
(2013) 08 CAL CK 0018
In the Calcutta High Court
Case No : W.P.S.T. No. 125 of 2013

Barun Chatterjee

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 26-08-2013

Acts Referred:

Citation : (2013) 4 CALLT 320 : (2013) 4 CHN 562 : (2013) LabIC 4370

Hon'ble Judges : Pranab Kumar Chattopadhyay, J; Murari Prasad Shrivastava, J

Bench : Division Bench

Advocate : Tapabrata Chakrabarty, A.K. Das and Masud Karom and Prabir Rej, for the Appellant; Chaitali Bhattacharyya and Mrs. Aparna Gosh, for the Respondent

Judgement

Pranab Kumar Chattopadhyay, J.—This writ petition has been filed assailing the judgment and order dated 16th August, 2012 passed by the West Bengal Administrative Tribunal in the case being O.A. No. 1391 of 2003 whereby the said learned Tribunal disposed of the application filed by the petitioner herein without granting any relief to the said petitioner. The petitioner herein was appointed as a Constable on 3rd July, 1977. Superintendent of Police, Burdwan initiated disciplinary proceedings against the petitioner by issuing a charge-sheet on 24th September, 2002 alleging the misconduct of unauthorized absence from duty. From the records, we find that the petitioner was absenting from duty with effect from 9th May, 2002 without obtaining any leave from the appropriate authority. The petitioner however, by the written communication dated 17th July, 2002 informed the Superintendent of Police, Burdwan about his willingness to join the duty and accordingly, requested the said Superintendent of Police to issue appropriate order for allowing him to join the duty by sanctioning leave for the said period the petitioner remained absent from duty.

2. It has been submitted on behalf of the respondents that the said petitioner did not join the duty in spite of expressing the willingness and ultimately, on 31st July, 2002 a show-cause notice was issued to the petitioner but no reply was

submitted by the said petitioner in answer to the said show-cause notice.

3. Thereafter the impugned charge-sheet was issued to the petitioner by the Superintendent of Police on 24th September, 2002 which is set out hereunder:--

BWN Dist. Proceeding No. 26/02 D/- 24-9-02

Charge

You, Const./1289 Barun Chatterjee of Burdwan District Police Force earlier attached to Katwa P.S. are hereby charged with gross misconduct and dereliction of duty unbecoming of a member of police force in that:--

1. That you have been absenting yourself from your place of posting at Katwa P.S. from 9-5-02 a.m.
2. That you have been absenting yourself without any leave or intimation to your appropriate authority since 9-5-02 nor you have taken any permission from the competent authority.
3. That you submitted petitions before R.O. on 7-7-02, 29-7-02 and 7-9-02 expressing your willingness to join, accordingly you were directed by the R.O. in all the petitions to join at Katwa P.S. but you did not join disobeying the direction of the R.O.
4. That notices vide Memo. No. 1407/R.O. D/-12-5-02 and Memo. No. 2284/R.O. dated 30-7-02 and show-cause notice vide Memo. No. 2326/R.O. D/- 31/7/02 were served upon you, but you have not given any reply to the above notices.

You are therefore directed to state in-writing within 7 (seven) days on receipt of the charge and statement of allegation, whether you plead guilty to the Charge in full or part thereof or want an open enquiry.

SUPERINTENDENT OF POLICE BURDWAN

4. After issuance of the said charge sheet, Enquiry Officer was appointed who conducted an enquiry and found that the Charge of unauthorized absence from duty for the period of 120 days has been established. Upon considering the charge leveled against the petitioner and also the findings of the Enquiry Officer, Superintendent of Police, Burdwan passed the final order of punishment on 28th March, 2003 withholding 14 Annual increments with future effect. The said Superintendent of Police confirmed the period of suspension and further directed that the period of unauthorized absence from duty should be treated as extraordinary leave. The final order of punishment passed by the Superintendent of Police, Burdwan dated 28th March, 2003 is reproduced hereinbelow:--

Burdwan Dist. D.O. No. 1085 D/- 28.3.03

FINAL ORDER IN CONNECTION WITH BURDWAN DISTRICT PROCEEDING NO. 26/02 DATED 24/9/2002 DRAWN UP AGAINST CONST/1289 BARUN CHATTER-JEE OF BURDWAN DISTRICT POLICE FORCE.

