IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

WP.ST 97 of 2021

The State of West Bengal & Anr.

Vs.

Sri Amarendra Kumar Singh & Anr.

For the Petitioners	: Mr. Tapan Kumar Mukherjee, Ld Sr. Adv. & Ld. AGP Mr. Rajat Dutta, Adv.
For the Respondent nos. 1	: Mr. Bikash Ranjan Bhattacharyya, Adv. Ms. Santi Das, Adv. Mr. R. D. Bhowmick, Adv.
Hearing Concluded on	: September 26, 2023
Judgement on	: October 4, 2023

DEBANGSU BASAK, J.:-

1. State as the writ petitioner has assailed the order dated February 4, 2020 passed by the West Bengal Administrative Tribunal in OA 142 of 2019.

2. By the impugned order, the Tribunal has set aside the entire departmental proceedings initiated against the respondent No. 1 holding, inter alia, that the finding of the enquiry officer was vitiated due to breach of principles of natural justice and that, the quantum of punishment was in

violation of Rule 8 (ii) of the West Bengal Service (Classification, Control and Appeal) Rules, 1971.

3. Learned senior advocate appearing for the State has contended that, the respondent No. 1 during his incumbency as Executive Engineer committed grave irregularities while discharging his duties by deviating from the tender/contract conditions which resulted in loss to the State exchequer. Consequently, a departmental proceeding had been initiated against respondent No. 1 by a charge-sheet dated May 25, 2016 which was amended on August 1, 2016. The respondent No. 1 had submitted a written Statement of defence with regard to the charges levelled against him. He had been granted requisite opportunity to substantiate his defence.

4. Learned senior advocate appearing for the State has contended that, the respondent No. 1 was afforded reasonable opportunity to defend himself. He has contended that, the enquiry proceeding was conducted in strict compliance with the principles of natural justice and/or procedural justice. The respondent No. 1 had admitted that he had relaxed the tender conditions and therefore, the respondent No. 1 had admitted a deviation from the tender conditions without the approval of the competent authority.

5. Learned senior advocate appearing for the State has contended that, the enquiry officer did not commit any irregularity in arriving at the findings as noted in the enquiry report dated August 3, 2016. The departmental authority had passed an order dated November 10, 2018 and issued a second show cause notice to the respondent No. 1 as to why the punishment of withholding two annual increments without cumulative effect and debarment of promotion during the period of undergoing penalty in terms of Rule 8 (ii) of the Rules of 1971 should not be imposed. The respondent No. 1 had been given an opportunity to reply thereto along with any additional documents that he wished to rely upon. The respondent No. 1 had submitted a letter dated January 22, 2017 in response to the second show cause notice. He had stated that, he did not want to submit any documents.

6. Learned senior advocate appearing for the State has contended that, the disciplinary authority imposed punishment of withholding of two annual increments without cumulative effect and debarment of promotion during the period undergoing penalty. Before imposing such sentence, the Public Service Commission was communicated with the proposed punishment by a Memo dated March 9, 2017 which

was approved by the Public Service Commission by their letter dated June 1, 2017.

7. Learned senior advocate appearing for the State has contended that, the respondent No. 1 did not exhaust the right of statutory appeal before approaching the Tribunal. He has contended that in view of Rule 19 of the Rules of 1971 the Tribunal has no jurisdiction to try the issue since under Rule 15 (9) of the Rules of 1971 there is an appellate authority prescribed. He has referred to section 20 (1) of the Administrative Tribunal Act, 1985 which provides that a Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of the advances. He has pointed out that the Rules of 1971 not only provides for an appeal against an order of punishment but also provide for second appeal or a revision. He has relied upon ***1995 volume 6 Supreme Court Cases 749 (B.C Chaturvedi vs. Union of India and Others)*** and ***1989 volume 4 Supreme Court Cases 582 (S. S. Rathore vs. State of Madhya Pradesh)*** in support of his contentions.

8. Relying upon ***2015 Volume 2 Supreme Court Cases 610 (Union of India and Others vs. P. Gunasekaran)***, ***2021***

volume 11 Supreme Court Cases 321 (Union of India and Others vs. Dalbir Singh) and ***2021 volume 2 Supreme Court Cases 612 (Deputy General Manager (Appellate Authority) and Others vs. Ajai Kumar Srivastava)*** learned senior advocate appearing for the State has contended that, the Tribunal should not have acted as an appellate authority in re-appreciating the evidence.

9. Referring to Rule 8 (ii) of the Rules of 1971, learned senior advocate appearing for the State has submitted that, the word "or" should be read as conjunctive and not disjunctive. In support of such contention, he has relied upon passages from the Maxwell's Interpretation of Statute, 12th edition page 232 and ***AIR 1958 Supreme Court 861 (Mazagaon Dock Ltd. vs. Commissioner of Income-Tax and Excess Profits Tax)***.

