

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble Justice PARTHA SARATHI SEN

WPA 24124 of 2018

Sri Gour Baran Samanta

Vs.

**West Bengal State Electricity Distribution
Company Limited & Ors.**

For the petitioner:

Mr. N. C. Bihani, Sr. Adv.

Ms. P. B. Bihani, Adv.

Mr. Soumya Mukherjee, Adv.

For W.B.S.E.D.C.L.

Mr. Sujit Sankar Koley, Adv.

Hearing Concluded on:

07.02.2025

Judgement on:

07.02.2025

1. The affidavit-in-reply as filed on behalf of the writ petitioner today is taken on record.
2. In this writ petition, the writ petitioner has prayed for issuance of appropriate writ or writs against the respondents/authorities for revoking and/or cancelling and/or rescinding the findings of the enquiry authority as communicated to him under cover of memo dated 15.10.2014, the findings of the disciplinary authority as communicated to him under cover of memo dated 30.06.2015 and the findings of the appellate authority dated July 18, 2016 who have concurrently held that the writ

petitioner is guilty of the charges as framed against him and subsequently, he was awarded punishment.

3. In course of his submission, Mr. Bihani, learned Senior Advocate duly assisted by Ms. Bihani and Mr. Mukherjee, learned advocates for the writ petitioner at the very outset draws attention of this Court to page no. 24 of the instant writ petition being the copy of the charge-sheet as issued against the writ petitioner by the respondents/authorities. Attention of this Court is also drawn to page no. 51 of the writ petition being a copy of the reply to the charge-sheet as submitted by the writ petitioner. In course of his submission, Mr. Bihani draws further attention of this Court to page nos. 54 to 128 of the writ petition being the copy of the enquiry proceeding and the findings of the enquiry officer.
4. Drawing attention to page no. 124 of the writ petition being the relevant portion of the enquiry report as submitted against the writ petitioner, it is argued on behalf of the writ petitioner that before the enquiry authority though positive evidence was adduced on behalf of the defence that the entire alleged defalcation was done by one Sri Konar but the enquiry

authority for the reasons best known to him had not considered the said evidence of the D.Ws.

5. Drawing attention to page no. 126 of the writ petition being another part of the enquiry report, it is further submitted by Mr. Bihani that though the enquiry officer placed his reliance upon one Circular No. 62 (Exhibit 26) but either in course of the said enquiry proceeding or before initiation of said enquiry proceeding, the copy of the said circular was never forwarded to the writ petitioner. It is thus, submitted by Mr. Bihani that on proper appreciation of the enquiry report, it would reveal that the said enquiry report is vitiated for non-consideration of material evidence as well as for violation of principle of natural justice which are the fundamental principles to be followed by an enquiry officer dealing with an in-house inquiry proceeding and thus, the interference by this Court in judicial review is very much warranted.
6. In his next fold of submission, Mr. Bihani draws attention of this Court to page nos. 129 to 135 of the writ petition being the copy of the order dated June 30, 2015 as passed by the disciplinary authority. It is submitted by Mr. Bihani that on perusal of the said order of the disciplinary authority, it would

reveal that the findings of the said appellate authority is based on surmises and conjectures inasmuch as the said disciplinary authority had not at all applied its independent mind while awarding punishment to the writ petitioner.

7. It is further submitted by Mr. Bihani that the appellate authority merely reproduced the versions of the enquiry authority in its finding dated June 30, 2015 and thus the finding of the said disciplinary authority suffers from unreasonableness and no proportionality is found in the said finding of the appellate authority which is mandatorily required while awarding punishment to the writ petitioner. Mr. Bihani further submits that the disciplinary authority while awarding punishment to the writ petitioner under cover of its memo dated June 30, 2015 was not supposed to examine the past service records of the writ petitioner inasmuch as it is not the case of the respondents/authorities that the writ petitioner is a habitual offender in discharging his duties as delegated to him.
8. Drawing attention to the findings of the appellate authority at page nos. 136 and 137 of the writ petition, it is submitted by Mr. Bihani that from the said memo dated 18.07.2016, it would reveal that the finding of the appellate authority is cryptic and

unreasonable and thus, the same is required to be interfered with by this writ court on account of non-consideration of the vital available materials as collected in course of enquiry proceeding.

