

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Kausik Chanda**

W.P.A. No.5578 of 2020

DR. TATHAGATA CHOUDHURI

-VERSUS-

VISVA-BHARATI AND OTHERS

For the petitioner : Mr. Samim Ahmed, Adv.,
Mr. Arka Maiti, Adv.

For the Visva-Bharati : Mr. Soumya Majumder, Adv.,
Mr. Victor Chatterjee, Adv.,
Mr. Barnamoy Basak, Adv.

Hearing concluded on : 24.11.2022

Judgment on : 15.03.2023

Kausik Chanda, J.:-

In this writ petition, the petitioner, a Professor in the Department of Biotechnology at Visva-Bharati, has challenged an order dated March 16, 2020. The said order withholds his two increments with cumulative effect.

2. It was reported that the petitioner allegedly threatened and abused a fellow professor at Visva-Bharati on November 17, 2019.

3. To enquire into the allegation against the petitioner, a one-member committee was formed by the university. The said one-member committee filed its report on November 26, 2019. Subsequently, the Executive Council of Visva-Bharati in its meeting dated November 29, 2019, resolved to form a three-member Enquiry Committee. The new committee was asked to review the findings of the one-member committee report and also to undertake additional steps. The said committee was formed by an order dated December 1, 2019. On the same date, the petitioner was suspended with immediate effect pending the receipt of the report of the newly constituted committee. The report of the said three-member committee was submitted on January 3, 2020, before the Vice Chancellor of Visva-Bharati.

4. The relevant findings and the recommendations of the said committee are reproduced below:

“From the above observation, this committee comes to the conclusion that both Prof. Chatterjee and Prof. Chowdhuri lost temper while interacting with each and used words that might have provoked them. Prof. K.Chatterjee reportedly said that he would forcefully break the door (**Lathimere**) and Prof. T. Chowdhuri thumped Prof.

K. Chatterjee on the back and thanked him somewhat sarcastically. It is also reported that Prof. T. Chowdhuri threatened Prof. K. Chatterjee that he would see what he could do.

Such misunderstanding and exchange of harsh words is not at all desirable between senior academicians and faculty members of the university. Both can be requested not to indulge in such altercations in future. The committee recommends that a token punitive measure needs to be taken against Prof. Tathagata Chowdhuri of the Dept. of Biotechnology to send a message to the Visva Bharati community that such undesirable activities will not be tolerated in future.”

5. Upon consideration of the said report, the Executive Council in its meeting held on March 6, 2020, revoked the suspension of the petitioner with immediate effect and imposed a penalty of withholding his two increments with cumulative effect. The said resolution of the Executive Council was communicated to the petitioner by the Registrar of Visva-Bharati through an office order dated March 16, 2020.

6. On behalf of the petitioner, it has been submitted that the entire proceeding suffered from a violation of the principle of natural justice since Visva-Bharati did not issue any charge sheet against the petitioner. The petitioner was never supplied with the enquiry report, and the report failed to take into consideration the evidence of all witnesses. The petitioner allegedly only patted of the shoulder of his colleague without any mala fide intention. The alleged act of the petitioner does not constitute any misconduct.

7. On behalf of the University, it has been submitted that the petitioner was well aware of the allegations levelled against him. The petitioner was aware of the process of collection of evidence/material before him. The petitioner also adduced his defence evidence before the Enquiry Committee.

8. It has been submitted on behalf of the university that the university has substantially complied with the principle of natural justice and due to the perceived non-compliance with the principle of natural justice, no prejudice has been caused to him. The purpose of issuance of a charge sheet is to make the delinquent aware of the allegations levelled against him. In this case, the petitioner was fully aware of the accusations. The petitioner, admittedly, made a written submission in support of his defence which demonstrated that the petitioner was cognizant of the charges made against him.

9. There has been substantial compliance with the principle of natural justice by issuing the show-cause notice dated December 2, 2019, outlining the specific allegations levelled against the petitioner. The said notice notified the petitioner of the charges brought against him. The petitioner has not been able to demonstrate any prejudice that he might have suffered in the disciplinary proceeding due to the non-supply of enquiry report.

10. In support of the submission that there has been substantial compliance of natural justice and no prejudice has been caused to the petitioner warranting interference of this Court, the petitioner has relied

upon two judgments of the Supreme Court reported at **AIR 1996 SC 1669** (***State Bank of Patiala v. S.K. Sharma***) and **AIR 1994 SC 1074** (***Managing Director, ECIL, Hyderabad v. B.Karunakar***).

11. I am of the clear view that the impugned order dated March 16, 2020, cannot be sustained.

12. The imposition of penalty has been done in an entirely illegal and arbitrary manner, disregarding the extant service rules and blatantly violating the principle of natural justice.

