

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **JUSTICE SUVRA GHOSH**

And

The Hon'ble **JUSTICE RAI CHATTOPADHYAY**

R.V.W. No. 53 of 2024

In

F.M.A. No. 356 of 2019

And

CAN No. 1 of 2024

Sri Kalpajit Chakraborty

Versus

The Union of India & Ors.

For the Applicant:

Mr. Kallol Basu

Mr. S.A. Ahmed, Adv.

Mr. Atreya Chakraborty, Adv.

For the Respondent:

Ms. Susmita Saha Dutta, Adv.,

Hearing concluded on:

20.06.2025

Judgment on:

27.08.2025

SUVRA GHOSH, J. :-

1. The appellant/applicant seeks review of the judgment delivered by an Hon'ble Division Bench of this Court on 19th December, 2023 in FMA 356 of 2019.
2. The applicant was appointed as a constable in the Central Industrial Security Force Unit (hereinafter referred to as the CISF) on temporary basis and was made permanent in the said post after two years. An order

of suspension was issued against him by the Assistant Commandant on 5th March, 2007 which was followed by a charge sheet on 30th March, 2007 alleging misconduct and disobedience to an order issued for proceeding to a new place of posting. He was charged with habitual indiscipline, misconduct, disobedience and also failure to improve himself. Upon receipt of notices of enquiry, the applicant participated in the enquiry and requested for assistance of an advocate to represent his case, his request being turned down by the enquiry officer. Charge sheet was submitted against the applicant to which he submitted a reply. Departmental proceeding was conducted and punishment imposed upon the applicant. The applicant assailed the disciplinary proceeding, charge sheet issued therein, report of the enquiry officer, punishment imposed by the disciplinary authority, the order of the appellate authority and the order of the revisional authority in a writ petition being W.P. no. 159 (W) of 2010 on the ground that he was not granted sufficient opportunity of cross examination and his prayer for deferring the cross examination for three days was turned down. The writ petition was dismissed by a Single Bench of this Court by a judgment delivered on 17th August, 2018. Being aggrieved by and dissatisfied with the said judgment, the applicant preferred an appeal before the Hon'ble Division Bench of this Court being FMA no. 356 of 2019. The appeal was also dismissed by a judgment delivered on 19th December, 2023. The applicant seeks review of the said judgment.

3. Learned counsel for the applicant has canvassed his argument as hereunder:-

The judgment impugned is confined to the issue of denial of cross examination by the applicant. Other issues with regard to non-consideration of the medical documents as submitted by the applicant and issuance of suspension letter in violation of extant rules were not considered. Since the applicant was recruited by the Commandant, CISF Unit, the Assistant Commandant had no authority to issue the order contemplating disciplinary proceedings against him. The applicant submitted medical documents before the authority which clearly demonstrated that he was suffering from back ailments and required treatment. The medical documents were not considered by the authority. He was made to cross examine 10 witnesses at one go and his prayer for deferring cross examination for three days was refused. Statement of PW-1 to PW-10 was recorded exparte. Though the applicant was present during evidence of PW-11 to PW-15 recorded on 5th September, 2007 and 6th September, 2007 his request for cross examining them after three days was turned down. He was forced to cross examine PW-2 to PW-9 on the same day.

4. The applicant made a prayer for revocation of the order of suspension on 23rd April, 2007 which was rejected on 16th May, 2007 on the ground of Rule 50 of the CISF Rules, reliance on such rule being entirely misplaced. The order of suspension was not reported to the appointing authority, i.e., the Commandant for approval in terms of the proviso to Section 33 (1) of the CISF Rules, 2001 within 30 days from the date of issuance thereof. The applicant's prayer for revocation of suspension was mechanically turned down though it was filed within the limitation period. Though the

suspension order was issued as the applicant was purportedly found to be involved in a disciplinary proceeding, no formal charge sheet was drawn up against him on the date of issuance of the suspension order, meaning thereby, that there was no disciplinary proceeding on the said date. The sanction order not being communicated to the applicant, he had every right to question the order of suspension.

5. The applicant informed about his inability to report to the rotational training along with medical documents and was assured of being given soft duties till he was declared medically fit. The applicant seeks review of the judgment impugned on such grounds. Learned counsel for the applicant has placed reliance on the following authorities in support of his contention:-

- a. Board of Control for Cricket in India and Another v/s. Netaji Cricket Club and Others reported in (2005) 4 Supreme Court Cases 741;
- b. Anil Kumar v/s. Presiding Officer and Others reported in (1985) 3 Supreme Court Cases 378;
- c. RVW 300 of 2019 in I.A. No. CAN 1 of 2020 in W.P.C.T. 2 of 2019.

6. Speaking for the respondents, learned counsel has submitted that the applicant was issued a charge sheet on 30th March, 2007. The charges were for disobedience of a lawful order to proceed to a new place of posting. Such disobedience and denial were treated as gross indiscipline, misconduct and becoming an undisciplined member of the force. The applicant filed a reply to the charge sheet and departmental proceeding was conducted. The applicant challenged the entire departmental

proceeding, charge sheet issued, report of the enquiry officer, punishment imposed upon him and orders of the appellate and revisional authorities in a writ petition. The applicant contended that he was denied an opportunity of hearing in the disciplinary proceeding and was not allowed to cross examine the witnesses.

