

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 5776 OF 2008

STATE OF WEST BENGAL & ORS.

Appellant (s)

VERSUS

SAFIQUL ISLAM

Respondent(s)

(With appln(s) for modification of Court's Order)

Date: 18/02/2010 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.M. PANCHAL
HON'BLE DR. JUSTICE B.S. CHAUHAN

For Appellant(s)

Mr. Avijit Bhattacharjee,Adv.

For Respondent(s)

Mr. Naresh Kaushik, Adv.
Mr. Rupesh Kaushik, Adv.
Mr. Pulakesh Bajpayee, Adv.
Mrs Lalita Kaushik,Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the
signed order.

(Neetu Khajuria)
Sr.P.A.

(Mithlesh Gupta)
Court Master
(Signed Order is placed on the file.)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 5776 OF 2008

State of West Bengal & Ors.

... Appellants

Versus

Safiqul Islam

... Respondents

O R D E R

1. The instant appeal is directed against judgment dated July 16, 2007 rendered by High Court of Calcutta in Writ Petition S.T. No.363 of 2005 by which judgment dated July 23, 2006 passed by West Bengal Administrative Tribunal in OA No.716 of 2003 upholding order dated June 30, 2003 of Superintendent of Police, Government Railway Police, Siliguri dismissing the respondent from service, is set aside.

2. The Relevant facts which emerge from the record of the case are as under :

The respondent, at the relevant point of time, was serving as a Sub-Inspector of Police. He was officer-in-charge

of Alipurduar Government Railway Police Station. On December

20, 2002 at about 2000 hrs., one Atul Chandra Barman a Head

Constable of Alipurduar Railway Police Station, along with

three other police personnel inspected Dn. BP Mail which had

arrived at Alipurduar Railway Station. He found that one

person was carrying one kilogram of Ganja in a polythene pack.

The person carrying Ganja was also found travelling in train

without ticket. Four other persons were also found travelling

in the said train without ticket. Therefore, the person who

was carrying Ganja as well as four other persons were taken to

Aliporeduar Government Railway Police Station. The search of

the body of the person who was carrying Ganja was felt

necessary but no Gazetted Officer was present in the police

station. Therefore, Sub-Inspector Monojit Sarkar was

instructed to secure presence of a Magistrate for effecting

search of the person who was found carrying one kilogram of

Ganja. Sub-Inspector Monojit Sarkar gave a written requisition

requesting Prabhash Vishvas who was Deputy Magistrate to come

to the police station so that the body of the person who was

found carrying Ganja could be searched. Accordingly, the

Deputy Magistrate went to the police station and witnessed the

search of body of person who was carrying Ganja.

The search

resulted into find of four more kilogram of Ganja from the

jacket put on by the said person.

Thereafter, Atul Chandra Barman, Head Constable, dictated his complaint to Sub-Inspector

Monojit Sarkar.

At the time when the complaint was being dictated, the Deputy Magistrate and another high police officer were present.

Meanwhile, an incident of assault on police took place

at platform No.2 of New Alipurduar Railway Station in which two

of the Government Railway Police Station personnel sustained

fatal injuries.

Therefore, Head Constable Atul Chandra Barman

had to accompany the injured constable to Alipurduar S.D.

Hospital.

3. When Head Constable Atul Chandra Barman came back to the

police station from hospital, he found that the person who was

caught with Ganja was released from custody by the respondent

along with two other persons who were found travelling in the

train without ticket. Head Constable Barman further found that

two persons, namely (1) Monindra Nath Debnath and (2) Kalapahar

Debnath of Assam were kept and taken into custody for alleged

commission of offence punishable under Section 20(b) of the

NDPS Act read with Section 137 of the Indian Railways Act.

Head Constable Barman also noticed that three persons who were

arrested earlier were released by the respondent without

observing any formality as required by law which indicated mala

fide intention on the part of the respondent.

According to

Head Constable Barman, the respondent asked him and Constable

Bhabesh Roy to make false statements to the superior police officers regarding the number of persons arrested from Dn. B.P.

Mail on the charge of carrying Ganja to match the concoction

made in the FIR.

4. When it came to the knowledge of the concerned authority

that two innocent persons were wrongly implicated in an

offence, punishable under the N.D.P.S. Act and real offender

was allowed to go scot-free, it was decided to have preliminary

inquiry through Mr. S. Chakraborty, who was then discharging

duties as Platform Inspector. Mr. S. Chakraborty held preliminary inquiry and made report stating that the respondent had intentionally released the person who was arrested with Ganja and had implicated two innocent persons falsely.

In view of abovementioned report, it was decided to initiate disciplinary proceedings against the respondent and in contemplation of disciplinary proceedings, he was placed under suspension.

