

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 508 of 2013

The State of West Bengal & Ors.

Versus

Gayanath Roy alias Karuna Sindhu Roy

For the Writ

Petitioners/State : Mr. Tapan Kumar Mukherjee, Sr
Adv. & A.G.P.
: Mr. Pinaki Dhole, Adv.
: Mr. Somnath Naskar, Adv.

For the respondent : Md. Nure Zaman, Adv.
: Mr. Jahangir Badsha, Adv.

Heard on : August 14, 2023

Judgment on : August 31, 2023

Md. Shabbar Rashidi, J.:

1. The writ petition is in assailment of the judgment and order passed on July 04, 2013 in OA No. 1275 of 2012 by

the West Bengal Administrative Tribunal at the behest of the State.

- 2.** The petitioner was a police constable. The departmental proceeding being Proceeding No. 110 of 1999 was started against the petitioner upon an allegation that he was directly involved in commission of murder of one Amarendra Narayan Roy under Ratua P.S. within the district of Malda in the night of February 09, 1994 resulting in the institution of Ratua P.S. Case No. 09/1994 dated February 09, 1994 under Section 456/302/329/34 of the Indian Penal Code, 1860 and 25/27 of the Arms Act, 1959. The petitioner also faced certain minor charges of being absent from duty on February 08, 1994 and February 09, 1994 without any information and due permission from the authorities. Upon conclusion of the enquiry, the petitioner was served with a show-cause notice intimating him the proposal for punishment and ultimately final order of punishment in the form of dismissal from service was passed by the

disciplinary authority wherein the order of disciplinary authority was upheld.

3. The petitioner was acquitted in the criminal case and upon such acquittal, he preferred an application before the authority for setting aside his dismissal order together with a prayer of reinstatement on September 21, 2010. It was contended that such application of the writ petitioner was disposed of by the commissioner of police in dismissal thereof without assigning any reasons. Aggrieved by such dismissal of his representation, the petitioner moved an application before the West Bengal State Administrative Tribunal being OA 228 of 2011.

4. Upon hearing the Tribunal was pleased to set aside the order of the Commissioner of Police directing it to examine the Judgment of the Criminal Court and thereafter take its reasoned decision if the petitioner was unable to get any benefit out of the Judgment delivered by the Criminal Court. In terms of the directions of the Tribunal, the Commissioner of Police passed an order rejecting the prayer of the petitioner on the ground that

order of discharge or acquittal of a police officer by Court was not a bar to await punishment in a departmental proceeding, in terms of Regulation 4 Chapter XIX of Police Regulation Calcutta, 1968. Such order of the commissioner of police was challenged by the petitioners in OA 1275 of 2012 before the Tribunal resulting in the impugned order.

5. By the impugned order, the Tribunal was pleased to hold that the main charge against the petitioner was not established during the enquiry and as such the petitioner could not have been held guilty of such charge. In that view of the fact, the Tribunal was of the view that the dismissal of the petitioner from service was bad in law. By the impugned order, the Tribunal went on to quash the final order of the disciplinary authority, appellate order as well as the order passed by the Commissioner of Police on the representation made by the petitioner. The authorities were directed to release all the admissible retiral benefits of the petitioner together with any arrears thereto.

6. The State of West Bengal has challenged the impugned order on the ground that the Tribunal was not justified in reappraising the entire evidence in the departmental proceeding. The learned Tribunal, by the impugned order had deposed of an application filed on behalf of the private respondent challenging the reasoned order passed by the Commissioner of Police on his representation. Challenge to the final order passed by the disciplinary authority and the appellate authority was earlier heard by the Tribunal in the first round of litigation in OA 228 of 2011. The Tribunal was not justified in reopening the entire issue in the impugned order and went on judicial review upon the order passed by the Commissioner of Police. In support of his contention, learned senior advocate for the petitioner relied upon **(2021) and 11 Supreme Court cases 321 (Union of India and others versus Dalbir Singh), (2013) 2 Supreme Court Cases 610 (Union of India and others versus P. Gunasearan), and 1995 6**

Supreme Court Cases 750 (Union of India and another versus B.C. Chaturvedi).

