

IN THE HIGH COURT AT CALCUTTA
(Appellate Side)
CONSTITUTIONAL WRIT JURISDICTION

W.P.S.T. 412 of 2013

Reserved on: 07.04.2021

Judgment on: 10.06.2021

Kanai Chandra Ghosh

...Petitioner

-versus-

The State of West Bengal & Ors.

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL, CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE ANIRUDDHA ROY**

Present:-M/s S.K. Nandi,
S.N. Chattopadhyay, and
Sizan Nandi, Advocates

...for the petitioner

Ms. Chaitali Bhattacharya, and
Mr. Subhendu Roychoudhury, Advocates

...for the respondents

JUDGMENT

Aniruddha Roy, J.:

1. This writ petition assails the order dated April 4, 2013 (for short, the impugned order) passed by the West Bengal Administrative Tribunal, Kolkata (for short, the Tribunal) in OA 1271 of 2010 (Kanai Chandra Ghosh vs. The State of West Bengal & Ors.) [for short, the said application], whereunder, the Original Application filed by the writ petitioner was disposed of without interfering with

the punishment order and the departmental enquiry report against him.

2. The petitioner was employed as a Police Constable in the West Bengal Police Force. While posted at Bishnupur Police Station he was suspended w.e.f. from March 15, 2007 vide D.O. No.1042 dated March 15, 2017 issued by the Superintendent of Police, Bankura. The petitioner was charged in Bankura District Proceeding No.- 29/07 dated May 17, 2007. He denied the charges vide his reply dated May 24, 2007 and prayed for enquiry.
3. Pursuant to the direction made by the Enquiry Officer dated August 4, 2007, the petitioner filed his statement of defense on August 28, 2007 inter alia contending that the deposition of the witnesses did not prove the charges against him and prayed for exoneration of charges. The Enquiry Officer submitted his report to the disciplinary authority. The SDPO, Khatra directed the petitioner to appear on October 31, 2007 in the said enquiry proceeding. The names of the nine witnesses, who were directed to depose were also communicated to the petitioner.
4. By a letter dated October 31, 2009 the petitioner prayed for exoneration of the charges against him. On the basis of the said letter the petitioner was directed by the Enquiry Officer to appear in connection with the proceeding for further enquiry. The petitioner immediately by his letter dated November 2, 2007 informed the Enquiry Officer that he was unable to agree with the decision calling him to appear in the enquiry as he had already submitted his defense and that he was entitled to get the copy of the enquiry report. By another application dated November 6, 2007 the petitioner requested the Enquiry Officer for supply the copy of the

order of the Superintendent of Police referred to in his communication dated October 28, 2007. On November 17, 2007 the Sub-Divisional Police Officer (SDPO) sent the copy of the order of the superintendent of Police (SP), Bankura dated October 9, 2007.

5. Being aggrieved by the order of enquiry and the decision for suspension, the petitioner filed a previous Original Application being OA 12030 of 2007 before the Tribunal. By an order dated February 5, 2009 the said previous Original Application was disposed of. Being aggrieved by the said order of the Tribunal dated February 5, 2009 the petitioner moved this Court through a writ petition being WPST 392 of 2009. By an order dated July 29, 2010 the said order of the Tribunal was set aside and a direction was made upon the disciplinary authority to proceed de novo from the stage of submission of enquiry report by the Enquiry Officer.
6. The disciplinary authority thereafter by its order dated September 14, 2010 awarded punishment to the petitioner and reduced the basic pay to the minimum of his Grade i.e. ₹.9,600/- (including G.P.) from the existing pay after proper adjustment. It was directed that the increment would be earned from reduced stage. Suspension was confirmed.
7. Challenging the said final order and finding dated September 14, 2010 of the disciplinary authority, the petitioner filed the Original Application praying for the following reliefs:

“(a) A direction be issued quashing the final order dated 14.09.2010 enquiry report, in connection with the charge proceeding in Bankura District Proceeding No. 29/07 dated 17.05.2007.

(b) Another direction be issued quashing the order of Suspension dated 15.03.2007 and directing treating of

Suspension period from 15.03.2007 to 02.02.2009 as a duty and granting of full salary for this period.

(c) Another direction be issued restraining the pay of the applicant to the stage where it was existing just before passing of final order.

