressly. Thus question of imposing penalty arises only after the public servant is found guilty of misconduct at the enquiry. In (2) AIR 1948 121 (Privy Council) , in interpreting section 240(3) of the Government of India Act which was in terms with the Article 311 prior to amendment it was held that no action under the sub-section could be proposed until a conclusion is arrived on the charges, and the actual punishment to follow it is provisionally determined. Before that stage the charges are unproved and suggested punishments are merely hypothetical. In (3) [Khem Chand Vs. The Union of India \(UOI \)and Others](#), it was observed that reasonable opportunity envisaged by Article 311(2) of the Constitution included (a) an opportunity to the Government servant to deny his guilt and establish his innocence (b) an opportunity to defend himself (c) an opportunity to make his representation as to why proposed punishment should not be inflicted on him which he can only do if the competent authority after the enquiry is over and after applying its mind to the gravity of the offence tentatively proposes to inflict. The Supreme Court in (4) [Hukum Chand Malhotra Vs. Union of India \(UOI\)](#), observed that the real point of the decision both in I.M. Lall's case and Khem Chand's case was that no opportunity was given to the Government servant concerned to show cause after the charges had been established and the authority considering the nature of the offence proposes the punishment to be inflicted on such Government servant.

10. In (5) [Sudhir Ranjan Halder Vs. State of West Bengal and Another](#), it was held that combined notice to show cause, against charges and the proposed punishment of dismissal was not in conformity with the section 240 of Government of India Act, 1935. It was further held that the punishment inflicted without a second opportunity to show cause against the proposal punishment, after the charges were established, was bad, inoperative and void.

11. The position where along with issue of charge-sheet the disciplinary authority also proposes punishment of dismissal or removal as also minor penalties followed by second show cause notice proposing a penalty after establishment of charges, has been considered by this court in many cases. It has been observed that where several major or minor penalties are proposed along with the issue of charge-sheet, there is really no formation of opinion against the delinquent to his prejudice the same was cured by the issue of second show cause notice of proposed punishment after the enquiry. In [Bibhuti Bhusan Paul Vs. State of West Bengal and Others](#), it was held that where the show cause notice contained several penalties, and the delinquent was asked to show cause against the charges it will be absurd to suggest

that the sole object was to punish him and accordingly it could not be said that the enquiry was tainted with bad faith at its inception. In (6) *Adyodhaya Prosad v. S. General Manager S.E. Railway*. C.R. 820W of 1964 dated May 23, 1968 the charge-sheet mentioned penalty eight of the list (dismissal) and lesser penalties which, it was held, only indicated that the authorities did not made up their mind but were merely informing the delinquent the various penalties that could be imposed if he failed to show cause. Similarly in (7) *Gopendra Mohan v. General Manager S. E. Rly.* in C. R. No. 2301W of 1966 dated August 26, 1969 in which in the charge-sheet the delinquent was asked to show cause against penalty specified in item eight or lesser penalties, it was held that the same indicated that the disciplinary authority did not made up his mind with regard to the guilt of the petitioner.

12. In the light of the consistent uniform view taken by this court in decisions referred to above and others, we are also of the opinion that mere proposal of several punishments major or minor in the charge-sheet will not by itself indicate that the disciplinary authority was biased or prejudiced against the delinquent as it indicates the flexibility and openness of mind of the disciplinary authority. This, without more, will not vitiate the disciplinary proceeding where in fact the enquiry is held according to rules and principles of natural justice and the delinquent is given a second opportunity to show cause against the proposed punishment. It is however describable that punishments should not at all be mentioned in the charge sheet consistent with provisions of Article 311(2), since proposal for punishment arises only after charges are established. The position however will be different when in the charge-sheet the disciplinary authority proposes the penalty of dismissal or other major penalties which may indicate the closed mind of the disciplinary authority and his prejudice against the delinquent. Expressions of such proposals for punishments in the charge-sheet before the start of the enquiry may cause reasonable apprehension in the mind of the delinquent that his case has been prejudged which will vitiate the enquiry. In (8) [S. Manickam Vs. Superintendent of Police and Others](#), it was held in facts of the case that where in the charge-sheet the delinquent was asked to show cause why he should not be dismissed, the government servant was prejudiced. In (9) [M. Chinnappa Reddy Vs. State of Andhra Pradesh and Others](#), it was held that expression in the charge-sheet of the proposed penalty of dismissal indicated prejudice of the disciplinary authority against the delinquent even before the enquiry has started leading to a misapprehension in the mind of such delinquent.

