
(2009) 03 CAL CK 0058

In the Calcutta High Court

Case No : R.V.W. 830 of 2005 in W.P.S.T. 99 of 2004

Satyanarayan Pandey

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 23-03-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 114
Criminal Procedure Code, 1973 (CrPC) — Section 4
Penal Code, 1860 (IPC) — Section 384, 385, 419, 511
Police Regulations of Calcutta, 1968 — Regulation 4
West Bengal Government Servants Conduct Rules, 1959 — Rule 24, 4

Citation : (2009) 3 CALLT 442

Hon'ble Judges : Bhaskar Bhattacharya, J; Aniruddha Bose, J

Bench : Division Bench

Advocate : Saktinath Mukherjee, Dibyendra Naryan Ray and Munmun Tewary, for the Appellant; Subrata Mukhopadhyay, Chhabi Chakraborty, Basabi Raichowdhury and Moniruzzaman, for the Respondent

Judgement

Aniruddha Bose, J.—The petitioner herein, a dismissed constable of Kolkata Police, seeks review of a judgment delivered by a Division Bench of this Court on 10th February 2005 dismissing a writ petition assailing a judgment and order of the West Bengal Administrative Tribunal. The petitioner had challenged the order of his dismissal from service before the West Bengal Administrative Tribunal ("Tribunal" in short) by filing an application (O.A. No. 8432 of 1999), which was rejected on 18th December 2003. He assailed the judgment rejecting his application before this Court, by filing a writ petition, which was registered as W.P.S.T. 99 of 2004, out of which the present proceeding arises. The main grounds on which review of this judgment is applied for are omissions in the matter of consideration of relevant facts and questions of law by this Court. The case of the petitioner is that if these legal questions and the facts were considered, the decision of this Court, of which review is prayed for, would have been materially altered.

2. The main case against the petitioner in the departmental proceeding which culminated in passing of the order of dismissal is that on 28th August 1998, while the petitioner was on duty, he absented himself without any intimation to and without any leave or permission from his superior authority. On that date, it has been alleged, he had gone with another constable to a brickfield in Tantiberia, a village within the jurisdiction of the Uluberia police station in the district of Howrah and attempted to extort money from one Shyam Sundar Paul, the owner of the brickfield personating himself as a police personnel from the detective department of Kolkata Police. He was arrested on that date itself and detained in Uluberia Police Station, but he did not inform his superior authorities the fact of his arrest. He was enlarged on bail on 29th August, 1998 and sought to resume his duties on 31st August, 1998. A criminal case (Uluberia P.S. Case No. 105 dated 28th August 1998) was started against him under Sections 419/384/511 of the Indian Penal Code, 1860.

3. The petitioner was placed under suspension pending enquiry on 28th August 1998 by an order issued by the Deputy Commissioner of Police, South and South Suburban Division, Kolkata. Thereafter, on 5th November 1998, departmental proceeding was started against the petitioner, and the petitioner was charged with gross misconduct unbecoming of a government servant. The charges against the petitioner, as specified in the statement of charge, were:

(i) On and from 28.8.98 you were found absenting yourself without any intimation, permission or leave from superior officers and you had returned from such unauthorised absence on 31.8.98. Your such misconduct was a violation of Rule 8 of Chapter XIX of P.R.C.

(ii) On 28.8.98 at 15.15 hours you, being a Govt. Servant, had been to M/s. Paul Bricks Works, Tantiberia, P.S. Uluberia, Dist. Howrah, alongwith Constable 18846 Subodh Ch. Swarnakar of DRO. CD and attempted to extort from the Shyam Sunder Paul of the said Paul Brick Works and there you represented yourself as a police personnel of DD, Calcutta. Your such act amounted to criminal misconduct which was improper and unbecoming of a public servant and derogatory to the prestige of the Govt. as defined in Rule 4 of West Bengal Govt. Servants Conduct Rules 1959.

(iii) You had left station without permission from the competent authority on 28.8.98 and thereby violated Rule 24(b) or Chapter IV of P.R.C.

(iv) You had suppressed the fact of your arrest and detention in police custody at Uluberia P.S. Dist. Howrah on and from 28.8.98 to 29.8.98, in dated 28.8.98 u/s 419/384/511 IPC.

