

24.02.2022
Sl. No.16
srm

W.P.A. No. 173 of 2022

Sribash Sarkar

Vs.

The State of West Bengal & Ors.

Mr. Pabitra Charan Bhattacharya

...for the Petitioner.

Mr. Subrata Kumar Basu,

Ms. Manisha Das

...for the Respondent Nos.2 and 3.

Despite service, none appears on behalf of the State-respondents. Affidavit of service is taken on record.

This writ petition has been filed challenging the procedural irregularity and illegality in the order of punishment imposed upon the petitioner dated December 13, 2021. The petitioner is an employee of Bankura District Cooperative Agriculture and Rural Development Bank (hereinafter referred to as the said Bank). The petitioner suffered a penalty. The petitioner was demoted from the post of Branch Manager to a clerical post of Grade-III.

When the petitioner was serving as a branch manager of the said bank, the petitioner was issued a show cause notice dated August 3, 2021, by the Chief Administrative Officer of the said Bank. The petitioner answered to the show cause notice on August 9, 2021. Thereafter, a second show

cause notice was issued to the petitioner on September 16, 2021 and the petitioner answered to the second show cause notice once again on September 25, 2021. Subsequent to receiving the answer to the second cause notice, a Memorandum and Articles of Charges was served upon the petitioner dated December 13, 2021, that is, after the issuance of the second show-cause notice.

The first show cause notice and the second show cause notice preceded the charge sheet. The order of demotion was passed on the basis thereof.

The authorities have proceeded completely in violation of the legal procedure to be followed in the matter of imposing a penalty upon an employee. The first show cause notice, at best, may be taken as the first step towards making a preliminary enquiry. The disciplinary authority was entitled to ask the petitioner to answer to the same and also direct an enquiry. All such actions could be treated as a fact finding enquiry, but the authorities could not have imposed punishment without initiating disciplinary proceeding in accordance with the Rules. In this case, no charge sheet containing the Memorandum of Articles of Charges had been issued prior to December 13, 2021. The authorities issued a second show cause notice in which a reference to an enquiry held on August 21, 2021, has been

made. The second show cause notice contains few charges. The enquiry which was made pursuant to the first show cause notice can at best be treated as a preliminary enquiry and relied upon as an evidence against the petitioner in the disciplinary proceeding. It is submitted that no enquiry as contemplated by law had been held. No documents were supplied. No evidence was recorded. Cross-examination was not allowed.

The petitioner submits that the two directors of the said Bank were asked to enquire into the matter and thereafter, the Chairman of the enquiry committee also enquired into the matter and the second show cause notice was issued. It is also submitted that no enquiry report was served upon the petitioner. Surprisingly, it appears that the Memorandum and Articles of Charges was issued after the second show cause notice was served upon the petitioner. The said Memorandum of Articles of Charges is dated December 13, 2021, whereas, the second show cause notice is dated September 16, 2021. The order impugned, imposing penalty is dated December 13, 2021 which was the date fixed for framing of charges and passing necessary orders. On the same day, the Board held a meeting and recorded dissatisfaction with the answers of the petitioner and passed the order imposing major punishment. Some documents

have been mentioned in the order which reveal that some signatures of the petitioner were obtained which were his admissions to the charges, but no opportunity was given to the petitioner to deal with the same. Those document ought to have been proved by the authority before the enquiry officer.

The right of the authority to proceed against a delinquent officer is not in dispute. The method by which such a proceeding must be initiated and concluded, has been provided by the rules. In this case, the authorities have proceeded contrary to the established procedure. The first show cause notice and the second show cause notice may be treated as the findings of a preliminary enquiry, but the requirement of serving a Memorandum and Articles of Charges upon the delinquent officer, allowing the said officer to answer to the said charges, appointment of an enquiry officer, proceedings before the enquiry officer, recording of evidence, preparation of the report by the enquiry officer, supply of the report to the delinquent officer to answer to the report and thereafter acceptance or non-acceptance of the report are the basic formalities which have to be followed in every disciplinary proceeding. The service rules of the petitioner provide a procedure by which such punishment should have been imposed. Rule 106(13) to (17) of the West

Bengal Co-operative Societies Rules, 2011 deal with disciplinary proceedings. The said Rules have not been followed. The order imposing penalty was passed on the same day that was fixed for framing of charge. Although there are provisions of appeal and review in the service rules, this Court does not think it necessary to relegate the matter back to the reviewing authority in view of the procedural illegality, impropriety and violation of principles of natural justice and also violation of Rule 106, Sub-Rules 13 to 15 of the West Bengal Co-operative Societies Rules 2011. The principles of natural justice has been violated at every step. This has caused injustice to the petitioner.