Constable/1289 Barun Chatterjee of Burdwan District Police Force is hereby charged with gross misconduct and dereliction of duty unbecoming of a member of Police Force in that:--

He has been absenting himself from his place of posting w.e.f. 9/5/2002 a.m. He has been absenting himself without any leave or intimation to the appropriate authority since 9/5/2002 nor he has taken any permission from the competent authority.

Notices vide Memo, Nos. 1407/RO dated 12/5/2002 and 2284/RO dated 30/7/2002 and show-cause notice vide Memo. No. 2326/RO dated 31/7/2002 were served upon him but he has not given any reply to the above notices. The charge was framed by me and I endorsed the proceedings file to Shri Samar Pandey, C.L. "A" Sadar, Burdwan to complete the enquiry and submit his findings.

During enquiry the Enquiring Officer examined 5 P.Ws and exhibited 9 documents. The Enquiry Officer submitted his findings with the opinion that, the charge for remaining 120 days unauthorized absent from duty against the Constable/1289 Barun Chatterjee is proved.

The charged Constable/1289 Barun Chatterjee appeared before me for personal hearing on 5/3/2003 and he begs for excuses. On perusing the evidence on record, charge, statement of allegation, findings and other relevant documents very carefully and minutely and after applying my mind judiciously, I agree with the findings of the E.O.I. order that his 14 annual increments be withheld with future effect. The period of suspension w.e.f. 9/8/2002 p.m. to 5/3/2003 is confirmed.

The period of unauthorised absence w.e.f. from 9/5/2002 a.m. to 7/9/2002 a.m., total 121 days is treated as E.O.L.

Superintendent of Police Burdwan

5. The petitioner thereafter resumed his duty. All of a sudden, the Deputy Inspector General of Police, Burdwan Range after a lapse of almost 4 1/2 months issued a show-cause notice to the petitioner asking the said petitioner to show-cause why he should not be dismissed from service on account of his unauthorised absence from the duty for 121 days. The petitioner replied to the said show-cause notice. On 30th October, 2003 the said Deputy Inspector General of Police being the revisional authority passed the revisional order dismissing the said petitioner from service with immediate effect. The aforesaid order was passed by the Deputy Inspector General of Police in terms of Regulation 884 of Police Regulation Bengal (hereinafter referred to as PRB).

6. Challenging the said order of the revisional authority an application was filed by the petitioner before the learned Tribunal and the learned Tribunal by the impugned judgment and order dated 16th August, 2012 refused to interfere with the aforesaid order passed by the revisional authority and dismissed the said application of the petitioner on merits.

7. It is not in dispute that the final order of punishment passed by the disciplinary authority was accepted by the petitioner herein and the said petitioner resumed his duty accepting the punishment imposed by the disciplinary authority without preferring any appeal before the Appellate Authority.

8. The Respondent Deputy Inspector General of Police however, exercised his revisional jurisdiction and enhanced the punishment imposed by the disciplinary authority. It is now to be decided whether the Respondent Deputy Inspector General of Police had properly exercised the revisional jurisdiction in order to enhance the punishment imposed by the disciplinary authority. In terms of Regulation 884 of the Police Regulation Bengal Deputy Inspector General of Police is empowered to exercise revisional jurisdiction. The said Regulation 884 is set out hereunder:--

884. Right to call for records. (S. 7, Act V, 1861, read with S. 243 of the Government of India Act, 1953).--The Inspector-General or the Deputy Inspector-General may call for the proceedings of any case, even where no appeal lies, and pass such orders as may seem fit provided that no order under this regulation shall be made to the prejudice of any person unless he has had an opportunity of showing cause against the proposed order. If he so desires he shall be granted a personal hearing and this fact should be recorded in the proceedings.

