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**(2010) 03 CAL CK 0056**

**Calcutta High Court**

**Case No:** CWJ (Appellate Side) C.R. 1306 (W) of 1983

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|---|---|
| C.R. Das-I Alias Chittaranjan Das | APPELLANT |
| Vs | |
| Personal Manager, Jute Corporation of India and Another | RESPONDENT |

**Date of Decision:** March 3, 2010

**Citation:** (2010) 4 CALLT 29 : (2011) 3 LLJ 807 : (2011) LLR 529

**Hon'ble Judges:** Aniruddha Bose, J

**Bench:** Single Bench

**Advocate:** Party in Person, for the Appellant;L.K. Pal, Amicus Curiae, for the Respondent

**Final Decision:** Allowed

**Judgement**

Aniruddha Bose, J.
The writ Petitioner at the material point of time was accountant-in-charge at Dhubri departmental purchase centre''(DPC) office of the Jute Corporation of India in Assam in this proceeding, he challenges the legality of a disciplinary proceeding in which he was charged with the offence of misconduct unbecoming of a public servant. The specific allegation against him was exhibiting callousness, lack of responsibility and lack of devotion to duty, which had given scope to a theft of rupees three thousand three hundred and forty two from an iron safe of the said office.

2. The case of the Petitioner is that on or about 7 March, 1981, in order to get certain documents which were necessary, he had broken the lock of the safe in the departmental purchase centre of the corporation as the subsisting lock become dysfunctional. The Petitioner claims to have broken the lock after intimating the state of affairs to the Regional Manager of the organisation and on his instruction over the telephone. According to the Petitioner, the lock was actually broken open at his instruction by one Madan Mohan Saha, night guard. Thereafter, the Petitioner claims to have counted the cash to ascertain the same would cover payment of certain bills, and put another lock on the safe made available by the said night

guard, and retained the key.

3. It is the specific case of the Petitioner that he had enquired about the duplicate key from the said night guard, and was informed that the duplicate key was lying with the junior accountant of the said office. On the following day i.e., 8 March, 1981 when he went back to the said office for the purpose of keeping certain cheques signed by the Regional Manager of the organisation in the safe, he found the money from the safe missing. The Petitioner thereafter lodged a First Information Report (FIR) with the Dhubri Police Station. He had also informed the higher officials of the said organisation about the theft.

4. At that point of time, it appears, there was a sum of rupees three thousand three hundred and forty two only in the safe. The Petitioner thereafter was issued a memorandum containing articles of charges and statement of allegations bearing No. JCI/3(2)/DPC/vig/81/Pt.II dated 13 July, 2010 (1981). By this memorandum, a departmental proceeding was contemplated against the Petitioner. The charges against the Petitioner were in relation to the incidence of theft of the said sum, and the substance of the allegations against the Petitioner was lack of responsibility, lack of devotion to duties and exhibiting callousness. The Petitioner explained his position by filing a reply on 30 July, 2010 (1981). The authorities, however, were not satisfied with his reply, and decided to hold an enquiry. The Petitioner indicated that in view of the explanation already given, he was not inclined to give any further explanation and desired to be heard in person. Thereafter, a practising Advocate of this Court was appointed as enquiry officer.

5. By a letter dated 21 December, 1981, the enquiry officer addressed to the Petitioner as well as the Presentation Officer of the Corporation, three, dates, being 31 December 1981, and 1 and 2 January 1982 were posted for holding the enquiry. The Personnel Manager of the Corporation was requested to make necessary arrangement for expenses of the Presenting officer. The enquiry was scheduled to be held at Dhubri itself.

6. It appears that the Enquiry Officer found that the Petitioner was liable for occurrence of theft or loss of corporation fund and that he was guilty of the charges framed against him. The Chief (Personnel & Administration) of the Corporation, being the Disciplinary Authority decided to impose penalty of minor nature, directing recovery of the said sum of Rs. 3,342 in monthly instalments of Rs. 200, each with interest at the usual rate till the entire sum was recovered. His further promotion was also withheld, until further order. It was also stipulated that the Petitioner would not be entitled to advance like festival advance, cycle advance etc; till the entire-sum was recovered. A copy of this order has been made Annexure-I to the petition.

