

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Partha Sarathi Chatterjee

MAT 1170 of 2023
+
IA No. CAN 1 of 2023 [Stay]

Union of India & Ors.
-Versus-
Ravindra Kumar Singh

With
MAT 1350 of 2023
With
IA No. CAN 2 of 2023 [Stay]

Ravindra Kumar Singh
-Versus-
Union of India & Ors.

For the Appellants in : *Mr. S.N. Dutta.*
[MAT 1170 of 2023] &
For the Respondents in
[MAT 1350 of 2023]

For the Appellant in : *Mr. Soumya Majumder,*
[MAT 1350 of 2023] & *Mr. Biswroop Bhattacharjee,*
For the Respondent in *Mr. Victor Chatterjee,*
[MAT 1170 of 2023] *Mr. Navin Kumar Singh,*
Ms. Surabita Biswas.

Hearing is concluded on : *1st August, 2024.*

Judgment On : **13th September, 2024.**

Tapabrata Chakraborty, J.

1. The subject matter of challenge in the present appeals is a judgment dated 12.05.2023 passed in a writ petition being W.P.A. 2180 of 2005 preferred by Ravindra Kumar Singh (in short, Ravindra) primarily praying for the following relief:

‘Issue a writ of/in the nature of Mandamus commanding the Respondents and each of them and/or their concerned employees, staff, servants, subordinates and/or authorities and each of them to forthwith cancel and/or quash and/or rescind and/or recall and/or revoke the impugned genform of dismissal dated September 8, 2004 and approval of the same being August 4/6, 2004 as in Annexures “P38” and “P40” and to forthwith reinstate your Petitioner as Adhikari (Met) in 700 Squadron, Bagjola with all benefits and arrears pay, emoluments and perquisites without there being any break in service.’

2. The facts in brief are that while Ravindra was borne on the books of 700 Squadron, Bagjola, Kolkata (in short, the Unit) as Pradhan Navik (Met), it was alleged by one Sri. S.C.Sharma, Commandant (JG) that a representative of Citibank visited him at office along with the salary certificate of Ravindra, P/Nvk, 00927-M for verification. On realising that the particulars in the certificate like basic pay etc. were inflated and the signature of certifying officer, i.e. Comdt (JG) SC Sharma, was a forged one, he requested the bank staff to forward the documents under official covering letter. Thereafter one Mr. Manoj Pokle, an official of e-service, informed him that the bank has already

made a letter in such regard on 28.10.2002. Since no correspondence was received till 18.11.2002, the Unit again contacted the firm and it was intimated that the letter was delivered through courier service to L.G. Sajju on 09.11.2002, however, the letter could not be traced after that. Subsequent thereto, a charge sheet dated 27.11.2002 was issued against Ravindra by the Commanding Officer (in short, CO) under Section 33 of the Coast Guard Act, 1978 (in short, the 1978 Act). For further examination and ascertaining the facts of the case, the loan application and the salary certificate were sent to the office of the Government Examiner of Questioned Documents, Kolkata along with specimen signatures of the Ravindra and SC Sharma. The Examiner opined that the signatures on loan application are that of Ravindra but with regard to the salary certificate, that being of a poor xerographic reproduction, the Examiner expressed his inability to give a definite opinion regarding its authorship. Thereafter by a memo dated 24.12.2002, the CO nominated an officer for recording of evidence. The Record of Evidence (in short, ROE) was prepared and certified in terms of Rule 23 of the Coast Guard (Discipline) Rules, 1983 (in short, 1983 Rules) and forwarded to the CO, who upon rehearing in terms of Rule 26 (2) (b) of the 1983 Rules incorporated a third charge and submitted the Punishment Approval Form (in short, PAF). The said PAF was thereafter scrutinized by Senior Law Officer/Commandant in the light of the recommendations dated 12.02.2004 and 19.02.2004 of the intermediary authorities in the chain of command being Sreekumar, Dy. Director (EPS) and the Director (Personnel) respectively and opinion was

forwarded to the Director General (in short, DG) *vide* memo dated 30.07.2004. Thereafter the DG *vide* memo dated 04.08.2004 set aside the third charge but approved the punishment of '*dismissal from Coast Guard service*' and the said punishment was proclaimed *vide* memo dated 08.09.2024. Aggrieved by the same, Ravindra approached this Court.

