

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Supratim Bhattacharya

F.M.A. 22 of 2017

With

CAN 2 of 2021

(ASSIGNED)

Dr. Tapas Ranjan Bandyopadhyay

Vs.

National Institute of Technology & Ors.

For the Petitioner : Mr. B. N. Ray,
Ms. Shetparna Ray

For the Respondents : Ms. Rajashree Venket Kundalia

Judgment on : December 12, 2025.

Madhuresh Prasad, J.:

1. The present appellant/ writ petitioner was a faculty member in the National Institute of Technology, Durgapur (NIT Durgapur in short). He was inflicted with a punishment of termination from service dated 04.05.2007, which was affirmed by the Appellate Authority vide order dated 21.10.2010. The writ petition was filed assailing the termination order as also the order of affirmation of the removal/termination order by the Appellate Authority. The writ petition was dismissed by the Writ Court by its judgment dated 24.06.2016 passed in WP No. 23699 (W) of

2010, which is put to challenge by the writ petitioner in the present intra court appeal.

2. It would be relevant to notice the fact(s) that this is the 5th Writ Petition filed by the writ petitioner since the issuance of Charge Memo dated 08.10.2004. The learned Single Judge has taken note of the fact that the writ petitioner, in the present writ proceeding, for the first time raised an issue regarding lack of jurisdiction of the authority issuing charge memo dated 08.10.2004. Prior to this writ proceeding no such issue was raised by the writ petitioner. The petitioner participated in the proceedings based on the Charge Memo without any objection. The point of jurisdiction, therefore, now cannot be allowed to be raised by the writ petitioner. The learned Single Judge has further noticed that writ petitioner could not establish that at the time of issuance of Charge Memo any other rules or regulations was in place based on which he could show that Director of the Institute was not the competent authority for initiating the proceedings.
3. The learned Single Judge has also taken note of the charge against the writ petitioner namely: (i) his refusal to set question papers, as directed by the authorities for examination to be conducted in the B-Tech Course/s and (ii) it that he refused to examine the answer scripts ignoring the direction of the authorities in this regard. At the relevant point of time the petitioner was Senior Lecturer in the Metallurgical Engineering

Department. There was another allegation also regarding handing over of copy of documents to the press, thereby making public, the name of paper setters and examiners for an examination, the result of which was yet to be published. Thus, it was alleged that by such conduct the petitioner jeopardized the whole examination process, putting at stake the fate of Under-Graduate and Post-Graduate student of Metallurgical Engineering Department.

4. The learned Single Judge dismissed the writ petition, taking note of the fact that the writ petitioner admitted his refusal to set the question papers as also to evaluate the answer scripts. In view of his express admission, coupled with unsustainable justification for such refusal tendered by the petitioner in this regard, the learned Single Judge was of the view that it is a case of gross insubordination by the writ petitioner. The act of insubordination had the effect of jeopardizing the academic calendar and career of the students. The learned single judge was of the view that the authorities have rightly taken the measures, impugned by the writ petitioner.
5. The learned single judge further found that there was no procedural error in the Departmental Proceeding conducted against the petitioner. Having regard to the limited scope of judicial review there being no procedural infirmity, the learned Single Judge was of the view that there was no scope to interfere with the punishment inflicted upon the writ petitioner.

6. The learned Advocate for the writ petitioner, in support of the present appeal submitted that the order of removal dated 04.05.2007, as also the order of its affirmation by the Appellate Authority are unsustainable.
7. Firstly, it is submitted that the Charge Memo dated 08.10.2004 was issued by the Director-in-Charge of the Institute, who was not a competent authority for issuing a charge memo against a Faculty Member of the Institute. The Director was not the petitioner's appointing authority. However, while acting as Director-in-Charge, the disciplinary proceeding was initiated against writ petitioner and the director has proceeded to complete the same by imposing penalty of removal against the petitioner. The initiation as well as order of punishment, therefore, are unsustainable for want of jurisdiction.
8. He has drawn attention of the Court towards Office Memorandum dated 09.11.2003 issued by the Government of India, in the Ministry of Human Resource Department, Department of Secondary and Higher Education (hereinafter referred to as OM dated 09.11.2003). He submitted that Clause 5.1 specified that the disciplinary authority for any member of non-teaching staff/faculty member including the petitioner was the "*Board of Governors*". The Charge Memo dated 08.10.2004, therefore, by the Director-in-Charge was clearly unsustainable, and such jurisdictional error can be raised at any time. The appellant has relied upon decision of the Apex Court in the case

