

**IN THE WEST BENGAL ADMINISTRATIVE
TRIBUNAL
BIKASH BHAVAN, SALT LAKE CITY
K O L K A T A – 7 0 0 0 9 1**

Present :-

**The Hon'ble Smt. Urmita Datta (Sen)
Member (J)**

-AND-

**The Hon'ble Sayeed Ahmed Baba
Member (A)**

J U D G M E N T

-of-

Case No. O.A. - 3318 of 2008

Sk. Ajanur Rahaman.....Applicant

-Versus-

State of West Bengal & others....Respondents

**For the Applicant : - Mr. A.K. Niyogi
Advocate**

**For the State Respondent:- Mr. S.K. Mondal
Advocate**

Judgment delivered on : 04.01.2022

**The Judgment of the Tribunal was delivered by :-
The Hon'ble Smt. Urmita Datta (Sen), Member (J)**

Judgement

The instant application has been filed challenging the impugned Final Order dated 30.08.2006 (Annexure-C) as well as the Appellate and Revisional Order dated 13.03.2007 and 28.05.2007 (Annexure- D & E), whereby the applicant was dismissed from service. As per the applicant, he was served with a Charge Memorandum dated 18.03.2006 on the ground of being unauthorized absent since 12.02.2006 till 18.03.2006 as well as non compliance of the warning notice for joining duty vide ORG No. 80/R.O. dated 24.02.2006 by which the O/C, Sagar PS was requested to direct the applicant to join duty within 24 hours from the date of receipt of this notice. Though the applicant had received the message on 24.02.2006 through his brother, however, he did not join his duty.

As per the applicant, he was appointed in the year 1995 in the post of Constable. However, one Disciplinary Proceeding was initiated being Proceeding No. 2/2006 dated 18.03.2006. Since, he was suffering from mental disease, he could not be present before the Authority. Thereafter, one Inquiry Officer was appointed on 08.08.2006, who submitted his final report holding the charges as proved. The said Inquiry Officer examined four prosecution witnesses and 17(seventeen) exhibited documents (Annexure – B). Subsequently, the Disciplinary Authority passed his Final Order dated 30.08.2006, dismissing the applicant from service with effect from 30.08.2006 (Annexure-C). Being aggrieved with, the applicant preferred an appeal before the Appellate Authority as well as Revisional Authority, who rejected the appeal of the applicant by confirming the final order passed by the Disciplinary Authority (Annexure-E). Being aggrieved with, the applicant has filed the instant application.

As per the applicant, he was suffering from temporary mental disorder, therefore he could not attend the inquiry. However, he had asked for sanction of leave and time to be present before the Inquiry Authority as well as the Disciplinary Authority. However, the Disciplinary Authority imposed punishment of dismissal from service ignoring the fact that such absence was not intentional but under compelling circumstances of mental illness. Further, the punishment of dismissal for 34 days' absence only, is hush as per the provision of Regulation 856 of Police Regulation of Bengal, 1943.

The applicant has further submitted one supplementary application enclosing the letter dated 09.03.2006, 29.03.2006, 21.05.2006, 31.06.2006, 14.08.2006 as well as appeal petition and medical certificate issued by one Dr. S.K. Som dated 28.10.2006. The applicant referred the following Judgements:

- (i)1973 AIR 1183 (Ghanashyam Das Srivastava – Vs – State of Madhya Pradesh.)
- (ii)(2008) 8 SCC 469 (State of Punjab –Vs – Sri P.L. Singhla)
- (iii)(2012) 3 SCC 178 (Krushnakant B. Parmar –Vs- Union of India & Anr.)

Though the Respondents have not filed any reply, however, they have submitted that the applicant was granted each and every opportunity to place his case rather asked before issuance of Show-Cause Notice. He was asked to join the service from his unauthorized absence through the O/C, Sagar PS as well as other notices but he failed to join the duty though the said notices were received by him. Further, in support of his contention, i.e., he was suffering from mental disease,

he could not place any medical certificate neither before the Disciplinary Authority nor before the Appellate Authority. Therefore, the Disciplinary Authority has rightly dismissed him from service for his past conduct as well as continuous absence even after being noticed and show-caused.

