

Form No. J(2)

**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 627 of 2009

The State of West Bengal & ors.

Vs.

Pabitra Roy

For the writ petitioners/State : Mr. Tapan Kr. Mukherjee,
Sr. Advocate & A.G.P.
Mr. Pinaki Dhole, Advocate,
Mr. Somnath Naskar, Advocate

For the respondent : Md. T. Hosain, Advocate

Hearing on : 06.09.2023

Judgment on : 06.09.2023

DEBANGSU BASAK, J.:-

1. The writ petition is directed against an order dated April 16, 2009 passed by the West Bengal Administrative Tribunal in O.A.1571 of 2004.

2. By the impugned order, the Tribunal set aside the punishment order of dismissal from service and directed reinstatement of the respondent. The Tribunal directed that it would be open to the disciplinary authority to impose any other punishment for his unauthorized absence which was just, proportionate and fair.

3. The writ petition is at the behest of the State. Learned Senior Advocate appearing for the writ petitioners/State submits that, the respondent was a Constable of the Calcutta Police. The respondent was found to leave guard duty on July 23, 2000 and remained in unauthorized absence till August 8, 2000. He contended that, the respondent was booked for Central Bank Guard duty with fire arms on July 23, 2000. Without intimating any person of authority and without depositing his firearm, the respondent left on July 23, 2000. The respondent was arrested in respect of a police case of Malda and remained in custody till August 7, 2000. The respondent remained in unauthorized absence till August 8, 2000 from July 23, 2000.

4. Learned Senior Advocate appearing for the State/writ petitioners submits that, the Tribunal erred in quashing the order of dismissal from service. He submits that, the respondent was a Constable of a police force. The charges as against the respondent stood established in the disciplinary proceeding. The Tribunal therefore, committed an error in holding that, dismissal from service of the respondent on the ground of unauthorized absence on one occasion was disproportionate to the

charge established. He relies upon unreported judgment and order dated August 28, 2023 passed by this Bench in **WP.ST116 of 2022 (The State of West Bengal & ors. vs. Sri Asim Kumar Bhattacharyya), (2022) 7 Supreme Court Cases 475 (Union of India and others versus M. Duraisamy), (1995) 6 Supreme Court Cases 749 (B. C Chaturvedi versus Union of India and others) and (2015) 2 Supreme Court Cases 610 (Union of India and others versus P. Gunasekaran).**

5. Learned advocate appearing for the private respondent draws attention of the Court to the materials on record. He submits that, the respondent left the place on July 23, 2000 to attend to his sick mother. In the criminal case, charge-sheet is yet to be filed.

6. There subsist an order dated December 7, 2009 passed by a coordinate Bench in this writ petition directing stay of the impugned order of the Tribunal till disposal of the writ petition.

7. We are informed that, the respondent was not reinstated pursuant to the order of the Tribunal.

8. A disciplinary proceeding was drawn up against the respondent. A charge containing two articles of charges dated September 19, 2000 was issued as against the respondent. The two charges relate to the respondent leaving without permission of the competent authority, guard duty booked to him at Central Bank on July 23, 2000 and remaining in unauthorized absence till August 8, 2000. The second charge was that the respondent was arrested in respect of English Bazar Police Station

Malda Case No.258 dated July 31, 2000 under Sections 170/419/511 of the Indian Penal Code, 1860 and was taken into custody therein to be released on August 7, 2000.

9. The respondent received the charge and a statement of allegation on September 27, 2000. The respondent submitted a prayer for supply of copies of listed documents. After receiving the same, respondent submitted a reply dated November 13, 2000 when he pleaded guilty to the first charge and apologized for the indisciplined act. The respondent stated that he would not produce any witness or document. Respondent did not offer any comment with regard to the criminal case.

10. The enquiry officer examined the prosecution witnesses and the documents in presence of the respondent. The respondent was afforded an opportunity to defend himself by cross-examination of the prosecution witnesses and by submitting the defence statement which the respondent declined before the enquiry officer.

11. The enquiry officer on completion of the enquiry submitted his findings holding that the charges levelled as against the respondent were proved. The findings of the enquiry officer was made over to the respondent on November 21, 2000.

12. The disciplinary authority heard the respondent twice on December 12, 2000 and April 9, 2003. During the personal hearing held on April 9, 2003 the respondent requested an opportunity to submit a statement in defence which was allowed. A statement of defence was

submitted on April 23, 2003 where, the respondent took the plea that he left the assigned place of duty without leave or permission due to sickness of his mother who was at his native address. He relied upon medical documents of his mother.