of **Chiranjilal Shrilal Goenka (Deceased) through LRS. vs. Jasjit Singh and Others** reported in **(1993) 2 SCC 507, State of Orissa & Anr. Vs. Mamata Mohanty** in Civil Appeal No.1272 of 2011 on 09.02.2011, and **Management of D.T.U vs. Shri B.B.L Hajelay & Anr.**, reported in **AIR 1972 SC 2452: (1972) 2 SCC 744.**

9. He submits that appointing authority has to personally apply its mind when question of removal of an employee arises, and such function cannot be delegated. He has also submitted that if an order is bad in its inception, it does not get sanctified at a later stage. Any subsequent resolution of the Board delegating power of Disciplinary Authority on the Director in the present case, therefore, cannot lend any justification to exercise of power by the Director/ Acting Director.
10. Relying upon the decision in the case of **Chiranjilal Shrilal Goenka** (supra) he submits that the law has been stated therein in clear and specific terms that a decree passed by a Court without jurisdiction is a nullity, and non-est. The defect of jurisdiction can be raised at any stage, even at the stage of execution or in collateral proceedings.
11. Second submission advanced by the learned Advocate for writ petitioner is regarding procedural infirmity. He submits that no presenting officer was appointed in the proceedings and nor any witness was examined in support of the charges. He has placed reliance on decision of the Apex Court in the case of **Roop Singh**

Negi vs. Punjab National Bank and Others reported in **(2009) 2 SCC 570.**

12. Third and last submission advanced on behalf of the appellant is that order of the Appellate Authority (Visitor) manifests non consideration of the appeal by the Visitor. He has referred to decision of the Apex Court in the case of ***Chairman, D.A, Rani Lakshmi Bai Kshetriya Gramin Bank vs. Jagdish Sharan Varshney & Ors.***, reported in **(2009) 4 SCC 240** that even while affirming an order, brief reasons were required to be assigned, which was not done by the appellate authority. Such order is therefore unsustainable in the eyes of law.

13. The order of removal as well as order of the Appellate Authority, therefore, according to the learned Advocate for the writ petitioner stands vitiated for the above infirmities. The order of the learned Single Judge dismissing the writ petition, therefore, deserves to be set aside and the order of punishment as well as its affirmation by the Appellate Authority are liable to be quashed/set side.

14. The learned Advocate for the respondent has drawn attention of the Court towards a brief background forming the basis of the Charge Memo dated 08.10.2004. Referring to the same she has submitted that in between July 2003 to September 2004, the petitioner was requested by the Professor and Head of the Department of Metallurgical Engineering to set the question papers on the subjects in terms of resolution of the Academic

Committee. The petitioner did not comply the directions. On the contrary he has recorded a response by way of a note on the written request, raising an objection that calendar for the semesters was not circulated or forwarded to the petitioner. He requested for copy of the academic calendar.

15. Similarly, the petitioner was requested by a routine communication to evaluate the copies of certain papers and to return the same to the Head Examiner of Metallurgical Engineering. The petitioner did not obey these two requests. She has laid emphasis on the fact that noncompliance with these directions is admitted by the petitioner.

16. The learned Advocate for the respondent further submitted that the petitioner was placed under suspension on 01.10.2004 and departmental proceeding was initiated for his alleged repeated refusal to set question papers and examine answer scripts. An order of removal from service was passed after the enquiry. The same was set aside by the Chairman of the Board of Governors of the Institute in compliance of an order passed in W.P No.9877(w) of 2004. Thereafter, the Charge-sheet was issued on 10.10.2004 which resulted in submission of an Enquiry Report.

