

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Harish Tandon

And

The Hon'ble Justice Prasenjit Biswas

**FMA 2066 of 2016
With
IA No. CAN 1 of 2016 (OLD CAN 4384 of 2016)
and
CAN 2 of 2021**

***Shri Pradip Banerjee
Vs.
Union of India & ors.***

For the appellant : **Mr. Biswaroop Bhattacharya, Adv.
Mr. K.M. Hossain, Adv.
Ms. Keya Sutradhar, Adv.
Mr. Kazi Ardan, Adv.**

For the
respondent Nos. 2 & 3 : **Mr. D.N. Ray, Adv.
Mr. Bhaskar Mukherjee, Adv.
Mr. Debdutta Dutta, Adv.**

Heard on : **15th July, 2024**

Judgment on : **15th July, 2024.**

Harish Tandon , J:

The order terminating the service in a disciplinary proceeding launched on an allegation of payment of illegal gratification from the contractors, is sought to be assailed before the Single Bench.

By the impugned order, the Single Bench dismissed the writ petition holding that the materials placed before the disciplinary authority were sufficient enough to prove the charges leveled against the appellant and consequently the order of dismissal does not warrant any interference by the writ Court.

Mr. Bhattacharya, learned advocate appearing for the appellant, vociferously submits that the order passed by the disciplinary authority suffers from serious illegalities and/or irregularities. Firstly, the complainant who lodged the complaint for which the proceeding was initiated subsequently withdrew the allegations made therein to the extent that he does not intend to pursue the same against the petitioner as he was instigated by another person having a rival interest in the service. Secondly, the allegation to the nature of an illegal gratification has serious consequences and to be proved to the hilt though normally the disciplinary proceedings are decided on preponderance of probability. Thirdly, the enquiry officer as well as disciplinary authority have proceeded with the closed mind having frustrated all the norms of conducting such proceeding against the delinquent and fourthly, the authority should have stayed away the moment the disciplinary proceeding as well as the criminal proceedings are initiated on the self same charges, self- same set of facts, self-same witness and self-same documentary evidence.

All such points taken by Mr. Bhattacharya in despair in order to thwart the ultimate decision taken by the authority. The employee in

an Institution must show his conduct aboveboard more particularly while dealing with the financial matters. The integrity and honesty is the hallmark in any service jurisprudence and its allegiance to the institution should be manifested from his conduct. There is no scope nor any room for an employee who indulged himself into an illegal gratification. Normally it is a humongous task on the part of the administration to prove the illegal gratification in absence of any documentary evidence as it is decided on the basis of preponderance of probability. The instant case is just the reverse where the appellant boldly accepted the illegal gratification in his savings bank account maintained with the Bank. Such being the apparent fact, what more evidence is required to prove such charges to the hilt; we are at loss. The gratification was boldly accepted through the banking transactions and a defence was taken by the appellant that it was for return of the loan advanced to the contractor. Despite such defence having taken, not a single iota of evidence nor a scrap of document, was produced before the authorities that the said amount was extended as a loan to the contractor.

Even if we accept for the arguments sake, the contention of the appellant to be corrected, it would bring a cascading effect in the service where an employee who is in helm of financial affairs is extending the loan to a contractor of the said institution inculcating a sense of some benefits having derived or to be derived in future.

We are conscious that if criminal case as well as disciplinary proceeding are launched on the self-same charges, same set of facts, identical witnesses as well as the documentary evidence, the decision in the criminal Courts may impact the disciplinary proceeding but the said principle is not a rule of compulsion and depends upon various factors. In the instant case, the enquiry was conducted before the criminal law was set in motion and ultimately a decision was taken by a disciplinary authority. Having held that the serious charges leveled against the petitioner has been proved, which in our opinion to the hilt as no other better quality of evidence can be produced than the one which was produced before the authority.

We thus do not find any justification in the stand of the appellant that the disciplinary proceeding should not have been proceeded with or may have succumbed to the ultimate decision taken in the criminal proceedings. In view of the special facts unearthed in course of proceeding, there is no explanation far to speak of plausible explanation, offered by the appellant.

We do not find that the manner in which the disciplinary proceedings have been conducted invites any interference after the authority on the basis of a documentary evidence namely the bank statement of the account held by the appellant is produced before the Court indicating the amount to have been received from the said contractor, the judgment needs interference. Mere withdrawal of the complaint after the delinquent is found to have committed serious

misconduct does not ipso facto exonerate him from the charges duly enquired by the authorities and, therefore, such subsequent event does not enure to the benefit of the appellant.

From whatever angle we look at does not find any ground warranting interference with the impugned order nor with the order passed by the disciplinary authority.

The appeal sans merit.

The same is hereby dismissed without any order as to costs.

The connected applications being CAN 1 of 2016 (OLD CAN 4384 of 2016) and CAN 2 of 2021 are also dismissed.

All parties shall act in terms of the copy of this order downloaded from the official website of High Court, Calcutta.

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

(Harish Tandon, J.)

(Prasenjit Biswas, J.)