In the matter of Deputy General Manager (Appellate Authority) and ors. Vs. Ajai Kumar Srivastava reported in (2021) 2 SCC 612, the Hon'ble Apex Court held as follows:

“22. The power of judicial review in the matters of disciplinary inquiries, exercised by the departmental/appellate authorities discharged by constitutional courts under Article 226 or Article 32 or Article 136 of the Constitution of India is circumscribed by limits of correcting errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice and it is not akin to adjudication of the case on merits as an appellate authority which has been earlier examined by this Court in State of T.N. v. T.V. Venugopalan [State of T.N. v. T.V. Venugopalan, (1994) 6 SCC 302 : 1994 SCC (L&S) 1385] and later in State of T.N. v. A. Rajapandian [State of

T.N. v. A. Rajapandian, (1995) 1 SCC 216 : 1995 SCC (L&S) 292] and further examined by the three-Judge Bench of this Court in B.C. Chaturvedi v. Union of India [B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749 : 1996 SCC (L&S) 80] wherein it has been held as under: (B.C. Chaturvedi case [B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749 : 1996 SCC (L&S) 80] , SCC pp. 759-60, para 13)

23. It has been consistently followed in the later decision of this Court in H.P. SEB v. Mahesh Dahiya [H.P. SEB v. Mahesh Dahiya, (2017) 1 SCC 768 : (2017) 1 SCC (L&S) 297] and recently by the three-Judge Bench of this Court in Pravin Kumar v. Union of India [Pravin Kumar v. Union of India, (2020) 9 SCC 471 : (2021) 1 SCC (L&S) 103] .

24. It is thus settled that the power of judicial review, of the constitutional courts, is an evaluation of the decision-making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The court/tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached or where the conclusions upon consideration of the evidence reached by the disciplinary authority are perverse or suffer from patent error on the face of record or based on no evidence at all, a writ of certiorari could be issued. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact.

25. When the disciplinary enquiry is conducted for the alleged misconduct against the public servant, the court is to examine and determine:

- (i) whether the enquiry was held by the competent authority;
- (ii) whether rules of natural justice are complied with;
- (iii) whether the findings or conclusions are based on some evidence and authority has power and jurisdiction to reach finding of fact or conclusion.”

The disciplinary proceeding must be conducted by strict adherence to the principles of natural justice. One of the essential ingredients of observing the principle of natural justice is to allow the delinquent officer to adduce evidence and examine his own witnesses and also cross examine the prosecution witnesses.

In the matter of State of Uttar Pradesh and ors vs. Saroj Jumar Sinha reported in (2010) 2 SCC 772, the Hon’ble Apex Court held that:

“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.

29. Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.

30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.

31. In *Shaughnessy v. United States* (Jackson, J.), a Judge of the United States Supreme Court has said: (L Ed p. 969)

‘... Procedural fairness and regularity are of the indispensable essence of liberty. Severe substantive laws can be endured if they are fairly and impartially applied...’.”

In the matter of *Central Bank of India Ltd. vs. Karunamoy Banerjee* reported in AIR 1968 SC 266 held as follows:

“14. There can be no controversy that the principles of natural justice must be observed, in the conduct of a domestic enquiry, and the workman concerned, must be allowed reasonable opportunity to defend himself. It has also been

held by this Court, that rules of natural justice require that the workman, proceeded against, should be informed clearly of the charges levelled against him; witnesses should be normally examined in the presence of the employee, in respect of the charges; if statements, taken previously and given by witnesses, are relied on, they should be made available to the workman concerned; the workman should be given a fair opportunity to cross-examine witnesses; he should be given a fair opportunity to examine witnesses, including himself, in support of his defence; and the Enquiry Officer should record his findings, based upon the evidence so adduced.

19. We must, however, emphasize that the rules of natural justice, as laid down by this Court, will have to be observed, in the conduct of a domestic enquiry against a workman. If the allegations are denied by the workman, it is needless to state that the burden of proving the truth of those allegations will be on the management; and the witnesses called by the management, must be allowed to be cross-examined by the workman, and the latter must also be given an opportunity to examine himself and adduce any other evidence that he might choose in support of his plea. But, if the workman admits his guilt to insist upon the management to let in evidence about the allegations, will, in our opinion, only be an empty formality. In such a case, it will be open to the management to examine the workman himself, even in the first instance, so as to enable him to offer any explanation for his conduct or to place before the management any circumstances which will go to mitigate the gravity of the offence. But, even then, the examination of the workman, under such circumstances, should not savour of an inquisition. If, after the examination of the workman, the management chooses to examine any witnesses, the workman must be given a reasonable opportunity to cross-examine those

witnesses and also to adduce any other evidence that he may choose.

20. Having considered the enquiry proceedings in its entirety in this case, we are satisfied that there has been no violation of the rules of natural justice. Therefore, it follows that the order of the Labour Court, refusing to grant approval, as asked for, by the management, is erroneous and, as such, it is set aside. In the result, the appeal is allowed; but parties will bear their own costs in this appeal.”

It is also not on record whether the evidences gathered against the petitioner, the documents relied upon by the enquiry committee and the reports of the enquiry committee holding the preliminary enquiries pursuant to the first show cause notice was served upon the petitioner or not. The learned Advocate for the bank has not been able to satisfy the court that the rules were followed. The entire decision was taken on an elaborate discussion by the Board.

Under such circumstances, the order impugned dated December 13, 2021 is set aside. The disciplinary authority is at liberty to proceed strictly in accordance with law and take all steps that may be necessary and permitted by Rule 106 of the 2011 Rules. The petitioner will cooperate in the disciplinary proceedings, if the same is instituted.

This Court has not decided the merits of the issues involved in this writ petition.

This writ petition is, thus, disposed of.

There will be no order as to costs.

All parties are to act on the basis of the server copy of
this order.

(Shampa Sarkar, J.)