

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble Justice PARTHA SARATHI SEN

WPA 4678 of 2015

Jitendra Singh
-Vs-
Union of India and Ors.

For the Petitioner: Ms. Pampa Dey Dhabal, Adv.,
Ms. Sangita Banerjee, Adv.

For the UOI : Ms. Chandreyi Alam, Adv.

Hearing concluded on: 19.09.2024.

Judgment on: 24.09.2024.

PARTHA SARATHI SEN, J. : -

1. By filing the instant writ petition under Article 226 of the Constitution of India, the writ petitioner has prayed for issuance of appropriate writ/writs for quashing of the order dated 21.05.2013 for dismissal from service of the writ petitioner as passed by the Disciplinary Authority, which has been affirmed successively by the Appellate Authority and the Respondent Authority.

2. It is the case of the writ petitioner that he was a constable under CISF. It is the further case of the writ petitioner that on the basis of a false allegation a memorandum dated 09.10.2012 containing seven charges along with statement of imputations was served upon him which was duly received by the writ petitioner. The Respondent Authorities were

not satisfied with the replies given by the appellant and allegedly in a biased manner and with a vindictive attitude initiated disciplinary proceeding against the present petitioner wherein the Respondent Authorities had most wrongfully found that the charges have been proved against the present writ petitioner which culminated to an order of penalty of dismissal from service with immediate effect against the writ petitioner.

3. Challenging the said order of dismissal dated 21.05.2013 the writ petitioner preferred an appeal before the Appellate Authority however, the Appellate Authority without considering the grievances of the writ petitioner affirmed the order of penalty as passed by the Disciplinary Authority. Challenging the order passed by the Appellate Authority the writ petitioner preferred a revision which was also not considered favourably.

4. The writ petitioner thus felt aggrieved and preferred the instant writ petition.

5. Ms. Dhabal, learned advocate for the writ petitioner in course of her submission draws attention of this Court to the memorandum of charges as framed against the present writ petitioner, the finding of the Enquiry Authority and the order of penalty as passed by the Disciplinary Authority as well as the findings of the Appellate Authority and the Revisional Authority. It is submitted on behalf of the writ petitioner that from the charges as framed against the present writ petitioner it would reveal that on the relevant day and hour the present writ petitioner was

on 'C' Shift duly from 21:00 hours on 25.08.2012 to 05:00 hours on 26.08.2012 at Gate No.6 of the relevant port where the writ petitioner had allegedly allowed the unauthorized entry of Tata 407 vehicle inside the port. It is submitted further that the Enquiry Authority in course of the said disciplinary proceeding did not consider at all that 'C' shift duly starts from 13:30 hours of a day and continues till 02:00 hours of the next day. It is further submitted that the charges as framed against the present writ petitioner are defective inasmuch as the registration number of the alleged Tata 407 vehicle has not been mentioned in the articles of charges. It is submitted further that the Disciplinary Authority only considered the evidence of the prosecution witnesses which are in favour of the Respondent Authorities but did not consider the evidence of the other prosecution witnesses which supports the innocence of the present writ petitioner. It is thus submitted that for non-consideration of the material evidence, principle of natural justice have been violated for which a serious miscarriage of justice occurred.

6. In course of her submission learned advocate for the writ petitioner draws attention of this Court to page no.30 of the writ petition being the copy of the defence statement as submitted by the writ petitioner. It is submitted that while appreciating the evidence in course of disciplinary proceeding none of the defence statement of the writ petitioner was considered by the Disciplinary Authority. It is further submitted that the Disciplinary Authority was persuaded by extraneous materials which are

not on record and therefore the disciplinary proceeding may be held to be bad in law.

7. It is further submitted that both the Appellate Authority and the Revisional Authority mechanically passed their respective orders while affirming the penalty of the writ petitioner and therefore the order of penalty as imposed upon the writ petitioner is required to be set aside and an appropriate order may be passed for reinstatement of the writ petitioner in his service along with the other ancillary reliefs.

8. Learned advocate for the writ petitioner further submits that for the sake of argument even if this Court hold that there is no scope to interfere with the finding of the aforementioned three authorities but the penalty of the writ petitioner may be altered to a minor penalty since the penalty as imposed upon the writ petitioner is excessive and harsh.

9. In course of her submission learned advocate for the writ petitioner placed her reliance upon an unreported judgement dated 12.04.2024 of a co-ordinate bench of this Court passed in **WPA no.29637 of 2016 (Pinku Sarkar vs. Union of India)**.

10. Per contra, Ms. Alam, learned advocate for the respondent authorities submits before this Court that no materials have been placed before this Court for invoking writ jurisdiction of this Court. It is further submitted by Ms. Alam that in course of disciplinary proceeding charges as labelled against the present writ petitioner has been proved and accordingly penalty is awarded to the writ petitioner.

11. It is further submitted by Ms. Alam, learned advocate for the revisionist that the Appellate Authority as well as the Revisional Authority after considering the entire materials as placed before this Court came to a logical conclusion with regard to the proof of charges as proved against the delinquent and thus there is little scope to interfere with their findings by this Court sitting in writ jurisdiction.