3. The writ petition upon contested hearing was disposed of by a judgment delivered on 12.05.2023. The operative part of the said judgment runs as follows:

'For all the reasons as aforesaid, the writ petition stands allowed. The order of the approving authority dated 4th August, 2004 and the proclamation dated 8th September 2004 are set aside and quashed giving liberty to the approving authority to take a fresh decision in the light of the observations made hereinbefore strictly in accordance with law within a period of four weeks from the date of receipt of the server copy of this order. The connected application also stands disposed of. There shall be, however, no order as to costs'.

4. Challenging the said judgment both Ravindra and the Coast Guard authorities (in short, CGA) preferred separate appeals being MAT 1350 of 2023 and MAT 1170 of 2023 respectively and the same were heard analogously.

5. Mr. Majumder, learned advocate appearing for the appellant, being Ravindra in the appeal being MAT No. 1350 of 2023 submits that the learned single Judge after arriving at a finding that '*it is evident from the materials placed that the charges against the petitioner have been held to be proved based*

only on presumption and suspicion’, ought not to have granted liberty to the Approving Authority (in short, the AA) to take a fresh decision.

6. He argues that the *lis* amongst the parties may be segregated in two distinct parts. The first part is the challenge against an order of approval of dismissal dated 04.08.2004 by which the punishment of ‘*dismissal from cost guard service*’ was approved and the second part is the challenge against the ‘*impugned Genform of dismissal dated September 08, 2004*’ by which Ravindra was awarded a punishment of dismissal from cost guard service with effect from 08.09.2004. A perusal of the judgment impugned would reveal that both the above orders were set aside by the learned single Judge and liberty was granted to the AA to take a fresh decision. Such relegation of the dispute to the AA is absolutely unreasoned and unsustainable in law.

7. He argues that the expert opined that the salary certificate ‘*being of a poor Xerographic reproductions do not afford suitable data for basing a definite opinion regarding their authorship*’. On the basis of such expert opinion no finding could have been arrived at that Ravindra forged the signature of Comdt (JG) S.C. Sharma.

8. He contends that the charges were not proved against Ravindra and the suspicion entertained by the employee, in law cannot be treated as evidence against Ravindra. The CGA before punishing him ought to have taken scrupulous care to ensure that an innocent is not punished. Being oblivious of such proposition of law, the learned single Judge erred in law in reopening the

proceeding and such direction leads to reinvigoration of a claim finally decided. There exists no legal evidence on record to link Ravindra with the alleged charged. The learned single Judge glossed over the said issues, as urged, and did not return any finding on the same. Such infirmity warrants interference of this Court.

9. He argues that Ravindra has been deprived of knowing the reasons which may have weighed with the AA to approve the order of dismissal. The manner in which the approval has been granted leaves much to be desired. Reasons introduce clarity in an order. On plainest consideration of justice, the AA ought to have set-forth its reasons, howsoever, brief in its order. The absence of reasons has rendered the order unsustainable and the same was rightly interfered with. In support of the arguments advanced reliance has been placed upon the judgments delivered in the cases of *Union of India vs. H.C. Goel*, reported in *AIR 1964 SC 364*, *Narinder Mohan Arya vs. United India Insurance CO. LTD. and Ors.*, reported in *(2006) 4 SCC 713* and *Roop Singh Negi vs. Punjab National Bank and Ors.*, reported in *(2009) 2 SCC 570*.

10. Drawing our attention to Section 57 of the 1978 Act and Rule 20 of the 1983 Rules, Mr. Dutta, learned advocate appearing for the CGA, the appellants in MAT 1170 of 2023, submits that a composite reading of the said provisions would reveal that in the event of imposition of a punishment of dismissal, approval of the authority under Section 57 (a) is required. The word '*approval*' refers to an act of officially accepting, endorsing or sanctioning a decision or an

action. The AA is not required to record elaborate reasons, in the event it has concurred with the findings of the disciplinary authority (in short, DA), as would be explicit from Rule 28 (e) of the 1983 Rules. The learned single Judge failed to appreciate that as per Rule 28(e) of the 1983 Rules, if the DG agrees with the DA as regards imposition of the punishment of dismissal, he is required to grant a formal approval without any detailed reasoning.

