

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

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Prasenjit Biswas

MAT 1003 of 2015

With

CAN 1 of 2015 (Old No. CAN 9163 of 2015)

The Eastern Coalfield Limited

Vs.

Sri Harkhit Ram Kahar & Ors.

For the Appellant	: Mr. Susanta Pal, Mr. Nikhil Roy.
For the Respondent	: Mr. Sandipan Banerjee, Mr. Sobhan Majumdar, Ms. Pubasha Nandy Brahma.
Judgment on	: 27.04.2026

Madhuresh Prasad, J.:

1. The appellant was the respondent before the writ Court. Vide order dated 24.12.2024, the writ Court remanded the matter to Respondent No. 3 (General Manager) to examine the record of the departmental proceeding conducted against the writ petitioner, to ascertain whether a copy of the enquiry report was served on the writ petitioner at the stage of second show cause notice by the disciplinary authority. The order dated 24.12.2014 is the subject matter in the present intra court appeal.

2. We have heard the learned advocate representing the parties. Also considered the records including a photocopy of the writ petition (W.P. No. 2856 (W) of 2006), which was handed over to the Court by learned advocate for the writ petitioner, after service of a copy upon the learned advocate representing the appellant.
3. The petitioner was serving as a Driver and was proceeded against by a charge memo dated 20.11.1991. It was alleged that the petitioner was habitual of committing acts of insubordination and abusing his superior authorities. The charges alleged assault also.
4. The enquiry was conducted. An enquiry report dated 18.02.1992, was submitted and the Disciplinary Authority passed an order dated 18.02.1993, inflicting the punishment of dismissal from service upon the writ petitioner.
5. It would be relevant to note that in relation to the same allegations, an F.I.R was lodged giving rise to a criminal case, bearing Andal P.S. Case No. 254 of 1991.
6. The petitioner was also convicted in the criminal case vide a judgment dated 30.07.1999. The conviction was challenged by way of an appeal. The Appellate Court set aside the conviction by a judgment dated 12.04.2001.
7. The petitioner represented before the authorities on 10.12.2001 that the acquittal being based on the same set of facts and material, the Disciplinary Authority should reconsider the order of punishment dated 18.02.1992, in light of the findings of the Appellate Court, and

extend the benefit of acquittal in the Criminal Appeal, in the departmental proceeding also. The petitioner relied upon the decisions of the Apex Court in the case of **Capt. M. Paul Anthony -Vs.- Bharat Gold Mines Limited and Another** reported in **AIR 1999 SC 1416**.

8. The representation was not considered, which compelled the petitioner to file a writ petition, W.P. 880(W) of 2002. The writ petition was disposed of by an order dated 11.05.2004, directing the Disciplinary Authority to consider the petitioner's representation in light of the Supreme Court decisions and to take a decision in the matter after affording an opportunity to the petitioner of being heard on the representation. The Writ Court was of the view that if the Disciplinary Authority was of the opinion that the benefit be extended to the writ petitioner then it was required to be done without any delay. In case the petitioner was aggrieved by decision of the Disciplinary Authority it was left open to the petitioner to take out appropriate proceedings for redressal of his grievance.
9. Thereafter, the authority passed an order dated 27.09.2004 rejecting the petitioner's representation, on a specious premise that the Writ Court while directing for consideration of the petitioner's representation did not set aside the order of dismissal; and since the writ petitioner did not have any further document to submit/exhibit or produce, there was no justification to interfere with the order of punishment awarded to him earlier by the Disciplinary Authority.
10. The order dated 27.09.2004 was put to challenge by the writ petitioner in the second/present writ petition bearing W.P. No.

2856(W) of 2006.

11. The Writ Court considered the two fold submissions advanced on behalf of the writ petitioner. Firstly, a submission was made that the decision of the Disciplinary Authority was not preceded by service of a copy of the enquiry report. It was submitted before the Writ Court that due to violation of the procedural prescription requiring submission of enquiry report, the petitioner was deprived of a vital opportunity to make comments/representation on the findings of the enquiry officer which was to his prejudice, holding the charges proved.
12. Another submission was advanced that despite this court's direction in WP No.2856 (W) of 2006, the Disciplinary Authority did not consider extending benefit of the acquittal in the criminal trial to the writ petitioners in respect of the findings in the Disciplinary proceedings.
13. Vide order dated 24.12.2014 of the Writ Court under appeal, the court remanded the matter to the General Manager (Respondent No. 3) to look into the complaint of the writ petitioner regarding non supply of a copy of the enquiry report.
14. The Writ Court was of the view that if there is a lapse of such procedure then the punishment order could not be sustained. If, however, on the other hand the authorities after due consideration find that the enquiry report was served, then perhaps no further action was required to be taken. For completing such scrutiny a time limit was fixed.