17. The petitioner again alleged the enquiry to be held *ex-parte*; and further enquiry was directed which was held in May 2005 and an order of removal from service was issued on 09.05.2005. The petitioner thereafter preferred an appeal before the Appellate Authority. The appeal was considered, and the matter was again

remanded by order of the appellate authority vide order dated 26.09.2006. A significant development in the meantime was that the Board of Governors in its meeting held on 05.03.2005 resolved at item no.3.4 as follows:

“ITEM NO.3.4

To consider delegation of power to the Director for awarding punishment to erring faculty member/non teaching staff.

Resolved that the Director be authorised to take disciplinary action and award punishment to both teaching and non teaching staff who are/is found guilty of misconduct, indulge in act of indiscipline and for dereliction of duties. The Chairman, Board of Governors shall act as Appellate Authorities for such employee i.e. both teaching and non teaching employees. This was in modification of earlier resolutions in this regard.”

18. Since the Board had delegated the powers of the disciplinary authority upon the director for both the teaching and non-teaching staff, in the meeting of B.O.G dated 05.03.2005, the appellate authority by its order dated 26.09.2006 remanded the matter to the director for reconsideration. The director therefore proceeded to consider the matter as disciplinary authority after due and proper delegation of authority by the B.O.G. Even at this stage, the petitioner without any demurer, responded to the 2nd show-cause notice issued to him by the Director and was again placed under suspension on 29.12.2006. A final order of removal from service was then passed on 04.05.2007, therefore, it does not lie in the mouth of the petitioner to contend that the Director was proceeding against him without authority. After issuance of the 2nd show-cause notice under due delegation of

authority by the B.O.G, the petitioner participated in the proceeding.

19. The learned Advocate for the respondent submits that in view of the specific delegation of authority and such authority not being questioned by the writ petitioner in the earlier writ petitions, the learned Single Judge was right in his conclusion that such issue cannot be raised now. She submits that the delegation of authority was for the sake of convenience, since the institute was continuously undergoing transition and since the Board was comprised of members from all over the country. It is under such circumstance that the delegation was resorted to by the Board to ensure that action can be taken promptly, as per need.

20. We find force in submission of the respondent's counsel that Since the Board of Governors was comprising of Members from throughout the country, the power of disciplinary authority was delegated to the Director by the Board, in its wisdom, to facilitate prompt action against the erring faculty member, or member of staff. After delegation by the Board on 05.03.2005 the petitioner has participated in the proceedings. In fact, on 20.04.2025 he sought direction from the High Court in W.P No.5220 (W) of 2005 for expeditious disposal of the departmental proceeding. Such prayer was recorded in the order dated 20.04.2005. The order further records:

“Advocate for the petitioner submits that the only grievance of the petitioner is that the enquiry will be

conducted by the same enquiry officer. He argues that since the enquiry officer previously recorded findings of guilt, there is a reasonable likelihood of his being biased against the petitioner. I fully agree with advocate for the respondent Institute that there is no basis for the apprehension. He points out that the petitioner at no point of time alleged that the enquiry officer acted mala fide. The position is conceded by advocate for the petitioner. On these facts I am of the view that there is absolutely no reason to direct the Institute, and for that matter the disciplinary authority, to appoint another enquiry officer for holding further enquiry. In my opinion, on the basis of mere apprehension if the enquiry officer is changed, the step is bound to create an unhealthy atmosphere and a bad precedent.

For these reasons I do not find any merit in the writ petition; and accordingly it is hereby dismissed. There will be no order for costs in the writ petition.”

21. We find that subsequently the petitioner filed another writ petition No. WP.7042 (W) of 2007. In this writ proceeding final order passed by the Disciplinary Authority (Director) was handed over to the petitioner. The writ petitioner again did not raise any objection regarding jurisdiction or competence of the Disciplinary Authority. On 08.05.2007 the writ petitioner withdrew the writ petition for preferring an appeal. In subsequent writ petition also being WP.15306 (W) of 2009 no such issue regarding incompetence of the Director (Disciplinary Authority) was raised

by the writ petition. The same is apparent from order dated 23.09.2009 passed in WP 15306 (W) of 2009.