4. The petitioner participated in the departmental proceeding and contested the charges by filing written statement of defence. The defence of the petitioner in substance, was that he had no specific duty on 28th August 1998, and he along with another constable had gone to Uluberia in a car for the purpose of finding out availability of bricks at a concessional rate. He denied the allegation of

extortion. It appears that altogether seven witnesses were examined in course of the departmental proceeding, which included three prosecution witnesses in the criminal case as well. Two of these witnesses were police officials attached to the Uluberia Police Station, being S.I. T. Dutta and ASI. Ganesh Chandra Pramanik. The other common witness was Shyam Sundar Paul, who appears to be the owner of the brickfield and de facto complainant in the criminal case. The Enquiry Officer in his report recorded the factual matrix of the case and after broadly discussing the case of the respective parties and deposition of the witnesses, recorded his finding in the following manner:

Now, the prosecution case and the defence version are before me for careful consideration and coming to a conclusion. We know standard of proof required in a departmental enquiry differs materially from the standard of proof required in a criminal charge, that is, standard of proof required in a disciplinary enquiry is that of pre-ponderance of probability and not proof beyond a reasonable doubt.

The charges Nos. I to IV against the C. O. are proved by the P.Ws however, the charge No. II and No. IV are related with the criminal case against the C.O. and the case is subjudice before the S.D.J.M. Court, Uluberia.

The enquiry into the instant proceeding has been concluded after offering the C.O. adequate opportunity to refute. The file is therefore, submitted to the departmental authority for taking further step as deem fit and proper.

5. The petitioner made a written representation against the report of the Enquiry Officer and submitted the same in a hearing before the Deputy Commissioner, Kolkata Police. He contested the finding on several counts. However, the Enquiry Report was accepted, and the said Deputy Commissioner issued a provisional order on 8th September 1999 to the following effect:

After carefully going through the charge statement of allegation, statement of defence, findings and other relied up documents etc. and after due application of mind. I am of the opinion, that the charges Nos. I to IV framed against the C.O. are proved. It is a proven fact that the C.O. had been to M/s. Paul Brick Works at Uluberia on 28.8.98 with Const./18846, Subodh Ch. Swarnakar and thus he left station without permission from the competent authority with ulterior motive. It is also a fact that the C.O. remained absent from Govt. duty without any intimation on and from 28.8.98 to 29.8.98, and that he remained in Police Custody from 28.8.98 to 29.8.98 in connection with Uluberia P.S. C/No. 165 dated 28.8.98 u/s 419/384/511 IPC.

Const./19167 Satya Narayan Pandey of C.D., is thus asked to show cause why he should not be dismissed from service for his gross misconduct unbecoming of a disciplined force. His reply should reach this office within 7 days from the date of receipt of this provisional order, or it will be presumed that he has nothing to say.

6. Earlier, in the month of January 1999, the petitioner had made a prayer for withdrawal of his order of suspension, but such prayer did not yield any

favourable result for him. Upon receiving the provisional order, the petitioner applied before the Tribunal praying for various reliefs, including quashing of the enquiry report as well as withdrawal of the provisional order and the order of suspension. In his application, (O.A. No. 8432 of 1999), prayer was also made for restraining the Deputy Commissioner of Police from taking any step for dismissal of the petitioner. No interim relief was granted to the petitioner in that application. In the meantime, on 15th October 1999, the authorities issued the order of dismissal of the petitioner. The said fact was brought on record by the petitioner before the Tribunal by filing a Supplementary application.

7. Thereafter, during pendency of the proceeding before the Tribunal, the petitioner was acquitted by the learned sub-divisional judicial magistrate, (SDJM) Uluberia in the Uluberia P.S. Case No. 165 dated 28th August 1998. The judgment of acquittal was delivered on 28th June 2002. The said fact was also brought on record before the Tribunal by way of another supplementary application.

8. The petitioner's main case before the Tribunal was pegged on his acquittal in the criminal case. The Tribunal, however, rejected the petitioner's application and confirmed the order of his dismissal, holding:

The two proceedings operate in separate fields and can proceed simultaneously. We do not find flaw with the process followed in conducting the domestic enquiry. The nexus between the alleged misconduct and the charged officer/applicant is apparent on point of evidence, as there appears to be no plausible reason for the visit to the brick field in the given background. Given by the standard of proof required in the departmental proceeding, the specific provision in PRC and the ratio of judgments, we are not in a position to interfere with the final order passed. The application, therefore, fails on merit and the same is dismissed.

