(1987) 12 CAL CK 0019

Calcutta High Court

Case No: Civil Rule No. 3490 (W) of 1982

Sarajit Coomer Mazumder		APPELLANT
	Vs	
The Calcutta Dock Labour Board and Others		RESPONDENT

Date of Decision: Dec. 17, 1987

Acts Referred:

- Constitution of India, 1950 - Article 141, 311

Hon'ble Judges: Mahitosh Majumdar, J

Bench: Single Bench

Advocate: Kamal K. Chakraborty, for the Appellant;P.N. De and Mr. D.K. Das, for the Respondent

Final Decision: Allowed

Judgement

Mohitosh Majumdar, J.
The writ petition and the Rule are directed against a Memorandum No. E/203(1), dated 6.9.80 together with the Re: Charge - 1 of the Statement of Allegations. The said charge is set out below:

Calcutta Dock Labour Board

Statement of Allegations

On the basis of which the charges are framed against Sri Sarajit Coomer Mazumder, Designation U.D.C.

Re : Charge - 1.

It has been reported that in utter disregard to office discipline and decorum Sri Sarajit Coomer Mazumder, U.D.C., has developed a habit in preferring baseless and frivolous representations/allegations to the various authorities. In the past he was advised/warned/instructed time and again to refrain from indulging in such

practice; but the fact remains that he has taken no note of that advice/ warning/instruction. Of late, he has directly submitted two representations to the Board''s Deputy Chairman giving forth some vague and baseless allegations against the functioning of the Board''s Watch & Ward Section.

2. The facts of the case are as follows. The petitioner, after receipt of the articles of charge and statement of allegations of misconduct under the cover of the said Memorandum, dated 6.9.89 submitted reply to that by denying the allegations contacted therein. Mr. M. S. Khan L.R.O. was appointed Enquiring Officer to enquire into the charges levelled against the petitioner by an order and thereafter the enquiry was commenced, continued and concluded. From a reference to the enquiry proceedings as contained in page 44 and page 45 of the petition, it would appear that Sri J. M. Lahiri, the Presentation Officer was cited as one of the witnesses. After conclusion of the enquiry proceedings, the Enquiry Officer submitted his report copy of which was not supplied to the writ petitioner despite requests. The petitioner was only informed that he may have extracts therefrom and other documents by letters, dated 10-12-1981 and 6th January 1982 which are quoted herein below:

Calcutta Dock Labour Board.

Ref. No. E/203(1)

Dated 10-12-1981

Sri Sarajit Coomer Mazumder,

U.D.C.

Watch & Ward Section.

Reference this office letter of even number dated 28-10-81, he is again advised to call at this office immediately for taking the note of the enquiry proceedings and submit his reply to the Shaw Cause Notice No. E 203(1), dated 24-8-81 within 15 days from the date of receipt, of this letter. He may note in this connections that no further time will be allowed to him and if no reply is received within the said time, the case will be decided ex parte without making any further reference to him.

(2) This also dispose of his Advocate Sri S. R. Bhattacharjee''s letters, dated 4-11-81 and 7-12-81.

Administrative Officer"

"Calcutta Dock Labour Board

No. E/203(1) Dated the 6th Jan., 1982

Sri Sarajit Coomer Mazumder, U.D.C.

Watch & Ward Section.

In connection to this office letter of even number, dated 10-12-81, he is hereby given the last and final chance to take down notes from the Enquiry Proceedings and other relevant documents available at this office and submit his reply, if any, to the Show Cause Notice No. E/203(I), dated 24-8-81 within 15 days from the date of receipt of the letter; failing which ex parte decision will be taken without making any further reference to him. This is done only to accord ample opportunity for preparation of his reply in defence, if any, which he may note.

2. This also disposes of his Advocate, Sri S. R. Bhattacharjee''s letter, dated 12-12-81.

Administrative Superintendent

3. After the enquiry report was submitted, the petitioner was served with the second Show Cause Notice, dated 22-2-82 in terms of Clause 6(ii) of the Board''s S.S.R.S. to reply as to why a penalty of withholding his annual grade increment for one year without cumulative effect should not be imposed on him. The petitioner, through his Advocate in reply informed the Administrative Officer that he was not given copy of the findings of the Enquiring Officer on the basis whereof the concerned authority proposed to indict penalty on him. It was also made known to the Authorities that the petitioner''s Advocate by letters, dated 4-11-81 and 7-12-81 requested the authority to supply plain copy of the findings of the Enquiry Officer on the basis of which the petitioner was being sought to be inflicted with penalty, but the petitioner was directed only to take down the note of the proceedings. The petitioner in fact was not given copy of the report although requests in writing were made therefore. The administrative body by order, dated February 22, 1982 actually imposed penalty of withholding annual grade increment for one year without cumulative effect upon the petitioner, as stated above.