We have heard the parties and perused the records. It is noted that the applicant was mainly charge-sheeted for unauthorized absence as well as non-joining of his duty after being served with warning notices for joining duty by the Higher Authority. Though, he had acknowledged and replied as well as asked for further time to join duty on the ground of mental problem, however, he never submitted any medical certificate or prescription before the Authority. As per the applicant, as he was suffering from temporary mental disorder and agony, therefore, he could not join the enquiry but had asked for sanction of leave and time. From the perusal of the Charge-Sheet as well as the Final Order, it is noted that even after serving warning notice to him, he did not turn up to join his duty though he submitted various letters dated 29.03.2006, 31.06.2006. Rather, though he received the Show-Cause Notice personally on 20.08.2006, but till the date of passing the order on 30.08.2006, neither he replied to the Show-Cause Notice nor he turned up to join his duty. From the perusal of record, it is further observed that the Respondent had granted the applicant enough opportunity to return to duty as well as to place his case before the Inquiry Authority as well as Disciplinary Authority. However, from the perusal of different letters submitted by the applicant as annexed in the supplementary affidavit, it is noted that as per the applicant, as he was physically and mentally ill, he treated himself in Gramin Hospital. As his wife was also ill, he could not join duty and asked for some time vide letter dated 21.05.2006 and 31.06.2006. However, no medical prescription issued by the Gramin Hospital has ever been submitted even before the Disciplinary Authority

or Appellate Authority. Though the applicant had annexed one medical certificate issued by one Dr. S.K. Som, whereby the said doctor had certified that the applicant was under treatment for anxiety and depression since 12.02.2006 to 15.09.2006, which is contrary to all of his submissions made in different letters. Even if, we have to accept that the said doctor had treated him and issued the certificate on 28.10.2006, he never submitted the said medical certificate before the Disciplinary Authority as well as the Appellate Authority. However, being a mentally disordered person, he kept on submitting different letters asking for time to join. Therefore, we are not at all convinced with the submission of the applicant that he was ever mentally unfit. It has been further noted that the Respondent Authority had granted the applicant all opportunity to place his case and there is no violation of natural justice during the disciplinary proceedings. As per the applicant, under Regulation 856 of Police Regulations, Bengal, 1943, the punishment is harsh for the applicant. Regulation 856 of Police Regulations, Bengal, 1943 stipulates inter alia:-

“856. General Instructions as to punishments. [§ 7, Act V, 1861 read with § 243 of the Government of India Act, 1935] - Officers shall avoid undue harshness in awarding punishments and shall discriminate carefully between offences connoting moral turpitude and minor offences. Every effort shall be made to maintain discipline and to correct the minor faults of police officers by instructions and by warnings without resorting to more severe punishments.

In awarding punishment, the general character of the offender and the nature of his past service shall

be taken into consideration. No major punishment shall be awarded to a police officer, until proceedings, as prescribed hereinafter, have been drawn up against him.

For the purposes of punishment an officer officiating in a higher rank shall be deemed to be of that rank.”

From the perusal of the above regulation as well as the fact of the case, it is clear that the applicant was granted enough opportunity by issuance of warning notice to the applicant for joining his duty and since the unauthorized absence is a gravious misconduct in a disciplined force and the reasoning for not joining of the office due to ill health of the applicant's wife is not acceptable, therefore, Regulation 856 of Police Regulations, Bengal, 1943, is not helpful with regard to the fact of the case.

In view of the above facts and circumstances, abovementioned judgements are not applicable in the instant case, as the applicant, [though, he received different notices and submitted representations referring his wife's ill health as well as his own ill health/mental health] never produced medical documents in support of his contention. Even the so-called medical certificate issued by one Dr. S.K. Som was issued on 26.10.2006, i.e., before passing the Appellate Authority's Order but it has only been enclosed and placed before this Tribunal by a supplementary affidavit at the time of final hearing but not before the Appellate Authority.

Therefore, we do not find any reason to interfere with the decision of the Disciplinary Authority as well as the Appellate Authority. Accordingly, the OA is dismissed being devoid of merit with no order as to cost.

Sayed Ahmed Baba
MEMBER (A)

URMITA DATTA (SEN)
MEMBER (J)

PKD