

**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 413 of 2010

Sahajuddin Mistry

Vs.

The State of West Bengal & Ors.

For the petitioner : Mr. Robin Kumar Gharai
Ms. Soma Chakraborty

For the State : Ms. Chaitali Bhattacharjee
Mr. Manas Kumar Sadhu

Heard on : June 20, 2023

Judgment on : June 20, 2023

DEBANGSU BASAK, J.:-

1. Petitioner is aggrieved by an order of dismissal dated March 22, 2010 passed by the West Bengal Administrative Tribunal in OA-710/2000.
2. Learned Advocate appearing for the petitioner submits that, the petitioner was imposed a punishment which was disproportionate to the articles of charges. He submits that,

in the event disproportionate punishment is imposed, and the same is shocking to the conscience of the Court, a Writ Court can intervene. In support of such contention, he relies upon *AIR 2000 Supreme Court 1151 (U.P. State Road Transport Corporation and others. Vs. Mahesh Kumar Mishra and others)* and *(1998) 3 Supreme Court Cases 192 (Colour-Chem Ltd. Vs. A.L. Alaspurkar & Ors.)*.

3. Learned Advocate appearing for the writ petitioner draws the attention of the Court to the materials-on-record. He submits that, the writ petitioner as a constable was being proceeded against on the basis of the so-called 156 days of unexplained absence. He submits that, the entirety of the family members of the writ petitioner were unwell over a period of time which resulted in the writ petitioner being absent from his duty for 157 days. He draws the attention of the Court to the averments made at different stages in that regard.
4. Learned Advocate appearing for the writ petitioner draws the attention of the Court to the order of the Superintendent of Police. He submits that, the Superintendent of Police

directed the 157 days' absence to be regularized through extraordinary leave. Once the absence was directed to be regularized by way of adjustment of extraordinary leave then the question of the writ petitioner being punished for the absence does not arise.

5. Learned Advocate appearing for the writ petitioner refers to the police regulations and submits that, two types of punishments are contemplated in a disciplinary proceeding, namely, minor and major. In the facts of the present case according to him, imposition of minor punishment would suffice.
6. Learned Advocate appearing for the State draws the attention of the Court to the materials-on-record. She submits that, the petitioner was a police constable and a member of disciplined force. He was found absent on repeated occasions spanning over a period of 157 days. His absence for 157 days remained unexplained by cogent evidence. The direction of the Superintendent of Police with regard to adjustment of the 157 days towards extraordinary leave was for the purpose of calculating the pay package that

the petitioner would be entitled to upon dismissal of service. It is not to be confused with the punishment imposed. Adjustment of unexplained absence with the extraordinary leave should not be confused with regularization of the absence.

7. We perused the materials made on record. We find that the petitioner was working as a constable with the West Bengal police. The petitioner was found absent over a period of time. A charge sheet as against the petitioner was issued on December 26, 1997 for unauthorized absence for 157 days during the period from April 4, 1998 to September 6, 1998.
8. On May 20, 2014, a finding of the Enquiry Officer was submitted to the disciplinary authority. The disciplinary authority found the writ petitioner guilty of the charges. The disciplinary authority passed a final order dated October 31, 1999 imposing a punishment of discharge from service on the petitioner.
9. Petitioner preferred an appeal from the order of the disciplinary authority on March 3, 2000. The disciplinary authority rejected such appeal on March 23, 2000. The

petitioner moved the West Bengal Administrative Tribunal by way of an original application being OA-710/2000. By the impugned order dated March 22, 2010, the Tribunal did not find any merits in the original application of the writ petitioner and dismissed the same.

10. The writ petitioner was heard in the departmental proceedings. It is not the contention of the writ petitioner that the articles of charges was vague or that the disciplinary proceedings stood vitiated by breach of principles of natural justice. There is an Enquiry Officer's report. There is also an order passed by the disciplinary authority. The order of the disciplinary authority contains reasons. It finds the writ petitioner to be absent for 157 days for the period from April 4, 1998 to September 6, 1998. The disciplinary authority finds that such leave remained unexplained by the writ petitioner. As a constable of a disciplined force, the writ petitioner was required to report for his duty. At least he was required to explain for his unauthorized absence from service. The writ petitioner failed on both the counts. The order of the disciplinary authority contains a direction for

adjustment of the unexplained absence from service for 157 days towards extraordinary leave. In our view, such a direction is not a condonation of the absence of the writ petitioner but a direction upon the authorities for the purpose of calculating the emoluments the writ petitioner would be entitled to upon the final order of punishment coming into effect.

11. The writ petitioner preferred an appeal from the order of the disciplinary authority. The appellate authority concurred with the view that the disciplinary authority. It cannot be said that, the order of the appellate authority is vitiated by breach of principles of natural justice. The order of the appellate authority also contains reasons.
12. Before the West Bengal Administrative Tribunal, the writ petitioner canvassed various points which were discussed and negated. Nothing is placed on record to suggest that any portion of the impugned order is perverse. The impugned order also contains reasons.
13. *Mahesh Kumar Mishra (supra)* and *Colour-Chem Ltd.(supra)* are of the view that, where the punishment imposed on the

delinquent is shocking and it shocks the conscience of the Court then the Court is empowered to intervene.

14. In the facts of the present case, the petitioner was awarded a punishment of discharge from service for unexplained absence of 157 days over a period from April 4, 1998 to September 6, 1998. The petitioner was engaged as a constable in a disciplined force. His unauthorized absence over such a period of time will affect the discipline of the force. Therefore, in such factual matrix, it cannot be said that, the punishment imposed was disproportionate to the articles of charges proved in the disciplinary proceeding as against the writ petitioner.
15. In such circumstances, we find no merit in the present writ petition.
16. **WP.ST 413 of 2010** is dismissed without any order as to costs.

(Debangsu Basak,J.)

17. I Agree.

(Md. Shabbar Rashidi, J.)