

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble Justice PARTHA SARATHI SEN

WPA 24127 of 2018

Manabendra Chakraborty

-Vs-

WBSEDCL & Ors.

For the Petitioner:

Mr. N.C Bihani, Sr. Adv.,
Ms. P.B Bihani, Adv.,
Mr. Soumya Mukherjee, Adv.

For the respondents:

Mr. Sujit Sankar Koley, Adv.

Hearing concluded on:

14.02.2025.

Judgment on:

19.02.2025.

PARTHA SARATHI SEN, J. : -

1. The subject matters of this writ petition are the charge-sheet dated 25.05.2012 as submitted against the writ petitioner, the findings of the enquiry officer dated 18.06.2013, the punishments as awarded by the disciplinary authority upon the writ petitioner on 09/10.03.2015 and the findings of the appellate authority dated 19.02.2016 affirming the findings of the enquiry officer and disciplinary authority and also the punishments awarded by the disciplinary authority.

2. For effective adjudication of the instant *lis* the facts leading to the submission of the charge-sheet against the writ petitioner are required to be narrated in a nut shell and those are as under :-

(i) At the material time the writ petitioner was posted as Assistant Chargeman at Uluberia Trans(O & M) sub-division.

(ii) the writ petitioner was at that material time was the senior most line maintenance staff and he was responsible to attend breakdown line maintenance including trimming of trees.

(iii) On 30.09.2011 the writ petitioner accompanied by five technical staff went inside the campus of KTPP for a 'tree cutting program'.

(iv) During the execution of the said work of tree treaming two employees of the respondent authorities were found severely injured and subsequently they succumbed to their injuries.

(v) In a preliminary enquiry as conducted by the respondent authority, it was found that the writ petitioner flouted the stipulations of the relevant office circulars dated 30.03.2010 and 16.07.2011 and took no steps at all for shutdown of KTPP 132 KV line and mobilized the staff of the respondent authority including himself to attend the tree treaming program endangering the lives of the said staff of the respondent authority which ultimately caused death of the two employees of the respondent authority.

(vi) According to the respondent authority such act of negligence of the writ petitioner prima facie tantamounts to violation of Regulations 1(b), (d) and (e) of WBSEB Employees' Service Regulations.

3. In course of his argument Mr. Bihani, learned Senior advocate appearing on behalf of the writ petitioner at the very outset draws

attention of this Court to page no.49 of the instant writ petition being a copy of the charge sheet dated 25.05.2012 as submitted by the respondent/authority against the writ petitioner. Attention of this Court is also drawn to page no.53 of the writ petition being a copy of the list of documents which were supplied to the writ petitioner along with the articles of charge. It is submitted by Mr. Bihani that from Sl. No.13 of such list of documents it will reveal that the disciplinary authority intended to place its reliance in the said departmental proceeding proposed to be initiated against the delinquent over the circulars dated 16.07.2011 and 03.03.2010. It is submitted on behalf of the petitioner that the said circulars have been exhibited in the said departmental proceeding as Exhibit nos.14 and 15. It is further submitted that the enquiry authority while arriving at its findings has placed reliance upon the said Exhibit nos.14 and 15 and came to hold that the writ petitioner was guilty of the charges as framed against him.

4. It is further submitted by Mr. Bihani that from the enquiry report as has been annexed to the instant writ petition from page nos. 71 to 139 it would reveal that it was the specific defence of the writ petitioner that the said two exhibits being circulars dated 16.07.2011 and 03.03.2010 were never supplied to him during his tenure of service as Assistant Chargeman at Uluberia Trans (O & M) Sub-division. Mr. Bihani contended that from the enquiry report it would reveal further that positive evidence to that effect was adduced by the defence witnesses. However, the enquiry authority for the reason best known to him ignored such material

evidence and came to a finding with regard to the alleged misconduct of the writ petitioner. It is thus submitted by Mr. Bihani that for non-consideration of the material evidence as adduced on behalf of the delinquent a serious miscarriage of justice occurred and thus the finding of the enquiry authority may be considered as perverse, warranting interference of this Court in judicial review.

5. It is further submitted by Mr. Bihani that the enquiry authority while arriving at its finding was persuaded by extraneous materials which is evident from the enquiry report as has been annexed in the instant writ petition which vitiates the decision making process of the enquiry authority and thus an appropriate writ may be issued for quashing of the said finding of the enquiry authority.

