
(2016) 05 CAL CK 0055

CALCUTTA HIGH COURT

Case No: Writ Petition No. 12658 (W) of 2005

A. Prabhakaran

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: May 17, 2016

Acts Referred:

- Central Civil Services (Conduct) Rules, 1964 - Rule 14(5)(c)
- Constitution of India, 1950 - Article 14, 16, 21

Citation: (2016) 5 WBLR 37

Hon'ble Judges: Arindam Sinha, J.

Bench: Single Bench

Advocate: Mr. K.B.S. Mahapatra and Mr. Kashinath Bhattacharya, Advocates, for the Petitioner; Mr. Bhudeb Chatterjee and Ms. Mithu Bhattacharya, Advocates, for the UOI

Final Decision: Disposed Off

Judgement

Arindam Sinha, J.—Mr. Mahapatra, learned advocate appears on behalf of the petitioner in support of the challenge in the writ petition against the disciplinary proceedings held. The petitioner was serving as cook in the Central Reserve Police Force (CRPF). Mr. Mahapatra submits, his client was a civilian employee. The charge brought against him was under the Central Civil Services (Conduct) Rules, 1964, in that, inter alia, he was found selling uniform articles in CRPF barrack on 10th September, 2000 which was prejudicial to good order and discipline of the Government service.

2. Mr. Mahapatra submits, his client being a civilian employee, it was not necessary for him to seek permission to go out of the Unit. He was to attend his duties regarding cooking and was thereafter free to leave the Unit. It was his client's case that he in assisting recruits of the Force who could not speak the local language, to acquire articles of uniform from the local market, had purchased the uniform articles on their behalf. It was not a case of purchase and then sale to the recruits. He submits further, the inquiry proceedings were conducted by the Inquiry Officer without there being a Presenting

Officer. There was thus conflict of interest. He relies on a judgment of a Division Bench of this Court in the case of **Krishna Choudhury v. State of West Bengal reported in 2011(2) CHN (Cal) 498** in particular paragraphs 29 and 30 which are set out below:-

"29. It is true that there is no specific provision for engagement of presenting officer in the Kolkata Police Regulation but undisputedly, said resolution does not prohibit engagement of the presenting officer, in the instant case, in absence of the presenting officer enquiry proceeding could not be conducted effectively as the witnesses produced by the prosecution could not be examined properly in an effective manner in order to establish the charges levelled against the petitioner herein. The witnesses of their own deposed before the Enquiry Officer without keeping any eye on the charges actually levelled against the petitioner and nobody on behalf of true prosecution was also present during the enquiry to remind the witnesses to confine themselves only in relation to the charges levelled against the petitioner.

30. A departmental enquiry cannot be conducted in a casual manner in the absence of the presenting officer. It becomes difficult for the Enquiry Officer to conduct the enquiry proceeding in an unbiased manner in the absence of the presenting officer as the said Enquiry Officer sometimes had to perform the duties which are required to be discharged normally by the presenting officer."

3. Mr. Mahapatra also submits, this was a charge of corruption brought against his client. His client as a Group-"D" personnel has little or no knowledge and, therefore, lack of awareness. Against such a person a charge of corruption brought which, as would appear from the Inquiry Report, was found to be proved against him on presumption. He relies on a decision of the Supreme Court in the case of **Union of India & Ors. v. Gyan Chand Chattar reported in (2009) 12 SCC 78**, in particular paragraph 21 to submit that a serious charge of corruption is required to be proved to the hilt, it cannot be proved on mere probabilities. Paragraph 21 is set out below :-

"21. Such a serious charge of corruption requires to be proved to the hilt as it brings civil and criminal consequences upon the employee concerned. He would be liable to be prosecuted and would also be liable to suffer severest penalty award able in such cases. Therefore, such a grave charge of quasi criminal nature was required to be proved beyond any shadow of doubt and to the hilt. It cannot be proved on mere probabilities."

He submits further, by drawing attention to page 109 of the writ petition, the Inquiry Report relied upon a discreet inquiry as would appear from the portion reproduced below :-

"To find factual position (statement of PW-VI) a discreet inquiry was conducted by Dy Comdt. Trg of 138 BN CRPF on 2.11.2000. According to the opinion of inquiry officer, hospital cook A. Prabhakaran brought uniform items from local market and sold them to Recruits besides hospital cook might have used Rt Kanaga Raj's hospital room for

stroing the uniform items exhibit P-VI."

4. Mr. Mahapatra submits, there was no Presenting Officer and the Inquiry Officer recorded the statement of witnesses. In doing so the Inquiry Officer, according to Mr. Mahapatra, produced and examined-in-chief the prosecution witnesses. His client had, however, declined to cross-examine the witnesses.

5. Mr. Mahapatra then relies on a judgment of the Supreme Court in the case of **State of Uttar Pradesh & Ors. v. Saroj Kumar Sinha reported in (2010) 2 SCC 772** in particular paragraph 28 therein as is set out below :-

"28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents."

