

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Partha Sarathi Sen

WPA 3169 of 2007

**Karan Singh
Vs.
Union of India & Ors.**

For the petitioner : Ms. Shrabani Chakraborty
Mr. Prabir Adhya
Ms. Madhumanti Chakraborty

For the U.O.I. : Mr. Pinaki Bhattacharyya
Mrs. Sarda Sha

Heard on : 06.05.2025

Judgment on : 06.05.2025

PARTHA SARATHI SEN, J.:

1. The affidavit-in-reply as filed on behalf of the writ petitioner is taken on record.
2. This Court has heard learned Advocate for the writ petitioner and learned Advocate for the respondents/Union of India and its functionaries at length and in full.
3. The instant writ petition is now taken up for passing appropriate order.

4. By filing the instant writ petition the writ petitioner has prayed for issuance of appropriate writ/writs against the respondents/authorities for quashing of the articles of charges as framed against him, the finding of the enquiry authority dated 20.06.1989, the order of punishment dated 09.08.1989 as imposed upon him by the disciplinary authority, the order dated 05.07.1990 as passed by the appellate authority affirming the order of punishment and the order dated 15.09.1994 passed in a revisional proceeding wherein also no favourable order was passed in favour of the writ petitioner.
5. At the time of hearing, learned Advocate for the writ petitioner at the very outset draws attention of this Court to page nos. 30 to 35 of the instant writ petition being a copy of the memorandum dated 08.05.1989 containing the articles of charges including the statement of imputation of misconduct. It is submitted that prior to the issuance of the said memo dated 08.09.1989 the respondents/authorities had issued no show-cause notice to the delinquent and on account of such, principle of natural justice has been violated.
6. It is further submitted on behalf of the writ petitioner that from the enquiry report dated 20.06.1989 it would reveal that the said enquiry authority has acted in a partial manner inasmuch as the said enquiry authority has assigned no reason at all for not

accepting the medical certificate as issued by a private medical practitioner. It is submitted further that the said enquiry authority had failed to consider the genuine reason of absence of the writ petitioner from the duty and in not doing so the finding of the enquiry authority is vitiated on account of non-consideration of relevant materials. It is further submitted on behalf of the writ petitioner that the finding of the enquiry authority is based on extraneous evidence and the same is arbitrary in nature.

7. It is further submitted that the enquiry authority, the disciplinary authority as well as the appellate authority had failed to visualize that in order to prove the charges against the writ petitioner on behalf of the respondents practically no positive evidence was adduced. It is further argued that both the disciplinary authority and the appellate authority most mechanically passed the orders under challenge without applying their independent mind. It is further argued that the order for removal of service is excessive in comparison to the charges as framed against the delinquent. It is further submitted that the previous punishments as awarded against the present writ petitioner cannot be a ground for framing a charge. It is thus submitted that the instant writ petition may be allowed and the order of removal of service as imposed upon the writ petitioner may be set aside and thus, consequential reliefs may be granted to the writ petitioner.

8. In course of her submission learned Advocate for the writ petitioner places her reliance upon the following two reported decisions namely, ***Syed Zaheer Hussain vs. Union of India & Ors.*** reported in ***(1999) 9 SCC 86*** and ***Union of India vs. Giriraj Sharma*** reported in ***1994 Supp. (3) SCC 755***.
9. *Per contra* it is submitted on behalf of the respondents that in absence of any arbitrariness and/or perversity in the orders under challenge there is little scope to interfere with the findings of the enquiry authority, the disciplinary authority, the appellate authority as well as the revisional authority. It is further submitted that in course of enquiry it has been proved that the delinquent was habitual offender of the charges of same nature for which he was previously awarded five minor punishments.
10. Learned Advocate for the respondents/Union of India thus submits that it is a fit case for dismissal of the instant writ petition.
11. This Court has meticulously gone through the entire materials as placed before this Court. This Court has given its anxious consideration over the submissions of the learned Advocates for the contending parties. This Court has also meticulously gone through the different provisions of the CISF Rules of 1969 (hereinafter referred to as the 'said Rules of 1969').
12. On perusal of the relevant provisions of the said Rules of 1969 it reveals that Rule 31 of the said Rules of 1969 deals with the nature

of penalties that may be imposed on an enrolled member of the force. Admittedly, the penalty as suffered by the writ petitioner that is removal from service comes under the category of major penalties.