9. In course of his submission, Mr. Bihani places his reliance upon the following reported decisions, viz;

- i. **Kerala State Beverages (M And M) Corp vs PP Suresh and Ors.** reported in **2019 (9) SCC 710**;
- ii. **United Bank of India vs Biswanath Bhattacharjee** reported in **2022 (13) SCC 329**;
- iii. **Allahabad Bank & Ors vs Krishna Narayan Tewari** reported in **2017 (2) SCC 308**;
- iv. **Managing Director, Electronic Corporation of India & Ors vs. B. Karunakar & Ors.** reported in **1993 (4) SCC 727**;
- v. **Syndicate Bank & Ors vs Venkatesh Gururao Kurati** reported in **2006 (3) SCC 150** ; and
- vi. the celebrated decision of **Associated Provincial Picture Houses Limited Vs. Wednesbury Corporation** reported in **1 K.B. CA 1974** at Page No. 323.

10. Mr. Bihani thus submits that it is a fit case for allowing the instant writ petition by setting aside the punishment as

imposed upon the writ petitioner by the respondents/authorities.

11. *Per contra* Mr. Koley learned advocate appearing on behalf of the respondent authorities at the very outset draws attention of this Court to the affidavit-in-opposition as filed against the writ petition. It is submitted by Mr. Koley that from the enquiry report as has been annexed with the instant writ petition it would reveal that the writ petitioner was given all possible opportunity to defend himself and, therefore, it cannot be said that principle of natural justice has not been followed while conducting the said disciplinary proceeding. It is further submitted by Mr. Koley that from the materials as placed before the enquiry authority it would reveal that at the relevant time the writ petitioner was employed as cash collector at Bhatar CCC as Senior Assistant and no plausible explanation could be advanced by the said delinquent as to what prompted him to assign his duty to some other person (who is not an employee of WBSEDCL) without informing his superior.
12. It is further submitted by Mr. Koley that the plea of the writ petitioner that the writ petitioner was not aware to run a computer is also found to be flimsy one inasmuch as, sufficient

materials have been placed before the enquiry officer that prior to getting posting as Senior Assistant (Cash Collector in Bhatar CC) adequate training was given to the writ petitioner. It is further submitted by Mr. Koley that this Court not being an Appellate Court is not supposed to re-appreciate the evidence as recorded by the enquiry officer while sitting in a writ jurisdiction especially when no case has been made out by the writ petitioner for interfering with the orders under challenge in absence of proof of any materials warranting interference by the writ court. Mr. Koley thus submits that it is a fit case for dismissal of the instant writ petition.

13. This Court has meticulously perused 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.
14. On perusal of the charge sheet as has been annexed to the writ petition it appears to this Court that as against the writ petitioner charges have been framed under three heads and the genesis of all the charges are defalcation of money as has been deposited in Bhatar CCC wherein at the relevant point of time the present writ petitioner was posted as cashier in charge.

15. On careful consideration of the entire materials of the departmental proceeding as conducted against the writ petitioner along with other five delinquents, it appears to this Court that in course of such departmental proceeding adequate opportunity was given to the writ petitioner to cross-examine the PWs. The writ petitioner was also offered with the opportunity to adduce evidence on his behalf.
16. As discussed supra in course of his arguments, Mr. Bihani was very vocal that in course of the said disciplinary proceeding the delinquent was not supplied copies of the relevant circular No.62 which has been marked as Exhibit-26 and which has been relied upon by the enquiry authority while arriving its finding. It has been argued thus that for non-supply of the said circular No.62 to the writ petitioner a serious miscarriage of justice occurred which tantamounts to violation of principle of natural justice and, therefore, interference of the writ court is very much warranted in exercise of its judicial review.
17. However, on perusal of page no.35 of the writ petition being a copy of the list of documents which were supplied to the present writ petitioner it reveals that in item No.17 a copy of the said circular No.62 dated 09/11/1957 was supplied to the writ

