

**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 109 of 2017

**The State of West Bengal & Ors.
VS.
Asif Iqbal Laskar**

For the Writ Petitioner : Mr. Amitesh Banerjee,
Ms. Munmun Tewari

For the respondent : Mr. Ramdulal Manna,
Ms. Manju Manna

Hearing concluded on : 03.08.2023

Judgement on : 03.08.2023

DEBANGSU BASAK, J.:-

1. The writ petition is directed against an order dated April 20, 2016 passed by the West Bengal Administrative Tribunal in O.A. 340 of 2013.

2. By the impugned order, the learned Tribunal set aside an order of dismissal as affirmed by the Appellate Authority and directed reinstatement of the private respondent to the post of Constable.

3. Learned senior advocate appearing for the writ petitioner submits that, the private respondent was proceeded against in a disciplinary proceeding. The private respondent was a Constable in the Second Battalion of the State Armed Police. He refers to the Charges, which were formulated against the private respondent on July 6, 2009. He submits that, all the Charges were proved as against the private respondent in the enquiry proceeding. The Disciplinary Authority imposed a punishment of dismissal from service. An appeal was carried by the private respondent, which was dismissed with the Appellate Authority concurring with the punishment imposed. He submits that, there was no material before the learned Tribunal to upset the quantum of punishment imposed

particularly when the learned Tribunal found that the charges stood proved as against the private respondent.

4. Learned senior Advocate appearing for the writ petitioner, relies upon **(2013) 12 SCC 372 [Lucknow Kshetriya Gramin Bank & Anr. Vs. Rajendra Singh]** and submits that quantum of punishment to be imposed is the exclusive jurisdiction of the Disciplinary and the Appellate Authority to determine. In the facts of the present case he submits that the learned Tribunal erred in setting aside the quantum of punishment imposed by the Disciplinary Authority as upheld on appeal.

5. Learned advocate for the private respondent draws the attention of the court to the contents of the Charges. He submits that, the authorities invoked provisions of the West Bengal Services (Duties, Rights and Obligations of Government Employees) Rules, 1980. He contends that such Rules of 1980 by virtue of Rule 1(2) thereof and particularly the proviso of Rule 1(2) excludes the applicability of Rules of 1980 so far as members of the police force are concerned. He submits that the private respondent was a Constable of

police. Therefore, according to him, the initiation of the Disciplinary Proceeding was bad in law and therefore no punishment could be imposed upon the private respondent.

6. The private respondent was serving as Constable in the Second Battalion of the State Armed Police. He was served with a chargesheet dated July 6, 2009 in connection with a disciplinary proceeding bearing No. 5/2009 initiated against him.

7. The chargesheet dated July 6, 2009 contains three charges. Essentially, the first charge as against the private respondent is of a second marriage being contracted while in service without obtaining divorce from the first wife. It was alleged that, the respondent violated the Rules of 1980 particularly Rule 5(4) of the Appendix VI(A) of the said Rules.

8. The second charge is connected with the first charge and it alleges that the private respondent suppressed the second marriage from the competent authority. The third charge as against the private respondent is that the private respondent did not inform the authority of pendency of criminal case initiated against him by his wife before the

learned Chief Judicial Magistrate, Alipore, being Case No. 691 of 2009 under Sections 498A/506/34 of the Indian Penal Code, 1860.

9. Additional charges were also framed as against the private respondent. In the additional charge, it was alleged that, the respondent was found in the parade ground on August 31, 2009 without shaving his beard and wearing leather sandals during the roll call at the battalion headquarter. Secondly, as additional charge, it was alleged as against him that he was found absent unauthorisedly from the barracks with effect from November 5, 2009 morning for a period of ten days.

10. The private respondent was placed under suspension. He filed a statement of defence. In the statement of defence, he acknowledged that he left the barrack on June 16, 2009 and returned on June 29, 2009 as he wanted to attend to his mother, who was seriously ill.

11. In the departmental proceedings, an enquiry report dated June 3, 2010 was submitted. The Disciplinary Authority passed a provisional order dated June 9, 2010 and

directed the private respondent to show-cause as to why the private respondent should not be dismissed from service. Thereafter, Disciplinary Authority passed the final order on August 31, 2010 and dismissed the private respondent from service with effect from August 31, 2010. An appeal was preferred. The Appellate Authority, after hearing the private respondent upheld the final order dated August 31, 2010 by an order dated November 25, 2010.

12. In the departmental proceedings, the private respondent confessed the guilt and admitted all the proved misconduct before the Disciplinary Authority as well as before the Appellate Authority. The private respondent acknowledged that, he contacted a second marriage and that there was a criminal case against him initiated by his first wife. However, he was discharged from the criminal case on compromise with his first wife. He acknowledged that he did not inform the department as to his second marriage as also about the criminal case. He acknowledged that he was unauthorisedly absent for a given period of time. He also acknowledged that he attended the parade ground without shaving his beard

and wearing leather sandal in the roll call at the battalion headquarter.

13. The learned Tribunal found that since the private respondent confessed his guilt and admitted all the proved misconduct, he was entitled to be exonerated of the charges as the private respondent was not a habitual absentee and that there was no record of earlier misconduct. The Learned Tribunal proceeded to direct reinstatement of the private respondent in the service with effect from the date he reports for his reinstatement. The private respondent was, however, found not to be entitled to any back wages.

