

05
22.04.2025
Ct. No. 11
Jayanta

MAT 1384 of 2024
with
IA No. CAN 1 of 2024
with
IA No. CAN 2 of 2024
Union of India & Ors.
Vs.
Sk. Abdul Karim

Mr. Pradip Kumar Das
Mr. Sandipan Maity

.... For the appellants

Mr. A. K. Lahiri

.... For the respondent.

The present appeal has been preferred by the Union of India and its functionaries challenging the judgment dated 8th February, 2024 passed by the learned Single Judge in the writ petition being WP 17915 of 2017.

Records reveal that the writ petitioner, namely, Sk. Abdul Karim (hereinafter referred to as Karim) was appointed initially as a Constable under the Railway Protection Force (hereinafter referred to as RPF) in the year 1979. On 12th October, 2011 he was posted at Ranchi. Subsequent thereto, on 20th January, 2012 a chargesheet was issued against him by the Divisional Security Commissioner, RPF, South Eastern Railway, Ranchi. Karim submitted his reply to the chargeheet and after considering the same the disciplinary authority (hereinafter referred to as DA) appointed an enquiry officer (hereinafter referred to as EO) to conduct an

enquiry. Karim appeared in the enquiry but did not cross examine the prosecution witnesses. The EO thereafter submitted the enquiry report (hereinafter referred to as ER) and considering the same and Karim's reply, the DA passed an order on 30th September, 2015 imposing a punishment of *'Reduction to 5 (Five) stages lower in present scale of pay, (i.e. from Pay Rs. 13500/- + GP Rs. 4200/- = Rs. 17,700/- to pay Rs. 11050/- + GP Rs. 4200/- = Rs. 15,250/-) for a period of 3 (Three) years with cumulative effect'*. Challenging the same, Karim preferring a statutory appeal and the Appellate Authority (hereinafter referred to as AA) rejected the appeal by an order dated 9th January, 2017. Aggrieved thereby, Karim preferred the writ petition challenging, *inter alia*, the orders passed by the DA and the AA. The judgment delivered in the same has been impugned in the present appeal. In the judgment impugned the learned Single Judge observed, *inter alia*, that *'while conducting a domestic enquiry, if the enquiry officer cross-examines the defence witnesses or puts suggestive questions to establish the prosecution case (as has been done in this case) the enquiry proceeding stands vitiated by such conduct of the enquiry officer'* and arrived at a finding that *'the enquiry officer himself proceeded to cross-examine self-same witnesses violating the principle of natural justice which also shows his utter biasness to such proceeding which in considered view of this Court cannot*

be condoned'. Reliance was placed upon a judgment delivered by the Hon'ble Supreme Court in the case of *Union of India & Ors. vs. Ram Lakhan Sharma*, reported in, (2018) 7 SCC 670 to buttress such finding. On the rudiments of such findings the learned Single Judge revoked the orders of the DA and AA and as Karim had already retired, the appellants herein were directed to clear all the arrears of pay and retrial benefits of Karim within six months from the date of communication of the judgment.

Mr. Das, learned advocate appearing for the appellants submits that in Rule 153 of the Railway Protection Force Rules, 1987 (hereinafter referred to as 1987 Rules) there is no provision under towards appointment of any Presenting Officer (hereinafter referred to as PO) for presenting the case before the EO and that as such the procedure adopted by the EO cannot be questioned. Ample opportunity was granted to Karim to cross examine the prosecution witnesses but he denied and he also did not pray for engagement of any defense assistant, as provided under Rule 153.8. The refusal on the part of Karim to cross examine prosecution witnesses, in fact, establishes the charge levelled against him. Non-appointment of the PO, by itself will not vitiate the enquiry.

According to him, it is not a case of '*no evidence*'. The charge alleged was established after the same stood

corroborated by the deposition of the witnesses. It is, thus, not a case that Karim had been found guilty on the basis of surmises.

He argues that there had been no violation of the principles of natural justice. The principles of natural justice cannot be stretched to a point that it would render the in-house proceedings unworkable. In exercise of the power of judicial review, writ Court also cannot re-appreciate the evidence. Such arguments, as advanced, were glossed over by the learned Single Judge and no finding was returned on the same.

Mr. Lahiri, learned advocate appearing for the Karim, denies and disputes the contention of Mr. Das and submits that the EO himself acted as the prosecutor. In course of enquiry he himself examined the witnesses. He put specific questions to the said prosecution witnesses and cross examined them. Thereafter, upon analyzing the depositions he arrived at a finding of guilt against Karim. Such illegality warranted interference of the writ Court.

He contends that even if there is no requirement towards appointment of PO in each and every case and even if the statutory rules are silent with regard to such appointment of PO, the EO could not have cross examined the witnesses. It is a clear case where the EO has put questions to the witnesses to elicit the facts and had relied upon such answers given to arrive at the finding of guilt. The EO has thus acted as the prosecutor,

which is impermissible in law. Such procedure as adopted maligns the departmental proceeding and establishes that the said proceeding had been conducted in a casual manner. In support of such contention reliance has been placed upon the judgments delivered in the case of *Union of India & Ors. vs. Ram Lakhan Sharma*, reported in, (2018)7 SCC 670 and *Krishna Choudhury vs. State of West Bengal*, reported in, 2011 (2) CHN (CAL) 489..

He further argues that the EO being a quasi-judicial authority has a neutral role to play and perform and he cannot act as a representative of the management. His duty is to act independently and impartially and as the punishment imposed inflicts severe civil consequences, the proceedings ought to have been in conformity with the principles of natural justice. Even if, an employee prefers not to participate in the enquiry, the department has to establish the charge against the employee by adducing oral as well as documentary evidence. In view thereof, the learned Single Judge rightly interfered with the orders passed by the DA and AA and there is no infirmity in the judgment warranting interference of this Court. Reliance has been placed upon the judgment delivered in the case of *President, Nagar Panchayat Umari vs. Shyam Charan Chaturvedi and Others*, reported in, AIR 2021 SC 492.

We have heard the learned advocates appearing for the respective parties at length and we have given our anxious consideration to the facts and circumstances of the case.

An appellate power interferes not when the judgment under attack is not right but only when it is shown to be clearly wrong.

It is not disputed that the prosecution witnesses were examined and cross examined by the EO. The ER reveals that the EO analyzed the depositions brought on record upon cross-examination and on the rudiments of the same, the EO arrived at a finding of guilt against Karim. The finding of guilt is inextricably bound with the depositions of the witnesses recorded upon cross-examination by the EO. Such procedure as adopted cannot pass muster under the law inasmuch as the procedure as adopted by the EO breaches the fundamental rule that EO cannot act as the prosecutor. Considering the fact that during pendency of the proceedings Karim had already retired, the Court granted the consequential reliefs and we do not find any infirmity in the same.

Upon dealing with all the factual issues, the learned Single Judge arrived at specific findings and there is no error, least to say any patent error of law in the judgment impugned and as such no interference is called for.

Accordingly, appeal and the connected application are dismissed.

There shall, however, be no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Reetobroto Kumar Mitra, J.) (Tapabrata Chakraborty, J.)