

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

**MAT 918 of 2022
Bengal Chemicals & Pharmaceuticals Ltd. & Ors.
Vs.
Arnab Bhattacharjee**

For the appellants : Mr. Jaydip Kar, Ld. Sr. Advocate
Mr. Subhabrata Chowdhury, Advocate
Ms. Tripti Pandey, Advocate
Ms. Rishita Ghosh, Advocate
Mr. Biswajit Goswami, Advocate

For the respondent : Mr. Ashim Kumar Routh, Advocate
Ms. Ananya Mondal, Advocate
Mr. Subhayan Barik, Advocate

Heard & Judgment on : September 5, 2024

DEBANGSU BASAK, J.:-

1. Appeal is directed against the order dated May 20, 2022 passed by the learned Single Judge in WPA 5745 of 2020.
2. By the impugned judgment and order, the learned Single Judge set aside the order dated December 31, 2019 passed by the inquiry authority, the report of the inquiry authority dated March 17, 2020 and the order of dismissal dated June 5, 2020.
3. By the impugned judgment and order, the learned Single Judge directed the disciplinary proceedings to commence afresh from the stage of cross-

examination of prosecution witness (P.W.) 5. Writ petitioner/private respondent was granted liberty to examine himself and his witnesses. Liberty was granted to the writ petitioner/private respondent to file list of witnesses. He was also granted liberty to submit list of relevant documents required to be produced. Inquiry authority was directed to summon such witnesses who are under the administrative control of the employer. Inquiry authority was also directed to ensure production of the relevant official documents. Learned Single Judge also directed that the attendance of the defence witnesses be secured by the management upon the direction of the inquiry authority.

4. Learned Senior Advocate appearing for the appellants submits that, the final order of dismissal and the entire disciplinary proceeding was not vitiated by breach of principles of natural justice. He refers to the minutes of the meeting of the inquiry authority from time to time. He submits that, prosecution witness no.5 was allowed to be cross-examined by the writ petitioner/private respondent. He declined to do so.
5. Learned Senior Advocate appearing for the appellants submits that, the direction by the learned Single Judge that, the inquiry authority shall summon the defence witnesses is not provided for in the service rules. In this regard, he refers to the Bengal Chemicals and Fertilizers Limited (Conduct, Discipline and Appeal) Rules, 1985 and in particular to Rule 25(8) thereof. He submits that, the note appended to Rule 25(8) of the Rules must be read in the context of the Rule itself. In support of such

contention, he relies upon **(1975) 4 Supreme Court Cases 86 (Tara Singh and Others vs. State of Rajasthan and Others)**.

6. In course of hearing of the appeal, we enquired as to whether, the inquiry authority was still available or not. We are informed that, enquiry authority was a person who was outside the organization. Presently his health and medical condition will not allow him to continue with the inquiry.
7. Writ petitioner/private respondent suffered a disciplinary proceeding. He was contesting such disciplinary proceedings. Such disciplinary proceedings resulted in an order of dismissal dated June 5, 2020. As noted above, the learned Single Judge set aside the order of dismissal along with the report of the inquiry authority dated March 17, 2020 and the closed of the evidence of the prosecution as well as the defence recorded in the order of the inquiry authority dated December 31, 2019. Learned Single Judge issued directions so far as conduct of the disciplinary proceedings is concerned from the stage of cross-examination of P.W.5 is concerned.
8. In the appeal, the issue is whether, the inquiry authority must summon the defence witnesses or not. Rule 25(8) speaks on the subject and is as follows:

“Rule 25. Procedure for imposing major penalties:

(8) If the employee does not plead guilty, the Enquiring Authority shall adjourn the case to a later date not exceeding thirty days, after

recording an order that the employee may, for the purpose of preparing his defence.

- i) inspect the documents listed with the Charge- sheet;***
- ii) submit a list of additional documents and witnesses that he wants to examine; and***
- iii) be supplied with the copies of the statements of witnesses, if any listed in the Charge-sheet.***

NOTE: Relevancy of the additional document and the witnesses referred to in sub-clause 8(ii) above will have to be given by the employee concerned and the documents and the witnesses shall be summoned, if the Enquiring Authority is satisfied about their relevance to the charges under in charge.”

