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Ct-08

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MAT 1310 of 2023

with

IA No. CAN 2 of 2023

Amiyo Mondal @ Mandal

Vs.

Union of India & Ors.

Mr. Ziaul Islam

... For the Appellant

Mr. Rajendra Banerjee

... For the Respondent no. 1/
Union of India

1. We have heard the learned counsel appearing for the parties.
2. The appeal is arising out of an order passed by the learned Single Judge in a writ petition in which the writ petitioner has challenged the order of dismissal from service.
3. The appellant alleged that he was dismissed from service on the basis of show-cause notice and reply thereto without initiation of disciplinary proceedings.
4. Learned Single Judge after verifying the record held that the petitioner got an opportunity to present his defence and to cross-examine Dr. Paritosh Verma as well as Constable Ajeet Singh.
5. Briefly stated the petitioner worked as a constable (GD) with the Border Security Force (BSF) since April, 19, 2013.
6. On the basis of the complaint that job was

offered against cash by manipulating various medical documents. CBI initially started an enquiry against Dr. Paritosh Verma and one Ajeet Singh, CT/GD working as a constable in the battalion. Apparently, Ajeet Singh was caught red handed by the BSF Vigilance Team while receiving bribe from one civilian. While it is not very clear whether disciplinary proceedings have been initiated against Dr. Verma and Ajeet, CBI has registered an FIR against the said three accused persons. The authority issued a show-cause notice on 20th October, 2021 alleging that one Ajeet Singh has stated during questioning that he was in contact with the writ petitioner while he was performing Security Aid duty of Dr. Paritosh Verma, Medical Officer of DME Centre. It was alleged that the writ petitioner had nexus with Dr. Verma, the Medical Officer who would clear the medical examination of the candidates in lieu of money and Constable Ajeet had transferred Rs.35,000/- through pay phone application to the appellant and also had given Rs.75,000/- in cash. Appellant had purchased one Mobile phone worth Rs.19,000/- from the said amount and kept the remaining amount of Rs.56,000 at room no.8 of Officers Mess SHQ, BSF Kishanganj allotted to Dr. Paritosh Verma, AC/MO.

7. It was alleged that from the statement of Ajeet, Dr. Paritosh and Divya wife of Dr. Paritosh as well their bank statements that it would appear that the appellant used to collect money from the candidates through Ajeet by making assurance that they would be cleared in the Medical Examination.

8. The commandant who had issued the show cause notice, was of the view that the trial by a Security Force Court would be inexpedient and impracticable in view of ample evidence collected against the appellant from the statement of Ajeet, Dr. Paritosh Verma and Divya.

9. The show cause notice was issued purportedly under the provision of sub Rule (2) of Rule 22 of the BSF Rule, 1969 and the appellant was called upon to submit, in writing, an explanation and defence why he should not be dismissed from the service without pension for such aforesaid act. In reply to the said show cause notice the appellant had stated that the CBI had already initiated enquiry in the alleged corruption case and it would be prudent in the event, the departmental proceeding is deferred till the investigation is completed by the CBI.

10. The writ petitioner alleged that he was under

tremendous pressure from Dr. Verma under whom he worked as security aid at the relevant point of time and he had not made any personal gain out of the money that was handed over to him by Ajeet with the instruction to hand over the said money to Dr. Verma or his wife. He only followed the instruction of his superiors without any ulterior gain. The appellant ventilated the predicament of working under the superior officers and the consequence of not following the direction of the superior.

11. The said explanation was however, not accepted by the commandant and he was dismissed from service.

12. In this background, the order impugned is required to be reviewed.

13. The reply to the show-cause notice is to enable the employer to decide whether any disciplinary proceeding should be initiated against the delinquent. However, as it appears from record without giving any opportunity to the appellant to participate in a disciplinary proceeding, he was dismissed summarily from service. In reply to the show-cause notice, he had made categorical statements against his superior, who had forced him to collect money on his behalf and it appears that before the Court of Special Judge, C.B.I-III,

Patna in connection with Special Case No. 06 of 2020 has filed a report before the Special Judge exonerating the present appellant and found him innocent.

