

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

RVW/10/2025

With

IA NO: CAN/1/2025

P. K. MAJUMDER

VS

UNION OF INDIA AND ORS.

In

FMA/121/2014

P.K.MAJUMDER

VS

UNION OF INDIA & ORS.

IA NO: CAN/1/2011(Old No:CAN/1264/2011)

For the Appellant	:	Mr. Ranjan Kr. Roy, Mr. Ranajit Roy, Advocates
For the UOI	:	Mr. Arun Bandyopadhyay, Mr. Dibashis Basu, Advocates
Heard & Judgment on	:	March 4, 2025

DEBANGSU BASAK, J.

- 1.** CAN 1 of 2025 in RVW 10 of 2025 is an application for condonation of delay. For the ends of justice causes shown in the application for condonation of delay are accepted as sufficient. CAN 1 of 2025 is allowed.
- 2.** Review is at the behest of the appellant in FMA No.121 of 2024 and directed against the order dated June 10, 2024 passed in the appeal.
- 3.** By our order dated June 10, 2024, we refused to restore the appeal at the behest of the review applicant since, despite repeated

requests, learned advocate for the review applicant was unable to assist us with regard to the merits of the matter. Purely on the plea that, the review applicant should not be foisted with the liability of the failure of his advocate to address us on the merits, we permit the review applicant to address us on the merits of the appeal itself, after treating the same as restored.

- 4.** Learned advocate appearing for the review applicant submits that, the review applicant suffered an order of dismissal from service. Review applicant preferred an appeal which was dismissed. Review applicant, thereafter, filed the writ petition resulting in the impugned order passed which was assailed in the appeal. He submits that, on going through the cause papers, he found that the stand of the employer was that, there was a provision for revision which was not availed of by the review applicant and that on merits the case of the review applicant was unmeritorious.
- 5.** Learned advocate appearing for the review applicant draws the attention of the Court to the Articles of Charge. He submits that, allegation is attempt of theft of certain materials by some miscreants. Learned advocate appearing for the review applicant submits that, there is a boundary wall which is guarded. The distance between the guards behind the boundary wall and the place of posting of the review applicant is more than 1.5 kilometers.

There is a watch tower manned by the appropriate personnel over the area. These aspects were not considered in the disciplinary proceedings.

- 6.** Respondent authorities are represented.
- 7.** Essentially, contention of the review applicant is that as an appeal Court we reappraise the entirety of the evidence which was led in the disciplinary proceedings, upheld by the Appellate Authority in the disciplinary proceedings and no ground for interference being found by the writ Court after the review applicant given up its right of revision.
- 8.** Materials placed on record establish that, the charges as against the review applicant was issued on April 2, 2005 containing one Article of Charge. The Article of Charge is with regard to gross misconduct, negligence and dereliction of duty on the part of the review applicant at a night shift on a particular date, on his failure to prevent an attempt of theft of certain materials by miscreants. Articles of Charge also speak of the materials being recovered from the area of operation of the review applicant. Article of Charge goes on to say that such conduct on the part of the review applicant was unbecoming of a conduct of a good member of the Armed Force.

- 9.** An inquiry proceeding was held. In the inquiry five prosecution witnesses were examined. Eight documents were exhibited before the Inquiry Officer on behalf of the prosecution.
- 10.** Review applicant participated in the inquiry proceeding. Breach of principles of natural justice does not appear herein.
- 11.** Inquiry Officer evaluated the evidence of the prosecution witnesses as also the documents exhibited in the inquiry proceedings. Enquiry Officer found that the charge as against the review applicant stood proved beyond doubt by a reasoned order.
- 12.** A copy of the Inquiry Report was furnished to the review applicant. He was afforded an opportunity to make a representation with regard thereto which he did by a writing dated November 9, 2005. The Disciplinary Authority considered the Inquiry Report and the representation of the review applicant with regard thereto and by a final order dated November 21, 2005, passed a penalty of removal of service with immediate effect upon the review applicant. The review applicant was informed as to his right of appeal.
- 13.** Review applicant preferred an appeal against the order of the Disciplinary Authority. Such appeal was disposed of by an order dated March 3, 2006 after concurring with the order of the disciplinary authority.

- 14.** The Inquiry Report, the order of Disciplinary Authority as also the order of the Appellate Authority contain elaborate reasons as to why, the findings as returned as against the review applicant were arrived at. None of the findings can be said to be perverse.
- 15.** Review applicant possessed a right of applying of revision. Review applicant chose not to do so. Review applicant proceeded to assail the order of dismissal from service as affirmed by the Appellate Authority by way of writ petition being WP 9594(W) of 2006.
- 16.** Writ petition of the review applicant was dismissed by order dated November 17, 2009. Being aggrieved therefrom, the appeal being FMA 121 of 2024 was filed by the review applicant.
- 17.** Before the writ Court, review applicant contended that the charges levelled as against the review applicant was vague, the alleged attempt of theft allegedly took place where there was no complaint by the plant as regards any alleged theft or any attempted theft. Disciplinary Authority proceeded on the basis of the review applicant's at the preliminary hearing had pleaded guilty whereas the review applicant never, in fact, pleaded guilty.
- 18.** Learned Single Judge considered all four aspects of the contentions of the review applicant and negated the all of the same. Learned Single Judge gave reasons as to the findings arrived at.

- 19.** Article of Charge is detailed. It contains the date, time and the manner of offences alleged to take place.
- 20.** The time of attempt of theft stood established by cogent evidence before the Inquiry Officer. Materials were, in fact, recovered as stated in the Articles of Charge as against the review applicant. There was an attempt of theft at the time and at the place as stated in the Articles of Charge.
- 21.** Records of the disciplinary proceedings so far as brought to our notice do not contradict the finding of the learned Single Judge that the review applicant at the preliminary hearing pleaded guilty.
- 22.** The quantum of punishment to be imposed is in the domain of the employer. Unless compelling reasons are shown to us, a writ Court is slow to interfere in such domain.
- 23.** In the facts of the present case, the review applicant belongs to a disciplined Police Force. Dereliction of duty as against the review applicant was established in the inquiry. Inquiry Officer found the conduct of the review applicant to be unbecoming of a member of disciplined Police Force.
- 24.** Disciplinary Authority concurring with the Appellate Authority, on elaborate reasons, found such conduct to incur punishment of dismissal from service.

- 25.** In such circumstances, it cannot be said that the punishment imposed is harsh.
- 26.** A writ Court far less an appeal Court, in seisin of an appeal directed against the order of writ Court, is not called upon to act as an appellate authority in a disciplinary proceeding, reappraise the evidence and substitute the findings, unless the order of the disciplinary authority is established to be perverse. Order of the Disciplinary Authority so upheld by the Appellate Authority cannot be said to be perverse.
- 27.** In such circumstances, we find no merit in the appeal itself and the same is dismissed.
- 28.** Consequently, we are not minded to review our order dated June 10, 2024.
- 29.** RVW/10/2025 is accordingly, **dismissed** without any order as to costs.

(Debangsu Basak, J.)

- 30.** I agree.

(Md. Shabbar Rashidi, J.)