

**(2007) 03 CAL CK 0056****Calcutta High Court****Case No:** F.M.A. No. 74 of 2004

Manab Kumar Guha

APPELLANT

Vs

Union Of India and Others

RESPONDENT

**Date of Decision:** March 6, 2007**Citation:** 111 CWN 444**Hon'ble Judges:** Pranab Kumar Chattopadhyay, J; Arunabha Basu, J**Bench:** Division Bench**Advocate:** Asish Sanyal and Achin Kumar Mazumdar, for the Appellant; Uttam Mazumdar, for the Respondent**Final Decision:** Allowed**Judgement**

Arunabha Basu, J.

This appeal is directed against the judgement and order dated 10.4.2002 passed by the learned Single Judge whereby and whereunder the said learned Single Judge vide Judgement and order dated 10.4.2002 dismissed the writ petition bearing WP No. 9960 (W) of 1998. In the writ petition the appellant prayed for an order to set aside the order of removal from service imposed on conclusion of the departmental proceeding initiated against him. The appellant was posted at Asansol as a constable of Railway Protection Force. He was charge sheeted along with another constable on the allegation that on 05-06-1995 they detained one passenger namely, Harish Chandra Ram and after assaulting him, robbed the said passenger of Rs. 400.00 as well as a key of the tractor. On the basis of written complaint lodged by the said passenger and after preliminary inquiry, departmental proceeding was initiated. In the departmental proceeding he was found guilty to the charge as per the report of the Inquiry Officer and by the order of the disciplinary authority, major penalty of removal from service was imposed upon the appellant. The appellant submitted written representation before the appellate authority and the appellate authority on consideration of the entire materials and by a reasoned order dated 17-10-1996 directed de novo inquiry" after recording the gross irregularities noticed

by him in the departmental proceedings.

2. After the matter was remitted, the Inquiry Officer recorded evidence both oral and documentary and again found the appellant guilty to the charge. The appellant thereafter, submitted written representation before the appellate authority. The appellate authority imposed major penalty of compulsory retirement from service.

3. Learned advocate for the appellant argued that learned Single Judge failed to consider the serious irregularities committed by the Enquiry Officer and Disciplinary Authority while conducting the departmental proceedings particularly with regard to non-compliance of specific directions of the appellate authority.

4. Learned advocate for the appellant drew our attention to various illegalities in connection with the departmental proceedings and the same require appropriate consideration.

5. It may be pointed out that initially after conclusion of departmental proceedings, the disciplinary authority imposed major penalty of removal from service. The order on due consideration was set aside by the appellate authority and the entire case was remitted back with a direction for de novo inquiry.

6. The gross irregularities noticed by the appellate authority are as follows:

1. Delinquent was not given any option to engage a friend to defend his case.

2. The complainant Harish Chandra Ram was not examined during the inquiry proceeding.

3. The story of the complainant was that after disposal/delivery of a tractor at Burdwan he came to board a train at Asansol, required further examination by E.O. and cross examination by the delinquent.

7. It is not disputed that the appellant was given the option to engage a friend during the course of de novo inquiry but the second and third direction of the appellate authority were not complied with and the complainant was not examined even during the course of de novo inquiry.

8. Learned advocate for respondent on instruction submitted that in spite of service of notice the complainant did not appear. Due to nonappearance of the complainant, the allegation as raised in the complaint written by the complainant, remains totally unsubstantiated. In the absence of the evidence of the complainant the allegation that the complainant was robbed of money and key of the tractor by the appellant can not be said to have been established by the evidence of other witnesses simply in view of the fact that none of them were witnesses to the occurrence.

9. In his report the Enquiry Officer tried to explain the non-appearance of the complainant as hereunder:

"It appears that out of such panic and fear in mind the complainant could not attend the inquiry or did not desire to attend the inquiry."

10. The non-appearance and non-examination of the said complainant as sought to have been explained by the Enquiry Officer is not supported by any evidence collected and produced during the departmental proceedings and as such the aforesaid finding must be held to be perverse and devoid of any evidence.

