

Probodh Chandra Ghose Vs. Executive Engineer, Canals Division and ors.

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Court : Kolkata

Decided On : May-10-1954

Reported in : AIR1955Cal276,58CWN928

Judge : Sinha, J.

Acts : [Constitution of India](#) - Article 311; ;Civil Services (Classification, Control and Appeal) Rules - Rule 55

Appeal No. : Civil Rule No. 2439 of 1953

Appellant : Probodh Chandra Ghose

Respondent : Executive Engineer, Canals Division and ors.

Advocate for Def. : Jagneswar Majumdar and ;Mihir Kumar Sarkar, Adv.

Advocate for Pet/Ap. : Anil Kumar Das Gupta, Adv.

Judgement :

ORDER

Sinha, J.

1. The facts of this case are shortly as follows. In March, 1923 the petitioner was' appointed a Ticket-Checker in Calcutta Canals Sub-Division under the Executive Engineer, Canals Division, Irrigation Department of the Government of Bengal. At

the material time he had been promoted to the post of a Sub-Divisional Clerk. In July, 1949, the petitioner was suspended and his case was referred to the anti-corruption department. We do not know what happened in the anti-corruption department, but it appears that on or about 3-7-1951 the petitioner was served with a charge-sheet and departmental proceedings commenced. It is disputed as to whether the petitioner received the Original Charge-sheet, but admittedly he received a copy, in terms of annexure 'C' to the petition. The charge-sheet sets out a number of charges, one being that there was issue of false tickets issued to launches plying in the canals, another was misappropriation of toll charges. The charge-sheet concluded as follows:

'In view of the facts and evidence collected it appears that Sri Probodh Chandra Ghosh Dastidar is liable to be charged for defalcation of Government money and abetment of offence.'

The petitioner asked for a copy of the police report' but the authorities stated that it was confidential. The petitioner on or about 28-12-1951 submitted an explanation. The very next thing that happened was that on or about 23-2-1953 the petitioner received an order passed by the Executive Engineer, Canals Division, which is annexure 'G' to the petition. The order states that the petitioner was discharged as he had been found guilty of abetting an offence in connection with defalcation of Government money.

2. This order of discharge, is clearly in contravention of Article 311 and also Rule 55 of Civil Services (Classification, Control and Appeal) Rules. As has been pointed out in many recent decisions, the procedure that has to be adopted in departmental proceedings against a delinquent must be as follows. Firstly, he must be given a clear intimation of the charges made against, him. This is done by serving what is called a 'charge-sheet'. Such a charge-sheet usually contains an enumeration of the charges and usually indicates) the penalties that are proposed to be imposed. Thereupon the delinquent shows cause, usually by filing a written explanation. It is for him' at that stage to indicate whether he wishes to appear in person or call witnesses or whether he wishes to inspect documents which are necessary for his defence and so forth. If he does ask for the privilege of

appearing at the trial, it should be granted to him.

Rule 55 lays down the procedure to be adopted at such departmental proceedings and I have already pointed out that although such proceedings are not to be carried out with the formality of a Judicial trial, nevertheless, rules of natural justice should be followed. A complaint has been made that no inspection has been given of the Police Report. I have pointed out that a preliminary enquiry, in order to decide whether the delinquent should be proceeded with in a Court of law or departmentally, is quite in order, and any such report, including a police report, is not necessarily a public one and the delinquent is not entitled to an inspection of it unless the findings of the enquiring body are based upon it. Any report or any document upon which the enquiring body bases its findings must be made available to the delinquent, otherwise it would not be possible for him to defend himself. When the enquiry is completed, the stage comes for punishment. If a number of charges have been preferred and a number of punishments proposed, then the delinquent is entitled to a second opportunity of showing cause as to why the particular punishment that is proposed to be meted out should or should not be inflicted, in view of the charges which have been brought home. Whether the second opportunity ought to be given is a question of fact. If the matter is such a simple one that the delinquent cannot possibly suffer any prejudice without the second opportunity, then it would not be essential to grant him a second opportunity. In other cases, he should have a second opportunity of showing cause against the proposed punishment.

3. In the present case, a charge-sheet was served containing several charges. In the charge-sheet there was no mention of the proposed punishment. The punishments that can be meted out are not one but several, namely, dismissal, removal from service, reduction in rank and so forth. Without affording an opportunity of showing cause against the penalty which seems to have been decided upon in this case, namely, discharge from Government service, the authorities suddenly passed an order discharging the petitioner from service. This is in clear violation of the principles that I have stated above. The order of discharge dated 23-2-1953 is clearly bad and must be set aside.

4. The order therefore will be that the Rule is made absolute and the order of discharge dated 23-2-1953 passed by the Executive Engineer, Canals Division, is set aside and/or quashed and a Writ in the nature of Mandamus is issued directing the respondents to forbear from giving any effect to it. The result is that the petitioner will be put in position as if the order of discharge had not been made. The authorities will now proceed in accordance with law.

5. I make no order as to costs.

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