11. He argues that Ravindra was working in a disciplined force and such service demands an impeccable integrity and track record besides good character and suitability. The standard of discipline expected from a member of a disciplined force needs to be construed at a different pedestal. The questions involved are not trivial. The charges against Ravindra were of falsifying official documents and false declaration and moral turpitude. Having regard to the seriousness of the charge and the fact that Ravindra was a member of a disciplined force, the learned single judge ought not to have interfered with the order of punishment. Question of any relaxation of the order of dismissal also does not occasion inasmuch as it needs to be borne in mind that in a disciplined force absolute integrity and honesty is required to be preserved and in the event such discipline is not maintained, the confidence of public would be impaired and that the appellant, being a member of disciplined force, is expected to be extremely cautious in his duties and having committed an offence, he cannot lament and seek sympathy from this Court.

12. He contends that execution of an application for home loan by Ravindra stood established. The expert opinion and the deposition of the witnesses corroborated such fact. Upon a detailed and comprehensive scrutiny of records, the punishment of dismissal was recommended by the DA after re-hearing the matter in consonance with the provisions of Rule 26 (2) (b) of the 1983 Rules and in the said conspectus, the learned single judge arrived at an erroneous conclusion that the recommendation was based upon extraneous materials and that the conclusion was presumptive.

13. He submits that there was no jurisdictional error on the part of the CGA in conducting the disciplinary proceedings, no infirmity in the decision-making process and no violation of the principle of natural justice warranting interference in exercise of jurisdiction under Article 226 of the Constitution of India moreso when the documents and the deposition of the witnesses satisfies the standard of proof on the rudiments of preponderance of probabilities.

14. He further argues that the writ Court cannot transpose itself as an appellate authority over the order of punishment passed by the competent authority upon re-appreciation of the evidence or adequacy and reliability of the evidence. In support of the arguments advanced reliance has been placed upon the judgments delivered in the cases of *Jayrajbhai Jayantibhai Patel –vs- Anilbhai Jayantibhai Patel & Ors.*, reported in (2006) 8 SCC 200, *Ex-Constable Ramvir Singh –vs- Union of India*, reported in AIR 2009 SC 33, *Ajit Kumar Nag vs. Indian Oil Corpn. Ltd., Haldia and Ors.*, reported in (2005) 7 SCC 764, *Union*

of India vs. P. Gunasekaran, reported in (2015) 2 SCC 610, *Union of India vs. Ex. Constable Ram Karan*, reported in (2022) 1 SCC 373 and *Union of India vs. Constable Sunil Kumar*, reported in (2023) 3 SCC 622.

15. In reply, Mr. Majumder argues that Ravindra cannot be made a victim of a presumptive conclusion. Any probability of misconduct needs to be supported with oral or documentary material and this requirement has not been fulfilled in present case. The charges could not be established against Ravindra and in view thereof, the relegation of the matter again to the AA is not sustainable in as much as the AA cannot sit in appeal over the findings of the learned single Judge that Ravindra ought not to have been penalized on the rudiments of mere suspicion.

16. We have heard the learned advocates appearing for the parties at length and we have given our anxious consideration to the facts and circumstances of the case.

17. A perusal of the judgment impugned would reveal that the learned Single Judge observed *inter alia* as follows:

- a. The finding of the CO to the effect that the petitioner attached a forged salary certificate with inflated salary details only on the basis that the loan application was signed by the petitioner was based '*only on presumption*';
- b. The recommendation of the Director (Personnel) was '*based on extraneous materials which are not relevant*'.

18. The essence of judicial approach is objectivity, exclusion of extraneous materials or consideration and observation of rules of natural justices. Sufficiency of evidence in proof of the finding is beyond scrutiny by Court, while absence of any evidence in support of a finding is an error of law apparent on the record. Suspicion, howsoever high is not a substitute for proof. The judgments upon which reliance has been placed by Mr. Dutta, do not dispute such proposition.

19. Remand of a disciplinary proceeding means sending the case back to the original decision-making body for further review, consideration or action. The goal of remand is to ensure that the disciplinary process is thorough, impartial and just. The learned single Judge after arriving at a specific finding that *'it is evident from the material placed that the charges against the petitioner have been held to be proved based only on presumption and suspicion'* ought not to have granted liberty to the AA to take a fresh decision in the light of the observations made in the order.

