

**IN THE HIGH COURT AT CALCUTTA
(CONSTITUTIONAL WRIT JURISDICTION)**

APPELLATE SIDE

Present:

The Hon'ble Justice Partha Sarathi Chatterjee

WPA 1844 of 2012

Tarun Chandra Mondal

-Vs.-

Union of India & Ors.

For the Petitioner : Mr. Kedareswar Chakraborty,
Mr. Saptarshi Chakraborty.

For the Union of India : Ms. Chandreyi Alam,
Mr. Tapan Bhanja.

Heard on : 18.03.2025

Judgment on : 02.04.2025

Partha Sarathi Chatterjee, J.:-

1. The justifiability of the charge sheet issued under a Memo. dated 26.02.2011, Enquiry report dated 25.06.2011, final order issued by the Disciplinary Authority, the order of the Appellate Authority dated 17.08.2011 have been called in question in this writ petition. Furthermore, the petitioner seeks a direction to the respondents to reinstate him with all consequential benefits.

2. Before addressing the contentious issue, it would be apt to outline the key facts, as projected in the writ petition, which are as follows:

a) The petitioner joined Central Industrial Security Force (in short, CISF) as constable against the quota reserved for the candidate belonging to Scheduled Tribe (in short, ST) community on 10.09.1991. While rendering service in CISF unit of Mejia Thermal Power Station (MTPS)/ Damodar Valley Corporation (DVC), a major penalty charge sheet under a memo. dated 26.02.2011 was served upon the petitioner. The charge sheet contained two articles of charge, which are reproduced hereinbelow:

“ 1. That no. 911400795 Constable Tarun Chandra Mondal of CISF Unit, MTPS (DVC) Mejia in order to gain appointment as Constable/GD in CISF authorities submitted false certification of ST being no. 1560-S/T dated 29.06.1986 and thus succeeded in securing appointment of Constable/GD from the Quota meant for ST candidates. His such act tantamount to grave misconduct and thus unbecoming of a member of a disciplined force like CISF. Hence the charge.

2. That no. 911400795 Constable Tarun Chandra Mondal of CISF Unit, MTPS (DVC), Mejia was granted 07 days CL w.e.f. 01.1.2011 to 17.1.2011 on the ground of his mother's serious illness. He required to rejoin the Unit on 18.1.2011/FN on expiry of leave. But he failed to do so and is still overstaying leave defying 02 Nos. of Call-up Notices sent to him by post besides sending 01 No. Telegram. The above act of the individual tantamount to gross indiscipline and dereliction towards his Bonafide duties. Hence, the charge.”

b) The petitioner, through two separate applications dated 10.06.2011 and 16.06.2011, requested an extension of 15 days to submit his reply to the charge sheet. However, no such extension was granted. Furthermore, the petitioner, by an application dated 15.06.2011, requested the supply of specific documents necessary to prepare his reply. Despite this request, no documents were provided to him. On the other hand, the presenting officer submitted a written brief dated 27.04.2011. In an unwarranted rush, the Enquiry Officer hastily issued his findings without allowing the petitioner adequate time or access to the necessary documents to effectively respond to the charge sheet.

c) The findings returned by the Enquiry Officer assert that the charges levelled against the petitioner were served upon him through a memorandum dated 26.05.2011. In response, the petitioner submitted a representation challenging the Enquiry Officer's report dated 18.05.2011, questioning its legality and/or veracity. Despite this, and based on the Enquiry Officer's report, the Disciplinary Authority (in short, DA) passed a final order on 30.06.2011, imposing the punishment of dismissal from service.

d) The petitioner filed a statutory appeal against the final order of the Disciplinary Authority (DA), but the appeal was dismissed by the Appellate Authority (AA) through an order dated 17.08.2011. Subsequently, the petitioner also filed a revisional application before the competent authority, which was also rejected. Hence, this writ petition.

3. In the writ petition, the petitioner specifically contended that although the Sub-Divisional Officer (in short, the SDO) of Ranaghat, District Nadia, issued the caste certificate, it was forwarded to the District Magistrate of 24 Parganas (North) for verification, which led to suspicions regarding the fairness of the respondents. Despite the SDO, Ranaghat, confirming through his letter dated December 31, 2010, that no such certificate had been issued by him, there has been no claim that the certificate is fraudulent, forged, or fabricated.