7. Relying upon **(2014) 3 Supreme Court Cases 610 (State of West Bengal and others Shankar Ghosh)**, learned advocate for the writ petitioner submitted that even when the charges in the criminal case and the departmental proceedings are same, there is no rule of automatic reinstatement on acquittal by the criminal Court. Learned senior advocate for the writ petitioner also relied upon **(2012) 9 Supreme Court Cases 685 (State NCT of Delhi versus Ajay Kumar Tyagi)** for the same proposition that exoneration in a criminal proceeding would not ipso facto terminate a departmental proceeding.
8. Relying on **(1996) 7 Supreme Court Cases 509**, learned senior advocate for the writ petitioner/state submitted that it is the exclusive domain of the disciplinary authority to consider the evidence on record and come to a conclusion that the charges were proved or not. The Tribunal has no power to trench on the

jurisdiction to appreciate evidence and to arrive at its own conclusion.

9. Learned senior advocate for the writ petitioners also submitted that the private respondent was acquitted from the criminal case but the same cannot be said to be an honourable acquittal. On such proposition learned senior advocate for the writ petitioner relied upon **(2006) 5 SCC 446 (G.M. Tank versus State of Gujarat and another, AIR (1964) Supreme Court 787 (R. P. Kapur V. Union of India and Another)** and **(2013) 1 Supreme Court cases 598 (Deputy Inspector General of Police and Another versus S. Samuthiram).**

10. On the other hand, learned advocate for the private respondent has submitted that the departmental proceeding and the criminal case were based on similar set of facts. Acquittal in the criminal proceeding will surely have a bearing on the outcome of the departmental proceeding. In support of his contention, learned advocate for the private respondent has relied

upon **(1999) 3 SCC 679 (Capt. M. Paul Anthony versus Bharat Gold Mines Ltd. and another.**

11. Relying upon **2012 (2) Cal Law Journal (Cal) 245 (Nanigopal Majumdar versus State of West Bengal),**

learned advocate for the private respondent has submitted that the charges against him were not proved in the departmental proceeding and the punishment awarded to him was bad in law. Learned advocate for the private respondent had also drawn our attention to Rule 8 (5) of Police Regulations of Calcutta and submitted that the enquiring authority or the disciplinary authority failed to take into consideration non-compliance of the aforesaid rule in arriving at a conclusion of guilt of the private respondent.

12. As noted, the private respondent was constable of police serving under Calcutta Police. He faced a departmental enquiry on the charges of being involved in commission of a heinous crime like murder coupled with lurking house trespass and housebreaking by night. He was also charged with was undisciplined conduct and

dereliction of duties as he left the barrack without prior intimation and due permission from the authorities. The private respondent was also charged for not informing the authorities regarding his implication in a criminal case.

- 13.** An enquiry was conducted and the enquiry officer, by his report dated December 17, 1999 observed that charge regarding undisciplined conduct and dereliction of duties unbecoming of a member of the police force in that he left his barrack on February 8, 1994 unauthorizedly, without prior permission from the competent authorities was established. The enquiry officer also held in his report that the charged officer did not report anything to the superior authorities as a member of the disciplined force about the incident in connection with Ratua Police Station Case No. 9 of 1994 was also proved beyond doubt. The enquiry officer, however, withheld his findings with regard to the charge regarding his involvement in the criminal case until disposal of the criminal case.

