

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Partha Sarathi Chatterjee

WPCT 139 of 2022

Union of India & Ors.
-Versus-
Srimanta Kumar De

For the Petitioners : *Ms. Rajashree Ray,*
Mr. Asit Kumar De.

For the Respondent : *Mr. Kalyan Sarkar,*
Ms. Riya Ballav.

Hearing is concluded on : *3rd October, 2023.*

Judgment On : **23rd November, 2023.**

Tapabrata Chakraborty, J.

1. The present writ petition has been preferred by the Union of India, the Department of Posts and its functionaries challenging an order dated 7th April, 2022 passed by the learned Tribunal in an original application being O.A. 350/01249/2019.

2. This case has a chequered history. The writ petitioner/the respondent herein, namely, Srimanta Kumar De (in short, Srimanta) was engaged as Gramin Dak Sevak Block Post Master (in short, GDSBPM) at Bansi Chandipur Branch Office in the district of Bankura on 6th April, 2010. He was placed under put off duty by an order dated 25th April, 2012 passed by the petitioner no. 6 herein and such order was confirmed by the petitioner no.5 *vide* memo dated 27th April, 2012. Subsequent thereto, a charge sheet was issued against Srimanta on 26th November, 2013 containing three articles of charges. During pendency of the disciplinary proceeding, Srimanta refunded the amount alleged to have been misappropriated by him. In the midst thereof, on the basis of a complaint lodged by one Sri Sanjoy Mondal against Srimanta, Joypur P.S. case no.121/13 dated 11th December, 2013 under Section 409/420 of IPC was registered. Challenging the put off duty order, Srimanta preferred an original application being O.A. 1447 of 2013 which was dismissed by an order dated 8th July, 2014. Aggrieved thereby, Srimanta preferred a writ petition being WPCT 134 of 2014 which was also dismissed by an order dated 14th August, 2014. As Srimanta's representation dated 11th August, 2014 praying for stay of the disciplinary proceedings in view of the pending criminal trial was not considered, he preferred an original application being O.A. 350/01616 of 2014 which was disposed of by an order dated 16th December, 2014 directing the disciplinary authority to consider Srimanta's representation. In compliance of the said order, the petitioner no.5 passed an order on 29th January, 2015 rejecting Srimanta's prayer for revocation of suspension. Challenging the said order, Srimanta preferred an original

application being O.A. 350/0544/2014 which was disposed of by an order dated 12th August, 2015 observing that Srimanta would be at liberty to prefer appeal before the Appellate Authority. Srimanta, accordingly, preferred an appeal on 21st September, 2015 and the same was disposed of by an order dated 20th January, 2016. Alleging non-compliance of the learned Tribunal's order dated 12th August, 2015 a contempt application was preferred. During pendency of the said contempt application, Srimanta preferred another original application being O.A. No. 00017/2016 *inter alia* praying for stay of the disciplinary proceeding which was disposed of by an order dated 3rd March, 2016 directing the disciplinary authority to consider Srimanta's representation dated 1st August, 2014. In compliance of the order dated 3rd March, 2016, the disciplinary authority passed an order on 24th May, 2016. Thereafter on 5th July, 2017 the petitioner no.5 passed an order observing that there was no bar in simultaneous action of the Court and initiation of disciplinary proceedings. Challenging the order dated 5th July, 2017, the Srimanta preferred another original application being O.A. No. 491/2016 00017/2016 which was disposed of by an order dated 6th February, 2018 directing the DA to take into consideration the Criminal Court's order judgment dated 30th March, 2017 prior to finalization of the disciplinary proceeding. In the midst thereof, an enquiry officer was appointed, who submitted his report on 19th July, 2018 to which Srimanta replied. The disciplinary authority thereafter passed a final order on 27th September, 2018 imposing a punishment of '*removal from engagement*'. Prior to conclusion of the disciplinary proceedings, Srimanta preferred another original application being O.A. No. 350/01290/ 2017 and the same

was dismissed for default on 18th February, 2019. In the midst thereof, the statutory appeal preferred against the same by Srimanta was dismissed by an order dated 6th February, 2019. Srimanta thereafter filed a revision which was also dismissed by an order dated 13th August, 2019. Aggrieved thereby, Srimanta preferred the original application being O.A. 350/01249/2019.

3. Ms. Ray, learned advocate appearing for the petitioners submits that Srimanta was granted ample opportunity to contest the disciplinary proceeding and that there has been no violation of the principles of natural justice. No procedural irregularity has been pointed out. The orders passed by the disciplinary authority, the appellate authority and the revisional authority are well reasoned and there has been no error in the decision making process warranting interference of the learned Tribunal.