13. At this juncture, if I look to the provision of Rule 34 of the said Rules of 1969 it reveals that Rule 34 clearly envisages the procedure for imposition of major penalties.
14. For effective adjudication of the instant *lis* Rule 34 of the said Rules of 1969 is required to be looked into and the same is quoted hereinbelow in verbatim:

“34. Procedure for imposing major penalties :-

- (1) Without prejudice to the provisions of the Public Servants (Inquiries) Act, 1850 (37 of 1850), no order imposing on a member of the Force any of the penalties specified in Cls. (a) to (d) to the Rule 31 shall be passed except after an inquiry held as far as may be in the manner hereinafter provided.*
- (2) The disciplinary authority shall frame definite charges on the basis of the allegations on which the inquiry is proposed to be held. Such charges together with a statement of the allegations on which they are based, shall be communicated in writing to the member of the Force and he shall be*

required to submit, within such time as may be specified by the disciplinary authority, a written statement of his defence and also to state whether he desires to be heard in person.

Explanation.-In this sub-rule and in sub-rule (3), the expression “the disciplinary authority” shall include the authority competent under those rules to impose upon the member of the Force any of the penalties specified in Cls. (e) to (h) of rule 31.

(3)

(4) On receipt of the Written statement of defence or if no such statement is received within the time specified, the disciplinary authority may itself inquire into such of the charges as are not admitted or if it considers it necessary so to do appoint a supervisory officer or an officer not lower in rank than an inspector, or a Board of Inquiry as the Inquiring Authority to conduct the inquiry.

(5)

(6)

(7) At the conclusion of the Inquiry, the Inquiry Authority referred to above shall prepare a report of the inquiry, recording its findings on each of the

charges together with reasons therefor. If in the opinion of such authority, the proceedings of the inquiry establish charges different from those originally-framed, it may record its findings on such charges, provided that findings on such charge shall not be recorded unless the member so charges had admitted the facts constituting the said charges or has had an opportunity of finding himself against them.

(8)

(9) The disciplinary authority shall, if it is not the Inquiring Authority referred to above, consider the record of the inquiry and record its findings on each charge.

(10) (i) If the disciplinary authority, having regard to its findings on the charges, is of the opinion that any of the penalties specified in Cls. (a) to (h) of rule 31 should be imposed, it shall pass appropriate orders in the case.

(ii) If it is of the opinion that any of the penalties specified in Cls. (a) to (d) of rule 31 should be imposed, such penalty may be imposed on the basis of evidence adduced during inquiry and it

shall not be necessary to give the member of the Force any opportunity of making representation on the penalty proposed.

11.”

15. On careful consideration of the aforementioned Rule 34 of the said Rules of 1969 it appears to this Court that the said Rules does not prescribe for service of any show-cause notice prior to framing of charges on the basis of the allegations on which the enquiry is proposed to be held.
16. In view of such, this Court finds no merit in the submission of the learned Advocate for the writ petitioner that the principle of natural justice has not been followed in the said disciplinary proceeding since the charges have been framed against the delinquent without giving an opportunity to answer to any show-cause.
17. On careful consideration of the report of the enquiry officer dated 20.06.1989 it appears to this Court that the said enquiry authority has followed the correct procedure as provided in Rule 34 of the said Rules of 1969 and this Court finds no departure on the part of the enquiry authority in that regard.
18. At the time of hearing, learned Advocate for the writ petitioner was very vocal for non-considering the medical certificate as has been issued by a private medical practitioner as produced by the delinquent during enquiry proceeding inasmuch as it was the

specific case of the delinquent before the enquiry officer that on account of his sickness he was unable to approach the Government Hospital which was situated 10 kilometers away from his native place.

