

28th August, 2025
(D/L No.302-305)
Ct. No.4
(SKB)

W.P.S.T.112 of 2024

State of West Bengal and others
Versus
Maharam Sk.

With

W.P.S.T.113 of 2024

State of West Bengal and others
Versus
Krishna Gore

With

W.P.S.T.114 of 2024

State of West Bengal and others
Versus
Tapas Bala

With

W.P.S.T.115 of 2024

State of West Bengal and others
Versus
Naresh Sarkar

Mr. Arjun Ray Mukherjee,
Mr. Subhendu Sengupta
....for the petitioners.

Ms. Ashmita Chakraborty,
Ms. Poushali Das
...for the respondent.

1. In all these cases the applicants before the Tribunal are constables/ members of a raiding party, which conducted raid for recovery of illicit possession of narcotic drugs in connection with

NDPS Case No. 136 of 2017. It is alleged that there was misappropriation of seized narcotic drugs. The applicants were alleged to have misappropriated the missing quantity of the seized contraband drugs.

- 2.** Applicants were served with identical Memorandum of Charges dated 23.09.2022 in this regard. The charge memo was served just a week prior to acquittal being recorded by the Trial Court on 30.09.2022, in the criminal trial regarding the self-same allegations arising out of NDPS Case No. 136 of 2017.
- 3.** The applicants therefore, challenged the continuation of the departmental proceedings on the basis of the Memo of Charges dated 23.09.2022 by filing separate Original Applications. The facts constituting the cause of action giving rise to filing of the OA (s) were common in all the OAs. The charge memos were quashed by the West Bengal Administrative Tribunal (SAT for short).
- 4.** The State has put to challenge the order/s passed by the SAT in the OAs by filing separate writ petitions. The writ petitioner/ State is represented by a common advocate in the writ petitions arising out of a common cause of action, arising out of

identical facts in respect of the same incident. The learned Advocate for the State submitted that he will be making submissions which are common to all the writ petitions.

5. The applicants also are represented by a common learned Advocate. The learned Advocate for the applicant/s/ respondent/s submitted that she would also be advancing submissions which are common to all the writ petitions.
6. We find that the memo of charges forming the subject matter of the writ petitions are not only of the same date, but the articles of charges are also verbatim. We, therefore, proceeded to consider the submissions advanced on behalf of the State/ writ petitioners, as well as the applicants which are common in all the writ petitions, with a view to disposal of the four writ petitions by a common judgment.
7. Heard the learned counsel for the writ petitioners as well as the learned advocate representing the respondent. The respondent/s, excise constable/s, were served with an identical memorandum of charges dated 23.09.2022 for conducting a disciplinary proceeding under the West Bengal Service (Classification, Control and Appeal) Rules, 1972, (in short 'Rules'). Therefore,

the article of charge contained in the charge memo of one of the applicants is being noted, which alleges as follows:

“That the said Maharam Sk. Excise Constable (now under suspension) was consciously present in the raid and played a conscious role in collusion with others in the matter of illicit possession, transportation and disposal of commercial quantity of narcotics drugs in the wake of recovery of ganja from the possession of the accused in connection with the NDPS case No.136/2017 dated 06/09/2017 and was deliberately associated with this unlawful misreporting act, subsequently unduly siphoning off the articles and that such an act was completely unbecoming of a public servant.”

8. The statement of imputations in support of such article of charge is also useful to reproduce having regard to the case made out by the applicant/respondent before the SAT and the same reads:

“Statement of imputations in support of the article of charge framed against Maharm Sk. Excise Constable (Now under suspension).

(1) *That the said Maharam Sk. Excise Constable (now under suspension), was consciously present to the raid and played a conscious role in collusion with others in the matter of illicit possession, transportation and disposal of commercial quantity of narcotics drugs in the wake of recovery of ganja on the possession of the accused in connection with the NDPS case NO. 136/201 dated 06.09.2017 and was deliberately associated with the unlawful misreporting act, subsequently unduly siphoning of the articles and that such an act was completely unbecoming of a public servant.”*

9. The applicant/s relying upon their acquittal in the criminal trial in respect of the same allegations, which formed the basis of the proceedings against

the applicant in the department, approached the SAT praying for a relief in the following terms:

“8. Relief sought for:

