

**(1999) 03 CAL CK 0039**

**Calcutta High Court**

**Case No:** Civil Order No. 10022 (W) of 1992

Vrindavan Dubey

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

**Date of Decision:** March 30, 1999

**Acts Referred:**

- Railway Property (Unlawful Possession) Act, 1966 - Section 3

**Citation:** (1999) 2 ILR (Cal) 382

**Hon'ble Judges:** Amitava Lala, J

**Bench:** Single Bench

**Advocate:** Bharati Ghosh Dutta, for the Appellant; M.M. Mallick, for the Respondent

### **Judgement**

Amitava Lala, J.

The writ Petitioner is an employee under Railway Protection Force. At the material point of time, he was posted at C & W, Kanchrapara of the Railway Protection Force.

2. The Petitioner was suspended from the service with effect from November 8, 1991. Such suspension order was served with the following charge-sheet:

Vrindavan Dubey, Constable/243 of C & W/Post/ Kanchrapara is hereby charged with gross neglect and misconduct in that while he was on duty at Gate No. 3 (RPF) Beat No. 3 (3A) of C & W Workshop for physical posting/Gate Checking and guarding duty from 8 Hrs. to 16 Hrs. on 5.11.1991 miserably failed to prevent and detect the illegal removal of 1000 pieces of railway coversheet loaded on railway lorry No. WBQ.5592 and also assisted in removal of such railway property unlawfully during the duty hours.

3. According to the writ Petitioner, without allowing him to submit his statement or reply, charges were framed and a person was appointed as Enquiry Officer to enquire into the charges levelled against the Petitioner.

4. The writ Petitioner further contended that by a letter dated November 25, 1991, after obtaining the charge-sheet, he addressed a letter to the Assistant Security Commissioner, who levelled the charges on behalf of the authority, seeking certain documents under such letter.

5. A representation was also made to withdraw the charge-sheet as according to the writ Petitioner, he has not committed any fault. By an order dated December 4, 1991 the Respondent No. 3 intimated the Inspector, Protection Force (C & W)/Kanchrapara to take inspection or to take extracts of the documents as marked under the letter being Annex. "E" to the writ petition leaving aside the other documents mentioned in the letter dated November 25, 1991 holding that those are not relevant documents and cannot be allowed to be inspected on the administrative points.

6. On December 23, 1991 the Petitioner requested the Respondent No. 3 to revoke the order of suspension pleading not guilty and made further representation. Thereafter, the Petitioner also made representation before the Enquiry Officer on February 10, 1991 whereby the Petitioner categorically pointed out that documents sought for were not supplied to the Petitioner. The categorical statement as to the charges and/or supply of the documents are available In the writ petition leaving aside other part of allowing the subsistence allowance.

7. The part of subsistence allowance was considered by the Court at the interim stage accordingly an order was passed in favour of the writ Petitioner and the writ Petitioner is getting benefit out of it:

8. Therefore, the real crux of the case is that the basis of the inference of the Enquiry Officer without supplying such documents although it appears from the writ petition that the Petitioner's grievances are not only restricted to that extent alone but as to the extent of the order of suspension, charge-sheet, finding of the Enquiry Officer, show cause issued by the same. However, in effect, all disputes merged to the finding of the Enquiry Officer.

9. It is also significant to remember that at present a punishment order was issued by the Assistant Security Commissioner, R.P.F., Eastern Railway, Kanchrapara Disciplinary Authority being memo No. ASC/K/CS/153/58/91 dated December 20, 1997 being Annex."E" to the interlocutory application of the Petitioner in connection with the writ petition.

10. To come back to the crux of the case I quote" hereunder the reasons for findings and finding of the Enquiry Officer being page 191 of the writ petition and internal page 7 of the Enquiry Report being Annex. "Z" of the petition.

Reasons for findings:

From the records and evidences collected during the enquiry it is evident that the truck No. WBQ 5592 loaded with 1000 Nos. cover sheets passed gate No. 2 of HLR

(S) at about 11.15 hrs. on 5.11.91 into the C & W shop. There is no doubt about it because DOOS/HLR himself made enquiry just after the passing of the said vehicle through this gate scrutinising the gate pass. After entering into the C & W shop, there is no direct evidence that the said vehicle loaded with the cover sheets passed out through gate No. 3 of C & W shop. But the circumstances is so strong that the vehicle with the cover sheets obviously passed out through gate No. 3 of C & W shop with the connivances of RPF staff on duty at this gate as there was no other alternative way to go out within the short time from 11.15 hrs. to 11.30 hrs.

