

Form No.J(2)

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

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 1265 of 2005

**Manas Kumar Behara
Versus
Union of India & Ors.**

For the petitioner : Mr. K.B.S.Mahapatra,
Ms. Arifa Sultana,

For the Union of India : Ms. Chandreyi Alam,

Heard on : 25th April, 2023.

Judgment on : **6th September, 2023.**

Raja Basu Chowdhury, J:

1. The present writ application has been filed, *inter alia*, challenging the disciplinary proceeding, the final order passed by the Disciplinary Authority as also the order passed by the Appellate Authority in the departmental appeal.
2. The petitioner was engaged as a head constable / general duty in the Central Industrial Security Force (in short, "CISF") and at the material point of time was posted at Haldia unit of Indian Oil Corporation Limited. The petitioner claims that his family members

were living at his native place and since, they had been suffering from various ailments, he was permitted to avail medical facilities available at his native place by the authorized medical attendant and/or from the Central Government Hospital Scheme whichever is available to him in accordance with his service benefit.

3. While, he was serving at Haldia, he was served with a charge sheet and an enquiry was conducted under Rule 34 of the Central Industrial Security Force Rules, 1969 (hereinafter referred to as the "said Rules"). The petitioner participated in the enquiry/disciplinary proceeding whereupon a final order dated 29th September, 2001 was passed by the Disciplinary Authority, awarding a penalty of compulsory retirement with admissible pensionary benefit. Challenging the aforesaid order of compulsory retirement, a writ application was filed before this Court, which was registered as WP no. 16175 (W) of 2001. On contested hearing, by an order dated 7th April, 2003, a Coordinate Bench of this Hon'ble Court was, *inter alia*, pleased to hold that there was no evidence to substantiate the charges leveled against the petitioner and consequentially set aside the order of compulsory retirement with a further direction to reinstate the petitioner in service along with full back wages.
4. Challenging the aforesaid order, the respondents preferred an appeal before the Division Bench of this Hon'ble Court, which was registered as MAT 3027 of 2003. By order dated 11th August, 2004,

the Division Bench of this Hon'ble Court, without going into the merits of the case was, *inter alia*, pleased to permit the petitioner to prefer a statutory appeal. By the aforesaid order, the petitioner was, however, allowed to rejoin his duties with a further direction upon the respondents to release his current salary and the arrear dues, if any, were made subject to the final decision in the appeal.

5. The petitioner had preferred an appeal which was ultimately disposed of by an order dated 4th October, 2004, *inter alia*, reducing the punishment meted out to the petitioner, thereby reducing the scale of pay by four stages from Rs.4220/- to Rs.3880/- in the time scale of pay of Rs.3200-85-4900 for a period of four years. By the aforesaid order, the Appellate Authority while directing the petitioner to be reinstated in service also proposed to treat the period of compulsory retirement to the date of rejoining of service as *dies-non*. The aforesaid order was, thus, treated as a show-cause insofar as treating the aforesaid period as '*dies-non*'. The petitioner had duly made a representation, whereupon, by an order dated 16th November, 2004, the Appellate Authority regularized the intervening period from the date of compulsory retirement to the date of rejoining his duties, i.e., from 3rd October, 2001 to 2nd September, 2004, however, as '*dies-non*'.
6. Mr. Mahapatra, learned advocate appearing for the petitioner, submits that the Appellate Authority did not independently

examine the entire matter. He says that the Appellate Authority despite ascertaining the factum of genuinity of the prescriptions and despite scrutinizing the evidence of the chemist did not independently return any finding that he had submitted false medical bills. According to Mr. Mahapatra, the departmental appeal was disposed of without the Appellate Authority providing any reasons at all. Drawing attention of this Court to the record of the proceeding including the order passed by the Appellate Authority, it is submitted that despite the authorities acknowledging that both the doctor as well as the chemist having confirmed the prescription and the cash memo to be genuine, by ignoring such admissible material has held that the charge against the petitioner stood proved.

