

**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 424 of 2012

The State of West Bengal & Ors.

Vs.

Sk. Najim Ali

For the State-Petitioners

: Mr. Tapan Mukherjee,

Ld. Sr. Advocate & Ld. AGP

Mr. Pinkai Dhole

Mr. Avishek Prasad

For the Respondent

: Mr. Abhratosh Majumder,

Ld. Sr. Advocate

Mr. Tapash Maity

Mr. Rahul Kumar Singh

Heard on : August 7, 2023

Judgment on : August 7, 2023

DEBANGSU BASAK, J.:-

1. The writ petition is directed against an order dated April 27, 2012 passed in RA-02 of 2012 by the West Bengal Administrative Tribunal.

2. By the impugned order, the Tribunal was pleased to set aside the disciplinary proceedings and the punishment awarded therein, as against the private respondent.
3. Learned Senior Advocate appearing for the State-petitioners submits that, the Tribunal erred in setting aside the entire disciplinary proceedings. He submits that, the ground for setting aside the entire disciplinary proceedings was on the basis of an alleged misconduct of the disciplinary proceedings.
4. Relying upon *(2013) 6 Supreme Court Cases 515 (Anant R. Kulkarni vs. Y.P. Education Society & Others)* and *(2013) 6 Supreme Court Cases 530 (Chairman, Life Insurance Corporation of India & Others vs. A. Masilamani)*, he submits that, the Tribunal was required to remand the disciplinary proceedings to the disciplinary authority to be conducted from the stage from where it stood vitiated. Tribunal erred in not doing so.
5. Referring to the Police Regulations of Calcutta, 1968 and particularly to Chapter XIX (Disciplinary Proceedings and Punishment) Regulation 1 and Regulation 19, learned Senior

Advocate appearing for the State-petitioners submits that, the disciplinary authority was entitled to award major punishment if the charges were proved.

6. Learned Senior Advocate appearing for the private respondent submits that, a major punishment was actually levied as against his client on the basis of a *de novo* enquiry directed to be undertaken. He submits that, the Police Regulations of 1968 does not allow a *de novo* enquiry to be made in a departmental proceedings. Therefore, the entire disciplinary proceedings stood vitiated. He submits that, first enquiry report was not accepted by the disciplinary authority. The disciplinary authority was without jurisdiction in directing a *de novo* enquiry to be made. Consequently, the Tribunal was correct in setting aside the entire disciplinary proceedings. His client should be refunded the amount deducted by way of punishment imposed in the disciplinary proceedings along with commensurate interest. He points out that, his client was denied promotion under the Career Advancement Scheme twice. Such facility should also be restored.

7. Departmental proceedings was initiated as against the private respondent being departmental proceeding no.140 dated December 20, 2006. The enquiry officer after completion of the enquiry submitted a report, where the enquiry officer found three of the charges to be established as against the private respondent and the other charges to be not proved.
8. The disciplinary authority, passed an order dated January 29, 2008 disagreeing with the view taken by the enquiry officer and directed a *de novo* departmental enquiry to be made. A departmental enquiry was started afresh and an enquiry report submitted which the disciplinary authority accepted by imposing a punishment of reduction of a pay of Rs.400/-. Appeal was carried against and order of the disciplinary authority concurring with the punishment imposed. The private respondent thereafter approached the Tribunal by way of RA -353 of 2009 which was disposed of by the impugned order dated December 13, 2011.
9. By the impugned order, the Tribunal set aside the entire departmental proceedings as against the private respondent.

10. *Anant R. Kulkarni (supra)* is of the view that, where the punishment imposed in the disciplinary proceedings is set aside, then, the Court should remit the case concerned to the disciplinary authority to conduct the proceeding from the point it stood vitiated and to conclude the same in accordance with law.