13. Admittedly, the said punishment has been imposed upon the petitioner without a full-fledged disciplinary proceeding initiated by the issuance of a charge sheet. The university also could not demonstrate that the enquiry report of the three-member committee was ever served upon the petitioner. From the enquiry report, it does not appear that any opportunity was ever afforded to the petitioner to cross-examine the prosecution witnesses. The committee met with different persons at different places “to understand the incident in depth”, and also visited the site “to have an idea about the place of incident.” It does not appear that material/evidence collected against the petitioner was ever supplied to him for his rebuttal. In fact, no regular examination or cross-examination of the witnesses occurred during the enquiry. The enquiry report was never served upon the petitioner. The Executive Council of the university unilaterally without any opportunity of hearing to the petitioner imposed

the punishment of withholding two increments with cumulative effect. Withholding two increments with cumulative effect amounts to a major penalty and such a penalty cannot be imposed without a regular disciplinary proceeding. The issue is covered by the Supreme Court judgment reported at **1991 Supp (1) SCC 504 (*Kulwant Singh Gill v. State of Punjab*)**.

14. The relevant part of the said judgment is quoted below:

“5. The further contention of Shri Nayar that the procedure under Rule 8 was followed by issuance of the show cause notice and consideration of the explanation given by the appellant would meet the test of Rules 8 and 9 of the Rules is devoid of any substance. Conducting an enquiry, de hors the rules is no enquiry in the eye of law. It cannot be countenanced that the pretence of an enquiry without reasonable opportunity of adducing evidence both by the department as well as by the appellant in rebuttal, examination and cross-examination of the witnesses, if examined, to be an enquiry within the meaning of Rules 8 and 9 of the Rules. Those rules admittedly envisage, on denial of the charge by the delinquent officer, to conduct an enquiry giving reasonable opportunity to the presenting officer as well as the delinquent officer to lead evidence in support of the charge and in rebuttal thereof, giving adequate opportunity to the delinquent officer to cross-examine the witnesses produced by the department and to examine witnesses if intended on his behalf and to place his version; consideration thereof by the enquiry officer, if the disciplinary authority himself is not the enquiry officer. A report of the enquiry in that behalf to be placed before the disciplinary

authority who then is to consider it in the manner prescribed and to pass an appropriate order as for the procedure in vogue under the Rules. The gamut of this procedure was not gone through. Therefore, the issuance of the notice and consideration of the explanation is not a procedure in accordance with Rules 8 and 9. Obviously, the disciplinary authority felt that the enquiry into minor penalty is not necessary and adhering to the principles of natural justice issued the show cause notice and on receipt of the reply from the delinquent officer passed the impugned order imposing penalty thinking it to be a minor penalty. If it is considered, as stated earlier, that it would be only a minor penalty, the procedure followed certainly meets the test of the principles of natural justice and it would be a sufficient compliance with the procedure. In view of the finding that the impugned order is a major penalty certainly then a regular enquiry has got to be conducted and so the impugned order is clearly illegal. The trial court rightly granted the decree. The judgment and the decree of the High Court is vitiated by manifest illegality. At this distance of time it is not expedient to direct an enquiry under Rules 8 and 9 of the Rules. The appeal is accordingly allowed and the judgment and decree of the High Court is set aside and that of the trial court is restored but in the circumstances without costs.”

15. It has to be noted that the Executive Committee of Visva-Bharati adopted a resolution on July 7, 1989, to the effect that the Government of India Rules should apply to its employees in absence of University Rules. Therefore, the disciplinary proceedings, in this case, should have been initiated in strict compliance with the Central Civil Services (Classification,

Control and Appeal) Rules, 1965. Even if it is assumed that the said Rules have got no manner of application in the petitioner's case, the university should not have given a complete go-bye to the principle of natural justice in imposing a major penalty. The principle of natural justice would require the university to conduct the enquiry in a proper manner and provide the petitioner with the materials collected against him as well as the enquiry report before imposing a major penalty.

16. I am of the clear view that failure to fulfill the elementary requirement of conducting a fair proceeding has caused a great prejudice to the petitioner in defending himself against the arbitrary imposition of a major penalty.

17. The facts involved in the case are, therefore, totally different from the facts involved in the reported cases relied upon by the university. The judgments relied upon by the university do not render any assistance to sustain the impugned action.

18. In that view of the matter, the disciplinary proceedings against the petitioner and the punishment order dated March 16, 2020, imposing a penalty of withholding two increments with cumulative effect are set aside. The university will restore the incremental benefits to the petitioner along with the arrears within a period of two weeks from the date of communication of this order.

19. Accordingly, W.P.A. No. 5578 of 2020 is allowed.

20. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)