4. Mr. Kamal K. Chakraborty, learned Advocate for the petitioner seriously assailed the enquiry proceedings, the Show Cause Notice, dated 24-8-81 and the second Show Cause Notice, dated 22-2-82. Mr. Chakraborty contended that the entire enquiry proceedings was vitiated by the action of the Enquiry Officer in allowing the Presentation Officer to appear before the Enquiry Officer as a witness. Mr. Chakraborty in support of his contention that a prosecutor cannot be witness relied on the decision of the Supreme Court in the case of AIR 1958 S.C. 86 State of U.P. versus Md. Noor Herein, the Presentation Officer was entrusted with the task of presenting the case of the prosecution. The Enquiry Officer, according to Mr. Chakraborty, learned Advocate; ought not to have allowed the Presentation Officer to appear as witness on the ground that a prosecutor could not be a witness as is indicated above. Sir. Chakravorty further assailed the action of the disciplinary authority in withholding the copy of the enquiry report and other documents to the petitioner and referred to the Judgment of the Supreme Court in the case of State of Gujarat Vs. R.G. Teredesai and Another, . It is claimed and contended by Mr. Chakraborty that when the Rules provide for issue of second Show Cause Notice, the copy of the enquiry report ought to have been furnished to the petitioner and

failure on the part of the respondents authorities to supply a copy of the report along with the second Show Cause Notice amounted to the breach of Rules of natural justice. Mr. Chakraborty learned Advocate also relied upon the judgment of the Supreme Court in the Case of State of Maharashtra Vs. Bhaishankar Avalram Joshi and Another, in support of his contention that failure on the part of the disciplinary authority to provide the petitioner with copy of the report of enquiry amounted to denial of reasonable opportunity. The last contention of Mr. Chakraborty, the learned Advocate is that the Show Cause Notice, dated 24-8-81 and the second Show Cause Notice, dated 22-2-82 including the penalty order could not be sustained as the disciplinary authority did not secure the compliance of Rule 10(J) of the Service Rules for the Employers of the Calcutta Dock Labour Board which is quoted herein below:

10. (j) The record of the inquiry shall include -

(i) the charges framed against the employee and the statement of allegations furnished to him under sub-paragraph (b) above;

(ii) his written statement of defence, if any

(iii) the oral evidence taken in the course of the inquiry

(iv) the documentary evidence considered in the course of the inquiry;

(v) the orders, if any, made by the disciplinary authority and the inquiring Authority in regard to the inquiry; and

(vi) a report setting out the findings on each charge and the reasons therefore.

5. Mr. Chakraborty, learned Advocate submits that the disciplinary authority did not consider the record of the enquiry nor did he record his findings on the charge. It is also submitted that the word ''consider'' is of a wide import. The word ''consider'' requires the disciplinary authority to actively consider the pros and cons of the entire case. Reference in this regard was made to the judgment of the Hon''ble Supreme Court in the case of Union of India and Another Vs. Tulsiram Patel and Others, . The order, dated 22-2-82 does not disclose the active application of mind nor does it show that the compliance of Rule 10(j) of the Service Rules was effectively and properly secured. The disciplinary authority did not consider the written defence of the petitioner not did he consider the oral evidence taken in course of the enquiry and also the documentary evidence. There is no whisper about the consideration of the enquiry report in the order, dated 22-2-82. Noncompliance of the said Rules, according to Mr. Chakraborty, renders the said order illegal. In extension of his submission that the disciplinary authority failed to comply with the aforesaid Rule, Mr. Chakraborty strenuously argued that when Statute requires something to be done in a certain manner, that must be done in that manner alone and any other mode of performance than those specified in the Statute is strictly forbidden and violative of rules of natural justice. In support of such contention

reference was made to the following cases, AIR 1945 18 (Privy Council) and Hukumchand Shyamlal vs. Union of India; AIR 1976 S.C. 707. The contention of Mr. Chakraborty, learned Advocate, in my view, finds its support from the decisions of the Chancery Division, the Privy Council and the Supreme Court referred to above. Article 141 of the Constitution shares at the face of the Court and there is no escape therefrom.

6. Mr. P. N. De, learned Advocate assisted by Mr. D. K. Das, learned Advocate for the respondents Calcutta Dock Labour Board authorities strenuously resisted the plea of Mr. Chakraborty, Advocate for: the petitioner by contending, inter alia, that the enquiry proceedings was held validly and bona fide that there is no departure from Rule 10(j) of the Service Rules. According to the respondents a plain reading of the second Show Cause Notice including the penalty order; dated 22-2-82 would show that the "said Rule 10(j) was effectively adhered to that at the stage of the second Shaw Cause Notice it is not otherwise incumbent upon the Disciplinary Authority to supply copy of the Enquiry Report in a matters where there was a proposal for imposition of minor penalty. Mr. P. N. De, Advocate for the respondent, also referred to a judgment of the Supreme Court in the case of Suresh Koshy vs. University of Kerala AIR 1900 S.C. 198 in support of his contention ''that the impression that Article 311 of the Constitution of India, particularly as it stood before its amendments required that every disciplinary proceedings must consist of two inquiries, one before issuing the show cause notice to be followed by another inquiry thereafter, is not correct.

