

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

M.A.T. No. 39 of 2022

**The Director General, Government of India, Ministry of Home
Affairs, Sashastra Seema Bal & Ors.**

Vs.

Debasish Chatterjee @ Debasish Kumar Chatterjee & Anr.

For the Appellants : Mr. Sudipto Kumar Mazumdar, Ld. D.S.G.I,
Mr. Ajoy Kumar Singhania, Adv.
Mr. Saptak Sarkar, Adv.
Mr. S. Kar, Adv.

For the Respondents : Mr. Jagriti Mishra, Adv.
Ms. Ananya Bhattacharya, Adv.
Mr. S. K. Dhar, Adv.
Mr. Asit Kumar Das, Adv.
Ms. Mrinmayee Das, Adv.

Hearing Concluded on : November 24, 2023
Judgement on : November 29, 2023

DEBANGSU BASAK, J.:-

1. Appellants have assailed the judgement and order dated April 22, 2022 passed by the learned Single Judge in WPA No. 774 of 2022. By the impugned judgement and order, the learned Single Judge has allowed the Writ Petition challenging an order of punishment passed in a disciplinary proceeding against the Respondent No. 1. Learned Single Judge has set aside the order of punishment dated June 21,

2021, passed by the Appellate Authority against the Respondent No. 1.

2. Learned Deputy Solicitor General appearing for the appellants has submitted that the Respondent No. 1 was a member of the Sashastra Seema Bal (SSB). A disciplinary proceeding had been initiated against the Respondent No. 1 which resulted in an order of punishment upheld by the Appellate Authority by the order dated June 21, 2021. He has contended that the order of the Appellate Authority concurred with the punishment imposed against the Respondent No. 1 by the disciplinary authority. The disciplinary authority had imposed a punishment of compulsory retirement and directed deduction from the pension receivable by the Respondent No. 1.

3. Learned Deputy Solicitor General has contended that, the quantum of punishment so far as compulsory retirement was never challenged by the Respondent No. 1 in the Writ Petition. The Respondent No. 1 had challenged the quantum of punishment relating to deduction of pensionary benefits as imposed by the order of punishment upheld by the Appellate Authority. He has contended that the learned Single Judge had erred in setting aside the entirety of the punishment imposed on the Respondent No. 1 when the entirety of the

punishment imposed was not under challenge before the Court.

4. Learned Deputy Solicitor General has contended that SSB was established under the provisions of the Sashastra Seema Bal Act, 2007. SSB is a central paramilitary force and has been classified as Central Armed Police Force (CAPF) along with other central parliamentary forces established by various statutes. He has referred to answers to a question dated May 7, 2013, given in the Lok Sabha to the effect that, retired CPF personnel are governed by the Central Civil Service (Pension) Rules, 1972. Consequently, the Respondent No. 1 was also governed by the Rules of 1972 as a member of SSB and that, the Rules of 1972 has permitted the deduction of pension in a disciplinary proceeding. According to him, neither the disciplinary authority nor the Appellate Authority had erred in directing the deduction of pensionary benefits as contained in the order dated June 21, 2021. The learned Single Judge had erred in not taking such fact into consideration while setting aside the order dated June 21, 2021.

5. Learned advocate appearing for the Respondent No. 1 has contended that, the Respondent No. 1 was appointed on August 18, 1983 as a constable (general duty) and worked

with the SSB till June 14, 2021. The Respondent No. 1 had received 16 cash rewards and 2 recommendations for his exemplary services. On October 2, 2021, a subordinate of the Respondent No. 1 had passed urine on the bed of the Respondent No. 1 in a highly intoxicated state. The Respondent No. 1 out of certain grave provocation had pushed the subordinate when such subordinate sustained injuries. A disciplinary proceeding had been initiated as against the Respondent No. 1 in respect of such incident and he was charged under Section 28 of the Act of 2007. He has referred to the chargesheet and contended that only one charge under Section 28 of the Act of 2007 was levelled. The disciplinary proceeding had resulted in an order of punishment dated June 21, 2021. The Respondent No. 1 had preferred a statutory appeal which was dismissed by an order dated January 11, 2022.

6. Learned advocate appearing for the Respondent No. 1 has contended that, his client did not challenge the imposition of punishment of compulsory retirement from service as done by the order of punishment dated June 21, 2021. However, his client is aggrieved by the portion of the order dated June 21, 2021 which has directed deduction of pension receivable by his client consequent upon compulsory retirement.

