

**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. 339 of 2023

Jasdev Dabas

VS.

Union of India & Ors.

For the Appellants : Mr. S. Roy, Adv.,
Mr. Kedareswar Bhattacharya, Adv.,
Mr. Saptarshi Chakraborty, Adv.,

For the Respondents : Mr. Anirban Mitra, Adv.,

Heard on : July 10, 2024

Judgment on : July 10, 2024

DEBANGSU BASAK, J.:-

1. Appeal is directed against the judgment and order dated February 17, 2023 passed in W.P.A. 20842 of 2010.

2. Learned Single Judge by the impugned judgment and order dismissed the writ petition. Writ petitioner is the appellant before us.

3. Appellant was a Constable working under Central Industrial Security Force (CISF). He was posted at Durgapur Steel Plant (in short DSP), Durgapur. He was proceeded against departmentally. Departmental proceeding ended in an order of removal from service. Appeal carried by the appellant was dismissed by the appellate authority. Revisional application also failed. Appellant thereafter approached the Writ Court. Writ petition was dismissed by the impugned judgment and order.

4. Learned advocate appearing for the appellant submits that the appellant was posted at Gate No. 2A of DSP on the fateful day when the incident is alleged to occur. He refers to an FIR lodged by the DSP authorities relating to the incident and submits that, incident is alleged to occur at Gate No. 2 and not Gate No. 2A. He refers to the judgment delivered by the Jurisdictional Magistrate regarding such FIR. He submits that the accused before the Magistrate were honorably acquitted. He, however, points out in his usual fairness that, the appellant was not an accused in the criminal proceeding.

5. Relying upon the FIR and the judgment of Jurisdictional Court, learned advocate appearing for the appellant submits that, place of occurrence was Gate No. 2 and not Gate No. 2A where the appellant was posted. Consequently, he submits that, the entire discipline proceeding stands vitiated due to misappreciation of material facts.

6. Respondents are represented.

7. We find from the records while the appellant was posted as a Constable of CISF at DSP, Durgapur, he was detailed for general shift barrier about from 0800 hrs. to 1800 hrs. on June 10, 2005 at Gate No. 2/A to Durgapur Steel Plant under the jurisdiction of D Company. While discharging such duty, he failed to stop and prevent one dumper bearing no. WB-39-1291 loaded with nut coke unauthorizedly passing through such barrier at about 1755 hrs. Such dumper was chased by the Officials of DSP on a jeep.

8. Due to his failure to stop the dumper, the appellant was proceeded against departmentally. An article of charge was issued as against the appellant with regard thereto. He was allowed an opportunity to submit his reply. In the enquiry, five prosecution witnesses were examined on behalf of the prosecution. Prosecution witnesses established the fact that, the appellant failed to stop and prevent a dumper loaded with nut coke unauthorizedly passing through Gate 2/A on the fateful day and time. Appellant was heard by the Enquiry Officer.

9. After evaluating the evidences placed before the Enquiry Officer, a finding was returned that the charge as against the appellant stood proved.

10. Appellant does not canvass the point of breach of natural justice during the departmental proceedings, in this appeal.

11. A final order considering the enquiry report was passed on October 6, 2006. The final order imposed a punishment of removal from service.

Being aggrieved, the appellant preferred an appeal therefrom which was dismissed of by an order dated July 5, 2007. The appellate authority concurred with the final order of the disciplinary authority. Appellant thereafter moved the revisional authority who disposed of the revision petition by an order dated November 20, 2007.

12. Point urged before us is that the DSP authorities lodged a First Information Report (FIR) relating to Gate No. 2 about the incident while the appellant was posted at Gate 2/A. We considered such contention in the light of the materials placed on record.

13. As noted above, before the Enquiry Officer, five prosecution witnesses were adduced. Such witnesses established that the dumper exited through the gate at which the appellant was posted. Appellant failed to prevent the dumper from exiting although the duty of the appellant required him to do so. Consequently, there is no error in the finding of the Enquiry Officer that the charge against the appellant stood proved. Disciplinary Authority also did not find any irregularity in such finding and proceeded to impose the punishment of removal from service.

14. Appellant was not made an accused in the criminal proceedings. Issues and the evidences in the criminal proceedings and the disciplinary proceedings are not identical. Therefore, appellant cannot rely upon the

judgment of the criminal proceeding to claim exoneration from the departmental proceedings.

15. Quantum of punishment is in the domain of the disciplinary authority. Charge proved during the enquiry is of such nature and coupled with the quantum of punishment imposed does not permit us to return a finding that the quantum of punishment is disproportionate to the charge proved.

16. In such circumstances, we find no merit in appeal.

17. **F.M.A. 339 of 2023** along with the connected application if there be any are dismissed without any order as to costs.

(Debangsu Basak, J.)

18. I agree

(Partha Sarathi Sen, J.)

S.D.