The respondent was served with a charge-sheet. The Enquiry Officer conducted enquiry. Before the Enquiry Officer, several witnesses were examined and cross-examined. At the conclusion of the enquiry, the Enquiry Officer submitted a report to the competent authority mentioning that the charges levelled against the respondent were proved. The competent authority considered the findings recorded by the Enquiry Officer in his report. Having regard to the gravity of the charges proved, the disciplinary authority issued a notice dated June 17, 2003 to the respondent calling upon him to show cause as to why he should not be dismissed from service. On receipt of the notice, the respondent filed OA No. 716 of 2003 before the West Bengal Administrative Tribunal praying to quash the charge-sheet as well as enquiry report and show-cause notice dated June 17, 2003. The Tribunal heard the respondent and issued notice to the petitioners making the same returnable on July 23, 2003 for hearing the appellants on the questions whether the OA should be admitted or not and whether interim relief as prayed for should be granted or not. The Tribunal, by an order dated June 27, 2003, directed the parties to maintain status quo till the next date of hearing. Meanwhile, it was noticed that the respondent had not submitted reply to the show-cause notice dated June 17, 2003, issued by the disciplinary authority, i.e., Superintendent of Police, GRP, Siliguri. Therefore, the disciplinary authority, after considering the contents of the enquiry report and the documents, decided to dismiss the respondent from service. The

competent authority passed an order dated June 30, 2003 dismissing the respondent from service.

5. Alleging violation of the order dated June 27, 2003, requiring the parties to maintain status quo, the respondent moved the Tribunal to initiate contempt proceedings against the disciplinary authority. The said application was taken up for

hearing on July 23, 2003 and a notice was issued to the competent authorities to show cause as to why action for contempt of court be not initiated against them for alleged violation of order dated 27, 2003 directing the parties to maintain status quo. The petitioners appeared before the Tribunal and pointed out that the order of the Tribunal requiring the parties to maintain status quo was never brought to the notice of the disciplinary authority till July 2, 2003 before which the order dismissing the respondent from service was already passed on June 30, 2003. The Tribunal, after

hearing the parties, rejected the prayer made by the respondent to initiate contempt of court proceedings against the petitioners and dropped contempt proceedings by an order dated May 18, 2004. Thereafter, the respondent sought permission of the Tribunal to amend OA No.716 of 2003 to enable him to challenge the order dismissing him from service. The said prayer was granted by the Tribunal.

6. On completion of pleadings by the parties, the Tribunal heard the parties and by judgment dated May 13, 2005, dismissed the original application filed by the respondent. The Tribunal held that the finding recorded by the Enquiry Officer that charges levelled against the respondent were proved was well founded and no reason to interfere with the same was pointed out by the respondent. The Tribunal also found that the punishment of dismissal from service imposed on the respondent was not harsh and did not warrant interference at the hands of the Tribunal.

7. Feeling aggrieved, the respondent invoked extra-ordinary jurisdiction of High Court of Calcutta under Article 226 of the

Constitution by filing WPST No.363 of 2005.

A Division Bench

of the High Court at Calcutta has allowed the writ petition by judgment dated July 16, 2007 giving rise to the instant appeal.

8. This Court has heard the learned counsel for the parties and considered the documents forming part of the appeal.

9. The first charge against the respondent was that he had permitted three persons including the person from whom five kilogram of Ganja was seized to be released and detained two innocent persons from whom the Ganja was never recovered.

So

far as this charge is concerned, the learned counsel for the petitioners has relied upon the statement made by Head Constable Atul Chandra Barman before the Enquiry Officer.

This

Court has considered the statement made by the said witness.

His statement makes it very clear that he had dictated his complaint to Sub-Inspector Monojit Sarkar.

In his statement

before the Enquiry Officer, Head Constable Barman claimed that Sub-Inspector Monojit Sarkar had made false statements in his FIR and asked him to sign the same.

Head Constable Barman

further stated before the Enquiry Officer that the respondent

had also pressurised him to sign the FIR.

Sub-Inspector

Monojit Sarkar was also examined by the Department as one of

the witnesses to prove the charges against the respondent. Sub-Inspector Monojit Sarkar had stated before the Enquiry

Enquiry

Officer that he had taken down the complaint as narrated by

Head Constable Barman.

According to him, Head Constable Barman

had requested him to right down the complaint as his handwriting was not good and he had never written complaint at

all. According to this witness, the respondent, who was the officer-in-charge of the police station, had asked him to write down the complaint which was to be narrated/dictated by Head

Constable Barman. What was asserted by this witness was that

he had reduced the complaint into writing as narrated by Head

Constable Barman. Though it was mentioned by Mr. Barman in his

statement/evidence before the Enquiry Officer that Sub-Inspector Monojit Sarkar had pressurised him to narrate false

facts, no enquiry was made against Sub-Inspector Monojit

Sarkar. It was mentioned by this witness that Constable Atul

Chandra Barman had told him that five kilogram of Ganja was recovered from Manindra Debnath and Kalapahar Debnath pointing out them to him and, therefore, he had mentioned the said fact in the complaint narrated by Constable Barman.

