

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Raja Basu Chowdhury

W. P. A. No. 502 of 2009

Kamalender Singh & Anr.

Versus

Union of India & Ors.

For the petitioners	:	Mr. M. B. S. Mahapatra Mr. Kashinath Bhattacharya
For the Union of India	:	Mr. Indrajit Dasgupta Mr. Puspita Bhowmick
Heard on	:	3.1.2023 and 6.01.2023
Judgement on	:	10.02.2023

Raja Basu Chowdhury, J:

1. The present writ application has been filed, *inter alia*, challenging the final order dated 18th July, 2006 passed by the Assistant Commandant, CISF Unit, ISP Burnpur and the order dated 8th March, 2008 passed by the Appellate Authority constituted under the Central Industrial Security Force Act 1968,(herein after referred to as the said Act), arising out of a

charge-sheet dated 1st May, 2006. The petitioner has also challenged the Final Order dated 17th July, 2006 and the Appellate Order dated 11th July, 2008 arising out of a charge-sheet dated 22nd May, 2006 (hereinafter referred to as the Second Charge-sheet). Since Mr. Mahapatra learned advocate representing the petitioner, on instruction, submits that he does not wish to press the challenge in respect of the final order and the appellate order passed in connection with the second charge-sheet, the present writ application is, thus, confined to the challenge arising out of the charge-sheet dated 1st May, 2006.

2. The petitioner, while working as a Head Constable/Driver at the CISF Unit Burnpur, District Burdwan, was issued a charge-sheet dated 1st May, 2006, enclosing there with statement of allegations. The charge-sheet, *inter alia*, reads that the substance of imputation of misconduct or misbehaviour in respect of which disciplinary action is contemplated is given in Annexure A to the said memorandum. The relevant portion of the said memorandum is extracted hereinbelow:

“That in absence of No.804070049 HC/GD Didar Singh on duty at Sheet Mill in Night Shift from 1800 hrs on 14.4.2006 to 0600 hrs on 15.4.2006, at about 1800 hrs on 14.4.2006 No.942297007 HC/Dvr Kamalendra Singh misbehaved with the wife and two sons of HC/GD Didar Singh and

assaulted them at the 'B' Type Children Park at River Side CISF Complex. The above act on the part of No.942297007 HC/Dvr Kamalendra Singh amounts to an act of misconduct, indiscipline thereby involved in misbehaviour with the members of the family of CISF person."

3. The petitioner duly responded to the aforesaid charge and while denying all material allegations claimed that the charge inflicted on the writ petitioner did not constitute a misconduct, in relation to discharge of his duties.
4. Records reveal that Assistant Commandant of the Central Industrial Security Force, while acting as a disciplinary authority of the petitioner, passed a final order dated 18th July, 2006, thereby, while holding the petitioner guilty of the charge, in exercise of powers conferred under Schedule I to Rule 32 of the CISF Rules, 2001(herein after referred to as the said rules) awarded a punishment of "FINE TO AN AMOUNT EQUIVALENT TO 07 (SEVEN) DAYS PAY".
5. Challenging the aforesaid order, a statutory appeal was filed by the petitioner. The said appeal was ultimately disposed of by the appellate authority, constituted under the said Act, by its order dated 8th March, 2008, *inter alia*, holding that the disciplinary authority had not committed any procedural irregularity while awarding the punishment and the Appellate Authority, having not found any cogent reason to interfere with the order passed

by the disciplinary authority, rejected the said appeal as devoid of merit.

6. Challenging, *inter alia*, the aforesaid orders, the present writ application has been filed.
7. Mr. Mahapatra, the learned advocate representing the writ petitioner, submits that the charge-sheet, based on which the writ petitioner had been punished, is not an enumerated misconduct. By referring to Sections 8 and 18 of the said Act, it is submitted that a punishment can be awarded to a member of the force provided he commits a misconduct as enumerated in the aforesaid sections of the said Act. According to Mr. Mahapatra a member of the force can be punished provided the disciplinary authority considers that the member is remiss or negligent in discharge of his duties or is unfit for the same or otherwise commits an offence which is punishable under the said Act.
8. By referring to the charge-sheet, it is submitted that the charge-sheet does not indicate that the writ petitioner had been negligent in discharge of his duties or unfit for the same. The aforesaid charge-sheet does not spell out a misconduct for which any member of the force can be punished, by invoking powers under Section 8 of the said Act.