(d) Further direction be issued staying the final order dated 14.09.2010 in Bankura District Proceeding No.29/07 dated 17.05.2007.

8. The respective parties filed their pleadings in the said Original Application. By the impugned order the said Original Application was disposed of upholding the punishment of the petitioner.

9. Mr. S.K. Nandi, Learned Counsel, appearing with Mr. S.N. Chattopadhyay and Mr. Sizan Nandi, Advocates appearing for the writ petitioner submitted that, the entire enquiry proceeding including the final order dated September 14, 2010 (for short, the final order) passed in the enquiry proceeding stood vitiated principally for the following reasons:-

(i) The finding of the Enquiry Officer was based on no evidence;

(ii) The nature of punishment imposed upon the petitioner is such that a second Show Cause Notice ought to have been issued upon the petitioner and

(iii) The entire enquiry proceeding had proceeded on the basis of hearsay evidence of the witnesses deposed.

10. Mr. Nandi then referred to few Regulations from the Police Regulations, of Bengal, 1943 (for short, 1943 Regulations). Relying upon Regulations 857 and 883 he submitted that, the punishments are divided into major and minor. Major punishments include inter alia **“Reduction”** in any form which had been imposed upon the petitioner in the enquiry proceeding. He then referred to Regulation

861 of the said 1943. The Regulation deals with the proceedings in cases of major punishment. He submitted that, in terms of Sub-Regulation (f) of Regulation 861 after the enquiry had been completed and after the punishing authority had arrived at a provisional conclusion in regard to the penalty to be imposed, the accused Officer shall, if the penalty proposed is inter alia for **“Reduction”** in any form, the charged employee must be supplied with a copy of the report of the Enquiry Officer and be called upon to Show Cause within a reasonable time not ordinarily exceeding one month against the particular penalty proposed to be inflicted. Much endeavor was laid on this Sub-Clause (f) of Regulation 861 and it was submitted that, in the instant case since the punishment inflicted upon the petitioner inter alia includes **“Reduction”** with regard to his monetary benefit, a Show Cause Notice ought to have been served upon the petitioner before imposing the punishment as mentioned in the final order. In absence of such second Show Cause Notice there is a procedural and also legal impropriety in the enquiry proceeding against the petitioner. Entire enquiry proceedings, accordingly, stood vitiated. He then referred to the oral testimony of witnesses and submitted that, from perusal of depositions of those witnesses it is evident that, the entire enquiry proceeding proceeded on the basis of hearsay evidence, which is no evidence at all in the eyes of law. Therefore, the findings of the Enquiry Officer were based on no evidence. He also submitted that, the punishment imposed on the petitioner was disproportionate.

11. It was further submitted on behalf of the petitioner that, the petitioner had joined service in 1996. The petitioner had suffered

punishment in 2010 and the petitioner was granted promotion in 2019. Therefore, the State employer had already ignored the decision of the enquiry and the consequent disciplinary proceeding by granting such promotion and allowed the petitioner to be in service without effecting the said order of punishment.

12. In support of his contentions Mr. Nandi had relied upon various judgments vide, *In the matter of: The State of Assam & Anr. vs. Bimal Kumar Pandit*, reported at AIR 1963 Supreme Court 1612; *In the matter of: State Bank of India & Ors. vs. T.J. Paul*, reported at (1999) 4 Supreme Court Cases 759; *In the matter of: Kalika Pathak vs. Union of India & Ors.*, reported at (2018) 3 CHN 338.
13. Ms. Chaitali Bhattacharya with Mr. Suvendu Roychoudhury, Learned Advocates appearing for the State submitted at the threshold that, there being a provision of departmental appeal in existence the petitioner should not have approached the Tribunal without exhausting the appellate remedy in view of the clear bar under Section 20 of the Administrative Tribunal Act, 1985 (for short, the 1985 Act). On this ground alone the Original Application was not maintainable and accordingly the Tribunal ought not to have entertained the same. Ms. Bhattacharya, then referred to the final order of the enquiry proceeding and submitted that, at every stage wherever it was necessary the petitioner was granted adequate opportunity of hearing and the petitioner also availed of such opportunity. The enquiry report was served upon the petitioner and only thereafter the personal hearing was granted to the petitioner in the enquiry proceeding. Relying upon the records of the enquiry proceeding which were before this Court she submitted that, the enquiry proceeding was not proceeded on the

basis of hearsay evidence and the finding of the enquiry proceeding was on the basis of the evidence and material available before the Enquiry Officer and the petitioner had adequate opportunity to controvert the same. The petitioner duly participated in the said enquiry proceeding. Therefore, the final order passed in the enquiry proceeding does not suffer from any irregularity or illegality and the Tribunal after considering all the materials before it came to its conclusion and affirmed the punishments imposed upon the petitioner.

