

**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 410 of 2013

Dipankar Biswas

Vs.

The State of West Bengal & Ors.

For the petitioner

: Mr. Partha Ghosh

Mr. Amal Kumar Datta

Mr. Rahul Agarwala

Ms. Simran Sureka

Mr. Debashis Das

For the State

: Mr. Tapan Kumar Mukherjee, Ld. AGP

Mr. Pinaki Dhole

Mr. Somnath Naskar

Heard on

: July 19, 2023

Judgment on

: July 19, 2023

DEBANGSU BASAK, J.:-

1. The writ petitioner is aggrieved by an order dated September 20, 2013 passed by the West Bengal Administrative Tribunal in OA-1693 of 2009.

2. By the impugned order, the Tribunal refused to set aside an order of dismissal of the writ petitioner in a disciplinary proceeding.
3. Learned Advocate appearing for the writ petitioner submits that, the writ petitioner explained his absence for 138 days for which he was charged with. He draws the attention of the Court to several documents annexed to the writ petition. He submits that, initially, the writ petitioner left his company and battalion on August 16, 2002 on hearing his son's illness. On reaching home, the writ petitioner involved in a motor accident on August 17, 2002 and was under treatment. He informed the authorities that on September 2, 2002 he fell down in the bathroom and received injury.
4. Learned Advocate appearing for the writ petitioner submits that, a punishment for dismissal from service on account of unauthorized absence is harsh. He relies upon *2006 (1)CLJ (Cal)386 (Madhusudan Chowdhury vs. State of West Bengal & Ors.)*, *2013(4)CHN(Cal)562 (Barun Chatterjee vs. State of West Bengal)* and submits that, since unauthorized absence does not involve moral turpitude, a punishment of dismissal cannot be awarded as was held in the two authorities. He

relies upon *2012 (2) Supreme 254 (Krushnakant B. Parmar vs. Union of India & Anr.)* and *(2010)2 WBLR (SC) 99 (Chairman cum Managing Director, Coal India Ltd. & Anr. Vs. Mukul Kumar Choudhuri & Ors.)* and submits that, a dismissal from service on account of unauthorized absence was harsh and was required to be set aside.

5. Learned Senior Advocate appearing for the State submits that, the two authorities of the Calcutta High Court proceeded on the basis of consideration of Regulations 856 and 857 of the Bengal Police Regulation, 1943. The petitioner was a constable of Calcutta Police and was governed by the provisions of the Police Regulations of Calcutta, 1968.
6. Learned Senior Advocate appearing for the State draws the attention of the Court to Regulation 2 Chapter 19, Regulations 1,5,8 and 9(6)(b) of the Regulation of 1968 and submits that, unauthorized absence is considered to be reflecting on the character of the delinquent. Since character of the delinquent is involved, a punishment for dismissal from service in respect of a police force is called for. He submits that, in similar circumstances, a Coordinate

Bench while considering a disciplinary proceeding as against a constable of the Calcutta Police upheld a punishment of dismissal from service in *(2011)4 CAL LT 570 (HC) (Ratan Dutta vs. State of West Bengal & Ors.)*. He relies upon *(1996)1 Supreme Court Cases 302 (State of U.P. And Others. Vs. Ashok Kumar Singh and Another)* and *(2014) 4 Supreme Court Cases 108 (Chennai Metropolitan Water Supply and Sewerage Board and Others vs. T.T. Murali Babu)* and submits that, the quantum of punishment to be imposed should best be left to the disciplinary authority.

7. In the facts of the present case, since the petitioner was a police constable and belonging to a disciplined force, quantum of punishment imposed was appropriate to the charges established. Consequently, according to the learned Senior Advocate for the State, no interference is called for.
8. Petitioner was proceeded against departmentally for unauthorized absence from August 16, 2002 till December 31, 2002, that is, for 138 days. Enquiry proceedings were held where the petitioner was found liable to be proceeded against. Departmental proceedings were initiated where the petitioner was found guilty. In the departmental proceeding

apart from his unauthorized absence for the period from August 16, 2002 to December 31, 2002 for 138 days being taken into consideration, his service record was also taken into consideration. It was noted that the petitioner earned three punishments with only one on record. Petitioner was charged with proceeding no.23 dated January 14, 2002 for his unauthorized absence of 767 days and was punished by withholding two increments and extraordinary leave for 77 days. It was found that, in such disciplinary proceedings, his long unauthorized absence was found to be affecting the company in which he was posted with his colleagues not being able to avail of their regular leave. Considering such facts, a punishment of dismissal from service was imposed on the petitioner which was assailed before the Tribunal. By the impugned order, the Tribunal dismissed the original application filed by the petitioner.