7. The Petitioner preferred an appeal before the appellate authority in terms of the service regulation. Before imposition of punishment, the Petitioner was not given a

copy of the enquiry report at the time of filing of appeal. The Petitioner, on representation being made, was given a copy of the report of the enquiry officer in his report, the enquiry officer inter alia observed:

Before concluding, I must advert to the pleas made in the letter explanation of Sri Das-I he neither denied the charges nor made any satisfactory explanation in support of his self defence. Even he stated that he did not desire to be heard in person. I, therefore, consider that the charges levelled against him left completely unchallenged. I do not know in what light to interpret the explanation (Ext-A-6) and insofar as the defences has not been elaborated I refrain from drawing any conclusion there from.

Accordingly, I submit my finding with the entire proceedings to the Chief Personnel Manager. JCI Ltd., holding Sri O.R. Das-I above Is liable for the occurrence of theft or loss of Rs. 33427-of the Corporation from the D.P.C. Dhubri and guilty of the charges levelled against him in the memorandum No. JCI/3(2)/DPC/Vig/81/Pt(II) dated 13-7-1981.

8. On 24 July 1982, the Petitioner was informed by a communication from S. Bhattacharya. Chief (Personnel & Administration) that his appeal had been considered by the competent authority and the penalty of withholding next promotion was reduced from indefinite period to a period of two years. The other part of the punishment relating to recovery of the said sum was however retained.

9. In this writ petition, the Petitioner had challenged the order of the disciplinary authority as well as the appellate authority.

10. In this matter, the writ Petitioner had appeared in person. In view of the fact that the dispute involved complicated questions on service jurisprudence, this Court requested Sri Lakshmi Kanta Pal, a practising Advocate of this Court to assist this Court as amicus curiae for effective adjudication of the dispute. Mr. S. Biswas, learned Advocate appeared on behalf of the Respondent Nos. 1 and 2, 11. The entire proceeding has been challenged by the Petitioner on four broad grounds. The first one is that'' as per the relevant rules, the allegations, against the Petitioner did not constitute misconduct. The second ground is that the enquiry report was not made available to him before imposing of penalty by the disciplinary authority. On holding enquiry also, it has "been argued that certain documents were relied upon by the enquiry officer which were not disclosed in the memorandum containing the articles of charges and list of documents and the list of witnesses. On the same count, it has further been argued that witnesses on behalf of the employer were permitted to give evidence whose names were not disclosed as witnesses. It has also been contended that the enquiry officer exceeded his jurisdiction by himself cross-examining the witnesses, and thus reflected bias on his part. The last ground on which the impugned orders have been assailed is (hat in the present case the disciplinary authority acted as the appellate authority also and hence the order of

the appellate authority ought to be quashed.

12. On the question as to whether the case alleged, against the Petitioner constitute misconduct or not, my attention has been drawn to Rule 5 of the Jute Corporation of India Employees'' Conduct,. Discipline and Appeal Rules, 1980, under which certain acts have been specified as minor misconduct and certain acts has been specified as major misconduct but the said rule specifically provides that the list of acts specified as misconduct were illustrative and not exhaustive. As such in my view only for the reason that the acts alleged against the Petitioner did not specifically come under any of the acts specified against the Clause A and Clause B of Rule 5 of the said Rules, it cannot be contended that a delinquent officer could not be charged with any other act which may otherwise come within the term misconduct, callousness, lack of devotion to duty entailing loss to the corporation may well constitute a misconduct in a given context.

13. On behalf of the Respondents it was sought to be contended that the writ petition itself has become in fructuous. The Petitioner has already retired and the writ Petitioner had accepted promotion subsequent to the filing of the writ petition. But since in substance the entire disciplinary proceeding has been challenged and imposition of penalty also included recovery of certain sum, I do not think that the writ petition ought to be disposed of as having become in fructuous.

14. In respect of the allegation of the Petitioner that the disciplinary authority and the appellate authority were the same, it has been argued on behalf of the Respondents that the order passed by the appellate authority was only communicated by the Chief Personnel Manager and it was not a case where he himself had passed the order. As such argument of the Petitioner on this count also stands rejected.

15. The Petitioner has however has made out a specific case that he was not given the report of the enquiry officer before disciplinary authority chose to impose punishment against him. There has been no denial of this fact by the Respondents. Mr. Pal, learned Advocate appearing as amicus curiae has brought to my notice two decisions of the Hon''ble Supreme Court of India in the cases of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., and Uttar Pradesh Government Vs. Sabir Hussain, on this point. The ratio of these decisions is that the failure to make available the enquiry report to the delinquent officer before, the disciplinary authority imposes punishment would constitute breach of the principles of natural justice in a departmental proceeding.

