

s/L 06+07
12.03.2026
Court No.04
B.K.N

W.P.S.T. 114 of 2013
Biswanath Das
Vs.
The State of West Bengal & Ors.

With
W.P.S.T. 345 of 2004
With
CAN 2 of 2024
CAN 3 of 2024
Shri Biswanath Das
Vs.
The State of West Bengal & Ors.

Mr. Bikash Ranjan Neogi,
Ms. Ananya Neogi,
Ms. Anushka Ghosh

...for the Petitioner.

Mr. Tapan Kumar Mukherjee, Ld. AGP,
Mr. Arjun Roy Mukherjee,
Ms. Tuli Sinha

... for the State in .W.P.S.T. 114 of 2013.

Mr. Tapan Kumar Mukherjee, Ld. AGP,
Mr. Somnath Naskar

...for the State in .W.P.S.T. 345 of 2004.

In Re: W.P.S.T. 114 of 2013

1. Heard the learned advocate for the writ petitioner/applicant as well as the learned advocates representing the State.
2. The brief facts which are not in dispute is that the petitioner was appointed in the year 1980 as a Group D staff. At the time of his appointment in the year 1980 he claimed his date of birth to be of 09.07.1962. He obtained the appointment on the basis of a school leaving certificate issued while he was in Class VIII. The petitioner was subsequently dismissed from service only to be reinstated under orders of the High Court. The time

in the meanwhile was utilized by the petitioner for acquiring higher qualification being Madhyamik, Higher Secondary as well as Graduation course. When he was reinstated subsequent to orders passed by the High Court, in the year 1993, he submitted the higher degrees acquired by him in the meantime, with an expectation that the same would pave the way for his carrier advancement including promotions etc.

3. At the time of submitting the higher qualifications testimonials, in the year 1993, he indicated to the employer, that there is a likely discrepancy in his date of birth as claimed at the time of his appointment, with that shown in the higher degrees being deposited by him.
4. He was proceeded against by a departmental proceeding. Before the Enquiry Officer, petitioner denied that he had taken benefit of any fake or forged certificate regarding his date of birth. He took a stand that the petitioner never claimed a correction in his date of birth during his period of service so as to take any benefit of the date of birth entered by him at the time of his entry in service.
5. His further contention was that there was no rule coming in the way of appointment below 18 years of age and that he did not violate any rule. He, therefore, took a stand that the charges in the charge memo were unsustainable.
6. The petitioner took no steps in the departmental proceeding to produce before the authorities the school leaving certificate containing an entry regarding his date of birth as 09.07.1962.

7. The proceeding was conducted against the petitioner based on a charge memo. He was allowed an opportunity of filing written statement of defence and adequate opportunity of effective participation in the enquiry. The Enquiry Officer held the charges proved against the writ petitioner and submitted an enquiry report dated 23.06.2003 to the Disciplinary Authority.
8. The Tribunal has opined that the procedural formalities being fulfilled there was no scope to interfere with the findings of the Enquiry Officer regarding charges being proved. The acceptance of the enquiry report by the Disciplinary Authority also, therefore, requires no interference. The petitioner was afforded ample opportunity. He did not avail the opportunity to produce the certificate. Any other procedural infirmity not being raised the Tribunal rejected the petitioner's Original Application challenging the initiation of departmental proceeding, the enquiry report, the findings of the Disciplinary Authority as well as the order of the appellate authority.
9. The order of the Tribunal dated 17.01.2013 passed in O.A. No. 107 of 2012 is the subject matter of the present writ proceeding.
10. The learned advocate for the writ petitioner in the present writ petition raised an issue regarding the procedure adopted by the Disciplinary Authority after submission of the enquiry report. It is submitted that while issuing the second show cause notice dated

18.02.2011, the Disciplinary Authority has not observed compliance with the principles of natural justice. The second show cause notice contained explicit acceptance of the Enquiry Officer's report. It also conveyed the decision of the Disciplinary Authority to impose a punishment. Prior to issuance of second show cause the Disciplinary Authority had made up his mind. Issuance of the second show cause notice was, therefore, not in compliance with the principles of natural justice. He referred to decision of the Hon'ble Supreme Court of India in the case of ***Himachal Pradesh State Electricity Board Limited –Vs.- Mahesh Dahiya*** reported in **(2017) 1 SCC 768**. He laid great emphasis on paragraph 31 of the judgment which reads:

