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13.06.2023
KC

WP.ST 85 of 2023

Bishnu Sarkar
Vs.
The State of West Bengal & Ors.

Mr. D. N. Ray
Mr. M. N. Ray
Ms. B. Nandy
Mr. Rajesh Kumar Shaw
... for the petitioner

Mr. Somnath Naskar
... for the State

The writ petition is directed against an order dated May 10, 2023 passed in O.A. 186 of 2023.

By the impugned order, the learned Tribunal negated the original application of the writ petitioner before the Tribunal.

A disciplinary proceeding was initiated as against the writ petitioner. Apparently, a preliminary enquiry was held. An enquiry report dated December 26, 2016 was prepared. On the basis of such enquiry report, articles of charges were framed. An enquiry officer was appointed to look into the articles of charges as against the writ petitioner. The same person, who functioned as a preliminary enquiry officer resulting in the report dated December 26, 2016 was

appointed as the enquiry officer to consider the articles of charges as against the writ petitioner.

Before the learned Tribunal, essentially, the writ petitioner canvassed three points. The first point was with regard to the vagueness of charges. The second point was with regard to non-grant of opportunity of cross examination of the witnesses and the third point was that of the preliminary enquiry officer being appointed as the enquiry officer itself.

In respect of the first two points we find that, the learned Tribunal correctly rejected such contentions. The articles of charges as against the writ petitioner cannot be said to be vague. In any event, the writ petitioner understood the articles of charges and contested the same on merits. So far as the contention of non-grant of right of cross examination is concerned, it is apparent from the records made available to the Court that, the writ petitioner declined to cross examine the witnesses. On the writ petitioner giving up his right of cross examination, he cannot be allowed to contend that opportunity to cross examine the witnesses was denied to him.

We, however, find substance on the third point so

far as the writ petition is concerned. The enquiry officer appointed for the purpose of considering the articles of charges as against the writ petitioner was the preliminary enquiry officer, which resulted in an enquiry report dated December 26, 2016. Such enquiry report forms one of the basis of the articles of charges as against the writ petitioner. Therefore, there is substance in the contention of the writ petitioner that, an element of biasness may creep in to the adjudicating process with an enquiry officer, who was the preliminary enquiry officer and whose report is sought to be relied upon against the writ petitioner in the disciplinary proceedings. We hasten to add that we are not questioning the integrity of the enquiry officer. However, we are of the view that justice should not only be done, but also should be seem to be done. Since, the enquiry officer prepared a report, which was sought to be relied upon by the prosecution as against the writ petitioner in the disciplinary proceeding, we find it inappropriate for the same person to act as the enquiry officer.

In such circumstances, we set aside the impugned order of the learned Tribunal. We set aside all steps taken as against the writ petitioner in the disciplinary proceeding till

the framing of the articles of charges. We permit the authorities to appoint a new enquiry officer to consider the article of charges afresh in accordance with law.

WP.ST 85 of 2023 is disposed of accordingly without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)