

03.08.2022
Court No. 19
Item no.659 (ML)
CP

W.P.A. No. 4198 of 2022

Nimai Sabal
Vs.
The State of West Bengal & ors.

Mr. A. K. Das
Mr. Kallol Kr. Maity
.....for the petitioner.

Mr. P. K. Roy
Mr. Biplob Das
.....for the respondent nos. 2 & 3.

Mr. Madan Mohan Roy
.....for the respondent nos. 10 to 12.

The writ petition has been filed challenging a disciplinary proceeding which has culminated in the imposition of a major penalty of dismissal from service. The points raised by the petitioner who was the manager of Sahajadpur S.K. U.S. (hereinafter referred to as the 'society'), are as follows:

- a) The charge-sheet was submitted upon the petitioner without indicating the list of witnesses and the list of documents relied upon by the disciplinary authority.
- b) The inquiry officer did not furnish the documents as prayed for by the petitioner.
- c) The inquiry report was not supplied to the petitioner.
- d) The petitioner was not asked to file his reply to the inquiry report.

- e) The order of punishment for dismissal from service has been issued without complying with the principles of natural justice.

The learned advocate for the society submits that the letter of dismissal was served upon the petitioner. The petitioner refrained from participating in the enquiry proceedings and hence, the enquiry proceedings were concluded, *ex parte*.

The court finds procedural irregularity. The charge-sheet does not indicate the list of witnesses and the list of documents relied upon by the disciplinary authority. The disciplinary authority is unable to satisfy the court whether the documents relied upon by the disciplinary authority were ever served upon the petitioner. Admittedly, the enquiry report was not served upon the petitioner. Such failure was completely in violation of the principles of natural justice.

Reference is made to the decision of the Hon'ble Supreme Court reported in **(1993) 4 SCC 727 (Managing Director, ECIL vs. B. Karunakar)**. The Hon'ble Apex court held that the right to receive the report of the authority was an essential part of reasonable opportunity and was in consonance with the principle of natural justice.

The findings recorded by the authority formed an important material before the disciplinary

authority. The principles of natural justice required that the petitioner should have been given a fair opportunity to meet, explain and controvert the findings against him, before he was punished. Denial of such opportunity amounted to negation of the tenets of justice and fair opportunity to the petitioner. Therefore, it was imperative that before the authority came to its own conclusions, and decided to punish the petitioner, the petitioner should have been provided an opportunity to reply to the enquiry report. The authority was then required to consider the reply, and the representation of the petitioner against it, and decide on the punishment.

Under such circumstances, the enquiry report and the order of dismissal from service are set aside and quashed. The proceedings will continue de novo.

The petitioner will continue to be under suspension and the subsistence allowance payable in terms of the rules shall be credited to the bank account of the petitioner. The petitioner shall be at liberty to withdraw the amount.

The charge-sheet is not being set aside. The list of witnesses and the list of documents relied upon by the disciplinary authority shall be supplied to the petitioner. The relevant documents shall be supplied.

The enquiry proceeding shall continue de novo upon the petitioner filing his written statement. A

new enquiry officer will be appointed. Such written statement shall be filed within four weeks from the date of receipt of the documents and the list of witnesses. The petitioner shall be entitled to cross-examine the PW witnesses, examine himself and his own witnesses. The disciplinary proceeding shall be concluded upon observation of the principles of natural justice.

This order shall not be construed as an expression of the court on the merits of the allegations against the petitioner.

The writ petition is disposed of.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)