

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

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

W.PA. 2180 of 2005

With

I.A. No. CAN 2 of 2018 (Old CAN 5349 of 2018)

Ravindra Kumar Singh

Vs.

Union of India & Ors.

For the Petitioner : Mr. Soumya Majumdar
Mr. Rajesh Upadhyay
Mr. Victor Chatterjee
Ms. Sanjukta Dutta
Ms. Surabita Biswasadvocates

For the Union of India : Mr. M.M. Verma
Mr. Samrat Ghosh ... advocates

Reserved on : 16.02.2023

Judgment on : 12.05.2023

Hiranmay Bhattacharyya, J.:-

1. The writ petitioner has challenged the approval of the punishment dated 4th/6th August 2004 and the promulgation of dismissal on 8th September 2004 and has prayed for setting aside the same and for reinstating him as Adhikari (Met).
2. While the writ petitioner was borne in the books of 700 Sqn (CG), Kolkata as Pradhan Navik(MET), a tentative charge sheet dated

27.11.2002 was served upon the petitioner which stated that the petitioner was guilty of making a false statement in a salary certificate prepared by him and he also forged the signature of Commandant (JG), S.C.Sharma in the salary certificate prepared by him.

3. Facts leading to the issuance of the charge sheet may be summarised as follows:

A representative from Citi Bank (Citi Corp.) came to 700 Sqn. (CG) for verification of salary certificate attached with the loan application of the petitioner. When the said salary certificate was shown to Commandant (JG), S.C. Sharma, he told the bank representative to forward the salary certificate under official forwarding letter. The matter was reported to the commanding officer and the commandant (JG) was ordered to investigate the matter and initiate disciplinary action. On completion of the Record of Enquiry the Punishment Approval Form (for short "PAF") was forwarded recommending award of the punishment of dismissal from Coast Guard Service and deprivation of Good conduct Badge (Three). The Vice Admiral, Director General being the Approving Authority approved the award of the punishment of dismissal from Coast Guard service by an order dated 04.08.2004.

4. Challenging the said decision of the Approving Authority, the petitioner approached this Court.
5. Mr. Majumdar, learned advocate appearing in support of the writ petition drew the attention of the Court to the documents annexed to the application being CAN 11890 of 2016 and contended that the charge against the petitioner of forging the salary certificate has not been established and the punishment of dismissal from service was inflicted based only on presumption. He contended that suspicion or presumption cannot be the substitute of proof in a domestic

enquiry. In support of such contention, Mr. Majumdar relied upon a decision in the case of *Narinder Mohan Arya vs. United India Insurance Company Ltd.* and others reported at (2006) 4 SCC 713. Mr. Majumdar contended that the findings recorded by the enquiry officer in a domestic enquiry cannot be said to be conclusive and binding upon the disciplinary authority and such authority after considering the evidence has to decide whether the charges are proved or not. He relied upon a decision of the Hon'ble Supreme Court of India in the case of *Union of India vs. H.C.Goel* reported at AIR 1964 (SC) 364 in support of such contention. Mr. Majumdar contended that since in an investigation started against S.C.Sharma, i.e., the 6th respondent herein, the petitioner who was then assisting the investigating officer as Law Section in charge did not co-operate with the 5th respondent in order to save the 6th respondent by white washing the evidence of guilt of the 6th respondent, the 6th respondent became biased against the petitioner. Mr. Majumdar contended that the action of the administrative authority was actuated by mala fides in as much as the 6th respondent acted in a biased manner. On the issue of malice, Mr. Majumdar relied upon a decision of the Hon'ble Supreme Court of India in the case of *Rajneesh Khajuria vs. Wockhardt Limited and Another* reported at (2020) 3 SCC 86.

6. Mr. Verma, learned Counsel appearing for the respondents seriously disputed the submissions made by Mr. Majumdar. He contended that the offences committed by the petitioner were investigated in accordance with Rules 18, 19 and 20 of the Coast Guard (Discipline) Rules 1983. The charges were heard by the Commanding Officer on the Offence Report and since prima facie evidence suggested involvement of the petitioner in commission of the aforesaid offences, the commanding officer ordered to prepare the Record of Evidence (for short "ROE"). The Commanding Officer after going through the ROE, decided to conduct a summary trial in exercise of powers under Section 57 of the Coast Guard Act, 1978.