4. As the petitioner was a permanent resident of the Bongaon Sub-Division in District North 24 Parganas, following the instructions of the respondents, the petitioner approached the competent authority of that district to obtain a caste certificate. After proper verification and scrutiny of the petitioner's request, the SDO, Barasat, North 24 Parganas, issued a caste certificate dated January 31, 2011, certifying that the petitioner belonged to the ST community (Bhumij). The petitioner also submitted this certificate. However, the respondents have simply disregarded it.

5. The petitioner averred that the prosecution failed to produce the SDO, Ranaghat, as a witness. Instead, an employee from the office of the SDO, Ranaghat, namely Mahadeb Chattopadhyay, was presented to testify on behalf of the prosecution. According to the petitioner, this was illegal and not permissible. Since the petitioner was unable to cross-examine the actual witness, he felt that he was deprived of a fair opportunity to properly defend himself in the enquiry proceedings.

6. The information provided by the petitioner in his bio-data at the time of his entry into service was thoroughly verified by the competent authorities. After ensuring the authenticity of the information, the petitioner was offered the appointment. The Additional District Magistrate, North 24 Parganas, opined that no

caste certificate had been issued in the name of 'Tarun Chandra Das.' However, despite this fact, the respondents have unjustly victimized the petitioner, who is, in fact, 'Tarun Chandra Mondal.

7. Pursuant to the order dated 15.05.2012 passed in this writ petition, the respondents filed an affidavit-in-opposition. The crux of the defense taken in the affidavit is that the petitioner was appointed as Constable/GD in the CISF based on the caste certificate (vide No. 1560-ST dated 29th June 1989) provided by him. This certificate was forwarded to the District Magistrate, 24 Parganas (North) for verification. In response, the District Magistrate, through a communication dated 1.11.2010, forwarded the verification report, which included a letter from the Sub-Divisional Officer, Ranaghat, Nadia, dated 20th October 2010. The letter confirmed that no caste certificate had been issued by the Sub-Divisional Officer, Ranaghat in favour of the petitioner.

8. The petitioner was initially granted seven days of casual leave from January 7, 2011, to January 17, 2011, due to his mother's illness. However, despite the leave period expiring on January 18, 2011, the petitioner failed to resume his duties and remained absent without authorization. His request for an extension of leave was denied, and a call-up notice was issued instructing him to return to work immediately. The petitioner, however, refused to comply with this directive. The petitioner submitted an outdoor patient (OPD) card, which showed that he attended a hospital on January 15, 2011, where he was advised to rest for seven days. Additionally, he presented a fitness certificate dated March 23, 2011, issued by a doctor in a private capacity. However, it is worth noting that the petitioner could have resumed his duties and sought treatment at the Unit Hospital, but instead, he deliberately overstayed his leave period.

9. In light of these events, the petitioner was placed under suspension in contemplation of a disciplinary proceedings against him. The disciplinary proceedings were conducted in accordance with the law, and both the Disciplinary Authority (DA) and the Appellate Authority (AA) passed their respective orders in compliance with legal procedures. The petitioner then filed a revisional application, which was found to be without merit and consequently dismissed. It was asserted that neither the constitutional rights nor the legal rights of the petitioner had been violated.

10. The petitioner's father received the charge memorandum, and on 27.02.2011, the Inspector, Mr. Sinha, visited the petitioner's leave address but he was not found at that address. The petitioner did not submit any application requesting an extension of time to file his reply to the charge sheet. Instead, the petitioner sought additional time to file his written submissions in response to the Enquiry Officer's report. It was denied that the petitioner had been deprived of any documents he had requested. During enquiry proceeding, one staff, namely, Mahadeb Chattopadhyay deposed but the petitioner declined to cross-examine Mr. Chattopadhyay. The petitioner never disclosed that he wanted to cross-examine the SDO, Ranaghat.