22. In the circumstance we find no infirmity in the conclusion of the learned Single Judge that the petitioner now cannot be permitted to raise a belated objection regarding incompetence of the disciplinary authority.

23. Insofar as the submission that there is no presenting officer or witnesses examined, the learned Advocate for the respondent Institute submits that the petitioner also did not call for any witness to be examined. The learned counsel has further pointed out that from paragraph 10 of the petitioner's representation dated 11.01.2005 in response to the Enquiry report, wherein it is stated by the petitioner that there was a presenting officer namely Dr. D.K. Mondal. She further submits that having regard to the petitioner's specific admission in respect of the charges, no witness was required to be produced in support of the charge.

24. In so far as the submission regarding the decision of the Appellate Authority being without any consideration the learned Advocate for the respondent has drawn attention of the Court towards the decision of the Visitor under due intimation to the writ petitioner. The same is dated 21.10.2010:

"The President, in her capacity as the Visitor of National Institute of Technology (NIT), Durgapur, has been pleased to approve the proposal contained in para 3 of the summary at pre-page."

25. From bare perusal of the communication, it is obvious that the entire brief of the case was placed before the Visitor along with recommendation of the Minister for Human Resource Development. The proposal was thus placed before the Visitor along with the relevant documents, statutory provisions, brief history of the case as well as order of the Disciplinary Authority. Upon consideration of these materials the President of India, in her capacity as Visitor of the NIT approved the punishment awarded by the Disciplinary Authority. The submission of the petitioner's Counsel regarding order being without consideration is therefore, devoid of any substance.

26. Learned Advocate for the respondent relies upon decision of a co-ordinate Bench in the case of ***Convent of Our Lady of Providence Girls' High School & Ors. vs. Anita Nigam & Ors.***, reported in ***2018 SCC OnLine Cal 4508*** to submit that in respect of educational institutions when a teacher is found to be non-compliant with the directions, which he is otherwise obliged to comply for conduct of examinations and evaluation of papers and is found guilty of such misconduct the writ Court should not exercise its jurisdiction to set aside such action, unless the order is found to be perverse.

27. She also relied upon ***Air-India Corporation, Bombay vs. V.A. Rebellow and Another*** reported in ***(1972) 1 SCC 814*** to submit that in view of the admitted defiance with the directions of the institute jeopardising the career of students there was a serious

misconduct by member of the faculty which occasioned loss of confidence. Under such circumstances this Court should not interfere with the decision of the authorities.

28. Insofar as the limited scope of judicial review in such matters she has also relied upon decision of the Apex Court in the case of ***Biecco Lawrie Limited and Another vs. State of West Bengal and Another*** Reported in **(2009) 10 SCC 32**. She submits that unless there is a clear violation of constitutional or statutory rights, which is absent in the present case, there is no scope for the Court to exercise judicial review in favour of the petitioner.

29. She lastly relied upon the case of ***U.P. Jal Nigam and Another vs. Jaswant Singh and Another*** reported in **(2006) 11 SCC 464** to submit that after such a long delay, the petitioner cannot be permitted to raise the issue regarding lack of competence of the Director to issue the charge memo and proceed against the writ petitioner.

30. We have considered the rival submissions made by the learned advocates for the parties and gone through the records.

31. In so far as the issue raised regarding competence of the Director to issue Charge Memo, we find that the learned single judge has rightly taken note of certain facts which are born from the records. At least four writ petitions were filed prior to the present writ petition. In the first writ petition the petitioner sought a direction for expeditious disposal of the Disciplinary proceedings without raising any issue regarding competence of

the Director to issue a charge memo. The issue has been raised after long delay, for the first time in the 5th Writ Petition filed by the petitioner.