9. *Madhusudan Chowdhury (supra) and Barun Chatterjee (supra)* are by Coordinate Benches and considers Regulations 856 and 857 of the Police Regulation of Bengal, 1943. The Police Regulation of Calcutta, 1968 is later in point of time and regulates the affairs of police personnel

engaged with the Kolkata Police. Regulations 2 of Chapter 1, Regulation 1, 5,8 and 9(6)(b) of Chapter 19 are relevant in the present context and they are as follows:

“Chapter-I

2. Limitation of application.- *These Regulations are applicable only to the Calcutta Police Force.*

Chapter-XIX

1. General. Notification No.4114-P1., dated the 4th October 1962.- *Punishments shall be of two classes, namely, major punishments and minor punishments. Major punishments include dismissal, removal from service, reduction, deprivation of approved service increment. Minor punishments include warning, censure (reprimand for misconduct), extra drill, extra fatigue duty, confinement to quarters and fine.*

Suspension is not to be considered as a specific punishment, and is only authorized in cases where the continuance in office of an Officer pending enquiry into his conduct is prejudicial to the public interest. When the enquiry is completed, some definite order of acquittal or punishment shall be recorded.

5. Retention in service of police officers sentenced by Criminal Courts.- *Every police officer sentenced by a Court for an offence implying moral turpitude shall, unless the Commissioner of Police otherwise orders, be dismissed.*

A police officer sentenced by a Court for an offence not implying moral turpitude shall ordinarily be dismissed but in trivial cases some more lenient form of punishment than dismissal may be awarded or the offender may not be punished. In such cases the

proceedings shall contain a record of the reasons for dismissing or not dismissing the offender.

8. Absence without leave.-*When an officer absents himself without leave (otherwise than by overstaying leave), and it is not thought desirable to grant him regular leave, the delinquent may be punished for misbehavior after drawing up regular proceedings.*

9(6)(b). *The enquiring officer or the authority empowered to award punishment to the person charged, as the case may be, shall, after considering such casue as may be shown by the person charged against the proposed penalty and after considering the previous character or the person charged, award such punishment to the person charged as he thinks fit."*

10. Regulation 2 of Chapter 1 stipulates that, the Regulation of 1968 will apply to the police personnel of Kolkata Police. Petitioner was a constable of Kolkata Police. Regulation 8 of Chapter 19 stipulates that when police personnel absents himself without leave (otherwise than by overstaying leave), and it is not thought desirable to grant him regular leave, the delinquent may be punished for misbehavior after drawing up regular proceedings. Regulation 9(6)(b) allows the enquiring officer or the authority empowered to award punishment to take into consideration the previous

character of the person charged and award such punishment to the person charged as he thinks fit.

11. Misbehavior as prescribed in Regulation 8 will relate to the character of the delinquent. Moral turpitude is considered in Regulation 5 of Chapter 19. It involves proceedings before a Court of law. It prescribes that, where, any police personnel is sentenced by a Court for offence implying moral turpitude, shall unless the Commissioner of Police otherwise orders, be dismissed. Any sentence by a Court not implying moral turpitude shall ordinarily be resulting dismissal but in trivial cases some more lenient form of punishment than dismissal may be awarded.
12. A delinquent was proceeded against under the provisions of the Police Regulation of Calcutta, 1968 in *Ratan Dutta (supra)*. There, the Coordinate Bench considered various authorities of the Supreme Court to the effect that, Courts ordinarily do not interfere with the quantum of punishment imposed in a disciplinary proceeding in respect of a disciplined force.
13. *Krushnakant B. Parmar (supra)* and *Madhusudan Chowdhury (supra)* relates to the disciplinary proceeding in respect of

employees who were not the members of a disciplined force. Therefore, it would be inappropriate to apply such ratio to the facts and circumstances of the present case.

14. In *Ashok Kumar Singh & Another (supra)* and *T.T. Murali Babu (supra)* the Supreme Court dealt with the scope of judicial review of punishment awarded after departmental enquiry. In *Ashok Kumar Singh & Another (supra)*, a police personnel was involved, there, the Supreme Court refused to reduce the quantum of punishment imposed. In *T.T. Murali Babu (supra)*, again the proportionality/quantum of punishment imposed and the scope of judicial review with regard thereto was discussed. On the facts, it was held that, the High Court erred in interfering with the quantum of punishment imposed.
15. In *T.T. Murali Babu (supra)*, the Supreme Court is of the view that the doctrine of proportionality in the case of imposition of punishment in service law gets attracted when a Court on the analysis of materials brought on record comes to the finding that the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the Court. In the facts of the present case, the petitioner is a

member of the disciplined force and was found to be in unauthorized absence for a period of 138 days. That apart, there were three previous instances of disciplinary proceedings being initiated as against the petitioner and one resulting in sentence of lighter nature for unauthorized absence.

16. In one of the previous disciplinary proceedings, it was found that, the unauthorized absence of the petitioner was affecting the discipline of the company in which he was posted. His unauthorized absence was resulting in his colleagues not receiving their regular leaves.
17. In such context, his unauthorized absence of 138 days would also result in a corresponding negative impact on the regular leave of his colleagues who could otherwise be entitled to leave on regular basis.
18. In such circumstances, we are unable to persuade ourselves that, the quantum of punishment imposed on the writ petitioner was disproportionate to the charges established.
19. We find no reason to interfere with the impugned order.

20. **WP.ST 410 of 2013** is dismissed without any order as to costs.

(Debangsu Basak,J.)

21. I Agree.

(Md. Shabbar Rashidi, J.)