19. In considered view of this Court such argument as has been advanced on behalf of the writ petitioner cannot be accepted since in a judicial review this Court cannot come to a finding either with regard to sufficiency or insufficiency of evidence since in a judicial review a writ court is not supposed to act as an appellate court. It is settled principle of law that in a departmental proceeding the departmental authority is the sole judge of the facts and in the event, the enquiry has been properly conducted and in such enquiry, if there is some legal evidence on which finding can be based, the adequacy or reliability of the evidence cannot be the subject matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution of India.
20. The said view was taken by the Hon'ble Supreme Court in the reported decision of ***High Court of Judicature at Bombay vs. Sasikant S. Patil and Anr.*** reported in ***2000(1) SCC 416***. In view of the discussion made hereinabove this Court finds no justification to interfere with the finding of the enquiry authority dated 20.06.1989.

21. It is pertinent to mention herein that the disciplinary authority while awarding punishment to the writ petitioner has also independently considered the entire charges as framed against the delinquent. The said disciplinary authority has also gone through the entire materials as collected in course of the said enquiry proceeding. The said disciplinary authority has also noticed that the said delinquent is a habitual offender of same nature and considering such misconduct on the part of the delinquent the said disciplinary authority awarded the punishment of removal of service to the writ petitioner.
22. In course of her argument learned Advocate for the writ petitioner though contended that the punishment as has been imposed upon the writ petitioner was totally disproportionate with regard to the charges as framed against him, however, in considered view of this Court such argument does not appear to be much convincing inasmuch as sufficient materials have been placed before this Court on the part of the respondents/authorities that on account of similar nature of offence the writ petitioner was awarded minor punishment on five occasions and even then he had not shown any improvement from this conduct. It is to be kept into mind that the writ petitioner was a Constable in CISF and pursuant to the provisions of the said Rules and conditions of his service, he is duty bound to maintain the discipline which he has failed to follow.

Admittedly disproportionality of punishment is a concept certainly not unknown to the service jurisprudence provided the quantum of punishment must shocks the conscience of the Court. In considered view of this Court, considering the conduct of the writ petitioner it appears that the punishment as awarded by the disciplinary authority is neither excessive nor harsh in any manner.

23. This Court has also occasioned to go through the finding of the appellate authority a copy of which has been annexed with the instant writ petition. It appears to this Court that the said appellate authority also while disposing the said appeal has independently considered the entire materials as placed before him including the memo of appeal as filed by the delinquent. The said appellate authority found no reason to interfere with the findings of the enquiry authority and disciplinary authority in absence of any procedural irregularity in conducting the departmental proceeding.
24. It further appears to this Court that while disposing a revisional application the revisional authority under cover of its order dated 15.09.1994 has also come to a logical conclusion with regard to the correctness of the finding of the enquiry authority , the disciplinary authority as well as the appellate authority.
25. This Court while disposing the instant writ petition thus finds no reason to interfere with the aforementioned four orders under

challenge since no materials have been place before this Court that those orders have been passed either in violation of principle of natural justice or contrary to the statutory regulations prescribing the mode of conducting such enquiry and/or the decisions of the aforementioned authorities have been vitiated either for non-consideration of the material evidence on record or for consideration of some extraneous materials.

26. In considered view of this Court the reported decision of ***Giriraj Sharma (supra)*** and ***Syed Zaheer Hussain (supra)*** as cited from the side of the writ petitioner are distinguishable from the facts and circumstances of the present case and those are thus no way helpful to the writ petitioner.
27. This Court thus finds no merit in the instant writ petition.
28. Accordingly, the instant writ petition being WPA 3169 of 2007 is dismissed.
29. There shall be, however, no order as to costs.
30. Urgent Xerox certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(PARTHA SARATHI SEN, J.)