9. The learned advocate of the petitioner submitted that the Deputy Inspector General of Police while exercising his power in terms of Regulation 884 had exceeded his jurisdiction and imposed penalty of dismissal from service which is disproportionate to the offence alleged.

10. The learned counsel representing the petitioner although submitted that the enhancement of the punishment in respect of the petitioner by the revisional authority is disproportionate to the offence alleged but we are to consider also whether Deputy Inspector General of Police being the revisional authority had properly exercised his revisional power by enhancing the punishment imposed by the disciplinary authority in respect of the petitioner herein.

11. The learned Advocate representing the petitioner specifically submitted before this court that the disciplinary authority upon considering the charges mentioned in the charge-sheet issued to the petitioner herein and also considering the findings of the enquiry officer imposed the major punishment by withholding 14 annual increments. The petitioner herein was charged for 120 days unauthorized absence from duty. The Enquiry Officer also found the petitioner guilty for the aforesaid unauthorized absence for a period of 120 days and the disciplinary authority agreeing with the findings of the Enquiry Officer inflicted the aforesaid punishment withholding his 14 annual increments with future effect.

12. The learned Advocate of the petitioner further submitted that the respondent Deputy Inspector General of Police while exercising his revisional power

considered the past conduct of the said petitioner for which the said petitioner already suffered punishment. The learned Advocate of the petitioner submitted that the petitioner cannot be punished twice for the same offence. The learned Advocate of the petitioner further submitted that the revisional order passed by the respondent Deputy Inspector General of Police enhancing the punishment imposed by the disciplinary authority by dismissing the said petitioner from service is disproportionate to the proved charge of unauthorised absence for a period of 120 days.

13. The learned advocate representing the respondents however, submitted that the consideration of past conduct of the petitioner cannot amount to double punishment. The learned Advocate of the State respondents further submitted that the respondent Deputy Inspector General of Police did not exceed his jurisdiction while exercising his power in terms of Regulation 884 of Police Regulation Bengal.

14. The learned Advocate of the State respondents specifically submitted that the respondent Deputy Inspector General of Police recorded reasons as to why the punishment imposed by the disciplinary authority should be enhanced. According to the learned advocate of the respondents, adequate reasons were mentioned by the Deputy Inspector General of Police for enhancement of punishment of the petitioner herein.

15. Mrs. Chaitali Bhattacharyya, learned Advocate of the respondents submitted that the disciplinary authority namely, Superintendent of Police, Burdwan only considered the charge of gross misconduct of the petitioner due to unauthorised absence of 120 days from duty and did not consider the charge relating to dereliction of duty unbecoming of a member of police force. Mrs. Bhattacharyya submitted that unauthorised absence in a disciplined force should be dealt with strictly. Mrs. Bhattacharyya further submitted that consideration of past conduct of the charged employee cannot and does not amount to double jeopardy.

16. Referring to a decision of the Hon"ble Supreme Court in the case of Union of India (UOI) and Others Vs. Bishamber Das Dogra, , Mrs. Bhattacharyya submitted that in case of misconduct of grave nature or indiscipline, even in the absence of Statutory Rules, authority may take into consideration the past conduct/service record.

17. In paragraph 28 of the aforesaid decision, another earlier decision of the Hon"ble Supreme Court in the case of The Govt. of A.P. and Others Vs. Mohd. Taher Ali, has been referred to and relied upon. The paragraph 28 of the aforesaid decision in the case of Union of India & Ors. v. Bishamber Das Dogra (supra) is set out hereunder:--

Para-28. In Govt. of A.P. v. Mohd. Taher Ali this Court rejected the contention that unless the past conduct is a part of charge-sheet, it cannot be taken into consideration while imposing the punishment observing that:

5. ...there can be no hard-and-fast rule that merely be-; cause the earlier misconduct has not been mentioned in the charge-sheet it cannot be taken into consideration by the punishing authority. Consideration of the earlier misconduct is often (necessary) only to reinforce the opinion of the said authority.