13. The medical documents were considered by the disciplinary authority and found to be unreliable for the reasons as noted in the show cause notice dated September 4, 2003 of the disciplinary authority. The disciplinary authority found that the respondent abandoned the arms and ammunition issued to the respondent for performance of Guard duty at Central Bank which was later deposited by the camp In-Charge. The disciplinary authority also found the respondent to be involved in a criminal case during the unauthorised period of absence. The disciplinary authority found that after arresting, the respondent impersonated himself and suppressed his identity.

14. The disciplinary authority issued a show cause notice dated September 4, 2003. The respondent replied thereto by a writing dated September 17, 2003. In a response, he claimed that he deposited the arms and ammunition with the Charge of the guard force.

15. The disciplinary authority issued the final order of dismissal as against the respondent on September 22, 2003.

16. Respondent thereafter, approached the West Bengal Administrative Tribunal by filing an Original Application being O.A.1512 of 2003 which

was disposed of by an order dated March 10, 2004 requiring the Joint Commissioner of Police to decide the appeal.

17. By an order dated May 14, 2004, the Joint Commissioner of Police, Calcutta dismissed the appeal of the respondent. Thereafter, the respondent approached the Tribunal by way of O.A.1571 of 2004 resulting in the impugned order.

18. **M. Duraisamy (supra)** on the issue of interference with the punishment imposed by the disciplinary authority is of the following view:

“12. While answering the aforesaid question/issue, the decision of this Court in Goparaju Sri Prabhakara Hari Babu, on the judicial review and the limited jurisdiction of the High Court on the proportionality of the order of departmental authority is required to be referred to. In the said decision, after referring to a catena of judgments of this Court, it is observed and held by this Court that the jurisdiction of the High Court on the proportionality of the order of departmental authority is limited. It is observed that it cannot set aside a well-reasoned order only on grounds of sympathy and sentiments. It is further observed and held that once it is found that all the procedural requirements had been complied with, courts would not ordinarily

interfere with the quantum of punishment imposed upon a delinquent employee. It is further observed that the superior courts, only in some cases may invoke the doctrine of proportionality, however if the decision of an employer is found to be within the legal parameters, the doctrine would ordinarily not be invoked when the misconduct stands proved.

13. *In B.C. Chaturvedi, the High Court interfered with the order of punishment imposed by the disciplinary authority and substituted the punishment of dismissal from service to one of compulsory retirement on the reasoning that the employee had put in 30 years of service and that he had a brilliant academic record and that he had earned promotion after the disciplinary proceedings were initiated. Setting aside the judgment and order passed by the High Court, this Court observed that the reasoning is wholly unsupportable. Such reasons are not relevant or germane to modify the punishment. What is required to be considered is the gravity of the misconduct. In the said case, the employee was found to be in possession of assets disproportionate to the known sources of his income. Therefore, this Court observed and held that the interference with the imposition of punishment was wholly unwarranted.*

14. *Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, the order passed by the Tribunal, confirmed by the Division Bench of the High Court, substituting the punishment of removal to that of compulsory retirement is unsustainable. Neither the Tribunal nor the High Court have found any irregularity in conducting the departmental enquiry. No procedural lapses have been found. In fact, the respondent employee admitted the charge of having defrauded Rs.16,59,065 and on detecting the fraud, he deposited the defrauded amount of Rs.16,59,065 along with penal interest. But for the detection of the fraud, probably, the respondent employee would not have deposited the defrauded amount. Once, a conscious decision was taken by the disciplinary authority to remove an employee on the proved misconduct of a very serious nature of defrauding public money, neither the Tribunal nor the High Court should have interfered with the order of punishment imposed by the disciplinary authority, which was after considering the gravity and seriousness of the misconduct.*

15. *Merely because the respondent employee had worked for 39 years and in those years, there was no punishment imposed and/or that he voluntarily deposited the defrauded amount along with penal*

interest and therefore there was no loss to the Government/Department cannot be a ground to interfere with the order of punishment imposed by the disciplinary authority and substitute the same from removal to that of compulsory retirement. Neither the Tribunal nor the High Court have, in fact, considered the nature and gravity of the misconduct committed by the delinquent officer. Therefore, both, the Tribunal as well as the High Court had exceeded in their jurisdiction in interfering with the quantum of punishment imposed by the disciplinary authority.

16. None of the grounds/reasoning on which the order of punishment of removal has been interfered with by the Tribunal and affirmed by the High Court are germane and can be sustained. Once it was found that the delinquent officer who was serving in the post office had defrauded to the extent of Rs.16,59,065 and that too, by way of fraudulent withdrawal in as many as 85 RD accounts and by way of non-credit of deposits in 71 RD accounts, no sympathy on such an employee was warranted.

