

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

BEFORE:

The Hon'ble Mr. Justice Ravi Krishan Kapur

W.P.A. NO.17095 of 2002

Indrajit Singh

-vs-

Eastern Coal Fields Limited & Ors.

For the petitioner	: Mr. Prantik Garai, Mr. S. S. Arefin Ms. S. Bose
For the respondent no.7	: Mr. Debasish Sutradhar Mrs. Somasree Saha
For the ECL	: Mr. Alok Kr. Banerjee, Ms. Sanchita Barman Roy
Heard on	: 19.01.2021
Judgment on	: 10.03.2021

Ravi Krishan Kapur, J.:

1. The petitioner assails a departmental proceeding initiated by the respondent no.1 and also challenges the final order of dismissal dated 14/16th September, 2002 passed by the General Manager of the respondent no.1.
2. The brief facts of the case are that the petitioner was appointed as a magazine clerk of the respondent no.1 at the Kunustoria Colliery. In the year 1993, the petitioner was accused of theft of 17,500 detonators drawn by the petitioner from the Belbad Colliery but which

had not been received by the Kunustoria Colliery. Subsequently, the petitioner was charged with theft, fraud and dishonesty and was ultimately dismissed from service.

3. On 16th March, 1994, in an earlier writ petition filed by the petitioner challenging the order of dismissal dated 25th December, 1993 this Court had set aside the order of dismissal and directed the respondent authorities to pay the arrear salaries of the petitioner upto 28th February, 1994. Subsequently, the petitioner thereafter joined service on 18th March, 1994. Thereafter, pursuant to liberty granted by this Court, the respondent initiated proceedings and the petitioner was served with a charge sheet dated 21 March, 1994. The petitioner was also placed under suspension by the same communication. The petitioner challenged the notice dated 21 March, 1994 before this Court and filed another writ petition being WP 8222 (W) of 1994. By an order passed in WP 8222 (W) 1994, this Court had stayed the suspension order.
4. Thereafter the petitioner replied to the charge sheet dated 21st March, 1994 and requested that the enquiry proceedings be stayed on the ground that the respondent authorities had also filed a criminal complaint and the criminal trial was in progress. The respondent did not adhere to the request made by the petitioner and proceeded to appoint Sri T.N. Mitra, Senior Personal Officer as an Enquiry Officer in connection with the domestic enquiry. Subsequently, the petitioner made several requests to the Enquiry Officer to stay the enquiry

proceedings on the ground that the same would prejudice the pending criminal trial. Despite repeated requests, the Enquiry Officer did not stay the enquiry proceedings and proceeded with the same.

5. In the enquiry proceedings the Enquiry Officer examined three different witnesses and concluded that the petitioner had received 17,500 electrical detonators but had failed to deposit the same with the Kulusotoria Colliery. The Enquiry Officer further held that the said detonators had been received by the delinquent after falsifying signatures and rubber stamps of the indenting official. The Enquiry Officer inter alia concluded that the petitioner was guilty of theft, fraud and dishonesty in connection with the property of the respondent authorities.
6. In an earlier writ petition being WP 8222 (W) of 1994, this Court had granted liberty to the respondent authorities to pass the final order and communicate the same to the petitioner. Thereafter, by an order dated 14th/16th September, 2002 the Enquiry Officer passed the final order and dismissed the petitioner from service.
7. By an interim order passed in this petition the impugned order of dismissal had been stayed and the respondent authorities were directed to pay the usual suspension allowance to the petitioner. The petitioner ultimately retired from service on 1st March, 2008. Meanwhile, in the criminal case the petitioner had by an order dated 27 September, 2012 passed by the 5th Special Court in Burdwan,

Asansol been acquitted of the charges levelled against him. The order has been brought on record by way of a supplementary affidavit filed by the petitioner.