In view of the facts mentioned hereinabove the applicant prays for the following relief:

a. An order directing the respondents and their men, agents and assigns, specially the respondent no.2 to forthwith and/or immediately rescind, revoke, cancel and/or withdraw the charge sheets dated 23rd September, 2022 and 3rd November, 2022 and to act in accordance with law;

b. An order directing the respondents and their men, agents and assigns, specially the respondent no.3 to forthwith and/or immediately rescind, revoke, cancel and/or withdraw the notice of hearing dated 3rd March, 2023 and to act in accordance with law;

c. An order directing the respondents and their men, agents and assigns, specially the respondent no.3 to forthwith and/or immediately allow the applicant to resume his duties and release his arrear full salary from the date of suspension till the date of acquittal and thereafter from the date of enlargement on acquittal along with all his due increments;

d. Interim order restraining the respondents and their men, agents and assigns, specially the respondent no.2 to forthwith and/or immediately rescind, revoke, cancel and/or withdraw the charge sheets dated 23rd September, 2022 and 3rd November, 2022 and the notice of hearing dated 3rd March, 2023 till the disposal of this application;

e. An order of stay, restraining the respondents from proceeding with the disciplinary enquiry till the disposal of the application;

f. Order for cost and incidental to this application to be paid to the applicant by the respondents;

g. Such further or other order or orders as the Hon’ble Members may deem fit and proper.”

10. The brief factual background is relevant to take into consideration. The applicant/s were constables, and Members of the raiding party which conducted a raid for recovery of illicit possession of some narcotic drugs in connection with NDPS Case No.136 of 2017. The raid was conducted on 06.09.2017, and an allegation developed that a substantial quantity of the recovered narcotic drug was missing. The authorities were of the view that the petitioners along with other members of the raiding team have taken away the narcotic recovered in the raid.

11. The present applicant along with other three Excise Constables, who are the respondents in W.P.S.T.113 of 2024, W.P.S.T.114 of 2024 and W.P.S.T.115 of 2024, namely, Krishna Gore, Tapas Bala and Naresh Sarkar respectively, were alleged to be responsible for the missing quantity of narcotic ('*ganja*').

12. After conducting a trial, the Trial Court was of the opinion that the authorities did not comply with the mandatory provisions contemplated under Sections 42, 50 and 57 of the NDPS Act after the alleged seizure. The prosecution case was found to be, therefore, unsustainable.

13. The Trial Court specifically held that there was “no evidence of specific quantity of contraband of 180 kg to 200 kg of ‘ganja’”. Thus, the Trial Court was of the opinion that any infringement of the provision of the NDPS Act by the accused person/s (applicant/s) does not arise. The findings of the Trial Court are being reproduced hereinbelow:

“I have already discussed that Sections 42, 50 and 57 of the NDPS Act has not been complied after alleged seizure of Ganja from Swapna Ghose. As the mandatory provision has not been complied, so it is fatal to the prosecution case. Prosecution fails to prove the case against Swapna Ghosh beyond any shadow of doubt as contents of earlier seizure list has not been proved. In the present case as there is no evidence of specific quantity of contraband of 180 Kg to 200 Kg of Ganja was recovered, so how Court may reach the conclusion that the accused persons committed any infringement of the provisions of NDPS Act?”(emphasis ours)

In view of the above facts and circumstances of the present case and in view of the law laid down by the Hon’ble Court noted above, this Court is of the view that prosecution of this case failed to prove the entire chain of evidence necessary for bring home the charge against the accused persons. So, this court has no hesitation to hold that the prosecution has failed to prove the charge against the accused persons and the accused persons deserve to be acquitted in the present case.”

14. The order of acquittal was recorded by the Trial Court on 30.09.2022. However, just a week before the judgment of acquittal was pronounced by the Trial Court, the Excise Commissioner, West Bengal, issued a memorandum of charges dated 23.09.2022 addressed to the applicant/s wherein

the article of charges and statement of imputation of misconduct, recorded above, was sent for service upon the applicant/s who were still in judicial custody. According to the Excise Commissioner, the charge memo was sent to the Krishnanagar Correctional Home at Nadia. The Superintendent of the Correctional Home returned the notice on 24.09.2022 with a note that the applicants refused to accept the notice.

15. After a few days of such intimation being sent to the authorities, the applicants were acquitted. Thereafter it is the case of the respondent that the applicant/s came to the office of Excise at Krishnanagar, Excise Division to intimate the authorities regarding their acquittal. During the applicants' visit to the office, an attempt was made to serve the charge memo which again they refused to accept.

16. A third attempt to serve the charge memo is also claimed by the State authorities. It is their case that on 14.10.2022 notices were sent by Speed Post to the residential addresses of the charged employees, which the applicants refused to accept.

