

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble Justice PARTHA SARATHI SEN

WPA 1048 of 2010

Animesh Majumder
Vs.
Union of India & Ors.

For the Petitioner :

Mr. A. K. Lahiri, Adv.

For the U.O.I. :

Mr. Indrajeet Dasgupta, Adv.,

Mr. Kalidas Saha, Adv.

Hearing concluded on:

23.07.2025.

Judgment on:

23.07.2025.

PARTHA SARATHI SEN, J. : –

1. The subject matter of the instant writ petition is the order dated 30.01.2006 as passed by the respondent no. 2/authority as well as the order dated 04.09.2006 as passed by the respondent no. 3/authority. By the order dated 30.01.2006 the respondent no. 2/authority being the disciplinary authority after conclusion of a disciplinary proceeding was not satisfied with the reply given by the delinquent who is the writ petitioner before this Court and thus while accepting the enquiry report of the enquiry officer imposes major penalty upon the writ petitioner for removal from service.
2. By the order dated 04.09.2006 the respondent no. 3/authority found no merit in the appeal of the delinquent and thus dismissed the said appeal.

3. On careful perusal of the entire materials as placed before this Court it reveals to this Court that undisputedly the present writ petitioner was at all material time was posted as driver at Frontier Headquarter, SSB Patna.
4. On account of alleged misconduct on the part of the present writ petitioner, the writ petitioner was severed with a memorandum dated 17.01.2005 containing statement of articles of charges as framed against him along with statement of imputation of misconduct or misbehavior in support of the articles of charge framed against him, copies of which have been annexed at page nos. 23 to 27 of the instant writ petition.
5. Since the disciplinary authority was not satisfied with the replies of the said charges as given by the delinquent, enquiry proceeding was initiated wherein the writ petitioner allegedly admitted his guilt.
6. By a memo dated 12.12.2005 as has been annexed at page no. 29 of the instant writ petition the respondent no. 2/authority being the disciplinary authority provisionally accepted the findings of the enquiry authority, however, an opportunity was given to the writ petitioner/delinquent to make a representation as to why major penalty of 'removal from service' would not be imposed upon the writ petitioner.
7. Materials have been placed before this Court that the writ petitioner replied to such memo under cover of his letter dated 01.01.2006. The disciplinary authority being the respondent no. 2/authority, however, was not satisfied with such reply and thereafter by the impugned order dated 30.01.2006 imposed the aforementioned major penalty upon the writ petitioner.

8. At the time of hearing Mr. Lahiri, learned advocate appearing on behalf of the writ petitioner while drawing attention to the charges as framed against the writ petitioner strongly contended that the charges as framed against the writ petitioner do not contain any ingredients of misconduct inasmuch as in such articles of charges there is no whisper regarding willful absence on the part of the delinquent.
9. Placing his reliance upon the decision of ***Krushnakant B. Parmar vs. Union of India and Another*** reported in **(2012) 3 SCC 178** it is argued by Mr. Lahiri that in order to come to a finding with regard to alleged unauthorized absence the enquiry authority is duty bound to come to a finding that such unauthorized absence of the delinquent must be willful which is distinguishable from the compelling circumstances beyond the control of the delinquent. It is submitted by Mr. Lahiri that no material could be placed on behalf of the respondents/Union of India and its instrumentalities that the disciplinary authority as well as the appellate authority had come to a finding that the unauthorized absence of the writ petitioner is willful. It is thus submitted by Mr. Lahiri that in absence of any such observation the charges as framed delinquent cannot stand and, therefore, all consequent actions as taken by the respondents/authorities on the basis of such charges are liable to be set aside.
10. It is further submitted by Mr. Lahiri that the alleged admission of guilt and/or misconduct by the delinquent is a myth inasmuch as in course of the disciplinary proceeding the writ petitioner was assured by his superior officers that in the event he admits the allegations made in the articles of charges the same would be beneficial for the carrier of the writ petitioner.

11. In his next limb of submission Mr. Lahiri further contended that for the sake of argument though not admitted even it is accepted that the charges as against the writ petitioner have been proved even then the findings of the disciplinary authority as well as the appellate authority are liable to be quashed inasmuch as the quantum of punishment is totally disproportionate with the charges leveled against the delinquent. In support of his contention Mr. Lahiri places his reliance upon the decision of ***Chairman-Cum-Managing Director, Coal India Limited and Another vs. Mukul Kumar Choudhuri and Others*** reported in **(2009) 15 SCC 620**.
12. Placing his reliance upon the decision of ***Tukaram Kana Joshi and Ors. thr. Power of Attorney Holder vs. M.I.D.C. and Ors.*** reported in ***AIR 2013 Supreme Court 565***. It is further argued by Mr. Lahiri that considering the predicament of the writ petitioner as has been pleaded in the instant writ petition, the alleged delay and latches, if there be any, on the part of the writ petitioner cannot stand in the way in getting the relief as prayed for.
13. Such contention of the writ petitioner is, however, opposed by Mr. Dasgupta, learned advocate appearing on behalf of the respondents.
14. It is submitted by Mr. Dasgupta that from the materials as placed before this Court, it would reveal that the petitioner on his own volition admitted his guilt and, therefore, by no stretch of imagination, it can be said that the writ petitioner was forced to admit his guilt as wrongly alleged.