12. Ms. Alam, learned advocate for the respondent authorities placed her reliance upon the reported decision of ***Union of India vs. Subrata Nath*** reported in ***Manu SC 1546 of 2022***.

13. Before entering into the merits of the instant lis this Court proposes to look to the law of land regarding the scope of judicial review in service matters. In the reported decision of ***Pravin Kumar vs. Union of India*** reported in ***(2020) 9 SCC 471*** the Hon'ble Apex Court held thus:-

“25. Learned counsel for the appellant spent considerable time taking us through the various evidences on record with the intention of highlighting lacunas and contradictions. We feel that such an exercise was in vain, as the threshold of interference in the present proceedings is quite high. The power of judicial review discharged by Constitutional Courts under Article 226 or 32, or when sitting in appeal under Article 136, is distinct from the appellate power exercised by a departmental appellate authority. It would be gainsaid that judicial review is an evaluation of the decision making process, and not the merits of the decision itself. Judicial Review seeks to ensure fairness in treatment and not fairness of conclusion. It ought to be used to correct manifest errors of law or procedure, which might result in significant injustice; or in case

of bias or gross unreasonableness of outcome: Government of Andhra Pradesh v. Mohd Nasrullah Khan (2006) 2 SCC 373.

26. These principles are succinctly elucidated by a three judge Bench of this Court in *BC Chaturvedi v. Union of India*; (1995) 6 SCC 749 in the following extract:

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the

conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel [(1964) 4 SCR 718 : AIR 1964 SC 364 : (1964) 1 LLJ 38] this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.”

14. In the reported decision of High Court at Judicature at Bombay vs. **Sashikant S Patil and Anr.** reported in **(2000) 1 SCC 416** the Hon’ble Apex Court expressed the following view:-

“Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such inquiry or if the decision of the authority

is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority is the sole judge of the facts, if the inquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution.”

The same view was taken by the Hon’ble Apex Court in the reported decision of **Subrata Nath (supra)**.

15. Coming to the factual aspect of this case it appears to this Court that the charges as labelled against the present writ petitioner was based on dereliction of duty when he was detailed for ‘C’ Shift duty from 21:00 hours on 25.08.2012 to 05:00 hours on 26.08.2012 at gate no.6 of NSD since at that material time he unauthorizedly permitted a Tata 407 empty vehicle to enter inside the port area without checking the dock permit of the vehicle, driving license and other relevant documents on account of which a theft took place from a container which was kept in the dockyard.

16. Admittedly the Enquiry Authority placed its reliance upon the evidence of PW6 and PW8 in its findings who supported the case of the prosecution and thus came to hold that the charges against the writ petitioner has been duly proved. As discussed supra learned advocate for

the writ petitioner not only disputed the correctness of the versions of the PW6 and PW8 but she also has urged that the versions of the other prosecution witnesses have been intentionally overlooked by the Disciplinary Authority.

17. In considered view of this Court sitting in a writ jurisdiction and while exercising the power of judicial review this Court is not expected to act as an appellate forum as already been done by the Appellate Authority and the Revisional Authority. In considered view of this Court, the appropriate duty of this Court is to see as to whether there occurred any miscarriage of justice in the decision making process by the aforementioned three authorities and/or as to whether in such decision making process the aforementioned three authorities were at all persuaded by extraneous materials which are not on record.

As discussed supra it is trite law that in the event it is found that the findings of the authority is based on some evidence, then the acceptability of such evidence cannot be canvassed for consideration in a writ petition.

18. Though the learned advocate for the writ petitioner was very vocal in submitting that both the Appellate Authority and the Respondent Authority mechanically endorsed the view of the Enquiry Authority and the Disciplinary Authority , however on perusal of the findings of the Appellate Authority as well as the Revisional Authority it appears to this Court that the said two authorities have applied their independent minds in arriving to their decision and accordingly they do not find any

mitigating circumstances to interfere with the order of the penalty as passed by the Disciplinary Authority.

19. In course of her submission learned advocate for the writ petitioner has miserably failed to show any manifest error in the proceedings of the aforementioned three authorities. The allegation of unfairness on the part of the aforementioned three authorities also could not be established. It does not transpire to this Court that evaluation of evidence of the prosecution witnesses has been done in such a manner which is contrary to the established principle of law. It is settled principle of law that technically rules of the Evidence Act and the mode of proof as prescribed therein is not applicable to a domestic enquiry.

20. It further appears to this Court that admittedly there are some legal evidence as against the present writ petitioner which are the basis of his penalty which cannot be interfered with by this Court sitting in writ jurisdiction while exercising its power of judicial review. The unreported judgement as passed in the case of ***Pinku Sarkar (supra)*** by the Co-ordinate Bench of this Court is distinguishable from the facts and circumstances of the instant case and the same has got no manner of application in reaching a logical conclusion of the instant lis.

21. Considering the grievances of the charges it does not appear to this Court that the penalty as imposed upon the writ petitioner is either excessive or disproportionate and the same does not shock the conscience of the court considering the grievousness of the charges as proved against him. This Court thus finds little scope to interfere with the findings of the

Disciplinary Authority, the Appellate Authority as well as the Revisional Authority.

22. There is no merit in the instant writ petition and accordingly the instant writ petition is dismissed.

23. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

(PARTHA SARATHI SEN, J.)