petitioner. This Court thus finds no merit in the submission of Mr. Bihani that the relevant circular No.62 (Exhibit-26) was neither supplied to the writ petitioner prior to the initiation of the said disciplinary proceeding nor during the pendency of the said proceeding. On being asked by this Court learned advocate appearing behalf of the writ petitioner also fails to show as to whether any suggestion was at all given to the PWs with regard to the non-supply of the said circular No.62 (Exhibit-26). It thus appears to this Court that the argument as advanced on behalf of the writ petitioner with regard to the violation of principle of natural justice has no leg to stand upon.

18. As discussed, it was argued on behalf of the writ petitioner that the findings of the enquiry authority is vitiated for non-consideration of the material evidence which affects decision making process of the enquiry authority inasmuch as enquiry authority had not considered the material evidence of the DWs regarding non-involvement of the writ petitioner. This Court finds that the enquiry authority had dealt with the evidence of the DWs while arriving its findings and thought it fit not to consider the same favourably for the writ petitioner.

19. It is settled principles of law that a writ court is not expected to act as an Appellate Court and, therefore, in a judicial review, re-appreciation of evidence as is being done by an Appellate Court is permissible. It is also the trite law that a Writ Court sitting on judicial review is not expected to substitute his own view even though it finds some irregularities in the findings of the disciplinary authority while coming to its logical conclusion.
20. Coming to the factual aspects of the case it appears to this Court that the enquiry authority had duly considered the entire materials as placed before him and came to a finding that the charges against the writ petitioner have been proved.
21. As rightly pointed out by Mr. Koley that in course of the disciplinary proceeding the enquiry authority had also taken an onerous task in fixing the responsibility upon the writ petitioner as well as upon the other delinquents who have been tried conjointly while deciding the amount of defalcation as allegedly made by them. It appears to this Court that the finding of the enquiry authority in this regard is very much justified at all.
22. On perusal of the finding of the disciplinary authority as communicated under cover of its memo dated 30.06.2015 it appears to this Court that the said disciplinary authority had

meticulously considered the pros and cons of the enquiry report. The said disciplinary authority had taken note of evidence as adduced by the PWs and DWs and both oral and documentary. The said disciplinary authority applied its independent mind and thus come to a logical conclusion with regard to the guilt of the writ petitioner with regard to the charges framed against him and also came to a logical conclusion with regard to the punishment for violation of the relevant regulations of West Bengal State Electricity Board Employees Service Regulation.

23. It thus appears to this Court that the finding of the disciplinary authority is neither violative of the statutory regulation prescribing the mode of such enquiry nor its finding is vitiated by considerations extraneous to the evidence.
24. This Court has also meticulously gone through finding of the appellate authority as communicated under cover of memo dated 18.07.2016. Admittedly such order is short and brief in extent. However, it does not appear to this Court that the said finding is either cryptic as alleged on behalf of the writ petitioner or mere recapitulation of the findings of enquiry authority as well as of the disciplinary authority. On the contrary it appears to this Court that the appellate authority had duly considered

the entire case as placed before him. He has taken note of the fact that the writ petitioner has already superannuated from his service on attaining the age of his superannuation and, therefore, he thought it fit to uphold the finding of the enquiry authority as well as the disciplinary authority with regard to the charges as proved against the writ petitioner as well as with regard to the punishment as awarded against the writ petitioner by the disciplinary authority.

25. At this juncture, I propose to deal with the reported decisions as cited from the side of the writ petitioner.
26. In the reported decision of ***Kerala State Beverages (supra)*** the Hon'ble Apex Court while dealing with the subject of Principles of Law of Proportionality came to a finding that the proportionality involves balancing test and necessity test. It has been held further that the balancing test permits scrutiny of excessive and onerous penalties or infringement of rights or interests and a manifest imbalance of relevant considerations. It has been held further that an administrative decision can be said to be proportionate if the objective with which a decision is made to curtail the fundamental rights is important, the measures taken to achieve the objective have a rational

connection with the objective and the means that impair the rights of individuals are no more than necessary.

