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**Court :** Kolkata

**Decided On :** Jul-28-2006

**Reported in :** 2007(1)CHN202

**Judge :** Debasish Kar Gupta, J.

**Acts :** [Constitution of India](#) - Article 14

**Appeal No. :** C.O. No. 2394 of 1986

**Appellant :** Dinesh Singh

**Respondent :** Agent Bengali Colliery (R), Eastern Coalfields Ltd. and ors.

**Advocate for Def. :** R.N. Majumder and ;S. Sil, Advs.

**Advocate for Pet/Ap. :** K.K. Bandyopadhyay, ;Swapan Banerjee and ;Lalit Mandat, Advs.

**Judgement :**

**Debasish Kar Gupta, J.**

1. The petitioner files this writ application challenging the order of dismissal passed by the respondent authorities as communicated to him under Memo No. SAT/Per/GM/85/10990 dated 14th December, 1985.

2. At the very outset Mr. R.N Majumder, learned Advocate appearing on behalf of the respondents, raise a preliminary objection. According to Mr. Majumder, there is a provision under the rules to prefer an appeal against the impugned order. So the petitioner can not come before this Court straightaway by filing this writ application to challenge the impugned order of dismissal. Mr. Majumder relied upon the judgements of the Hon'ble Supreme Court of India passed in Delhi Cloth and General Mills Co. v. Ludh Budh Singh reported in : (1972)ILLJ180SC , and in Mohini v. General Manager, Syndicate Bank reported in H.C. Kant LLJ 351.

3. Mr. Kalyan Kumar Bandyopadhyay, learned Senior Counsel appearing on behalf of the petitioner submits that this writ application is filed by the petitioner for getting relief against the violation of his fundamental right as guaranteed under Article 14 of the [Constitution of India](#). According to Mr. Bandyopadhyay, the principles of natural justice have been violated in each and every stage of the proceeding. Mr. Bandyopadhyay further submits that such violation of the principles of natural justice can be proved on the basis of the admitted facts of the case.

4. I have heard the learned Counsels appearing for the respective parties on the preliminary issue. The subject-matter of challenge in this case is violation of the fundamental right of the petitioner. According to Mr. Bandyopadhyay, the violation can be proved on the basis of the admitted facts of the case. Therefore, this writ application can not be rejected at the threshold on the ground that the order under challenge is an appealable order.

5. Moreover, the consequence of the impugned order is a major penalty. In this case, an order of dismissal from service. It is an injury not capable of being ordinarily erased when the error is corrected on subsequent appeal. The damage to the reputation of the petitioner has a far-reaching effect. It affects the standing and dignity of the petitioner among the fellow members.

6. With regard to the decisions relied upon by Mr. Majumder, I find that the Hon'ble Supreme Court arrived at those conclusions on the basis of completely different facts and circumstances.

7. In view of the above, the case of the petitioner is required to be examined on the admitted facts as also on the basis of the materials on records to ascertain as to whether there is violation of the fundamental right of the petitioner as guaranteed under the [Constitution of India](#).

8. The petitioner was working for gain as General Clerk in Nageswar Satgram Colliery. He was served with a chargesheet dated 16th September, 1981. The charge levelled against him was misappropriation of money to the tune of Rs. 63,445.12p. He was directed to submit his reply within 48 hours of receipt of the above chargesheet. By a letter dated 18th September, 1985 the petitioner requested the respondent authority to allow him to go through the Cash Voucher of the relevant period as also the Bonus Register for giving reply to the chargesheet. In the above communication, the petitioner also denied the charges levelled against him. The respondent authority as per communication dated 26th September, 1985 rejected his prayer of taking inspection of the aforesaid two documents. As per communication dated 18th October, 1985 the petitioner was informed by the Enquiry Officer to appear before him on 30th October, 1985 to take part in the enquiry proceeding. The petitioner appeared before the Enquiry Officer and prayed for a direction upon the presenting officer to allow him to take inspection of certain documents. The Enquiry Officer adjourned the hearing of the enquiry proceedings to 7th November, 1985 with a direction upon the presenting officer to produce those documents on that date. As per communication dated 5th November, 1985 the petitioner prayed for an adjournment of hearing of the enquiry proceedings to be held on 7th November, 1985 on medical ground. Then the order under challenge dated 14th December, 1985 was served upon the petitioner dismissing him from the service.