According to

this witness, Deputy SRP, IRP, Alipurduar and SRP had visited Alipurduar Government Railway Police Station on December 21,

2002 but Constable Atul Chandra Barman had not made any complaint or grievance before any of them that he was pressurised to sign the complaint of Ganja case wherein wrong facts were mentioned.

On scrutiny of the record, this Court finds that the High Court has come to the conclusion that the charge that the respondent had permitted three persons to be released, one of whom was found with Ganja, is not proved. The learned Counsel for the petitioners could not demonstrate before this Court that the said finding recorded by the High Court was contrary to the evidence led before the Enquiry Officer. This finding of the High Court is eminently just and is, therefore, hereby upheld. The result of this discussion shows that the first charge was not proved at all.

10. Second charge against the respondent was that he had let off three persons without completing any formality as required by law which indicated mala fide intention on his part.

So far as this charge is concerned, the High Court has found that no particulars were notified to the respondent as to which formality required by law was not followed by him while releasing the three persons. The second charge levelled against the respondent is as vague as anything could be. It

was not mentioned in the charge as to which formalities and/or precautions required to be observed at the time of release of a person arrested, were not followed by the respondent. The

Enquiry Officer could not spell out in his report as to which formalities were not followed by the respondent at the time

when three persons arrested were released. Under the circumstances, this Court is of the opinion that the charge being vague, no plausible answer could be given by the respondent. The finding recorded by the High Court on the second charge is borne out from the record of the case and no ground is made out by the learned counsel for the petitioners to interfere with the same.

11. The last charge against the respondent was that he had forced Head Constable Atul Chandra Barman and Head Constable Bhabesh Roy to make false statements before their superiors regarding number of persons arrested from Dn. B.P. Mail on the charge of carrying Ganja, to match the concoction made in the FIR. As observed earlier, the complaint narrated by Head Constable Atul Chandra Barman was reduced into writing by Sub-Inspector Monojit Sarkar. In his statement, Sub-Inspector Monojit Sarkar had asserted that he had noted down the facts which were narrated by the Head Constable Atul Chandra Barman. The record further shows that at the time when the complaint was being dictated and reduced into writing, a High Police Officer was also present and, therefore, it is not probable that Sub-Inspector Monojit Sarkar would state wrong facts in the FIR in presence of a high police officer. Therefore, the finding recorded by the High Court on the third charge also deserves to be upheld.

12. What is important to notice is that during the course of enquiry, neither the Magistrate in whose presence the body of the person who was carrying Ganja was searched nor High Police Officer who had visited the police station were examined. In fact, the report of the Enquiry Officer was based on unreliable evidence. Normally, the High Court would not interfere with the findings of the Enquiry Officer by reappreciating the evidence. However, it was found by the High Court that the proceedings were conducted on the basis of vague charges and no acceptable evidence was adduced to establish charges levelled against the respondent. In fact, the High Court has recorded a finding that the conclusions arrived at by all the authorities

were perverse and, therefore, interference in the matter was necessitated. What is relevant to notice is that the search of

the person carrying Ganja was conducted in the presence of Deputy Collector and the Magistrate who were invited to be

present during search of body of those persons.

During the

said search, Ganja was seized from the possession of the two persons and a seizure list was also prepared by the Magistrate himself. In the said seizure memo also, the names of those two

persons who were kept in custody were mentioned.

Further, the

case under NDPS Act was registered before the appropriate court

and till then, the two persons detained had remained in custody, but after submission of final report, they were discharged. Therefore, it is difficult to hold that the

respondent had permitted the real offenders to go scotfree.

The Enquiry Officer did not summon the Magistrate and without

having say of the Magistrate, disbelieved what was stated in the seizure list.

13. On the facts and in the circumstances of the case, this

Court is of the opinion that the High Court was justified in

treating the report of the Enquiry Officer as perverse and

setting aside the punishment of dismissal from service imposed

on the respondent. No ground is made out by the learned

counsel for the petitioners to interfere with the directions

given by the High Court to the petitioners to reinstate the

respondent in service forthwith with 50 per cent of back wages.

The appeal is, therefore, liable to be dismissed.

14. For the foregoing reasons, the appeals fails and is

dismissed. There shall be no order as to costs.

.....J.
[J.M. Panchal]

.....J.
[Dr. B.S. Chauhan]