This judgment will also govern OA-8433/99 in which the interim order is vacated.

9. The petitioner's writ application against this order was also dismissed by a Division Bench of this Court, and in the judgment of this Court, it was held:

Considering the aforesaid contentions, we find that enquiry officer submitted the enquiry report considering all materials on record and disposing of the matter with substantial detail. Evidence was duly considered by the enquiry officer and appropriate finding was recorded by him. We have also perused the enquiry report annexed to the present writ petition. It appears that petitioner was granted due opportunities. Evidence of each individual witnesses were duly considered with substantial details and thereafter findings have been arrived at even taking into consideration the standard of proof required in a disciplinary enquiry in comparison to the standard of proof required in a criminal charge. Ultimate finding has been recorded that charge Nos. 1 to 4 were proved. As the disciplinary authority has passed final order accepting the Enquiry report, there was no requirement for him to record further detailed discussion particularly when the enquiry report contains sufficient discussion of evidence. This was more

so as the petitioner did not submit any reply to the show cause notice nor gave any explanation for such non-filing of explanation.

Though reference has been made of the pendency of the criminal case involving charge Nos. 2 to 4 but as we find that ultimately the criminal proceeding had come to an end and the judgment shows that in absence of evidence supporting the FIR the petitioner was acquitted there and in the departmental proceeding evidence has been recorded by several witnesses proving the charge and there being no serious discrepancy having been shown in the enquiry report or in the order of the disciplinary authority the contention of the petitioner cannot be accepted.

With regard to decision in the criminal proceeding in favour of the petitioner and as argued by the learned Advocate for the petitioner, as we find that criminal proceeding ended in acquittal of the petitioner in view of absence of evidence in support of the FIR, the said finding cannot be relied on in the disciplinary proceeding nor the same can have any impact on the findings in the disciplinary proceeding particularly which such finding was on proof of the charges upon considering evidence on record.

The judgments cited by the learned parties show that in the case of Ram Chandra (supra) it has been held by the Apex Court that acquittal in the connected criminal proceeding, requires to be considered depending on facts involved in each case. In the facts of the present case, as discussed above, the judgment in the criminal case does not help the petitioner. In the case of Anil Kumar (supra) the proposition laid down is that the report must be a reasoned one. In the present case, we find that report by the enquiry officer was sufficiently reasoned and on that ground the report cannot be held bad. In the case of Institute of Chartered Accountants of India (supra) is on the compliance of the principles of natural justice in respect of disciplinary proceeding and in the present case, we do not find there any violation of any principles of natural justice.

In view of the above findings, there is no ground to interfere with the impugned order either passed by the learned Tribunal or by the disciplinary authority. The writ petition is therefore, dismissed.

10. The main submission of Mr. Shakti Nath Mukherjee, learned Senior Advocate appearing on behalf of the petitioner before us was that the Division Bench of this Court had failed to consider the impact of the petitioner's acquittal from the criminal case. He argued that the main charges against the petitioner in the domestic enquiry and in the criminal case were almost identical, based on the same set of facts. Since the petitioner was acquitted in the criminal case, Mr. Mukherjee submitted, the finding of his guilt by the departmental authority on the same charge could not be sustained. He contended that it was not an absolute proposition of law that the right of an employer to punish a delinquent employee in a departmental proceeding stood always preserved even if the

delinquent employee is acquitted from the same charge in a criminal case brought against him. In support of his submission, he relied on a decision of the Hon'ble Supreme Court in the case of G.M. Tank Vs. State of Gujarat and Another, , and also cited three other authorities being:

(i) Suman Roy Chowdhury v. State of West Bengal and Ors. (2007) 2 CHN 339

(ii) Swapan Kumar Maity Vs. South Eastern Railways and Others,

(iii) Amit Biswas Vs. State of W.B. and Others,

11. Mr. Mukherjee also argued that the departmental authorities did not disclose any reason in the enquiry report or the order but came to the finding about the petitioner's guilt straightway, after mechanically reproducing the cases of the prosecution and defence. His case is that finding of guilt against the petitioner suffered from fundamental flaws, and the judgment under review, according to him, did not examine or address any of these issues. This constituted error of law which was apparent on the face of record, he submitted, and warranted review of the judgment. His main prayer, of course, was for setting aside the order of dismissal of the petitioner in the post of constable.