13. There may again be cases where the charge-sheet itself may indicate the bias or prejudice of the disciplinary authority against the delinquent as for example by mention of major penalties or otherwise in the facts of the case. In such cases even whether there may or may not be actual prejudice or bias, the delinquent may suffer from reasonable apprehension that he has been prejudiced or prejudged. The charge-sheet we are concerned with states that "it has been made to appear" that

the delinquent. "have been found guilty of gross misconduct" on several charges. For those reasons the delinquent was "prima facie unsuitable to be retained in the service of Government" and for those reasons again it was "proposed to imposed upon him the penalty of dismissal from civil service of the Government under clause (vii) of Rule (37) of the Bengal Subordinate Service (discipline and Appeal) Rules, 1936". The delinquent was asked to submit his defence before the enquiry officer appointed for the purpose showing caused why the penalty of dismissal from civil service of Government or such other penalty as may be deemed fit should not be imposed on him. A perusal of the charge-sheet like this before us would in our opinion lead to the reasonable apprehension in the mind of the delinquent that the disciplinary authority had expressed his mind and views against the petitioner and there would be no fair or impartial enquiry. It is a well known accepted proposition of law that justice must not only be done but must be demonstrated to have been done. In this state of affairs there is no scope from the conclusion that the entire disciplinary proceeding commencing with the issue of charge-sheet was vitiated by the mention of the proposal of the penalty of dismissal in the charge-sheet and of the other existing circumstances likely to lead to a reasonable apprehension of the delinquent of a fair and impartial enquiry against him.

14. The learned Judge further found that the enquiry officer who was subordinate officer to the disciplinary authority was put in embarrassing position in view of the expressed view of the superior authority the director of Health Services. There was, as held by the learned Judge, also reasonable apprehension that such enquiry officer subordinate to the Director was likely to be prejudiced by the various expressions about the delinquent in the charge-sheet. This charge-sheet is a far cry from the charge-sheet in the case of (10) [The Collector of Customs, Calcutta and Others Vs. Biswanath Mukherjee](#), whereby the disciplinary authority stated in the charge-sheet that in view of the assets of the same Rs. 61,000/- found with the delinquent there was a presumption that the same was obtained by unlawful means. It was held that while evidence was led to prove assets no presumption was made against the petitioner at that stage.

15. In (11) Hareram Samanta v. Superintendent of Police Hooghly, 66 C.W.N. 54 it was held that bias can seldom be demonstratively proved and if there are good reasons to think that the mind of the tribunal or the authority is prejudiced against the delinquent by reason of something proceeding it the finding should not be allowed to stand. In (12) [State of Uttar Pradesh Vs. Om Prakash Gupta](#), while dealing with the principles of natural justice it was laid down that all the courts have to see is whether the non-observance of any of those principles in a given case is likely to have resulted in deflecting the course of justice. On an over all consideration of the facts and attending circumstances it appears to us that on various expressions in the charge-sheet about expressions in the charge-sheet about the guilt of the petitioner with the proposal for the dismissal of the petitioner and the final order of dismissal the apprehension of the petitioner that his case was prejudiced and

prejudged was reasonable and further in view of such expression the enquiry officer being an officer subordinate was likely to be prejudiced leading to the deflection of justice. In fact the enquiry officer finding the petitioner guilty also found that he was unfit to be retained in Government service and should be dismissed from service which was no part of the duties enjoined under the rules on the enquiry officer. For these reasons we are in agreement with the learned Judge that the entire proceeding had been vitiated.

16. The appeal fails and is dismissed. There will be no order as to costs.

B.C. Ray, J.

17. I agree.