

**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

FMA 419 of 2024

**PANCHANAN ROY
VS
UNION OF INDIA AND ORS.**

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

For the UOI : Mr. Swapan Kumar Nandi,
Ms. Banani Bhattacharya, 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 12985 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. Consequently, 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 against the appellant on five charges. The first article of charge relates to his failure to attend regimental duties like parades on several dates and P.T. on one specified date. The second article of charge is his failure to attend the orderly room of Assistant Commandant on specified dates and absence from parade. The third article of charge relates to the appellant being found sleeping at night shift duty. The fourth article of charge relates to his failure to start the engine of speed boat to catch persons of interest. The fifth article of charge relates to the appellant being found absent from barrage duty post and found at feeder canal without obtaining prior permission for shifting of duty. The fifth charge also relates to the appellant cutting down his name in the duty chart at his own without permission from the competent authority.

7. On the basis of these five articles of charges, inquiry was held where the Inquiry Officer submitted a detailed report finding that all the five articles of charges stood proved.

8. We perused Inquiry Report. Inquiry Report contains reasons as to the finding of charges being proved. 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, the fifth article of charges was established as against the appellant as also the other articles of charges.

10. There is no material placed on record or before the learned Single Judge to suggest, let alone establish, to the contrary of 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 4024 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 5265 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 writ petition before the departmental Authority in view of the fact that such other constable facing similar charges were given rival punishment.

12. Appellant before us filed a representation for withdrawal of the order of the removal from services and 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 fifth article of charges was 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 consider 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. FMA 419 of 2024 is **dismissed** without any order as to costs.

(Debangsu Basak, J.)

18. I agree.

(Md. Shabbar Rashidi, J.)

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