HIGH COURT OF TRIPURA
AGARTALA

W.A. No.55/2020

1. The Union of India,
   Represented by Home Secretary,
   Ministry of Home Affairs, having its office at
   South Block, New Delhi – 110001.

2. The Secretary,
   Government of India,
   Ministry of Home Affairs, having its office at
   South Block, New Delhi – 110001.

3. The Director General,
   Central Reserve Police Force,
   Having its office at CGO Complex,
   Lodhi Road, New Delhi – 110003.

4. The Deputy Inspector General,
   Central Reserve Police Force,
   Group Centre, Salbagan,
   Agartala, West Tripura – 799012.

5. The Commandant,
   Central Reserve Police Force,
   Group Centre, Salbagan,
   Agartala, West Tripura – 799012.

.....Appellant(s)

Versus

Sri Raju Singh,
S/O. Sri Gopi Mohan Singh,
Resident of Vill. – Noagaon, Bamutia,
P.O. & P.S. – Lefunga,
District – West Tripura.

.....Respondent(s)

For Appellant(s) : Mr. Biswanath Majumder, CGC.

For Respondent(s) : Mr. Somik Deb, Advocate.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI
HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY

Date of hearing : 15.12.2020.

Date of delivery of Judgment & order : 21.12.2020.

Whether fit for reporting : Yes.

JUDGMENT & ORDER

(Akil Kureshi, CJ).

We have heard learned counsel for the parties for final disposal of the Appeal.

2. This Appeal is filed by the Union of India to challenge a judgment dated 26.08.2019 passed by the learned Single Judge in W.P. (C) No.702 of 2019.

3. Brief facts are as under:

The respondent herein-original petitioner, Raju Singh was appointed as a Constable (GD) in Central Reserve Police Force ('CRPF', for short) on 18.09.1998. While he was so working as a Constable, an FIR was lodged against him on 13.10.2011 at Lefunga Police Station alleging offences punishable under Sections 324 and 307 read with Section 34 IPC. On account of the petitioner's involvement in the said criminal case, a departmental inquiry was instituted. He was also suspended from service.

Two Charges were leveled against the petitioner. Charge Article-1 was that while functioning as a Constable, he assaulted another Constable A.K. Jamatia with a chopper and injured him. Charge Article-2 was that on 11.10.2011 the delinquent engaged in a transaction of purchase/sale of a motor cycle for Rs.45,000/- without the permission of the competent authority and also assaulted the said constable A.K. Jamatia. Upon completion of the departmental inquiry, the disciplinary authority passed an order dated 03.10.2012 by which he removed the petitioner from service. The period of suspension would not be treated as spent on duty.

4. The criminal case instituted against the petitioner resulted in his conviction by the Sessions Court by a judgment dated 31.03.2015 under Section 324 of IPC. He was sentenced to pay fine of Rs.40,000/- and in default thereof, to suffer imprisonment of 9 months. No substantive sentence of imprisonment was imposed. The petitioner challenged the said judgment of the Sessions Court by filing Appeal before the High Court. This Appeal was disposed of by a judgment dated 15.06.2018. The conviction was confirmed. However, the petitioner was granted benefit of probation. Relevant portion of the judgment reads as under:

> "8. Hence, it is directed that the appellant be released on probation of good conduct on furnishing a bond of Rs.20,000/- supported by two surities of the like amount to maintain the good behavior for a period of two years. If it is found that he has caused

a breach of the said condition, the appellant shall either deposit the fine as directed by the trial court or in default thereof he shall suffer the default imprisonment. However, the release of the appellant would be subject to the further condition that he would pay the compensation to the extent of Rs.40,000/- to the victim namely Ananda Kishore Jamatia through the trial court, meaning, the amount of compensation be deposited in the trial court at the time of furnishing the bond and the trial court shall transmit the said amount to the said victim. The appellant shall submit the bond along with the amount of compensation within a period of 30 (thirty) days from today in the trial court in the mode as indicated above.

It is made clear that service of the appellant shall not be effected adversely in any manner, save and except for any other delinquency not related to this case."

