

07-08-2023
ct no. 13
sl. no. 2
sp

F.M.A. No. 572 of 2014
With
IA No. CAN 1 of 2014 (Old No. CAN 989 of 2014)
The Kolkata Port Trust & Ors.
-Versus-

Md. Mustafa (since deceased) rep. by Md. Asfaque (son) &
Ors.

Mr. Arunava Ghosh,
Mr. Ashok Kumar Jena

...for the appellants

Mr. Kingsuk Mondal

....for the respondents

1. The mandamus appeal is directed against the judgement and order dated October 8, 2013 passed by a Single Bench of this Court in W.P. No. 5444 (W) of 2010 (Md. Mustafa Vs. The Kolkata Port Trust & Ors.).
2. The brief facts of the case are that the writ petitioner was appointed on compassionate ground on July 10, 1991. He was employed in place and stead of his alleged late father Md. Idris.
3. Initial enquiries were made by the Port Trust Authorities. A declaration was obtained from the writ petitioner in which he stated that he had only one sister. The writ petitioner/respondent continued in employment until May 18, 2007 (17 years) when he was placed on suspension in contemplation of departmental proceedings.

4. A charge sheet was issued to the writ petitioner/substituted respondent on June 20, 2007. The charge was for major penalty that he secured employment on compassionate grounds by impersonating himself as son of late Md. Idris. The writ petitioner replied to the charge sheet.
5. The management examined 4 witnesses and the writ petitioner two witnesses. The Enquiry Officer found the writ petitioner guilty of the charges and submitted a report to the Disciplinary Authority. The writ petitioner represented in writing against the enquiry report.
6. After considering the enquiry report and the representation of the writ petitioner the Disciplinary Authority by the order dated October 29, 2008, passed a major penalty of dismissal against the writ petitioner/substituted respondent.
7. The writ petitioner preferred an appeal before the Deputy Chairman, which was rejected. The writ petitioner carried the matter in review before the Reviewing Authority, i.e., the then Chairman of the Kolkata Port Trust.

8. The review application was rejected by order dated January 17, 2011. The writ petition was filed thereafter.
9. The learned Single Bench found the order of the Disciplinary Authority not sustainable on a two-fold ground.
 - (a) That the test applied by the Enquiry Officer was incorrect.
 - (b) The writ petitioner had asked for two documents being the report of the Vigilance Officer of the year 1991 before the writ petitioner was given compassionate employment.
10. The said two documents were not supplied to the petitioner/respondent. The learned Single Bench, had asked the Port Trust to produce the said two vigilance reports in Court by affidavit which was not produced. The learned Single Bench, therefore, was of the view that the denial of the two documents constituted a denial of the principle of natural justice. The writ petitioner according to the learned Single Judge was denied an opportunity to defend himself in the enquiry by reason of non-supply of the said two documents.

11. This Court has very carefully considered the entire record of enquiry as also the judgement impugned.
12. It is now a well-settled principle of service jurisprudence that non-supply of every document sought by a charge sheeted employee would not ipso facto amount to denial of natural justice. It must be demonstrated first as to how those documents are relevant, for the purpose of the defence of the petitioner to the charges levelled against him. There has been no such demonstration.
13. Even in the detailed reply to the enquiry report the writ petitioner has not asserted or alleged or contended that he has been handicapped in his defence by reasons of non-supply of the two documents in question.
- 14.** The argument of the writ petitioner/substituted respondent and the findings of the learned Single Bench, of prejudice or violation of natural justice of the petitioner/respondent on this score, therefore, is not sustainable in law. Reference is made in this regard to the decision of the Supreme Court in the case of ***State Bank of Patiala Vs. S.K. Sharma*** reported in **(1996) 3 SCC 364**.

15. The next aspect that has to be considered is as to whether the said two documents were relied upon by the Enquiry Officer in the process of finding guilt, or the Disciplinary Authority, in imposing the penalty against the writ petitioner. The answer is an emphatic 'No'. The Disciplinary Authority relied primarily upon the declaration of the writ petitioner given at the time of securing employment and the report of the Superintendent of Police, Bhagalpur (Bihar). It is this document that the writ petitioner's defence fell foul of. This document has admittedly been supplied to the writ petitioner.
16. It cannot also be said that the conclusion of the Disciplinary Authority and the Enquiry Officer were based on any material not disclosed to the writ petitioner. The findings are definitely not perverse and are infact based on the evidence on record.
17. In the above circumstances, this Court is of the view that the learned Single Bench has committed error in finding against the Kolkata Port Trust (now known as 'S.P. Mukherjee Port Trust).
18. In the backdrop of the discussions made hereinabove, this Court is of the view that F.M.A. 572 of 2014 must be allowed and is

hereby allowed. The impugned judgement and order dated October 8, 2013 passed by a Single Bench of this Court in W.P. No. 5444 (W) of 2010 (Md. Mustafa Vs. The Kolkata Port Trust & Ors.) shall stand set aside.

19. In course of proceedings in this appeal, the respondents have been brought on record since the original writ petitioner Md. Mustafa died on 19.12.2014, The respondents are the legal heirs of late Md. Mustafa.
20. The Kolkata Port Trust shall release all the entitlements and payments of a dismissed employee to the respondents, if not already so done. Any dues, payable to the deceased employee, shall be paid within a period of 2 months from date.
21. In view of the above, CAN 1 of 2014 (Old No. CAN 989 of 2014) shall also stand dispose of.
22. There shall be no order as to costs.
23. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)