20. That the order impugned is absolutely silent as to why after setting aside the order of the AA dated 04.08.2004 and the proclamation dated 08.09.2004 liberty was granted to the AA to take a fresh decision. Such relegation would be an exercise in futility since the AA cannot sit in appeal over the observations of the Court.

21. The order of approval of punishment dated 4th/6th August, 2004 and the order of proclamation of dismissal dated 08.09.2004 were challenged in the

writ petition filed in the year 2005 which was ultimately disposed of about 18 years thereafter on 12.05.2023. The relegation of the matter for reconsideration after the lapse of such a long period of time would be iniquitous since Ravindra is at the fag end of his service career and is due to retire in the month of January, 2025. It would, therefore, not be in the interest of the justice to remand the issue at this stage for start of another innings.

22. On 26.12.2003, the CO incorporated a fresh charge of false statement since Ravindra while deposing made a statement of not applying for loan. In the report of the Deputy Commandant dated 12.02.2004 it was observed *inter alia* that the third charge stood dropped since the statement does not amount to a deposition. It was also observed that the charge of submission of forged document could not be established. In the follow up report of the Director (Personnel) dated 19.02.2004 it was observed *inter alia* that '*it may be presumed that the forged salary certificate in question could have been the handwork of the individual himself*'. Surprisingly thereafter the Commandant/Senior Law Officer in his report dated 30.07.2004 even after noting that Ravindra had not been identified by any of the witnesses and that the Expert had not been examined and that there are shortcomings in the ROE, still recommended approval of the first and the second charges. The apparent inconsistencies and imperfections and contradictory findings do not establish the charges of falsifying official documents and false declaration. The CGA in paragraph 28 of the affidavit-in-opposition have even alleged moral turpitude against Ravindra which does not even feature in the chargesheet itself.

23. In service jurisprudence dismissal from employment is akin to civil death. The sequence of facts reveals that the CGA have proceeded in an arbitrary manner and have imposed punishment of dismissal. Ravindra's conduct is irreproachable and his understanding of responsibility and adherence to discipline is not questionable and his reinstatement would not tantamount to foisting a cantankerous and abrasive officer upon the employer moreso when he had no antecedent and had discharged 18 years of unblemished service.

24. For the reasons discussed above, the decision of the learned Single Judge setting aside the order of the AA dated 04.08.2004 and the proclamation dated 08.09.2004 is affirmed and the portion of the impugned order giving liberty to the AA to take a fresh decision in the light of the observations, is set aside and the CGA are directed to reinstate Ravindra within 6 weeks from the date of communication of this order and to start payment of Ravindra's monthly salaries and other allowances, month by month. The CGA shall treat Ravindra in service without any break as if no order of dismissal was ever issued to Ravindra.

25. It is true that once the order of termination of service of an employee is set aside, ordinarily the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. While dealing with the prayer of back-wages, factual scenario, equity, good

conscience and a number of other factors, like the manner of selection; nature of appointment; the period for which the employee has worked with the employer etc.; have to be kept in view. Appropriate pleadings need to be on record pertaining to the issue as to whether the employee was not gainfully employed or was employed on lesser wages. The Court may also deny the relief of award of full back wages where that would place an impossible burden on the employer. None of the parties appear to have taken appropriate steps towards early disposal of the writ petition and accordingly the burden of such pendency of the writ petition for more than 18 years cannot be placed solely upon the employer.

26. In the said conspectus, we are of the opinion that a balance would be maintained and the interest of justice would be subserved through issuance of a direction upon the CGA to disburse 50% of the back wages to Ravindra from the date of dismissal till the date reinstatement in terms of this order.

27. Accordingly, the CGA are directed to calculate and disburse the back wages within a period of 8 weeks from the date of communication of this order. The appeal preferred by Ravindra being MAT 1350 of 2023 and the connected applications are, accordingly, disposed of.

28. The appeal preferred by CGA being MAT 1170 of 2023 and the connected applications are dismissed.

29. There shall, however, be no order as to costs.

30. Urgent photostat certified copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)