9. It is still further submitted that Section 18 of the said Act provides for penalties for neglect of duty. The petitioner has also not been charged for the same. He then by referring to Section 18 (2A) of the said Act, says that ordinarily an offence which is cognizable under the Code of Criminal Procedure, is required to be tried by a properly constituted Criminal Court, however a commandant, can also enquire into such offence, provided that the Central Government invests the commandant with the powers of a Magistrate of any class for the purpose of enquiring into or trying any offence committed by an enrolled member of the force and punishable under this Act or any offence committed by any enrolled member of the force against the person or property of another member of the force. He says that in the present case the Assistant Commandant had not been invested with the powers of a Magistrate, as such the Assistant Commandant is not empowered to investigate against the petitioner on account of any alleged offence committed by an enrolled member of the force, against the person or property of another member of the force, while not on duty.

10. It is submitted that the charge is grave in nature, the same alleges of misbehaving with the wife of a member of the force and his two sons. Mr. Mahapatra submits that without holding any proper enquiry, the final order of punishment had

been passed. He says it is immaterial whether the final order resulted in a minor penalty or a major penalty. What is material is the stigma that is attached to the petitioner for life, on being held guilty of charges levelled against the petitioner. He further submits that the charges levelled against the petitioner are not enumerated in Section 8 and 18(1) of the said Act and the Rules framed thereunder and consequentially the petitioner cannot be punished for the same. In support of his contention, he places reliance on a judgement delivered by the Hon'ble Supreme Court in the case of *Rasiklal Vaghajibhai Patel v. Ahmedabad Municipal Corporation & Anr.*¹ and the judgment delivered by the Hon'ble Supreme Court in the case of *A. L. Kalra v. Project and Equipment Corporation of India Ltd.*². He says that both the charge sheet as well as the order of punishment as also the order passed by the Appellate Authority cannot be sustained, the same be set aside.

11. *Per contra*, Mr. Dasgupta, learned advocate representing the respondents, submits that the petitioner cannot be aggrieved, since only a minor penalty has been imposed on the petitioner. He says that in case of minor penalty of this nature there is no procedure for holding any regular enquiry. In

¹ *Rasiklal Vaghajibhai Patel v. Ahmedabad Municipal Corporation & Anr.*, AIR 1985 SC 504

² *A. L. Kalra v. Project and Equipment Corporation of India Ltd.*, (1984) 3 SCC 316

support of his contention, he places reliance on the provisions of Chapter 10 of the said rules. Mr. Dasgupta further submits that reference to Section 18 of the said Act by the petitioner is entirely misconceived. He says that it is always within the authority and domain of the respondents to enquire into the allegations of misconduct, especially when the same concerns misbehavior with the wife and children of a member of the force.

12. He says merely because a misconduct is not enumerated in the service rule, the same does not mean that an act which otherwise constituted a misconduct, is not capable of being held out as misconduct committed by the concerned employee. He says that the right to initiate a disciplinary proceeding against an employee is an inherent right which the employer enjoys. He says that it cannot be perceived that despite an employee committing a misconduct, the disciplinary authority cannot take him to task.