7. No reasons have been provided as to why the punishment in this case had been reduced from compulsory retirement to only reduction of pay by four stages. There was also no justification in treating the period between 3rd October, 2001 to 2nd September, 2004 as '*dies-non*'. The decision arrived at both by the Disciplinary Authority as well as the Appellate Authority is perverse, based on no evidence. As such the aforesaid order cannot be sustained and should be set aside.
8. *Per contra*, Ms. Alam, learned advocate appearing for the respondents submits that the petitioner was given all reasonable

opportunity to defend himself. He had participated in the said proceeding. The Appellate Authority had conducted the proceeding as required under Rule 52 of the said Rules. She says that only if the Appellate Authority had differed with the findings rendered by the Disciplinary Authority, in such event the Appellate Authority was required to give reasons. The Appellate Authority, by exercising its power under Rule 52(2) of the said Rules, had interfered with the punishment. This Court while exercising its extraordinary writ jurisdiction is not called upon to scan and re-examine the evidence on record. The order passed by the Appellate Authority cannot be faulted. Due procedure was also followed while regularizing the intervening period from the date of compulsory retirement till the date of rejoining his duties, i.e., from 3rd October, 2001 to 2nd September, 2004, by treating the same to be '*dies-non*'. The aforesaid writ petition does not make out a case for interference, the same should be dismissed.

9. Heard the learned advocates appearing for the respective parties and considered the materials on record. As would appear from the Articles of Charge, the same, *inter alia*, concerns submission of false bills.
10. From the record of the proceeding before the enquiry officer, it would appear that the petitioner had claimed Rs. 3022.70/- towards reimbursement of medical expenses of his wife Smt. Anita

Behera, however, genuinity of the above bills were doubted as the prescription of the doctor bearing token no. 28140 dated 10.10.2000 and 24.10.2000 mentioned repeat treatment. It appears that the doctor, who had issued the prescription, was examined, he admitted that he had written both the prescriptions, but due to passage of time he was unable to recall why the medicines were prescribed in two prescriptions. The enquiry officer, however, found the charge framed against the petitioner as proved.

11. Although, the petitioner had made a representation against the enquiry report, by highlighting that both the doctor as also the chemist had confirmed genuinity of the prescriptions and the bills respectively, the Disciplinary Authority by an order dated 29th September, 2001 concluding that the petitioner having submitted false bills and the charge having been proved, awarded a punishment of compulsory retirement with admissible pensionary benefit.

12. In the facts noted above, when the appeal was heard, the Appellate Authority after recording the facts in paragraph 10 of his order was, *inter alia*, pleased to hold that the grounds of appeal are not valid. The relevant portion is extracted herein below:

“10. In pursuance to the orders dated 11.08.2004 passed by the Hon’ble Division Bench of Kolkata High Court, I have carefully considered the appeal dated 18.08.2004 preferred by the appellant, the

departmental proceedings files and the evidence held on record. I have also heard the appellant on 27.09.2004. The plea of the appellant that he is not guilty of the charges can not be accepted at this stage as there are sufficient evidence available on record which proved the discrepancy with regard to submission of medical bills, which were detected to be false. Moreover, the Enquiry Officer conducted the enquiry in this case in a fair and judicious manner. The appellant was afforded all reasonable opportunities to rebut the allegation. He, however, failed to do so. The principles of natural justice have been fully adhered to in this case. The various other pleas of the appellant raised in his appeal, are not valid. The allegation against the appellant has been proved beyond any doubt.”

13. As would appear from the above, the Appellate Authority did not bother to give its independent findings on the appeal and in the facts since, the Hon’ble High Court found the order of compulsory retirement to be harsh, the Appellate Authority modified the order of punishment by the following order.

*“11. As per the directions of Hon’ble Division Bench of Hon’ble High Court Kolkata that the order of punishment meted out to the appellant was a little harsh, I pass an order for his reinstatement in service and modify the punishment of “COMPULSORY RETIREMENT FROM SERVICE” to the **“REDUCTION OF PAY BY FOUR STAGES FROM RS.4220/- TO RS.3880/- IN THE TIME SCALE OF PAY OF***

RS.3200-85-4900 FOR A PERIOD OF FOUR YEARS. IT IS FURTHER DIRECTED THAT NO.724510654 HC/GD M.K. BEHERA OF CISF UNIT IOC HALDIA WILL NOT EARN INCREMENT OF PAY DURING THE PERIOD OF REDUCTION AND THAT ON EXPIRY OF THIS PERIOD THE REDUCTION WILL HAVE THE EFFECT OF POSTPONING HIS FUTURE INCREMENTS OF PAY” to meet the ends of justice.”

