

W.P.S.T. 484 of 2009

The State of West Bengal & Ors.

Vs.

Mr. Montaj Ali & Anr.

Ms. Chandreyi Alam, Id. A.G.P.,
Ms. Kakali Dutta

...for the State

Mr. Suresh Chandra Manna,
Mr. Nobiul Islam

...for the Respondent

1. Heard the learned advocate for the writ petitioner/State and the learned advocate for the respondent.
2. The applicant before the West Bengal Administrative Tribunal ('Tribunal' for short), a Constable in the West Bengal Police Force, was proceeded against on the basis of a charge-memo dated 10.10.2005. The substance of the allegation against the Constable (hereinafter referred to as 'applicant') was that on 27.09.2005 at about 17:15 hours, the Assistant Sub-Inspector (A.S.I.) of the Tarapith outpost (OP) was preparing to proceed for bringing the salary for the OP. He placed his loaded service revolver on the table in the office. The applicant, a constable was directed to accompany the A.S.I. He picked up the revolver from the table and started to fiddle with it. One round shot off from the revolver and hit the right

arm of another Constable, who later succumbed to his injury.

3. The applicant did not admit to the charges and was proceeded against in an enquiry conducted by the C.I. of Murarai, Birbhum. The enquiry report dated 18.04.2006 was submitted. The disciplinary authority, namely, the Superintendent of Police (S.P.), Birbhum served a show-cause notice dated 19.04.2006, why the applicant should not be dismissed from service. The applicant submitted his reply dated 25.04.2006 to the second show-cause. The S.P. by an order dated 28.04.2006, held the applicant guilty of the charge and directed for his dismissal from service with immediate effect.
4. Before the disciplinary authority, the applicant, in his defence stated that he was asked by the A.S.I. to bring the holster from the second floor of the Tarapith O.P. As per order of the A.S.I., he was required to keep the revolver in the holster. Since there was some haste in the order of the A.S.I., the C.S.E. was placing the revolver in the holster accordingly, and he slipped on the floor which resulted in firing from the revolver.
5. The applicant claimed before the authorities that the allegations at best constituted an act of negligence/mistake. The same cannot be

considered as a misconduct inviting the severe punishment of dismissal from service. The authorities have not considered the plea taken by the applicant and inflicted the punishment of dismissal which was affirmed by the Appellate Authority, as well as the Revisional Authority.

6. The above facts laid the foundation for filing of an Original Application before the Tribunal. O.A. No. 2946 of 2006, by the applicant. The same was disposed of by the Tribunal observing that the dismissal or removal from service would not be proper and legal. The disciplinary authority is required to record a new punishment within a period of three months. The consequential benefits, if available, were required to be extended to the C.S.E./applicant.
7. The order of the Tribunal, therefore, did not interfere with the findings of the disciplinary authority, appellate authority as well as the revisional authority insofar as the charges were proved.
8. The Tribunal interfered only with the quantum of punishment. The applicant did not assail the order of the Tribunal dated 10.02.2009 in O.A. No.2946 of 2006. Therefore, the scope of the present writ petition is confined to the issue whether the direction of the Tribunal based on a

finding of the quantum of punishment being excessive, and directing reconsideration is unsustainable or not.

9. The law in this regard is by now a settled issue. It is normally for the employer to take a decision with respect to the quantum of punishment having regard to the gravity of the allegations.
10. The jurisdiction of the court exercising judicial review is very limited in respect of disciplinary proceedings. The Apex Court, therefore, has held in the case of ***Damoh Panna Sagar Rural Regional Bank & Anr. vs. Munna Lal Jain*** reported in ***(2005) 10 SCC 84; Union of India v. P. Balasubrahmanayam, 2021 5 SCC 662*** that in exercise of judicial review the court should not interfere or go into the choice of punishment made by the Administrator, unless it suffers from procedural infirmity, is wholly illogical or is shocking to the conscience of the court. The Apex Court further laid down that when the court considers the punishment to be shockingly disproportionate, it must record reasons for coming to such a conclusion and a mere expression that punishment is shockingly disproportionate would not meet the requirement of law. If the punishment imposed is considered shockingly disproportionate, then also it would

normally be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty.