8. In this factual matrix it is submitted on behalf of the petitioner that the petitioner has been honourably acquitted of all the charges in the criminal proceeding and hence the departmental proceeding were liable to be quashed. It is also submitted on behalf of the petitioner that since the facts and evidence in the criminal trial and the departmental proceedings were the same it would be unfair, unjust and objectionable to allow the findings recorded in the departmental proceeding to stand. It is also alleged by the petitioner that the findings of the Enquiry Officer were vague and without any reason and the Enquiry Officer had not considered the relevant evidence before arriving at his conclusions. It is further submitted that the petitioner was also entitled to an amount on account of pension.
9. On behalf of the respondent authorities it is submitted, that there are no grounds to interfere with the report of the Enquiry Officer. The Enquiry Officer conducted an enquiry after giving due notice to the petitioner. The petitioner chose not to participate in the enquiry, although he had adequate notice of the same. The Enquiry Officer conducted the enquiry and submitted his Final Report finding the petitioner guilty of all the charges levelled against him. Subsequently, a second show cause notice was also issued to the writ petitioner. The petitioner replied to the same.

10. It is submitted on behalf of the respondents that the scope of a departmental enquiry is different from a criminal proceeding inasmuch the standard of proof required in a departmental enquiry is not the same as required to prove a criminal charge. Moreover, it is submitted by the respondent authority that acquittal from a criminal case does not automatically debar an authority from proceeding with the departmental proceeding. In this context reliance was placed on *Captain M. Paul Anthony vs. Bharat Gold Mines Ltd. (1999) 3 SCC 679*. It is also submitted on behalf of the respondents that acquittal in a criminal case has no relevance to the departmental proceeding initiated against the petitioner inasmuch as in a criminal proceeding the case has to be proved beyond reasonable doubt whereas in a departmental proceeding it has to be proved on a preponderance of probabilities. In this connection, reliance was also placed on the decision reported in *Samar Bahadur Vs. State of Uttar Pradesh & Ors. (2011) 9 SCC 94 at para 7*.
11. On merits, it is submitted on behalf of the respondents that, the mere pendency of criminal proceeding cannot be a ground to interfere with a departmental proceeding. It is also submitted on behalf of the respondent no.1 that the petitioner had sought to make out a new case by way of filing a supplementary affidavit for which there was no factual foundation in the writ petition. On this ground alone, the petitioner was not entitled to any relief whatsoever.

12. I have considered the submissions made on behalf of the parties and also the pleadings filed on their behalf. At the outset, it is settled law that a Writ Court whilst exercising powers of judicial review does not assume the role of an Appellate Authority. Judicial review does not permit entering into the intricate merits of a case like an Appellate Authority and its jurisdiction is circumscribed by limits to consider jurisdictional errors, correcting errors of law, procedural errors leading to manifest injustice and any violation of the principles of natural justice. These principles have been consistently reiterated in a catena of decisions. It is also well-established that ordinarily the disciplinary authority is the sole judge of facts. As a rule, the adequacy of evidence or reliability of evidence ought not to be canvassed before a Writ Court. In *State of Andhra Pradesh and Ors Vs S. Sree Rama Rao*, AIR (1963) SC 1723 it has been held that:

“The High Court does not in a proceeding under Art. 226 of the Constitution act as a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant : it is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice have not been violated.

Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for writ under Art. 226 to review the evidence and to arrive at an independent finding on the evidence.

The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of

natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based the adequacy or reliability of that evidence is not matter which can be permitted to be canvassed before the High Court in a proceeding for writ under Art. 226 of the Constitution.”

13. The primary grievance of the petitioner is that the disciplinary proceeding and the criminal prosecution could not proceed simultaneously. It is also argued that once a criminal court has acquitted the petitioner in the criminal proceedings the departmental proceeding was liable to be automatically quashed.
14. Ordinarily where a disciplinary enquiry has been held independently of a criminal proceeding acquittal in the criminal case is of no avail to the petitioner. As a proposition of law even if a person stands acquitted by a criminal court a domestic enquiry can still be conducted. The rationale being that the standard of proof required in a domestic enquiry and that in a criminal case are altogether different. In a criminal case the standard of proof required is the rule of beyond reasonable doubt whilst in a domestic enquiry, it is on the preponderance of the probabilities that an assessment of facts is made [*Management of Bharat Heavy Electricals vs. M. Mani (2018) 1 SCC*

285, Divisional Comptroller, Karnataka State Road Transport Corp. vs. M. G. Vittal Rao (2012) 1 SCC 442]. Thus, a disciplinary proceeding and a criminal prosecution can always proceed simultaneously and perhaps come to a separate and different conclusion.

