

18.02.2021
Item No. 06
Ct. No. 04
PG

F.M.A. 505 of 2019
With
IA no. CAN 1 of 2019 (Old CAN 12792 of 2019)
Joytish Chandra Karmakar
Vs.
The Union of India & Ors.

Mr. Swapan Kr. Nandi
Mr. S.N. Chattopadhyay
Mr. Sizan Nandifor appellant

Mr. Sanajit Kr. Ghosh
Mr. Madhusudan Mukhopadhyay....for respondents

Mr. Nandi, learned advocate appears on behalf of appellant, who is unsuccessful writ petitioner. He submits, his client has been wrongly charged. Hence challenge to the show-cause notice and charge sheet. The first Court erred in dismissing the writ petition as premature. There is glaring discrimination inasmuch as Head Constable Sri Rajib Chowdhury was also detailed for duty on that day, place and time but no inquiry proceeding was initiated against him. Furthermore, the witness accounts of alleged incident, as would appear from the inquiry report, do not give proof of the allegations.

We have perused impugned judgment, the grounds and prayers in the writ petition and the inquiry report. We have not called upon respondents, represented by Mr. Ghosh, learned advocate to argue.

We find first Court correctly held that there is no allegation by petitioner of violation of principles of natural justice, inasmuch as it appears from the inquiry report, appellant was given full opportunity to make out his defence case.

To our mind, there is no discrimination. We see it, if can be said to be omission of respondents to proceed against the Head Constable, as their perception of the person not having done any wrong. Appellant must strive to achieve that position but, on merits, to show that he too did not do any wrong. Discrimination would only be in the converse, that appellant is guilty and so is the Head Constable.

We find from the inquiry report that the procedure was duly followed. Appellant had named one witness, who is reported to have been properly notified but remained absent from the proceeding for reason best known to the named witness. No exhibits were filed on behalf of appellant but he did file defence statement, which was considered.

The suspension order stood revoked and appellant is now serving elsewhere than where the incident took place. We confirm impugned judgment and direct that respondents resume the proceeding affording opportunity of presentation of case as required by rules. Mr. Ghosh submits, during pendency of the writ petition and appeal, the

disciplinary authority awarded punishment of major penalty. Appellant had preferred appeal, which also stands dismissed. In the circumstances, the respondents will allow appellant to apply for review, within four weeks from date.

Appeal and connected application are disposed of, as above.

(Arindam Sinha, J.)

(Suvra Ghosh, J.)