

27.07.2023
Item No.12
Ct. No.5
CHC
(dismissed)

WP.ST 459 of 2013

Basudeb Roy
Vs.
The State of West Bengal & ors.

Mr. Samiran Mandal,
Mr. Abhinaba Dan,
Mr. Nitish Samanta,
Ms. Sreemoyee Datta
...for the writ petitioner

Mr. Tapan Kr. Mukherjee, Sr. Advocate & A.G.P.
Mr. Somnath Naskar
...for the State

The writ petition is directed against an order dated November 30, 2012 passed by the West Bengal Administrative Tribunal in O.A.3 of 2012.

By the impugned order, the Tribunal rejected the challenge to an order of dismissal passed on review.

The writ petitioner was working as Constable with the Kolkata Police. The departmental proceeding bearing no.161 dated October 28, 2004 was initiated as against the petitioner on the allegation of the petitioner taking money from seven several persons to

the tune of Rs.2,35,000/- on the promise of offering job to those persons.

The seven several persons, from whom, the writ petitioner allegedly took the money, filed several complaints with the police. Criminal cases were initiated as against the petitioner.

Charges in the departmental proceeding were framed as against the petitioner. An enquiry proceedings were held. During enquiry, the charges levelled were found established. Thereafter, the Disciplinary Authority passed the final order as against the petitioner dismissing the petitioner from service as penal measure. Petitioner preferred an appeal against the order of dismissal from the service. Such appeal was rejected.

The criminal proceedings launched as against the petitioner subsequently resulted in orders of acquittal. The petitioner being acquitted from criminal case filed an Original Application before Tribunal by way of O.A.648 of 2010. The Tribunal disposed of O.A.648 of 2010 by the order dated April 28, 2011 granting liberty to the petitioner to approach the Commissioner of Police for review of the punishment order following his acquittal from the criminal cases. The Commissioner of Police, Kolkata was directed to dispose of the matter after granting the petitioner an opportunity of personal hearing.

Pursuant to the order dated April 28, 2011, the Commissioner of Police granted a personal hearing to the petitioner on his application for review. Commissioner of Police, rejected the prayer of review by his order dated September 28, 2011. Aggrieved thereby the petitioner approached the Tribunal by way of O.A.3 of 2012 in which, the impugned order was passed.

While considering the prayer for review the Commissioner of Police noted the distinctions between the criminal proceeding and the disciplinary proceeding. Commissioner of Police noted that in a criminal proceeding, safety of the public was an issue while in a departmental proceeding, the dominant purpose was the purity and efficiency of public service. Moreover, there were different standards of proof so far as criminal and departmental proceeding were concerned. He noted that in a criminal proceeding, an issue was required to be established beyond reasonable doubt, while in a departmental proceeding, such issue may be considered on the basis of preponderance of probability. Commissioner of Police found that the fact of the petitioner taking the sum of Rs.2,35,000/- from seven persons stood established. He noted that the de facto complainant in a criminal case did not adduce any evidence. He noted that, the money that the petitioner took was on

the promise of grant of job. He concurred with the findings of the Disciplinary Authority and did not find any merit in the review.

As noted above, the petitioner faced a departmental proceeding on account of taking money from seven several persons. The charge of the taking money stood established. The Disciplinary Authority found that in order to maintain purity and efficiency in the service, an order of dismissal was required.

An order of punishment, is not lightly interfered with by a Court unless it is shown that the order of punishment was vitiated on the doctrine of proportionality or was vitiated by *mala fide*.

In the facts of the present case, since the allegations are of such nature, when established, justifiably lead to a dismissal from service. In the facts of the present case, the Disciplinary Authority found it prudent to dismiss the petitioner from service on the violation of the facts proved. The acquittal from the criminal case did not alter the situation in favour of the petitioner. The acquittal was not one of honourable acquittal. Moreover, the evidence adduced in the disciplinary proceedings established the taking of money by the petitioner.

In such circumstances, we find no ground to interfere with the impugned order.

W.P.S.T. 459 of 2013 is dismissed without
any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)