

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

W.P.A. 7161 of 2012
With
W.P.A. 23999 of 2010

Tarakeshwar Pandey

Versus

Union of India & Ors.

For the Petitioners : Mr. Achin Kumar Majumder, Adv.

For the Respondents : Mr. Sovan Mukherjee, Adv.

Heard On : 14.06.2022

Judgment On : 14.06.2022

Saugata Bhattacharyya, J.:

This is a writ petition pertaining the decision of the Revising Authority dated 15th March, 2011 whereby the Revising Authority in terms of Rule 219.4 of the Railway Protection Force Rules 1987 (hereinafter referred to as “said Rules of 1987”) enhanced the punishment against the petitioner to the extent

of compulsory retirement from service with full pensionary benefit with immediate effect.

The petitioner was a Sub-Inspector of Railway Protection Force who was charge-sheeted vide order dated 3rd December, 2009. The allegation as contained in the charge-sheet is reproduced below:

“Charge:-

Sri T.K. Pandey, SIPF of RPF/Post/ Ranchi is charged for discreditable conduct in that while girls students of Aligarh Muslim University were travelling by a Special train from Aligarh, on 1.11.2009 at about 18.00 hrs, on arrival of the train at Bokaro Railway station he (SI Sri Pandey) along with others tried to board in the same coach unauthorisedly also abused and threatened them on refusal by Fahad Allam, Nadia Allam and Sabnam Ara.

This amounts to discreditable conduct in a manner prejudicial to discipline and bringing discredit to the reputation of the force and unbecoming of a Railway servant in the discipline force of the Union.

Thus such act on the part of Sri T.K. Pandey SIPF tantamount to gross indiscipline act and discreditable conduct which renders him violation of rule 146.1.146.4 of RPF rules 1987 and para-3 (iii) of Railway Service Conduct rules 1966.”

After issuance of such charge-sheet departmental enquiry was commenced by the Enquiry Officer and the enquiry report dated 29th May, 2010 was prepared which went against the petitioner and it was found by the enquiry officer that the petitioner was guilty of the charges and the allegations. Based on such enquiry report dated 29th May, 2010 Senior Divisional Security Commissioner, RPF, South Eastern Railway, Ranchi issued order of punishment whereby the petitioner was imposed punishment to the extent of reduction in rank from Sub-Inspector to Assistant Sub-Inspector for a period of one month.

Petitioner as it appears from the submission made on behalf of the parties to this writ petition as well as from the records had accepted such order of punishment imposed upon him by the disciplinary authority and did not make any demur against the findings of the Enquiry officer as contained in enquiry report dated 29th May, 2010 as well as the decision to impose punishment as contained in the order of punishment dated 19th July, 2010.

Subsequently, the Revising Authority took up the issue on its own motion relating to imposition of punishment upon the petitioner in terms of Rule 219.4 of the said Rules of 1987 and issued show cause notice dated 11th November, 2010 to the petitioner asking him to explain why the punishment should not be enhanced in connection with the disciplinary proceeding initiated against him.

Such show cause notice of the Revising Authority is at pages 72 to 73 of the writ petition.

The petitioner being aggrieved by the steps taken by the respondent authorities preferred the writ petition being WPA 23999 of 2010 challenging the said show cause notice dated 11th November, 2010 and the said writ petition stood dismissed by a coordinate Bench vide order dated 2nd February, 2011. The relevant part of the observation of the coordinate Bench made in the order dated 2nd February, 2011 runs infra:

“Taking into consideration the aforementioned facts and circumstances and also considering the provisions of Rule 219.4, this Court is of the view that there is no irregularity at all in the Order passed by the IG-cum-Chief Security Commissioner, R.P.F., who passed the Order on 11.11.2010. There is no merit in this writ petition. It is accordingly dismissed”.

After dismissal of the first writ petition petitioner responded to the show-cause notice dated 11th November, 2010 vide letter dated 13th February, 2011 and in consideration of such reply to the show-cause notice ultimately the order of enhancement of punishment to the extent of compulsory retirement from service with full pensionary benefit was imposed upon the petitioner vide order dated 15th March, 2011 by the Revising Authority invoking relevant provisions under Rule 219.4 of the said Rules of 1987.