17. *Being a public servant in the post office, the delinquent officer was holding the post of trust. Merely because subsequently the employee had deposited the defrauded amount and therefore there was no loss*

caused to the department cannot be a ground to take a lenient view and/or to show undue sympathy in favour of such an employee. What about the loss caused to the department by way of goodwill, name and fame of the department and its reliability amongst the public? By such a misconduct/act on the part of the delinquent officer, the reputation of the department had been tarnished. Therefore, in the facts and circumstances of the case, both, the Tribunal as well as the High Court have exceeded in their jurisdiction in interfering with the quantum of punishment imposed by the disciplinary authority and to substitute the same to that of compulsory retirement.

19. **B.C. Chaturvedi (supra)** was considered by the Supreme Court in **M. Duraisamy (supra)**.

20. **P. Gunasekaran (supra)** again on the scope of interference with regard to disciplinary proceeding, held as follows:-

“12. *Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and*

was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*

- (i) *the finding of fact is based on no evidence.*

13. *Under Articles 226/227 of the Constitution of India, the High Court shall not:*

- (i) *reappreciate the evidence;*
 (ii) *interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
 (iii) *go into the adequacy of the evidence;*
 (iv) *go into the reliability of the evidence;*
 (v) *interfere, if there be some legal evidence on which findings can be based.*
 (vi) *correct the error of fact however grave it may appear to be;*
 (vii) *go into the proportionality of punishment unless it shocks its conscience.”*

21. **Sri Asim Kumar Bhattacharyya (supra)** notices **M. Duraisamy (supra)** along with other authorities. In the facts of that case, the employee was involved in bigamy which is an offence. Considering the gravity of the misconduct of the delinquent therein, quantum of punishment imposed by the disciplinary authority was upheld.

22. In the facts of the present case, the respondent belonged to a disciplined force. He was assigned Guard duty at Central Bank with arms. He left the Guard duty without permission and without informing the authorities on July 23, 2000. He was found to abandon the firearm assigned to him for Guard duty. He was arrested on August 7, 2000 in

assigned to him for Guard Duty. He was arrested on August 7, 2000 in respect of criminal case where the allegation was of impersonation.

23. In the disciplinary proceeding as also in the Original Application before the Tribunal, the respondent acknowledged the fact that he left Guard duty on July 23, 2000. His explanation is that he received a phone call from his younger brother about the illness of his mother. He left the place of work. Claim of sickness of his mother was considered by the disciplinary authority and found to be unsubstantiated by the disciplinary authority.

24. In fact, the charge that respondent left Guard duty on July 23, 2000 and was absent till August 7, 2000 stands established going by the admission of the respondent. His justification so far absence was considered and found to be without any basis.

25. What is alarming and which the Tribunal did not take into consideration is the fact that it is not a simpliciter absence from duty but abandoning a guard duty at a Bank and abandoning his firearms. These are serious dereliction of duty unbecoming of a police personnel.

26. The respondent was granted an opportunity of hearing at every stage of disciplinary proceeding. The complaint is not that the respondent was not heard. Even he was allowed to prefer an appeal subsequent to the order passed by the Tribunal. The appeal of the respondent was considered and disallowed.

27. At every stage, the respondent was afforded with the opportunity of hearing. The respondent is unable to draw our attention to any fact constituting breach of the principles of natural justice at any stage of the departmental proceeding including the stage of the appeal.

28. The order of the disciplinary authority as well as the appellate authority are well reasoned .

29. **M. Duraisamy (supra)** is of the view that when all legal parameters in arriving at a punishment in a disciplinary proceeding are fulfilled the Court should not interfere with the quantum of punishment imposed unless it is shocking to the conscience of the Court. It also observed that, simply because there is no other charges established as against the delinquent or because there are no other departmental proceeding against the delinquent, the same *ipso facto* will not lead to a conclusion that quantum of punishment imposed is harsh.

30. Quantum of punishment imposed is within the domain of the disciplinary authority and all parameters of legal compliance relating to the disciplinary proceeding was satisfied at the disciplinary proceeding stage.

31. The Tribunal proceeded on the ground that there was no other instance of breach of discipline by the respondent nor returned a finding that the quantum of punishment imposed was harsh. With respect, the same does not withstand test laid down in **M. Duraisamy (supra)**.

32. In such circumstances, the impugned order of the Tribunal is set aside. The order of dismissal from service of the respondent is restored.

33. **WP.ST 627 of 2009** is **allowed** without any order as to costs.

(Debangsu Basak, J.)

34. I agree.

(Md. Shabbar Rashidi, J.)

CHC