15. It is further argued by Mr. Dasgupta that in absence of any arbitrariness and/or perversity and/or no material to show that the decision making process of the respondents/authorities was vitiated for non-consideration of the relevant materials on record, there cannot be any justification to interfere with the orders impugned especially in a judicial review.
16. It is further submitted by Mr. Dasgupta that proportionality of punishment cannot be decided on a fixed parameter. It is further submitted by Mr. Dasgupta that the writ petitioner being a member of disciplined force is bound to observe the level of discipline and since the writ petitioner has failed to maintain such level of discipline, this Court must be very slow in interfering with the quantum of punishment.
17. In support of his contention, Mr. Dasgupta places his reliance upon a judgment and order dated 09.07.2025 as passed by the Division Bench of this Court presided over by the Hon'ble the Chief Justice in the case of MAT 2290 of 2024 (***Union of India & Ors. Vs. R. Kasivelu***).
18. This Court has meticulously gone through the entire materials as placed before this Court on behalf of the contending parties. This Court has given its due consideration over the submissions of the learned advocates for the contending parties.
19. On careful consideration of the entire materials as placed before this Court, it appears to this Court that the respondents/authorities framed two charges against the writ petitioner based on his unauthorized absence from 10.04.2003 to 08.08.2004 and then again on and from 23.08.2004.

20. From the statements of imputation of misconduct or misbehaviour, in support of the articles of charges, it reveals that on 09.04.2003, the writ petitioner while on duty met with an accident and, thereafter, he was advised by the medical officer, PMCH, Patna to remain in rest for three months. It is the specific allegation against the writ petitioner that instead of availing three months medical rest, the writ petitioner without obtaining permission for leave the station, left his place of posting on the very next date i.e., on 10.04.2003 and remained absent therefrom till 06.08.2003. It further reveals that immediately after joining, he applied for 26 days earned leave prefixing and suffixing some weekly holidays and soon thereafter he again left his station on 23.08.2004 without intimating his superior.
21. It is pertinent to mention herein that in course of the disciplinary proceeding, the writ petitioner admitted his guilt. In course of this argument, Mr. Lahiri though contended that on account of coercion and/or undue influence and/or fraud, the writ petitioner was forced to admit his guilt, however, in his reply to show cause dated 01.01.2006, the writ petitioner has not ventilated his grievance regarding his alleged admission before the disciplinary authority and on the contrary, he raised the issue of his family problem.
22. As discussed in the foregoing paragraphs, the disciplinary authority found no substance in such reply to show cause as submitted by the writ petitioner and thus imposed the major penalty of removal from service.
23. At this juncture, this Court proposes to look to the reported decision of **Krushnakant B. Parmar (Supra)** as cited from the side of the writ

petitioner wherein the Hon'ble Supreme Court while dealing with a case of alleged misconduct of a delinquent held that in the event the absence of the delinquent is on account of compelling circumstances under which it was not possible for him to perform duty, such absence cannot be held to be willful and therefore in such case the employee cannot be held guilty of failure of devotion to duty or behavior unbecoming of a government servant.

24. In considered view of this Court, the reported decision of ***Krushnakant B. Parmar (Supra)*** is no way helpful to the writ petitioner inasmuch as in the disciplinary proceeding, the writ petitioner had made no endeavour to justify his unauthorized absence and on the contrary, he has admitted his fault and/or guilt regarding his unauthorized absence. In view of such, this Court finds that the proposition of law as decided in the case of ***Krushnakant B. Parmar (Supra)*** is quite distinguishable from the facts and circumstances of this case.

25. On careful scrutiny of the orders under challenge, it reveals that the said two authorities while passing the impugned orders have independently considered the enquiry report including findings of the enquiry officer. The said two authorities have given a fair chance of hearing to the writ petitioner prior to passing of the impugned orders and thus followed the principle of natural justice.

26. It is settled principle of 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 proceeding in violation of the principle of natural justice or in violation of

the 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 be arrived at such a conclusion or grounds very similar to above.

27. In considered view of this Court, in the instant writ petition the writ petitioner has failed to ventilate any of the aforementioned settled principles of law for interfering with the orders of the respondents/authorities as passed in connection with a disciplinary proceeding as well as in the appeal as preferred therefor.

28. This Court must not be unmindful that sitting in a judicial review, this Court is not permitted to re-appreciate the evidence like an appellate court and further this writ court in such judicial review is also not permitted to substitute its own view by holding that the view taken by the disciplinary authorities are not correct, unless sufficient materials have been placed for canvassing that the findings arrived at by the disciplinary authorities are either arbitrary or capricious.

29. So far as the proportionality of the punishment is concerned as rightly pointed out by Mr. Dasgupta that the level of discipline to be followed by a member of a paramilitary force is much higher than any other employee who is employed in any other civil service as held in the case of **R. Kasivelu (Supra)** by a Division Bench of this Court presided over by the Hon'ble the Chief Justice.

30. Sufficient materials have been placed before this Court that the present writ petitioner being a member of the armed disciplined force went for unauthorized leave even disobeying the advice of the medical practitioner and remained absent for a considerable length of time without assigning any plausible explanation therefor.
31. It thus appears to this Court that the quantum of punishment as imposed upon the writ petitioner does not appear to be shocking and the said punishment by no stretch of imagination may be termed as excessively harsh.
32. In view of the discussion made hereinabove, this Court thus finds no merit in the instant writ petition.
33. Accordingly, the instant writ petition being **WPA 1048 of 2010** is dismissed.
34. There shall be, however, no order as to costs.
35. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)