4. She argues that the learned Tribunal passed the impugned order being oblivious of the fact the put off duty order passed against Srimanta was not interfered with by the learned Tribunal in the earlier original application and that the challenge against the said order also failed in the writ petition preferred by Srimanta. The charges proved against Srimanta cannot be construed to be trivial in nature and Srimanta ought to have maintained an impeccable disposition while rendering his services. Question of any relaxation of the order of removal does not occasion inasmuch as it needs to be borne in mind that while rendering public service absolute integrity and honesty is required to be preserved. Having

miserably failed in his duties, Srimanta cannot lament and seek sympathy from this Court.

5. She further argues that after issuance of the put off duty order, Srimanta on his own refunded the alleged defrauded amount to the department and such act establishes the charges levelled against him in the disciplinary proceedings.

6. Ms. Ray argues that order passed by the revisional authority does not suffer from any jurisdictional error and the learned Tribunal erred in law in reappreciating the entire evidence and in rejecting the order passed in revision and remitting the matter back to the authority for imposition of any punishment lesser in quantum than dismissal or removal from service.

7. According to Ms. Ray, the facts do not make out any case of imposition of any shocking punishment disproportionate to the misconduct on the part of Srimanta. In the backdrop of the charges proved, the impetus towards imposition of punishment of removal ought not to have been construed to be lacking. In support of the arguments reliance has been placed upon the judgment delivered in the case of *Union of India and Others -vs- M. Duraisamy*, reported in (2022) 7 SCC 475.

8. Ms. Ray further argues that the punishment imposed is not the severest under the rules since the penalty imposed would not be construed to be a disqualification for future employment.

9. *Per contra*, Mr. Sarkar appearing for the respondent submits that the charge in the criminal proceeding was similar to charge under Article III

in the charge sheet. Upon contested hearing and considering the evidence on record the competent Court by a judgment dated 30th March, 2017 had acquitted the petitioner holding that he is not guilty of the offence punishable under Section 409/420 of IPC. In view thereof, the charge under Article III stands effaced. The charges under Article I and II are also similar to that of Article III containing allegations to the effect that Srimanta had misappropriated the money of the depositors. The failure on the part of the prosecution to prove the charge in the criminal proceeding, which is similar to the charge under Article III of the charge sheet, reduces the intensity and impact of the remaining charges and renders the punishment to be harsh and disproportionate. Srimanta has already crossed the age limit to participate in selection process for any future employment and as such the punishment imposed upon him is the severest as per the relevant rules.

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

11. A perusal of the order passed by the disciplinary authority reveals that the said authority arrived at a purported finding that to conceal his offence, Srimanta *'dragged some other factors which are irrelevant and extraneous with the case'* does not stand supported with any reason. The appellate authority upon merely quoting the grounds of appeal and without disclosing any independent reason confirmed the order of removal. The revisional authority in its order dated 13th August, 2019 upon arriving at a finding that *'passbooks were not included in the list of documents (annexure –*

III) of the memorandum' cast the onus upon Srimanta to 'submit requisition for passbooks'. In the said conspectus, the learned Tribunal rightly observed that it was the duty of the prosecution to make available the documents which form basis of the charges. The learned Tribunal was also right in observing that 'two disparate version of the said Madan Mohan Jana is available, one in the departmental proceedings and other in criminal proceedings' inasmuch as in the criminal proceeding Madan Mohan Jana deposed that 'he does not remember any thing about his money transaction at Bansi Chandipur Post Office' whereas the self-same person in the departmental proceedings deposed that the concerned pass book was handed over to the BPM 'for posting of interest'. In view of such contradictions and inconsistencies the learned Tribunal rightly set aside the order passed in revision. The expressions 'honourable acquittal', 'acquitted of blame', 'fully acquitted', 'fully exonerated' are unknown to the Code of Criminal Procedure or the Indian Penal Code, which are coined by judicial pronouncements. In the present case the learned Additional Sessions Judge upon considering the evidence on record arrived at a specific finding that the prosecution has failed to prove the charges under Section 409 and 420 of IPC against Srimanta and in the backdrop of such sequence, the observation of the revisional authority that 'this clearly reveals that Hon'ble Court has not honourably exonerated Sri Das on the merit of the case' was rightly found to be unreasonable.

12. Regard being had to the facts involved and the nature of the post held by Srimanta, the learned Tribunal was of the opinion that the doctrine

of the proportionality was invokable and accordingly upon quashing the revisional authority's order remitted the matter back to the said authority '*to consider the order of acquittal and evidence in support of the conclusion against the applicant and on the basis of extenuating factors, if any, impose the punishment lesser in quantum than dismissal or removal from service*'.

13. 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 delivered in the case of *M. Duraisamy (supra)* upon which reliance has been placed by the petitioners is distinguishable on facts.

14. The learned Tribunal, upon dealing with all the factual issues arrived at specific findings and we do not find any error, least to say any patent error of law in the judgment impugned. The impugned judgment does not suffer from any jurisdictional error or any substantial failure of justice or any manifest injustice warranting interference of this Court.

15. Accordingly, the writ petition being WPCT 139 of 2022 is dismissed.

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

17. 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.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)