

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
(APPELLATE SIDE)**

Present:
The Hon'ble Justice Rai Chattopadhyay

WPA 7535 of 2018

**Gokul Chandra Halder
Vs.
Union of India & Ors.**

For the Petitioner	: Mr. Ekramul Bari, : Sk. Imtaj Uddin.
For the K.P.T	: Mr. Kallol Basu, : Ms. Sujata Mukherjee.
For the U.O.I	: Mr. Atarup Banerjee, : Mr. Debapriya Samanta.

Heard On : 18/04/2024
Judgment on : 18/04/2024

Rai Chattopadhyay, J.

1. The writ petitioner has challenged the impugned order of punishment dated June 16, 2017 and the appellate order dated January 8, 2018, in this writ petition.
2. The petitioner has been serving in the rank of Assistant Engineer and Charge Official at Haldia Dock Complex. The disciplinary

proceeding was initiated against him and the charge sheet was issued on September 18, 2013, the petitioner took part in the disciplinary proceeding.

- 3.** After completion of the disciplinary proceeding the enquiry officer submitted his report dated March 31, 2017, thereby exonerating the writ petitioner of all the alleged charges.
- 4.** The said report of the enquiry officer was placed before the Deputy Chairman (H), that is the disciplinary authority. The disciplinary authority, however, disagreed with the findings of the enquiry officer and passed its order dated June 16, 2017, thereby holding the writ petitioner guilty of the alleged charges. The writ petitioner is aggrieved that such order by the disciplinary authority dated June 16, 2017, has been passed without granting him any opportunity of hearing and also that the same is devoid of any cogent reason, to substantiate the final decision by the disciplinary authority in the said order.
- 5.** The penalty was imposed against the writ petitioner of reduction of pay by two stages in the same time scale of pay, for a period of two years from the date of issuance of the order. Also that the petitioner would not be entitled to any increments during the aforesaid period of reduction of his pay and such reduction would have the corresponding effect of poseponing the future increments of his pay.
- 6.** Being aggrieved the writ petitioner preferred to file an appeal against the order of punishment as above. The appellate

authority's order is dated January 8, 2018, by dint of which the appellate authority has rejected petitioner's prayer and upheld the order of the disciplinary authority as well as the penalty imposed upon the writ petitioner, as justified.

7. The petitioner says that in case of disagreement with the views of the enquiry officer, the disciplinary authority was obliged to provide an opportunity of hearing to the petitioner prior to passing an order of penalty against him. The petitioner alleges violation of the principle of natural justice.
8. The petitioner submits that the action of the respondent authorities is contrary to the provisions of the Kolkata Port Trust Employees' (Classification, Control and Appeal) Rules, 1987.
9. The petitioner relies upon an unreported judgment delivered by a learned Single Judge of this court on 9th April, 2019 in **WP 93 of 2018 (Subal Kumar Hansda vs. Board of Trustees for the Port of Kolkata & Ors.)** wherein a similar issue was decided by the court.
10. The court, therein took into consideration Regulation 8(A) of the Regulation of 1987 wherein Regulation 8(A)(3) has provided that if the disciplinary authority having regard to its findings on the Articles of Charge and on the basis of the evidence adduced during enquiry, is of the opinion, that any of the penalties specified in Clause (5) to (9) of Regulation 7 should be imposed on the employee, itself make an order imposing said penalty and it shall not be necessary to give the employee any further opportunity of making representation on the penalty proposed to

be imposed. Clauses (5) to (9) of Regulation 7 deals with major penalties. The court was of the opinion that the principles of natural justice are to be read into those provision, exercise and implementation of which cannot be in an arbitrary manner, without compliance with the principles of natural justice.

11. The learned advocate appearing on behalf of the respondents submits that the Regulation itself has excluded scope of giving any further opportunity of hearing to a delinquent, in case there is a disagreement between the findings of the enquiry officer and that of the disciplinary authority. It has been submitted that unless the Regulation which permits the authority to impose an order of penalty without giving any further opportunity of hearing to the delinquent is challenged, the petitioner is bound to follow the same.
12. The respondents have relied on the relevant provision of the Calcutta Port Trust Employees' (Classification, Control and Appeal) Regulations, 1987, that is, Regulation 8A (1) (i) and (ii). Let those be extracted herein below:-

“8A. Action on the enquiry report-(1) (i) The Disciplinary Authority if it is not itself the Enquiring Authority, may on perusal of the enquiry report and representation, if any, of the delinquent, remit the case to the enquiring authority, for further enquiry and report after recording its reasons in writing and the enquiring authority shall thereupon proceed to hold further enquiry as per Rule.