12. Appearing for the authorities Mr. Mukhopadhyay, learned Junior Standing Counsel opposed the application. He questioned maintainability the petition, and his case was that the judgment was delivered by the Division Bench of this Court considering all the relevant and material factors. He submitted that to reexamine these issues at this stage would entail reappraisal of evidence and other factual issues, which was not permissible in exercise of jurisdiction to review a judgment. He contested the submission of Mr. Mukherjee that there was error apparent on the face of the records.

13. We were addressed by the learned Counsels appearing for the parties on the aspect of maintainability of the review petition, as well as on merit on the main case. On merit, Mr. Mukhopadhyay submitted that even if the charge of extortion could not be sustained, the finding against the petitioner on the first, third and the fourth charges remained unaltered. He emphasised on the fact that the petitioner being a member of a disciplined force, a high degree of responsibility in discharge of his duties was expected of him. His case on this aspect was that the Writ Court ought not to interfere with punishment imposed on a delinquent member of a police force by the disciplinary authority on finding of guilt after conducting a departmental proceeding. Since certain charges against the petitioner stood established, even if the charge of extortion failed, punishment awarded against him ought not to be interfered with by this Court.

14. We shall first examine the question of maintainability of the instant review petition. While hearing the present petition, we are exercising jurisdiction vested in this Court under Article 226 of the Constitution of India. In the case of Shivdeo Singh and Others Vs. State of Punjab and Others, , the jurisdiction of the Writ Court to review its own order was discussed and it was held that such power was

derived not from the CPC directly but was in exercise of inherent power of the Writ Court. In this judgment of a Constitution Bench of the Supreme Court, it was held:

It is sufficient to say that there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or the correct grave and palpable errors committed by it....

15. A Division Bench of this Court also examined this question in a recent case, *Maruti Real Estate Pvt. Ltd. and Another Vs. Life Insurance Corporation of India and Others*, . Considering different authorities on this subject, the Division Bench concluded that Section 114 or Order 47 Rule 1 of the Code does not in terms apply to any application for review in the writ jurisdiction. Thus, the Writ Court while exercising its jurisdiction for review of its own judgment is not strictly bound by the parameters laid down in the Code. The main object behind such exercise on the part of the Writ Court is to prevent miscarriage of justice.

16. In the present case, the main contention of the petitioner is that the finding of guilt by the departmental authority could not be sustained in a charge from which he stood exonerated by a criminal court of competent jurisdiction. The Tribunal proceeded in this matter with an underlying reasoning that criminal case and departmental proceeding operate in separate fields and could proceed simultaneously, and an employer could not be held to be bound by the finding of a court on the guilt or innocence of his employee, while determining the manner in which employer-employee relationship could be maintained or regulated. Reference was made in the Tribunal's order to Regulation (4) of Chapter 19 of the Police Regulations, Calcutta, 1968 which stipulates:

Discharge or acquittal not a bar to departmental punishment - An order of discharge or acquittal of a police officer shall not be a bar to the award of departmental punishment to that officer in respect of same cause or matter

17. Several decisions of the Hon"ble Supreme Court were referred to in the judgment. These were:

- (i) *Dhananjay v. CEO, Zilla Parishad* (2003) 2 SCC
- (ii) *Sulekh Chand and Salek Chand Vs. Commissioner of Police and Others*,
- (iii) *Govt. of Andhra Pradesh and Another Vs. C. Muralidhar*,
- (iv) *Corporation of the City of Nagpur, Civil Lines, Nagpur and another Vs. Ramchandra and others*,
- (v) *Nelson Motis Vs. Union of India and another*,
- (vi) *Secretary, Ministry of Home Affairs v. Tahir Ali Khan Tyagi* (2002) 6 Supreme 274
- (vii) *Chairman and Managing Director, United Commercial Bank and Others Vs.*

P.C. Kakkar,

18. Ordinarily, it would not have been proper on our part to examine in detail the judgment of the Tribunal in a petition for review of a judgment of this Court, by which the writ petition challenging the order of the Tribunal was dismissed. But in this application, the case of the petitioner is that in the judgment under review, the Division Bench did not apply the established principle of law and the ratio of the various authorities while testing the judgment and order of the Tribunal. Mr. Mukherjee had argued that because of this reason, the judgment under review suffered from error apparent on the face of records and resulted in miscarriage of justice. Under these circumstances, some element of analysis of the judgment of the Tribunal becomes inevitable in the present case.

