

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Subrata Talukdar

And

The Hon'ble Justice Supratim Bhattacharya

FMA 703 of 2019

With

CAN 3 of 2022

Union of India & Ors.

-Vs

K. D. Saroch

For the Appellants : Ms. Chandreyi Alam
Ms. Runu Mukherjee

For the Respondent/ writ : Mr. K. B. S. Mahapatra
petitioner Mr. Kasinath Bhattacharya

Heard On : 06.02.2023

Judgement Delivered On : 04.05.2023

Supratim Bhattacharya, J.:-

- 1) The appellants have preferred the instant appeal against the impugned Judgement and Order passed in the writ petition being WP 8404 (W) of 2009 dated 10th March, 2016. Through the impugned Order the Hon'ble Single Bench has come to the conclusion that the inquiry report is perverse and on the basis of the said finding, has set aside the inquiry report alongwith all consequential orders.
- 2) The appellants, being the Union of India, were the respondents in the said writ petition, while the respondent in the instant appeal was the writ petitioner.
- 3) The facts of the instant case are that a charge of theft of 14 bags of *Ferro Chrome* weighing 540 KG amounting to Rs. 62,600/- was brought against the respondent/writ petitioner on the ground of the same being stolen from the Ferro store of CISF unit in the Durgapur Steel Plant on the 31st day of May, 2008. On the basis of the said charge a Departmental Proceeding was initiated against the respondent/writ petitioner and the respondent/writ petitioner has been found guilty of the said charge and on the basis of the said finding the incumbent has been punished. Against the said finding and punishment the respondent/writ petitioner had preferred the writ petition and the same has been allowed.
- 4) Learned Senior Counsel for the appellants/ Union of India has submitted that there was gross misconduct, negligence, dereliction of duty and

failure to maintain absolute integrity on behalf of the respondent/writ petitioner. It is further submitted that during the night of 30th March, 2008 and 31st March, 2008 the respondent/writ petitioner was entrusted with the duty of sentry in the 'C' shift at the ferro alloy stores area in between 21.00 hrs. and 05.00 hrs. It is further submitted that at about 02.30 hrs. one B.C. Sahoo, an Ex. S.I., while on round checking reached the alloy stores and found Constable K.D. Saroch, that is the respondent/writ petitioner, standing at the corner of the store near the railway track while some criminals were noticed moving near the track. It is also submitted that thereafter the said S.I. called the Quick Response Team (QRT) over walkie-talkie while the respondent/writ petitioner made no attempt to chase or challenge the miscreants and the said miscreants ran away. It is further submitted that the respondent/writ petitioner could not give any satisfactory answer in respect of the *Ferro Chrome* having been found outside the store. It is thus pointed out that on the basis of the aforesaid facts and circumstances proceeding had been initiated against the respondent/writ petitioner. It is further submitted that all the procedures which were required to be followed during a Departmental Proceeding (DP) had been adopted during this Departmental Procedure. It is submitted that the said DP ended with the conclusion that charge stood proved against the respondent/writ petitioner.

The Learned Senior Counsel pointed out that the respondent/writ petitioner preferred an appeal before the Appellate Authority against the final order of the Enquiry Proceedings. The Appellate Authority had issued a show-cause as to why the punishment of reduction of pay should not be enhanced to compulsory retirement. It is further submitted that the respondent/.writ petitioner challenging the proposal for enhancement of punishment had approached the Hon'ble Court through the writ petition.

Learned Senior Counsel has asserted that the enquiry proceeding did not suffer from any procedural irregularity and does not warrant any interference by the Hon'ble Court. It is submitted that the respondent/writ petitioner had actively participated in the entire proceeding and that the charge levelled against the respondent/writ petitioner stood proved. Learned Counsel has further submitted that the Disciplinary Authority and the Appellate Authority had considered all the issues raised by the respondent/writ petitioner and after considering all aspects and after being satisfied, have come to the conclusion that there was gross misconduct, negligence, dereliction of duty and failure to maintain absolute integrity which is unbecoming of a member of a disciplined force.

The Learned Counsel has further submitted that against the respondent / writ petitioner the charges proved are of gross misconduct, negligence, dereliction of duty and failure to maintain absolute integrity rendering

himself unbecoming of a good member of disciplined force. Banking upon the aforesaid facts and circumstances the Learned Counsel has submitted that the findings based on the observations in the impugned order of the Hon'ble Single Bench that the DP was perverse is not correct and as such the said impugned order is liable to be set aside. Learned Counsel concluded his submission by emphasising that the Hon'ble Apex Court has held that in exercising powers of judicial review the High Court ought not to step into the shoes of the Appellate Authority and should not arrive at an independent finding.

Reliance in this respect has been placed on the authority reported in **AIR 1999 SC 3579.**

5) *Per Contra*, Learned Counsel appearing on behalf of the respondent/ writ petitioner has submitted that the respondent/writ petitioner has been victimized and there was breach of natural justice in the conduct of the disciplinary proceeding. It is submitted that allegations of theft of fourteen bags of Ferro Chrome weighing 500 Kgs have been levelled against the respondent/writ petitioner. It is pointed out that the allegation of theft has been stated to have occurred during the night of 30.05.2008 and 31.05.2008. It is also submitted that the respondent/writ petitioner seeing the movement of some people had blown his whistle as a result of which other personnel had reached the said place and the miscreants fled away. The Learned Counsel categorically stressed upon the point that there was no report of theft of materials

from any of the Ferro stores. The Learned Counsel has also submitted that the alleged stolen materials were deposited after much delay on 17.06.2008 as because no theft had taken place.

