

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Partha Sarathi Sen

WPA No. 3819 of 2012

**Md. Ziaul Haque
Vs.
Union of India and others**

For the petitioner : Md. Zohaib Rauf

For the respondents : Mr. Shyamal Chakraborty

Heard on : 08.08.2024

Judgment on : 08.08.2024

Partha Sarathi Sen, J:-

1. In this writ petition the writ petitioner has prayed for issuance of appropriate writ against the respondents authorities for quashing the order of punishment as imposed upon him by an order dated 16.01.2012 pursuant to the report of the enquiry officer dated 23.03.2010.

2. From the materials as placed before this court, it appears that it is undisputed that at all material time, the writ petitioner was an employee under the respondent no.2-authority in the post of Technical Officer, Fish And Fish Products in the Export Inspection Agency.
3. It is equally undisputed that the writ petitioner was entrusted for inspection of 312 cartons containing headless shrimps. According to the writ petitioner, the consignment containing headless shrimps were initially kept in slabs. Thereafter those were put in cartons and ultimately all the cartons are packed in a master carton.
4. After submission of the Field Inspection Report (hereinafter referred to as the FIR in short), on 03.07.1989 the respondent authorities found dereliction of duty on the part of the writ petitioner in doing such inspection and accordingly a second inspection team was entrusted to verify the FIR as submitted by the writ petitioner and the second inspection was done on 30/31.07.1989.
5. The second inspection team also submitted its report. The respondent authorities thought it prudent to get the inspection done by a third inspection team and accordingly an inspection was done by the said team and ultimately on 08.09.1989 the said third inspection team submitted its report.

6. The respondent authorities on consideration of the entire materials as placed before him issued a Memorandum dated 20.08.1998 containing two articles of charges along with imputation of charges against the delinquent who is the writ petitioner before this court.
7. In the enquiry proceeding the writ petitioner was found to be guilty of charges as framed against him and on the basis of such enquiry report dated 23.03.2010 the disciplinary authority being the Director of the Ministry of Commerce and Industry (Department of Commerce), that is, the respondent no.3 imposed a penalty of 5 per cent cut in the pension of the writ petitioner for a period of five years from the date of his retirement.
8. It is pertinent to mention herein that at the time of the imposition of the punishment the writ petitioner was superannuated from his service.
9. In course of hearing, Mr. Rauf, learned Advocate for the writ petitioner, submits before this court that while conducting the enquiry proceeding, the respondent authorities have not only violated the principles of natural justice but also the report of the enquiry authority is vitiated in view of the fact that the said report shows that the enquiry authority in coming to its conclusion has not considered the material evidence and on the contrary the enquiry authority was

persuaded by some extraneous materials which he cannot do under the law and therefore this court being a writ court in exercise of its plenary power may grant relief to the writ petitioner.

10. It is further submitted by Mr. Rauf that before the enquiry officer the delinquent in the writ petition has contended that his report dated 03.07.1989 was tampered and considering such contention, the enquiry authority referred the said report dated 03.07.1989 to QDEB for forensic examination.
11. It is submitted that from the materials on record it would reveal that prior to conducting forensic examination the scientific officer had marked the questioned document/signature with letter 'Q' and at the same time he has also marked the admitted and specimen signatures of the writ petitioner with letters 'A' and 'S' respectively.
12. It is further submitted that in course of enquiry proceeding as per order of a coordinate Bench of this court, the delinquent was permitted to adduce evidence by its witnesses where the said Assistant Examiner of QDEB was tendered as a defence witness.
13. Mr. Rauf, in course of his submission, further draws attention of this court to page no.70 of the writ petition. It is submitted that on perusal of the evidence of the Assistant Examiner of QDEB, it would reveal that the said scientific officer gave a vivid description as to how he

proceeded with, while examining the alleged tampered report dated 03.07.1989 and came to specific finding under cover of his report dated 27.11.1997 in the following manner:

“The person who wrote the blue enclosed signatures stamped and marked S1 to S3 and A1 to A25 did not write the red enclosed signature similarly stamped and marked Q1.

It has not been possible to express any definite opinion on the signatures marked Q2 and Q3.”

14. It is further submitted by Mr. Rauf that from page no.70 of the writ petition it would reveal that the said scientific officer was also tendered before the enquiring authority for his cross-examination but the enquiry officer did not avail the opportunity to cross-examine the said scientific officer.
15. It is, thus, submitted by Mr. Rauf that the oral evidence of the said scientific officer being DW1 remains uncontroverted and the report of the said scientific officer dated 27.11.1997 also remains uncontroverted.
16. It is further submitted by Mr. Rauf that in the enquiry report though the enquiry officer had dealt with the oral and documentary evidence as adduced by the said DW1 (scientific officer) but the analysis of

evidence by the said enquiry officer is of such a nature which must shocks the conscience of the court.