13. According to Mr. Dasgupta misconduct envisages breach of discipline and as such it is not possible to lay down exhaustive definition of what would constitute misconduct. He says that the word 'misconduct' is wide enough to include within its sweep, wrongful omission and commission whether done or omitted, to be done, intentionally or unintentionally, the same also includes improper behavior, intentional wrongdoing,

or deliberate violation of a rule or standard of behavior. In support of his aforesaid contention, he places reliance on a judgment delivered by this Hon'ble Court in the case of *Probodh Kumar Bhowmick v. University of Calcutta & Ors.*,³ and that the aforesaid decision was rendered by considering not only the judgment, delivered by the Hon'ble Supreme Court in the case of *Rasiklal Vaghajibhai Patel (supra)*⁴ but also the case of *A. L. Kalra (supra)*⁵. He says that the judgment delivered by the Hon'ble Supreme Court, in the case of *A. L. Kalra, (supra)*⁶ has been considered by the Hon'ble Supreme Court in the case of *Secy. to Govt. v. A.C.J. Britto*,⁷ and in paragraph 9 thereof, the judgment delivered in the case of *A. L. Kalra., (supra)*⁸ has been explained. By referring to paragraph 8 of the aforesaid judgment, he says that not accepting food, has also been considered to be a misconduct, although the same had not been enumerated as misconduct in the service rules. As such, in the light of the aforesaid, it is submitted that the judgment delivered in the case of *A. L. Kalra., (supra)*⁹ is no longer a good law.

14. He then submits that Sections 8 and 18 of the said Act operate in different fields. By placing reliance on a judgment

³ *Probodh Kumar Bhowmick v. University of Calcutta & Ors.*, (1994) 2 Cal LJ 456

⁴ *(Supra)* AIR 1985 SC 504

⁵ *(Supra)* (1984) 3 SCC 316

⁶ *(Supra)* (1984) 3 SCC 316

⁷ *Secy. to Govt. v. A.C.J. Britto*, (1997) 3 SCC 387

⁸ *(Supra)* (1984) 3 SCC 316

delivered by this Court in the case of *Barun Kumar Malla v. Union of India & Ors.*,¹⁰ it is submitted that an attempt to sexually exploit someone by a member force has been considered to be a misconduct. The authority and jurisdiction of the employer, to proceed departmentally against the delinquent, is altogether an independent jurisdiction. The same cannot be interfered with. He says that in the aforesaid case this Hon'ble Court did not stay the departmental proceeding despite pendency of criminal proceedings since the jurisdiction and authority of the management to proceed against an employee cannot be interfered with.

15. Insofar as the judgements cited by Mr. Mahapatra is concerned, it is submitted that the judgements are authorities for that they decide. The aforesaid judgements are otherwise distinguishable in the facts of the case and as such do not assist the petitioner. He says that the writ application deserves to be dismissed and no interference is called for.

16. Having heard the learned advocates appearing for the respective parties and having considered the materials on record I find that the writ petitioner has been charge-sheeted for having misbehaved with the wife and two sons of a member of a

⁹ (*Supra*) (1984) 3 SCC 316

¹⁰ *Barun Kumar Malla v. Union of India & Ors.*, (2009) 4 Cal LT 539

force. It would also be apparent from the Annexure to the charge-sheet which contains the imputations of misconduct that the petitioner was not charged for remiss or negligence in discharge of his duty, nor was he charged of being unfit for the same. In this context it would be relevant to reproduce Section 8 of the said Act:-

“Section 8. Dismissal, removal, etc., of members of the Force.-

Subject to the provisions of article 311 of the Constitution and to such rules as the Central Government may make under this Act, any supervisory officer may –

- (i) dismiss, [remove] [, order for compulsory retirement of,] or reduce in rank, any [enrolled member] of the Force whom he thinks remiss or negligent in the discharge of his duty, or unfit for the same; or*
 - (ii) award any one or more of the following punishments to any [enrolled member] of the Force who discharges his duty in a careless or negligent manner, or who by any act of his own renders himself unfit for the discharge thereof, namely –*
 - (a) fine to any amount not exceeding seven days’ pay or reduction in pay scale;*
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- (b) *drill, extra guard, fatigue or other duty;*
- (c) *removal from any office of distinction or deprivation of any special emolument;*
- [(d) withholding of increment of pay with or without cumulative effect;*
- (e) *withholding of promotion;*
- (f) *censure.]”*