9. Mr. K.K. Bandyopadhyay, learned Senior Advocate, appearing on behalf of the petitioner submits that the enquiry proceeding as also the order of dismissal under challenge are liable to be quashed and set aside for violation of the principles of natural justice. Mr. Bandyopadhyay submits that matter relates to the year 1980-81 but the proceeding was initiated in the year 1985. No list of documents, no list of witnesses were annexed to the chargesheet. Mr. Bandyopadhyay further submits that the prayer of the petitioner for taking inspection of the Cash Voucher

and Bonus Register was turned down by the authority arbitrarily and without any valid reason at the initial stage. Mr. Bandyopadhyay submits that after the communication dated 5th November, 1985, the petitioner was never informed as to whether the prayer for granting adjournment on 7th November, 1985 was allowed. Suddenly, the order of dismissal was served upon him without giving him an opportunity to take part in the enquiry proceedings. Therefore, the principles of natural justice was violated in this case and on that ground alone the enquiry proceeding as also the order of dismissal are liable to be set aside. Mr Bandyopadhyay further submits that a criminal case being case No. 2/89 was initiated against the petitioner. As per order dated 2nd July, 2001 he was found not guilty of the charges by the Special Court Burdwan at Asansol. The charges levelled against the petitioner in the disciplinary proceeding as also the charges in connection with the above criminal case were same.

10. Mr. Bandyopadhyay draws my attention to the minutes of the enquiry proceedings annexed to the affidavit-in-opposition filed by the respondents (Annexure B page 19 to the affidavit-in-opposition) to show that the Enquiry Officer himself put the questions to the witnesses and recorded their answers to arrive at a conclusion. Mr. Bandyopadhyay further draws my attention to the various portions of the above minutes to show that the Enquiry Officer did not act in accordance with law in the matter of service of notice.

11. Mr. Bandyopadhyay relied upon two decisions namely *Kashinath Dikshita v. Union of India and Ors.* reported in : (1986)11LLJ468SC and *State of U.P. v. Shatrughan Lal and Anr.* reported in : [1998]3SCR939 , in support of his claim that the principles of natural justice was violated in this case. Mr. Bandyopadhyay then relied upon a judgment of this High Court delivered in the case of *Rama Kanta Dubey v. Union of India and Ors.* reported in 2004 (2) CHN 462, in which the Enquiry Officer himself examined the witnesses. It was held to be bad. Mr. Bandyopadhyay then relied upon a decision of this High Court in the case of *Anandram Jiandrai Vaswani v. Union of India and Ors.* reported in 1983 (1) CLJ 8, in which the Enquiry Officer put the leading questions to the witnesses that action on the part of the I.O. was held to be bad.

12. Mr. R.N. Majumder, learned Counsel, appearing on behalf of the respondent authority draws my attention to the statement made in the affidavit-in-opposition filed on behalf of the respondent authorities to show that the next date of sitting was fixed on 13th November, 1985. The Enquiry Officer took steps to inform it to the petitioner by a communication dated 7/8th November, 1985. Mr. Majumder draws my attention to the same paragraph to show that the matter was again adjourned to 21st November, The petitioner was informed of the same by communication dated 13th November 1985. A peon made attempts 14th, 15th, 16th and 19th November, 1985. But on all occasions the petitioner was absent from his residence. The communication was also sent to the petitioner by registered post with A/D and from the endorsement of the postal peon on the registered envelope it appears that the petitioner was found absent on 16th, 17th, 18th, 19th, 20th, 21st, 22nd and 23rd November, 1985. Mr. Majumder further submits that since the notices could not be served upon the petitioner the Enquiry Officer had no other alternative but to proceed in the matter in the absence of the petitioner. Mr. Majumder further submits that the enquiry report submitted by the Enquiry Officer was duly considered by the disciplinary authority and the order of dismissal was passed. So there is no violation of the principles of natural justice.