The stand is also taken that failing to identify the store from which such goods were missing, the alleged stolen and subsequently recovered goods were returned to the store melting shop of the plant. It is submitted that the receipt of deposit of such materials in the store melting shop were not disclosed during the enquiry proceedings. Banking upon the aforesaid facts, Learned Counsel has submitted that the respondent/writ petitioner is innocent and the instant appeal be dismissed.

- 6) The crux of the instant appeal is as to whether the order passed by the Hon'ble Single Bench is in accordance with law or not.
- 7) On going through the entire facts of the *lis*, it reveals that charges have been brought against the respondent/writ petitioner of gross misconduct, negligence, dereliction of duty and failure to maintain absolute integrity. It has been alleged that during the night of 30.05.2008 and 31.05.2008 at about 2.30 hours one S.I. namely B.C. Sahoo who was the shift in-charge of the 'C' shift while having a round found the respondent/writ petitioner standing in a corner of the Ferro store near railway track and some persons were seen to be moving near the track. The said Mr. Sahoo had immediately called the Quick Response Team (QRT) over walkie-talkie but the respondent/writ petitioner did not make any attempt to chase or challenge those persons.

On being chased those persons fled away in the darkness. It has been alleged that fourteen bags weighing 540 Kgs of Ferro chrome were recovered.

Relying on the aforementioned facts charges were framed and ultimately the respondent/writ petitioner has been punished for the same.

- 8)** On going through the impugned Judgement and Order it is apparent that the Hon'ble Single Bench has emphasized upon the fact that there was no report of theft of any material from any Ferro store. There has also been reliance on the fact that the stolen material was deposited after much delay, that is on the 17.06.2008, as because there had not been any theft reported and there was failure to identify the store from which such goods were missing and ultimately the recovered goods were returned to the store melting shop of the plant. The Hon'ble Single Bench has also found that the receipt of the deposit of goods has not been disclosed in the enquiry proceedings. Reliance has also been given to the fact that it was not possible to identify from which store the theft had taken place and no store in the specified area of duty of the respondent/writ petitioner had reported any theft of such material, which this Court also relies upon.

- 9)** Reliance by the Hon'ble Single Bench on the fact that the materials relied upon in the Disciplinary Proceeding conducted against the respondent/writ petitioner do not reveal loss of the materials, at least from a store within the vicinity or area of the duty of the writ petitioner,

which raises concern in the mind of this Court as regards to the theft. In case of theft the prime thing which is to be taken into consideration is the material stolen. Where there is no complaint of any material stolen which is the foundation of such offence, it raises immense doubt in the mind of the Court with regard to the basis for the charges brought against the respondent/writ petitioner in the DP.

10) In this aspect this Court feels it necessary to state that in a criminal case, standard of proof required is beyond reasonable doubt while in a domestic enquiry it is the preponderance of probabilities that constitutes the test to be applied. This aforementioned aspect has been dealt with by the Hon'ble Apex Court in the Judgement published in (1999) 3 SCC 679 wherein the following has been stated in Paragraph 13: "... while in the departmental proceedings the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubts. The little exception may be where the departmental proceedings and the criminal case are based on the same set of facts and the evidence in both the proceedings is common without there being a variance."

11) The fact that the materials involved in the disciplinary proceeding conducted against the petitioner do not reveal the loss of the materials at least from a store within the vicinity or area of duty of the petitioner which raises concern in the mind of this Court as regards to the theft.

12) In a case of theft the prime thing which is to be taken into consideration is the material stolen. Where there is no complaint of any material stolen which is the foundation of such offence, it raises immense doubt in the mind of this Court and where there is slightest of doubt offence cannot be proved, which is required to be proved beyond reasonable doubt.

13) The citation relied upon by the appellant that is **AIR 1999 SC 3579** is not applicable in the instant case as because the aforesaid judgement is in respect of insufficient evidence adduced but in the instant case there is no question of insufficiency of evidence on the contrary the root of the offence that is theft of the article is not present in the fact involved in the instant case.

14) This Court relies upon the judgement passed by Hon'ble Division Bench of the Hon'ble Apex Court published in **(2009) 2 SCC 570**. The relevant portion at Paragraph 23 stands quoted below:

"... Suspicion, as is well-known, however high may be, can under no circumstances be held to be a substitute for legal proof."

15) In addition to the above this Court also refers to the judgement passed by the Constitution Bench of the Hon'ble Apex Court in *AIR 1964 SC 364*. At paragraph 27 of the said Judgement the following has been stated:

“27. ... Though we fully appreciate the anxiety of the appellant to root out corruption from public service, we cannot ignore the fact that in carrying out the said purpose, mere suspicion should not be allowed to take the place of proof even in domestic enquiries it may be that the technical rules which govern criminal trials in Courts may not necessarily apply to disciplinary proceedings, but nevertheless the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules.”

- 16)** In this instant case on hand theft of article is the laying stone while misconduct, negligence, dereliction of duty and failure to maintain absolute integrity is ancillary to theft. Where the prime cause of the offence that is theft is in doubt the derivatives cannot come to the forefront. As such the allegations of misconduct, negligence, dereliction of duty and failure to maintain absolute integrity does not have any leg to stand upon.

In the light of the above factual and legal scenario, this Court is at one with the view of the Hon’ble Single Bench.

Thus, this Court does not find any infirmity in the Judgement and Order of the Hon’ble Single Bench and the same stands affirmed.

FMA 703 of 2019 with CAN 3 of 2022 stands accordingly dismissed.

Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.

Urgent Xerox certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I Agree

(Subrata Talukdar, J.)

(Supratim Bhattacharya, J.)