17. A conjoint reading of the charge-sheet and section 8 of the said Act would lead to the inevitable conclusion that the charge not being in relation to discharge of his duty nor the same rendering the petitioner unfit for duty, the punishment provided therefore cannot be made applicable in this case. In this context it would be profitable to refer to the judgement delivered by the Hon’ble Supreme Court in the case of *Rasiklal Vaghajibhai Patel (supra)*¹¹. Relevant portion of paragraph 5 of the aforesaid judgement is extracted below:

“It is thus well-settled that unless either in the Certified Standing Order or in the service regulations an act or omission is prescribed as misconduct, it is not open to the employer to fish out some conduct as misconduct and punish the workman even though the alleged misconduct would not be comprehended in any of the enumerated misconduct.”

18. Similar view has also been taken by the Hon'ble Supreme Court in the case of *A. L. Kalra*, (*supra*)¹². In paragraph 22 of the said judgment, it has been, *inter alia*, observed as follows:

“22. Rule 4 bears the heading ‘General’. Rule 5 bears the heading ‘Misconduct’. The draftsman of the 1975 Rules made a clear distinction about what would constitute misconduct. A general expectation of a certain decent behaviour in respect of employees keeping in view Corporation culture may be a moral or ethical expectation. Failure to keep to such high standard of moral, ethical or decorous behaviour befitting an officer of the company by itself cannot constitute misconduct unless the specific conduct falls in any of the enumerated misconduct in Rule 5. Any attempt to telescope Rule 4 into Rule 5 must be looked upon with apprehension because Rule 4 is vague and of a general nature and what is unbecoming of a public servant may vary with individuals and expose employees to vagaries of subjective evaluation. What in a given context would constitute conduct unbecoming of a public servant to be treated as misconduct would expose a grey area not amenable to objective evaluation. Where misconduct when proved entails penal consequences, it is obligatory on the employer to specify and if necessary define it

¹¹ (*Supra*) AIR 1985 SC 504

¹² (*Supra*) (1984) 3 SCC 316

with precision and accuracy so that any ex post facto interpretation of some incident may not be camouflaged as misconduct. It is not necessary to dilate on this point in view of a recent decision of this Court in Glaxo Laboratories (I) Ltd. v. Presiding Officer, Labour Cour, Meerut where this Court held that “everything which is required to be prescribed has to be prescribed with precision and no argument can be entertained that something not prescribed can yet be taken into account as varying what is prescribed. In short it cannot be left to the vagaries of management to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant standing order is nonetheless a misconduct not strictly falling within the enumerated misconduct in the relevant standing order but yet a misconduct for the purpose of imposing penalty” . Rule 4 styled as ‘General’ specifies a norm of behaviour but does not specify that its violation will constitute misconduct. In Rule 5, it is nowhere stated that anything violative of Rule 4 would be per se misconduct in any of the sub-clauses of Rule 5 which specifies misconduct. It would therefore appear that even if the facts alleged in two heads of charges are accepted as wholly proved, yet that would not constitute misconduct as prescribed in Rule 5 and no penalty can be imposed for such conduct. It may as well be mentioned that Rule 25 which prescribes

penalties specifically provides that any of the penalties therein mentioned can be imposed on an employee for misconduct committed by him. Rule 4 does not specify a misconduct.”

19. Since the charge implicates the petitioner of having misbehaved with the wife and the two sons of a member of a force, not in discharge or in course of duty, in my opinion Section 18(2A) of the said Act is attracted. Section 18(2A) of the said Act is extracted hereinbelow:-

“Section 18 [(2A)] *Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Central Government may invest the Commandant with the powers of a Magistrate of any class for the purpose of inquiring into or trying any offence committed by an enrolled member of the Force and punishable under this Act, or any offence committed by an enrolled member of the Force against the person or property of another member of the Force:*

Provided that –

- (i) when the offender is on leave or absent from duty; or*
- (ii) when the offence is not connected with the offender’s duties as an enrolled member of the Force; or*

(iii) *when it is a petty offence even if connected with the offender's duties as an enrolled member of the Force; or*

