

**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 891 of 2023

**NANI GOPAL BISWAS
VS
UNION OF INDIA AND ORS.**

For the Appellant : Mr. Bikash Ch. Das,
Mr. Ramkrishna Biswas, Advocates

For the UOI : Mr. D. N. Ray,
: Mr. Rajesh Kumar Shah, Advocates

Heard & Judgement on : September 18, 2024

DEBANGSU BASAK, J.

- 1.** Appeal is directed against the judgment and order dated February 16, 2023 passed in WPA 12984 of 2011.
- 2.** Appeal is at the behest of the writ petitioner.
- 3.** Learned advocate appearing for the appellant submits that, the appellant is similarly situated and circumstances as that of two other delinquents who were imposed minor punishments in respect of similar charges. He draws the attention of the Court to the Article of Charges in respect of two other delinquents who were imposed minor punishments. He also draws the attention of the Court to the Article of Charges levelled as against the appellant. He submits that, Article- III

of the Article of Charges as against the appellant, was not proved during the inquiry. In support of such contention, he draws the attention of the Court to the Inquiry Report. He submits that the Presenting Officer looked into the Attendance Register and passed an opinion which, according to him, is unacceptable. According to him, since the Article-III of the Article of Charges was not proved, the other two Article of Charges being similar as that of the two other delinquents who were imposed minor punishment should be imposed by the Disciplinary Authority.

4. Learned advocate appearing for the appellant submits that, since the Disciplinary Authority imposed a punishment of removal from services, which is not a minor punishment, Disciplinary Authority erred in not doing so. Learned Single Judge failed to appreciate such fact and erred in dismissed the writ petition.

5. Respondent Authorities are represented.

6. A disciplinary proceeding was initiated as against the appellant on three charges. First Article as against the appellant is absentee from attending to the P.T. Parade and regimental duties. Second Article is failing to respond in the evening roll call and failing to attend orderly room of Assistant Commandant. Third Article of Charge is absentee from duty post on a specified date.

7. On the basis of third Article of Charge, inquiry was held where Inquiry Officer submitted a detailed report finding that all the three Articles of Charge stood proved.

8. We perused Inquiry Report. Inquiry Report contains reasons as the removal from services. Writ Court is not concerned with the sufficiency of the evidence or is called upon to re-appreciate the evidence as the Appellate Authority. All that the writ Court is required

to consider is whether there is sufficient material to arrive at the conclusion that the Inquiry Report returned.

9. In the facts of the present case, subject 'Attendance Register' was considered. From such Attendance Register and after considering such documentary evidence and other evidence, it was found that the appellant was absent on scheduled shift duty on April 20, 1993 about 01.00 hours.

10. There is no material placed on record or before the learned Single Judge to suggest, let alone establish, to the contrary of such finding.

11. Appellant challenged the decision taken in the disciplinary proceeding by way of a writ petition. Such writ petition was allowed. Being aggrieved, the respondent Authorities preferred an appeal being MAT 4026 of 2001 when the Division Bench reversed the finding of the learned Single Judge and allowed the appeal. Appellant filed a Special Leave Petition being Special Leave Petition 5264 of 2003. Such Special Leave Petition was heard with other Special Leave Petition which was disposed of by the Hon'ble Supreme Court by permitting the appellant to file a fresh representation before the departmental Authority in view of the fact that such other constables facing similar charges were given minor punishment.

12. Appellant before us filed a representation for withdrawal of the order of the removal from services and for imposition of a minor punishment. Such representation was rejected by a reasoned order. The reasoned order was challenged by the appellant by way of a writ petition which resulted in the impugned order.

13. Learned Single compared the Article of Charges of the two other delinquents who were imposed minor punishment with the charge

sheet of that of the appellant before us. Learned Single Judge held that, the third Article of Charges were serious in nature and was absent so far as the other two delinquents are concerned. Consequently, learned Single Judge found that the appellant cannot justifiably claim to be on the same footing and circumstance as that of the two other delinquents who suffered minor punishment.

14. We considered the charge sheet of the two other delinquents who were imposed minor punishment and the charge sheet as against the appellant. As noted by the learned Single Judge, third charge as against the appellant was absent in the charges levelled against the two other delinquents who were imposed minor punishment. Third charge as against the appellant was proved during the inquiry as noted above.

15. Quantum of punishment is in the domain of the disciplinary authority. Quantum of punishment imposed, on the charges substantiated, cannot be said to be shocking or disproportionate.

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

17. MAT 891 of 2023 is **dismissed** without any order as to costs.

(Debangsu Basak, J.)

18. I agree.

(Md. Shabbar Rashidi, J.)

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