7. Learned advocate appearing for the Respondent No. 1 has contended that deduction of pension as a form of punishment is not prescribed under the Act of 2007. He has referred to of the Act of 2007 and contended that the Respondent No. 1 was charged under Section 28 of the Act of 2007. He has pointed out that Section 28 of the Act of 2007 comes under chapter III which deals with the offences. He has also referred to Sections 51 to 60 of the Act of 2007 which prescribes the punishments that can be imposed under the Act of 2007. He has contended that for the charge under Section 28 of the Act of 2007, a direction for deduction of pensionary benefits in a disciplinary proceeding cannot be made.

8. Learned advocate appearing for the Respondent No. 1 has relied upon **2010 SCC online J&K 262 (Union of India and Others versus Prem Masih)** in support of his contention that the quantum of punishment that can be imposed is prescribed by the statute and that deduction of pensionary benefits is not prescribed under Sections 51 to 60 of the Act of 2007.

9. A disciplinary proceeding had been initiated as against the Respondent No. 1 by the disciplinary authority by the chargesheet dated May 25, 2021. The Respondent No. 1 had

been charged under Section 28 of the Act of 2007, for ill-treating a subordinate. It had been alleged as against the Respondent No. 1 that on October 2, 2020, at about 21:29 hours, he had assaulted a subordinate who suffered severe head injury. In the disciplinary proceeding, 9 prosecution witnesses had been examined. During the pendency of the disciplinary proceedings, the Respondent No. 1 had applied for voluntary retirement with effect from August 31, 2021. Such applications had been considered and rejected by a writing dated June 2, 2021 in view of the pendency of the disciplinary proceedings.

10. The disciplinary proceeding had been disposed of by an order dated June 21, 2021 by holding that the Respondent No. 1 was guilty of the charge under Section 28 of the Act of 2007 and was awarded a punishment of compulsory retirement from service under Section 51 (1) (d) of the Act of 2007. The order dated June 21, 2021 had also directed that the Respondent No. 1 shall be granted two thirds of the pension admissible on the date of his compulsory retirement subject to a minimum of Rs. 9,000 per month in terms of rule 40 (1) of Central Civil Service (Pension) Rules, 1972.

11. The Respondent No. 1 had preferred statutory appeal against the order dated June 21, 2021. The Appellate

Authority under the Act of 2007 had upheld the order dated June 21, 2021 by the order dated January 10, 2022. The Respondent No. 1 had thereafter filed the Writ Petition resulting in the impugned judgement and order dated April 22, 2022.

12. The Respondent No. 1 had been charged under Section 28 of the Act of 2007 which resulted in the order of punishment dated June 21, 2021. Offences under the Act of 2007 have been specified in chapter III thereof. Punishments under the Act of 2007 have been specified in chapter IV. Learned counsels for the parties have referred to Sections 28 and 51 to 53 which are as follows: –

“28. Any officer, subordinate officer or under-officer, who uses criminal force to or otherwise ill-treats any person subject to this Act, being his subordinate in rank or position, shall, on conviction by a Force Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.”

“51. (1) Punishments may be inflicted in respect of offences committed by persons subject to this Act and convicted by force Courts according to the scale following, namely :-

(a) death;

(b) imprisonment which may be for the term of life or any other lesser term but excluding imprisonment for a term not exceeding three months in force custody;

(c) dismissal or removal from the service;

(d) compulsory retirement from the service;

(e) imprisonment for a term not exceeding three months in force custody;

(f) reduction to the ranks or to a lower rank or grade or a place in the list of their rank in the case of an under-officer;

(g) reduction to next lower rank in case of an officer or subordinate officer;

Provided that no officer shall be reduced to a rank lower than the one to which he was initially appointed;

(h) forfeiture of seniority of rank and forfeiture of all or any part of the service for the purpose of promotion;

(i) forfeiture of service for the purpose of increased pay or pension;

(j) fine, in respect of civil offences;

(k) severe reprimand or reprimand except in the case of persons below the rank of an under-officer;

(l) forfeiture of pay and allowances for a period not exceeding three months for an offence committed on active duty;

(m) forfeiture in the case of person sentenced to dismissal from the service of all arrears of pay and allowances and other public money due to him at the time of such dismissal;

(n) stoppage of pay and allowances until any proved loss or damage occasioned by the offence for which he is convicted is made good.

(2) Each of the punishments specified in sub-section (1) shall be deemed to be inferior in degree to every punishment preceding it in the above scale.

52. *Subject to the provisions of this Act, a Force Court may, on convicting a person subject to this Act of any of the offences specified in sections 16 to 48 (both inclusive) award either the particular punishment with which the offence is stated in the said sections to be punishable or, in lieu thereof, any one of the punishments lower in the scale set out in section 51 regard being had to the nature and degree of the offence.*

53. *A Force Court may award in addition to, or without, any other punishment, the punishment specified in clause (c) of sub-section (1) of section 51 or any one or more of the punishments specified in clauses (f) to (n) of that sub-section.”*

13. Section 28 of the Act of 2007 has specified that any officer, subordinate officer or under officer, who uses criminal force to or otherwise ill-treats any person subject to the Act of 2007, being a subordinate in rank or position, shall be convicted by a Force Court, and shall be liable to suffer imprisonment for a term which may extend to 7 years or such less punishment as is in the Act of 2007 mentioned.