19. The fact that a departmental proceeding and a criminal proceeding can continue simultaneously on the same or similar set of charges is a well established proposition of law. It is also an well-established proposition of law that mere acquittal or discharge from a criminal case does not confer absolute immunity on an employee from any form of punishment in a departmental proceeding based on the same or similar set of charges.

20. Such power or jurisdiction of the employer is, however, not unfettered, and in appropriate cases where acquittal has taken place from a criminal charge, the authority of the employer to impose punishment on identical charges on the employee could be subjected to judicial scrutiny. In the cases of *Sulek Chand (supra)*, *Corporation of City of Nagpur v. Ram Chandra (supra)* and *G. M. Tank (supra)*, a mollifying effect on departmental proceeding or punishment in case of exculpation of the employee on similar charges in a criminal proceeding has been mandated by the Hon"ble Supreme Court. None of the authorities considered by the Tribunal or the Division Bench lays down in absolute terms that acquittal in a criminal case cannot have any impact on a departmental proceeding brought on same or similar charges.

21. In the case of *G. M. Tank (supra)*, it has been held:

The judgments relied on by the learned Counsel appearing for the respondents are distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a departmental case against the appellant and the charge before the criminal court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge-sheet, factors mentioned are one and the same. In other words, charges evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts, namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer Mr. V.B. Raval

and other departmental witnesses were the only witnesses examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

22. The three decisions of Division Bench of this Court to which we referred to earlier examine the question as regards the circumstances under which a departmental proceeding could be permitted to continue, or punishment retained, if the delinquent employee is discharged or acquitted by a criminal court on the same or similar charges. In the case of *Amit Biswas v. State of W. B.* (supra), it has been held:

It is now settled law that parallel proceedings, both in criminal Court and by employer, are permissible only in cases where offence alleged is against the person or property of employer, co-employee, in course of employment, at the place of employment or in connection with the employment of the employee. In the aforesaid situation, even if an employee is acquitted in a criminal proceeding before the Court of Law, an employer can nevertheless proceed with the departmental enquiry. For instance, if on an allegation of defalcation of employer's money, in the criminal proceedings due to faulty police investigation the employee is acquitted, an employer can reasonably contend that he is not satisfied with the police investigation and he having suffered, he has the right to start parallel departmental enquiry against the employee. Similar is the cases where it relates to any offence against the property or person of the co-employees or if the incident occurred in the place of employment as it relates to discipline of the places of employment; but, in a situation like the present one, we cannot conceive of initiation of departmental enquiry which has nothing to do with the employment of the employee. If we accept the reason assigned by the Tribunal, then even in a murder case or a case of rape, after an employee is acquitted, the employer will get jurisdiction to probe those incidents which is specifically barred u/s 4 of the Code of Criminal Procedure.

Same principle of law has been laid down in the cases of *Swapan Kumar Maity* (supra) and *Suman Roy Chowdhury* (supra).

23. The Tribunal, in its judgment, out of which this proceeding arises, failed to take into consideration this factor, and confirmed the order of dismissal mechanically applying the principle of law that a criminal proceeding and a departmental proceeding has their independent spheres of operation.

24. If an established legal proposition or principle of law is not applied in a particular case, then the judgment delivered without considering such legal principle would suffer from error apparent on the face of records. The scope of scrutiny by the reviewing Court in such cases of course would not be as wide as that of an appellate Court. In such circumstances, the first task of the Court exercising the review jurisdiction would be to ascertain as to whether the principle or proposition of law which is alleged to have not been considered would have applied in the facts of the particular case. If the finding is positive on this count, then the next task of the reviewing Court would be to apply that proposition of law in the facts of that case, and then ascertain if the judgment already rendered would have been varied if such a proposition of law was applied to that case. If answer to this question is also affirmative, then the judgment would have to be reviewed at the instance of the aggrieved party.