10. Referring to the facts of the case, learned senior advocate appearing for the State has contended that, the respondent No. 1 was afforded reasonable opportunity to defend himself. According to him, principles of natural justice have not been breached in arriving at the order of punishment imposed. He has referred to ***1977 volume 2 Supreme Court Cases 256 (Chairman, Board of Mining Examination and***

Chief Inspector of Mines and Another vs. Ramjee) in support of his contention.

11. Learned senior advocate appearing for the respondent No. 1 has contended that, the tender work in question was in the horrible condition and that, after the visit of the road by the then the Hon'ble The Chief Justice of this Hon'ble Court a suo moto Public Interest Litigation was filed in the month of June 2012. The road condition was so bad that, on emergent basis, work order had been issued. Officials higher than the respondent No. 1 had visited the locale during the execution of the work and did not find any irregularity. In fact, during the inspection, all inspecting officers had been highly satisfied with the quality of the work and no question regarding violation of tender conditions and deployment of plant and machineries were raised by any official at any point of time. All necessary tests had been performed at regular intervals to ensure the quality of work. Till the end of June 2013, 60% of the tender work had been completed. However, all of a sudden, allegations of violations of the tender conditions had been raised by a writing dated July 8, 2013. He has contended that, thereafter, subsequent to exchange of correspondence, a

disciplinary proceeding was initiated against the respondent No. 1.

12. Learned senior advocate appearing for the respondent No. 1 has pointed out that the charge-sheet specifically mentions about the list of documents and the list of witnesses to be relied upon. However, in the enquiry proceedings, no witnesses had been examined nor any name of witnesses for the prosecution was made available to the respondent No. 1. He has also pointed out that, the respondent No. 1 had denied all the charges levelled against him. Consequently, it was upon the prosecution to establish the charges levelled which the prosecution had failed. No presenting officer had been appointed in the enquiry proceedings and that, the enquiry officer assumed the role of the presenting officer thereby misconducting the entire proceedings. In support of his contention, learned senior advocate appearing for the respondent No. 1 has relied upon ***1996 volume 1 Calcutta Law Journal 61 (Ganesh Chandra Das versus Union of India).***

13. Learned senior advocate appearing for the respondent No. 1 has relied upon ***2003 Volume 1 Calcutta Law Times (HC) 319 (Prasanta Kumar Basu vs. Burn Standard Co***

Ltd) and ***2002 Volume 7 Supreme Court Cases 142 (Sher Bahadur vs. Union of India and others)*** and contended that, the findings of the enquiry officer were perverse in absence of any legal findings. No witnesses had been examined by the prosecution. The list of documents had been marked exhibits by the enquiry officer herself which shows biasness. Opportunity to cross examine the witnesses had been denied to the respondent No. 1.

14. Relying upon ***1999 Volume 2 Supreme Court Cases 10 (Kuldeep Singh vs. Commissioner of Police and Others)*** learned senior advocate appearing for the respondent No. 1 has contended that, the documents considered by the enquiry officer had to be proved by witnesses. In the present case, such procedure was not followed and therefore, the enquiry officer has misconducted the proceedings.

15. Learned senior advocate appearing for the respondent No. 1 has contended that the charges levelled against his client were not specific and therefore, the enquiry was liable to be squashed. In support of such contention, he has relied upon ***2013 Volume 6 Supreme Court Cases 515 (Anant R. Kulkarni vs. Y.P. Education Society and Others)***.

16. Learned senior advocate appearing for the respondent No. 1 has relied upon ***2019 Volume 5 Calcutta High Court Notes 191 (State of West Bengal vs. Sanjay Kumar Dutta)*** and contended that, the coordinate bench of this Hon'ble Court considered the word "or" appearing in Rule 8 of the Rules of 1971 and construed the same to be disjunctive.

17. By a memorandum dated May 25, 2016 the authorities had proposed to hold an enquiry under Rule 10 of the Rules of 1971 against the respondent No. 1 on the articles of charges made available to the respondent No. 1. The memorandum had several annexures with annexure III containing the list of documents by which the Articles of Charge were proposed to be sustained and annexure IV the list of witnesses. A presenting officer had been appointed by an order dated June 25, 2016. By a letter dated June 6, 2016, the authorities had sent photocopies of the documents as mentioned in annexure III of the Articles of Charge to the respondent No. 1. The authorities had issued a corrigendum dated August 1, 2016 correcting certain portions of the Articles of Charge.