32. We also find force in submission of the learned Advocate for the respondent that the Board of Governors delegated powers to Disciplinary Authority for Teaching as well as non-Teaching Staff in the Board Meeting dated 05.03.2005. The Appellate Authority remanded the matter back to the Disciplinary Authority (Director) much later thereafter, that is on 26.09.2006. The remand to the Director, was after due delegation of power of disciplinary authority upon the Director made by the Board of Governors, which was never made an issue by the petitioner. In fact, the writ petitioner submitted himself to such jurisdiction and responded to the second show cause notice issued by the Director. We, therefore, find no force in the submission now raised by the petitioner's counsel regarding lack of competence of the Director to issue Charge Memo.

33. Another submission regarding there being no presenting officer or that witness was not examined, also does not inspire any confidence for the reason that the two charges for which the petitioner was proceeded against, namely not setting question papers and refusing to evaluate the answer scripts, are not denied or disputed by the writ petitioner. In fact, he has tried to justify such refusal to discharge his academic responsibility by relying upon earlier order debarring him from such duty. Such

stand of the writ petitioner, in our opinion would not justify such refusal to discharge the responsibility, when later the same responsibility was re-assigned by the superior/competent authority. We also consider it worth taking note of a fact that the petitioner himself referred to existence of a Presenting Officer (Dr. D.K. Mondal) in paragraph 10 of the petitioner's representation dated 11.01.2005, in response to the Enquiry Report.

34. The petitioner also did not make any request for examining any witnesses. The petitioner is not able to show that any prejudice was caused to him by the fact of non-examination of any witnesses. In absence of any prejudice being caused, we find no force in the plea of alleged procedural irregularity. Such submission must be viewed keeping in background the settled law in this regard. No doubt non-observance of the principles of natural justice has been held to cause prejudice. The Apex Court, however, has stated the law in the case of ***State Bank of Patiala vs. S.K. Sarma***, reported in (1996) 3 SCC 364 that a Court/Tribunal should make a distinction between a total violation of the rule of fair hearing; and violation of a facet of that rule. The Apex Court stated that a distinction must be made between no opportunity or no adequate opportunity. In the former case, an order was held to be invalid. In the latter case however, wherein a facet of the rule of fair hearing is alleged the same has to be examined from the stand point of prejudice. This

decision has recently been taken note of by judgment of the Apex Court in the case of **Krishnadatt Awasthy vs. State of Madhya Pradesh & Ors.**, reported in **(2025) 7 SCC 545**, the Apex Court also referred to an earlier decision in the case of **State of UP vs. Sudhir Kumar Singh** reported in **(2021) 19 SCC 706** wherein the position of law was summarized in paragraph 48, which reads:

“48. In a more recent decision in State of U.P. v. Sudhir Kumar Singh [State of U.P. v. Sudhir Kumar Singh, (2021) 19 SCC 706] , the position of law was summarised as under: (SCC pp. 748-49, para 42)

“42. ... 42.1. Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.

42.2. Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

42.3. No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.

42.4. In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by

the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.

42.5. The “prejudice” exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice.”

35. The Apex Court has stated that “prejudice exception” must not however be understood as infringing upon the core principle of *audi alteram partem*.

36. Upon consideration of the legal position emerging from recent decision of the Apex Court in the case of **Krishnadatt Awasthy** (*supra*) we consider the judgment to squarely cover the facts of the present case noted above, in view of the admitted position noted above regarding non-compliance, by the petitioner, with the directions issued by his superiors regarding conduct of examination.

37. Delegation of power and function of disciplinary authority by the Board, upon the Director was not challenged by the writ petitioner. In fact, after such delegation of authority made way back on 05.03.2005 the petitioner participated in the proceeding/s without any demurer. In the writ petitions filed thereafter he did not raise the issue, rather he sought direction for expeditious disposal of the pending proceedings. The same is evident from the above noted orders dated 20.04.2005 in W.P. No.5220 (W) of 2005, order dated 08.05.2007 passed in W.P.