11. The petitioner himself submitted the caste certificate issued by the Sub-Divisional Officer, Ranaghat, Nadia. However, a complaint was received by the Government alleging that many individuals had obtained employment by submitting false and fraudulent certificates. In response to instructions from the Ministry of Home Affairs, it was decided to verify and/or re-verify the caste certificates of all employees. Consequently, the petitioner's caste certificate was forwarded to the District Magistrate, 24 Parganas (South) for verification. The verification revealed that no such certificate had been issued by the SDO, Ranaghat, Nadia. As a result, it

became clear that the petitioner had fraudulently obtained his employment by submitting a fake certificate. It was asserted that fraud vitiates everything.

12. The petitioner's application dated 15th June, 2011 regarding supply of additional documents did not depict actual picture. The petitioners were provided additional documents by the Sr. Commandant under his covering letter dated 18.06.2011. It was asserted that entire proceeding was conducted in accordance with the Rule 36 of the CISF Rules, 2001.

13. Mr. Chakraborty, learned advocate representing the petitioner, argued that although the petitioner is a permanent resident of District North 24 Parganas, he temporarily resided in Ranaghat, Nadia, and therefore, he approached the SDO, Ranaghat, who issued the caste certificate in his favour after proper verification and inquiry. However, with an ulterior motive, the competent authority forwarded this caste certificate to the District Magistrate, North 24 Parganas, for further verification. In response, the District Magistrate submitted his report, which included a letter from the SDO, Ranaghat, stating that no such caste certificate had been issued. Referring to the letter of the Additional District Magistrate, North 24 Parganas, Barasat, Mr. Chakraborty pointed out that the letter referred to a caste certificate in favour of one 'Tarun Chandra Das,' while actually the petitioner's name is 'Tarun Chandra Mondal.' Therefore, he argued that the letter from the Additional District Magistrate is not related to the petitioner's caste certificate.

14. He further argued that the enquiry proceedings were conducted without the petitioner's knowledge, depriving him of an adequate opportunity to defend himself. As a result, he contended that the entire enquiry was vitiated. To support this submission, he cited the decision in *A.R. S. Choudhury vs. Union of India & Ors.*,

reported in *AIR 1956 Cal 662*. Additionally, he argued that the petitioner was not given the opportunity to cross-examine the SDO, Ranaghat, and as such, the petitioner was denied a fair chance to properly defend himself. Therefore, he submitted that the enquiry proceedings were defective, and the punishment imposed on the petitioner, based on such defective proceedings, cannot be upheld. To support this contention, he referred to the decision in *Amal Kanti Bose vs. The West Bengal State Co-operative Bank Ltd. & Ors.*, reported in *2000 (1) Cal LJ 166*. Furthermore, he contended that the punishment awarded to the petitioner was unjust, and in support of this argument, he relied on an unreported decision by a coordinate Bench of this Court in *W.P. 5440 (W) of 2010 (Radhe Shyam vs. Union of India & Ors.)*.

16. In rebuttal, Mrs. Alam, learned advocate representing the respondents, argued that the petitioner submitted a caste certificate claiming to belong to the ST community. This certificate was then forwarded to the District Magistrate, North 24 Parganas, for verification. Upon verification, it was revealed that no caste certificate had been issued in favour of the petitioner by the Office of the SDO, Ranaghat. Additionally, the petitioner remained absent for an extended period without authorization and, despite receiving a call-up notice, failed to resume his duties. Consequently, disciplinary proceedings were initiated against the petitioner on charges of submitting a forged certificate to secure employment and for unauthorized absence.

17. She also argued that the petitioner had never claimed to cross-examine the SDO, Ranaghat and he had never detailed the documents he required to defend himself properly. Mrs. Alam asserted that the entire proceeding was conducted in accordance with the rules and there was no illegality in conducting the proceeding. The petitioner was afforded opportunity to defend himself. The Enquiry Officer, DA,

AA and the Competent Authority passed reasoned orders. She claimed that punishment is commensurate with the misconduct committed by the petitioner. Therefore, according to her, there is no scope to interfere in this writ petition. In support of her contention, she cited a decision, reported at *2022 (16) Scale 828 (Union of India; Subrata Nath vs. Subrata Nath; Union of India & Ors.)*.