14. Ms. Bhattacharya then specifically referred to Sub-Regulation (f) of Regulation 861 of the 1943 Regulations and submitted that, the second Show Cause Notice was required to be served only in case of a punishment which includes inter alia **“reduction in rank”**. In the present case no such punishment for **“reduction in rank”** was imposed upon the petitioner. Thus, there was no necessity to serve a Show Cause Notice in terms of Sub-Regulation (f) of Regulation 861 of the 1943 Regulations upon the petitioner.
15. Ms. Bhattacharya, the learned State Counsel then distinguished the judgments cited on behalf of the petitioner, submitting that, since in the present case there was no punishment imposed for **“reduction in rank”** the relevant regulation does not require to serve a Show Cause Notice upon the petitioner, as contended by the petitioner. Hence, the ratio of the judgments relied upon by the petitioner has no application in the facts and circumstances of the case.
16. After considering submission made on behalf of the parties and upon perusal of materials before this Court, it appears that, nine folds of charges were labeled against the petitioner which are:

- 1) On 18.12.2006 and on 02.01.2007 he was found stopping running Trucks on road without any order of the authority.
- 2) He also misbehaved with the Truck drivers using rough languages without any cogent reasons only to realize money or any other ulterior motive.
- 3) His such activities are likely to create apprehension of law and order problem in the locality and thereby the officers and force are avoiding to accompany him on any duty.
- 4) On 29.01.2007 he was detailed Thana 2nd sentry duty from 10.00 hrs. to 12.00 hrs and so on. Remaining, present at P.S he intentionally denied to take up sentry duty and made altercation with duty officer demanding any other duty than sentry duty.
- 5) He did not report sick at any Police unit and attended S.D Hospital Bishnupur on 29.01.2007 without any authority and managed to get advice of M.O. for 02 weeks medical rest to cover his intentional lapses.
- 6) He did not pray for any leave forwarded by IC Bishnupur P.S against medical rest for 02 weeks so advised and without sanction of leave he remain unauthorized absent from PS w.e.f 29.01.2007 to 11.02.2007. He resumed his duty at Police Lines on 12.02.2007 A.M producing, fit for light duty certificate issued by the M.O.
- 7) On 08.03.2007 evening, and on 11.03.2007 evening, he was not found available on call at and around the P.S for emergent duty and evening, raid. Thus he intentionally avoided Govt. duty remaining absent from P.S.

8) *On 12.03.2007 at 10.25 hrs on being asked he did not submit his explanation for remaining absent from PS and other force issuing Bishnupur PS C.C No 576/07 dated 12.03.2007 at 11.45 hrs. when he misbehaved with I.C Bishnupur PS using filthy languages indicating with red eyes and left the PS avoiding the Govt. duty.*

9) *On 12.03.2007 during visit of Addl. SP Bankura at Bishnupur PS he was called by the duty officer over telephone as per order but he was too dare and desparate not to turn up and intentionally violated the order of Addl. S.P Bankura.*

17. From the final order of the disciplinary proceeding it appears that, the authority while imposing punishment had proceeded on the basis of the Charge Nos. 4 to 9 mentioned above, which were duly proved and established against the petitioner. Charge Nos. 1 to 3 mentioned above were ignored as not being proved. This clearly shows proper appreciation of relevant material/evidence against the petitioner and the application of mind by the disciplinary authority thereupon. From the charges established, it would appear that, the petitioner had committed several misdeeds from time to time and was a habitual offender working in a police force. The charges proved against the petitioner further show that the moral turpitude of a police person was lacking. The established charges would further demonstrate that, the petitioner was also a habitual and willful violator of the relevant service rules and regulations. The petitioner being an employee of police force was thoroughly indisciplined and was charged for unauthorized absence during his service tenure. Even the petitioner was found not available as and when he was called for emergency duty. The petitioner also did not

care for furnishing any explanation for such misdeeds committed 41by him when he was asked to do so. The cumulative assessment of the conduct of the petitioner during his service tenure would definitely demonstrate that the petitioner became unfit and not eligible to serve in disciplined force. From the records it is equally evident that, despite having a meaningful participation by the petitioner in the disciplinary proceeding with adequate opportunity of hearing, he was unable to dislodge the charges proved against him. The petitioner previously also approached the Tribunal and this Court, when directions were issued for disciplinary proceeding to proceed de novo from the stage of submission of enquiry report, accordingly the disciplinary proceeding had progressed.