14. We are surprised to find that by a cryptic order the service of the writ petitioner was terminated. There has been no consideration of the explanations he had offered in reply to the show cause notice. The power under Rule 22 has to be applied with caution in situations where the formation of the opinion is possible without battering an eyelid and/or evidence on record does not require any investigation or that the enquiry would be an empty formality. We may refer to paragraph 10 of the order of dismissal which reads as follows:

“Whereas, reply dated 19th November, 2021 submitted by No.130817918 Constable Amiyo Mondal to the aforesaid Show Cause Notice was examined in the light of entire facts and circumstances of the case and found to be devoid of merit as there is sufficient evidence on record regarding his involvement in the aforesaid corruption case.”

15. Having regard to the consequence that a delinquent is likely to suffer by invoking the drastic power under Rule 22, it is expected that some reasons should be given for not accepting

the explanation.

16. It appears that paragraphs 2 to 9 of the impugned order dated 31st March, 2022 are mere reiteration of the statements made in the show cause notice.

17. It appears that the authorities have proceeded with a closed mind and pre-judged the issue. Inviting an explanation was an empty formality. The order passed by the authority has a serious and grave consequence as it not only forfeits his terminal benefits but also forfeits his pension. He had been put to penury.

18. The persons named by the appellant in his reply to the show-cause notice stand corroborated by the report filed by the C.B.I before the Special C.B.I Court as the C.B.I was of the view that the appellant is innocent and no charge-sheet was filed against the appellant. The writ petitioner was dismissed from service only on the basis of reply to the show-cause notice which has clearly implicated Dr. Paritosh Verma and Constable Ajeet Singh. This is also the finding of C.B.I during enquiry culminating in the charge-sheet. The appellant is entitled to a fair procedure as it should not be given an impression that the authorities concerned are trying to protect Dr. Paritosh Verma and Constable Ajeet Singh or any

other person superior to the appellant at the cost of the appellant.

19.In such facts and circumstances we are of the view that invoking the Provision 22 in the instant case, was not proper. He should have been given an opportunity to prove his innocence or the circumstance under which he was pressurized to collect money. In fact, the CBI did not find anything incriminating against the appellant/writ petitioner. The scope of investigation by CBI and the Vigilance Department of BSF are similar and it is not unexpected that the investigation by CBI was more probing and intrusive.

20.Under such facts and circumstances we set aside the order of termination and consequently the order under appeal.

21.The writ petitioner shall be reinstated without back wages for the time being and in the event if he is exonerated, he would be entitled to full back wages. We make it clear that in the event no proceeding is initiated against the appellant within two weeks from date, it shall be presumed that the respondents are not willing to proceed departmentally against the appellant/petitioner and in such case, the appellant would be entitled to reinstatement with full back wages. We have not gone into the merit of the charges. We set

aside the order of dismissal only on the ground that no departmental proceeding was initiated against the appellant by issuing a charge-sheet. Moreover, the order of dismissal is cryptic and premeditated. It clearly violates the principle of natural justice.

22. In the event the authority concerned is of the view that during the pendency of the disciplinary proceeding the appellant is required to be kept under suspension, appropriate order to that effect shall be issued along with subsistence allowance admissible to the appellant till the conclusion of the disciplinary proceeding.

23. In the event any disciplinary proceeding is initiated against the writ petitioner.

24. In view of the above, the appeal succeeds.

25. MAT 1310 of 2023 stands disposed of.

26. In view of disposal of the appeal, nothing remains to be decided in the application for stay being CAN 2 of 2023 and the same is accordingly disposed of.

27. However, there shall be no order as to costs.

28. Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Soumen Sen, J.)

(Uday Kumar, J.)

