

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Rai Chattopadhyay

MAT 493 of 2020
with
IA No.CAN 1 of 2020 (Old No. CAN 4905 of 2020)
with
IA No.CAN 4 of 2022

Union of India & Ors.
versus
Wangkhemayum Bishonath Singh & Anr.

For the Appellants : *Mr. Anirban Mitra.*

For the Respondents : *Mr. K.B.S. Mahapatra,*
Mr. G.C. Chakraborty.

Hearing is concluded on : *1st December, 2023.*

Judgment On : **11th December, 2023.**

Tapabrata Chakraborty, J.

1. Challenging a charge sheet dated 15th November, 2011 issued by the appellant no. 2, an inquiry report dated 3rd February 2012, orders passed by the disciplinary authority (in short, DA), appellate authority (in

short, AA) dated 23rd February, 2012 and 27th April, 2012 respectively and the *suo moto* review order dated 18th September 2012 passed by the appellant no.3 exercising authority under Rule 54 of the Central Industrial Security Force Rules, 2001 (in short, CISF, Rules), the writ petitioner/respondent no.1, namely, Wangkhemayum Bishonath Singh (hereinafter referred to as Bishonath) preferred a writ petition being WP 1038 of 2009. Upon contested hearing the said writ petition was disposed of by the judgment dated 12th February, 2020 setting aside the impugned orders passed by the DA, AA and the revisional authority (in short, RA) and directing the appellants to reinstate Bishonath. Aggrieved by the said judgment the present appeal has been preferred.

2. By the order dated 23rd February 2012, the DA imposed a penalty of *'reduction of pay by (3) three stages from Rs. 9620/-(BP RS. 7620/- + GP Rs. 2000/-) TO RS. 9060/-(BP RS. 7060/- + GP RS.2000/-) in the revised pay band and grade pay for a period of 03 (THREE) years with immediate effect. It is further directed that he will not earn increments 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'*. The statutory appeal preferred against the same was rejected by the AA on 27th April, 2012 and about three months thereafter a show cause notice dated 19th July 2012 was issued by the RA and by an order dated 18th September, 2012, the punishment imposed by the DA and as affirmed by AA was enhanced and Bishonath was dismissed from service by the appellant no.3.

3. Mr. Mitra, learned advocate appearing for the appellants submits that the learned Single Judge erred in law in observing that the entire incident took place beyond the duty hours of the respondent no.1 without considering the provisions of Section 15 of the Central Industrial Security Force Act, 1968 (in short, CISF Act) which categorically provides that every member of the Force shall be considered to be always on duty.

4. He argues that all the allegations are attributable to the charge framed. There had been a concurrent finding of the inquiring authority (in short, IA), the DA and the AA to the effect that on 11th November 2011, at about 12 hours Bishonath went to the quarter no.3/70 at ASP family complex of one Smt. O.I. Devi, wife of O.I. Singh, when she was alone in the quarter, with a *mala fide* intent and before going to the quarter he knew the fact that Smt. O. I. Devi's husband was not present. As long as there is the some evidence on which the DA and RA can rest their findings, sufficiency or insufficiency of such evidence cannot be gone into by a writ Court.

5. Reiterating the arguments advanced in course of the hearing of the writ petition, Mr. Mitra submits that being a member of a discipline force, Bishonath was required to exercise high standard of conduct. Good conduct and discipline are inseparable from the functioning of every member of the Force and any dereliction in the discharge of the duties whether by way of negligence or with deliberate intention or with casualness constitutes misconduct on part of such members of the Force. In support of such argument reliance has been placed upon the judgment delivered in the case

of *Secretary to Government and Others vs. A. C. J. Britto*, reported in (1997) 3 SCC 387.

6. He contends that in exercise of the power of judicial review the writ Court is not supposed to substitute its own opinion on reappraisal of facts. It is trite that Courts, while exercising their power of judicial review over such matters, do not sit as the appellate authority. Decision qua the nature and quantum is the prerogative of the disciplinary authority. It is not the function of the writ Court to decide the same.

7. He argues that the learned Single Judge erred in law in observing that molestation *per se* is not mentioned in the CISF, Act or in the CISF Rules as misconduct and that as such the complaint lodged by the complainant ought not to have been proceeded with by the DA by drawing up disciplinary proceedings being oblivious of the provisions of Rule 77 of the CISF, Rules which *inter alia* provides that even in the absence of any provision or in case of insufficient provisions, the conditions of service would be governed by the Central Civil Service (Conduct) Rules, 1964 (in short, CCS Rules). Rule 3(1) (iii) of the CCS Rules categorically provides that every government servant shall at all times do nothing which is unbecoming of a government servant. The term misconduct implies a wrongful intention and not a mere error of judgment. It embraces acts which the employee had no right to perform, acts performed improperly. The act of Bishonath is inextricably bound with his conduct and it comes within the ambit of the said Rules. Reliance has been placed upon the judgment delivered in the

case of *State of Punjab and Others Vs. Ram Singh Ex. Constable*, reported in (1992) 4 SCC 54.

8. According to him there had been no jurisdictional error on the part of the appellants in conducting the proceedings. Appropriate opportunity of hearing was also granted to Bishonath and as such the learned Single Judge erred in entertaining the writ petition and interfering with the proceedings moreso when the CISF, Rules provided an alternative remedy to Bishonath. Reliance has been placed upon a judgment delivered in the case of *State Bank of India and Others vs. Narendra Kumar Pandey*, reported in (2013) 2 SCC 740.