11. *A. Masilamani (supra)* is of the following view:

“15. In view of the issues raised by the learned counsel for the parties, the following questions arise for our consideration:

15.1. When a court/tribunal sets aside the order of punishment imposed in a disciplinary proceeding on technical grounds i.e. non-observance of statutory provisions, or for violation of the principles of natural justice, then whether the superior court, must provide opportunity to the disciplinary authority to take up and complete the proceedings from the point that they stood vitiated; and

15.2. If the answer to Question 1 is that such fresh opportunity should be given, then whether the same may be denied on the ground of delay in initiation, or in conclusion of the said disciplinary proceedings.

16. It is a settled legal proposition, that once the court sets aside an order of punishment, on the ground that the enquiry was not properly conducted, the court cannot reinstate the employee. It must remit the case concerned to the disciplinary authority for it to conduct the enquiry from the point that it stood vitiated, and conclude the same. (Vide ECIL v. B. Karunakar, Hiran Mayee Bhattacharyya v. S.M. School for Girls, U.P. State Spg. Co. Ltd. v. R.S. Pandey and Union of India v. Y.S. Sadhu.)

17. The second question involved herein is also no longer res integra. Whether or not the disciplinary authority should be given an opportunity to complete the enquiry afresh from the point that it stood vitiated depends upon the gravity of delinquency involved. Thus, the court must examine the magnitude of misconduct alleged against the delinquent employee. It is in view of this, that courts/tribunals are not competent to quash the charge-sheet and related disciplinary proceedings, before the same are concluded on the aforementioned grounds.”

12. In the disciplinary proceedings initiated as against the private respondent, an enquiry report was submitted. The disciplinary authority by an order dated January 29, 2008 did not agree with the enquiry report and directed *de novo* enquiry into the proceedings.
13. The *de novo* enquiry resulted in an enquiry report which was accepted by the disciplinary authority. Disciplinary authority by an order dated September 29, 2008 imposed a punishment as against the private respondent directing that the pay of the private respondent be reduced at Rs.400/- per month for a period of five years with immediate effect. The appellate authority concurred with the disciplinary authority so far as the quantum of punishment is concerned. The Tribunal set aside the entire disciplinary proceedings on the

ground that, the Regulations of 1968 does not provide for *de novo* enquiry to be made.

14. The disciplinary proceedings stood vitiated on and from January 29, 2008 when the disciplinary authority directed *de novo* proceedings to be initiated. Since the *de novo* proceedings are not contemplated under the Regulations of 1968, the Tribunal was correct in setting aside the order imposed in the disciplinary proceedings as against the private respondent.
15. The Tribunal, however, was required to remit the disciplinary proceedings to the disciplinary authority from the stage from where, the disciplinary proceedings stood vitiated, that is, from January 29, 2008 on the strength of the two decisions of the Supreme Court being *A. Masilamani (supra)* and *Anant R. Kulkarni (supra)*.
16. In such circumstances, we set aside the impugned order of the Tribunal. We direct commencement of the disciplinary proceedings from the stage it attained on January 29, 2008 with the order dated January 28, 2008 of the disciplinary authority being also set aside. All orders subsequent to the

January 29, 2008 in the disciplinary proceedings are also set aside.

17. So far as the deduction from the pay of the private respondent concerned, the same will abide by the result of the disciplinary proceedings.
18. We are informed that, the private respondent was under suspension as on January 28, 2008. We are also informed that the private respondent is presently working and is posted as Inspector, C-company, Reserved Force of Kolkata Police. We are also informed that, the suspension order invoked on January 29, 2008 was withdrawn on the passing of the final order.
19. Since we set aside the final order and since the respondent is presently working, it would be appropriate to leave the issue with regard to continuance of suspension as against the private respondent with the disciplinary authority.
20. Since the disciplinary proceedings are pending for a considerable period of time, it would be appropriate that in the interest of justice, the disciplinary authority concludes

the exercise as expeditiously as possible and preferably within three months from date.

21. **WP.ST 424 of 2012** is disposed of without any order as to costs.

(Debangsu Basak,J.)

22. I Agree.

(Md. Shabbar Rashidi, J.)