27. It appears to this Court that the said celebrated proposition of law has got no relevance in the facts and circumstances in the instant case inasmuch as it appears to this Court that the enquiry authority, the disciplinary authority, as well as the appellate authority while arriving their respective findings duly applied the theory of check and balance and ultimately came to a logical conclusion with regard to the charges as framed against the writ petitioner as well as with regard to the quantum of punishment considering the grievousness of the charges as proved against him.

28. In the reported decision of ***Biswanath Bhattacharjee (supra)*** the Hon'ble Apex Court reiterated the fundamental principles of law to be followed by a writ court while issuing a writ of mandamus. This Court is of considered view that the proposition of law as decided in the case of ***Biswanath Bhattacharjee (supra)*** if applied to the facts and circumstances of the instant case, the same supports the case of the respondent than the writ petitioner inasmuch as no materials could be placed that the aforementioned findings of the

respondent authorities are either based on consideration of irrelevant materials ignoring relevant material and/or such findings are otherwise perverse.

29. In the reported judgment of **Krishna Narayan Tewari (supra)** the following was held:

“7. We have given our anxious consideration to the submissions at the Bar. It is true that a writ court is very slow in interfering with the findings of facts recorded by a departmental authority on the basis of evidence available on record. But it is equally true that in a case where the disciplinary authority records a finding that is unsupported by any evidence whatsoever or a finding which no reasonable person could have arrived at, the writ court would be justified if not duty-bound to examine the matter and grant relief in appropriate cases. The writ court will certainly interfere with disciplinary enquiry or the resultant orders passed by the competent authority on that basis if the enquiry itself was vitiated on account of violation of principles of natural justice, as is alleged to be the position in the present case. Non-application of mind by the enquiry officer or the disciplinary authority, non-recording of reasons in support of the conclusion arrived at by them are also grounds on which the writ courts are justified in interfering with the orders of punishment.”

30. As discussed hereinabove this Court has already come to a finding the writ petitioner has failed to made out a case that the

enquiry proceeding as conducted against him was vitiated on account of violation of principles of nature justice and/or non-consideration of the material evidence or otherwise perverse. This Court is thus of considered view that the reported decision of **Krishna Narayan Tewari (supra)** is equally of no help to the writ petitioner.

31. It further appears to this Court that the reported decision of **B. Karunakar and Ors. (supra)** is also not helpful for the writ petitioner inasmuch as the writ petitioner has miserably failed to show that he was not supplied with the relevant circular (Exhibit-26) prior to the initiation of the departmental proceeding.
32. On the same principle the reported decision of **Venkatesh Gururao Kurati (supra)** is also of no help to the writ petitioner.
33. In the celebrated decision of **Wednesbury Corporation (supra)** King's Bench Division held thus:

“... I do not wish to repeat myself but I will summarize once again the principle applicable. The court is entitled to investigate the action of the local authority with a view to seeing whether they have taken into account matters which they ought not to take into account, or, conversely, have refused to take into account or neglected to take into account matters which they ought to take into account. Once that

question is answered in favour of the local authority, it may be still possible to say that, although the local authority have kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it.”

34. This Court considers that the proposition of law as decided in the case of **Wednesbury Corporation (supra)** is equally of no help to the writ petitioner in as much as the writ petitioner has miserably failed to establish that the enquiry authority while conducting enquiry has failed and neglected to take into account such evidence which ought to have been taken by him.
35. Before arriving at the logical conclusion of the instant *lis* this Court must not be unmindful to reiterate the settled principles of law that in a disciplinary proceeding and/or in an in-house proceeding if there is some legal evidence on which findings can be based, then adequacy or reliability of evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution of India.
36. On further careful consideration of the entire materials as placed before this Court it appears to this Court that the disciplinary authority awarded punishment upon the writ

petitioner in the following manner:- (i) Deduction of 30% admissible pension for lifetime and (ii) Recovery of defalcated amount of Rs.90656/- from his gratuity.

