IN THE HIGH COURT AT CALCUTTA

(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

WPA 27512 of 2007

Md. Amir Ali Mondal

Versus

State of West Bengal & Ors.

Md. Yusuf Ali

.....For the Petitioner

Mr. Raja Saha

Mr. Biswabrata Basu Mallick

.....For the State

Mr. Subir Kumar Bhattacharyya

.....For the Respondent Nos. 2 & 4

Heard on : 24.02.2022

Judgment on : 10.03.2022

Krishna Rao, J.: The petitioner was appointed as Village Organizer (Grade-I) in the year 1984. In the year 1987, the petitioner was posted as Sales-in-charge, Berachampa Service Station, Deganga, Comprehensive Area Development Project under the Deganga Project. The petitioner being the Sales-in-charge of Berachampa Service Station used to keep actual and detailed accounts of the inputs fertilizers, pesticides etc. received from the Head Office by way of Challans. The articles received by the petitioner from the Head Office used to sell to the farmers and also used to collect the sale proceeds. The daily sell proceeds is to be entered in the Daily Cash Sale and Credit Sale Register and cash received by the petitioner is to be deposited either in the Bank or in the Head Office as per the direction of the competent authority. On depositing of the cash, the money receipts were entered in the Cash Remittance Register.

As per the direction of the Managing Director, the Annual Stock Verification of Berachampa Service Centre was held and physical stock of fertilizers, pesticides and seeds were prepared. During the physical verification, it was found that some articles were deficit as per stock register. On 16.07.1988 a Board Meeting was held and in the said meeting the shortage of articles were assessed to the tune of Rs. 67,401/-.

On 02.09.1988 the petitioner was placed under suspension. On 23.12.1988 the disciplinary authority had issued Memo No. P(AAM)/ENG./2778/1(3) and Memo No. P(AAM)/ENG./2779/1(3) along with Article of Charges to the petitioner. On receipt of the memorandum, the petitioner has submitted statement of defence denying the charged levelled against the petitioner.

On receipt of the written statement of defence, the disciplinary authority had appointed Enquiry Officer and Presenting Officer to conduct the enquiry against the charges levelled against the petitioner. The petitioner participated in the said enquiry and accordingly, on completion of enquiry the Enquiry Officer submitted the enquiry report to the disciplinary authority holding that the charges levelled against the petitioner is proved. The Enquiry report was duly served to the petitioner and on receipt of the enquiry report; the petitioner had submitted his reply. On receipt of the reply submitted by the petitioner, the disciplinary authority had passed an order on 18.04.1990 by imposing penalty of removal from service of the petitioner from the corporation.

Being aggrieved with the order of penalty dt. 18.04.1990, the petitioner has preferred an appeal before the appellate authority. As the appeal was pending before the appellate authority and the appellate authority has not taken any decision, the petitioner has filed a writ petition before this Court being W.P. No. 437 (W) of 2007 and the Coordinate Bench of this Court vide order dt. 05.03.2007 disposed of the said writ application by directing the appellate authority to dispose of the appeal preferred by the petitioner within a period of 6 weeks from the date of communication of the order. After the order passed by this Coordinate Bench of this Court, the appellate authority has dismissed the appeal by upholding the order passed by the disciplinary authority dt. 18.04.1990.

Md. Yusuf Ali, Ld. Counsel representing the petitioner submitted that on the basis of the same similar facts, a criminal case was also initiated and the case is still pending before the Ld. Magistrate and the respondent authorities without considering the fact that the criminal case is pending have initiated departmental proceeding against the petitioner and imposed punishment of removal from service. The Counsel for the petitioner further submitted that the disciplinary authority had passed the order simply on the basis of the report of the Enquiry Officer which was in biased manner and has not considered the defence taken by the petitioner.

Ld. Counsel for the petitioner further submitted that the disciplinary authority failed to appreciate that the petitioner had to go to bank and Head Office to deposit money and for recording the cash remittance register and adjust the sell proceeds in every month, the Managing Director had to check those records monthly and if any discrepancy was found in any month that should have been detected then and there but in the instant case, the said procedure was not followed. The Ld. Counsel further argued that the authorities have forcefully recorded the confessional statement of the petitioner and had compelled the petitioner not to adduce any evidence.

The Counsel for the petitioner submitted that as per Article of Charges the amount is mentioned in the charges is Rs. 70,000/- but the actual amount was 67,401/- and as such the authorities have issued the charge-sheet against the petitioner without calculating the amount properly. Ld. Counsel for the petitioner further submitted that the calculation made for the purpose of shortage was a defective one because the minimum 3 % handling shortage of all kinds was not allowed. The Counsel for the petitioner further submitted that the appellate authority has also not considered the grounds urged by the petitioner in the appeal and the appellate authority has dismissed the appeal of the petitioner without assigning any reason

The Counsel for the petitioner further submitted that neither the disciplinary authority nor the appellate authority not given proper opportunity of hearing to the petitioner and have imposed major penalty for removal of service of the petitioner from the said Corporation.