11. The Appellate Authority also noticed about the unusual conduct of the complainant, as according to the complainant, he came to dispose of a tractor at Burdwan some days ago and thereafter he came to Asansol to board a train for his return journey. If the complainant came to Burdwan to dispose of the tractor at Burdwan, then it remained totally unexplained as to how the key of the tractor was still in his possession on the date of the occurrence. The serious anomaly as earlier noticed by the Appellate Authority remains totally unexplained and such glaring defect remained unanswered in spite of the direction by the Appellate Authority. No explanation is forthcoming either in the report of the Enquiry Officer or in the order of the disciplinary authority or in the order of the Appellate Authority about the serious irregularity, which was earlier noticed by the Appellate Authority while directing de novo inquiry.

12. Incidentally, during the course of the departmental proceeding number of documents were produced and marked as Exhibit including the Seizure List prepared by the officer of the Railway Protection Force and the complaint lodged by Harish Chandra Ram but the key of the tractor was not even produced during the course of the departmental enquiry.

13. On examination of the record, we find that neither the original complaint nor the original seizure list were produced during the course of de novo enquiry. Only Xerox copies of those documents were produced and admitted into evidence as exhibits.

14. In his complaint Harish Chandra Ram stated that he came to Burdwan on 27-05-1995 to deliver a tractor at Burdwan. It remained totally unexplained what was the occasion for the said complainant to keep the key of the tractor in his possession and carrying the same even on 05-06-1995 at Asansol Railway Platform.

15. It may be pointed out that on earlier occasion this was noticed by the Appellate Authority and there was specific direction that this aspect of the matter requires serious consideration by the disciplinary authority but even during de novo enquiry the serious irregularity as noticed by the Appellate Authority on the earlier occasion remained unanswered and unexplained. No attempt was made by the Enquiry Officer to establish this aspect of the matter by any other evidence.

16. In the report of the Enquiry Officer the recital in the Seizure List, a Xerox copy of which was produced during disciplinary proceedings, was taken into consideration.

17. It may be pointed out in this context that Seizure List was prepared by the Officer of Railway Protection Force who was well conversant about law of search and seizure. Signature of the complainant was obtained as one of the witnesses of the seizure list but the finding of the Enquiry Officer that the recovered articles namely cash and key of the tractor were identified by the complainant can not be accepted in view of the fact that no such recital was recorded in the seizure list.

18. The attempt made by the Enquiry Officer to establish the said fact from other witnesses can not be accepted as the same is not supported by the evidence of the complainant. Neither the evidence of the complainant was available before the Enquiry Officer nor there was any recital in the Seizure List that the recovered articles were identified by the complainant.

19. In the departmental enquiry strict rule of evidence are not required to be followed and it is not the duty of the court to reappraise the evidence as a court of appeal but when it is found that the finding is arrived by the authority on totally unacceptable evidence, then the decision making process and resultant finding must be held to be perverse.

20. Learned Single Judge in his finding took into consideration the order passed by the Appellate Authority, which is reproduced below :

"It appears that the appellate authority duly considered the fact that the complainant was not examined. As the complainant was not examined the charge of robbery could not be proved."

21. It is pointed out that it was the positive case that by an act of robber)" cash and the key of the tractor was removed from the possession of the complainant. If the charge as to robbery remained unestablished then the very basis of charge cannot be said to have been established. It is somewhat curious that even though serious allegation was raised against a member of a disciplined force that while on duty he committed an offence of robbery but still no step was taken by the Railway Protection Force Authority for initiating criminal case against the appellant and as a matter of fact, no complaint was even lodged with the local police authority in this regard.

22. On consideration of the entire materials, we are unable to agree with the findings of the learned Single Judge and we have no other option but to allow the appeal after setting aside the judgement and order passed by the learned Single Judge.

23. In the result, the appeal succeeds and the order passed by the learned Single Judge is hereby set aside. The order of compulsory retirement from service passed against the appellant is hereby set aside and quashed. Respondents are directed to reinstate the appellant in service forthwith with full back wages. The respondents are also directed to grant all other admissible consequential service benefits to the

appellant immediately after his reinstatement in service.

24. There shall be no order as to costs. Let urgent Xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

Arunabha Basu, J.

I agree.