(iv) *when, for reasons to be recorded in writing, it is not practicable for the Commandant invested with the powers of a Magistrate to inquire into or try an offence, the offence may, if the prescribed authority within the limits of whose jurisdiction the offence has been committed so requires, be inquired into or tried by an ordinary criminal court having jurisdiction in the matter.] ”*

20. Mr. Dasgupta, learned advocate appearing for the respondents, has not disclaimed the contention of Mr. Mahapatra that the disciplinary authority of the petitioner had not been invested with the powers of a Magistrate of any class, for the purpose of enquiring into or trying any offence committed by an enrolled member of the force and punishable under this Act or any offence committed by an enrolled member of the force against the person or property of another member of the force. No authorization in that regard, has also been disclosed by any of the parties. It is, thus, apparent that the Assistant Commandant, did not have and was not invested with the power or authority to try any offence, committed by the petitioner against the person or property of another member of a force, which ordinarily is triable under the Code of Criminal

Procedure, 1973. On such ground, I find that the Assistant Commandant lacked the authority and jurisdiction to investigate or adjudicate, into the misconduct or charges levelled against the petitioner.

21. Mr. Dasgupta, however, by placing reliance on the judgment delivered by the Hon'ble Supreme Court in the case of *Secy. to Govt., (supra)*¹³ and by referring paragraphs 7 to 9 of the said judgment, has claimed that the judgment delivered by the Hon'ble Supreme Court in the case of *A. L. Kalra., (supra)*¹⁴ is no longer good law. I am afraid and am unable to accept the same. In in the case of *Secy. to Govt., (supra)*¹⁵ the delinquent who was in disciplined force, was in fact charged for not obeying legitimate orders of his superior. As such the Hon'ble Supreme Court, while relying on the judgment delivered by the Hon'ble Supreme Court in the case of *Ranjit Takur (supra)* was, *inter alia*, pleased to observe as follows:

“7. What was, however, contended on behalf of the respondent was that in absence of any rule treating non-compliance with an order of a superior police officer or non-appearance before a Medical Board as an act of misconduct no disciplinary proceedings should have been initiated against him for the said act

¹³ *(Supra)* (1997) 3 SCC 387

¹⁴ *(Supra)* (1984) 3 SCC 316

¹⁵ *(Supra)* (1997) 3 SCC 387

of delinquency. In support of this submission the learned counsel relied upon the decision of this Court in A.L. Kalra v. Project and Equipment Corpn. of India Ltd. [(1984) 3 SCC 316 : 1984 SCC (L&S) 497] In that case, disciplinary proceedings were initiated against A.L. Kalra [(1984) 3 SCC 316 : 1984 SCC (L&S) 497] by the Corporation for committing an act of misconduct under Service Rule 4(1)(i) and (iii) which prescribed that every employee of the Corporation shall at all times maintain absolute integrity and do nothing which is unbecoming of a public servant. Rule 5 prescribed various misconducts for which action could be taken against an employee governed by the rules. Taking note of the fact that Rule 4 was given the heading “General” and Rule 5 was given the heading “Misconduct” this Court took the view that the draftsmen of the Rules made a clear distinction about what would constitute misconduct. It was under these circumstances this Court observed that (SCC p. 330, para 22)

“failure to keep such high standard of moral, ethical or decorous behaviour befitting an officer of the company by itself cannot constitute misconduct unless the specific conduct falls in any of the enumerated misconduct in Rule 5”.

Rule 4 was regarded as vague and of general nature and in that context it was further observed that where misconduct when proved entails penal consequences, it is obligatory on the employer to specify and if necessary define it with precision and accuracy so that any ex post facto interpretation of some incident

may not be camouflaged as misconduct. Construing the rules this Court held that (SCC p. 331, para 23)

“Rule 4 styled as ‘General’ specifies a norm of behaviour but does not specify that its violation will constitute misconduct”.

Rule 4 was thus construed as not specifying a misconduct. Thus the decision in that case turned upon the scheme of those rules and the construction placed upon Rules 4 and 5 of those rules. This Court in that case has not laid down as a general principle that if an act is not specified by rules to be a misconduct then it cannot be regarded as such and an employee cannot be punished for committing such an act.