- 14.** The disciplinary authority, by a provisional order dated April 02, 2004 directed the private respondent to show cause as to why he shall not be dismissed from service. By its final order dated August 08, 2001, the disciplinary authority dismissed the private respondent from service for gross misconduct unbecoming of a member of disciplined force.
- 15.** The private respondent carried an appeal against such final order and the Appellate Authority, by its order dated November 01, 2004 dismissed the appeal agreeing with the final order passed by the disciplinary authority.
- 16.** The private respondent was acquitted in Sessions Trial No. 1 (4) of 2008 arising out of Ratua PS Case No. 9 of 1994 vide Judgment and Order passed therein on March 29, 2010. Following such acquittal, the private respondent preferred a representation on September 21, 2010 which was disposed of by a writing dated November 11, 2010.
- 17.** The private respondent challenged the order of dismissal of his representation in OA 228 of 2011 before

the West Bengal Administrative Tribunal which was disposed by an order dated July 14, 2011. The Tribunal directed the Commissioner of Kolkata Police to consider the representation of the respondent afresh along with the judgment in criminal case. The Commissioner of Kolkata Police, upon reconsideration in terms of the directions of the tribunal, by his reasoned order dated November 24, 2011 negated the prayer of the private respondent for reinstatement.

- 18.** The private respondent again approached The Tribunal in OA 1275 of 2012 wherein, by the impugned order, the Tribunal set aside the order of dismissal holding that the main charge of being involved in a criminal case was not established. The Tribunal held that the respondent could not have been dismissed from service on the basis of evidence gathered in the departmental proceeding and consequently directed payment of all the admissible retiral benefits to the private respondent as if he had not been dismissed from service.

19. The petitioner has come up with a case that the tribunal exceeded its jurisdiction by re-evaluating the evidence and coming to a finding at variance with that arrived at by the disciplinary authority, appellate authority as well as the Commissioner of Kolkata Police. The Tribunal acted as an appellate body and passed the impugned order upon evaluation of evidence collected in course of departmental proceeding. The petitioner has relied upon Rule 4 under Chapter XIX of the Police Regulation of Calcutta which reads thus:

4. Discharge or acquittal not a bar to departmental punishment. - An order of discharge or acquittal of a police officer by a Court shall not be a bar to the award of departmental punishment to that officer in respect of the same cause or matter.

20. The Tribunal directed reconsideration of the representation of the respondent in the wake of his acquittal in the criminal case holding that the charges in

the criminal case and in the departmental proceeding were substantially similar. With the deepest of respect, we are unable to endorse such view. Being implicated in a criminal case and not informing the authorities of involvement in a criminal case by a member of a disciplined force are two different charges. An employee, not to talk of a member of a disciplined force, is duty bound, under the terms of the employment guided by established rules, to intimate his superior authorities regarding his involvement/implication in a criminal case. No material has been brought forth to establish that the respondent duly intimated the authorities about his involvement in a criminal case. Rather, it transpires that, such fact was discovered much after the initiation of the criminal case, when the respondent was arrested in connection with the criminal case and was thereafter put under suspension.

- 21.** The respondent was also facing a charge of undisciplined demeanour on account of his unauthorized

absence from barrack and questionable conduct in sending his leave application to the authorities.

22. Be that as it may, the respondent's acquittal in the criminal case, *ipso facto* did not afford him a vested right to be exonerated from the departmental proceeding together with reinstatement. The disciplinary authority was well within its jurisdiction to award punishment inspite of his acquittal in the criminal case, in terms of Rule 5 of Police Regulation of Calcutta. In the case of **Inspector General of Police v. S. Samuthiram (Supra)**, it was held by the Hon'ble Supreme Court that,

“26. As we have already indicated, in the absence of any provision in the service rules for reinstatement, if an employee is honourably acquitted by a criminal court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the

onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile, etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say that in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so.

27. We have also come across cases where the service rules provide that on registration of a criminal case, an employee can be kept under suspension and on acquittal by the criminal court, he be reinstated. In such cases, the reinstatement is automatic. There may be cases where the service rules provide that in spite of domestic enquiry, if the criminal court acquits an employee honourably, he could be reinstated. In other words, the issue whether an employee has to be reinstated in service or not depends upon the question whether the service rules contain any such provision for reinstatement and not as a matter of right. Such provisions are absent in the Tamil Nadu Service Rules.”

