

**IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Debangsu Basak**

**And**

**The Hon'ble Justice Md. Shabbar Rashidi**

**WP.ST 8 of 2013**

**State of West Bengal & Ors.**

**Vs.**

**Krishna Chowdhury**

For the State-Petitioners

: Mr. Tapan Mukherjee,

Ld. Sr. Advocate & Ld. AGP

Mr. Pinkai Dhole

Mr. Somnath Naskar

For the Respondent

: Mr. Soumya Majumder

Ms. Mayuri Ghosh

Heard on : August 23, 2023

Judgment on : August 23, 2023

**DEBANGSU BASAK, J.:-**

1. State challenges an order dated August 28, 2012 passed by the West Bengal Administrative Tribunal in OA-278 of 2010.
2. By the impugned order, the Tribunal quashed the provisional order as also the final order of punishment

passed as against the private respondent in a disciplinary proceedings.

3. Learned Senior Advocate appearing for the State/petitioners submits that, the Tribunal erred in quashing the provisional order as also the final order of punishment. He submits that, the provisional order of punishment was quashed on the ground that it did not contain any reasons. The enquiry officer exonerated the private respondent from the charges. He contends that, the disciplinary authorities are entitled to look into the report of the enquiry officer and come to an independent finding. In the facts of the present case, the disciplinary authority, disagreed with the exoneration of the private respondent by the enquiry officer and, proposed punishment as against the private respondent on charges being proved. The disciplinary authority subsequently passed a final order.
4. In support of the contention that, the disciplinary authority is entitled to disagree with the findings of the enquiry officer and come to an independent finding, learned Senior Advocate appearing for the State/petitioners relies upon

*(2000) 1 Supreme Court Cases 416 ( High Court of Judicature at Bombay vs. Shashikant S. Patil & Another).*

5. Relying upon *(1989) 4 Supreme Court Cases 582 ( S.S. Rathore vs. State of Madhya Pradesh)*, learned Senior Advocate appearing for the State/writ petitioners submits that, the private respondent was not entitled to approach the Tribunal since, there was an appeal provision under the service rules. The private respondent did not prefer any appeal against the final order of dismissal. Therefore, the bar under the Tribunals Act prevents the Tribunal from adjudicating on the merits of the case.
6. Learned Advocate appearing for the private respondent draws the attention of the Court to the provisional order passed by the disciplinary authority. He submits that, in view of the last two paragraphs of the provisional order, it can be justifiably said that, the disciplinary authority was biased as against the private respondent. The disciplinary authority disclosed its mind of punishing the private respondent with an order of dismissal in the provisional

order itself, prior to the private respondent submitting his response.

7. Learned Advocate appearing for the private respondent submits that, the original application was filed challenging the provisional order of punishment prior to the final order of punishment being passed. Therefore, the plea of the State that the original application was not maintainable in view of the ratio of *S.S. Rathore (supra)* was not available to the State.
8. A disciplinary proceedings bearing No.54 dated June 1, 2006 was initiated against the private respondent. It was alleged as against the private respondent that he was married to a lady with two children being born out of such wedlock. Thereafter, he entered into a second marriage without divorcing the first wife. It was alleged as against the private respondent that, he lived with the second wife as husband and wife and thereby violated the provisions of West Bengal Government Servants Conduct Rules, 1959 (Part-1) Appendix No.6 Rule No.30. Additional charges were also framed as against the private respondent. The enquiry

officer submitted a report where he exonerated the private respondent.

9. The report of the enquiry officer was considered by the disciplinary authority. The disciplinary authority by an order dated March 3, 2010, disagreed with the view of the enquiry officer. The disciplinary authority proceeded to consider the evidence led before the enquiry officer. It discussed in details the evidence of the prosecution witnesses. It found that, the defence of the respondent that the second wife withdrew the allegations/complaint made as against the private respondent was of no avail. It, therefore, found to the charges as against the private respondent being established.
10. The provisional order of the disciplinary authority dated March 3, 2010, however, proceeded to record that, the disciplinary authority held the private respondent guilty of the charge of solemnizing another marriage during the subsistence of first marriage and proposed dismissal from service.

11. A final order was passed by the disciplinary authority. Although, the provisional order of the disciplinary authority stated that, the respondent would be dismissed from service, final order of the disciplinary authority punished the respondent by withholding five annual increments.
12. S.S. Rathore (*supra*) considers Section 20 of the Administrative Tribunals Act, 1985 and observes as follows:

*“15. In several States the Conduct Rules for government servants require the administrative remedies to be exhausted before the disciplinary orders can be challenged in court. Section 20(1) of the Administrative Tribunals Act, 1985 provides:*

*“20. (1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.”*

*16. The Rules relating to disciplinary proceedings do provide for an appeal against the orders of punishment imposed on public servants. Some Rules provide even a second appeal or a revision. The purport of Section 20 of the Administrative Tribunals Act is to give effect to the Disciplinary Rules and the exhaustion of the remedies available thereunder is a condition precedent to maintaining of claims under the Administrative Tribunals Act. Administrative Tribunals have been set up for government servants of the Centre and several States have already set up such Tribunals under the Act for the employees of the respective States. The law is soon going to get crystallized on the line laid down under Section 20 of the Administrative Tribunals Act.”*

13. In the facts of the present case, the original application before the Tribunal was filed against the provisional order dated March 3, 2010 and prior to the passing of the final order. Therefore, the appeal provisions governing the service conditions of the delinquent did not become operative in the facts and circumstances of the present case.
14. In *Shashikant S. Patil & Another (supra)*, the Supreme Court observed that, the disciplinary authority is entitled to dissent from the conclusion of the enquiry officer. It also observed that, interference in the decision of the departmental authorities can be permitted while exercising the jurisdiction under Article 226 of the Constitution if such authority held the proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribed in the mode of such enquiry or if the decision of the authorities was vitiated by considerations extraneous to the evidence or merits of the case, or if the conclusion of the authorities is wholly arbitrary or capricious that no

reasonable person could arrive at such a finding or grounds similar to the above.

15. In the facts of the present case, the disciplinary authority discussed the entire evidence led at the enquiry stage and disagreed with the view taken by the enquiry officer. The disciplinary authority was entitled to do so. It was required to issue a show-cause notice to the delinquent to answer as to the grounds for disagreement with regard to the findings of the enquiry officer.
16. In the facts of the present case, the disciplinary authority by the provisional order dated March 3, 2010, not only disagreed with the view of the enquiry officer but also expressed its mind with regard to the guilt of the respondent and the quantum of punishment.
17. To such extent, in our view, the provisional order dated March 3, 2010 stands vitiated. The subsequent action of the disciplinary authority being based on the provisional order dated March 3, 2010 also will stand vitiated.
18. In such circumstances, we are constrained to quash the provisional order dated March 3, 2010 and all subsequent

orders passed in the disciplinary proceedings as against the respondent. We clarify that, the disciplinary authority is at liberty to conclude the disciplinary proceedings afresh from the stage of the enquiry report. It is expected that the disciplinary authority concludes the entire proceedings preferably within a period of three months from the date of communication of this order.

19. In view of the discussions above, the impugned order of the Tribunal is set aside.
20. **WP.ST 8 of 2013** is disposed of accordingly without any order as to costs.

**(Debangsu Basak,J.)**

21. I Agree.

**(Md. Shabbar Rashidi, J.)**