18. From the charges mentioned above it appears that, the petitioner had committed several misdeeds from time to time and is a habitual offender working in Police Force. From the final order of the disciplinary proceeding it appears that, the authority while imposing punishment had proceeded only on the basis of such charges which were duly proved and established against the petitioner and the rest were ignored. This clearly shows proper appreciation of the relevant material/evidence against the petitioner and application of mind by the disciplinary authority. The charges which were established would show that the moral turpitude of a police person was lacking. It is also evident from records that despite having a meaningful participation by the petitioner in the disciplinary proceeding with adequate opportunity of hearing, he was unable to dislodge the charges proved against him.

19. To consider the points raised on behalf of the petitioner as mentioned above at the outset, a brief analysis of the final order passed in the enquiry proceeding is essential. There were nine charges imposed against the petitioner, out of which after a detailed fact finding enquiry the Disciplinary authority punished the petitioner for Charges Nos. 4,5,6,7,8 and 9, as mentioned in the final order. The punishment imposed was that pay of the petitioner was reduced to minimum basic pay of his grade i.e. ₹ 9,600 (including GP) from his existing pay after proper adjustment. He would earn future increments from that stage. His pay, allowances arrear pay etc., if due, would be regularized immediately. The period of suspension w.e.f. March 15, 2007 to February 2, 2009 was confirmed and he would not get anything more than what he was allowed earlier. The period of unauthorized absence w.e.f. January 29, 2007 to February 11, 2007 was treated as Extra Ordinary Leave (EOL) without pay.
20. Further on a proper and true construction of the relevant Regulations of the said 1943 Regulation which are applicable in the facts of this case, it is clear that the punishment imposed by the disciplinary authority on the petitioner does not include **“Reduction in rank”** and as such the question of serving a Show Cause Notice in terms of Regulation 361(f) did not arise. Thus, the disciplinary authority had proceeded lawfully and in compliance of the relevant Regulations of the 1943 Regulation.
21. In as much as, from records of the enquiry and disciplinary proceedings and the final order passed therein, it appears that there was no infirmity. The disciplinary authority had not proceeded on the basis of any hearsay evidence. In as much as, the

charges which had been proved against the petitioner, the petitioner failed to controvert and dislodge them, despite having a meaningful participation in the enquiry proceeding.

22. In all the judgments relied upon for the petitioners, it was held that, imposing the punishment for a proved delinquent is regulated and controlled by the statutory rules. Therefore, while performing the quasi judicial functions the authority has to act or purport to act for execution or intended execution of the statute or statutory rules. The relevant authority is not permitted to ignore such statutory rules under which punishment is to be imposed. The disciplinary authority is bound to give strict adherence to such rules and any order of punishment imposed outside the purview of the statutory rules or in breach thereof is a nullity and cannot be enforced against the delinquent. In the present case, as already discussed above the punishment was not for **“reduction in rank”** and as such Regulation 861 (f) of the 1943 Regulations is not attracted. Therefore, there was no violation of any applicable rule or regulation while imposing punishment against the petitioner. Thus, the ratio of those judgments relied upon on behalf of the petitioner have no application in the facts and circumstances of this case.
23. In so far as the point of maintainability of the Original Application before the Tribunal, as raised by the Learned State Counsel, is concerned the Tribunal has already dealt with the same in the impugned order. In any event, the State had not challenged the impugned order on this ground.
24. In view of our fore going discussions, this Court finds that there is no infirmity in the impugned order passed by the Tribunal and as

such the same is not interfered with. The present writ petition being **W.P.S.T. 412 of 2013** stands dismissed.

25. There shall, however, be no order as to costs.

(Rajesh Bindal)
Chief Justice (Acting)

(Aniruddha Roy)
Judge

Kolkata
10.06.2021

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P.A. (RM)