14. Section 28 of the Act of 2007 has specified a punishment of imprisonment extending to 7 years or such less

punishment as mentioned in the Act of 2007. By its order dated June 21, 2021 the disciplinary authority did not award any punishment of imprisonment. It has preferred to award a lesser punishment than one of imprisonment. The lesser punishment that has been imposed has to conform with the punishment mentioned in the Act of 2007.

15. Punishments that can be imposed by Force Court have been specified in Section 51 of the Act of 2007. Compulsory retirement from service has been prescribed under Section 51 (1) (d) of the Act of 2007. Therefore, the imposition of punishment of compulsory retirement from service that has been prescribed by the disciplinary authority and as upheld by the Appellate Authority is within the punishments prescribed by the Act of 2007.

16. Section 52 of the Act of 2007 allows a Force Court to award either the particular punishment with which the offence is stated in Sections 16 to 48 (both inclusive) or in lieu thereof, any of the punishments lower in the scale set out in Section 51 regard being had to the nature and degree of the offence.

17. Section 53 of the Act of 2007 has vested a Force Court to award, in addition to, or without, any other punishment, the punishment specified in clause (c) of sub-Section (1) of

Section 51 or any one or more of the punishments specified in clauses (f) to (n) thereof.

18. Neither Section 28 of the Act of 2007, under which the Respondent No. 1 had been charged and found guilty, nor the provisions of Section 51 which prescribes the punishments that can be imposed, empowers the Force Court to impose deduction of pension.

19. In ***Prem Masih (supra)*** the court had considered the provisions of the Army Act, 1950 and in the conspectus of the facts of that case, held that, no punishments as had been imposed therein could be imposed upon the delinquent.

20. Under the Act of 2007, by virtue of Section 53 thereof, a Force Court has the power to impose a punishment in addition to order or without any other punishment, the punishment specified in Section 51 (1) (c) or any one or more of the punishments specified in clauses (f) to (n) thereof. However, deduction from pension has not been specified as a form of punishment therein.

21. Rule 40 of the Central Civil Service (Pension) Rules, 1972 has authorised the competent authority to impose such penalty, pension or gratuity or both at a rate not less than two thirds and not more than full compensation pension or gratuity or both admissible to the delinquent on the date of

the compulsory retirement. Although, the Rules of 1972 govern the service conditions of the Respondent No. 1, the punishments prescribed under the Act of 2007 has not envisaged deduction of pension in respect of an offence proved under Section 28 thereof. Rules of 1972 is subordinate to and cannot be construed to override the provisions of the Act of 2007. Consequently, aid of the Rules of 1972 cannot be had for the purpose of imposing a punishment of deduction of pension in respect of an offence under Section 28 of the Act of 2007.

22. Quantum of punishment that has to be imposed in a disciplinary proceeding is in the domain of the disciplinary authority more so in respect of defence forces. Courts are extremely slow in interfering with the quantum that has been imposed in the disciplinary proceedings unless it is established that, the disciplinary authority acted without jurisdiction in doing so.

23. In the facts of the present case, it cannot be said that, the disciplinary authority was without jurisdiction in imposing a punishment of compulsory retirement from service. Compulsory retirement from service as a form of punishment has been prescribed under Section 51 of the Act of 2007. Section 52 of the Act of 2007 has empowered the disciplinary

authority to impose alternative punishment to the punishment prescribed in the Section prescribing the offence.

24. Moreover, the Respondent No. 1 did not assail the order of the disciplinary authority dated June 21, 2021 so far as it has imposed a punishment of compulsory retirement. The Respondent No. 1 had assailed such order to the extent to which such order has prescribed deduction of pension.

25. In view of the discussions above, the order of the disciplinary authority dated June 21, 2021 as upheld by the statutory Appellate Authority by the order dated January 11, 2022 prescribing a punishment of compulsory retirement of the Respondent No. 1 is reinstated. The order of the disciplinary authority dated June 21, 2021 as upheld on January 11, 2022 to the extent of directing deduction of pensionary benefits of the Respondent No. 1 is set aside. Impugned judgement and order under appeal is modified to such extent.

26. MAT 39 of 2022 is disposed of accordingly without any orders to cost.

[DEBANGSU BASAK, J.]

27. I agree.

[MD. SHABBAR RASHIDI, J.]