(Emphasis supplied)

In fact in Taher Ali case the argument had been advanced that if the disciplinary authority wanted to consider the past service record of the employee, it should be a part of the charge-sheet. Though in K. Manche Gowda this Court said that it should be so indicated in the second show-cause notice only for the purpose of imposing punishment. Thus it is not necessary that it should be a part of the charge-sheet.

18. In the present case, therefore, it is to be considered whether the petitioner herein is guilty of any grave misconduct. The Hon'ble Supreme Court in a recent judgment in the case of Krushnakant B. Parmar Vs. Union of India (UOI) and Another, specifically observed:--

17. Absence from duty without any application or prior permission may amount to unauthorized absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalization, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a Government servant.

18. In a departmental proceeding, if allegation of unauthorized absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in the absence of such finding, the absence will not amount to misconduct.

19. In the present case the Inquiry Officer on appreciation of evidence though held that the appellant was unauthorisedly absent from duty but failed to hold that the absence was wilful; the disciplinary authority as also the appellate authority, failed to appreciate the same and wrongly held the appellant guilty.

19. In the present case also, the Enquiry Officer on appreciation of evidence did not hold that the absence of the petitioner was wilful. The disciplinary authority accepted the findings of the Enquiry Officer regarding unauthorized absence of the petitioner from duty for a period of 120 days but did not hold that such absence was wilful specially, when neither in the charge-sheet was it alleged that the unauthorized absence of the petitioner was wilful nor even the Enquiry Officer on appreciation of the evidence held that the aforesaid unauthorized absence of the petitioner was wilful.

20. In view of the aforesaid judgment of the Hon'ble Supreme Court in the case of Krushnakant B. Parmar Vs. Union of India (UOI) and Another, disciplinary authority is required to prove that the absence is wilful and in the absence of such a finding, his absence will not amount to misconduct. However, the petitioner herein did not challenge the decision of the disciplinary authority by

initiating appropriate proceeding and as a matter of fact accepted the same by not preferring any appeal before the Appellate Authority.

21. The respondent Deputy Inspector General of Police being the revisional authority expressed an opinion that the Superintendent of Police, Burdwan being the disciplinary authority should have dismissed the petitioner from service as the continuance of the petitioner in service is prejudicial to the public good. On examination of the charge-sheet issued to the petitioner, we find that the said petitioner was charged with dereliction of duty unbecoming of a member of police force.

22. The learned Advocate of the respondent authorities specifically urged before this Court that the Superintendent of Police being the disciplinary authority did not consider the specific charge levelled against the petitioner regarding dereliction of duty which made the said petitioner unbecoming of a member of police force. Since the said petitioner was never charged with wilful unauthorized absence from duty and the Enquiry Officer on appreciation of evidence also did not hold that the absence of the petitioner from duty for the aforesaid period of 120 days was wilful, it cannot be said that the behaviour of the petitioner was unbecoming of a member of police force.

23. The respondent Deputy Inspector General of Police while exercising the revisional power should have considered that the charge of dereliction of duty levelled against the petitioner could not lead to the conclusion that the conduct of the said petitioner was unbecoming of a member of police force when it could not be even held that the said petitioner was guilty of a misconduct as mere unauthorized absence from duty by itself will not amount to misconduct unless such absence is wilful as has been specifically held by the Supreme Court in the aforesaid case of *Krushnakant B. Parmar Vs. Union of India (UOI) and Another*,

24. The respondent Deputy Inspector General of Police has failed to appreciate the limited scope and power of a revisional authority. In the present case, the respondent Deputy Inspector General of Police should have appreciated that there was no failure on the part of the disciplinary authority to exercise his jurisdiction vested under the Rules.

25. The power of revisional authority from its very nature is not an unlimited power. Such power is to be sparingly exercised when the revisional authority is satisfied that the power has been exercised perversely by the subordinate authority. In the instant case, without any such finding revisional authority has completely altered the order passed by the disciplinary authority.