17. Thereafter, it is stated that the notice regarding charge memo was sent by a Messenger

to the residence of the applicants and pasted at a conspicuous place outside the residence of the applicants.

18. Thereafter, on 03.11.2022 a memo bearing No.C-786E was issued as an addendum to the earlier charge memo dated 23.09.2022. By this memorandum, it is the case of the State that an additional charge was made against the applicant/s that non-receipt of the charge memo amounts to a willful violation of lawful instruction of the disciplinary authority and a disobedience. Accordingly, a statement of article of charge was communicated along with this memorandum dated 03.11.2022.

19. The applicant/s approached the SAT in the above noted facts and circumstances. The SAT has taken note of the acquittal of the applicant/s in the criminal trial. By considering the article of charges and the evidence relied upon, the SAT has come to a conclusion that the charges framed by the disciplinary authority was entirely based on the NDPS Case No.136 of 2017. In fact, not only the charge according to the SAT, was substantially the same, but there was no material whatsoever in the Departmental enquiry, in addition to, or apart from the charge-sheet filed in

the criminal case, being relied upon by the disciplinary authority.

20. Taking note of the acquittal of the applicant/s in the criminal trial, the O.A. has been allowed.

21. The learned counsel for the writ petitioners/State has assailed the order of the SAT by making four submissions:

a) The first submission is founded on a well settled legal proposition that the proceedings in a disciplinary/departmental proceeding are conducted with a view to establishing the charges on preponderance of probabilities. There is no application of strict Rules of evidence required for establishing a criminal charge in a criminal proceeding. Therefore, the SAT has erred in relying upon an acquittal in a criminal trial. In spite of such acquittal, the authorities could have established the allegations made in the departmental proceedings by complying with the standard of preponderance of probabilities.

b) The SAT has allowed the application filed by the applicant/s without considering or deciding the additional charges

communicated vide addendum on 03.11.2022. Only the first charge has been dealt with and, therefore, the order of the SAT is unsustainable.

c) It is submitted that the charge memo dated 23.09.2022 or 3.11.2022 did not give rise to a cause of action to the applicant/s for invoking the jurisdiction of the SAT, let alone, any relief being granted. The SAT should not have interfered with the charge memo at this nascent stage.

d) The last submission advanced on behalf of the petitioners/State is that the scope of challenge to a charge memo, by now stands decided by a catena of judgments. There is a very limited scope and a charge memo can only be assailed;

- i) if it is without jurisdiction.
- ii) It is in contravention of any Rule or statutory provision.
- iii) It is vitiated by *mala fide*.
- iv) If it is vague to the extent that it is not possible to comprehend the charge and thereby depriving the charged employee an opportunity to meet the

charges by making out a defence.

22. The learned counsel for the respondent/applicant, on the other hand, submits that a bare reading of the charge memo reveals that the charges were one and the same in the disciplinary proceedings and in the criminal trial. The material relied upon in the charge memo is also limited to a charge-sheet submitted in the criminal proceedings and, therefore, since the criminal trial ended in acquittal of the applicant/s, the SAT has rightly interfered with the charge memo on the same charges based on the same evidence.

23. It is further submitted that a reading of the charge memo makes it clear that the same is so vague that it is impossible to make an effective reply or to say anything in defence. The statement of implication in support of the article of charge does not even specify the contraband which is alleged to be misreported by the applicant/s.

24. There is also no mention of the quantity, which has allegedly been misrecorded, misappropriated, or siphoned off by the applicant/s. In absence of such details, the

charge memo was vitiated on the ground of being vague and, thus, has rightly been interfered with by the SAT.

25. The learned counsel for the respondent/applicant has further referred to Rule 10(6) of the Rules. Referring to Rule 10(6), it is submitted that the consequence of not responding to a charge memo are contained in the Rule. The fact that the applicant/s refused to receive the charge memo is denied and disputed by the learned counsel by submitting that the same was never served. However, it is submitted that even if for the sake of argument, it is to be accepted, then at best the consequences under Rule 10(6) would follow such a lapse. Such an omission, even if it is accepted for the sake of argument, but not admitted, does not constitute a misconduct.

26. It is further submitted that since the article of charges in the disciplinary proceedings and criminal case are one and the same, relying on the same evidence, the SAT has rightly interfered with the charge memo as any exercise pursuant to such a charge memo would be futile.