11. We find from the order of the Tribunal that while interfering with the quantum of punishment, no reasons whatsoever have been assigned to hold that the punishment is excessive. There is no finding or reason in support of the conclusion; or directions extracted above.
12. While the matter was being argued by the learned A.G.P., we have perused the *Police Regulations of West Bengal, 1943*, wherein there are certain provisions including Regulation 1013, casting an obligation on the officer, who has been issued arms & ammunition for its safe-keep and maintenance in a serviceable condition. There is no charge that the C.S.E. has taken the revolver from its safe keep of armoury, or OP. The allegation itself suggests that same was kept on the table by the A.S.I. and under the circumstances picked up by the applicant.
13. The applicant, however, has a different story to tell that he was asked by the ASI to place the revolver in the holster.
14. Without going into sufficiency of such defence taken by the applicant we are of the view that the finding that the applicant mishandled the revolver

or in other words was negligent in handling revolver does not require any interference. The way the applicant, a constable mishandled the revolver cannot be countenanced. Such lapse cannot be trivialized. The applicant/constable, therefore, was rightly held liable for gross negligence which was required to be punished.

15. We, however, are required to consider the factual matrix forming the basis of alleged misconduct. There is no allegation that the revolver was kept in safe custody and that the applicant has taken the same from any safe custody. The allegation is based on a factual foundation that the revolver was kept by the ASI on the table. It is specific defence of the applicant that the ASI had asked to place it in the holster, since they were immediately required to proceed for fetching the salary for the OP.
16. It is therefore, clear that there is no allegation of any ill-motive whatsoever on the part of the applicant.
17. Times without number the Apex Court held that every mistake does not constitute a misconduct or neglect in discharge of duties and that an employee cannot be punished for a sheer mistake committed *bona fide*. If an employee is not guilty of committing a culpable mistake, then

disciplinary action may be uncalled for. (***Andhra Pradesh State Transport Corporation vs. P. Appa Rao, (2007) 15 SCC 746***).

18. In the present case we are not inclined to take a view that the applicant's conduct constituted a sheer mistake. Having regard to the requirement of discipline and considering it paramount that the arms are required to be handled by the members of the force with abundant precaution, we do not intend to interfere with the finding that the charges constituted a gross negligence.
19. However, in the instant case neither there is any allegation, nor any finding that the revolver was unauthorizedly taken away. There is also no allegation that the act of firing from the revolver was wilful and there was any ill motive of inflicting a fatal injury on his fellow constable. Even as per the allegation and statement of the witnesses who appeared before the Enquiry there is no basis whatsoever to infer that there was any wilful act constituting misconduct. The allegation is that one bullet was fired when the Constable picked up the revolver from the table and was fiddling with it.
20. Under the above facts and circumstances, we are of the view that the gross negligence when viewed with the attending facts and circumstances, the

same did not invite the extreme punishment of dismissal from service. The punishment therefore in our opinion is shockingly disproportionate to the gravity of the allegation, and is unsustainable.

21. Having given our anxious consideration above, we are also of the view that the order of dismissal passed by the Disciplinary Authority, affirmed by the Appellate and the Revisional Authority was unsustainable. We therefore, find no reason to interfere with the conclusion of the Tribunal, but for the reasons which we have recorded above.
22. We therefore, leave it to the Revisional Authority (Petitioner No.2) to take a fresh decision accordingly, on the quantum of punishment.
23. As a result of exercise of discretion by the Revisional Authority, if the constable/applicant is entitled to any consequential benefit, the same is required to be extended to the applicant.
24. The revisional authority, namely, the Inspector General of Police, Western Zone, West Bengal, (Petitioner No.2), shall take a decision in accordance with law in terms of our observation hereinabove within a period of six (06) weeks from date of receipt/communication of a copy of this order.
25. The present Writ Petition is disposed of in these terms.

26. There will be no order as to costs.
27. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Madhuresh Prasad, J.)

(Prasenjit Biswas, J.)