

**IN THE HIGH COURT AT CALCUTTA**  
**CIVIL APPELLATE JURISDICTION**  
**APPELLATE SIDE**

**Present :-**

**THE HON'BLE JUSTICE TAPABRATA CHAKRABORTY**

**And**

**THE HON'BLE JUSTICE PARTHA SARATHI SEN**

**FMA 778 of 2024**

**Mina Debi Singh & Ors.**

**-Vs-**

**Union of India & Ors.**

For the Appellants : Mr. Achin Kumar Majumder, Adv.,

Ms. Ananya Adhikary, Adv.

For the respondents : Mr. Arijit Majumder, Adv.

Hearing concluded on: 03.12.2024.

Judgment on: 13.12.2024.

**PARTHA SARATHI SEN, J. : –**

1. In this appeal the judgement dated 10<sup>th</sup> April, 2024, as passed in WPA 16373 of 2015 by the learned Single Bench is impugned. By the impugned judgement learned Single Bench declined to interfere with the findings of the disciplinary authority as well as of the appellate authority and the revisional authority and thus dismissed the writ petition. The writ petitioner felt aggrieved and thus preferred the instant appeal.

2. For effective adjudication of the instant appeal the facts leading to filing of the aforementioned writ petition before the learned Single Bench are required to be discussed in a nutshell and those are narrated hereinbelow.

- I. On 20.08.2000 the writ petitioner, who at that material time was a constable of RPF got involved in an alleged incident of gang rape with his colleague.
- II. On account of such incident on 28.08.2000 the respondents/authorities submitted charge sheet against the writ petitioner.
- III. Challenging the said charge sheet the writ petitioner approached this High Court by filing a writ petition and on 18.05.2010 such writ petition was allowed whereby and whereunder the charge sheet as submitted against the writ petitioner was quashed by the Writ Court in connection with WP 22160(W) of 2007 wherein liberty was however given to the respondents/ authorities to proceed de-novo on the basis of the charge sheet dated 28.08.2000.
- IV. The matter went up to appeal at the instance of the respondents/authorities and by an order dated 17.12.2012 a co-ordinate Bench dismissed the said appeal being FMA 1534 of 2011.
- V. Challenging the findings of the Division Bench as passed in FMA 1534 of 2011 a SLP was preferred before the Hon'ble Supreme Court which was also dismissed by an order dated 15.07.2013.
- VI. The respondents/ authorities thereafter on 22.07.2013 issued a separate memorandum containing the charges and the

statement of allegation against the delinquent who was the writ petitioner before the learned Single Bench, which according to us, is identical with the charges in charge sheet dated 28.08.2000.

- VII. The enquiry authority after completion of the enquiry proceeding submitted its report dated 22.07.2013 whereby and whereunder it has been held that all the charges against the delinquent has been duly proved.
- VIII. On 12.10.2013 the disciplinary authority after considering the enquiry report awarded punishment of dismissal from service to the delinquent.
- IX. The writ petitioner preferred an appeal however, the appellate authority by its order dated 12.10.2013 dismissed such appeal without interfering with the order of punishment.
- X. The delinquent remained unsuccessful before the revisional authority since by its order dated 21.11.2014 the revisional authority rejected the prayer for revision.

3. As discussed above, the entire proceedings i.e. the memorandum of charges, the finding of the enquiry authority, the findings of the disciplinary authority, appellate authority and revisional authority have been impugned before the learned Single Bench by filing WPA 16373 of 2015.

4. It is pertinent to mention herein that during the pendency of the writ petition, the writ petitioner died and in his place his legal heirs have

been substituted. The present appeal is at the instance of the legal heirs of the original writ petitioner.

5. Mr. Achin Kumar Majumder, learned advocate for the appellants/substituted writ petitioners at the very outset draws our attention to page no.89 of the paper book. It is submitted by him that along with the memorandum of charges dated 22.07.2013 a list of witnesses and a list of documents were supplied to the writ petitioner upon which the enquiry authority intended to place its reliance in course of the enquiry proceeding. Drawing attention to page nos.100 and 102 of the paper book being the copy of the finding of the enquiry authority it is submitted on behalf of the appellants that from the said enquiry report it would reveal that the enquiry authority while coming to a logical conclusion in the said departmental proceeding had relied upon some documents which are not in the list of documents as provided to the writ petitioner while issuing the said memorandum of charge. It is submitted that on account of this, the writ petitioner suffered serious prejudice since in course of enquiry proceeding the writ petitioner got no opportunity to controvert the said documents. It is thus submitted on behalf of the appellants that the enquiry authority did not follow the established procedure for holding enquiry which affected the decision making process of the enquiry proceeding to a great extent.

6. It is submitted further on behalf of the appellants that in an enquiry proceeding the enquiry authority is duty bound to act as an adjudicator and not as a prosecutor. It is contended further that from the

findings of the enquiry authority it would reveal that the enquiry authority voluntarily collected the 'other exhibits' as mentioned in page no.102 of the paper book which clearly indicates that the said enquiry officer was predetermined to submit an adverse report against the delinquent.