Per contra, the Ld. Counsel appearing for the respondents submitted that when the petitioner was posted as Sales-in-charge of Berachampa Service Station had misappropriated an amount of Rs. 70,000/- and when the authorities came to know about the said fact on Physical Verification of the Stock, the authorities have issued the memo to the petitioner by giving an opportunity of hearing to the petitioner to submit his reply but the reply submitted by the petitioner was not satisfactorily and accordingly, the disciplinary proceeding was initiated.

The Ld. Counsel for the respondent further submitted that as per the assessment of the shortage of money it was found that an amount of Rs. 3,575.95/- is yet to be realized from the farmers. The Counsel for the respondent further submitted that there was a shortage of amount of Rs. 56,259.55/- with respect of cost of the fertilizer, an amount of Rs. 6,880.02/- being the cost of pesticides and an amount of Rs. 686.00/- being the cost of seeds total amounting to Rs. 67,401/-.

The Counsel for the respondent further submitted that the petitioner had made confessional statement in writing wherein the petitioner has accepted his guilt and during the enquiry, the said confessional statement was duly proved by way of evidence.

The Counsel for the respondent further submitted that the disciplinary authority as well as the appellate authority have given proper opportunity of hearing to the petitioner and after considering all the evidence and material on record have passed the order of removal of the petitioner from the service and as such the order passed by the disciplinary authority as well as the appellate authority is not required to be interfered with. The Counsel for the respondent prayed for dismissal of the writ application.

Considered the submissions made by the Counsel for the parties. On Physical Verification of the annual stock of fertilizers, seeds and pesticides of Berachampa Service Station it was found that some of the articles were deficit as per stock register and after assessing the same it was found that the cost of the same was Rs. 67,401/-. When the respondents came to know about the said misappropriation, immediately the petitioner was placed under suspension and disciplinary proceeding was initiated. The petitioner was given an opportunity to submit his written statements of defence and accordingly, the petitioner has submitted the same but the disciplinary authority was not satisfied with the same and the disciplinary proceeding was continued. During the enquiry, the petitioner had confessed his guilt with regard to the misappropriation of the said amount. The petitioner had participated in enquiry and the confessional statement made by the petitioner was duly proved. After considering all the materials on record the disciplinary authority had passed an order for removal of service of the petitioner. The petitioner being aggrieved with the order of the disciplinary authority had preferred an appeal. The appellate authority after considering all the materials and the evidence on record had dismissed the appeal filed by the petitioner.

The Article of charges framed against the petitioner on the basis of:-

(a) Stock Register of 1987-88.

(b) Report of Preliminary Enquiry.

(c) All cash memos, vouchers and challans for the said period.

(d) Written confession of the petitioner dt. 08.07.1988.

All the documents were exhibited during the evidence and the petitioner had not objected for exhibiting the documents and had got opportunity to cross examine the witness.

As per the confessional statement made by the petitioner on 08.07.1988, he has admitted that the sale proceeds and cash of about 70,000/- has been defalcated by him and he will deposit the total amount within 7 days and the statement was marked as "Exhibit-B".

The principles have been culled out by a three Judge Bench of the Hon'ble Supreme Court in the case of B.C. Chaturvedi –Vs- Union of India & Ors. reported in 1995 (6) SCC 749 wherein it was observed that:-

> "18. A review of the legal petition would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of Judicial review, cannot normally substitute its own calculation on penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the consequence of the High Court/ Tribunal, it would appropriately mould the relief, either directing the disciplinary/ appellate authority to consider the penalty imported, or to shorten the allegation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reason in support thereof."

It has been further examined by the Hon'ble Supreme Court in the case of Lucknow Kshetriya Gramin Bank & Anr. –Vs- Rajender Singh reported in (2013) 12 SCC 372 in paragraph 19:-

19. The principle discussed above can be summed up and summarized as follows:-

19.1. When Charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities.

19.2. The Court cannot assume the functions of disciplinary/ departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as the function is exclusively within the jurisdiction of the competent authorities.

19.3. Limited Judicial review is available to interfere with punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the consequent of the Court.

19.4. Even in such cases when the punishment is set aside as shockingly disproportionate to the nature of charge framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The Court by itself cannot mandate as to what should be penalty in such cases.

19.5. The only expression to the principle stated in para 19.4 above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct were identical or the co-delinquent was pointed with more serious charges. This would be as the doctrine of equality when it is found that the employee concerned and the co-delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well often the services of charge-sheet in the two cases. If the co-delinquent accepts the charges, indicating rumours with unqualified apology punishment to him would be justifiable.

In the instant case, the petitioner has been punished with penalty of removal from service after the charge levelled against the petitioner stood proved by the disciplinary authority in a departmental enquiry held against him after following the due process of law and the punishment implicted upon the petitioner is duly affirmed by the appellate authority in the appeal preferred by the petitioner.

In view of the above this Court find that there is no scope to interfere with the order passed by the disciplinary authority or the appellate authority.

WPA No. 27512 of 2007 is thus **dismissed**.

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)