

(2010) 12 CAL CK 0073

Calcutta High Court

Case No: M.A.T. No. 1003 of 2009; F.M.A. No. 126 of 2010

Ashoke Kumar Nath

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: Dec. 24, 2010**Citation:** (2011) 2 CHN 233**Hon'ble Judges:** Dr. Sambuddha Chakrabarti, J; Bhaskar Bhattacharya, J**Bench:** Division Bench**Advocate:** Pryabrata Mukherjee, Mojibur Rahaman, Murari Chakraborty, Sumit Kr. Roy, for the Appellant; Nisith Mukherjee, G.K. Das for the Respondents No. 2., for the Respondent**Final Decision:** Allowed

Judgement

Dr. Sambuddha Chakrabarti, J.

This appeal arises out of a judgment and Order dated, September 2, 2009 passed by the learned Trial Judge in W.P. No. 28446 (W) of 2008 dismissing the writ petition filed by the Appellant.

2. It was alleged by the Appellant in the writ petition that in the year 2004 the Respondent No. 2 to the writ petition i.e. the Director, Kolkata General Post Office, after duly accepting the tender of the Appellant had permitted him to work as a Professional Letter Writer (P.L.W., for short) at the Kolkata G.P.O. for a period of 3 years. In February, 2005 one Anil Sharma entrusted the Appellant to send money through an insured envelope containing currency notes of Rs. 1,300. According to the Appellant, in spite of handing over the insured envelope containing the said currency notes to Shri Anil Sharma, after the said envelope was received by the addressee it was discovered that the said currency notes were missing and the same was reported by Anil Sharma. The Appellant as a result of the pressure created upon him, had made the payment to Shri Anil Sharma. Thereafter, Shri Anil Sharma lodged a complaint to Respondent No. 2. The Respondent No. 3 issued a show cause notice dated 23rd February, 2005, asking the Appellant to show cause why the

permission granted to him to work as a Professional Letter Writer (P.L.W.) shall not be cancelled and why action against him shall not be taken. The Appellant on apprehension that the said Shri Anil Sharma was hatching a conspiracy against him in collusion with some employees of the G.P.O. had lodged a complaint with the Officer-in-Charge of the Here Street Police Station and requested him to take necessary steps in the matter. The Appellant also requested the Respondent No. 3 to send him a copy of the alleged complaint against him to enable him to give a comprehensive reply to the show cause notice. It was further alleged in the writ petition that without affording any opportunity the Respondent No. 2 by an Office Memo dated March 4, 2005 had terminated the Appellant's tenure as a P.L.W. at the Calcutta G.P.O.

3. The Appellant challenged the same by a writ petition which was disposed of in the year 2007 by which the learned Trial Judge set aside the impugned Order of termination and passed a direction upon the Respondent No. 2 to consider the matter afresh upon giving the Appellant an opportunity of being heard and upon making available to him the copies of the said complaint within a period of eight weeks. It was further directed that the Appellant would be entitled to participate in fresh tender but in the event he was found guilty of any misconduct his offer would not be accepted and till the Respondent No. 2 decided the matter he would not be entitled to work as a P.L.W.

4. Pursuant to the said Order the Appellant was directed to appear at the chamber of the Respondent No. 3 on August 13, 2007 which he did. The copy of the complaint was made available to him. By an Office memo dated September 11, 2007 the Respondent No. 2 issued an Order whereby he held that the malpractice of the offence committed by the Petitioner was proved beyond any shadow of doubt and to protect the image of the department and to provide better service to the public, he directed that the tender which the Appellant had submitted for the period from 01.09.2007 to 31.08.2010, was to be rejected and that he would be given no more opportunity in future to participate as a tenderer for the P.L.W. and he will not be allowed to work as a P.L.W. at the Kolkata G.P.O. for ever.

5. The Appellant again filed a writ petition and the said was disposed of by this Court by setting aside the Order. The learned Trial Judge while disposing of the writ petition had granted leave to the Appellant to file written objection within three weeks and also directed the Respondent No. 2 to consider the matter afresh after giving him a reasonable opportunity of hearing and by offering him to make oral submissions and to dispose of the same within eight weeks from the date by passing a speaking Order.

6. The Appellant, thereafter, filed his written objection on September 18, 2008 and the Petitioner was called to attend the hearing on October 13, 2008 before the Respondent No. 2. At the hearing the Appellant, it is alleged, had submitted an application to call Shri Anil Sharma to cross-examine him in the proceedings for the

proper and effective adjudication which was turned down by the Respondent No. 2. The further grievance of the Appellant is that after only giving a very short hearing the Respondent No. 2 closed the same and by Order dated October 24, 2008, he held that the offence committed by him was of a serious nature and directed that the tender submitted by the Appellant for the period from September 1, 2007 to August 31, 2010 was to be rejected and that he would not be allowed to work as a P.L.W. at the Calcutta G.P.O. in future. This Order has been challenged in this writ petition.

