

Dr. Alok Kumar Khan

Vs.

The State of West Bengal & Ors..

Mr. Abhratosh Majumdar,

Mr. Khairuil Alam,

Mr. Amitabha Majumdar.

... for the petitioner.

Mr. Swapan Kumar Datta,

Mr. Dipankar Das Gupta.

... for the respondents.

Though the substantial relief has been granted to the petitioner by the Tribunal, yet the petitioner approached this Court by filing a writ petition challenging the portion of the impugned order by which the matter was relegated to the disciplinary authority for reconsideration and to take a final decision upon observing the principles of natural justice.

The petitioner construed the aforesaid direction prejudicial to his interest, as the authority shall be swayed by the aforesaid observations to the extent that the penalty to the extent of suspension of 50% of the pension permanently has been upheld or uninterfered with.

Indubitably, the disciplinary proceeding was initiated against the petitioner for the alleged misconduct and ultimately the enquiry officer opined that the petitioner should be deprived from getting any pension. However, the Public Service Commission recommended to withhold 10% of the pension for a period of one year. Subsequently the aforesaid recommendation was forwarded to the disciplinary authority, which disagreed with the quantum of punishment proposed to be inflicted upon the petitioner and remitted the matter to the Public

Service Commission. The second opinion was given by the said authority reiterating the stand taken in the first recommendation, but thereafter the disciplinary authority disagreeing with the second recommendation inflicted withholding of 50% of the pension permanently. The approval was later on given by the Cabinet and communicated to the petitioner.

The challenge was made to the Tribunal to an order withholding 50% of the pension permanently and by the impugned order the Tribunal set aside the order of the disciplinary authority solely on the ground of non-adherence of the principles of natural justice. The Tribunal did not put a complete halt thereafter, but directed the disciplinary authority to reconsider the case upon observing the principles of natural justice so far as the imposition of penalty by way of withholding 50% of the pension permanently.

It is submitted by the learned Advocate for the petitioner that Rule 10 (11) of the West Bengal Services (Classification, Control and Appeal) Rules 1971 has not been considered and in departure therefrom the disciplinary authority have acted in imposing the penalty not recommended by the Public Service Commission. It is ardently submitted that the moment the Public Service Commission was consulted by the disciplinary authority, the recommendation has to be accepted and the disagreement cannot be shown more particularly when the said Commission reiterated the imposition of penalty for the second time.

On the other hand, the State did not agree with the aforesaid submission and it is submitted that the aforesaid provision has no manner of applicability in the instant case and, in fact, the disciplinary authority disagreed with the quantum of punishment

recommended by the Public Service Commission but failed to adhere to the procedure provided under Sub-rule (12) of Rule 10 of the said Rules. It is further submitted that there is no infirmity and/or illegality in the impugned order and, therefore, the writ petition deserves dismissal at the stage of admission.

Rule 8 of the said Rules contained exhaustive incidents of penalties to be imposed upon the Government servant and Rule 10 relates to the procedure to be adopted for imposition of penalty. Sub-rule (11) thereof postulates that if the disciplinary authority is of the opinion that any of the penalties specified in clauses (i) to (iii) of Rule 8 to be imposed, it shall pass appropriate order on the case. However, the proviso inserted to it makes it clear that in such event it would be necessary to consult the Commission and the record of the enquiry shall be forwarded by the disciplinary authority to the Commission for advice and such advice shall be taken into consideration before passing the orders.

However, Sub-rule (12) of Rule 10 relates to a case where the penalty specified in clauses (iv) to (viii) of Rule 8 is proposed to be imposed by the disciplinary authority upon recording its disagreement on the recommendations and/or findings of the enquiry authority.

Both the aforesaid Sub-rules applied in a specified situation providing different modes, yet to achieve the common goal, i.e. for imposition of penalty of proven misconduct. The moment the disciplinary authority does not agree with the quantum of punishment proposed to be imposed, the procedure has been exhaustively provided therein and if such procedure has not been adhered to in its letter and spirit, the decision of the authority cannot receive any

approval or affirmation. The authority cannot act beyond the statutory provisions nor can travel beyond the circumference thereof. The authority must give due regard to the statutory provisions and any departure therefrom shall entail the decision liable to be stuck down.

The principles of natural justice or adherence of doctrine of *audi alteram partem* maxim is one of the fundamental rights enshrined in the Constitution of India, which cannot be undermined except in an extraordinary and exceptional cases. The moment the decision of the authority is found to have flouted the principles of natural justice, no other consequence is warranted except quashing and setting aside the said decision. The statutory Rules applicable in this regard is required to be followed and, therefore, it is not advisable that the Court or the Tribunal should direct the authority to put a thing in a particular manner, which may not be in tune with the statutory provisions.

We thus find that the portion of the order by which the Tribunal directed the particular mode to be exhausted was not warranted and, therefore, the order impugned is modified to the extent that the order of the disciplinary authority challenged before the Tribunal is quashed and set aside.

The writ petition is thus disposed of.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

