

**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

MAT 356 of 2020

Ram Dayal Rai

VS.

Union of India & Ors.

For the Appellant : Mr. Achin Kumar Majumder,
Ms. Ananya Adhikary, Advocates

For the Respondents: Mr. Kumar Jyoti Tewari,
Mr. Santosh Kumar Pandey, Advocates

Heard & Judgement on: July 30, 2024

DEBANGSU BASAK, J.

- 1.** Appeal is at the behest of the writ petitioner and directed against the judgment and order dated January 16, 2020 passed in WP 29124 (W) of 2014.
- 2.** By the impugned judgment and order, learned Single Judge dismissed the writ petition.
- 3.** Appellant as the writ petitioner approached the writ Court assailing order dated January 25, 2014 passed by the Appellate Authority affirmed by the Revisional Authority on August 22, 2014. Appellate Authority

reduced the penalty imposed on the appellant/writ petitioner in the disciplinary proceedings on August 26, 2013 from "compulsory retirement from service with 80% of Pension and 80% of Gratuity" to "compulsory retirement from service with full pensionary benefits as admissible on the date of compulsory retirement."

4. Learned advocate appearing for the appellant submits that, the Disciplinary Authority as well as the Appellate Authority considered materials beyond the scope of the charge sheet. He invites the attention of the Court to the charge sheet. He submits that, two charges were framed. He draws the attention of the Court to portion of the order of the Disciplinary Authority as well as the Appellate Authority where, according to him, both of such Authorities travelled beyond the charges framed. In particular, he submits that, so far as the first charge is concerned, the same was not proved during the inquiry. So far as the second charge is concerned, he submits that, Appellate Authority travelled beyond the second charge in the proceedings with the materials which were not there in the second charge at all.

5. Learned advocate appearing for the appellant submits that, the Inquiry Officer misconducted the inquiry proceedings. At the inquiry, although the prosecution disclosed seven prosecution witnesses to be examined, Inquiry Officer proceeded to examine three other witnesses apart from seven disclosed prosecution witnesses, terming them to be Court witnesses. Appellant was seriously prejudiced since, in the inquiry proceeding, appellant was not given prior notice of such Court witnesses being examined. He was asked to cross-examine such Court witnesses. In view of the rank held by the appellant and in view of the fact that appellant was not adequately conversant with law, he was not in a position to

adequately defend himself so far as the three so-called Court witnesses are concerned.

6. Learned advocate appearing for the appellant submits that, the appellant took the point with regard to Inquiry Officer examining witnesses as the Court witnesses in the appeal. Such point was cursorily dealt with by the Appellate Authority.

7. Learned advocate appearing for the appellant submits that the Inquiry Officer abdicated his duty as such and connected himself as the Investigating Officer by examining Court witnesses and collecting evidences beyond the scope of Enquiry. Therefore, the Inquiry Report stands vitiated.

8. Learned advocate appearing for the appellant submits that documents which were not supplied to the appellant were marked as exhibits during the inquiry. In support of such contention, he draws the attention of the Court to portion of the Inquiry Report where Exhibit-P1 was tendered and marked as evidence by P.W. 1 while such document was not given to the appellant prior to the commencement of examination of witness.

9. Referring to Exhibit-P1, learned advocate appearing for the appellant submits that, the author of such letter was not called as a witness at the inquiry proceedings. The contents of such document, therefore, were not established.

10. Learned advocate for the appellant submits that, in view of the procedural illegalities and irregularities vitiating the inquiry proceedings and, in fact, the entirety of the disciplinary proceedings, the order passed by the Disciplinary Authority, the Appellate Authority as well as the

Revisional Authority should be set aside. He submits that, the entire proceedings stand vitiated due to breach of principle of natural justice.

11. Respondents are represented.

12. Appellant was the Head Constable of Central Industrial Security Force (CISF). With regard to his actions while posted on duty on February 24, 2013, a charge sheet dated March 21, 2013 was issued to him. The charge sheet contains two Articles of Charges. First Articles of Charge relates to the appellant allegedly receiving inducement to allow a vehicle to pass through a gate at which he was posted on duty. The second Articles of Charge is with regard to his action in allowing the same vehicle which was allowed entry to exit from the gate without proper checking. The second Article of Charge also goes on to say that such vehicle was found carrying 20 items unauthorisedly without any valid pass/permission.

13. Appellate submitted his written representation to the memorandum of charges on April 1, 2013. Inquiry Officer and Presenting Officer were appointed. A full-fledged inquiry was held. The Inquiry Officer conducted the inquiry in terms of the CISF Rules, 2001. Evidence of prosecution and Court witnesses were recorded. No defence witness was produced. Documents produced in the evidence were marked as exhibits.