37. As discussed supra and as rightly pointed by Mr. Koley, learned advocate for the respondent authorities that the enquiry authority while arriving at its logical conclusion in respect of enquiry proceeding rightly concluded the defalcated amount and thus the respondent authorities are very much justified in passing an order for recovery of the aforementioned defalcated amount from his gratuity since in the mean time that the writ petitioner was superannuated.
38. It further appears to this Court that the respondent authorities have also awarded a punishment of deduction of 30% admissible pension for lifetime. This Court however considers that the quantum of punishment with regard to the deduction of admissible pension is bit harsh considering the gravity of the charges as proved against him and the quantum of the defalcated amount.
39. In the reported decision of ***Union of India Vs. P. Balasubrahmanayan***, reported in ***(2021) 5 SCC 662*** the Hon'ble Supreme Court held as:

“It is correct to say that judicial forums do not sit as an appellate authority to substitute their mind with the mind of the disciplinary authority in so far as the finding is concerned, however, disproportionately of punishment is a concept certainly not an unknown to the service jurisprudence and has received consideration, inter alia, of this Court.”

40. The same view was taken by the Hon’ble Supreme Court in another reported decision namely **S. R. Tiwari Vs. Union of India** reported in **(2013) 6 SCC 602** wherein the following has been held:

“25. In B.C. Chaturvedi v. Union of India & Ors., reported in (1995) 6 SCC 749 :AIR 1996 SC 484, this Court after examining various its earlier decisions observed that in exercise of the powers of judicial review, the court cannot “normally” substitute its own conclusion or penalty. However, if the penalty imposed by an authority “shocks the conscience” of the court, it would appropriately mould the relief either directing the authority to reconsider the penalty imposed and in exceptional and rare cases, in order to shorten the litigation, itself, impose appropriate punishment with cogent reasons in support thereof. While examining the issue of proportionality, court can also consider the circumstances under which the misconduct was committed. In a given case, the prevailing circumstances might have forced the accused to act in a certain manner though he had not intended to do so. The court may

further examine the effect, if the order is set aside or substituted by some other penalty. However, it is only in very rare cases that the court might, to shorten the litigation, think of substituting its own view as to the quantum of punishment in place of punishment awarded by the Competent Authority.

26. In V. Ramana v. A.P.S.R.T.C. & Ors. reported in (2005) 7 SCC 338: AIR 2005 SC 3417, this Court considered the scope of judicial review as to the quantum of punishment is permissible only if it is found that it is not commensurate with the gravity of the charges and if the court comes to the conclusion that the scope of judicial review as to the quantum of punishment is permissible only if it is found to be “shocking to the con-science of the Court, in the sense that it was in defiance of logic or moral standards.” In a normal course, if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the Disciplinary Authority to reconsider the penalty imposed. However, in order to shorten the litigation, in exceptional and rare cases, the Court itself can impose appropriate punishment by recording cogent reasons in support thereof.”

41. As discussed hereinabove the punishment for deduction of 30% admissible amount of pension for lifetime, in considered view of this Court, is excessive since the same is not commensurate with the charges proved and the quantum of the defalcated amount.

42. This Court considers that the justice would be met if deduction of 30% admissible pension as payable to the writ petitioner is restricted for seven years. In doing so this Court thus modifies the quantum of punishment in the manner indicated hereunder.
43. There shall be a deduction of 30% of admissible pension payable to the writ petitioner from the date of his superannuation and thereafter he is entitled to normal pension. While calculating the arrear pension the respondent authorities are relieved from paying any interest thereon. However arrears of pension if there be any, are to be disbursed to the writ petitioner by the respondents positively by the last day of the year 2026.
44. With the aforementioned observation the instant writ petition being **WPA 24124 of 2018** is disposed of.
45. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all necessary formalities.

(Partha Sarathi Sen, J.)