6. In his next limb of submission Mr. Bihani draws attention of this Court to page nos. 148 to 154 of the writ petition being a copy of the second show cause notice dated 25.09.2014 as served upon the writ petitioner by the disciplinary authority. Drawing further attention of this Court to page no.153 of the writ petition it is submitted by Mr. Bihani that while issuing the said second show cause notice to the writ petitioner the disciplinary authority ought to have come to a tentative finding with regard to the charges as framed against the writ petitioner. It is further submitted on behalf of the writ petitioner that from the said second show cause notice, it would thus reveal that the said disciplinary authority had practically come to a definite finding with regard to the charges as labelled against the writ petitioner and thus the said second show cause notice

may be held to be perverse inasmuch as the disciplinary authority prior to the passing of the order of punishment had practically made up its mind to impose punishment upon the writ petitioner.

7. It is thus submitted that the order of punishment dated 10.03.2015 as passed by the disciplinary authority was prejudged and/or predetermined and there was no independent application of mind on the part of the disciplinary authority while passing the order of punishment dated 10.03.2015 as is evident from page nos. 157 to 160 of the instant writ petition.

8. Drawing attention to page no.152 of the writ petition it is further submitted by Mr. Bihani that while issuing the second show cause notice dated 25.09.2014 the disciplinary authority though practically admitted that relevant exhibits were not supplied to the writ petitioner prior to submission of charge sheet, however, the said disciplinary authority had failed to consider the violation of the basic principles of natural justice which is mandatorily to be followed in a disciplinary proceeding. It is thus submitted by Mr. Bihani that the finding of the disciplinary authority and the punishment as imposed by the disciplinary authority also warrants interference by this writ court in the instant writ petition.

9. While drawing attention to page no.164 of the instant writ petition being a copy of the memo dated 19.02.2016 as issued by the appellate authority it is submitted on behalf of the writ petitioner that the said appellate authority also placed reliance upon the aforementioned two circulars being exhibit nos. 14 and 15 but the said appellate authority

failed to apply its independent mind with regard to the prejudice caused to the writ petitioner due to the non-supply of the aforementioned two circulars being exhibit nos. 14 and 15 prior to initiation of the disciplinary proceeding and practically echoed the version of the enquiry authority as well as disciplinary authority. It is thus submitted by Mr. Bihani that the errors as committed by the disciplinary authority and the appellate authority while arriving at their findings are apparent on the face of record and the same causes manifest injustice to the writ petitioner. It is thus submitted that an appropriate writ/writs may be issued against the respondent/authority while allowing the instant writ petition.

10. In course of his argument Mr. Bihani places his reliance upon the following reported decisions namely:-

i. Ranotosh Saha vs. Secretary, Government of West Bengal and Ors reported in **(2008) (1) CHN 231;**

and

ii. Syndicate Bank and Ors vs. Venkatesh Gururao Kurati reported in **(2006) 3 SCC 150.**

11. Per contra, Mr. Koley learned advocate appearing on behalf of the respondent/authority submits before this Court that observation of Regulation 59 is mandatory on the part of an employee under the respondent/authority. It is further submitted by Mr. Koley that the relevant circulars have been circulated amongst the employees of the respondent/authority including the writ petitioner directing them to strictly abide by the safety norms and procedures laid down under the

Standard Operating Practice and Transmission Safety Manual to achieve Zero Accident. It is further contended by Mr. Koley that in course of enquiry proceeding the charges have been duly proved against the present writ petitioner and thus such factual finding ought not be disturbed by this Court sitting in writ jurisdiction.

12. Mr. Koley further submits that while replying to the second show cause notice dated 25.09.2014 as has been annexed at page no. 155 of the writ petition it would reveal that the alleged prejudging and/or predetermination on the part of the disciplinary authority was never agitated and/or pointed out in such reply.

