

Form No. J(1)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present: **The Hon'ble Justice Bibek Chaudhuri**

WPA 18451 of 2003

Bibekeswar Mondal
Vs.
Union of India & Ors.

For the petitioner : None.

For the U.O.I. : Mrs. Chandreyi Alam.

Heard on : 16.09.2021

Judgment on : 16.09.2021

Bibek Chaudhuri, J.:

The petitioner takes no step. However, on the basis of submission made by the learned Advocate for the respondent, the instant writ petition is taken up for hearing on merit.

The petitioner has filed the instant application under Article 226 of the Constitution challenging alleged illegal and arbitrary order of dismissal dated 13th July, 1998 from his service as Constable under Border Security Force pursuant to a departmental proceeding.

It is submitted by the learned Advocate for the respondents that prior to filing of the instant writ petition, the petitioner filed W.P.15136(W) of 1998 against the respondents with the similar relief and a Coordinate Bench of this Court vide order dated 18th June, 2002 passed the following order as follows :-

"While on Naka duty the writ petitioner was asked by his superior officer to escort the seized bags containing sugar and salt respectively to the prescribed destination. It is alleged that at the reaching point there had been shortage of 10 KG of sugar and 50 KG of salt for which the writ petitioner was proceeded departmentally and was subsequently dismissed from service. At that point of time the writ petitioner was hardly in the second year of his service tenure and was aged about 23 years. On perusal of the evidence it appears that when the bags were loaded on the Matador Van which was directed to be escorted by the delinquent no weighment was done. Hence, it was not logically possible to come to a conclusion that there had been shortage of definite quantity. It had also not come out in the evidence that the seized jute bags were tempared which could prima facie infer that there had been a shortage. It is also alleged that the delinquent made a confession before his superior that while in transit he distributed sugar and salt amongst the villagers. However, the said statement was denied by

the petitioner. The appellate authority did not consider the above aspect while affirming the order of punishment.

In the case of S.K.Srinivasan vs. Union of India reported in AIR 1958 SC 419 the Apex Court in paragraph 16 of the judgment observed that an admission is not conclusive proof of the matter admitted, though it may in certain circumstances operate as an estoppel.

The order of the appellate authority dated 14th February, 2001 is thus quashed and set aside. The appellate authority is directed to hear the appeal afresh upon giving an opportunity for personal hearing to the writ petitioner through his authorized representative. The appellate authority is also directed to examine the evidence in the light of the observation made herein and in any event he is directed to impose a lighter punishment having regard to the above special facts without removing the writ petitioner from service. The appellate authority will also consider the question of payment of back wages to the petitioner.

The entire process of consideration, hearing, passing of the reasoned order and communication thereof must be made with a period of 8 weeks from the date of communication of his order.

The writ petition is thus disposed of.

Urgent xerox certified copy will be given to the parties, if applied for."

After such order being passed, the Appellate Authority heard the matter once again and passed an order allowing reinstatement of the petitioner. The petitioner was asked to report the unit for his reinstatement. Finally in 2004, he appeared before the head of the unit and he was reinstated.

In view of such circumstances, the instant writ petition has become infructuous and accordingly, the same may be disposed of. I am in conformity with the contention of the learned counsel for the respondents.

For the reasons stated above, the instant writ petition is dismissed being infructuous on merit.

(Bibek Chaudhuri, J.)