15. I find that the impugned order of the Disciplinary Authority contains reasons and has been arrived at after considering relevant evidence. There is nothing unreasonable nor perverse nor irrational in the impugned order. The enquiry has been conducted fairly and objectively. The impugned order is a reasoned order which takes into consideration the evidence adduced before the authorities. There has been no unfairness in the passing of the impugned order. I also find that there has been no violation of the principles of natural justice. The authorities cited on behalf of the petitioner are inapposite and distinguishable on facts. It is true that in some cases employees postpone or defer disciplinary proceedings pending a decision in any criminal trial but it cannot be said that the principles of natural justice require an employer must always await the final decision of the criminal court. In *Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corporation Ltd., Haldia and Ors, AIR 2005 SC 4217* it has been held as follows:

11. As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely

different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence.

16. Moreover, acquittal in the criminal case cannot always invariably be a ground for interfering with the order of punishment imposed by the disciplinary authority. As a proposition of law an order of dismissal can be passed even if the delinquent official had been acquitted of the criminal charges, *Southern Railway Officers Association and Anr. Vs. Union of India and Ors. (2009) 9 SCC 24.*

17. I also find from the order passed in the criminal proceedings that the witnesses who were examined before the Court had either forgotten the facts or were unable to adduce any evidence before the Criminal Court. I also find that the criminal proceedings were pending since 1993 and were ultimately concluded in 2012. In the criminal proceedings there were some discrepancies noted in the statements made of the witnesses and that the witnesses were unable to recollect the facts and were unable to give evidence for some reason or another. In fact the prosecution failed to make out a case primarily due to lack of evidence. On the contrary, the disciplinary proceedings were conducted within a reasonable time and after considering all the evidence before the authorities. Hence, I am of the view that there are no grounds to have the disciplinary proceedings interfered with

even though the petitioner has been acquitted in the criminal proceedings *Sashi Bhusan Prasad Vs. Inspector General, CISF* (2019) 7 SCC 797, *Deputy Inspector General of Police and Anr. Vs. S. Samuthiram* (2013) 1 SCC 598.

18. I find that the reliefs in the writ petition were for stay of the departmental proceedings. However, in view of the subsequent events the petitioner had filed a supplementary affidavit to bring on record the order of the Criminal Court and had also prayed for post retiral benefits. In view of the fact that this petition has been pending for more than two decades, I choose to deal with the merits of the supplementary affidavit after having given an opportunity to the respondents to deal with the same. I am of the view that a Court is entitled to take note of subsequent events and decide the matter in view of those events.

19. On the aspect of further payment, I find that the petitioner is not a “member” under the Coal Mines Pension Scheme, 1998, since the petitioner had not filled an option form in accordance with law. Moreover, no contribution under Clause (b), (c), (d) & (e) of para 3 of CMPS 1998 Scheme had been deducted or deposited by the petitioner. As such, the petitioner did not become entitled to any amount on account of pension. The petitioner had already been paid a sum of Rs.7,87,041/- which has been received by the petitioner on 8th July, 2008. It was further submitted on behalf of the respondent authorities that under the Coal Mines Family Pension Scheme, 1971, the date of

appointment of the petitioner was 11th December, 1965 and the petitioner was not a member on that date. Thereafter, an option was given to all excluded members to opt to join the above scheme but the petitioner did not opt for the pension scheme within the stipulated time period as well as the extended time period nor did the petitioner submit an option form being PS1, PS3, PS4 during his service period. The last option given to all employees was on 5th March, 2009 which the petitioner did not avail. Hence, on this account I am of the view that no amount is due and payable to the petitioner.

20. For the foregoing reasons, I find no merit in the writ petition. WPA 17095 of 2002 is dismissed. Interim orders if any stand vacated. However, there shall be no order as to costs.

(Ravi Krishan Kapur, J.)