25. In the present case, two of the charges, being the second and fourth charge directly relate to allegation of extortion, and the petitioner's arrest is a direct consequence of such alleged act of extortion. The prosecution in the criminal case had led the evidence of the de facto complainant, and certain officers and constable of the Uluberia police station. It appears from the judgment of the subdivisional judicial magistrate (SDJM), the de facto complainant was not present at the time of occurrence. His manager, Bijoy Manna (P.W. 3) gave contradictory evidence. On appraisal of evidence, the finding of the learned magistrate was:

As a result, the accd. persons cannot be said that they have committed an offence u/s 419/385 I.P.C. and they are liable to be acquitted from this case....

26. In the departmental proceeding, two officers of the Uluberia police station, A.S.I. Ganesh Chandra Pramanik and S.I. Tapan Dutta, as well as Sri Shyam Sundar Pal (all of whom were prosecution witnesses in the criminal trial) gave evidence as witnesses. The four other witnesses in the departmental proceedings appear to be police officials from the jurisdiction in which the petitioner was posted. Thus, on the charge of extortion, reliance had to be placed primarily on the three common witnesses.

27. The Enquiry Officer, in his report, did not give any reason as to why he was finding the charges proved, but gave his finding and recommendation on a composite basis, treating all the charges proved. However, as would be evident from his finding, he took cognizance of the pending criminal case vis-?-vis the second and the fourth charge, and qualified his finding with the following observation:

...however the charge No. II and No. IV are related with the criminal case against the C.O. and the case is subjudice before the SDJM Court, Purulia.

The provisional or final order of the disciplinary authority does not reflect proper consideration of the petitioner's defence. The said authority appears to have passed the order mechanically. In the judgment of the Tribunal and also of this

Court, which is under review, the defence of the petitioner was not properly considered.

28. In our opinion, subsequent acquittal of the petitioner from the criminal case has a direct bearing on the second and the fourth charge so far as the departmental proceeding is concerned. The alleged offence of extortion cannot be said to have been committed against the person or property of employer or a co employee. It cannot also constitute an offence in course of employment, as the allegation against the petitioner is not that he sought to commit acts of extortion while in discharge of his duties. The charge against him is that he personated himself as being connected with the detective department. The alleged offence was also not committed, as per the charge, at the place of employment or in connection with employment. Thus the allegation against the petitioner so far as the second charge is concerned, his acquittal in our opinion ought to invalidate finding of his guilt under the second charge. Otherwise, such finding would be contrary to the ratio of the decision of the Hon"ble Supreme Court in the case of G. M. Tank (supra), and the decision of this Court in the case of Amit Biswas (supra). So far as Regulation 4 of Chapter 19 of the Police Regulation of Calcutta is concerned, we do not think that such provision could be construed to confer on the police authorities blanket power or authority to impose punishment on a charge from which he has been exonerated by a court of competent jurisdiction. The order imposing punishment in such a situation, in any event can be reviewed by the Writ Court. Thus, if it is found by the Court that the punishment has been imposed in a manner contrary to the ratio of the decision of the Hon"ble Supreme Court in the case of G.M. Tank (supra), it would be well within the jurisdiction of the Court to invalidate such order imposing punishment.

29. The fourth charge against the petitioner is suppression of the fact of his arrest and detention. In our opinion, since the petitioner has been acquitted from the charge of extortion, the very fact of his arrest loses its foundation. Such arrest, for all practical purpose, becomes without any legal basis, and the petitioner cannot be subjected to any penal consequence for being arrested on a charge from which he was subsequently acquitted. Moreover, in course of the departmental proceeding, one A. Syed (P.W.-2), who appears to be a police officer himself had deposed that he received message of the petitioner's arrest from the Additional S.P. Howrah. Then the petitioner was suspended on 29th August 1998. This has been recorded in the report of the Enquiry Officer. Under these circumstances, in our opinion he cannot be penalised for any act or omission flowing from such arrest, as it was conclusively established that the alleged crime for which he was arrested was not committed by him.