26. The expression "call for the proceedings of any case" in Regulation 884 must be construed to mean the proceedings in respect of which revisional power is exercised over the order passed by the disciplinary authority. Such a construction is inevitable when Regulation 884 is part of Regulation framed for imposition of punishment. A penal provision is always construed against the donee of the power and in favour of the person proceeded against.

27. Going by this well accepted principle, the proceedings relating to the past conduct of the petitioner cannot come within the expression "proceedings of any case" within Regulation 884 of P.R.B.

28. By considering the proceedings relating to the past conduct of the petitioner, the revisional authority acted on extraneous materials and therefore, the order of dismissal passed by the revisional authority is without jurisdiction.

29. Furthermore, the disciplinary authority imposed the major punishment upon accepting the findings of the enquiry officer. The respondent Deputy Inspector General of Police while exercising the revisional power did not find any illegality and/or irregularity in the disciplinary proceedings conducted against the petitioner herein. The said Deputy Inspector General of Police only disagreed with the quantum of punishment imposed by the disciplinary authority and enhanced the said punishment by substituting his own views with regard to the final order of punishment notwithstanding the fact that the disciplinary authority also imposed major punishment. Which particular punishment should be passed cannot be a subject-matter of revision when there is no failure on the part of the disciplinary authority to exercise his jurisdiction and authority in conducting the disciplinary proceedings and imposing the punishment. The revisional authority might have his own views with regard to the quantum of punishment but the same cannot be substituted when there is no failure on the part of the disciplinary authority to discharge his due duties and responsibilities in exercising the authority vested in him under the Rules.

30. The findings of the revisional authority in the present case is totally perverse since the said respondent Deputy Inspector General of Police while exercising his revisional power failed to appreciate that there was no failure on the part of the disciplinary authority in conducting the disciplinary proceedings in respect of the petitioner and awarding major punishment in accordance with law. The revisional authority cannot substitute his own views in place of the disciplinary authority even though there was no failure on the part of the disciplinary authority to exercise his authority and power.

31. The respondent Deputy Inspector General of Police being the revisional authority should have confined himself to the decision making process and he had no scope to differ with the disciplinary authority specially when the said disciplinary authority passed the final order of punishment upon accepting the finding of the Enquiry Officer about the charges levelled against the petitioner herein.

32. In absence of any procedural illegality and/or irregularity in the matter of conducting the departmental proceedings, there was no scope for the revisional authority to exercise the revisional power which has been done erroneously in the present case. The learned Tribunal, in our opinion, failed to take note of the illegality and/or irregularity committed by the respondent Deputy Inspector General of Police while exercising the revisional power. The limited scope and

power of the revisional authority should have been appreciated by the learned Tribunal while deciding the application filed by the petitioner herein. The learned Tribunal did not notice that the respondent Deputy Inspector General of Police exceeded his authority and jurisdiction in enhancing the punishment and dismissing the petitioner from service by exercising the revisional power in terms of Regulation 884.

33. For the aforementioned reasons, we quash the impugned order passed by the respondent Deputy Inspector General of Police, Burdwan Range dated 30/11/2003 and affirm the decision of the disciplinary authority namely, Superintendent of Police, Burdwan dated 28/03/2003. The respondents herein are directed to reinstate the petitioner in service forthwith. However, considering the facts and circumstances of the case, we are of the opinion that justice will be done if the petitioner is paid 50 percent of the back wages.

34. The respondent authorities are directed to treat the petitioner throughout in service as if no order of dismissal was ever passed against the said petitioner. The respondent authorities are further directed to pay back wages to the petitioner @ 50% from the date of dismissal from service pursuant to the impugned order passed by the respondent Deputy Inspector General of Police till the date of joining the duties in terms of this order.

35. For the reasons discussed hereinabove, the impugned judgment and order passed by the learned Tribunal cannot be sustained and the same is accordingly, set aside.

36. With the aforesaid directions, this writ petition stands allowed without any order as to costs. Let urgent Xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

Murari Prasad Shrivastava, J.

I agree.