18. When an employer initiates disciplinary proceedings against an employee, it assumes the role of a quasi-judicial authority. As such, it must act fairly, impartially, and without bias or preconceived notions. The principle of fair play applies to administrative, judicial, and quasi-judicial functions alike. If the Court finds that the authority has acted arbitrarily, with a closed mind, or in violation of natural justice or statutory rules, it can exercise its power of judicial review to ensure justice is upheld.

19. However, the scope of judicial review is typically limited to the decision-making process. A decision that is perverse, irrational, or grossly disproportionate falls within the scope of judicial review. While a writ court cannot sit as an appellate body over the decision of the disciplinary authority, nor can it re-evaluate the evidence presented during the enquiry, it may examine the evidence in limited circumstances where the decision is alleged to be perverse, that is, based on no evidence, to determine whether there is any justification for such an allegation.

20. Therefore, let me examine first whether there was any irregularity or illegality in decision making process. In the present case, it is undisputed that disciplinary proceedings were initiated against the petitioner on two charges: (i) using a fraudulent caste certificate to secure employment, and (ii) unauthorized absence due to his overstay beyond the period of casual leave granted by the authority. The charge memorandum was duly served upon the petitioner, but he did

not submit any reply to it. Annexure-P2 (page 37 of the writ petition) indicates that his request for an extension of 10 days to submit his representation against the charge memorandum was rejected. The page no. 35 to the writ petition suggests that the petitioner was granted 5 days' time to submit representation. Additionally, Annexure-P2 (pages 36-37 of the writ petition) further shows that the petitioner sought an extension of time to submit his response to the Enquiry Officer's report. Annexure-P2 (page 38) also reveals that, in an application dated June 15, 2011, the petitioner claimed that he had been provided a copy of the attestation form without the signatures of the SDO and BDO, Bongaon. He requested the authority to supply the attestation form with the signatures of the SDO and BDO, Bongaon, which he asserted had been submitted by him at the time of his entry into service. Mr. Chakraborty vigorously contended that the prosecution did not produce SDO, Ranaghat and as such, the petitioner had been deprived of getting any opportunity to cross-examine him.

22. The petitioner initially claimed that his mother fell ill and thereafter, he claimed that he himself fell ill. Record suggests that he only produced one OPD card and one fit certificate dated March 23, 2011 issued by one doctor in his private capacity. However, no medical documents have been produced to show that his physical condition was such he was not in a position to submit reply either to the charge memorandum or to enquiry report within the time specified therein.

23. It is well ingrained proposition of law that mere plea of procedural irregularity or violation of natural justice etc. will not suffice, the person complaining of such violation is to make out a case that due to such irregularity and/or violation he has been prejudiced or due to such irregularity or violation, miscarriage of justice prejudicial to his interest has occasioned. I may profitably refer

the judgment delivered in case of *State of U.P. –vs- Sudhir Kumar Singh*, reported in AIR 2020 SC 5125, wherein it was ruled that 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, prejudice must be caused to the person complaining of the non-observation of principle of natural justice.

24. Undeniably, the central issue in the disciplinary proceedings was whether the caste certificate submitted by the petitioner at the time of his entry into service was genuine. The petitioner claimed that he had submitted an attestation form with the signatures of the SDO and BDO, Bongaon. However, he alleged that a different attestation form, which did not contain the signatures of these authorities, was provided to him, and he requested that the correct attestation form be supplied. This is a disputed question of fact regarding which attestation form was actually submitted by the petitioner at the time of his entry into service, and as such, it falls outside the scope of judicial review by this Court. Furthermore, the petitioner failed to present any evidence to demonstrate the purpose that would have been served by obtaining the attestation form, if it indeed existed, or its relevance to the enquiry proceedings.