7. It is further submitted on behalf of the appellants that from the materials as placed before this Court it would reveal further that the enquiry officer had not only exceeded his jurisdiction but from his conduct it would reveal that from the very inception of the enquiry he was biased which is why the delinquent was even not permitted to adduce DWs. It is further submitted by Mr. Achin Kumar Majumder that from the enquiry report dated 29.09.2013 it would reveal further that the enquiry authority placed its reliance upon the evidence of a criminal trial and thus ignored the settled principle of law that an enquiry proceeding and a criminal trial operates in two different fields though crime or misconduct might arise out of the same act.

8. It is submitted on behalf of the appellants that the aforementioned illegality and/or irregularity in conducting the departmental proceeding was highlighted in course of hearing before learned Single Bench but in the impugned judgement the learned Single Bench has miserably failed to return any finding in that respect.

9. It is further submitted on behalf of the appellants that the learned Single Bench has also failed to come to a finding that the disciplinary authority did not at all apply its independent mind and on the contrary had practically echoed the versions of the enquiry authority.

10. In course of his argument Mr. Achin Kumar Majumder also took us to the finding of the appellate authority as well as the revisional authority. He draws our attention to Rule 217.3 of the Railway Protection Force Rules 1987 (hereinafter referred to as the said 'Rules' in short). It is submitted by him that in the finding of the appellate authority there was no application of independent mind in terms of the mandate of the said Rules and on the contrary the appellate authority most mechanically and arbitrarily upheld the order of the disciplinary authority. It is thus submitted by Mr. Achin Kumar Majumder that while passing the impugned judgement learned Single Bench did not at all consider the non-application of mind by the appellate authority in terms of Clauses (a), (b) and (c) of Rule 217.3 of the said Rules.

11. Drawing attention to the impugned judgement more specifically to paragraph nos. 20, 21 and 22 thereof it is submitted by Mr. Achin Kumar Majumder that learned trial court had practically acted like an appellate court holding the 'other exhibits' (as depicted from page no.102 of the paper book) as admitted documents and thus failed to visualize serious miscarriage of justice which occurred on account of consideration of extraneous evidence which was never part and parcel of the enquiry proceeding.

12. Mr. Achin Kumar Majumder, learned advocate for the appellants thus submits that it is a fit case for allowing the instant appeal by setting aside the impugned judgment.

13. On behalf of the appellants reliance was placed upon the reported decision of **Anil Kumar vs. Presiding Officer and Ors.** reported in **(1985) 3 SCC 378.**

14. Per contra, Mr. Arijit Majumder, learned advocate for the respondents/authorities supports the impugned judgement. It is submitted by him that in paragraph nos. 20,21 and 22 the learned Single Bench has assigned cogent reason for not ignoring the documents relating to criminal trial against the writ petitioner by the enquiry authority and rightly observed that the 'other exhibits' (as mentioned in page no.102 of the paper book) are not foreign documents and on the contrary those documents are the documents of criminal trial in which the writ petitioner was found to be guilty under Sections 376(2)(g)/511 IPC and was sentenced to suffer R.I for 7 years and to pay Rs. 5000/- in default to suffer further imprisonment for a period of one year each.

15. It is further submitted that in the impugned judgment learned Single Bench was correct in coming to a finding that the principle of natural justice was not violated at the instance of the enquiry officer since no material could be placed before the Single Bench that the writ petitioner/delinquent was prevented to adduce any defence witnesses.

16. Placing reliance upon the reported decision of **Secretary, Local Self-Government Department and Ors, State of Kerala vs. K. Chandran and Ors** reported in **(2022) 12 SCC 104** it is submitted on behalf of the respondents/authorities that since the departmental proceedings and the criminal trial ended against the original writ

petitioner/delinquent, the substituted writ petitioners being the legal heirs of the original writ petitioner/delinquent are not entitled to any benefits from the respondents/authorities as wrongly claimed. Mr. Arijit Majumder thus submits that it is a fit case for dismissal of the instant appeal.

17. We have considered the rival submissions of the parties to the instant appeal. We have meticulously gone through the entire materials as placed before this Court. We have also perused the impugned judgement.

18. As discussed (supra), on account of the alleged incident of gang rape as alleged to have occurred on 20.08.2000 at the instance of the writ petitioner and one of his colleagues, the departmental enquiry and criminal trial started simultaneously. Admittedly, by a judgement dated 30.08.2005 and the order of sentence dated 31.08.2005 passed by the learned Additional Sessions Judge, Fast Track Court (3rd Court), Assansol, in Sessions Trial no. 7 of 2004 the writ petitioner and the co-accused were found guilty under Sections 376 (2)(b)(g)/511 IPC and they were sentenced to suffer imprisonment and fine as mentioned (supra).

19. It is nobody's case that the punishment of dismissal from service as suffered by the writ petitioner/delinquent is on account of conviction of the writ petitioner/ delinquent.