13. Mr. Koley thus submits that it is a fit case for dismissal of the instant petition.

14. Before entering into the factual aspects as well as to the merit of the instant writ petition this Court considers it just and proper to look to the settled position of law with regard to the scope of judicial review in service matters. In the reported decision of **Praveen Kumar vs. Union of India and Ors reported in (2020) 9 SCC 471** the Hon'ble Apex Court had occasion to revisit the scope of judicial review in service matters and while doing so the Hon'ble Apex Court expressed the following view:-

"I. Scope of Judicial Review in Service Matters

25. Learned counsel for the appellant spent considerable time taking us through the various evidences on record with the intention of highlighting lacunas and contradictions. We feel that such an exercise was in vain, as the threshold of interference in the present

proceedings is quite high. The power of judicial review discharged by Constitutional Courts under Article 226 or 32, or when sitting in appeal under Article 136, is distinct from the appellate power exercised by a departmental appellate authority. It would be gainsaid that judicial review is an evaluation of the decision making process, and not the merits of the decision itself. Judicial Review seeks to ensure fairness in treatment and not fairness of conclusion. It ought to be used to correct manifest errors of law or procedure, which might result in significant injustice; or in case of bias or gross unreasonableness of outcome.

26. These principles are succinctly elucidated by a three judge Bench of this Court in BC Chaturvedi v. Union of India: (1995)6 SCC 749 , para 12:1996 SCC (L&S)80 in the following extract:

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction,

power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal

evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel [(1964) 4 SCR 718 :AIR 1964 SC 364] this Court held at p. 728-29 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.”

27. These parameters have been consistently reiterated by this Court in a catena of decisions, including:

(i) State of Tamil Nadu v. S Subramaniam, (1996) 7 SCC 509.

(ii) Lalit Popli v. Canara Bank, (2003) 3 SCC 583.

(iii) Himachal Pradesh State Electricity Board Ltd v. Mahesh Dahiya, (2017) 1 SCC 768.”

15. Keeping in mind the settled position of law as discussed supra if I look to the factual aspects of this case it appears to this Court that admittedly the enquiry officer had framed 10 points (like issues in a civil proceeding) and those are also quoted hereinbelow in verbatim:-

“1) Whether there was a pre-scheduled program of tree trimming on 30.09.2011 under the KTPP-Uluberia 132kV line inside the campus of KTPP?

2) Whether on 29.09.11 Sri Gobinda Biswas (CO) duly intimated and consulted the above program over telephone with Sri Manabendra

Chakraborty, ACM, being In-charge of the Maintenance Gang of Uluberia Transmission (O&M) Sub Division as per the prevailing practice of the Company?

3) Whether according to the above scheduled program as worked out with the due consent of Shri Biswas, Shri Chakraborty along with other five technical staff of the maintenance gang executed the above job on 30.09.2011?

4) Whether inspite of the fact that there was a scheduled program of "cutting of trees" under the KTTTP-Uluberia 132kV line inside the campus of the KTPP on 30.09.10, neither any shutdown was insisted for by Sri Manabendra Chakraborty nor it was effected?

5) Whether the site was a dumping yard of KTPP and due to dumping of débris under the aforesaid line, the ground clearance had been reduced to an unsafe distance and even though, on arriving at the spot and also observing the physical site condition, Sri Chakraborty, being In-charge of Maintenance Gang, did not ask for required shutdown of the said line and instead of that he had engaged himself and other 5 maintenance staff including two victims to undertake the work of cutting of trees endangering the lives of all the aforesaid members (including himself), which ultimately caused untimely loss of the precious lives of Sukumar Santra and Shakti Pada Mondal, both LM?

6)Whether Sri Manabendra Chakraborty, ACM (CO) having been fully aware of the stipulation laid down in the circular dated 30.03.2010

and 16.07.2011 of the C.E Trans. (O&M), WBSETCL and also the fact of non taking of any shutdown, mobilized the technical staff of the maintenance gang of the Sub Station for tree cutting under the live line, endangering the lives of the aforesaid technical staff including himself which ultimately caused untimely loss of the lives of said Sukumar Santra and Shakti Pada Mondal?

7) Whether in the Uluberia 132 KV Sub Station there was a common practice of undertaking the work of cutting/trimming of trees without taking shutdown of the concerned line in gross violation of the Company's prevailing norms and procedures of safety?

8) Whether inspite of the aforesaid jobs of tree cuttings having been duly entered in the Job Register maintained at the Uluberia 132 KV Sub Station during the period from 01.05.10 to 30.09.11, Sri Biswas, being In-charge of Uluberia Transmission (O&M) Sub Division, did never take any attempt, whatsoever, during his incumbency at Uluberia Transmission (O&M) Sub Division to refrain the technical staff of Maintenance Gang of the said Sub Station to undertake such unsafe acts i.e cutting of trees without taking the required shutdown of the concerned line?

