

**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)**

**J U D G M E N T  
-of-**

**Case No. O.A. - 28 of 2018**

**Md. Obaidulla Sk .....Applicant**

**-Versus-**

**State of West Bengal & others....Respondents**

**For the Applicant : - Mr. Manujendra Narayan Roy,  
Mrs. Sunita Agarwal,  
Advocates.**

**For the State Respondent:- Mr. Asok Kumar Das Sinha,  
Advocate.**

**Judgment delivered on : 26<sup>th</sup> July, 2021**

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

## Judgement

1. The instant application has been filed praying for following relief(s):

**“(a) An order be passed by setting aside and / or quashing the Appellate Order being No. 57/CI/THQ dated 17.12.2017 issued by the Deputy Inspector General of Police, Murshidabad Range affirming the order passed by the disciplinary Authority, viz., the Superintendent of Police, Murshidabad in Murshidabad District proceeding No. 8/17 dated 15.01.2017.**

**(b) An order be passed directing the respondents to make payment of full salary of the applicant of the period of suspension from 02.01.2017 to 31.08.2017 and to give the annual increment of pay as the applicant is entitled to.**

**(c) And order be passed directing the respondents not to give any effect and / or further effect to the order passed by the Murshidabad in proceeding no. 8/17 Superintendent of Police dated 15.01.2017 during pendency of this application.**

**(d) To pass any other appropriate order or orders, direction or directions as this Hon’ble Tribunal may deem fit and proper.”**

2. (i) As per the applicant, he was Charge Sheeted vide Murshidabad District Proceeding No. 08/17 dated

15.01.2017 (Annexure 'C' & 'D') in connection with a complaint filed by one Sandip Kumar Das, ASI (AP) of DAP. In the said Charge Sheet, the sole charge is that the applicant on 01.01.2017 at around 6.45 hrs. was passing through the Old Collectory More on a motor cycle, when he was restrained by the Civic Volunteers discharging traffic duty there for preventing any vehicle from 05.00 hrs. to 07.00 hrs. surrounding the Square Field restriction imposed for observing "Nirmal Barrack Square" programme.

- (ii) However, as per the authority, the applicant forced to go through the restricted road and he misbehaved with the on duty police officer and his accompanied Civic Volunteers by abusing filthy languages. Thus he did not bother to obey the instruction of his superior for observing "Nirmal Barrack Square" programme and abuse a police officer, who was discharging his duty (Annexure 'G').
- (iii) Thereafter the applicant vide his letter dated 19.01.2017 pleaded not guilty to the charges and had asked for an open enquiry (Annexure – 'P').
- (iv) According to the applicant, the enquiry proceeding started without any Presenting Officer and the Enquiry Officer had acted as both the Enquiry Officer (Annexure 'G) and Presenting Officer and had examined and cross-examined the witnesses and submitted his enquiry report totally disregarding the submission made by the P.W.s holding that the applicant is guilty of the charge.
- (v) Subsequently, Disciplinary Authority had passed his order dated 31.08.2017, (annexure 'H') holding the applicant as guilty and ordered for forfeiture of annual increment for two consecutive years with future effect and had also confirmed the suspension period.

- (vi) Being aggrieved with, the applicant had filed an appeal before the Appellate Authority. However, the Appellate Authority also confirmed the findings of the Disciplinary Authority (annexure 'J'). Being aggrieved with, the applicant had filed the instant application.
3. As per the applicant, the findings of the Enquiry Authority are perverse. The Inquiry Officer had acted both as Enquiry Officer as well as Presenting Officer and had come to a conclusion contrary to the submission made by the P.W.s.

According to the applicant, though Police Regulation of Bengal, 1943 does not explicitly mentioned about appointment of Presenting Officer in a departmental proceeding, however, it certainly casts shadow on the conduct of the Enquiry Authority as to whether he is acting in fair and just manner. Therefore, to remove the hurdle 'Nemo debet esse iudex in propria sua causa', the Presenting Officer should be appointed and the Enquiry Officer should not act both as Enquiry Officer and Presenting Officer as he is supposed to be impartial and unbiased.