14. On finalization of the departmental inquiry, Inquiry Officer submitted a report dated June 9, 2013. Copy of such Inquiry Report was supplied to the appellant. Appellant was permitted to submit his representation with regard thereto. Appellant submitted his written representation with regard to the Inquiry Report on June 13, 2013. Disciplinary Authority on consideration of the Inquiry Report and the written representation by an order dated July 9, 2013 held that, charge-I was not proved and that, Charge-II was proved. Disciplinary Authority afforded further opportunity

to the appellant to make a representation against the Inquiry Report. Appellant submitted a reply to the Inquiry Report on July 30, 2013. Further considering the Inquiry Report and the materials placed on record, Disciplinary Authority passed a final order dated August 26, 2013 where, Disciplinary Authority awarded the penalty of "compulsory retirement from service with 80% of pension and 80% of gratuity".

15. Appellant filed an appeal before the appellate authority on September 10, 2013. Appeal was disposed of by an order dated January 25, 2014. Appellate authority reduced the punishment awarded to "compulsory retirement from service with full pensionary benefits as admissible on the date of compulsory retirement."

16. Being aggrieved, appellant filed a revisional application before the revisional authority. Revisional authority concurred with the appellate authority and dismissed the revisional application by an order dated August 22, 2014.

17. Aggrieved by the orders of the appellate authority and the revisional authority, writ petitioner preferred the writ petition in which the impugned judgment and order was passed.

18. We gave our anxious consideration to the contentions advanced on behalf of the appellant. The first contention was with regard to the disciplinary authority and the subsequent authorities thereafter proceeding beyond the scope of the articles of charges contained in the charge sheet.

19. So far as such contention is concerned, we find from the records that, there were two articles of charges. The first charge was held to be not proved. Second charge relates to the appellant permitting a specified vehicle to exit a specified gate without proper checking and such vehicle was carrying 20 items without authorization. Such fact stood established

before the Inquiry Officer. Disciplinary authority and appellate authority while considering such charge and the materials produced observed that, allowing the vehicle to exit the gate without proper checking resulted in an incident of theft happening. The vehicle was found with 20 items without any permit to carry such items out of the secured premises.

20. In our view, neither the disciplinary authority nor the appellate authority travelled beyond the charge no.2 established during the inquiry on the basis of the materials proved. Revisional authority concurred with the appellate authority.

21. The second contention is with regard to the Inquiry Officer examining three witnesses as Court witnesses. This point was canvassed before the appellate authority. Appellate authority in its decision rightly dealt with such contention and held that, the Inquiry Officer was entitled to call upon such of the witnesses as deemed appropriate so as to throw light on the subject. Inquiry Officer calling a witness to throw light on the issue in an inquiry does not necessarily mean that the Inquiry Officer was acting as an Investigating Officer. The evidence given by such witness may be evaluated on the touchstone of the law of evidence as applicable. Such evidence may also favour the delinquent. In the facts of the present case, the evidence of the Court witnesses were evaluated in a process known to law.

22. Appellant was given adequate opportunity to cross-examine the Court witnesses. The plea that the appellant was not well-versed in law so as to make adequate cross-examination cannot be accepted.

23. One document was introduced by prosecution witness no.1 and it was marked Exhibit in the inquiry. A document produced by a witness, if otherwise adequately proved in accordance with the principles of law of

evidence applicable, is required to be marked as Exhibit. Copy of such document was given to the appellant. Therefore, there was no infirmity on the part of the Inquiry Officer in marking a document produced by a witness at the enquiry, as Exhibit. Copy of the document as noted above was made available to the appellant immediately on the document being produced in the inquiry.

24. Whether or not, the author of the document so marked as Exhibit is required to be called at the inquiry is the subject matter which is required to be adjudicated by the Inquiry Officer. The entirety of the evidence is required to be evaluated. Merely because the author of a document is not produced as a witness during the inquiry, the contents of such document need not be looked into, cannot be so said. The contents of a document marked as an Exhibit can be looked into and evaluated, if it otherwise meets the parameters laid down for its evaluation on the basis of law of evidence applicable.

25. At every stage of the proceedings, appellant was afforded an opportunity to make a representation. He was allowed to submit a written reply to the charge sheet and to the inquiry report. He was also allowed to make a representation to the first decision of the disciplinary authority. Thereafter, the disciplinary authority took the decision as recorded. Appellant was allowed to prefer an appeal, as permitted. Appellant was also allowed to prefer a revisional application, as permitted by the rules governing his service.

26. Orders passed by the Disciplinary Authority, Appellate Authority and the Revisional Authority contain adequate and cogent reasons. The views expressed by such authorities are plausible on the basis of the evidence placed on record.

27. In such circumstances, we do not find that, there was any breach of principles of natural justice as contended by the appellant.

28. Learned Single Judge concurred with the findings of the appellate authority as upheld in revision and dismissed the writ petition of the appellant. We find no ground to interfere with the impugned judgment and order.

29. In such circumstances, MAT 356 of 2020 is **dismissed** without any order as to costs.

(Debangsu Basak, J.)

30. I agree.

(Md. Shabbar Rashidi, J.)

Dd/AD