9) Whether Sri Gobinda Biswas (CO) being fully aware of the well laid company's safety norms and standards did not take any proactive steps towards refraining the technical staff of the maintenance gang from undertaking such unsafe acts of cutting of trees without taking proper shutdown endangering their lives inspite

of a similar accident occurred under his jurisdiction just one year back?

10) Whether during his incumbency at Uluberia Transmission (O&M) Sub Division Sri Biswas (CO) did not enforce any supervision, whatsoever, towards strict adherence of safety norms and standards at work site, as laid down in the circular dated 30.03.2010 and 16.07.11 of the C.E, Trans (O&M), WBSETCL?”

16. This Court has meticulously gone through the copy of the enquiry report as has been annexed to the instant writ petition from page nos. 72 to 139. Admittedly as pointed out by Mr. Bihani in course of his argument from page nos. 78 of the instant writ petition it would reveal that the relevant two circulars have been exhibited as Exhibit nos. 14 and 15.

17. At this juncture if I once again look to the relevant portion of the enquiry report it reveals that the said enquiry authority considered the aforesaid point nos. 1,2 and 3 conjointly and came to hold that in the above sub-station there was not a single instance of tree cutting or trimming after taking proper shut down of the line. The enquiry authority further came to hold that there was no record of passing of any written order by Shri Biswas (another delinquent) either for any maintenance work executed without pre-planned or for any tree cutting/trimming work since executed in the said sub-station. The said enquiry officer further came to a finding that the management witnesses have established before him that the job of tree trimming on 30.09.2011 was actually prescheduled program and according to such program the writ petitioner

executed the said job on 30.09.2011 with due consent of his immediate superior Shri Biswas (another delinquent) with the help of other concerned technical staff of the maintenance wing of sub-station.

18. It further appears to this Court that the said enquiry authority while arriving at its findings with regard to point nos.4,5,6 and 7 came to hold that the writ petitioner is found to have carefully ignored the possible danger due to reduced and unsafe ground clearance between the site of accident which was a dumping yard and the live line on arriving at the spot and also observing the physical site condition and without asking for the required shut down of the live line, he engaged himself and the concerned maintenance staff including the victim to undertake the job endangering lives of himself and the others.

19. On careful scrutiny of the copy of the enquiry report as has been annexed to the instant writ petition this Court has noticed that the said enquiry authority has dealt with the aforementioned two circulars being Exhibit nos. 14 and 15. The said enquiry officer further came to a finding that while assessing the evidence of PW1 that it was the positive evidence of PW1 that the said circulars were widely circulated amongst the concerned officers and the matter was thus beyond question.

20. As rightly argued by Mr. Koley the findings as arrived by the enquiry authority in the departmental enquiry proceeding is the outcome of evaluation of the oral and documentary evidence as recorded by him and therefore this Court being not an appellate court is not expected to reappreciate the evidence while sitting in a judicial review. This Court

considers that the writ petitioner before this Court has miserably failed to make out a case that either the rules of natural justice has not been followed by the enquiry authority or the enquiry authority proceeded with the departmental proceeding in violation of the statutory regulations prescribing the mode of enquiry or the conclusion of finding reached by the disciplinary authority is based on no evidence. This Court is thus of considered view that in a judicial review a writ court is not expected to substitute its own view like an appellate authority even if it disagrees with the findings of the enquiry authority regarding appreciation of evidence as made by him. As discussed supra it has been consistently held by the Hon'ble Apex Court that in a disciplinary proceeding a strict proof in accordance with the provisions of the Evidence Act is not at all necessary and thus adequacy of evidence and/or reliability of evidence cannot be permitted to be canvassed before a court exercising writ jurisdiction.

21. In course of his argument Mr. Bihani was very vocal with regard to the second show cause notice dated 25.09.2014 as issued to the writ petitioner by the disciplinary authority. It has been submitted by him that from page 152 of the instant writ petition it would reveal that while issuing the second show cause notice the disciplinary authority came to an absolute finding with regard to the charges as framed against the writ petitioner and allegedly proved against the writ petitioner and thus it can be said that he was predetermined and/or prejudged in imposing the sentence. According to Mr. Bihani on such score the punishment as imposed by the disciplinary authority is perverse.