8. *The observations made by this Court in Ranjit Thakur v. Union of India [(1987) 4 SCC 611 : 1988 SCC (L&S) 1 : (1987) 5 ATC 113] support the view that we are taking. In that case the question which arose for consideration was whether a disregard of an order to eat food by itself amounted to disobedience to a lawful command for purposes of Section 41 of the Army Act, 1950. This Court observed that the question (SCC pp. 619-20, para 24)*

“has to be examined in the context of the imperatives of the high and rigorous discipline to be maintained in the Armed Forces. Every aspect of life of a soldier is regulated by discipline. Rejection of food might, under circumstances, amount to an indirect expression of remonstrance and resentment against the higher authority. To say that a mere refusal to eat food is an innocent, neutral act might be an oversimplification of

the matter. Mere inaction need not always necessarily be neutral. Serious acts of calumny could be done in silence. A disregard of a direction to accept food might assume the complexion of disrespect to, and even defiance of authority”.

9. *The Rules applicable in this case do not specify acts of misconduct for which a delinquent officer can be punished. Rule 2 empowers the competent authorities to impose upon members of the Service penalties specified therein “for good and sufficient reason”. Therefore, the decision of this Court in A.L. Kalra case[(1984) 3 SCC 316 : 1984 SCC (L&S) 497] is clearly distinguishable. Before holding that there was no justification to initiate disciplinary proceeding against the respondents, the Tribunal ought to have considered whether there was “good and sufficient reason” for initiating such proceedings against him. It was not justified in taking that view on the ground that such an act of delinquency has not been specified in the Rules as an act of misconduct. Not obeying a legitimate order of his superior by a member of the Police Force has to be regarded as an act of indiscipline and would certainly provide a good and sufficient reason for initiating a disciplinary proceeding.”*

22. The judgment delivered in the case of *Barun Kumar Malla (supra)*¹⁶ dealt with the issue whether during pendency of a

¹⁶ *(Supra)* (2009) 4 Cal LT 539

criminal proceedings in an Appropriate Court of Law, could the disciplinary authority initiate disciplinary proceedings against the delinquent. While answering such question in paragraph 8 of such judgment this Hon'ble Court was, *inter alia*, pleased to observe as follows:

*“7. Mr. Bhandari learned advocate appearing for the respondent authority submitted that the judgment in the case of Badal Pal (supra) has no manner of application to the facts and circumstances of this case.....
.....*

a) The first question which falls for a decision is the jurisdiction of the authority(sic. read authority) to initiate the disciplinary proceedings during the pendency of the criminal proceedings in the appropriate Court of Law.

8. It has already transpired that the alleged incident happened when the petitioner was on active duty. In other words, during his duty hours he allegedly in the aforesaid misconduct. There is no denial of the fact that the judgment in the case of Badal Pal (supra), cited by Mr. Basu, was rendered in a case where the act of kidnapping, abduction etc. took place while the member of the force was not on duty. I therefore accept the submission of Mr. Bhandari that the judgment in the case of Badal Pal rendered on its own fact can have no manner of application to the facts and circumstances of the case. The mere fact that the said judgment was noticed by a Division Bench and was

not differed from does not make any difference. As a proposition of law it is difficult to accept that the writ petitioner, acting as a sub-inspector of the Central Industrial Security Force, is not amendable to the disciplinary jurisdiction of the employer for an alleged attempt to sexually exploit the prosecutix. This question is no longer res Integra. It has authoritatively been laid down by various judgments of this Court and the Supreme Court that the jurisdiction of the employer to proceed deparmentally against the delinquent is altogether independent of the jurisdiction exercised by the Courts of Law for the purpose of prosecuting and punishing the offender. Reference in this regard may be made to the judgment in the case of Probodh Kumar Bhowmick v. University of Calcutta reported in 1994 (2) CLJ 456 wherein the following view was taken:

“In absence of any provision of statute, an employer in my opinion, has an inherent right to initiate a disciplinary proceeding as against its employees. It is beyond anybody's comprehension that although an employee might have committed a serious misconduct like defalcation theft, misbehaviour with a lady or similar other matter, he cannot be punished. Recently this Court has come across a case when a Reader of the University has been punished for sexually exploiting a lady resarch student. Misconduct is a generic term of which the instances of misconduct as may be specified by the employer are their species. Misconduct in its generic sense has been defined by various High Courts and Supreme Court from time to

time as would appear from the discussions mad hereinafter.