It is a pre-planned conspiracy by the issuing and receiving staff of HLR/stores and C & W shop to remove the materials illegally from the Rly. premises. So, their connivance with the RPF staff on duty at the gate No. 3 of C & W shop was also pre-arranged. This, is confirmed when the same vehicle again passed as empty through gate No. 2 of HLR/store at about 14.40 hrs. on 5.11.91 from C & W shop to HLR/stores. It means that RPF staff on duty at gate No. 3 of C & W shop allowed this vehicle to pass out with the materials through their gate and again allowed to come inside the C & W shop as empty after disposing the materials without keeping any record at the gate during their duty period.

Findings:

I hold the delinquent Court 243 Vrindaban Dubey guilty of the charge brought against him for gross neglect and misconduct on duty in that while he was on duty at gate No. 3 of C & W workshop for vehicle passing/gate, checking and guarding duty from 08.00 hrs. on 5.11.91 miserably failed to prevent and detect the illegal removal of 1000 Nos. of Rly. cover sheets loaded on Rly. lorry No. WBQ 5592 and also associated in removal of such Rly. property unlawfully during his duty hours.

Dated: 8.7.92.

(M.R. SARKAR)

I.P.F./S.M.R. & E.O.

11. Now I quote reasons and order passed by the Disciplinary Authority:

As ordered I have gone through the proceeding case file in depth finding of the E.O. charges allegation and representation of the delinquent. As per order of the Hon'ble High Court, Calcutta I have gone through the case file and duly applying my mind and I fully agree with finding of the E.O. considering the gravity of the case and value of the property stolen from the C&W/KPA on that particular day i.e. on 5.11.91 and the delinquent was supposed to protect as miserably failed to prevent the stealthily removal of 1000 pes. of Rly. cover sheets valued Rs. 1,20,000/- which was later the entire properties were recovered and dealt vide C&W/KPA's case No. 1(11)91 dt. 6.11.91 u/s 3(a) RP(UP) Act'66 and the case is till under trial before the Hon'ble Judicial Court, 1st Class, Barrackpore.

Even though the gravity of the case is high: I am of the opinion and a lenient view has been taken with a view the delinquent will rectify himself in his future service and imposing penalty of reducing his pay to the lowest stage for 3 years with C.E. The imposition of punishment will be treated as per the Hon"ble High Court's order, Calcutta.

12. Therefore, two broad aspects of the matter are following.

- a) As to whether the Inference of the Enquiry Officer is disproportionate with the observation or not;
- b) Whether order of punishment can be passed by the Disciplinary Authority on the basis of such observation and finding of the Enquiry Officer even in the course of or pendency of the writ petition or not;
- c) Whether Writ Court will interfere in the matter or send before the appropriate appellate authority in this respect at this stage of the proceeding or not.

13. Mr. M.M. Mallick, Learned Counsel appearing on behalf of the Respondents vehemently opposed the prayer of the writ Petitioner by saying that the punishment by which the Petitioner is aggrieved is not debarring the Petitioner to carry out on his service. The Petitioner is also getting benefit of subsistence allowance by virtue of an interim order. Under such stage it is fit and proper that the Petitioner should approach to the appellate authority. As and when the alternative remedy of appeal is available writ jurisdiction cannot be invoked. In support of his contention he cited a judgment reported [Union of India \(UOI\) and Others Vs. Upendra Singh](#), thereunder.

14. Mr. Mallick submitted that in 3 case of charges framed in a disciplinary enquiry, Court can interfere only in respect of misconduct/irregularity or illegality. There is no scope of interference in respect of correctness of the findings recorded by the Disciplinary Authority or Appellate Authority as the case may be. A judicial review cannot extend to the examination of the correctness of the charges or a reasonableness of a decision. Judicial review is not an appeal from a decision but review of the manner in which the decision is made.