7. The Respondents filed an opposition to the said writ petition wherein the facts leading to the issuing of the Order impugned in the writ petition have been narrated. It was mentioned that the complaint received by the Respondent No. 2 from Shri Anil Sharma specifically mentioned that the Petitioner had in the past also committed such an act with his brother when an amount of Rs. 1,150/- was entrusted to the Petitioner by an insured letter which again after reaching the addressee was found to contain only some pieces of paper and after pressing the Appellant he refunded the said amount within 15 days. It was specifically contended that the Appellant was provided all reasonable opportunities to present his case at the hearing. It was also alleged that another complaint of similar type was lodged by one Shri Ramji Chowdhury regarding the sending of money by him amounting to Rs. 1,500/- by an insured letter. The Petitioner had granted a kutchra receipt to Shri Chowdhury. During the transaction he had used certain documents which were examined by the Director of Forensic Sciences and a report was filed by him. After the conclusion of the hearing the Respondent No. 2 had issued an Order impugned in the writ petition. It further appears that the sub-postmaster of the Post Office under whose jurisdiction the addressee in the instant case used to reside, had furnished a report to the effect that the envelope had reached there in good condition and after opening the same it was found to contain only some pieces of paper instead of money. According to the Respondents this singularly proved that he had cheated Shri Anil Sharma. The Respondents mentioned that some items in connection with a transaction in the year 2004 were shown to him. The Appellant had put his handwriting on those documents. When that was sent to the Government Examiner of Questioned documents, Director of Forensic Sciences, the same was confirmed to be his handwriting.

8. The Appellant filed an affidavit-in-reply where he reiterated that he was not afforded reasonable opportunity to defend his case and that the complaint lodged by Shri Ranji Chowdhury had not been proved and, therefore, any document relied upon by the authorities in connection with that case cannot have any bearing.

9. From the allegations and counter-allegations it transpires that there were major lapses in arriving at the conclusion that the Appellant was guilty of the offences alleged against him. In the Order impugned in the writ petition the Respondent No. 2 had narrated the complaint of Shri Anil Sharma in details and had thereafter

mentioned the main points of the written objection submitted by the Appellant with his observations at the end of each paragraph. From the way of disposing of the points of objection it appears that the Respondent No. 2 had merely passed his opinion without any discussion indicating the basis of his conclusion. For example, to the Appellant's defence that there was no evidence that the addressee of the insured article had received only some papers and not the currency notes the Respondent No. 2 had merely to observe that "this is denied and disputed as the matter is on record.

10. Then about the specific case of the Appellant that he had no knowledge about the complaint lodged by Shri Anil Sharma before making the payment of Rs. 1,300/- and that the staff of the G.P.O. had assured him that if he had made the payment the complaint would be withdrawn, the Respondent No. 2 had merely observed that the statements were self-contradictory and that it was clear that the Appellant had made a false and baseless written objection.

11. Then again in connection with the written complaint lodged by Shri Ramji Chowdhury that the same was not related to the present case the Respondent No. 2 had observed that it is not irrelevant to draw the attention to the said complaint which clearly indicated that he was habituated in malpractice and the same was also established by the fact that while working as a P.L.W. in Shribhumi Post Office he had committed a similar type of offence and committed fraud in respect of Rs. 6,435/- from different persons. A police case was also started against him.

12. While passing the Order impugned the writ petition the Respondent No. 2 had overlooked a very major lacuna in the complaint case. If it is correct, as alleged by the complainant, that in the past also the Appellant had committed this offence with his brother then regard being had to the common course of human conduct it was only natural that the complainant would not entrust him with Rs. 1,300/- or at least would ensure that the money handed over to him was in fact put inside the envelope before it was sealed. There is no explanation about why the complainant in spite of the previous knowledge of an alleged fraudulent mal practice being committed by the Appellant had not ensured that the money was actually put into the envelope. and the Respondents authorities while adjudicating the Appellant's case had failed to address themselves to this crucially important aspect of the matter. The Respondents authorities ought to have appreciated that the case as framed had not been proved.

13. That apart, there is nothing on record except the assertion of the complainant that the money had not reached the addressee. It does not appear that the addressee was called to depose or that he in fact deposed that he had not received the money sent from Kolkata. Without this, the compliant is a mere hearsay evidence. and the Respondents had clearly erred in accepting this as an inviolable truth. The learned Trial Judge also had committed a mistake in not appreciating this major lacuna of the case and in not holding that the charges against the Appellant

could not be said to have been proved.

14. The Appellant's prayer for calling Shri Anil Sharma for cross-examining him was also improperly turned down by the Respondents. This is a case where the Appellant did not get any opportunity to cross-examine the complainant. If the Respondents wanted to rely on the report of the Government Examiner of Questioned Documents they most certainly ought to have given him a reasonable opportunity to cross-examine the complainant. Refusal to afford this opportunity meant a denial of reasonable opportunity of hearing itself to him. and thereby the principles of Natural Justice have also been violated.

