

30th January, 2025
(D/L No.10)
Ct. No.4
(SKB)

W.P.S.T.177 of 2024

Sk.AjanurRahaman
Versus
State of West Bengal and others

Mr. Bikash Ranjan Neogi,
Ms.Ananya Neogi,
Mr. Guddu Singh
....for the petitioner.

Mr. Tapan Kr. Mukherjee, Id. AGP,
Ms. Sangeeta Roy
... for the State.

1. Heard the learned counsel for the petitioner and the learned counsel for the State respondents.
2. The petitioner was appointed in 1995 on the post of a Constable. He was suddenly absent from duties since 12.03.2006. The same led to issuance of a charge memo dated 18.03.2006 against the petitioner, on the ground of unauthorized absence.
3. The brief facts which are not in dispute are that the petitioner after he proceeded on unauthorized leave since 12.02.2006 has never resumed his duties. It is also not in dispute that the petitioner was duly served with various letters asking him to join, the charge memo and intimation regarding the dates fixed in the enquiry before the enquiry

officer. Such intimation was also sent through special messenger.

4. The petitioner has chosen not to file any statement of defence in the enquiry, he did not examine any defence witness and did not even appear on the dates fixed for hearing i.e. on 14.08.2006 and 17.08.2006.
5. After examining four prosecution witnesses and 17 documents, in support of the charge memo, the enquiry officer submitted the enquiry report. The enquiry report dated 08.08.2006 holding the charges proved was communicated to the petitioner vide show cause notice dated 18.08.2006 through special messenger. Copy was served on the petitioner on 20.08.2006 and it allowed the petitioner 7 days time to file his reply. The petitioner chose not file any reply and thus final order of punishment was passed by the Disciplinary Authority on 30.08.2008.
6. Against the order passed by the disciplinary authority, the petitioner preferred an appeal. Before the appellate authority he has taken a plea that he was mentally broken down and thus he left his duties without any intimation to the authorities. His mental breakdown has been taken as a ground never to resume duties

thereafter and also not to participate in the disciplinary proceedings at any stage.

7. Before the appellate authority, for the first time, the petitioner has stated that, if required, he was willing to produce a medical certificate to support his plea for mental breakdown for the entire period. Even before the appellate authority, however, no such medical certificate has been produced.
8. The appeal of the petitioner, thus, also came to be rejected by the appellate authority on 13.03.2007. It is under such circumstances that the petitioner approached the State Administrative Tribunal (in short 'Tribunal').
9. We find from the order of the Tribunal that the Tribunal has taken into consideration the plea raised by the petitioner, the judgments cited on his behalf as well as the plea regarding the punishment being disproportionate and excessive in view of the allegation of unauthorized absence. The Tribunal has rejected the petitioner's application, which brings him before this court by filing a writ petition under Article 226 of the Constitution of India.
10. Insofar as the plea of the petitioner that the appellate authority has passed an order which is

unsustainable for want of reasons, we find that neither unauthorized absence nor petitioner's non-participation in the enquiry proceedings is in dispute. The plea taken by the petitioner before the appellate authority to justify such absence and non-participation is mental breakdown or depression between 12.02.2006 to 15.09.2006. No material whatsoever such as prescription etc. was produced before the appellate authority. There being no dispute on the facts and there being no evidence in support of the sole plea raised by the petitioner regarding his unauthorized absence and non-participation, we find that there was nothing to be considered by the appellate authority other than the bald plea regarding the claimed mental breakdown or depression; in support of which also there was no material.

11. We, therefore, find that the consideration of the appellate authority vide order dated 13.03.2007 in the facts and circumstances was rightly limited to non-availability of the medical certificate, is sufficient consideration, since no other issue was arising for consideration before the appellate authority.

12. Having observed so, we, further take note of the fact that it is an admitted position that the petitioner did not participate in the enquiry proceedings; in this regard, the law is well settled. We refer to judgment of the Apex Court in the case of ***H.P. Transport Corporation Vs. L.C. Rahi*** reported in ***(2008)11 SCC 502*** wherein it has been held that despite opportunity being given to a person if he chooses not to participate in the enquiry proceedings and not avail the opportunity, then in such circumstances, it is considered as waiver of the requirement of natural justice by the person.

13. Insofar as the plea regarding the punishment being excessive and disproportionate to the gravity of the charge, we find that the petitioner was serving as a constable in an armed force, the requirement of diligence, discipline and commitment towards duties in such a service is of a very high degree; and unauthorized absence without any basis in the circumstances cannot be viewed with any leniency. Such lapse of the petitioner, therefore, in our opinion also, would invite a major punishment. The plea regarding the punishment being excessive and disproportionate

to the gravity of the charges also merits no favourable consideration towards the petitioner.

14. We find no infirmity in the decision of the Tribunal rejecting the petitioner's challenge to the punishment and the proceedings.

15. The writ petition stands dismissed.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)