9. Mr. Mahapatra, learned advocate appearing for the Bishonath denies and disputes the contention of the appellants and submits that suspicion, howsoever high, cannot be substitute of actual proof. The appellants have miserably failed to establish in the course of proceedings that the respondent '*suddenly bolted the door of house and caught hold her hand and also tried to molest her*'. There is no direct evidence on record in support of such allegations and as such the fundament of the decision is erroneous and illegal and the learned Single Judge had rightly set aside the entire proceedings.

10. Drawing our attention to the provisions of Section 8 of the CISF, Act, Mr. Mahapatra submits that the alleged charged does not relate to the office and has not been committed in the course of employment or at the place of employment. The alleged conduct can neither be construed to be a remiss or negligence in the discharge of duties or unfit for the same.

Something not prescribed cannot be taken into account as varying with what is prescribed. No criminal complaint was lodged against Bishonath and in support of the allegations in the charge sheet there is no imputation that Bishonath had been negligent in his duties or had acted in a fraudulent manner. No criminal complaint was also lodged against Bishonath. The alleged act of Bishonath had been construed to be a misconduct by the appellants in exercise of unbridled exercise of discretion and in the said conspectus, the learned Single Judge had rightly interfered and set aside the proceedings. Reliance has been placed upon the judgments delivered in the cases of *Rasiklal vs. Ahmedabad Municipal Corporation*, reported in AIR 1985 SC 504 and *A.L. Kalra vs. Project and Equipment Corporation of India Ltd.*, reported in (1984) 3 SCC 316.

11. He argues that the presenting officer (in short, PO) himself observed that '*the allegation like bolted the door, caught hold her hand and tried to molest the lady goes benefit of doubt*'. In the present case the DA did not enquire into the article of charge but appointed an IA for holding the enquiry and in view of the provisions of Rule 36 (5) (c) of the CISF, Rules, the DA is bound by the observations of PO.

12. Drawing our attention to the order passed by the RO dated 18th September 2012, Mr. Mahapatra argues that no independent reason had been disclosed as to why he disagreed with the punishment imposed by the DA, as affirmed in the statutory appeal, and thought it fit to *suo moto* review the same without even explaining the delay of about three months towards issuance of the show cause notice on 19th July, 2012.

13. According to Mr. Mahapatra, the argument of Mr. Mitra as regards application of Section 15 of CISF, Act to the facts of this case is fallacious. The contents of Section 15 need to be considered together and not in isolation. A particular line cannot be taken up and highlighted. The rule of exhaustion of alternative remedy, is a rule of discretion and not a rule of compulsion. In the facts of the case, the learned Single Judge rightly did not propose to relegate Bishonath to the alternative remedy forum.

14. Heard the learned advocates appearing for the respective parties and considered the materials on record.

15. The charge alleged against Bishonath was that he went to quarter no. 03/70 of ASP family complex, when Smt. O. I. Devi, wife of constable O I Singh (posted out to CISF Unit BPCL Dibrugarh), was alone in the quarter and that after having tea he suddenly bolted the door of house and caught hold of O.I. Devi's hand and tried to molest her. In course of enquiry the PO observed that *'the allegation like bolted the door caught hold her hand and tried to molest the lady goes benefit of doubt'*. The enquiry report would reveal the disputed fact was whether the Bishonath bolted the door of the quarter and grabbed the hand of Smt. O I Devi. Without arriving at any finding as regards such disputed fact, the IA observed that *'As per the version/complain of Smt. O I Devi, PW-1 charged Official bolted the door and caught hold her hands then she pushed him and took him out of her Qtr by giving warning to him'*. On the rudiments of a bald allegation, a charge cannot be held to have been established.

16. The DA in his order observed *inter alia* that '*the allegation of charged official bolted the door and caught hold her hands, for the above act, she shouted and threatened to make Const. W. B. Singh to leave her quarter could not be confirmed from the statement adduced by PWs and CWs*'. In spite of such observation, Bishonath was surprisingly found to be guilty and a penalty was imposed. A specific ground was taken in the statutory appeal that there was no evidence of bolting the door or holding of Smt. O.I. Devi but such issue was glossed over and no finding was returned on the same by the AA. There is no explanation as to why the RO took *suo moto* cognizance and issued a show cause about three months after the order was passed by the AA. In the order dated 18th September 2012, the RO also did not take into consideration the fact that there was no direct evidence of molestation against Bishonath. The action of the appellants is not based on a fair procedure.

17. It is well known that a decision is an authority for what it decides and not what can logically be deduced therefrom. Even a slight distinction in fact or an additional fact may make a lot of difference in decision making process. The judgment is a precedent for the issue of law that is raised and decided and not observations made in the facts of any particular case. Plentitude of pronouncements leaves cleavage in the opinions formed in the respective cases. There is no dispute as regards the proposition of law as laid down in the judgments upon which reliance has been placed by Mr. Mitra, however, the same are distinguishable on facts.

18. In the said conspectus and as the alleged charge of molestation did not survive and as the incident was not related to the duty of Bishonath, the learned Single Judge rightly came to finding that the orders passed by the DA, AA and RO had caused great miscarriage of justice.

19. The learned Single Judge had, upon dealing with all the factual issues, arrived at specific findings and we do not find any error of law least to say any patent error of law in the judgment impugned and the same also does not suffer from in jurisdictional error warranting interference of this Court.

20. Accordingly, the writ petition and the application for stay being IA No. CAN 1 of 2020 (Old No. CAN 4905 of 2020) are dismissed and the application being IA No. CAN 4 of 2022 is disposed of.

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

22. Urgent Photostat certified copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Rai Chattopadhyay, J.)

(Tapabrata Chakraborty, J.)