4. According to the applicant, in the instant case, the Enquiry Officer while questioning prosecution witnesses and thereafter coming to the conclusion had taken some extraneous consideration. Thus he had over stepped his periphery as Enquiry Officer. From the deposition made by P.W. No. 3, 5, 6 (original complainant) and P.W. 7, it would be evident that the applicant went through the back side road. Rather no witnesses had deposed that the applicant used filthy languages. Therefore, the applicant neither used filthy language on any Civic Volunteers/ Duty Officer nor he forced himself to go through the restricted area as alleged. As per the applicant, for questioning the reasons for blockade and / or restriction by itself never prove that the applicant forced to go

from the restricted area. Further some of the P.W.s clearly mentioned that the complainant tried to take away key from the applicant's bike, which is criminal offence in terms of the Indian Penal Code. But conspicuously, the Enquiry Officer was silent on this part and gave excuse that the Charged Officer did not lodge a complaint with the authority, thus he is guilty of the alleged charge.

5. Therefore, as per the applicant, the punishment imposed is shockingly disproportionate to the alleged charges. Thus orders of both Disciplinary Authority and Appellate Authority are perverse and liable to be quashed and set aside.

6.

In support of his contention, the applicant has referred following judgements:

**“(i) Union of India –Versus- Ram Laxman Sharma Reported in (2018) 7 SCC 670.**

**(ii) State of Uttar Pradesh – Versus- Saroj Kumar Sinha Reported in (2010) 2 SCC 772.**

**(iii) Krishna Choudhury –Versus- The State of West Bengal & Others reported in 2011 (2) CHN (CAL) 498.”**

7. The respondents have filed their statement, wherein they have stated that the applicant was granted every opportunity to defend himself. However, no defense statement was submitted by the C.O. in spite of several opportunity was granted. It has been further stated that the defense counsel did not raise any objection during the continuance of the proceeding / enquiry. It has been further submitted that, the applicant was restrained by the Civic Volunteers and the A.S.I. Sandip Kumar Das in course of performing his duty requested to obey the orders of traffic movement but the applicant forcefully tried to violate the orders

and misbehaved with the officer. Thereafter, the officer had made written complaint before the authority. As per the respondent, the P.W.s had supported the allegation that the applicant used filthy languages and misbehaved with the duty officer. Since there is no such provision for appointment Presenting Officer in the Police Regulation Act, 1943, therefore, the Enquiry Authority has rightly conducted the enquiry and submitted his findings upon which after applying judicial mind, the Disciplinary Authority as well as Appellate Authority had passed their orders.

8. I have heard both the parties and perused the records. It is noted that the applicant was charge sheeted mainly on the ground that he had forcibly tried to go through the restricted road / area and also misbehaved with the A.S.I. and his accompanied Civic Volunteers by abusing filthy languages, which amounts to grave misconduct as per the West Bengal Service Conducts Rule, 1959. However, as per the applicant, no Presenting Officer was appointed during the Disciplinary Proceeding and the Enquiry Officer had acted as Presenting Officer. Thus, there is a clear violation of principle of fair proceeding and natural justice. Whereas, as per the respondents, since there is no such provision for appointment of Presenting Officer, therefore, there is no violation of Rules and the Enquiry Officer had given the right findings on the basis of the deposition made by the P.W.s. Therefore, orders of both Disciplinary Authority and Appellate Authority are right.