18. The respondent No. 1 had by a writing dated June 21, 2016 submitted his Written Statement of Defence. In his Written Statement of Defence, he had dealt with every Articles

of Charge individually. In respect of the first Articles of Charge, he had stated that, it was common practice which was widespread amongst Engineer Officers of different Directorates of Public Works Department to get the work executed by relaxing the tender conditions in order to meet the urgent need of the prevalent circumstances. In respect of the 2nd Articles of Charge, the respondent No. 1 had cited problem in the Internet for the delay of 7 days in sending the response letter. In respect of the 3rd Articles of Charge the respondent No. 1 had contended that, the plant and machineries deployed for the work by the respective contractors by and large met the requirement of the tender conditions.

19. Enquiry officer by his report dated August 3, 2017 had dealt with each and every Articles of Charge along with the response thereto of the respondent No. 1 and arrived at the finding that, the charges stood proved as against the respondent No. 1. In arriving at such a conclusion, the enquiry officer had dealt with every Articles of Charge and the defence taken by the respondent No. 1 in details. With regard to the first Articles of Charge, he had noted that, the

respondent No. 1 in his written Statement of Defence admitted that the work was executed by relaxing the tender conditions.

20. The entirety of the Articles of Charge had revolved around the respondent No. 1 relaxing the tender conditions and thereby causing loss to the State exchequer. The respondent No. 1 had acknowledged that, there were instances of relaxation of tender conditions as alleged in the Articles of Charge. He had however sought to justify such relaxation on the ground that, other executive engineers of other directorates routinely do so. This justification has not been accepted, quite correctly, by the enquiry officer.

21. The ratio of ***Ganesh Chandra Das (supra)*** has no manner of application since, in the enquiry proceeding, the authorities had appointed a presenting officer by the writing dated May 25, 2016. A Technical Secretary, Public Works Department had been appointed as the presenting officer by such writing.

22. Non-examination of witnesses during the enquiry has not vitiated the proceedings. In the Written Statement of Defence, the respondent No. 1 had acknowledged that, he had deviated from the tender conditions. He had also not denied the existence or the veracity of the documents which the

department was relying upon. In fact, the documents were generated in respect of the tenders in respect of which, the allegations of relaxation of tender conditions and thus causing loss to the exchequer were levelled as against the respondent No. 1. It was therefore, within the domain of the enquiry officer to interpret the documents and arrive at the finding as to whether, the charges levelled as against the respondent No. 1 had been proved on not. On appreciation of the Articles of Charge, the documents involved, and the Written Statement of Defence of the respondent No. 1, the enquiry officer had returned a finding that, the charges were proved. In such circumstances, it cannot be said that, the enquiry officer had misconducted the proceedings or that, there was breach of principles of natural justice by reason of non-examination of witnesses by the prosecution. Consequently, in our view, the ratio laid down in ***Prasanta Kumar Basu (supra)*** and ***Sher Bahadur (supra)*** has no manner of application in the facts and circumstances of the present case.

23. The facts and circumstances of the present case are absolutely different than those that has been obtaining in ***Kuldeep Singh (supra)***. In that case, the charge against the delinquent consisted of payment of money to labourers, a

portion of which was alleged to have been kept by the delinquent. In light of such charges, the witness of the Department had denied having made any payment to the delinquent and the labourers to whom the payment was alleged to be made, were not produced at the enquiry. In such context, non-examination of witnesses had been held to be fatal. In the facts of the present case, the respondent No. 1 had in his Written Statement of Defence acknowledged that there had been deviations from the tender conditions. He had therefore admitted the charge of deviating from the tender conditions, in writing, in his Written Statement of Defence.

24. ***Anant Kulkarni (supra)*** has held that, where, the charges were vague then, the departmental proceedings stood vitiated. In the facts of the present case, the memorandum dated May 25, 2016 containing the Articles of Charge is detailed. It runs into several pages. Details of every charge has been specifically stated in the memorandum. Documents that the department had relied upon were also specified in the memorandum. The respondent No. 1 had submitted his Written Statement of Defence dealing with each of the Articles of Charge in details. Contemporaneously, the respondent No.

1 did not complain that, the Articles of Charge were vague and that, he had difficulty in understanding the same.

25. Rule 8 (ii) of the Rules of 1971 has been considered in ***Sanjay Kumar Dutta (supra)*** which observed as follows: –

> *"21. In the present case the context is Rule 8 of the said Rules. It provides for penalties which may be imposed. There are seven penalties which may be imposed and except for the penalties mentioned in clause (ii), each penalty is separately provided in a clause all to itself. The only exception is clause (ii) which provides for withholding of increment or promotion. There is nothing in Rule 8 which will be consistent with forcing the disjunctive 'or' to be read as 'and' and thereby burden a charged officer found guilty of a delinquency with not just one but two penalties, each of them affecting his right to livelihood and the right to advance in public service tied thereto, which is a fundamental right. Apart from being unambiguous, the word 'or' in this context, cannot be given the colour of a conjunction which is not consistent with the context of the provision of penalties……"*

26. The coordinate bench in ***Sanjay Kumar Dutta (supra)*** has held that, the word "or" used in Rule 8 (ii) of the Rules of 1971 is disjunctive and cannot be read as conjunctive. Although, Maxwell Interpretation of Statute has observed that, in certain circumstances, the word "or" can be read as conjunctive, in view of the pronouncement of the coordinate bench as noted above, we are not minded to take a different

view. ***Mazagaon Dock Ltd (supra)*** has construed provisions of the Income Tax Act, 1922 and held, in that context that, the word "or" could be read as conjunctive.