23. R.P.Kapur (Supra) also noted that that in case of acquittal in the trial of a criminal case, the proceeding may continue. In the facts of the present case, such proposition is fortified with Rule 5 of the 1968 Regulations. Moreover, the respondent was facing the

proceeding on certain charges which were quite independent of that involved in the criminal case.

24. Similarly, in the case of **G.M.Tank (Supra)**, the Hon'ble Supreme Court observed that the facts and evidence in the departmental proceeding as well as the criminal case were same without there being any iota of difference went on to allow the appeal as the criminal case ended in acquittal. In the said case, the Hon'ble Supreme Court while examining the possibility of continuance of departmental proceeding and criminal case based on same set of facts, noted that the decision in the case of **Capt. M. Paul (Supra)** were applicable in view of honourable acquittal of the delinquent in the criminal case.

25. In **Ajay Kumar Tyagi (Supra)**, Hon'ble Supreme Court was pleased to set aside the order passed by the High Court quashing the criminal case following exoneration in the departmental proceeding and laid down that,

“24. Therefore, in our opinion, the High Court quashed the prosecution on total misreading of the judgment in P.S. Rajya case [(1996) 9 SCC 1: 1996 SCC (Cri) 897]. In fact, there are precedents, to which we have referred to above, that speak eloquently a contrary view i.e. exoneration in departmental proceeding ipso facto would not lead to exoneration or acquittal in a criminal case. On principle also, this view commends us. It is well settled that the standard of proof in a department proceeding is lower than that of criminal prosecution. It is equally well settled that the departmental proceeding or for that matter criminal cases have to be decided only on the basis of evidence adduced therein. Truthfulness of the evidence in the criminal case can be judged only after the evidence is adduced therein and the

criminal case cannot be rejected on the basis of the evidence in the departmental proceeding or the report of the inquiry officer based on those evidence.

25. We are, therefore, of the opinion that the exoneration in the departmental proceeding ipso facto would not result in the quashing of the criminal prosecution. We hasten to add, however, that if the prosecution against an accused is solely based on a finding in a proceeding and that finding is set aside by the superior authority in the hierarchy, the very foundation goes and the prosecution may be quashed. But that principle will not apply in the case of the departmental proceeding as the criminal trial and the departmental proceeding are held by two different entities. Further, they are not in the same hierarchy.”

26. The facts of the present case are very much identical to the facts obtaining in **Sankar Ghosh (Supra)**. The respondent therein was a police constable facing a departmental proceeding and a criminal case under Section 395/412 of the Indian Penal Code, 1860. Upon his acquittal in the criminal case, the delinquent approached West Bengal Administrative Tribunal which disposed of the Original Application directing his reinstatement. The State carried an appeal to the High Court which affirmed the order passed by the Tribunal and dismissed the appeal. The Hon'ble Supreme Court, taking note of the provisions contained in Regulation 4 under Chapter XIX of the Police Regulation of Calcutta, 1968 held that,

“19. Regulation 4 of Chapter XIX of the Police Regulations of Calcutta, 1968, which is applicable to the case in hand, specifically provides that acquittal or discharge in a criminal proceeding shall

not be a bar to award punishment in a departmental proceeding in respect of the same cause or matter. The said Regulation is extracted below for easy reference:

“4.Discharge or acquittal not a bar to departmental punishment.—An order of discharge or acquittal of a police officer by a court shall not be a bar to the award of departmental punishment to that officer in respect of the same cause or matter.”

The above rule indicates that even if there is identity of charges levelled against the respondent before the criminal court as well as before the enquiry officer, an order of discharge or acquittal of a police officer by a criminal court shall not be a bar to the award of the departmental punishment. The Tribunal as well as the

High Court have not considered the abovementioned provision and have committed a mistake in holding that since the respondent was acquitted by a criminal court of the same charges, reinstatement was automatic.

20. We find it difficult to support the finding recorded by the Tribunal which was confirmed by the High Court. We, therefore, allow the appeal and set aside the order of the Tribunal, which was affirmed by the High Court. However, there will be no order as to costs.”