15. The learned advocate representing the respondents/appellant would submit that the Writ Court passed the order on 24.12.2014, about six months after the writ petitioner had crossed the age of superannuation on 30.06.2014. Therefore, even if it was found upon scrutiny that a copy of the enquiry report was not served, there was no scope whatsoever to proceed against the petitioner. He submits that in the circumstances the order of the learned Single Judge dated 24.12.2014, was/ is incapable of compliance, unsustainable, and fit to be set aside.

16. The learned advocate for the writ petitioner/respondent on the other hand has drawn attention of the Court towards the affidavit-in-opposition filed in the writ proceedings. It is his submission that from paragraph 17 of the affidavit-in-opposition, and the order of punishment dated 18.02.1993 passed by the disciplinary authority, it is clear that the enquiry report dated 18.02.1992 was not served on the writ petitioner in the proceedings. Upon thread bare consideration of the record the learned Single Judge also took note of this fact.

17. The learned Single Judge held that the disciplinary authority did not proceed to consider the petitioner's claim based on acquittal in the criminal trial in its proper perspective. The Single judge noted with surprise:

"It is surprising that it did not occur to the said respondent authority that if the order of dismissal originally passed against the petitioner had to be retained there was no necessity in sending the matter back to the respondents over again to take a fresh decision in the mater. I, thus, find that the respondent authority had not only failed to comply with

the direction passed by this Court but also could not read the order in its true spirit and also could not appreciate the purpose of remanding the matter back to him. I, therefore, set aside the order impugned in the writ petition.

However, in the meantime, after the judgment in the case of Capt. M. Paul & Tonny Vs. Bharat Coal Mines Limited & Another (supra) the Supreme Court had reiterated the stand in the case of G.M. Tank Vs. State of Gujarat & Others, reported in (2006) 5 SCC 446. The question of the impact of acquittal in a criminal case upon the disciplinary authority, if both instituted on identical charges, again came up for consideration before the Supreme Court in the case of State of Bikanir & Joypur Vs. Memi Chand Nabwaya reported in (2011) 4 SCC 584.

I send the matter back to the respondent no. 3 to take a fresh decision in the light of the laws laid down in these judgments and after considering the judgment passed in the criminal Case.”.

18. The learned Single Judge also directed the respondent No. 3 as follows:

“While sending the matter to the respondent no.3, I specifically direct him to find out from the records if any copy of the enquiry report along with the second show cause notice was ever sent to the partitioner giving him an opportunity to give his opinion on the report as well as to reply to the show cause notice. If it was not done the respondent authority shall start the enquiry proceeding de novo from the stage of submission of the enquiry report by the Enquiry Officer and shall comply with all the steps necessary before a final order by the disciplinary authority is passed. In that case the petitioner will be deemed to have been in regular employment continuously as the respondents admittedly had never placed him under suspension.

It is made clear that if the records reveal that the report of the enquiry was sent to the petitioner seeking his observations and the necessary procedural requirement was complied with, the respondents shall not be required to revoke the order of dismissal. But they shall intimate their decision in either case to the petitioner. This exercise is to be completed including the intimation to the petitioner within three weeks from the date of communication of the order.

In case it is found that the petitioner had not been dismissed

after complying with the procedural requirements the respondent no.3 shall take a fresh decision in accordance with law laid down by the Supreme Court in the cases referred to above within a period of eight weeks from the date of communication of the order after giving the petitioner an opportunity of hearing and shall dispose of the representation made by the petitioner which was directed to be disposed of by this Court in the earlier writ petition.”