22. At this juncture I propose to look to the relevant portion of the reported decision of **Ranotosh Saha (supra)** and the same is quoted below in verbatim:-

“18. It is settled law, as has been laid down in the decisions cited on behalf of the petitioner, that a disciplinary proceeding is initiated in order to ascertain as to whether the delinquent employee who is charged with misconduct is guilty or not. Burden of proving that the employee is guilty, normally, is on the management/employer. It is only after an enquiry is conducted in accordance with the principles of natural justice and a report is submitted by the Enquiry Officer holding that the charges of misconduct levelled against the employee stand established that the employer can enter into the arena of considering whether the delinquent employee is to be retained in service or not or while retaining him in service, to impose any other punishment on him which is permissible in accordance with the applicable rules. Question of dismissal of the delinquent employee would arise after the employee concerned having been found guilty of misconduct warranting major punishment gives his reply to the report of the Enquiry Officer holding him guilty or where there is a provision or issuance of second show-cause notice, the petitioner is forwarded the report of the Enquiry Officer together with the employer's tentative agreement with the finding of the Enquiry Officer and the provisional decision taken by the employer to punish him. Broadly this being the procedure for holding a domestic enquiry, it is undesirable for the

employer, while issuing show-cause notice or chargesheet to indicate therein that the employee sought to be proceeded against is to show cause against dismissal/termination from service, and thereafter to grant opportunity to the delinquent employee to appear before an authority for personal hearing. The possibility of a delinquent employee being of the impression that the disciplinary authority having already taken a decision to dismiss him from service, the enquiry proposed to be conducted against him would be one to complete a formality in law cannot be ruled out. It is in these circumstances, where the employee perceives a real danger of bias together with the feeling that justice would not be meted out to him, that a complaint of the nature sought to be raised by the learned Counsel for the petitioner in this case, can be examined having due regard to the surrounding facts and circumstances and conclusions can be drawn therefrom and if it is found to have some merit, the Court would consequently consider the extent of relief that can be granted.

19. The show-cause notice in the present case was issued on 15.11.02. It appears from the materials on record that by his representation dated 28.11.02, the petitioner had replied to the show-cause notice. From the said representation it does not appear that the petitioner had expressed any apprehension that the issue sought to be investigated had been prejudged and/or predetermined

and that the same having been initiated to complete a formality in law, he would not receive justice.....”

23. Keeping in mind the proposition of law as decided in the case of **Ranotosh Saha (supra)** by a Co-ordinate Bench of this Court if I once again look to the entire second show cause notice as issued by the disciplinary authority as has been annexed to the instant writ petition at page nos. 148 to 154 it never transpires to this Court that the said disciplinary authority while issuing the second show cause notice was predetermined or prejudged in imposing punishment upon the present writ petitioner and on the contrary it appears that the said disciplinary authority independently considered the charges as framed against the delinquent as well as the evidence adduced in the said disciplinary proceeding and he has assigned his independent finding with regard to the point nos. 1 to 7 as framed by the disciplinary authority against the present writ petitioner.

24. On perusal of page no. 155 of the writ petition being the copy of the reply to the second show cause notice it appears that the same is incomplete and even from the said incomplete portion of the said reply it appears to this Court that the writ petitioner has never expressed his apprehension that issuance of show cause notice is merely a formality since the appellate authority has prejudged himself while issuing the second show cause notice.

25. Admittedly the findings of the second show cause notice as has been communicated to the writ petitioner by its memo dated 19.02.2016

is brief in nature but it does not transpire to this Court that the appellate authority while issuing the said memo has merely reproduced the versions of either of the enquiry officer or of the disciplinary authority. On the contrary, it appears to this Court that the said appellate authority also duly scrutinized the entire materials as placed before it and came to a justified finding with regard to the charges as framed and proved against the delinquent and also with regard to the adequacy of the punishment as imposed upon the delinquent.

26. On careful consideration of the entire materials it thus appears to this Court that the parameters as have been framed in the reported decision of ***Praveen Kumar (supra)*** have been duly followed by the respondent/authority herein while conducting disciplinary proceeding as well as the proceedings before the disciplinary authority and before the appellate authority.

27. In view of the decisions made hereinabove this Court thus finds no merit in the instant writ petition and the instant writ petition is thus dismissed.

28. All connected pending interlocutory applications, if there be any, stands hereby disposed of.

29. There shall be however no order as to costs.

30. Urgent photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

(PARTHA SARATHI SEN, J.)