

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Partha Sarathi Sen

F.M.A. 691 of 2019

with

CAN 1 of 2019 (Old CAN 1820 of 2019)

CAN 2 of 2019 (Old CAN 1821 of 2019)

Md. Abdur Rashid

VS.

Union of India & Ors.

For the Appellants : Mr. S. Bandopadhyay
Mr. Soham Roy
Mr. Rahul Kumar Singh

For the Respondents : Mr. Debapriya Gupta

Heard on : July 9, 2024

Judgment on : July 9, 2024

PARTHA SARATHI SEN, J.:-

1. The instant appeal is directed against the judgment dated October 10, 2018 as passed by the learned Single Judge in W.P. No. 17495 (W) of 2017 whereby

and whereunder the said Single Bench dismissed the writ petition of the present appellant.

2. Admittedly, the writ petitioner/appellant was an A.S.I (GD) of the BSF. At the material time, he was posted at BOP-Jagirwalabari which is admittedly at India-Bangladesh border.

3. The writ petitioner had alleged to have committed some acts which are contrary to his service rules and disciplines by which he was governed and accordingly the disciplinary authority framed nine charges against him and proceed with the enquiry.

4. In course of the enquiry proceeding, the enquiry authority found all the charges have been proved against the appellant and accordingly as per rule, General Security Force Court hereinafter referred to as the 'said Court' was held which also independently appreciated the evidence recorded in the enquiry proceeding and the said Court came to a finding with reasons that the findings of the enquiry proceedings are correct and thus proceeded to impose the punishment of dismissal, from service upon the appellant which has been appealed against wherein the writ petitioner was also failed which culminated into filing of the writ petition.

5. In course of hearing, learned advocate for the writ petitioner/appellant draws our attention to the three alleged confessions of the writ petitioner/appellant. It is submitted that the learned Single Bench while

disposing the said writ petition has failed to appreciate that the said three alleged confessional statements of the writ petitioner were recorded under the duress, threat and pressure which would be evident from the finding of the enquiry authority as well as from the finding of the said Court.

6. We have meticulously gone through the charges as framed against the present writ petitioner/appellant. Admittedly, the charges are exceptionally grave. We have also gone through the findings of the enquiry authority and we noticed that prior to coming to a logical conclusion, the enquiry authority recorded the evidence of the prosecution witnesses and thus came to a factual finding with regard to the charges as framed against the delinquent.

7. It further appears to us that the said Court in their proceeding also independently appreciated the selfsame evidence and they have also come to a conclusion with regard to the proof of charges without any doubt.

8. As rightly recorded by the learned Single Bench that the scope of writ petition in such type of proceeding is very much limited unless it has been shown that there occurred violation of principles of natural justice on the part of the enquiry authority and/or the disciplinary authority and/or the said Court and/or the said appellate authority. In a case of disciplinary proceeding of like nature, the writ Court cannot act itself as an Appellate Court and, therefore, it is not supposed to re-appreciate the evidence all over again unless it has been shown that the aforesaid authorities acted in such a

manner which is contrary to the rules by which the delinquent is governed and/or the said authorities while coming to the finding of the guilt as relied upon some extraneous evidence which are not before them.

9. We have also noticed that the aforesaid departmental authorities have also considered the three confessional statements in its proper perspective which we also declined to interfere in absence of any materials to show that the finding of the departmental authorities in respect of those three confessional statements are absolutely perverse.

10. Appellant admit three confessional statements. One before the company Commandant and one before the Enquiry Authority and the third before the General Force Court. Nothing has been placed on record to suggest that there was no contemporaneous complaint as to any of the three confessional statements having been obtained by coercion or undue influence as contended before us.

11. We thus find no merit in this appeal and accordingly the instant appeal being **F.M.A. 691 of 2019** is **dismissed**.

12. With the dismissal of the appeal, all connected applications are disposed of.

13. Interim order, if there be any stands hereby vacated.

14. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all the formalities.

(Partha Sarathi Sen, J.)

15. I agree

(Debangsu Basak, J.)

S.D.