(ii) The Disciplinary Authority shall if it disagrees with the findings of the Enquiring Authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on records is sufficient for the purpose.”

- 13.** According to the respondents the disciplinary authority as per the terms of the said Regulations is entitled firstly to disagree and thereafter to record its own findings on the charges leveled against the writ petitioner. It has been submitted that the Regulations have never spoken about grant of any opportunity to a delinquent employee in case the disciplinary authority disagrees with the finding of the enquiry authority. Instead on the basis of the said Regulations the disciplinary authority shall only be duty bound to record its reasons for disagreement and then its finding on the basis of the evidence on record. Therefore, according to the respondents there has not been any illegality as regards the order of the disciplinary authority dated June 6, 2017, and also as regards the order of the appellate authority dated January 8, 2018, to uphold the said order of the disciplinary authority – since the same is in accordance with the Regulations governing the service conditions of the writ petitioner. It has been submitted that the Regulations expressly excluded any opportunity of hearing to a delinquent in the event of disagreement between the opinion of the enquiry officer and the disciplinary authority. That, it was legal and valid on the part of the authority to impose punishment upon the petitioner.
- 14.** It appears that in the disciplinary proceeding the enquiry officer has considered in details all the charges and came to a specific finding that none of the three charges levelled against the petitioner could be proved. The disciplinary authority upon perusal of the report of the enquiry officer came to an independent finding that the charges against the petitioner were proved. The appellate authority also affirmed the order passed by

the disciplinary authority. However the petitioner was not provided any opportunity of hearing by the disciplinary authority prior to imposition of the order of penalty.

15. Whether the disciplinary authority could have proceeded for imposition of penalty after disagreeing with the report of the enquiry officer, came up for consideration in a writ petition before the Hon'ble Single Judge of this court in **WP 93 of 2018 (Subal Kumar Hansda vs Board of Trustees for the Port of Kolkata & Ors.)**. The court considered the matter in details and held that the decision of the disciplinary authority to disagree with the findings of the enquiry officer without giving the charge sheeted employee an opportunity to make a representation or without providing a hearing and the subsequent imposition of the major penalty without notifying the tentative findings of disagreement is in violation of the principles of natural justice. The court had been pleased to set aside and quash the orders passed by the disciplinary authority and the appellate authority.
16. The case in hand is exactly of the same nature. In the case of **Subal Kumar Hansda (supra)** the court relied upon a judgment delivered by the Hon'ble Supreme Court in the matter of **Punjab National Bank & Ors. vs Kunj Behari Misra** reported in **AIR 1998 SC 2713**. The Court took note of the fact that the provision which came up for consideration before the Hon'ble Supreme Court and the provision relied upon by the respondents in the case of **Subal Kumar Hansda (supra)** was *pari materia*.

17. The court also considered the principle contained in the maxim *expreccio unius personae vel rei est exclusio alterius* meaning that the specific mention of one excludes the other.
18. The provision of the Regulation relied upon by the respondents to impose the order of penalty without giving another opportunity of hearing to the petitioner was considered by the Court and held that the principles of natural justice are to be impliedly read into the provision of law. Any decision taken by the respondents upon blind adherence to these provisions of law without complying with the implicit conditions of the principle of natural justice must be held to be bad in law.
19. In the case of ***Dr. Rash Lal Yadav vs. State of Bihar & Ors.*** reported in ***(1994) 5 SCC 267***, the Hon'ble Court held that the rules of natural justice are devised for ensuring fairness and permitting satisfactory decision making. Where the statute is silent and contrary intention cannot be implied, the requirement of the applicability of the principles of natural justice is read into it, to ensure fairness and to protect the action from the charges of arbitrariness. Unless the law expressly or by necessary implication excludes the application of the principles of natural justice, Court will read the same in the enactments that are silent. However, if the statute expressly or by necessary implication omits the application of the principles of natural justice, the statute will not be invalidated for this omission on the ground of arbitrariness.
20. In the case of ***State of Haryana vs. Ram Kishan & Ors.*** reported in ***(2010) 1 SCC 417***, the Court was of the view that where

exercise of power results in any civil consequences to citizens, unless the statute specifically rules out the natural justice, such rule would apply. Not to do so will be violative of the principles of natural justice.