27. The learned counsel has further highlighted a lapse in the procedure adopted by the disciplinary authority in making second, third and

fourth attempt to serve the charge memo on the applicant/s, after their acquittal in the criminal trial for the same charges. It is submitted that the authority was required to drop the proceedings initiated by the charge memo dated 23.09.2022 in terms of note 1 of Rule 9 of the Rules. If at all the disciplinary authority wanted to proceed with the enquiry, he was required to record an opinion in compliance with the stipulation contained in note 1 of Rule 9 which has not been done in the present case.

28. The learned counsel for the petitioners/State has briefly replied to submit that the reference to the charge memo and alleged absence of material other than the charge memo is not fatal to the charge as it was always open to the disciplinary authority to introduce further evidence or witness, as long as it was in compliance with the principles of natural justice.

29. We have considered the rival submission of the parties and examined the order passed by the SAT. The SAT primarily has proceeded on the ground that since the charge in the disciplinary proceedings is one and the same, as fell for consideration in the criminal trial and it was based, relying upon the same set of evidence, the

continuance of the disciplinary proceedings would not be in the interest of justice.

30. Such conclusion has been recorded since the delinquent in the disciplinary proceedings has been acquitted on the same set of charges based on the same set of evidence in the criminal trial.

31. Since several other submissions have been advanced on behalf of the parties, as noted above, we proceeded to examine the submissions recorded above.

32. The Rules have been framed under the proviso to Article 309 of the Constitution of India. The Rules have statutory force. The Rules considered above requires a particular course of action to be followed by the disciplinary authority when a delinquent is acquitted in the criminal trial in respect of the same charges for which a departmental proceeding is being conducted. The Rules prescribes the manner for proceeding in such situation. There is no discretion left in the disciplinary authority to act otherwise, and in contravention of the Rules. The law in this regard is also well settled that when a procedure is prescribed for doing a thing in a particular manner, then it can be done in such manner only. Any other course of action is thus prohibited. We

take into consideration a decision of the Apex Court in the case of **Chief Information Commr. v. State of Manipur, (2011) 15 SCC 1**, para 40 of which reads as under:

“40. It is well known that when a procedure is laid down statutorily and there is no challenge to the said statutory procedure the Court should not, in the name of interpretation, lay down a procedure which is contrary to the express statutory provision. It is a time-honoured principle as early as from the decision in Taylor v. Taylor [(1875) 1 Ch D 426 (CA)] that where a statute provides for something to be done in a particular manner it can be done in that manner alone and all other modes of performance are necessarily forbidden. This principle has been followed by the Judicial Committee of the Privy Council in Nazir Ahmad v. Emperor [(1935-36) 63 IA 372 : AIR 1936 PC 253 (2)] and also by this Court in Deep Chand v. State of Rajasthan [AIR 1961 SC 1527 : (1961) 2 Cri LJ 705], AIR at para 9 and also in State of U.P. v. Singhara Singh [AIR 1964 SC 358 : (1964) 1 Cri LJ 263 (2)] reported in AIR at para 8.”

33. The submissions advanced on behalf of the parties have to be viewed, keeping in background the discretion vested in the authorities under the relevant Rules/Regulations in respect of the departmental proceedings.

34. In the present case, the proceedings against the applicant/respondent are governed by the Rules, framed under the proviso to Article 309 of the Constitution of India. For the purposes of the issue pending consideration in the present proceedings, we are required to see the effect of the two Rules, Note 1 of Rule 9 and Rule 10(6) of the Rules.

35. Note 1 of Rule 9 circumscribes the discretion of the disciplinary authority in the following terms:

“Note 1. – In all cases of fraud, embezzlement, or similar offences, the disciplinary authority shall take steps to institute departmental proceedings against all the delinquents and conduct them with strict adherence to the rules up to the point at which prosecution of any of the delinquents begins. At that stage it must be specifically considered whether further conduct of the departmental proceedings against any of the remaining delinquents is practicable, and if so, it shall continue as far as possible (which will not as a rule, include finding and sentence). If the accused is convicted, the departmental proceedings against him shall be resumed and formally completed either by dismissing or removing the person from Government service or by reducing him in rank on the ground of his conviction. If the accused is not convicted, the departmental proceedings against him should be dropped unless the authority competent to take disciplinary action is of opinion that the facts of the case disclose adequate grounds for taking departmental action against him. (emphasis ours) In either case the proceedings against the remaining delinquents shall be resumed and completed as soon as possible after the termination of the proceedings in court.”