15. This is now a settled principle of law that whenever an adjudication of a man's right is to be made he is to be given an opportunity of being heard. This is a cardinal principle of Natural Justice which in every case has to be followed, unless, of course, this is statutorily or otherwise specifically excluded, either expressly or by necessary implication. Needless to mention that such opportunity, to be effective, must be a real and not a nominal one. In [Swadeshi Cotton Mills Vs. Union of India \(UOI\)](#), the Hon'ble Supreme Court cautioned that such hearing must be a very genuine hearing and not a public relations exercise. An empty audience satisfying the mere form of it ultimately may amount to a big nothing. More than six decades ago Lewis J. in R. v. Architects' Registration Tribunal, ex parte Jaggar, 1945 (2) All ER 131, clearly held that merely bringing to the notice of a party that an evidence exists is not sufficient.

16. The Appellant in this case was not given opportunity to cross-examine the complainant, Shri Anil Sharma. This, we consider, is a clear departure from the rules of Natural Justice. An effective opportunity of being heard includes a right to cross-examine a witness or a complainant the moment his version of the statement is disputed by the charged person. In [K.L. Tripathi Vs. State Bank of India and Others](#), , the Hon'ble Supreme Court considered this right to form a part of fair play in action. One major purpose of cross-examination is to discredit the testimony of, a statement made earlier, written or verbal, and to elicit the truth. The Appellant not having been given this opportunity was clearly denied an effective and meaningful right of being heard.

17. If we look at the course of events in connection with this case it appears that this was the third writ petition filed by the Appellant. On the past two occasions reasonable opportunity of hearing was held not to have been afforded to the Appellant. and on both these two occasions in the past the High Court had set aside the impugned Orders and sent the matter back the Respondents.

18. The manner of disposing of the specific points of defence of the Appellant clearly brings out the high handedness on the part of the authorities. The specific case of the Appellant was dismissed with rather cursory observations, like: "this is denied and disputed" or "it is clear that he made false and baseless written objection" etc.

The Respondent No. 2 again had sweepingly concluded that the reasons cited by the Appellant to consider his innocence could not be justified. The authorities thereby had clearly adopted a wrong stand. The Respondent No. 2 being a senior and responsible officer of Government of India was expected to be aware of it that in a case of such a nature it was for the authorities to prove the charge against him. The Respondents authorities had misdirected themselves in approaching the case from the reverse angle and misplaced the onus upon the Appellant in arriving at a conclusion that he could not justify his innocence.

19. It was submitted on behalf of the Respondents at the hearing of the appeal that since the tender was for a fixed period, in the departmental enquiry the principles of natural justice were not required to be adhered to. We find no merit in such submission. Unless specifically barred or excluded by necessary implication, the principles of natural justice apply to all inquiries and all proceedings irrespective of whether a person proceeded against is a permanent employee or holding a temporary employment. This stand is clearly against the settled principles of law.

20. We are keenly aware of the basic position that a Writ Court does not normally sit in appeal against an Order passed in a departmental proceeding. But that does not mean that in all cases this limitation on the power of the Writ Court must apply as an absolute bar to the exercise of its jurisdiction. As early as in the early 1960-s in the case of [State of Andhra Pradesh Vs. Sree Rama Rao](#), the Hon"ble Supreme Court sanctioned the High Court's interference "where the departmental authorities have held the proceedings against a delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry...."

21. We have already found that the authorities concerned have grossly violated the principles of natural justice and even after giving three opportunities could not rectify themselves. This not only justifies but warrants the Writ Court to exercise jurisdiction to set aside and quash the Order impugned. We find no factual substance in the arbitrarily arrived conclusion of the authorities. and we have no other alternative but to conclude that the observations made by the Respondents that the offence committed by the Appellant is a serious one and that this kind of malpractice damaged the image of the department and belied the trust and faith reposed by the public in general in the department, were misplaced and not applicable to the facts of this case.

22. The learned Trial Judge while dismissing the writ petition had concluded that the Respondent No. 2 had afforded the Appellant a fair opportunity of hearing. Such observation does not find any support from the facts of this case. The Appellant's prayer to cross-examine the complainant has been considered by the learned Trial Judge as an effort to drag the matter. This, however, is not the law. A charged employee has every right to cross-examine the complainant and this is not to be viewed as dragging the matter or a mere wish to be fulfilled by the Respondents.

23. This is neither his wish nor his fancy. By praying for an opportunity to cross-examine the complainant the Appellant was not asking for an absurd thing. This was his right and it was very much within his competence to ask for the same.

24. The learned Trial Judge failed to consider that there are many major lacuna in the proceeding itself and the conclusion arrived at was more like an imposition by an higher authority than a conclusion based on material facts and reasons. Such an Order cannot be sustained. We hold that the Order impugned in the writ petition is bad. The entire proceeding suffers from the vice of violations of the principles of natural justice.

25. We set aside the judgment and Order of the learned Trial Judge and allow the appeal. The Office Order impugned in the writ petition is also hereby set aside and quashed.

26. There shall, however, be no Order as to costs.

27. Urgent xerox certified copy, if applied for, will be supplied within seven days from the date of the application.

Bhaskar Bhattacharya, J.

I agree.