15. I have carefully considered, the ratio of the judgment. There cannot be any difference of opinion in respect thereof but only question before the Court is to look into the facts to understand whether the case of the Petitioner is falling under the exception as given in the judgment,

16. the additional submission of Mr. Majlick is that since there is a provision of appeal writ cannot lie specially at the interlocutory stage of the proceeding. Although no decision was cited but he made his submission on the basis of the necessary implication or outcome of the cited judgment as above.

17. Mrs. Bharati. Ghosh (Dutta) Learned- Counsel appearing on behalf of the Petitioner submitted that it is a well-known principle that even if the alternative remedy is available if the writ petition is filed in stead of availing opportunity and the High Court entertained the petition giving hearing on merits the petition cannot, therefore, be rejected on the ground that the statutory remedy was not availed. She relied upon [L. Hirday Narain Vs. Income Tax Officer, Bareilly](#), of such judgment, in support of her contention she further added that this writ petition is made in the year 1992; The department issued the order of punishment by a letter dated December 20, 1997. For last several years, the matter is pending and it was heard at length, several interim orders were, passed and interlocutory applications were disposed; of even to the suspension or subsistence allowance. Thereafter, at this stage, sending the matter before the authority for the purpose of appeal will unnecessary cause further delay to the Petitioner.

18. She further cited [V. Vellaswamy Vs. Inspector General of Police, Tamil Nadu, Madras and Another](#), to establish that existence of right to review is not bar having alternative remedy and, therefore, dismissal of the writ petition on that score, as cited judgment is improper. She has also cited a judgment delivered by Single Bench of this Hon'ble Court reported in Swapan Roy v. Indian Airlines Ltd. and Ors. 1996 (1) C.H.N. 147 to establish that Writ Court can interfere in a case of disproportionate framing of charge by the Enquiry Officer, for an example collecting of materials from the outside sources during the conduct of enquiry etc.

19. In all, the Petitioner wanted to establish that alternative remedy is no bar in invocation of the jurisdiction of the Writ Court even at the interlocutory stage of the proceedings. Having long lapse of time of 8 years due to pendency of the writ matter and passing of several orders including disposal of the interlocutory application in connection with the writ matters and passing of orders and acting upon by the authorities on the basis of such order create a right of acquiescence in favour of the writ Petitioner having final relief in connection with the subject matter.

20. I have carefully considered the submissions made by the parties in respect thereto. For the purpose of coming to appropriate finalisation of the issue I am of the view the long lapse of time and disproportionate stand on the Enquiry Officer being the "misconduct of the proceedings" are the striking balance to draw an inference in favour of the writ Petitioner. It is abundantly clear that the writ petition was moved before the Court in the year 1992 and till 1998 several orders were passed by this Court. Even on April 13, 1998 in an interlocutory application subsistence allowance was directed to be enhanced by the Respondents in favour of the Petitioner and the Respondents acted upon on the basis of the same. Therefore, long lapse of time squarely hit by principle of law of acquiescence in favour of the Petitioner.

21. So far the decision, as cited by the Respondents, it appears that there are three exceptions as to the interference of the Writ Court for judicial review at the stage of

disciplinary proceedings. The three exceptions are misconduct, irregularity or illegality. It is also abundantly clear that the petition sought for inspection of certain documents which were refused. Therefore, the determination by the Enquiry Officer cannot be said to be free from material irregularity. Apart from that the reasons for finality as given by the Enquiry Officer is totally based upon surmise in coming to a conclusion but ultimately referred for punishment to him which squarely speaks that the finding is disproportionate to the observation of the Enquiry Officer on the face of it. Therefore, there is no scope of further judicial scrutiny even by the Appellate Authority at this stage.

22. Under these circumstances, all the questions broadly speaking for passing an order in favour of the Petitioner without referring the same for the purpose of adjudication by the appellate authority. Therefore, I am with the Petitioners in passing the order in favour of the writ Petitioner.

23. Hence, I quash the entire disciplinary proceedings and set aside the order of punishment issued by the Assistant Security Commissioner, R.P.F., Eastern Railway, Kanchrapara being Memo No. ASC/K/ CS/153/58/91 dated December 20, 1997. As a result, whereof the Petitioner will be entitled for all service benefits including the arrears of amount withheld by the authority.

24. The writ petition is, thus, disposed.

25. No order is passed as to costs.