The Punishment Approval Form (for short “PAF”) relating to the petitioner was thereafter processed and forwarded to the Director General, Indian Coast Guard who is the competent authority to approve the punishments. The Director General after applying his mind approved the punishment of dismissal from Coast Guard service on 04.08.2004 and the approved punishment was promulgated to the accused by his commanding officer on 08.09.2004.

7. Mr. Verma contended that the Disciplinary authority being a fact finding authority is vested with the exclusive power to examine the evidence and if such evidence is found to be adequate and reliable, the disciplinary authority has the discretion to impose appropriate punishment on the delinquent employee keeping in mind the gravity of misconduct. He contended that the High Court in exercise of powers of judicial review cannot act as an appellate forum over the findings of the disciplinary authority and reappreciate the evidence. In support of such contention he relied upon the following decisions of the Hon’ble Supreme Court of India.

- (i) *State of Karnataka and Another vs. Umesh* reported at (2022) 6 SCC 563.

- (ii) *Union of India and others vs. Ex. Constable Ram Karan* reported at (2022) 1 SCC 373.

- (iii) *Union of India and others vs. Subrata Nath* reported at 2022 Live Law (SC) 998.

8. Heard the learned advocates for the parties and perused the materials placed.
9. The allegation against the petitioner was that he had submitted a salary certificate depicting false and inflated figures of his monthly salary along with his application for loan from a Bank. It was further alleged that the petitioner forged the signatures of

commandant (JG) S.C. Sharma, the 6th respondent herein on the said salary certificate.

10. Record reveals that on a request made by the 6th respondent, the Bank forwarded the letter through courier service and the same was duly received on 09.11.2002 by one L.G. Sajju who deposed as PW-4. However, it is not in dispute that the said letter could not be traced thereafter.
11. The investigation was conducted by the unit after obtaining a photostat copy of the salary certificate and the loan application. The said documents were sent to the Government Examiner of Questioned Documents, Kolkata along with specimen signatures of the petitioner and S.C. Sharma, the 6th respondent/PW-1 for further examination. The expert, however, opined that the salary certificate being of a poor xerographic reproduction, he is unable to give a definite opinion regarding its authorship.
12. The Commanding Officer on 29th December 2003 arrived at a finding that the petitioner attached a forged salary certificate with inflated salary details only on the basis that the loan application was signed by the petitioner and by relying upon some statements made by the Assistant attached to the Mail Section. Such finding of the Commanding Officer, was based only on presumption. The Commanding Officer even after noting the opinion of the Government Examiner relied only upon the observations made with regard to the signatures of the petitioner in the loan application but failed to take into consideration the observation of the expert with regard to the signature on the salary certificate.
13. The Director (Personnel) on February 19, 2004, however, observed that the benefit of doubt with regard to forging of the salary certificate has to be given to the petitioner since the Government Examiner of the questioned document was not in a position to verify and give his firm opinion on such issue. The Director (Personnel),

however, after taking into consideration the fact that the petitioner approached this Court on a transfer issue and obtained a stay order observed that it may be presumed that the forged salary certificate could have been the handwork of the petitioner. On such presumption, such authority recommended for accepting the proposal for dismissal from service. Such recommendation is, however, based on extraneous materials which are not relevant.

14. The Director General, being the approving authority, however, approved the award of punishment from Coast Guard service on 4th August 2004. The order of the approving authority is extracted hereinbelow-

"I hereby set aside the third charge relating to making false statement, contained in the Offence Report against the accused, RK Singh, P/Nvk(Met), No. 00927-M, of 700 SQN (CG).

While taking into consideration the serious nature of the other two offences committed by the abovenamed accused, I approve award of following punishment:-

Dismissal from Coast Guard service."