19. We considered the rival submissions and the material on record. We find that the Disciplinary Authority passed the order of punishment on 18.02.1993, wherein the date (18.02.1992) of the enquiry report was recorded. The order of the Disciplinary Authority however, does not record a fact that the enquiry report was ever served on the writ petitioner, let alone there being any reply thereto, or consideration of any such reply. In the circumstances the record did not leave any room for a doubt regarding the non-submission of a copy of the enquiry report on the writ petitioner, prior to passing of final order by the Disciplinary Authority.
20. A plain reading of the order dated 18.02.1993 passed by the Disciplinary Authority, leads to an irresistible conclusion that the petitioner did not have any opportunity of considering the finding of the Enquiry Officer in the Enquiry Report dated 18.02.1992, or for making any representation against the same. Such a procedure adopted by the Disciplinary Authority cannot be said to subserve the principles of natural justice. Such procedure adopted by the Disciplinary Authority is unfair, unjust and unsustainable.
21. The requirement of furnishing a copy of the Enquiry Report to the employee so as to afford an opportunity to make an effective

representation showing any infirmity in the procedure adopted by the enquiry officer is by now settled. The Hon'ble Supreme Court of India in the case of **Union of India vs. Mohd. Ramzan Khan** reported in **(1991) 1 SCC 588** laid down the law in this regard.

22. Subsequently, the Apex Court also considered what is the correct order to be passed on discovery of such procedural infirmity, in the case of **Managing Director, ECIL, Hyderabad & Ors. vs. B. Karunakar & Ors.** The judgment is reported in **(1993) 4 SCC 727**. The Apex Court held:

"31. Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question

whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law.”

23. Mr. Pal learned Advocate for the appellant also could not point out from the record regarding service of copy of the enquiry report on the writ petitioner prior to passing of the order by the disciplinary authority. The enquiry report, as well as the disciplinary authority's order are both of a date subsequent to 20.11.1990, being the cut-off date after which service of copy of enquiry report was held mandatory by the Apex Court subsequently in the case of **B. Karunakar** (*supra*). The judgment also laid down the law as regards the relief to be granted in case of lapse committed by the disciplinary authority by not serving copy of the enquiry report. The learned single Judge therefore, passed orders in the terms extracted above.

24. As on date the order was passed by the learned single Judge the petitioner had already attained the age of superannuation and therefore, as per submission of the learned Counsel for the appellant, there was no scope for the respondent authorities to proceed against the writ petitioner. Such submission at the first blush appears to be

attractive. However, since the learned single Judge had passed a specific direction enabling the authorities to proceed with the matter and the same was not challenged by the writ petitioner, we do not find any force in the submission of the learned Advocate for the appellant that the decision of the learned single Judge was not capable of being put into execution/compliance. The authorities, however, have taken no step pursuant to such liberty granted by the learned Single Judge.

25. From the facts and circumstances noted above it is apparent that the authorities were granted opportunity to consider the matter afresh twice already. The first opportunity was granted by the writ court in its order dated 11.05.2004 passed in the earlier writ proceeding [WP 880 (W) of 2002]. The second opportunity was granted in the present writ proceeding on 27.09.2004. The disciplinary authority consistently failed to ensure proper utilization of the liberty granted to it on both the occasions. In fact, earlier the Disciplinary Authority passed an order on 27.09.2004 contrary to and in violation of the liberty granted to it by the Writ Court in WP 880 (W) of 2002.

26. As per the Apex Court decision in the case of **B. Karunakar** (*supra*) the writ court again granted an opportunity to the Disciplinary Authority in the present proceeding also, which was not availed by the Disciplinary Authority. As a result of repeated defaults by the authorities the petitioner's representation dated 10.12.2001 has not been considered by the authorities till date despite two order/s of the Writ Court.

27. The writ petitioner cannot be made to suffer any further deprivation

due to the repeated lapse on part of the appellants over the past more than two decades. Twice the writ court allowed an opportunity to look into the alleged infirmities in the disciplinary proceeding conducted against the writ petitioner. On the second occasion the Court granted such opportunity after recording a finding that the Disciplinary Authority had failed to act in terms of the liberty granted by the writ court in the first writ petition.

28. The writ court in the present proceeding also considered a fact that there was no material on record to suggest that a copy of the enquiry report was served on the writ petitioner prior to its consideration and final order being passed by the Disciplinary Authority. We also found that there was no material on record to even suggest that a copy of the enquiry report was served on the writ petitioner.