“31. Both the learned Single Judge and the Division Bench have heavily relied on the fact that before forwarding the copy of the report by the letter dated 2-4-2008 the disciplinary authority-cum-whole-time members have already formed an opinion on 25-2-2008 to punish the writ petitioner with major penalty which is a clear violation of the principles of natural justice. We are of the view that before making opinion with regard to punishment which is to be imposed on a delinquent, the delinquent has to be given an opportunity to submit the representation/reply on the enquiry report which finds a charge proved against the delinquent. The opinion formed by the disciplinary authority-cum-whole-time members on 25-2-2008 was formed without there being benefit of comments of the writ petitioner on the enquiry report. The writ petitioner in his representation to the enquiry report is entitled to point out any defect in the procedure, a defect of substantial nature in appreciation of evidence, any misleading of evidence both oral or documentary. In his representation any inputs and explanation given by the delinquent are also entitled to be considered by the disciplinary authority before it embarks with further proceedings as per statutory rules. We are, thus, of the view that there was violation of principle of natural justice at the level of disciplinary authority when opinion was formed to punish the writ petitioner with dismissal without

forwarding the enquiry report to the delinquent and before obtaining his comments on the enquiry report. We are, thus, of the view that the order of the High Court setting aside the punishment order as well as the appellate order has to be maintained.”

11. The learned AGP on the other hand has referred to decision of the Hon’ble Apex Court in the case of ***Union of India and Others –Vs.- P. Gunasekaran*** reported in ***(2015) 2 SCC 610*** to submit that the contours of judicial review lie within a very narrow compass. The Court exercising judicial review is concerned only with the decision making process and not the decision. Unless it is shown that there is a failure to comply with the procedural formalities, the order is without reference to any material whatsoever, taking into consideration material extraneous to the charges, or where the findings are vitiated by proved malafide, or perverse then only the Court exercising judicial review should interfere with the findings recorded in the departmental proceeding.
12. He submits that the Disciplinary Authority has proceeded as per the procedural prescription contained in the West Bengal Services (Classification, Control and Appeal) Rules, 1971 [CCA Rules, 1971 for short]. The compliance of natural justice is implicit in the procedural prescription contained in the Rule. Therefore, there is no infirmity in the second show cause notice dated 18.02.2011.

13. We have considered the rival submissions. The point urged by the learned advocate for the petitioner is required to be viewed having regard to the language in which the second show cause notice is couched. The second show cause notice issued by the Disciplinary Authority reads:

“.....

Whereas it appears from the report of the Inquiry Authority of dated 23.06.2003 that the three Articles of Charges slapped against Shri Biswanath Das, Group-‘D’ are established as :-

- (i) The Articles of Charges I & II are established that Shri Das entered in the Govt. service at an age of 12 years 4 months 4 days which was below the qualification age of 18 years to enter in the service as his age proof vide Madhyamik passed certificate issued by the W.B.B.S. education. He entered in the Govt.service through a false Class – VIII passed certificate by showing his date of birth on 09.07.1962 and even he could not cite the name of the school where he studied Class VIII before the Inquiring Authority during enquiry. It is clear enough from all the documentary evidences and the report that he has managed to get the class VIII passed certificate falsely only to enter into the Govt. service and by way of suppression of fact he got the Govt. service at a non – serviceable age of 12 years.
- (ii) The Articles of Charge III has also been established through evidence that he had submitted petition to the Higher Authority without giving through proper channel and he has violated Rules 21 of West Bengal Govt. Servant Conduct Rules 1959.

Therefore, as per the provision of Sec. Rule 12(b) of West Bengal Servant Conduct Rules 1959 the undersigned is calling upon him the 2nd show – cause notice why the proposed penalty of dismissal from service since his appointment to the Govt. service would not be imposed upon him admeasuring his offences. For his reference the findings of the I.A is enclosed.

