

**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**

W.P.S.T. 283 of 2009

**Janardan Mukherjee
VS.
The State of West Bengal & ors.**

For the Writ Petitioner : Mr. D. N. Ray,
Ms. Munmun Tewary

Hearing concluded on : 21.06.2023

Judgment on : 21.06.2023

DEBANGSU BASAK, J.:-

1. The writ petition is directed against an order dated January 21, 2009 passed by the West Bengal Administrative Tribunal in O.A.1345 of 2004.

2. By the impugned order, the Tribunal did not find any merit in the challenge launched by the writ petitioner to an order of dismissal.

3. Learned advocate appearing for the writ petitioner submits that, the writ petitioner was found to be absent from duty for 68 days. The previous conduct of the writ petitioner remaining absent should not be taken into consideration by the disciplinary authority. Moreover, it was the obligation of the department to establish why the writ petitioner was absent for 68 days and whether, the writ petitioner was absent for compelling reasons or wilfully.

4. Learned advocate appearing for the writ petitioner relies upon **(2012) 3 Supreme Court Cases 178 (Krushnakant B. Parmar vs. Union of India & anr.)** in support of his contention with regard to the absence of the writ petitioner.

5. Learned advocate appearing for the writ petitioner submits that, the punishment of dismissal from service was disproportionate to the charges proved in the disciplinary proceedings. Therefore, the writ court should intervene.

6. None appears for the State.

7. Admitted facts are that, the writ petitioner was a Constable of the West Bengal Police. He was found absent for 68 days over a period of time. Disciplinary proceedings were initiated as against the writ petitioner.

8. A final order dated March 15, 2004 was passed against the writ petitioner in the disciplinary proceedings. The Superintendent of Police passed an order dated March 23, 2004 affirming the final order as against the writ petitioner. The writ petitioner preferred an appeal before the D.I.G. Medinipore Range on April 2, 2004. The appeal was rejected on July 2, 2004. The writ petitioner approached the Tribunal by way of O.A.1345 of 2004 which was disposed of by the impugned order.

9. The writ petitioner despite being given an opportunity to explain his conduct pursuant to the show cause notice issued to him failed to do so. The writ petitioner as noted above, was a Constable of a disciplined force. Unexplained absence over such a period of time was inimical to good order and discipline of a police force.

10. Writ petitioner did not contend that, there was any breach of principles of natural justice in the conduct of the entire disciplinary proceedings as against the writ petitioner. The writ petitioner was heard. The final order of dismissal contains reasons. The appellate authority order also contains reasons. The impugned order of the Tribunal is a speaking order.

11. In **Krushnakant B. Parmar (supra)** a government servant was involved. Such government servant was governed by the Central Civil Services (Conduct) Rules, 1964. In such context, the Supreme Court observed that, the question whether “unauthorised absence from duty” amounted to failure of devotion to duty or behaviour unbecoming of a government servant cannot be decided without deciding the question whether absence was wilful or because of compelling circumstances.

12. In the facts of the present case the petitioner belonged to a disciplined force. His continued absence, if allowed to go unnoticed will be inimical to the discipline of the force. A robust disciplined police force is in public interest.

13. The other contention of the writ petitioner is disproportionality of the punishment imposed. We find from the record that, the writ petitioner was absent sporadically for over a period of time. He was proceeded against in the disciplinary proceedings for his unauthorised absence for 68 days. Beyond that, he was absent on previous occasions also. His previous absence militates against his conduct and can be a legitimate factor to weigh the quantum of punishment to be imposed.

14. Imposition of punishment is in the domain of the disciplinary authority. Courts are visibly and advisedly slow in interfering with the quantum of punishment. However, a Writ Court can interfere with the quantum of punishment imposed by the disciplinary authority if it is established that not only was the punishment disproportionate to the charges proved but conspicuously so. Even then, ideally, the Court should remand the matter to the disciplinary authority for the quantum of punishment.

15. Considering the facts and circumstances of the present case, the disciplinary authority decided that dismissal from

service would be an appropriate order. We find no material to suggest that, the punishment imposed was disproportionate to the charges proved. In such circumstances, we find no merit in the present writ petition.

16. **W.P.S.T. 283 of 2009** is **dismissed**.

17. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Debangsu Basak, J.)

18. I agree.

(Md. Shabbar Rashidi, J.)