- 21.** In the present case the enquiry officer has dealt with all the three charges *vis-à-vis* the evidence adduced before it. After due consideration the enquiry officer has exonerated the writ petitioner. The decision of the disciplinary authority upon the report of the enquiry officer is completely different from the findings of the enquiry officer. The Regulation no. 8A (1) (ii) is the enabling provision to allow the disciplinary authority to differ with the findings of the enquiry officer. It also permits the disciplinary authority to come to its own findings as regards the charges. However, the Regulations say that to reach to its own finding the disciplinary authority has to record its reasons for disagreement. Provision has also been made for assessment of the evidence on record by the disciplinary authority, separately and individually, in order to finally disagree with the enquiry report.
- 22.** The language employed therein would itself justify grant of fresh opportunity to the delinquent before any other finding, than that commensurate to the finding of the enquiry officer. The power of the disciplinary authority under the said Regulations to reassess the evidence would entail the corresponding responsibility to let the delinquent speak on his behalf. The judicial pronouncements as mentioned above can be relied on in support of Court's finding, as above.

- 23.** The disagreement of decision by the disciplinary authority with that of the enquiry officer is to the detriment and prejudice of the petitioner, whereby instead of being exonerated, he has been imposed with major penalty. So far as the reasons and decision of such disagreement is concerned, the delinquent, that is, the petitioner herein, should have been given an opportunity to defend his cause. Had the disagreement of the disciplinary authority, with the decision of the enquiry officer, not affected the petitioner adversely, by imposition of major penalty against him, possibly there would not have been any reason for the disciplinary authority to even afford an opportunity of hearing to the petitioner or recording any reason therefor. However, the law requires giving opportunity of hearing to a person, before imposition of penalty upon him, particularly when after service of copy of the enquiry report, the person is given a different understanding of being exonerated from the alleged charges. Therefore, if the disciplinary authority, after service of the enquiry report to the delinquent, decides to differ from the decision of the enquiry officer, the necessity for him to give an opportunity of hearing to the delinquent before delivering his final order and to give the reasons for his disagreement, becomes imperative.
- 24.** Therefore, the disciplinary authority before dealing with the evidence afresh and taking an independent decision thereon, to differ from that of the enquiry officer, and issuing the order dated June 16, 2017, should have given an opportunity of hearing to the petitioner to defend himself as against the fresh consideration of evidence by the disciplinary authority.

- 25.** On the basis of the discussions made above, the Court finds that the instant writ petition should succeed. Hence, WPA No. 7535 of 2018 is allowed.
- 26.** The orders passed by the disciplinary authority dated June 16, 2017 and the appellate authority dated January 8, 2018, are set aside and quashed.
- 27.** The matter is remanded back to the disciplinary authority who shall proceed afresh with the disciplinary proceeding from the stage of receiving a copy of the report of the enquiry officer. The disciplinary authority shall give an opportunity of hearing to the petitioner and pass a reasoned order by recording its finding therein, in respect of each article of charge saying whether, in its opinion, it stands proved or not. In case of disagreement with the findings of the enquiry officer, he shall record the reasons for disagreement.
- 28.** Till the time any such decision is made by the respondent/disciplinary authority, after hearing the petitioner, no effect shall be given to either the order of disciplinary authority dated June 16, 2017, imposing punishment against the petitioner, nor to the order of the appellate authority dated January 8, 2018 and shall be treated as a regular employee, having been exonerated from all the charges leveled against him.
- 29.** W.P No. 7535 of 2018 is disposed of.

- 30.** No order as to costs.
- 31.** Urgent photostat certified copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Rai Chattopadhyay, J.)

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