His written show – cause reply is expected to reach the undersigned within 15(fifteen) days on receipt of this show cause letter adducing with proper evidences & documents etc.

If he fails to reply this show cause letter it would be presumed that he agrees with the proposed penalty.”

14. A bare perusal of the second show cause notice reveals that the Disciplinary Authority has communicated the findings of the Enquiry Officer which amounts to an indication of tentative agreement with the findings of the Enquiry Officer. The Disciplinary Authority also communicated a proposed punishment in the second show cause notice. There is no final and conclusive opinion explicit from the second show cause notice dated 18.02.2011, as was contained in the second show cause in the case of ***Mahesh Dahiya (supra)***. In the case of ***Mahesh Dahiya (supra)*** the Disciplinary Authority had taken a decision which was recorded in paragraph 5 of the judgment. Paragraph 5 of the judgment reads:

“5. The disciplinary authority-cum-whole-time members of the Board considered the enquiry report on 25-2-2008 and took the following decision:

“The findings of the enquiry report were accepted by the WTM and it was decided to award major penalty of removal from service after following proper codal formalities.”

15. It is apparent from the second show cause notice quoted in paragraph of the decision of the Hon’ble Apex Court in the case of ***Mahesh Dahiya (supra)*** that the whole time members (WTM) of the Board had already accepted the finding in the enquiry report. It is also apparent from a bare reading of the second show cause notice that the

WTM had already decided to award a major penalty of removal from service.

16. There is no such final and conclusive finding recorded by the Disciplinary Authority in the present case that it has already accepted the enquiry report or that it already decided to award any penalty. In the present case there is only a proposed punishment, that also having regard to the Enquiry Officer's findings on the charges. The same was served on the delinquent to afford him an opportunity to submit a representation which in our considered opinion is in accordance with Rule 10(12) of the CCA Rules, 1971 which reads:

“10. Procedure for imposing penalties –

(12) If the disciplinary authority, having regard to its finding on the charges, is of opinion that any of the penalties specified in clauses (iv) to (vii) of Rule 8 should be imposed or where the Commission recommends, in any of the cases referred to it under sub-rule (11) one or other of the penalties specified in clauses (iv) to (vii) of rule 8 and the disciplinary authority agrees with the views, it shall:

(a) furnish to the Government employee a copy of the report of the inquiring authority and a statement of its findings together with brief reasons for disagreement, if any, with findings of the inquiring authority ; and

(b) give him a notice stating the punishment proposed and the grounds therefore and calling upon him to submit within a specified time such representation as he may wish to make on the punishment proposed but only on the basis of the evidence adduced during the enquiry.”

17. A bare reading of the Rule reveals that Rule 12(b) requires communication of a proposed punishment in the second show cause notice. The purpose of the Rule is to afford adequate opportunity to the delinquent to know

what is going on in the mind of the Disciplinary Authority while communicating the enquiry report.

18. In this connection we consider it apposite to take into consideration the law declared by the Hon'ble Apex Court in the case of ***Punjab National Bank and Others –Vs.- Kunj Behari Misra*** reported in (1998) 7 SCC 84. The Hon'ble Supreme Court in this decision has taken note of the earlier Constitution Bench decision in the case of ***State of Assam –Vs.- Bimal Kumar Pandit*** reported in AIR 1963 SC 1612. The Hon'ble Apex Court after considering several judgments earlier delivered by the Hon'ble Apex Court, held in paragraph 15:

“15. At this stage, it will be appropriate to refer to the case of State of Assam v. Bimal Kumar Pandit decided by a Constitution Bench of this Court. A question arose regarding the contents of the second show-cause notice when the Government accepts, rejects or partly accepts or partly rejects the findings of the enquiry officer. Even though the case relates to Article 311(2) before its deletion by the 42nd Amendment, the principle laid down therein, at p. 10 of the Report, when read along with the decision of this Court in Karunakar case will clearly apply here. The Court observed at SCR pp. 10-11 as follows:

