

Constitutional Writ

Present: The Hon'ble Justice Debasish Kar Gupta

Judgment on 25.08.2010

W. P. No.13161(W) of 2007

Sk. Manuar.

versus

The State of West Bengal & Ors.

With

W.P. No.13158(W) of 2007

Sarathi Kumar Das

versus

The State of West Bengal & Ors.

Points:

**Disciplinary proceeding-** Petitioner admitted his guilt-Non supply of documents and enquiry report whether vitiates the disciplinary proceeding-Service Law

Facts:

Writ petitioner prayed for setting aside of the order of dismissal on the ground of violation of the principles of natural justice as the relevant documents were not supplied to the petitioners before or in course of the enquiry proceedings conducted against them. The copy of the enquiry reports were not supplied to them for giving an opportunity to submit representations to the disciplinary authority before passing the impugned orders of punishment.

Held:

It appears from the materials on record that the presenting officer produced all the relevant documents before the enquiry officer on July 29, 2005. It is further revealed from the minutes of the enquiry proceedings that the petitioners did not raise any objection regarding non-supply of copy of the documents before the enquiry officer at any point of time. That apart, it appears from the minutes of the proceedings relating to hearing before the appellate committee on February 22, 2007 that the petitioners themselves admitted before the appellate committee that the enquiry officer had explained the enquiry proceeding to the petitioners in Bengali before obtaining their respective signatures on the minutes of the proceeding. From the above minutes it is revealed that the petitioners admitted their guilt before the appellate committee. Therefore, the petitioners fail to show that they were prejudiced because of non-supply of the enquiry reports to them. So, the inevitable conclusion is this the supply of enquiry reports would have made no difference to the ultimate finding and the punishment imposed upon the petitioners.

Para 10 and 12

Cases cited:

Managing Director ECIL Vs. B. Karunakar, reported in AIR 1994 SC 1074, South Bengal State Transport Corporation Vs. Swapan Kr. Mitra, reported in 2006(3) CHN 104; Central Bank of India Ltd., Vs. Karunamoy Banerjee, reported in AIR 1968 SC 266

For Petitioner : Mr. Soumen Dutta

For Respondents : Mr. Suchit Banerjee.

**The Court:** This first writ application being W.P. No. 13161(W) of 2007 is filed by the petitioner challenging the order of dismissal dated October 31,

2006 passed against the petitioner as also the order dated June 11, 2007 passed by the appellate authority upholding the aforesaid order of dismissal of the petitioners from the service of the respondents.

2. The second writ application being W.P. No.13158(W) of 2007 is filed by the petitioner against the similar order of dismissal dated October 31, 2006 as also a similar order passed by the appellate authority affirming the order passed by the disciplinary authority.

3. Since the facts and circumstances of the aforesaid two cases are identical involving same points of law, these writ applications are taken for analogous hearing.

4. The petitioners were working for gain as a mechanical-cum-delivery man-cum-weighman of Kolaghat Thermal Power Project/Station Employees Corporation Stores Ltd., Dist. Paschim Midnapore. Charge-sheets dated June 9, 2004 were issued against them. The petitioners submitted their replies dated June 19, 2004. Enquiries were conducted against them. After receiving the enquiry reports, second show-cause notices dated November 14, 2005 were served upon the petitioners proposing punishment of dismissal of the petitioners from services. The petitioners submitted their replies dated April 28, 2005 to the above show-cause notices. Thereafter, the impugned orders of punishment dated October 31, 2006 were passed against the petitioners by the disciplinary authority. The petitioners preferred statutory appeals and the same were disposed of by the appellate authority on June 11, 2007 upholding the decisions of the disciplinary authority. Hence these writ applications.

5. It is submitted by the learned counsel, appearing for the petitioner that the relevant documents were not supplied to the petitioners before or in course of the enquiry proceedings conducted against them. It is further

submitted on behalf of the petitioners that the copy of the enquiry reports were not supplied to them for giving an opportunity to submit representations to the disciplinary authority before passing the impugned orders of punishment. It is also submitted on behalf of the petitioners that second show-cause notices were served upon the petitioners after determining the proposed punishments. According to him the impugned orders of punishment and the orders passed by the appellate authority are liable to be set aside on the ground of violation of the principles of natural justice.

6. The learned counsel appearing for the petitioners relies upon the decision of **Managing Director ECIL Vs. B. Karunakar, reported in AIR 1994 SC 1074, and South Bengal State Transport Corporation Vs. Swapan Kr. Mitra, reported in 2006(3) CHN 104** in support of his above submissions.

7. On the other hand it is submitted on behalf of the respondents that all the relevant documents were produced before the enquiry officer in course of conducting enquiry on July 29, 2005. So the petitioners had the opportunity to go through those documents. It is also submitted on behalf of the respondents that in course of hearing before the appellate committee, Petitioners submitted that the enquiry officer explained the proceeding in Bengali to them and thereafter obtained their respective signatures in the minutes of the enquiry proceeding. According to him the charges levelled against the petitioners were proved in the above enquiry proceedings. Therefore, the allegation of violation of principles of natural justice cannot be sustained in law.

8. The Learned counsel appearing for the respondents relied upon the decision of **Central Bank of India Ltd., Vs. Karunamoy Banerjee, reported in AIR 1968 SC 266** in support of his above submissions.

9. I have heard the learned counsel appearing for the respective parties as also considered the facts and circumstances of the cases. The grievances of the petitioners are twofold, (i) Non supply of relevant documents before or incourse of enquiry proceeding, (ii) Non-supply of copy of the enquiry report before issuing second show-cause notice in the matter.

10. It appears from the materials on record that the presenting officer produced all the relevant documents before the enquiry officer on July 29, 2005. It is further revealed from the minutes of the enquiry proceedings that the petitioners did not raise any objection regarding non-supply of copy of the documents before the enquiry officer at any point of time. That apart, it appears from the minutes of the proceedings relating to hearing before the appellate committee on February 22, 2007 that the petitioners themselves admitted before the appellate committee that the enquiry officer had explained the enquiry proceeding to the petitioners in Bengali before obtaining their respective signatures on the minutes of the proceeding. From the above minutes it is revealed that the petitioners admitted their guilt before the appellate committee. So I find that the allegation of the petitioners with regard to the denial of reasonable opportunity to them in the enquiry proceeding in question was an afterthought.

11. Admittedly, the copy of the enquiry report was not supplied to the petitioner for submitting representation. So, the question of setting aside the disciplinary proceeding from the stage of supply of enquiry report is required to be examined in the light of the decision of **Managing Director**

**ECIL Vs. B. Karunakar(supra)** and the relevant portions of the above decision are quoted below:

*“Hence, in all cases where the Inquiry 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 Courts/Tribunals find 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 Courts/Tribunals 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 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.”*

**(Emphasis supplied)**

12. Copies of the enquiry reports dated have been annexed to the supplementary affidavits filed on behalf of the respondent Nos.3 and 4. At the cost of reputation it is observed that the petitioners submitted before the appellate committee in course of hearing that they were guilty of the charges levelled against them. Therefore, the petitioners fail to show that they were prejudiced because of non-supply of the enquiry reports to them. So, the inevitable conclusion is this the supply of enquiry reports would have made no difference to the ultimate finding and the punishment imposed upon the petitioners.

13. Therefore, these writ applications are dismissed.

14. There will be, however, no order as costs.

15. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

**( Debasish Kar Gupta, J. )**