36. Insofar as the issue whether the proceedings founded on the impugned charge memo dated 23.09.2022 was to be continued or not, the answer lies in a bare reading of the provision of the Rules extracted above. The provision confers the discretion on the disciplinary authority to continue the proceedings provided an opinion is recorded based on the facts of the case and it is held that adequate grounds for taking departmental action exists in spite of

the acquittal of the delinquent in the criminal proceedings. In absence of any such consideration and any conclusion based on such consideration, the Rules is clear in its intent. In such a circumstance, when the accused is not convicted, the departmental proceedings against the accused is to be dropped.

37. In the present case, there is no consideration by the competent authority whatsoever, of the issue, as contemplated under Note 1 of Rule 9 of the Rules, regarding existence of adequate grounds for continuing with the proceedings.

38. We, therefore, are of the considered opinion that continuance of the departmental proceeding is impermissible and in contravention of Note 1 of Rule 9 of the Rules. In such circumstance the mandate of the provision is clear that *“departmental proceeding against him should be dropped”*. Our such conclusion takes care of submission (a), (c) in so far as charge memo dated 23.09.2022 is concerned, and submission (d).

39. We thus proceeded to consider the other ground urged by the learned State Counsel based on submission (b) and submission (c) regarding charge memo dated 03.11.2022, that the

applicant/respondent has avoided the notice in respect of the proceedings arising out of charge memo dated 22.09.2022, which itself constitutes a misconduct, which can be enquired into. The answer, to this submission in our opinion, lies in a bare reading of Rule 10(6) of the Rules. Rule 10(6) reads as follows:

“10.(6) If the Government servant who has not admitted any of the articles of charge in his written statement of defense appears before the inquiring authority, such authority shall ask him whether he is guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the inquiring authority shall record the plea, sign the record and obtain the signature of the Government servant thereon. The inquiring authority shall return a finding of guilt in respect of those article, of charge to which the Government servant/pleads guilty. The enquiring authority shall, if the Government servant fails, to appear within the specified time or refuses or omits to plead or claims to be tried require the disciplinary authority or his representative to produce the evidence by which he proposes to prove the articles of charge and shall adjourn the case to a late date not exceeding 30 days, after recording an order that the Government servant may for the purpose of preparing his defense.

(a) Inspect within live days of the order or within such further time not exceeding live days as the inquiring authority may allow, the documents specified in the list referred to in sub-rule (2);

(b) Submit a list of witnesses to be examined on his behalf;

(c) Give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow asking for the discovery or production of any document which are in the possession of Government but not mentioned in the list mentioned, in sub-rule (2).”

40. A plain reading of the Rule 10(6) reveals that, in the event, a government servant fails to appear or refuses or omits to plead or claims to be tried or to produce any evidence in respect of the charges, the proceedings are required to be adjourned to a date not later than 30 days. Thereafter, the Rule prescribed the procedure to be normally followed by the authority and in absence of any response from the delinquent, the Rule contemplates that the proceedings may be taken to its logical conclusion in accordance with law.

41. In the present case however, we have already considered the effect of the applicants' acquittal in the criminal trial in terms of Note 1 of Rule 9 of the Rules. The departmental proceedings were required to be dropped and, therefore, continuance of the proceedings on the basis of the charge memo dated 23.09.2022, was itself in contravention of Note 1 to Rule 9 of the Rules. In view of such requirement in the Rules the alleged attempts to serve charge memo even after the petitioners' acquittal in the criminal trial was in contravention of the Rules, and an exercise in futility. In the circumstances submission of the learned Advocate for the writ petitioner that the

writ petitioner has evaded/avoided service of the charge memo is not only raising a disputed issue of fact, but is also unsustainable as it cannot be countenanced that the authorities were making attempts to serve charge memo in respect of departmental proceedings which were required to be dropped as per the Rules. We are, therefore, unable to agree with submissions (b) and (c) in so far as charge memo dated 03.11.2022 is concerned, made by the learned Advocate for the State that charge can be made out on the basis of such facts. The charge memo dated 03.11.2022 was, therefore, unsustainable and is also liable to be quashed.

42. We, therefore, find no reason to interfere with the order passed by the SAT, insofar as the Tribunal has quashed the charge memo and directed for grant of consequential benefits expeditiously in compliance with the Tribunal's order impugned.

43. All the writ petitions being W.P.S.T.112 of 2024, W.P.S.T.113 of 2024, W.P.S.T.114 of 2024 and W.P.S.T.115 of 2024 are disposed of in the above terms.

- 44.** Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of all necessary formalities.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)