“We ought, however, to add that if the dismissing authority differs from the findings recorded in the enquiry report, it is necessary that its provisional conclusions in that behalf should be specified in the second notice. It may be that the report makes findings in favour of the delinquent officer, but the dismissing authority disagrees with the said findings and proceeds to issue the notice under Article 311(2). In such a case, it would obviously be necessary that the dismissing authority should expressly state that it differs from the findings recorded in the enquiry report and then indicate the nature of the action proposed to be taken against the delinquent officer. Without such an express statement in the notice, it would be impossible to issue the notice at all. There may also be cases in which the enquiry report

may make findings in favour of the delinquent officer on some issues and against him on some other issues. That is precisely what has happened in the present case. If the dismissing authority accepts all the said findings in their entirety, it is another matter: but if the dismissing authority accepts the findings recorded against the delinquent officer and differs from some or all of those recorded in his favour and proceeds to specify the nature of the action proposed to be taken on its own conclusions, it would be necessary that the said conclusions should be briefly indicated in the notice. In this category of cases, the action proposed to be taken would be based not only on the findings recorded against the delinquent officer in the enquiry report, but also on the view of the dismissing authority that the other charges not held proved by the enquiring officer are, according to the dismissing authority, proved. In order to give the delinquent officer a reasonable opportunity to show cause under Article 311(2), it is essential that the conclusions provisionally reached by the dismissing authority must, in such cases, be specified in the notice. But where the dismissing authority purports to proceed to issue the notice against the delinquent officer after accepting the enquiry report in its entirety, it cannot be said that it is essential that the dismissing authority must say that it has so accepted the report. As we have already indicated, it is desirable that even in such cases a statement to that effect should be made. But we do not think that the words used in Article 311(2) justify the view that the failure to make such a statement amounts to contravention of Article 311(2). In dealing with this point, we must bear in mind the fact that a copy of the enquiry report had been enclosed with the notice, and so, reading the notice in common sense manner, the respondent would not have found any difficulty in realizing that the action proposed to be taken against him proceeded on the basis that the appellants had accepted the conclusions of the enquiring officer in their entirety."

(emphasis ours)

19. The decision in the case of **Mahesh Dahiya (supra)** lays down the law that before arriving at a conclusion or finding, copy of the enquiry report is to be served on the delinquent. The decision lays down an undeniable

proposition which is binding on this Court, but in correlation to the fact arising for consideration therein, being the conclusive finding and decision of the Disciplinary Authority recorded in paragraph 5 of the said judgment, extracted above. There is no such final conclusion or finding recorded in the present case. Therefore, judgment in the case of ***Mahesh Dahiya (supra)*** would have no application to the facts and circumstances of the present case.

20. In the present case tentative finding; and proposed punishment was communicated by the second show cause, which is in accordance with the procedural prescription contained in the CCA Rules, 1971 and supported by the law in this regard in decision of the Hon'ble Apex Court in the case of ***Kunj Behari Misra (supra)***.

21. We find no procedural lacuna in the second show cause notice dated 18.02.2011 issued in the present case. The sole contention raised by the learned advocate for the writ petitioner, therefore, is devoid of merit. We found no force in the submission advanced by the learned advocate for the writ petitioner for interfering with decision dated 31.08.2010 passed by the Tribunal in O.A. No. 678 of 2002.

22. The writ petition is dismissed.

In Re: W.P.S.T. 345 of 2004
With
CAN 2 of 2024
With
CAN 3 of 2024

1. The application has been filed for restoration based on a plea that due to long pendency of the writ petition a communication gap occurred between the writ petitioner and the learned advocate.
2. We find that sufficient case is made out for restoration of the writ petition. The writ petition is restored to its original file and number.
3. CAN 2 of 2024 is allowed.
4. CAN 3 of 2024 is dismissed as not pressed.
5. It is submitted by the learned advocate/s representing the parties that the present writ petition is concerned only with benefits consequent upon setting aside of the dismissal.
6. Since the dismissal has not been interfered with nothing survives in the writ petition. The same is accordingly dismissed.

(Madhuresh Prasad, J.)

(Prasenjit Biswas, J.)