25. Mr. Chakraborty strongly argued that the prosecution failed to produce the SDO, Ranaghat, as a witness. Instead, an employee was presented to testify about the letter from the SDO, Ranaghat. The petitioner did not examine this employee, nor did he submit any application indicating his intention to cross-examine the SDO, Ranaghat. Therefore, due to the petitioner's own fault, the entire proceeding cannot be deemed defective. As noted earlier, the central issue in the enquiry was whether the caste certificate submitted by the petitioner was fraudulent. The SDO, Ranaghat, in his letter confirmed that no such certificate had been issued from his office. It is

more challenging to prove a negative fact than to establish a positive one. The petitioner had the opportunity to present evidence to challenge the accuracy of the SDO, Ranaghat's letter, but failed to do so. He also could ask the Enquiry Officer to summon the SDO, Ranaghat as defence witness but he had not done it.

26. Mr. Chakraborty questioned the fairness of the DA's decision, as the caste certificate was forwarded to the District Magistrate (DM) of North 24 Parganas, even though it was issued by the SDO of Ranaghat, Nadia who is under the administrative control of the DM of Nadia. However, the petitioner was a permanent resident of North 24 Parganas and as such, the certificate was forwarded to the DM of his home district. The DM of North 24 Parganas sought a report from the SDO of Ranaghat and submitted it along with the SDO's letter. There is no evidence to suggest bias or impartiality in the DA's actions, nor any reason to invalidate the enquiry proceedings based on this issue.

27. Mr. Chakraborty argued that the letter from the Additional District Magistrate, which mentioned the name "Tarun Chandra Das," suggested that the report forwarded by the Additional District Magistrate, North 24 Parganas, was not related to the petitioner's caste certificate. However, the letter dated 1.11.2010 (Annexure P13 to the writ petition) was a response to an enquiry about two caste certificates, vide. nos. 901 (S/C) dated 15.06.1983 and 1560 (S/T) dated 29.06.1986. although the letter referred to the names of the certificate holders, Ashis Kr. Das and Tarun Chandra Das, the petitioner cannot deny that he produced the caste certificate numbered 1560 (S/T) dated 29.06.1986. It appears there was a mistake in recording his surname as "Das" instead of "Mondal." I do not find any justification to determine that this error caused any prejudice to or misled the petitioner in defending himself.

28. Mr. Chakraborty argued that the punishment imposed by the DA was disproportionate. It is undisputed that the post to which the petitioner was appointed was reserved for an ST candidate. The petitioner was appointed based on the caste certificate he provided. However, during the enquiry, which gave the petitioner an opportunity to defend himself, it was established that the caste certificate was fraudulent and had never been issued by the SDO, Ranaghat. It is clear that by submitting a fake certificate, the petitioner misled the respondents into believing he was a candidate from the ST community, which led to his appointment.

29. A job is nothing but essentially a contract between the employer and employee and if any of them is misled for basing upon any ingenuine or fake certificate or document, the entire contract will be void *ab initio*. A party who misled the other party to the contract cannot claim any benefit from the contract. Therefore, based on this analogy, it can be concluded that the petitioner's appointment is void *ab initio* and illegal *per se*. Therefore, in like case, the proper course would be termination or cancellation of appointment and support of this view would be obtained from catena of decision of the Hon'ble Supreme Court. It is well renowned principle of law that a man can be deprived of his legal rights if he acts in such way as would make it fraudulent for him to set up his rights. The petitioner also failed to justify his absence from duties, and therefore, the period of absence was rightly deemed unauthorized. In light of this, I am of the view that the DA did not err in awarding the punishment of dismissal from service.

30. I have carefully gone through the decision cited by Mr. Chakraborty. There is no scintilla of doubt regarding binding precedent set forth in those judgments but those are distinguishable on facts.

31. Therefore, what flows from the above discussion is that there was no irregularity, least to say any illegality in the proceeding. I do not find any flaw in decision making process which could have prompted me to hold that the petitioner has been prejudiced. No materials are available to hold that the decision is based on no evidence. The Enquiry Officer returned a reasoned findings and rightly concluded that charges levelled against the petitioner and the DA rightly awarded punishment of dismissal from service to the petitioner and both the AA and the Competent Authority while dealing with the appeal and revision, respectively passed reasoned order. As such, for the above reason, the only analogy which can be drawn is that the petitioner's contention lacks merit.

32. Consequently, the writ petition is, thus, dismissed. However, there shall be no order as to the costs.

(Partha Sarathi Chatterjee, J.)