30. We, accordingly, are of the opinion that by not applying these well established legal principles while testing the judgment of the Tribunal, the Division Bench committed error of law, and such error of law is apparent on the face of the records. If such error is not corrected, that would lead to miscarriage

of justice.

31. However, even if the petitioner is exonerated from the second and the fourth charge, the judgment of acquittal does not clear him of the first and the third charge, relating to his unauthorised absence and leaving station without obtaining permission from his superior officers. Mr. Mukhopadhyay argued that since finding on these two charges remain unaltered, we should not interfere with the punishment awarded, as the power to impose punishment in a departmental proceeding exclusively vests with the disciplinary authority.

32. In the case of the petitioner, he has been subjected to the highest degree of punishment in a departmental proceeding, being dismissal from service. In the order imposing punishment, there was no charge-wise segregation of punishment, but composite punishment was imposed on a finding that all the charges were proved. We have, however, held that finding on the part of the police authorities on the second and fourth charges could not be sustained. So far as the first charge is concerned, the allegation is that the petitioner was found absent without any authorisation from 28th August till his return to duty on 31st August 2008. The main reason for his absence after 28th August 1998 appears to be his detention, and for the reasons discussed above, the fact of his arrest cannot be held against him.

33. In the light of these facts, in our opinion, the maximum punishment which was imposed on the petitioner ought not to be retained. It is inconceivable that even after being cleared from finding of guilt on two of the major charges, the order of dismissal could be continued.

34. This takes us to another area of controversy, which again the Writ Court would normally avoid entering into. The issue we propose to take up for consideration now is as to whether even after considerable dilution in the degree of guilt found against the petitioner, his order of dismissal would stand or not. Addressing this question in this proceeding becomes necessary because it has been argued on behalf of the state respondents/police authorities that since finding on two charges remain undisturbed, even after acquittal of the petitioner from the criminal case, we should refrain from interfering with the punishment awarded against the petitioner. However, on this issue again the Writ Court is not altogether prohibited from examining the legality of punishment awarded in a departmental proceeding. If punishment awarded is disproportionate vis-à-vis the offence alleged, or shocks the conscience of the Court, it is well within the jurisdiction of the Writ Court to interfere with the award of punishment.

35. The substance of the finding of the departmental authorities against the petitioner which survives now is absenting from duty without giving intimation to or obtaining prior permission from the higher authorities, and leaving station, also without proper authorisation. Mere absence for a day for going to a place from where one could return on the same day per se in our opinion would not under ordinary circumstances entail dismissal from service. No case has been

made out against the petitioner that he is a habitual absentee. In the case of the petitioner, after his acquittal from the criminal case, none of the aggravating circumstances survive. In the given facts, we are of the view that the order of dismissal of the petitioner would be disproportionate punishment.

36. We, however, do not wish to take up the task of considering factors for fresh imposition of punishment, as that would amount to encroaching upon the domain of the disciplinary authority on the question of awarding of punishment. Accordingly, we set aside the judgment under review, and also quash the order of punishment. We direct the authorities to reconsider the case of the petitioner in the light of the observations made in this judgment, and upon such reconsideration, the authorities shall be entitled to impose such punishment they may consider fit and proper on the basis of the first and the third charge, excepting imposing punishment of dismissal from service.

37. The authorities shall take their decision in the manner directed above within a period of eight weeks from the date of communication of the order. If no such decision is taken within the timeframe given above, the petitioner shall be deemed to have been reinstated in service from which he would have been superannuated under the normal circumstances and would be entitled to fifty percent of the salary due to him for the entire period during which his service stood terminated, till he reached the age of superannuation. He would also be entitled to all other consequential benefits.

38. The present application is allowed in the above terms.

39. There shall, however, be no order as to costs.

40. I agree.

41. After this order is passed Miss Chakraborty, the learned Advocate appearing on behalf of the respondents, prays for stay of operation of our order.

42. In view of what have been stated above, we find no reason to stay the operation of our order. The prayer is therefore refused. Let the papers previously produced by the employer be returned to the learned Advocate appearing for the respondents.

43. Photostat certified copy of this order, if applied for, be given to the learned Counsel appearing for the parties within a week from the date of the application being filed.