6. Mr. Chatterjee, learned advocate appears on behalf of the Union of India. Adjournment of hearing was earlier granted since, the allegation of bias not having been made in the departmental proceedings, he had argued that the same should not be allowed to be taken for the first time in the writ petition. This Court was of the view that notice of case in order recorded was sufficient notice and adjournment granted to enable Mr. Chatterjee to make his submissions in response. Mr. Chatterjee submits Rule 14(5)(c) of the Central Civil Services (Acquisition, Control and Appeal) Rules, 1965 left it to the discretion of the Disciplinary Authority when appointing an Inquiry Authority to appoint a Presenting Officer to present on its behalf the case in support of the articles of charge. He submits, therefore, there was no breach of procedure committed in the omission of the Disciplinary Authority to have appointed a Presenting Officer. If an allegation to this effect had been made to the Disciplinary Authority, the Authority may have had occasion to appoint a Presenting Officer. The petitioner was, thus, clearly estopped from taking this ground. He submits further, the discretion provided to the Disciplinary Authority in the matter of appointing Presenting Officer was because it was an inquiry and the Presenting Officer was seeking to get the truth in making the inquiry. As such the inquiry could be done without presentation of a case.

7. He relies on the case of **Mulchandani Electrical and Radio Industries Ltd. v. The Workmen reported in AIR 1975 SC 2125**, on a portion therein as is reproduced below :-

"5.The witnesses were allowed to be cross-examined on behalf of the Union after they had answered the questions asked by the Enquiry Officer. In our opinion the note

made by the Enquiry Officer stating that the witnesses had turned hostile meant only that they had stated before him something that was inconsistent with what appeared in the memorandum signed by them. We do not think that the enquiry was vitiated because the Enquiry Officer put some questions to the said witnesses by way of clarification in the circumstances stated above. This Court in **Workmen in Buckingham and Carnatic Mills Madras v. Buckingham and Carnatic Millas Madras, (1970) 1 Lab LJ 26 (SC)** held that the Enquiry Officer in a domestic enquiry can put questions to the witnesses for clarification wherever necessary and if he allows the witnesses to be cross-examined thereafter, the enquiry proceeding cannot be impeached as unfair. We are therefore unable to accept that the enquiry in this case had not been conducted in a fair and proper manner."

He also relies on a judgment of a Learned Single Judge of the High Court of Bombay in the case of **Sukhdeo Vishwanath Garaje v. M/s. Food Corporation of India reported in 1989(2) LLJ 277 (Bom)** where in similar facts the said Learned Judge had upheld the inquiry proceedings.

8. This Court finds the judgment in Saroj Kumar Sinha (supra) was delivered on facts being that the respondent, delinquent officer before the Supreme Court, was unaware of the first Inquiry Report as well as the second one which said that the first Inquiry Report was correct. The declaration of law in paragraph 28 of Saroj Kumar Sinha (supra), as relied upon by Mr. Mahapatra, was made in a situation where the Inquiring Authority had proceeded ex parte against the delinquent officer since he had failed to submit explanation to the charge sheet, without fixing a date of his appearance in the inquiry to afford him right to present his defence by cross-examining the witnesses.

9. In the context of the facts and submissions already recorded as in the present case, a query comes to the mind of this Court to the effect that when the Inquiry Report refers to a discreet inquiry already made, whether the inquiry proceedings can be said to be merely an inquiry or a quasi judicial proceedings as declared to be so in Saroj Kumar Sinha (supra).

10. The answer to the query is not found in Mulchandani Electrical and Radio Industries Ltd. (supra). It appears the facts in the said case was that after the charge sheeted workmen had submitted explanation, there was an inquiry into the charges against him. The Inquiry Officer having considered the evidence adduced at the inquiry found that the charges of threat and assault against the workman had been established. This Court, therefore, is unable to apply the declaration of law in those facts where it does not appear that the inquiry proceedings did not have the assistance of a Presenting Officer. So far as Sukhdeo Vishwanath Garaje (supra) is concerned, the reasoning given by the learned Single Judge of the High Court of Bombay in upholding the inquiry proceedings where there was no Presenting Officer, were to the effect firstly, that in the inquiry proceeding the defence had every opportunity to cross-examine the management witnesses and examine in-chief the defence witnesses. Secondly, on the ground that the provisions of

the Evidence Act regarding, inter alia, leading questions being put in examination in-chief, were not applicable to inquiry proceedings. Those reasons do not answer the query of Court that has arisen in this case.

11. The declaration of law made in Saroj Kumar Sinha (supra) is perceived by this Court to be a declaration made by the said Court being conscious that any declaration of law made by it shall be binding on all Courts within the territory of India. The declaration made is not a declaration that is qualified as only applicable to the facts in that case. A proceeding has been declared to be a quasi judicial proceeding. Furthermore, a discreet inquiry was already made which would take the steam out of the submission made on behalf of the Union of India that the inquiry in the present case was just an inquiry to get at the truth which did not require the participation of a Presenting Officer.

12. For the reasons aforesaid the writ petition succeeds. The impugned order of dismissal as confirmed by the revisional Authority is set aside. The respondents will be at liberty to launch a de novo inquiry proceedings against the petitioner. In the meantime the petitioner will be entitled to apply for reinstatement pending commencement of the inquiry, if thought necessary. In the event inquiry proceedings are launched de novo, the concerned respondent Authority will appoint an Inquiry Officer other than the Inquiry Officer who had made the inquiry earlier and also cause presentation of the case against the petitioner. Such de novo inquiry will proceed on documents already on record. In the event fresh inquiry is to be launched the same must be done within a period of six months from the date of communication of this order made to respondent no. 5. If the petitioner, in the meantime, applies for relief, consequent to this order, to the said respondent, such application must be dealt with within a period of 2 months from the making of it.

13. The writ petition is disposed of.

14. Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties on usual undertakings.