27. With regard to natural justice and its breach, the Supreme Court in ***Ramjee (supra)*** has observed as follows: –

> *"13. The last violation regarded as a lethal objection is that the Board did not enquire of the respondent, independently of the one done by the Regional Inspector. Assuming it to be necessary, here the respondent has, in the form of an appeal against the report of the Regional Inspector, sent his explanation to the Chairman of the Board. He has thus been heard and compliance with Regulation 26, in the circumstances, is complete. Natural justice is no unruly horse, no lurking landmine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt — that is the conscience of the matter."*

28. ***S.S. Rathore (supra)*** has dealt with the issue of limitation under the Limitation Act, 1963 in respect of a suit for declaration against an order of dismissal from service. It

has construed Sections 20 and 21 of the Administrative Tribunal Act, 1985in such context. In our view, it is not an authority for the proposition that, a delinquent cannot approach the Tribunal established under the Administrative Tribunal Act, 1985 without exhausting alternative remedy as has been sought to be contended on behalf of the State.

29. ***B.C Chaturvedi (supra)*** has dealt with the question as to whether the Tribunal was justified in interfering with the punishment imposed by the disciplinary authority. On consideration of the authorities on the subject, it has held as follows: –

> *"18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may*

itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

30. ***P. Gunasekaran (supra)*** has also dealt with the scope of interference with disciplinary proceedings. It has held as follows: –

"12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

(a) the enquiry is held by a competent authority;

(b) the enquiry is held according to the procedure prescribed in that behalf;

(c) there is violation of the principles of natural justice in conducting the proceedings;

(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) reappreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.

"

31. Scope of judicial review of departmental proceedings has been considered in ***Ajai Kumar Srivastava (supra)*** were it has held as follows: –

"25. When the disciplinary enquiry is conducted for the alleged misconduct against the public servant, the court is to examine and determine:

> *(i) whether the enquiry was held by the competent authority;*
>
> *(ii) whether rules of natural justice are complied with;*
>
> *(iii) whether the findings or conclusions are based on some evidence and authority has power and jurisdiction to reach finding of fact or conclusion.*
>
> *28. The constitutional court while exercising its jurisdiction of judicial review under Article 226 or Article 136 of the Constitution would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in a case of mala fides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at those findings and so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained."*

32. ***Dalbir Singh (supra)*** has observed that, judicial interference of disciplinary action/proceeding is justified only if the finding of the disciplinary authorities is based on no evidence or infraction of rules/regulations or violation of principles of natural justice.

33. In the facts and circumstances of the present case, the materials on record have failed to establish that, the disciplinary authority proceeded on no evidence or that, the disciplinary proceedings were conducted in infraction of any

rules/regulations or that, there has been violation of any principles of natural justice.

34. The Tribunal has set aside the entire disciplinary proceedings against the respondent No. 1. The Article of Charges have detailed the allegations levelled as against the respondent No. 1. The respondent No. 1 had responded thereto by a written statement of defence. Enquiry Officer had considered the materials placed before him and arrived at a finding that the charges stood established. We have returned a finding that, the enquiry proceedings have not been vitiated by breach of principles of natural justice. Therefore, it would be incorrect to set aside the entirety of the disciplinary proceedings as against the respondent No. 1

35. A disciplinary authority has imposed a quantum of punishment which falls foul of Rule 8 (ii) of the Rules of 1971 on the strength of the interpretation thereof given by the Co-ordinate Bench in ***Sanjay Kumar Dutta (supra)***.

36. Quantum of punishment to be imposed is in the domain of the disciplinary authority/appellate authority and therefore, it has to be left to them to decide.

37. In such circumstances, the disciplinary proceeding is remanded to the disciplinary authority for the purpose of

deciding on the quantum of punishment to be imposed in terms of the Enquiry Report as accepted by the disciplinary authority. The disciplinary authority will proceed with the disciplinary proceedings from such stage.

38. It is expected that the disciplinary proceeding is concluded as expeditiously as possible and preferably within six months from the date of communication of this order.

39. The impugned order of the Tribunal is modified to such extent.

40. WP.ST 97 of 2021 is disposed of accordingly without any order as to costs.

[DEBANGSU BASAK, J.]

41. I agree.

[MD. SHABBAR RASHIDI, J.]