13. Mr. Majumder further relied upon the case of Bank of India v. Apurba Kumar Saha reported in 1995 (2) Lab. LJ 18 to show that failure to give reply would not prevent the enquiry authority to proceed in the matter. Mr. Majumder further relied upon three cases, namely State of Haryana and Anr. v. Rattan Singh reported in : (1982)ILLJ46SC , J.D. Jain v. Management of State Bank of India and Anr. reported in : (1982)ILLJ54SC and in Syndicate Bank v. General Secretary, Syndicate Bank Staff Association and Anr. reported in : (2000)ILLJ 1630 SC , to show that in the event the Enquiry Officer comes to a conclusion on the basis of the materials on record it is not open for the delinquent employee to take the ground that the proceeding was conducted ex parte in the absence of that employee. Mr. Majumdar further relied upon three cases namely, Nelson Motis v. Union of India and Anr. reported in : (1992)ILLJ744SC , Senior Supdt. of Post Offices, Pathananthitta and Ors. v. A Gopalan reported in AIR 1999 SC 1514, Union of India and Ors. v. Bihari Lal Sidhana reported in : [1997]3SCR364 to show that acquittal in criminal case is not a bar to proceed against delinquent employee

in disciplinary proceeding.

14. I have heard the learned Counsels appearing for the respective parties as also I have given my anxious consideration to the materials on record. I find that the petitioner as per his communication dated 18th September, 1985 denied the charges levelled against him and prayed for inspection of the Cash Voucher and the Bonus Register for giving proper reply to the chargesheet. The respondent authority as per communication dated 26th September, 1985 refused the prayer of the petitioner to take an inspection of the above documents at that stage and took a stand that he would be given full opportunity for inspection of all concerned documents in the domestic enquiry. In my view the respondent authority took a decision to put the cart before the horse. Admittedly the petitioner was not given an opportunity to give a proper reply to the chargesheet.

15. It is an admitted position as appears from the statements made in paragraph 10 of the affidavit-in-opposition filed on behalf of the respondent Nos. 1, 2, 4 and 5 that during the enquiry proceeding the Enquiry Officer adjourned the hearing to 13th November, 1985. The information was sent to the petitioner through peon book on 12th November, 1985 but that could not be served on him. It further appears from the statements made in above paragraph that the Enquiry Officer further adjourned the hearing of the proceeding on 13th November, 1985, the next date of hearing was on 21st November, 1985. Attempts were made to inform the petitioner of the above date of hearing through peon book as also by sending a notice by registered post. The peon failed to serve the notice upon the petitioner. As per statements made in the above paragraph of the affidavit-in-opposition it is an admitted position that the postal peon made attempts to serve the notice upon the petitioner by registered post even on 22nd and 23rd November, 1985. But the hearing of the enquiry had taken place on 21st November, 1985. It appears from the minutes of the enquiry proceeding (Annexure 'B' at page 15) of the above affidavit-in-opposition that even after 21st November, 1985 the hearing of the proceeding continued on 27th November, 1985. But no notice was issued to the petitioner to inform that date to him. Thereafter, the order of dismissal was passed by the respondent No. 2 on the basis of the enquiry report of the Enquiry Officer. Therefore, it appears from the record that the petitioner was not given proper

opportunity to attend the enquiry proceedings. Rules of natural justice was violated from the initial stage of giving reply chargesheet and in conducting enquiry proceedings.

16. The rules of natural justice operate as a check on the freedom of administrative action. Those rules ensure fairness in administrative action. Rules of natural justice are, therefore, devised for ensuring fairness and promoting satisfactory decision making. In this case it is an admitted position that the rules of natural justice was violated. Due to such violation the petitioner could not defend his case properly and effectively. I have no hesitation to hold that the decision making process of this case is not sustainable in law.

17. With regard to the cases relied upon by Mr. Majumdar appearing on behalf of the respondent Nos. 1, 2, 4 and 5, I find that in case of Bank of India v. Apurba Kumar Saha (supra), the delinquent employee did not file the written explanation and denied the charges levelled against him orally. He did not cross-examine the witnesses in the subsequent stage, the delinquent employee was given an opportunity to file written argument. In my view, the facts of that case defers from this case. In the next case of State of Haryana and Anr. v. Ratan Singh (supra) the fact was different. In that case the proceeding was initiated against a conductor who was working under the Haryana Road Ways, a transport undertaking. In that case the complainant passengers were not examined at the domestic enquiry. Further the complainants declined to give a written statement to the Inspector of the Flying Squad. The fact of that case also differs from the instant case. In the case of J.D. Jain v. State Bank of India and Anr. (supra) the delinquent employee was a cashier of a bank. He was given an opportunity to submit reply to the chargesheet and he availed of that opportunity. An opportunity of hearing had been given to the delinquent employee before the final order was passed. Therefore, the fact of that case also differs from the instant case. The fact of the case of Syndicate Bank (supra) also differs from the instant case. There the delinquent employee remain unauthorised absent for a long period. Then he applied for leave. The leave was not sanctioned by the bank and the decision was duly communicated to him. Still the employee did not report for duty. The bank sent a notice to him about his unauthorised absence. Subsequently, the bank