5. According to the petitioner, against the disciplinary authority's order of removal from service, he had preferred a departmental Appeal. However, the petitioner has not produced the Appeal memo with the petition, nor provided the date on which such Appeal was filed. The department contends that no such Appeal was ever filed. Be that as it may, after the High Court disposed of the petitioner's Appeal against conviction, the petitioner preferred W.P. (C) No.702 of 2019 and challenged his removal from service. The learned Single Judge set aside the order of removal and asked the disciplinary authority to reconsider the order of removal. This was primarily on the basis of the observations made by the learned Single Judge of the High Court in Criminal Appeal of the

petitioner providing that the conviction of the petitioner shall not affect adversely in any manner except for any other delinquency not related in the case. The learned Judge noted that the said order was not challenged by the State and therefore had achieved finality. Having regard to such observations, in view of the learned Single Judge, the disciplinary authority would pass a fresh appropriate order. Relevant portion of the impugned judgment of the learned Single Judge reads as under:

> "[7] Mr. Deb, learned counsel appearing for the petitioner has submitted that the petitioner has complied direction the as reflected in the Para-8 of the said order dated 15.06.2018. Mr. Deb, learned counsel has contended that in view of the order dated 15.06.2018, the order of removal returned by the disciplinary authority be interfered. I find sufficient force in the plea and as a result, the respondents, particularly the respondent No.5 is directed to revisit the order of removal vide the order dated 03.10.2018 [Annexure-3 to the writ petition] which has been challenged in this writ petition. For the purpose as would be recorded hereafter, the order of termination stands quashed for limited purpose without any observation on the merit of the decision.
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> [8] Mr. H. Deb, learned A.S.G., however, has submitted that the appellate court ought not have passed such order. This court is constrained to observe that formulation of the appropriate sentence is within the exclusive jurisdiction of the criminal court. Moreover, the state has not challenged that order. Hence, the order has reached finality.

> [9] The disciplinary authority, the respondent No.5 having regard to the observation made above shall pass the appropriate order within a period of 6 (six) weeks from the day when the respondent No.5 shall receive a copy of the order from the petitioner. The disciplinary authority shall not deviate from the observation made in the order dated 15.06.2018. All the consequential orders also to be passed within that period. The petitioner is at liberty to submit an elaborate representation to the disciplinary authority within a week from the day of receiving copy of this order.
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> [10] Having observed thus, this writ petition stands allowed to the extent as indicated above.
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> Copy of this order be served on the counsel for the parties."

6. It is this judgment, the Union of India has challenged in the present Appeal. Learned counsel for the appellant submitted that the disciplinary authority had taken into account all aspects of the matter before passing the final order. The same should not have been interfered with by the learned Single Judge. The petitioner was a member of a disciplined force. It was proved that he had assaulted his own colleague. Once such misconduct was established it was entirely up to the disciplinary authority to impose appropriate punishment.

7. On the other hand, learned counsel, Mr. Somik Deb opposed the Appeal contending that the learned Single Judge has considered all aspects of the matter before issuing the final directions. The observations made in

the judgment in Criminal Appeal of the petitioner cannot be ignored. He submitted that once the petitioner was granted the benefit of probation, his conviction would not cast any shadow insofar as his employment is concerned. He relied on certain decisions to which reference will be made at later stage.

8. In our opinion, the learned Single Judge committed a serious error in setting aside the order of removal passed by the disciplinary authority, that too on the ground that while disposing of the Criminal Appeal of the petitioner, the Single Judge of the High Court had made certain observations.

9. Firstly, the order of removal passed by the competent authority on 03.10.2012 was not based on the petitioner's conviction by criminal Court. This order was passed long before the petitioner was convicted by the Sessions Court. Secondly, the departmental inquiry contained two Charges. One was assaulting a co-employee and causing injury with a sharp edged weapon and the second was being involved in an un-authorized transaction of sale and purchase of a vehicle.

10. As noted, the petitioner was convicted by the Criminal Court. In Appeal, the conviction was confirmed. He was given the benefit of probation. While doing so, the learned Judge made certain further

observations that "It is made clear that service of the appellant shall not be effected adversely in any manner, save and except for any other delinquency not related in this case." Firstly, these observations, prima facie, give an impression that the fact that the delinquent was already removed from service long before the High Court disposed of his Criminal Appeal, was lost sight of. Even otherwise, the question of the effect of the High Court judgment confirming the conviction of the petitioner but giving him benefit of probation was not at issue in the said proceedings in which the petitioner had challenged his conviction in a Criminal Appeal. In fact, as noted earlier, the removal of the petitioner from service was based on a departmental inquiry, which did not rely on his conviction by the criminal Court. In that view of the matter, the observations made by the learned Single Judge in the said Criminal Appeal must be viewed as passing remarks and cannot be seen as giving any binding directions to the parties concerned. This is more so because the Union of India, which was the employer and which would be adversely affected by the said observations was not even a party before the Court. The State prosecuting the petitioner had no lis so far as the petitioner's employment is concerned. If the State as a prosecutor, therefore, did not challenge the said judgment, the passing observations made therein, cannot be utilized against the Union of India for the purpose of interfering with the independent action taken by the disciplinary authority long back.