Misconduct, inter alia, envisages breach of discipline, although it would not be possible to lay down exhaustively as to what would constitute conduct and indiscipline, which, however, is wide enough to include wrongful ommission or commission whether done or ommitted to be done intentionally or uninentionally. It means, "improper behaviour; intentional wrong doing on deliberate violation of a rule of standard or behaviour":

"Misconduct is a transgression of some established and definite rule of action, where no discretion is left except what necessary may demand, it is a violation of definite law, a forbidden act. It differs from carelessness. Misconduct even if it is an offence under the Penal Code, 1860 is equally misconduct."

In absence of any rule governing the procedure in such a matter, in my considered view, the employer can take recourse to his general inherent power to proceed against a teacher on the basis of well known and settled grounds of misconduct. In such an event neither any case of conflict with the prescribed procedure nor 'perishing with the sword would arise as no procedural sword has been taken out by the employer.'"

23. The judgment delivered by this Court in the case of *Probodh Kumar Bhowmick (supra)*¹⁷ is also distinguishable. In

¹⁷ *(Supra)* (1994) 2 Cal LJ 456

none of the above cases punishment was inflicted without a holding a proper enquiry. As would appear from the above, the aforesaid judgments were delivered in different set of facts. It is also well settled that a judgement is an authority for what it decides and not what can be deduced therefrom, a slight variation in facts may lead to a different outcome. In the instant case, the facts are completely different and distinguishable.

24. From the discussions made herein above and the materials on record I find that service conditions of the petitioner are codified. The service conditions specifically provide as to when a punishment shall be inflicted on a member of the force. Since there are service regulations providing for prescribed procedure for enquiring into a misconduct, in my opinion, it is not open to the respondents to punish the petitioner, without holding a regular domestic enquiry, especially when the allegations relate to misbehaving with the wife and children of a member of the force. I am afraid and I am also unable to accept the contention of Mr. Dasgupta that the Judgement delivered in the case of *A. L. Kalra (supra)*¹⁸, is no longer a good law. Before parting I must add that ordinarily when an act of gross misconduct, indiscipline unbecoming of a

¹⁸ (*Supra*) (1984) 3 SCC 316

member of a disciplined force is noticed, the right initiate enquiry/disciplinary proceeding cannot be said as non-existent. To inflict a penalty for such misconduct, the delinquent must, however, be informed in advance, not only that he may be held guilty, but the extent of punishment he/she may suffer, in the event charges are proved. The same should be followed up by a show cause, to afford opportunity to the delinquent to explain why enquiry shall not be conducted. Based on reply to such show cause that a decision to hold an enquiry should be taken. In case the disciplinary authority decides to hold such enquiry, a regular enquiry be held before arriving at any conclusion either as regards guilt or exoneration of the delinquent employee. In such case, however, the penalties enumerated for misconduct prescribed in the rules cannot be automatically imposed, as the same would tantamount to violation of principles of natural justice. Similarly in my view, it is also not open to the respondents to fish out some conduct and punish the delinquent without a regular enquiry, in the guise of imposing a minor penalty.

25. For the reasons more fully discussed hereinabove, I find that the final order passed by the disciplinary authority dated 18th July, 2006 and the order passed by the appellate authority on 8th March, 2008 cannot be sustained and are, accordingly,

set aside and quashed. The writ petitioner shall be entitled to all consequential benefits.

26. The writ application being WPA 502 of 2009 is, accordingly, disposed of.

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

28. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)