15. It is evident from the order of the approving authority that the same is a non-speaking one. The approval of punishment is granted only taking into consideration the serious nature of the offences without considering whether the charges leveled against the delinquent have been proved in accordance with law.
16. For the purpose of verifying whether the signature appearing in the Salary Certificate was that of S.C. Sharma, the matter was referred to the Government Examiner. The allegation against the petitioner that he has forged the signature of the 6th respondent cannot be said to have been proved when the Government Examiner could not verify and give his firm opinion on such issue. That apart the commandant (JG) on 12.02.2004 also observed that the charge

against the petitioner that he has submitted forged documents also appears to have been not proved. It further appears that the recommendation for accepting the proposal for dismissal from service was based only on presumption. The approving authority, however, failed to assign any reasons in support of the decision to approve the award of punishment. Such authority ought to have considered whether such recommendation could have been made on the basis of the materials on record by assigning reasons therefor.

17. The Hon'ble Supreme Court in the case of Narinder Mohan Arya vs. United India Insurance Co. Ltd and others reported at (2006) 4 SCC 713 reiterated the well settled proposition of law that suspicion or presumption cannot take the place of proof even in a domestic enquiry and the writ court in such circumstances is entitled to interfere with the findings of the tribunal or authority. In the case on hand the authorities have proceeded on the basis of presumption as observed hereinbefore. That apart, the order of the approving authority is a non-speaking one.
18. The Hon'ble Supreme Court in H.C.Goel (supra) observed that the findings of the enquiry officer are not final and also cannot be said to be binding upon the appointing authority who has the power to impose punishment. Therefore, the authority who has the power to impose punishment upon the delinquent has to consider whether the findings of the enquiry officer is erroneous, illogical or unsound before taking a final decision. It is evident from the materials placed that the charges against the petitioner have been held to be proved based only on presumption and suspicion. The order of the approving authority is also a non-speaking one. This Court therefore holds that there is infirmity in the decision making process for which the order of the Approving authority calls for interference.

19. There is, however, no quarrel to the proposition of law laid down by the Hon'ble Supreme Court in the following decisions on the scope of Judicial Review in matters falling within the exclusive domain of the disciplinary authorities. The case on hand however, falls within the exceptions carved out by the Hon'ble Supreme Court with regard to interference under Article 226 of the Constitution of India.
- i) *Union of India & Ors. vs. Ex. Constable Ram Karan* reported at (2022) 1 SCC 373.
 - ii) *State of Karnataka and Another vs. Umesh* reported at (2022) 6 SCC 563
 - iii) *Union of India & ors. vs. Subrata Nath* reported at 2022 Live Law (SC) 998.
20. The Hon'ble Supreme Court in *Subrata Nath* (supra) reiterated the proposition of law laid down in *Union of India and others vs. P. Gunasekaran* reported at (2015) 2 SCC 610 wherein, the Hon'ble Court after reiterating the well settled proposition that the High Court cannot act as the appellate authority in the disciplinary proceedings carved out certain exceptions where the High Court can interfere. The notable amongst those which may be relevant for the case on hand are that there is violation of the principles of natural justice or that the authorities have allowed themselves to be influenced by irrelevant or extraneous consideration.
21. The case on hand falls with the aforesaid exceptions carved out by the Hon'ble Supreme Court as would be evident from the observations made hereinbefore.
22. This Court is, therefore, of the considered view that the order of the approving authority is liable to be set aside for the reasons indicated hereinbefore. Since this Court is inclined to interfere with the order of the approving authority on the grounds indicated

hereinbefore, the issue of malice is not gone into by this Court at this stage and the same is left open.

23. For all the reasons as aforesaid, the writ petition stands allowed. The order of the approving authority dated 4th August, 2004 and the proclamation dated 8th September 2004 are set aside and quashed giving liberty to the approving authority to take a fresh decision in the light of the observations made hereinbefore strictly in accordance with law within a period of four weeks from the date of receipt of the server copy of this order. The connected application also stands disposed of. There shall be, however, no order as to costs.
24. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)

(P.A.-Sanchita)