29. Despite repeated opportunity granted to the appellant, the Disciplinary Authority failed to take steps in compliance of the two orders passed in the two writ proceedings. Due to such repeated default on part of the authorities the petitioner, a driver, has been made to suffer continued deprivation by the inaction on the part of the respondent authority in considering his representation dated 10.12.2001; and comply with the obligation cast on the Disciplinary Authority by the writ Court by its order dated 24.12.2014.

30. We are, therefore, of the considered view that the appellant cannot be permitted to take undue advantage of its own lapse in according consideration to the petitioner's representation, or in terms of the Apex Court decision in the case of **B. Karunakar** (*supra*).

31. Our conclusion is fortified by decision of the Apex Court in the case of **Kusheshwar Prasad Singh vs. State of Bihar and Others** reported in **(2007) 11 SCC 447** wherein the Hon'ble Supreme Court of India stated the law in this regard:

"13. The appellant is also right in contending before this Court that the power under Section 32-B of the Act to initiate fresh proceedings could not have been exercised. Admittedly, Section 32-B came on the statute book by Bihar Act 55 of 1982. The case of the appellant was over much prior to the amendment of the Act and insertion of Section 32-B. The appellant, therefore, is right in contending that the authorities cannot be allowed to take undue advantage of their own default in failure to act in accordance with law and initiate fresh proceedings.

14. In this connection, our attention has been invited by the learned counsel for the appellant to a decision of this Court in Mrutunjay Pani v. Narmada Bala Sasmal [AIR 1961 SC 1353] wherein it was held by this Court that where an obligation is cast on a party and he commits a breach of such obligation, he cannot be permitted to take advantage of such situation. This is based on the Latin maxim commodum ex injuria sua nemo habere debet (no party can take undue advantage of his own wrong).

15. In Union of India v. Major General Madan Lal Yadav [(1996) 4 SCC 127 : 1996 SCC (Cri) 592] the accused army personnel himself was responsible for delay as he escaped from detention. Then he raised an objection against initiation of proceedings on the ground that such proceedings ought to have been initiated within six months under the Army Act, 1950. Referring to the above maxim, this Court held that the accused could not take undue advantage of his own wrong. Considering the relevant provisions of the Act, the Court held that presence of the accused was an essential condition for the commencement of trial and when the accused did not make himself available, he could not be allowed to raise a contention that proceedings were time-barred. This Court (at SCC p. 142, para 28) referred to Broom's Legal Maxims (10th Edn.), p. 191 wherein it was stated:

"It is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognised in courts of law and of equity, and,

indeed, admits of illustration from every branch of legal procedure.”

16. It is settled principle of law that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, “a wrongdoer ought not to be permitted to make a profit out of his own wrong”.

32. Therefore, the disciplinary authority’s order dated 18.02.1993 and the subsequent order dated 27.09.2004, passed in violation of the orders of the writ court in WP 880 (W) of 2002 are held to be unsustainable to deprive the writ petitioner of his dues. The orders are unsustainable as being violative of the principles of natural justice and fairness. Both orders are hereby quashed.

33. The petitioner, has suffered for decades on account of the reluctance and failure of the disciplinary authority to consider his claim despite orders passed by the Writ Court. In totality of the above noted facts and circumstances, taking note of repeated lapse on the part of the respondents, we do not consider it just and expedient to allow the Disciplinary Authority to now proceed with the enquiry at such distant time.

34. We are, therefore, in agreement with the order of the learned Single Judge requiring the authorities to pay the current salary to the petitioner which he would have been entitled to had he been in service. In view of our above consideration we do not find any basis to further deprive/defer the payment of arrears of salary till conclusion of any fresh round of disciplinary proceeding. We are unable to agree

with such conclusion of the learned Single Judge in the order under appeal.

35. The petitioner is, therefore, entitled to all consequential benefits as a result of quashing of the disciplinary authority's order dated 18.02.1993 and also quashing of the order dated 27.09.2004 also passed by the Disciplinary Authority. The monetary benefits be paid within eight weeks from the date of receipt/production of a copy of this order before the respondent No. 3.

36. The present appeal and W.P. 2856 (W) of 2006 are accordingly disposed of.

37. Pending Stay Application CAN 1 of 2015 (Old No. CAN 9163 of 2015), stands also disposed of. Interim order, if any, stands vacated.

38. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Madhuresh Prasad, J.)

I agree.

(Prasenjit Biswas, J.)