14. Essentially, the learned Tribunal interfered with the quantum of punishment imposed by the Disciplinary Authority as upheld by the Appellate Authority. The learned Tribunal allowed the private respondent to join duties without any punishment for the proved misconduct.

15. The contention of the private respondent that, the entire Disciplinary Proceeding was bad in law requires consideration. The charge sheet dated July 6, 2009 in the first sentence speaks of invocation of provisions of Police

Regulations of Bengal. At the end of the first charge with regard to the allegation of second marriage, it was stated that the private respondent allegedly violated the provisions of Rule 5 (4) of the Rules of 1980.

16. As rightly pointed out on behalf of the private respondent, the Rules of 1980 are not applicable to a police personnel such as the private respondent in view of Rule 1(2) of the Rules of 1980.

17. Rule 1 of the Rules of 1980 is as follows:

“West Bengal Services (Duties, Rights and Obligations of the Government employees) Rules, 1980

(1) Short title, application and commencement- (1)

These rules may be called the West Bengal Services (Duties, Rights and Obligations of the Government employees) Rules, 1980.

(2) They shall apply to all employees of the Government of West Bengal: Provided that nothing in these rules shall apply to persons appointed to any All India Service and members of the Police, and Jail Staff falling under the purview of the Jail Code.

(3) They shall be deemed to have come into force with effect from the 1st, day of June, 1980”.

18. Quoting a wrong section of a statute or a regulation, does not ipso facto vitiate any proceedings. The Disciplinary

proceedings were initiated under the provisions of the Police Regulations Bengal. What was alleged in respect of the first charge was that the respondent allegedly violated Rule 5 (4) of the Rule of 1980 by contacting the second marriage.

19. The private respondent did not establish either before the learned Tribunal or before us that the Disciplinary Authority initiating the Disciplinary Authority, conducting the inquiry, passing the provisional order dated June 9, 2010 passing the final order dated August 31, 2010 were acting without jurisdiction. Petitioner submitted to the jurisdiction of the Disciplinary Authority unconditionally. Apart from the submission to jurisdiction, we find no reason to hold that the Disciplinary Authority acting as against the private respondent herein was functioning without jurisdiction.

20. Consequently, we are unable to uphold the contention of the private respondent that, the entirety of the Disciplinary Proceeding initiated was vitiated.

21. In **Lucknow Kshetriya Gramin Bank & Anr.** (supra) the Supreme Court, while referring to various authorities on the subject of judicial interference on the quantum of

punishment imposed observed that, the quantum of punishment is the exclusive jurisdiction of the Disciplinary and the Appellate Authority to determine. However, judicial review of the quantum of punishment is permissible when, the punishment was found to be shocking and disproportionate to the nature of proved misconduct. Even in such a case, the Court should, after setting aside the order of punishment, remit the matter to the Disciplinary/Appellate Authority with the direction to pass appropriate order.

22. In the facts of the present case, charges as against the private respondent, stood established, inter alia, on admission. Nothing is placed on record to suggest that the private respondent is seeking to retract from the admissions made.

23. The learned Tribunal, took pains to consider the enquiry report thoroughly. The learned Tribunal recorded that, it went through the enquiry report thoroughly and arrived at a finding that the enquiry authority rightly appreciated the evidence on record. The learned Tribunal found materials in the depositions made by the witnesses before the enquiry

authority to be supportive of the case of the prosecution. The learned Tribunal also noted the limited scope of judicial interference. However, The learned Tribunal proceeded to set aside the final order holding the private respondent guilty of misconduct and directed reinstatement with no back wages.

24. There was no material before the learned Tribunal to arrive at a finding that the quantum of punishment imposed was shocking. The charges proved as against the private respondent are that, he did contract a second marriage during the subsistence of the first marriage, he did not inform the department with regard to his second marriage, he suppressed the whole matter with regard to his second marriage and an earlier social marriage contacted on February 22, 2001, he was absent without leave for ten days, he attended a parade without shaving his beard and wearing sandals.

25. Nothing was stand before us to suggest let alone establish that the charges established taken together in a departmental proceeding would not result in an order of dismissal from service of a Constable. We need to keep in mind that the

private respondent was engaged as a Constable in a disciplined force i.e. State Armed Police Force. Therefore, it cannot be said that, dismissal from service on the charges of the nature established in the Disciplinary Proceedings, was shocking to the judicial conscience. The learned Tribunal did not ascribe any cogent reason for setting aside of the entirety of the punishment imposed as against the private respondent. The learned Tribunal did not substitute the punishment imposed although returning a finding that the enquiry report was not vitiated. The Disciplinary Proceeding was also found not to be vitiated.

26. In such circumstances, we set aside the impugned order of the learned Tribunal and restore the order of dismissal of the Disciplinary Authority dated August 31, 2010 as upheld on appeal by the order dated November 25, 2010.

27. **WP.ST. 109 of 2017** is **allowed** without any order as to costs.

28. Prayer for stay made on behalf of the private respondent is considered and refused.

(Debangsu Basak, J.)

29. I agree.

(Md. Shabbar Rashidi, J.)

KAUSHIK CHATTERJEE