7. Such is not the requirement of the principles of natural justice. Law may or may not prescribe such a course. Even if a Show Cause Notice is provided by law, from that it does not follow that a copy of the report on the basis of which the Show Cause Notice is issued should be made available to the person proceeded against or that another inquiry should be held thereafter. Mr. De, learned Advocate further submitted that in the matter of imposition of minor penalty the disciplinary authority was not required to furnish the other documents, that the Show Cause Notice including the order, dated 22-2-82 did not suffer from grievous violation of Rule 10(j) of the Service Rules, as indicated above.

8. Turning back to the facts and circumstances of the case as also to the respective submissions of the learned Advocates for the parties, it is proper for the Court to examine them. It is an admitted fact that the presentation officer appeared as witness. Mr. De, learned Advocate could not justify the action of the authority in adducing the Presentation Officer as a witness in the departmental proceedings. It should be borne in mind that the criterion should be that the prosecutor cannot be witness applies in a departmental proceedings. The act of the Presentation Officer in having his own testimony recorded in the case beyond any shadow of doubt evidences a state of mind which clearly demonstrates a considerable bias existed. It is completely foreign to the fundamentals of the Service Rules and service

jurisprudence that a Presentation Officer should be allowed to participate as witness. Whatever could not be said otherwise before the Enquiry Officer was sought to be filled up by the deposition of the Presenting Officer as a supplemental to the case of the prosecution. In my view, the participation of the presentation Officer as witness rendered the enquiry and the entire proceedings inoperative and without jurisdiction.

9. Now, I shall consider the effect of the second show cause including the order therein, dated 22-2-82. From a clear and plain reading of the same it appears that the disciplinary authority did not consider the pros and cons of the entire case. The disciplinary authority did not even record that he agreed with the findings of the Enquiry Officer. The contention of Mr. Dey, learned Advocate for the respondents supported by the judgment of Supreme Court in AIR 1977 S.C. 537 Tarachand Khattry vs. Municipal Corporation of Delhi cannot be sustained inasmuch as the Disciplinary authority is bound to adhere to and secure the compliance of the rules. The said judgment can be clearly distinguished from the facts and circumstances of the case. The disciplinary authority did not record his reasons in terms of Rule 10(j) of the Service Rules. Recording of reasons disclosed the mental process and the due application of mind. It is to be remembered that the disciplinary authority does not act as a conduit pipe of the Enquiry Officer. He is to discharge his functions independently and is not .to be swayed by the Enquiry Report. Had the disciplinary authority considered the enquiry proceedings with reference to the participation of the Presentation Officer as witness, he would not have passed the order, dated 24-8-81 and the Show Cause Notice including the order, dated 22-2-82. Disciplinary authority in my view did not take into account the true import, scope and effect of Rule 10(j) which defines the word "records of the enquiry" Disciplinary Authority admittedly did not consider the written defence of the petitioner, evidence both oral and documentary and not did he reach any finding as regards the articles of charge. The word "consider" has been effectively explained by the Supreme Court in the case of Barium Chemicals vs. Union of India & others; A.I.R, 1972 S.C. 591 and the judgment of the Supreme Court in Tulsiram Patel vs. Union of India (Supra). The word "consider", in my view, has been rendered illusory by reason of non-compliance of the requirements as contained in Rule 10(j) of the said Rules. The failure on the part of the disciplinary authority to supply copy of the enquiry report is wholly fatal, to the orders impugned in this writ petition. The Supreme Court in succint manner held that the entire object of supply of copy of the enquiry report is to enable the delinquent officer to satisfy the punishing authority that he is innocent of the charges framed against him and that even if the charges have been upheld, the punishment proposed to be inflicted is unduly severe. The very object of the same, as is indicated above, stands utterly frustrated by failure of the Disciplinary Authority to supply copy of the enquiry report. The view that I have taken finds support from the judgment of the Supreme Court in the case of State of Maharashtra Vs. Bhaishankar Avalram Joshi and Another, .

10. Before parting with the case. I am constrained to hold that the technical Rules applicable to the criminal trials may not strictly apply to the disciplinary proceedings, but nevertheless the principles in punishing the guilt scrupulous care must be taken to see that the innocent are not punished applies as much to regular criminal trials as to the disciplinary proceedings. The View finds support from the judgment of the Supreme Court in the case of Union of India vs. H. C. Goel; AIR 1064 S.C. 364 at paragraph 27 page 370.

11. I am of the view that the Disciplinary Authority did not act with a sense of responsibility and fairness in dealing with the case of the petitioner by passing the impugned orders without securing the compliance of the Rules.

12. The impugned orders are hereby set aside. The Rule is made absolute and the writ petition is allowed. The respondents are directed to pay all the service benefits which would have accrued to the petitioner had he not been fastened with the impugned orders, within a period of twelve weeks from date.

13. There will be no order for costs.