7. From the copies of the order sheets of the enquiry, it appears that on 6th September, 2007 and 8th September, 2007, the proceeding was adjourned on prayer of the applicant at the stage of cross examination of witnesses. On the next day, i.e., on 12th September, 2007, the proceeding was again adjourned though not on the prayer of the applicant. Examination of witnesses was held on 13th September, 2007 when the applicant was not present. He did not attend the proceeding to cross examine the witnesses despite opportunities granted to him. No prayer for adjournment was made by the applicant on 13th September, 2007 and he withdrew himself from the proceeding. The Hon'ble Single Bench as well as the Hon'ble Division Bench have rightly dismissed the applicant's case with an observation that no palpable illegality is seen either in the enquiry or in the orders of the authorities and the writ Court would not interfere with the exercise of disciplinary power by the quasi-judicial authority.
8. Learned counsel has placed reliance in the authorities in Sanjay Kumar Agarwal v/s. State Tax Officer and another reported in (2024) 2 Supreme Court Cases 362; HDFC Bank Limited and Others v/s. Union of India and Others reported in (2023) 5 Supreme Court Cases 627; B.C. Chaturvedi and Union of India and Others reported in (1995) 6 Supreme Court Cases 749 in support of her contention.

9. We have considered the rival contention of the parties and material on record.
10. It shall be useful to reproduce Order 47 Rule 1 of the Code of Civil Procedure which deals with review of a judgment.

“Application for review of judgment.- (1) Any person considering himself aggrieved,-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.”

11. In the authority in Board of Control for Cricket in India (supra), the Hon’ble Supreme Court has observed that a mistake on the part of the Court which would include a mistake in the nature of the undertaking may also call for a review of the order. The words “sufficient reason” in Order 47 Rule 1 of the Code are wide enough to include a misconception of fact or law by a Court or even an advocate. In a later judgment in Sanjay Kumar Agarwal (supra), the Hon’ble Supreme Court, in paragraph

16, has considered several authorities and has laid down the legal position governing grounds for review of a decision/judgment as follows:-

- 1) *“A judgment is open to review inter alia if there is a mistake or an error apparent on the face of the record.*
- 2) *A judgment pronounced by the court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.*
- 3) *An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record justifying the court to exercise its power of review.*
- 4) *In exercise of the jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be “reheard and corrected”.*
- 5) *A review petition has a limited purpose and cannot be allowed to be “an appeal in disguise”.*
- 6) *Under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions which have already been addressed and decided.*
- 7) *An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.*

8) Even the change in law or subsequent decision/judgment of a coordinate or larger Bench by itself cannot be regarded as a ground for review.”

12. In the case in hand, the applicant, being aggrieved by the disciplinary proceeding initiated against him, the charge sheet issued therein, the report of the enquiry officer, the punishment imposed, the order of the appellate authority and the order of the revisional authority filed the writ petition wherein he drew the attention of the Hon’ble Single Bench with regard to the illegality/irregularity in the entire proceedings as well as orders. It is not a fact that the Single Bench dealt with only the issue of refusal of adjournment by the authority or denial of opportunity to cross examine the witnesses by the applicant. The Court, in fact, dealt with the legality and validity of the articles of charges, enquiry made thereto, decision taken by the disciplinary authority, the appellate authority and the revisional authority. Each stage of the proceeding was considered by the learned Court which held that at all stages, the authorities assigned reasons for the decisions arrived at. The decisions have not been substantiated to be perverse. There was discussion of the evidence and reasons for the conclusion. There was no failure on the part of the enquiry officer to act judicially, impartially or to adhere to the principles of natural justice. The authority in Anil Kumar (supra) was dealt with by this Court in the judgment. The Hon’ble Single Bench held that exercise of discretion of the enquiry officer need not to be interfered with by a writ Court unless exercise of such discretion is established to be actuated by malafide or based on extraneous considerations. None of such grounds was found to

have been substantiated in the writ petition. The appellant preferred an appeal against the said judgment. The Hon'ble Division Bench of this Court refused to interfere with the judgment and dismissed the appeal.

13. Learned counsel for the applicant has tried to impress upon this Court that the judgment impugned is confined to the issue of denial of cross examination by the applicant and other issues with regard to non-consideration of the medical documents submitted by him and issuance of suspension letter in violation of the rules were not considered. The judgment of the Hon'ble Single Bench demonstrates that all the issues raised by the applicant were taken up for consideration by the learned Court. The decision of the learned Court was affirmed by the Division Bench. Such decision cannot be termed as a mistake on the part of the Court in the nature of the undertaking or a misconception of fact or law. What the applicant terms as an error in the judgment cannot be said to be an error apparent on the face of the record and there is no scope for re-hearing or correcting such error in exercising jurisdiction under Order 47 Rule 1 of the Code. As observed by the Hon'ble Supreme Court, a review petition has a limited purpose and cannot be allowed to be an appeal in disguise. The applicant cannot be permitted to reagitate and reargue the questions which have already been addressed and decided, in the garb of a review. The applicant appears to be aggrieved by the decision of the Division Bench affirming the decision of the Single Bench on merits of the case. Such grievance cannot be addressed by this Court in an application for review. The judgment does not fall within the scope and ambit of review and the present application cannot be entertained. Allowing the

application shall tantamount to reconsideration of the entire issue on merits which does not fall within the parameters laid down by the Hon'ble Supreme Court and is beyond the scope of review. The applicant shall be at liberty to take necessary steps for redressal of his grievance before the appropriate forum.

14. Before parting with the record, we are inclined to deal with the authorities in Union of India and Others (supra) and B.C. Chaturvedi (supra) relied upon by the respondents. These authorities deals with judicial review of enquiries/proceedings conducted by an authority in a disciplinary proceeding. The ratio of the judgments can be distinguished from the present case.
15. In view of the aforementioned legal position, we are inclined to hold that the application is devoid of any merits and is liable to be dismissed.
16. Accordingly, RVW No. 53 of 2024 in FMA No. 356 of 2019 is dismissed.
17. The connected application being CAN 1 of 2024 is disposed of.
18. There shall however be no order costs.
19. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with usual formalities.

I agree.

(Rai Chattopadhyay, J.)

(Suvra Ghosh, J.)