In the present writ petition the petitioner has assailed such order of enhancement of punishment along with findings of the enquiry officer dated 29th May, 2010 and the order of the Appellate Authority dated 19th September, 2011.

The petitioner has thrown challenge to the order of Appellate Authority dated 19th September, 2011 since he preferred departmental appeal against the order of enhancement of punishment dated 15th March, 2011 and the Appellate Authority vide order dated 19th September, 2011 confirmed the order of enhancement of punishment.

Mr. Achin Kumar Majumder, learned advocate, appears on behalf of the petitioner and submits that under Rule 153.19 the enquiry officer while recording his findings is required to assign reasons in support of the adverse findings made against the petitioner. According to the assessment of the petitioner the report of the enquiry officer is devoid of any reason. In addition thereto, it has also been contended that the Revising Authority while enhancing the punishment against the petitioner was required to assign further reasons in support of the decision of enhancement of punishment after granting opportunity to the petitioner to show-cause why the punishment imposed by the disciplinary authority need not be enhanced. According to the petitioner the impugned order of enhancement of punishment dated 15th March, 2011 does

not bear any cogent reason. Therefore, it has been strenuously argued on behalf of the petitioner that such decision to enhance punishment upon the petitioner should not be allowed to survive.

In addition thereto it has also been submitted on behalf of the petitioner that the relevant facts relating to the charge levelled against the petitioner which ought to have been taken into consideration by the enquiry officer was not addressed by the said enquiry officer while recording findings against the petitioner which violates the basic tenets of principle of natural justice. In addition thereto, reliance has also been placed on the Judgment of the Apex Court reported in AIR (2000) 3 SCC 350 (Sajjadanashin Sayed Md. B.E. EDR. (D) By LRS. -vs- Musa Dadabhai Ummer and Ors.), paragraph 11 onwards, in order to answer the query of the Court whether the order passed by the co-ordinate Bench dated 2nd February, 2011 shall operate as constructive res-judicata in terms of Explanation-IV to Section 11 of Civil Procedure Code, 1908. By placing reliance on paragraph 11 onwards of Sajjadanashin Sayed (supra) it has been submitted on behalf of the petitioner that the impugned show cause notice for enhancement of punishment dated 11th November, 2010 was the principle issue in the writ petition (WPA 23999 of 2010) and the other issues were collateral and incidental in nature therefore principles of constructive res-judicata may not operate as estoppel while questioning the findings of the enquiry officer in the subsequent writ petition which has been considered by this Court at present.

Mr. Sovan Mukherjee, learned advocate representing the Railway Authorities being the principle respondents has submitted that there was no flaw in the findings of the enquiry officer considering recording of the incident at Bokaro Station on 1st November, 2009. According to the respondent authorities the enquiry officer took stock of the situation and incident which took place on 1st November, 2009 at Bokaro Station and went to the root of the issue and the allegation levelled against the petitioner and accordingly on preponderance of probability the enquiry officer came to the findings which ultimately went against the petitioner.

It has also been contended on behalf of the respondents that there is no departure on the part of the respondent authorities in following the procedure while initiating and concluding disciplinary proceeding against the petitioner and petitioner was granted adequate opportunity before the authority. In addition thereto, attention of this Court has been drawn to procedure adopted by the Revising Authority in terms of Rule 219.4 of the said Rules of 1987 wherein the Revising Authority before coming to the conclusion on enhancement of punishment against the petitioner issued show-cause notice which was upheld by the co-ordinate Bench vide order dated 2nd February, 2011 and granted opportunity to the petitioner to respond to such show-cause notice. Therefore according to the respondent authorities the procedure which

was required to be adopted was strictly followed right up to the enhancement of punishment against the petitioner.

Reliance has been placed on behalf of the respondents on the judgment of the Apex Court reported in 1977 SC 1680 (State of Uttar Pradesh -vs- Nawab Hussain), paragraphs 7 and 8.

This Court has considered the submissions made on behalf of the respective parties and considered the relevant materials available on record including the pleadings.