invoked Clause 16 of the IV Bipartite Settlement between the management of the bank and the employees calling upon the delinquent employee to show cause for his continued absence and to report back for work within a particular date failing which he would be deemed to have voluntarily retired from the services of the bank. That notice was sent by registered post and it was returned with the report of the postal authority that he refused to receive the same. The Hon'ble Supreme Court decided the allegation of violation of the principles of natural justice on the aforesaid facts and circumstances. Therefore, that decision has no manner of application on the instant case in view of the facts and circumstances of the case.

18. The other issue that remains is if petitioner is acquitted in the criminal case whether or not the departmental enquiry will continue. This issue has been decided in the case of Corporation of the City of Nagpur Civil Lines, Nagpur v. Ramchandra reported in : (1981)11LLJ6SC . The relevant portion of the above judgment is quoted below:

The other question that remains is if the respondents are acquitted in the criminal case whether or not the departmental inquiry pending against the respondents would have to continue. This is a matter which is to be decided by the department after considering the nature the findings given by the Criminal Court. Normally where the accused is acquitted honourably and completely exonerated of the charges it would not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence, but the fact remains, however, that merely because the accused is acquitted, the power, of the authority concerned to continue the departmental inquiry is not taken away nor is its direction (discretion) in any way fettered. However, as quite some time has elapsed since the departmental inquiry had started the authority concerned will take into consideration this factor in coming to the conclusion if it is really worthwhile to continue the departmental inquiry in the event of the acquittal of the respondents. If, however, the authority feels that there is sufficient evidence and good grounds to proceed with the inquiry, it can certainly do so. In case the respondents were acquitted, we direct that the order at suspension shall be revoked and the respondents will be reinstated and allowed full salary thereafter even though the authority chooses to proceed with the inquiry. Mr. Sunghi states that if it is decided

to continue the inquiry, as only arguments have to be heard and orders to be passed, he will see that the inquiry is concluded within two months from the date of the decision of the Criminal Court. If the respondents are convicted, then the legal consequences under the rules will automatically follow.

19. I further agree with the submissions made by Mr. Majuinder on the above issue that the ratio laid down in the case of Nelson Motis (*supra*) is applicable in this case.

20. In view of the above discussion I hold that the enquiry proceedings initiated against the petitioner as per chargesheet dated 16th September, 1985 has been vitiated from the stage of giving reply to the chargesheet. I, therefore, quash and set aside the enquiry report dated 10th December, 1985 of the respondent No. 3 as also the order of dismissal dated 16th December, 1985 passed by the respondent No. 2. The consequence will follow in accordance with law. If, however, the respondent authority feels that there is sufficient evidence and good ground to proceed with the enquiry, the respondent authority will be at liberty to start the disciplinary proceeding against the petitioner *de novo* from the stage of giving proper opportunity to the petitioner to give a reply to the chargesheet dated 16th September, 1985. In the event the respondent authority decides to start the disciplinary proceeding against the petitioner as above then the disciplinary proceeding must be completed within two months.

21. It is made clear that I have not entered into the merits of the case so far the disciplinary proceeding is concerned and all points involved in the proceeding are kept open.

22. The writ application is thus disposed of.

23. In view of the above facts and circumstances there will be, however, no order as to costs.

24. Urgent xerox 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.

Later : (28.7.2006)

25. Mr. Sil, learned Advocate appearing on behalf of the respondent, prays for stay of operation of this judgment, on instruction of his client.

26. I find no reason to stay the operation of the above judgment.

27. The prayer is, thus, refused.

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