20. Sufficient materials have been placed before us that the memorandum of charge containing articles of charges, statement of allegations, list of witnesses and list of documents were served upon the

writ petitioner/delinquent prior to initiation of the enquiry proceeding. Before the enquiry officer evidence, both oral and documentary were adduced. As noted (supra) it was strongly contended on behalf of the appellants that while arriving at a finding the enquiry authority acted in a partial manner, he himself collected the evidence and used the same against the delinquent which clearly showed his biasness towards the respondents and thus the finding of the enquiry authority is based on extraneous evidence.

21. It is trite law that 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 enquiry 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 enquiry was properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under 226 of the Constitution.

22. We have gone through the findings of the enquiry authority as available from page nos.110 to 114 of the paper book. We are conscious that neither the Writ Court nor we while sitting in judicial review or while hearing an appeal therefrom are supposed to re-appreciate the evidence like an appellate authority. Further it has been noticed by us that the findings of the enquiry authority was not based solely on the 'other exhibits' as collected by him during enquiry proceeding. It further appears to us that the said 'other exhibits' though relates to the criminal trial as faced by the writ petitioner/delinquent but those are not the only the documents which persuaded the enquiry authority to come to a finding against the writ petitioner/delinquent. It is to be kept in mind that the writ petitioner/delinquent during his life time was the member of a disciplined force and therefore he was expected to lead a life in such a manner which must not tarnish the image and reputation of the force in which he was employed. We are convinced that no materials could be placed before us that the finding of the enquiry authority is solely based on extraneous evidence.

23. It appears to us that while passing the impugned judgement the learned Single Bench duly distinguished the standard of proof which governs a criminal trial, that is proof beyond reasonable doubt and not a civil standard governed by a preponderance of probability. Within the rule of preponderance, there are various approaches based on context and subject. While sitting in a writ jurisdiction as well as sitting in the appellate jurisdiction against the judgement of the Writ Court the

autonomy of the fact finding authority should not be hampered unless it has been shown that the findings of the fact finding authority are perverse. It has been rightly noticed by the learned Single Bench that in the enquiry proceeding there are some evidences against the delinquent to prove the charges which is sufficient in a disciplinary proceeding.

24. Since Mr. Achin Kumar Majumder in course of his argument was very vocal for non compliance of Rule 217.3 of the said Rules we propose to quote Rule 217.3 hereinbelow *in verbatim*:-

*“217.3 In the case of an appeal against an order imposing any of the punishments specified in rules 148 and 149 or enhancing any penalty imposed under the said rules the appellate authority shall consider :-*

*(a) whether the procedure prescribed in these rules has been complied with, and if not, whether such non-compliance has resulted in violation of any constitutional provisions or in miscarriage of justice;*

*(b) whether the findings are warranted and based on evidence on record; and*

*(c) whether the punishment or the enhanced punishment imposed is adequate or inadequate or severe and pass speaking orders for-*

*(i) setting aside, confirming, reducing or enhancing the punishment, or*

*(ii) remitting the case to the authority which imposed or enhanced the punishment or to any other authority with such directions as it may deem fit in the circumstances of the case:*

*Provided that-*

*(i) no order imposing an enhanced punishment shall be passed unless the appellant is given an opportunity of making*

*any representation which he may wish to make against such enhanced punishment; and*

*(ii) if the enhanced punishment, which the appellate authority proposes to impose, is one of the punishments specified in clauses (a) to (d) of rule 148.2 and an inquiry under rule 153 has not already been held in the case, the appellate authority shall, subject to the provisions of rule 153 itself hold such inquiry or direct that such inquiry be held and thereafter on a consideration of the proceedings of such inquiry pass such orders as it may deem fit.”*

25. It appears to us that the appellate authority did not mechanically dispose of the appeal. He applied his independent mind, re-appreciated the evidence in its entirety and duly examined the procedures for disposal of the appeal including the adequacy of the punishment as awarded by the disciplinary authority.

26. We are in agreement with the argument of Mr. Achin Kumar Majumder that a disciplinary authority is a quasi-judicial authority and therefore is expected to act judicially. However, we find no force in the argument of Mr. Achin Kumar Majumder that from the enquiry report it is apparent on the face of the record that the said enquiry officer conducted the enquiry proceeding with a closed mind and with partiality in absence of any cogent material. It further appears to us that collection of the relevant documents of the sessions trial in which the writ petitioner/delinquent was convicted at the instance of the enquiry authority did not vitiate the enquiry proceeding in absence of violation of

principle of natural justice or in absence of violation of statutory regulations prescribing the mode of such enquiry.

27. For the sake of repetition we once again hold that there is no material to substantiate that exhibiting the documents of the criminal trial in the disciplinary proceeding at the instance of the enquiry officer vitiated the decision making process in the said proceeding.

28. We thus find no merit in the instant appeal and accordingly, the instant appeal is dismissed.

29. There shall be no order as to costs.

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

**(PARTHA SARATHI SEN, J.)**

**(TAPABRATA CHAKRABORTY, J)**