9. Rule 25(8) deals with a scenario where, the employee does not plead guilty. It enjoins upon the inquiry authority a duty to allow the employee the specified time to prepare his defence, inspect documents listed with the charge sheet, submit a list of additional documents and witnesses that the employee wants to examine and the employee be supplied with all the copies of the statement of witnesses, if any, listed with the charge sheet.
10. Note appended to Rule 25(8) leave the relevancy of additional documents and the witnesses to the discretion of the inquiry authority. In the event, inquiry authority is satisfied with regard to the relevancy of the

documents and the witnesses referred to in Clause (ii) of Rule 25(8) then, inquiry authority is to summon the same.

11. In the facts of the present case, it is the claim of the writ petitioner/respondent that, he wants to examine five defence witnesses and that all five defence witnesses agreed to depose but the management prevented those defence witnesses from deposing.
12. The contention that the management prevented the defence witnesses to depose is disputed on behalf of the appellants. It is also contended that such stand of the writ petitioner/private respondent is not borne out by the records.
13. Be that as it may, note to Rule 25(8) enjoins upon the inquiry authority to decide on the relevancy of the documents and the witnesses referred to in Clause (ii) of Rule 25(8). Inquiry authority will, therefore, proceed to decide on the relevancy of the documents sought to be relied upon by the defence as also the witnesses sought to be examined by him. Once a decision is taken by the inquiry authority as to their relevance, he will no doubt summon both the documents as also the witnesses which/who are within administrative control of the management.
14. We make it clear that the writ petitioner/respondent is at liberty to produce such defence witnesses that he deems appropriate, subject obviously to the issue of relevancy, in the inquiry proceedings. We request the management to allow such of the defence witnesses who are within its administrative control to depose in the inquiry on behalf of the

defence, if the issue of relevancy is decided in favour of the writ petitioner/respondent. In the event, witness which the writ petitioner/private respondent seeks to adduce in the inquiry and such witness is an employee of the organization and the relevancy of such witness is held in favour of the writ petitioner/respondent by the inquiry authority, then, the inquiry authority will summon such witness and the management will be bound to allow such defence witness to be adduce in the inquiry proceedings.

15. The contesting parties in the appeal invited the Court to issue directions for expeditious disposal of the disciplinary proceedings, since it is pending for some time now.
16. The inquiry proceedings commenced with the issuance of charge sheet dated April 18, 2019 and it is yet to be concluded. Therefore, there exists adequate reasons for issuance of direction for expeditious disposal of the disciplinary proceedings as against the writ petitioner/private respondent.
17. Disciplinary authority is at liberty to replace the inquiry authority, if necessary. In the event, the inquiry authority is so replaced by the disciplinary authority, then, the newly appointed inquiry authority may commence the disciplinary proceedings from the stage as directed by the impugned judgment and order or from such other stage that he deems appropriate but prior to the final order dated December 31, 2019. Inquiry authority will allow the writ petitioner/respondent one

opportunity to cross-examine P.W.5. Inquiry authority will allow the writ petitioner/private respondent to adduce defence witnesses in the manner as observed herein.

18. Court is informed that the presenting officer superannuated in the meanwhile. Consequently, the disciplinary authority is at liberty to replace the presenting officer.
19. It is expected that the disciplinary proceedings are concluded within a period of three months from the date of the appointment of the inquiry authority. Inquiry authority is at liberty to proceed on a day-to-day basis. Inquiry authority is requested not to grant any unnecessary adjournments to any of the parties.
20. Save and except the modifications as noted above, the impugned judgment and order is sustained.
21. **MAT 918 of 2022** along with all connected applications, if any, are disposed of without any order as to costs.

(Debangsu Basak, J.)

22. I agree.

(Md. Shabbar Rashidi, J.)

(AD)