17. It is, thus, submitted that the enquiry officer while passing the impugned order was persuaded by some extraneous substances and/or with some malice did not consider material evidence for which the writ petitioner is entitled to the relief as prayed for.
18. Per contra, Mr, Chakraborty, learned Advocate for the respondents authorities submits that from the materials as placed before this court it would reveal that the delinquent being the writ petitioner was all along indisciplined in his service which is why he had been put into suspension on a number of occasions.
19. It is further submitted that the enquiry proceeding continued for a considerable length of time only because of the writ petitioner since he approached on a number of occasions before this court on some flimsy grounds. It is further submitted that in order fulfill his ill motive, the writ petitioner had even filed a criminal case against the said enquiry officer.
20. Drawing attention to the page no.51 and 52 of the writ petition it is submitted by Mr. Chakraborty, learned Advocate for the respondents authorities, that the enquiry officer in its daily order sheet dated 30th May, 2005 had clearly opined that the report of the scientific officer

cannot be taken into consideration since the same is not based on any reasoning and from the evidence of the prosecution witnesses it would reveal that the report dated 03.07.1989 as submitted by the delinquent is genuine and authentic and therefore the charges as levelled against the writ petitioner, the finding of the enquiry authority and the punishment as awarded by the disciplinary authority ought not to be interfered with.

21. Mr. Chakraborty, in course of his submission contends that this court being a writ court should not re-appreciate the evidence of the witnesses as recorded in the disciplinary proceeding unless it has been shown that gross violation of principles of natural justice has been occurred and/or the finding of the enquiry authority and/or disciplinary authority is based on such fact which is not permitted to be considered by law.
22. On perusal of the entire materials as placed before this court and after hearing the learned Advocates for the contending parties, it appears to this court that the instant writ petition has been filed challenging the finding of the enquiry authority as well as the punishment as awarded by the disciplinary authority upon the writ petitioner without availing the opportunity to file appeal since according to the writ petitioner the

Appellate Authority itself became the disciplinary authority and therefore no purpose would be served by filing an appeal.

23. This court finds sufficient justification in the submission of Mr. Rauf, learned Advocate for the writ petitioner in this regard.
24. It is cardinal principle of law that while entertaining a writ petition challenging the finding of a domestic enquiry the writ court must be very slow in interfering with the finding of such domestic enquiry unless it has been shown that violation of principles of natural justice occurs at the instance of the enquiry officer or in the enquiry proceeding or the finding of the enquiry authority is based on non-consideration of material evidence and/or on consideration of some extraneous materials which are not at all relevant for the purpose of the domestic enquiry.
25. Since the report dated 03.07.1989 as submitted by the writ petitioner was the subject-matter of enquiry before the enquiry authority and on which a Memorandum was issued upon the writ petitioner containing articles of charges and statement of imputations, this court cannot ignore that before the enquiry authority, writ petitioner has raised a very pertinent point with regard to the genuineness of such report since according to the writ petitioner such report was tampered.

26. Materials have placed before this court that considering the grievance of the writ petitioner the said report was sent to QDEB which is an independent investigating agency for forensic examination and it has submitted of its report on 27.11.1997 which has already been discussed (supra).
27. The scientific officer who has been arrayed as DW1 in categorical terms stated that the questioned signatures which have been marked with 'Q' did not match with the specimen signatures and admitted signatures which have been marked with S1 to S3 and A1 to A25 respectively and he clearly opined that the person who wrote/signed by S1 to S3 and A1 to A25 did not write the questioned signature, that is, Q1.
28. As discussed earlier, the said scientific officer was tendered for cross-examination but the enquiry authority had chosen not to cross-examine him.
29. This court is well-aware that the strict Rules of evidence is not applicable in a domestic enquiry but the principle analogous thereto is obviously applicable and in applying such principle this court has got no hesitation to hold that the oral evidence as well as the documentary evidence as adduced by the DW1 being the scientific officer remained uncontroverted.

30. Admittedly, in course of the enquiry proceeding dated 30th May, 2005 one prosecution witness opined that he had examined and verify the genuineness and authenticity of the FIR dated 03.07.1989 and found it to be genuine.
31. It is settled principle of law that when there occurred a question with regard to the acceptability of a signature upon a document which is disputed, the court, time and again took the help of an expert and unless contrary is shown, the evidence of expert gets priority and is admitted in evidence.
32. On perusal of the enquiry report dated 23.03.2010 and the impugned order dated 16.01.2012 it appears to this court that both the enquiry authority as well as the disciplinary authority practically avoided to answer to the inconclusive evidence as adduced by DW1 (scientific officer) and assigned no reason at all as to what persuaded them not to consider such scientific evidence especially when the document over which the scientific evidence was adduced, formed the very basis of the said enquiry.
33. Considering the entire materials this court, thus, finds that the finding of the enquiry authority as well as the finding of the disciplinary authority are vitiated by the principles of natural justice

as well as for non-consideration of the material evidence which the said two authorities ought to have considered.

34. For the reasons discussed hereinabove, the instant writ petition succeeds and is hereby allowed.
35. Consequently the impugned orders dated 23.03.2010 as passed by the enquiry authority and the impugned order dated 16.01.2012 as passed by the disciplinary authority are hereby set aside.
36. Consequently, the punishment as imposed by the respondent no.3-authority upon the writ petitioner vide its order dated 16.01.2012 stands hereby quashed.
37. Consequently, the respondents are directed to disburse the admissible dues of the pension to the writ petitioner along with prevailing nationalized Bank fixed deposit interest to the writ petitioner positively within six months from the date of communication of this order. It is made clear that while calculating the pension, both arrear and current, the respondent authorities are directed to calculate the same on notional basis.
38. With the aforementioned observation, WPA 3819 of 2012 is disposed of along with connected pending applications, if there be any.
39. Liberty to communicate.

40. Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Partha Sarathi Sen, J.)

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