27. In the case of **Nani Gopal Majumder (Supra)** a Coordinate Bench of this Court while allowing the writ petition, found that the report of the Enquiry Officer, therein, was illogical for all practical purposes suffering from procedural impropriety and was shocking to the

conscience of the Court. The same was passed without adhering to the principles of natural justice.

28. However, in the facts of the case at hand, no such case has been made out. The only case put forward by the respondent was that since he had been acquitted of the criminal charges, punishment in the departmental proceeding was not justified.

29. In **Capt. M. Paul Anthony (Supra)** the Appeal was allowed in consideration of the fact that the two proceedings were banking upon same set of facts, the witnesses examined in the criminal case and the departmental proceeding were same and the failure in both the proceedings was that no search and seizure was made from the residence of the delinquent.

30. However, we find it prudent to reiterate that the departmental proceeding challenged against and the criminal case were not at all based on identical set of facts. The criminal case was initiated on an allegation of involvement of the respondent in the murder of a person at his residence far away from Calcutta where he was

posted. On the contrary, in the departmental proceeding, besides being involved in a criminal case for heinous crime of murder, he was charged with suppressing his implication in a criminal case from the authorities in derogation of established rules in this regard. He was also charged for unauthorized absence from the Barrack without prior permission and due intimation. Some set of witnesses were examined in his proceedings. The scope and ambit of the two proceedings were different. Therefore, it cannot be said that the two proceedings stood on identical set of facts in order to conclude that acquittal in one would entail exoneration in the other proceeding.

- 31.** Another aspect which requires consideration is that the departmental proceeding was pursued. The Enquiry Officer went on to take evidence in the proceeding and came to a specific conclusion on the basis of evidence so collected. The disciplinary authority concurred with the findings of the Enquiry Officer and awarded punishment which was upheld by the Appellate Authority. Nothing

has been brought to our notice that such finding of the Enquiry Officer, disciplinary authority or the appellate authority was manifestly perverse of such a degree sufficient to shudder the conscience of the Court. In fact, the reasoned order passed by the Commissioner of Police, Calcutta passed in terms of the directions of the Tribunal seems to be well founded. In consideration of the available evidence, the conclusion arrived at by the authorities may well be termed as a plausible point of view.

32. In the case of **Dalbair Singh (Supra)** the Hon'ble Supreme Court laid down certain guiding factors regarding the scope and extent of judicial review in the wake of a departmental proceeding and held that judicial review is not an appeal. It was held thus,

“21. This Court in Union of India v. P. Gunasekaran [Union of India v. P. Gunasekaran, (2015) 2 SCC 610: (2015) 1 SCC (L&S) 554] had laid down the broad

parameters for the exercise of jurisdiction of judicial review. The Court held as under: (SCC pp. 616-17, paras 12-13)

“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.”

33. Similar principles were laid down in **S. Subramaniam (Supra)**, **B. C. Chaturvedi (Supra)** and **P. Gunasekaran (Supra)**. It was held that the Court/Tribunal in its power to judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on evidence. The court can interfere where the authority held the proceeding in a manner which is inconsistent with the rule of natural justice or in violation of statutory rules.

34. In the case at hand, nothing has been brought to demonstrate that dismissal of the representation of the respondent or in conducting the conducting the disciplinary proceeding, the authorities acted in violation of rules of natural justice or in derogation of the established rules guiding the departmental proceedings.

35. Therefore, in the light of discussions made hereinbefore, the impugned order passed by the tribunal in O.A. 1275 of 2012 is liable to be set aside. We accordingly, set aside the impugned order passed by the West Bengal Administrative Tribunal. The order passed by the Commissioner of Police Kolkata dated October 24, 2011 shall stand restored.

36. Accordingly, the instant writ petition being **WPST 508 of 2013** is hereby allowed without any order as to costs. Connected applications, if any, shall stand disposed of accordingly.

[MD. SHABBAR RASHIDI, J.]

37. I agree.

[DEBANGSU BASAK, J.]