No.7042 (W) of 2007, and order dated 23.09.2009 passed in W.P. No.15306 (W) of 2009. Also there is specific admission of the petitioner regarding his defiance to comply with the order of the superior for setting of question papers and examining the answer scripts. The justification for such defiance is raised by relying on some earlier bar in this regard imposed upon the petitioner, which plea, we have found to be unsustainable. It is obvious that in view of the subsequent direction of the competent authority to the petitioner to discharge such duties, the petitioner could not rely upon an earlier direction by the competent authority placing a bar on discharge of such duties. He was obliged to discharge the academic responsibility, which he was called upon to perform. By not doing so, he has jeopardized the general academic atmosphere of an educational Institution, and career interest of students.

38. In view of his admission regarding defiance of the directions, the petitioner cannot demonstrate that non examination of witnesses in the proceeding, in any way, prejudiced him; or that there was an inadequate compliance with natural justice or that adequate opportunity was not provided to the petitioner in the proceedings. The petitioner did not request for examining any witness. The admitted lapse, which form the basis of his punishment would not in any way be altered by examination, non-examination of witnesses in the departmental enquiry, having regard to the fact that charge was to be established on

the principle of pre-ponderance of probabilities. The submission on behalf of the petitioner relying upon decision of the apex Court in the case of **Roop Singh Negi** (*Supra*) is therefore of no avail to the petitioner. The petitioner's case is covered by the decision of the apex court in the case of **Sudhir Kumar Singh** (*supra*).

39. We also considered the last submission made on behalf of the petitioner regarding there being no manifest consideration by the President of India acting as the Appellate Authority (Visitor).

40. On perusal of the records, we find that petitioners appeal along with the brief of the case was placed before the Visitor along with recommendation of the Minister of Human Resource Development, Government of India. The brief contained the relevant documents, statutory provision, brief history of the case and order of the Disciplinary Authority under appeal. It is apparent from the records that after due consideration the President of India in her capacity as Visitor of NIT approved the punishment awarded by the Disciplinary Authority, vide order dated 21.10.2010 which we have extracted above.

41. Insofar as submission regarding the order of the appellate authority namely, visitor (The President of India) being without assigning any reasons and therefore vitiated, we find that the learned Single Judge has rejected such submission. The learned Single Judge rightly held that order of the appellate authority was an order concurring with order of the disciplinary authority.

Relying upon decision of the Apex Court in the case of **S.N. Mukherjee vs. Union of India**, reported in (1990)4 SCC 594 he held that elaborate reasons were not required to be stated by the appellate authority.

42. We are also of the view that the court exercising judicial review under Article 226 would not sit in appeal over decision of the appellate authority and examine the decision on merits. The material placed on record, demonstrates a procedure wherein based on consideration of the charges, records of enquiry, the relevant rules and regulations, and after taking into consideration the above noted material and recommendation submitted by the Minister of Human Resource Development, Government of India, the appeal was examined, and decision taken by the Visitor.

43. We would further add that when it is manifest that after due consideration of relevant material a decision is arrived at by such a high authority, in absence of any allegation regarding the decision being perverse, actuated by mala fide or for any other reason shocking the conscience of the court including breach of natural justice, there is no scope or occasion for this court to interfere with such decision.

44. We therefore find no force in the submission advanced on behalf of the petitioner. The judgments relied upon by the petitioner's counsel, no doubt, contain binding and undeniable propositions of law. However, in view of above consideration of the facts and

circumstances, we found that the judgments are not applicable to the facts and circumstances of this case.

45. We would further add that in view of the nature of laps allegedly, committed by the petitioner, which was not in dispute we find that the same had severe consequences on the career of students such conduct undoubtedly occasions a loss of confidence in the petitioner, disentitling him to continue to be vested with responsibility of mentoring the career of students in the institution. We, therefore, also agree with the submission advanced by the learned Advocate for the respondent/institute relying upon decision of the Apex Court in the case of ***Air-India Corporation, Bombay*** (Supra) that judgement dated 24.06.2016 of the learned Single Judge in WP No.23699 (W) of 2010 does not require any interference. The appeal is dismissed.

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

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

(Madhuresh Prasad, J.)

I agree.

(Supratim Bhattacharya, J.)