11. In that view of the matter, the judgment of the learned Single Judge must be reversed. In case of ***State of Madhya Pradesh vs. Man Singh***, reported in ***(2019) 10 SCC 161*** the Supreme Court observed as under:

> "11. We are also constrained to observe that the High Court in its order directed that the sentence which the accused has already undergone, would not affect his service career. We fail to understand under what authority the High Court could have passed such an order. Even in a case where the High Court grants benefit of probation to the accused, the Court has no jurisdiction to pass an order that the employee be retained in service. This Court in *SBI v. P. Soupramaniane* clearly held that grant of benefit of probation under the Act does not have bearing so far as the service of such employee is concerned. This Court held that the employee cannot claim a right to continue in service on the ground that he was released on probation. It was observed:
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> > "7. …The release under probation does not entitle an employee to claim a right to continue in service. In fact the employer is under an obligation to discontinue the services of an employee convicted of an offence involving moral turpitude. The observations made by a criminal court are not binding on the employer who has the liberty of dealing with his employees suitably."

12. In view of the above discussion, the question of effect of confirmation of conviction with probation on the departmental inquiry need not be gone into. However, since it is strongly argued by the counsel for the petitioner, we may refer to some of the relevant decisions on the point.

13. In case of ***The Divisional Personnel Officer, Southern Railway and another vs. T.R. Chellappan***, reported in ***(1976) 3 SCC 190***, three Judge Bench of the Supreme Court observed that release of an employee on probation does not mean that no penalty can be imposed against him under the service rules. Mere fact that the accused is released on probation does not obliterate the stigma of conviction.

14. In case of ***Union of India and others vs. Bakshi Ram***, reported in ***(1990) 2 SCC 426***, it was reiterated that dismissal of an employee pursuant to misconduct leading to his conviction even though granted benefit of probation is permissible. It was observed that the words used in Sections 12 and 14 of the Probation of Offenders Act, 1958 "shall not suffer disqualification, if any, attaching to a conviction of an offence under such law" does not bar a departmental punishment for misconduct which led to his conviction.

15. In case of ***Sushil Kumar Singhal vs. Regional Manager, Punjab National Bank***, reported in ***(2010) 8 SCC 573***, it was reiterated that release of an offender under Probation of Offenders Act, 1958 may remove disqualifications of the other statutes (like Representation of Peoples Act, etc.) but such conviction can still be a ground for initiating disciplinary

proceedings or to impose appropriate punishment depending upon gravity of the offence.

16. In case of ***Punjab Water Supply Sewerage Board and another vs. Ram Sajivan and another***, reported in ***(2007) 9 SCC 86***, once again this principle was reiterated.

17. Counsel for the original petitioner, however, referred to a decision in case of ***Aitha Chander Rao vs. State of Andhra Pradesh***, reported in ***1981 (Supp) SCC 17***, in which while granting benefit of probation to an accused it was further provided that the conviction would not affect his service career as per Section 12 of the Probation of Offenders Act. However, in this two Judge Bench decision in case of ***Aitha Chander Rao (supra)***, the three Judge Bench judgment in case of ***The Divisional Personnel Officer, Southern Railway and another vs. T.R. Chellappan (supra)*** was not brought to the notice of the Court. ***Aitha Chander Rao (supra)*** was not approved in later decision in case of ***Harichand vs. Director of School Education***, reported in ***(1998) 2 SCC 383***. This was also noticed in case of ***Sushil Kumar Singhal vs. Regional Manager, Punjab National Bank (supra)***.

18. Counsel also relied on the decision in case of ***Shankar Dass vs. Union of India and another***, reported in ***(1985) 2 SCC 358*** in which, in

fact, the Court had held that the order of dismissal from service consequent upon a conviction is not a disqualification within the meaning of Section 12 of the Probation of Offenders Act.

19. Learned counsel, Mr. Deb lastly submitted that the punishment imposed was grossly disproportionate to the proved misconduct. In this context, he relied on a decision in case of ***State of Madhya Pradesh and others vs. Hazarilal***, reported in ***(2008) 3 SCC 273***. However, we cannot lose sight of the fact that the petitioner was a member of a disciplined force. It was proved through departmental inquiry as well as in Criminal Court that he had assaulted his co-employee with a sharp weapon causing injury. It was thereafter up to the disciplinary authority to impose appropriate punishment available under the Service Rules.

20. In the result, the Appeal is allowed. Impugned Judgment of the learned Single Judge is set aside.

Pending application, if any, also stands disposed of.

(S.G. CHATTOPADHYAY), J **(AKIL KURESHI), CJ**

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