14. The Appellate Authority did not stop there. It further proposed that the period spent by the petitioner from the date of awarding of punishment of compulsory retirement till his date of rejoining of duty pursuant to the order passed by the Hon’ble Division Bench of this Hon’ble Court to be treated as “*dies-non*” and accordingly afforded an opportunity to the petitioner to make a representation. Record would reveal that the Appellate Authority upon consideration of the petitioner’s representation ordered that the period spent by the petitioner from the date of compulsory retirement till the date of rejoining duty i.e. 03.10.2001 to 02.09.2004 be treated as “*dies-non*” for all purpose.
15. Although, the learned advocate representing the respondents contended that unless the Appellate Authority differs with the findings of the Disciplinary Authority there is no necessity to give reason, I am afraid and am unable to accept the same. Reasons not only provide clarity but are the soul and spirit of a judgment. Since, the Appellate Authority did not give any reason for holding

the grounds of appeal to be invalid, the very object of direction issued by the Division Bench of this Hon'ble Court by the order dated 11th August, 2004 in granting liberty to the petitioner to avail the statutory remedy stood frustrated. The Appellate Authority had mechanically, by observing that the principles of natural justice had been complied with, held that the other grounds in appeal are not valid. The finding that the allegations made against the petitioner were proved beyond doubt is also not supported by any reasoning. Least what required consideration, was the factum of genuinity of the prescription taken note of by the Division Bench of this Hon'ble Court.

16. Further when the Hon'ble Division Bench had allowed the petitioner to join his duties by reserving liberty to the Appellate Authority to decide on the arrears, the Appellate Authority ought not to have treated the period spent between the order of compulsory retirement and joining of duty as "*dies-non*" as no such liberty was available. The Appellate Authority was only required to consider whether arrear would be paid to the petitioner. There was no scope to treat the said period as break in service.
17. Not only is the findings rendered by the Appellate Authority perverse but it also exceeded its jurisdiction in directing break in service of the petitioner, which was also not authorised by the Hon'ble Division Bench. The reduced punishment, from compulsory

retirement from service, to reduction of pay by four stages for four years in the time scale of pay with a further punishment that the petitioner shall be denied the benefits of increment, also appears to be harsh, especially taking note of the fact that both the doctor and the chemist had confirmed genuinity of the prescription and the cash memo respectively.

18. On the basis of the documents on record, it would appear that both the enquiry officer and the Disciplinary Authority had ignored admissible material/evidence of both the doctor as also the chemist. Both the findings as also the punishment, thus, appear to be perverse, irrational and shockingly disproportionate to the charge, which also does not appear to have been proved and that there is more than an element of doubt involved. Although the Disciplinary Authority had relied on the statement of the owner of the medical shop, the owner of the medical shop on being confronted with the cash memo had stated that he was not present in the shop-room at the time of issue of cash memos.

19. However, giving benefit of doubt to the enquiry already conducted and having regard to the facts as noted above and that the petitioner by now having crossed the age of superannuation, and since, he can no longer be referred back to the Disciplinary Authority for awarding a lesser punishment. I am of the view that a minor penalty should be imposed having regard to the gravity of

charge and the admissible material/evidence, as noted above, having been ignored by the authorities while holding the petitioner guilty. In view thereof, the order of punishment be modified by reducing the pay scale of the petitioner as payable to him on the date of punishment, to the immediate lower stage in the time scale of pay for a period of one year, without adversely affecting his pension, be imposed. Insofar as the arrear payments comprising of the period spent between the order of compulsory retirement and the date of rejoining duty, in terms of the order of Division Bench of this Hon'ble Court is concerned, since, the petitioner did not work for the said period, the same be treated as an authorised long leave, for which the petitioner shall not be entitled to actual salary, however, be entitled to all notional benefits.

20. The order of the Disciplinary Authority is accordingly modified as noted above and the orders of the Appellate Authority dated 4th October, 2004 and the order dated 16th November, 2004 stands set aside.

21. The writ application is, thus, ***disposed of.***

22. There shall be no order as to costs.

23. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)