In taking into consideration the relevant facts as well as submissions made it appears that petitioner filed first writ petition after issuance of show-cause notice by the Revising Authority in terms of Rule 219.4. At the time of throwing challenge to such show-cause notice it was definitely open to the petitioner to question the findings of the enquiry officer as contained in the report dated 29th May, 2010 which petitioner chose not to do and the challenge in the first writ petition was confined only to the issuance of said show-cause notice by the Revising Authority. In order to satisfy the query of this Court record of the first writ petition being WPA 23999 of 2010 was called for and this Court has considered the scope of the said writ petition. Unfortunately it appears from such records of the previous writ petition that challenge was thrown only to the show cause notice issued by the Revising Authority. In

consideration of such challenge thrown in the first writ petition at the instance of the petitioner it appears to this Court that the doctrine of constructive res-judicata as contemplated under Explanation-IV to section 11 of the Code of Civil Procedure does apply and considering the entire gamut of the issue discussed above it also appears that the findings of the enquiry officer in his report was the basic material on which first disciplinary authority imposed the lesser punishment and subsequently the Revising Authority made enhancement of the punishment upon invoking Rule 219.4. Therefore, the petitioner according to the assessment of this Court ought to have questioned the findings of the enquiry officer which was available to the petitioner at the time of instituting the first writ petition. Petitioner did not do so. Therefore such order of the co-ordinate Bench on the first writ petition dated 2nd February, 2011 should be construed as an estoppel in the matter of throwing further challenge to the enquiry report while presenting the second writ petition questioning the decision of enhancement of punishment by the Revising Authority.

In this regard this Court finds it apt to rely upon the judgment of the Apex Court in **Nawab Hussain (supra)**, paragraph 8 of the said Judgment is quoted below:-

“8. It is not in controversy before us that the respondent did not raise the plea, in the writ petition which had been filed in the High Court that by virtue of Clause-(1)

of Article 311 of the Constitution he could not be dismissed by the Deputy Inspector General of Police as he had been appointed by the Inspector General of Police. It is also not in controversy that was an important plea which was within the knowledge of the respondent and could well have been taken in the writ petition, but he contended himself by raising the other pleas that he was not afforded a reasonable opportunity to meet the case against him in the departmental enquiry and that the action taken against him was mala fide. It was therefore not permissible for him to challenge his dismissal, in the subsequent suit, on the other ground that he had been dismissed by an authority subordinate to that by which he was appointed. That was clearly barred by the principle of constructive resjudicata and the High Court erred in taking a contrary view.”

Now question comes whether the Revising Authority while exercising his power as contemplated under Rule 219.4 took the necessary steps before taking decision relating to enhancement of punishment. This Court has perused the order of the Revising Authority dated 15th March, 2011 wherefrom it does not appear that the Revising Authority differed with the findings of the enquiry officer but came to the conclusion that this is a case of enhancement of punishment. Mere reading of the order of the Revising Authority goes to show that accepting the findings of the enquiry officer the Revising Authority according to its wisdom finds it proper to enhance the punishment against the

petitioner and ultimately imposed the punishment of compulsory retirement from service with full pensionary benefit.

Question arises whether it is open to interference by the Court of judicial review? This Court finds it proper to rely upon the Judgment of the Apex Court reported in **(1995) 6 SCC 749 (B.C. Chaturvedi Vs. Union of India & Ors.)**; Paragraph 18 runs infra:

“18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/ Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/ Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”

The principle which has been enunciated in **B.C. Chaturvedi (supra)** in paragraphs 17 and 18 clearly reveals that High Court/Tribunal while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/ Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof. On consideration of the law laid down by the Apex Court in **B.C. Chaturvedi (supra)** it does not appear to this Court that in the present case any exception has been carved out warranting inference by this Court on imposition of enhanced punishment. In the present case the Revising Authority considering the report of the enquiry officer thought it fit to enhance the punishment on invoking Rule 219.4 of the said rules of 1987 which is within the four corners of the statutory provisions. Furthermore, this Court cannot shut its eyes to the failure on the part of the petitioner in assailing the findings of the enquiry officer while throwing challenge to the show-cause notice issued by the Revising Authority in the first writ petition which according to this Court shall operate as constructive res-judicata.

Considering the above conspectus, this writ petition does not merit consideration and the same stands dismissed. However, there shall be no order as to costs.

The record of WPA 23999 of 2010 be sent down to the department.

Urgent Photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)

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