16. Mr. Pal has also brought to my notice another flaw in the proceeding. In the case of the Petitioner, the enquiry officer himself had cross-examined the witnesses. He cited a decision of the Hon''ble Supreme Court in which such a practise has been deprecated. The authority cited on this point is the case of Union of India and Ors. v. Naman Singh Shekhawat reported in 2008 11 CLR 909 SC. In this judgment, which

involved allegations of bias against the enquiry officer, it was held:

The bias on the part of the inquiry officer is implicate from the record. Why the inquiry officer cross-examined the Respondent is beyond anybody''s comprehension. He was not the prosecutor, A presenting officer had been appointed.

The inquiry officer could not have taken over the job of the presenting officer, particularly when he was a superior officer. Valid and sufficient reasons have not been assigned by the inquiry officer in this behalf."

17. It may be permissible on the part of the enquiry officer to seek clarification from a witness. But if he cross-examines a witness, then that would constitute assuming the role of a prosecutor, which would be impermissible. In the report of the inquiry officer itself there is record that he had cross- examined a witnesses. It appears in page 15 (inner page) of the inquiry report, a copy of which has been made annexure to the writ petition. It is specified:

But I shall categorically state that the cross-examination of the witnesses of both the parties by me were made for correct determination of the charges against the charge-sheeted employee

18. In my opinion, this reason Is of too wide amplitude to justify such cross-examination. In this case, a presenting officer was appointed and it was his duty to sustain the charges brought against the Petitioner. The enquiry officer could not assume the role of the prosecutor, as he seems to have done in the present case.

19. In this writ petition, it is not in dispute that the enquiry report was not made available to the Petitioner before the disciplinary proceeding commenced. In the affidavit-in-opposition filed on behalf of the Respondent Nos. 1 and 2, it has been stated:

11. It is stated that the order passed by the disciplinary authority and the report of the enquiry officer were not sent due to inadvertence on the part of the dealing Assistant. However, the same were sent on 28th April 1982. But by non-receipt of the said report the Petitioner was not prejudiced in any way, on the, contrary, the appellate authority after considering the case of the Petitioner ordered that promotion would be withheld only for a period of two years

20. From these facts, it is clearly established that the requisite degree of impartiality which is expected to be maintained in a disciplinary proceeding was not maintained. The very fact that the enquiry officer cross-examined the witnesses show the manner in which the proceeding was conducted was flawed. The enquiry report was also not made available to the Petitioner at the appropriate time.

21. One point was taken in the affidavit-in-opposition that the writ petition has become infructuous because of such a long delay. But I do not think that would be a ground for denying relief to the Petitioner. The writ petition was not filed at a belated stage. The Petitioner had approached this Court in the year 1983 but the matter was not heard and there is no allegation that the writ Petitioner himself was in any way responsible for delay in final hearing of the writ petition. Even though he has retired, being subjected to a disciplinary proceeding and found guilty thereof carries a stigma, and every person is entitled to approach a Court of law to clear his name from such allegations. Otherwise the Petitioner would have carry the burden of punishment imposed against him in course of employment all through his life.

22. Considering all these aspects, I am satisfied that the enquiry was vitiated. In these circumstances, I quash the orders of the disciplinary authority and the appellate authority. For the same reason, the report of the enquiry officer also stands quashed.

23. Now comes the question of relief. As punishment, the sum which is alleged to have been stolen has already been appropriated by the employer. The Petitioner suffered loss of two increments while in service. He has now retired. Under normal circumstances, I would have permitted initiation of the proceeding de novo as I am quashing the proceeding and consequential orders for procedural lapses. But after lapse of such a long period, almost thirty years since the incident which led to the passing of the order of imposition of punishment. I do not think it would be feasible to direct fresh enquiry. The records may not be available. The witnesses may not be available. I am also not inclined to enter into a detailed exercise as to how much loss the Petitioner has really suffered in monetary terms because of such punishment, I do not think the Writ Court ought to enter into that exercise.

24. In the given facts I am of the opinion that if Rs. 50,000 is directed to be paid to the writ Petitioner, that would constitute substantial relief for him. Accordingly, I allow the writ petition and Rule is made absolute in terms of prayers (a) and (b). The orders of the disciplinary authority and the appellate authority as well as report of the enquiry officer stand quashed. There will be a further direction on the Respondent Nos. 1 and 2 to pay a sum of Rs. 50,000 to the Petitioner within a period of six weeks from the date of communication of this order. The show cause notice shall stand permanently stayed as I have already held that no useful purpose would be served in reopening the entire issue.

25. There shall, however, be no order as to costs. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, as expeditiously as possible.

Writ application allowed.