The same issue was considered by the Hon'ble High Court in W.P.S.T. No. 300/2010 reported in 2011(2) CHN (CAL) 498, in the matter of Krishna Chowdhury –Vs- State of West Bengal wherein the respondent had taken the same plea that there is no such provision of appointment of Presenting Officer. The issue was further considered by the Hon'ble Apex Court in the case of Union of India and Other –Vs- Ram Laxman Sharma reported in

(2018) 7 SCC 670, while considering the earlier different judgements of the Hon'ble Apex Court including the case of State of U. P. –Vs- Saroj Kumar Sinha reported in (2010) 2 SCC 772, the Hon'ble Apex Court has observed that whether an Enquiry Officer has solely acted only as an Enquiry Officer or has also acted as a Presenting Officer depends on the fact of the each case and to avoid such allegation of biasness and running the risk of enquiry being declared as illegal and vitiated, the present trend appears to be to invariably appointment of Presenting Officers, except in simple case. The Hon'ble Apex Court while dealing with other judgements of Hon'ble Supreme Court as well as High Courts had also observed and there is no requirement of appointment of Presenting Officer in each and every case whether statutory Rules required authorities to make an appointment or rather silent with regard to the blockade of any facet of principle of natural justice, which are not specifically excluded in the statutory schemes, are not prohibited. Thus, the question as to whether the Enquiry Officer, who is supposed to act independently in an enquiry, as acted as prosecutor or not is a question of fact, which has to be decided on the facts and proceedings of the particular case and Hon'ble Apex Court ultimately held inter alia:

**“37: The High Court having come to the conclusion that the Enquiry Officer has acted as prosecutor also, the capacity of independent adjudicator was lost while adversely affecting his independent role of adjudicator. In the circumstances, the principle of bias shall come into the play and the High Court was right in setting aside the dismissal orders by giving liberty to the appellants to proceed with inquiry afresh. We make it clear that our**

observations as made above are in the facts of the present cases.

**38: In result, all the appeals are dismissed subject to the liberty as granted by the High Court that it shall be open for the appellants to proceed with the inquiry afresh from the stage as directed by the High Court and it shall be open for the appellant to decide on arrear pay and allowances of the respondents.”**

9. In the instant case also neither there is any mandatory provisions nor any mandatory exclusion of appointment of Presenting Officer as per Police Regulation of Bengal, 1943. It is noted that following P.W.s had given the following deposition:

**“P.W. – 3 civic/57 imran Ali of Bhagawangola P.S.**

**CHIEF: I, CV – 57 Imran Ali and Srimanta Das were engaged on duty at gate. At that time one person came there and asked “why the road is closed? We told him that we do not know. The officer is here you could know from him. We called officer. He asked officer “why the road is closed? Officer replied that “D.M. knows” Then that person told that you are engaged in duty. “Why shall I ask from D.M.? He also told that “don’t you know being an armed officer. He then turned away to go after conversation. ASI Sandip Das then pulled out the key of his bike as he assumed that C.O. abused him with slang language. At that time the android mobile phone of officer fell down**



on the road. Then the officer told him that I will teach you a good lesson. The bike rider left the place.

P.W. - 4 civic/101 Srimanta Das of Bhagwangola P.S.

CHIEF: I, CV – 101 Sriminta Das and CV – 57 Imran Ali were engaged on duty at gate. At that time one person came there riding a Motor cycle and asked “why the gate is closed? We told him that we shall call the officer and asked him. The ASI Sandip Kumar Das came and told him that you can know it from D.M. Both of them then started leaving the place. At that time motor cycle rider told that I wanted to go to duty through this way but I could not go. ASI Sandip Das assumed that he used slang language. Then ASI Sandip Das told him to stop and he tried to snatch the key of bike. Then the mobile phone of officer fell down on the road.

P.W. – 5 SI – Binoy Sarkar of Berhampore P.S.

CHIEF: I, SI Binoy Sarkar of Berhampore P.S. and Goutam Babu were present at some distance from the place of incident. We both came to the place of incidence after seeing the crowd. Goutam Babu asked, “What happened”? Then constable Obaidulla Sk told

that I am a security of Mannan Saheb. I wanted to go through this way to reach fast. Then Goutam Babu told him that you shall not be allowed to go through this way. Use back side road. Obiadullah Sk then went to the back side road.

P.W. – 6: ASI (AB) Sandip Kumar Das of DAP, Murshidahad

CHIEF: On 1<sup>st</sup> January 2017 I was engaged in duty at Barrack Square from 05.00 hrs to 07.00 hrs in the morning I noticed that at about 6.45 hrs that a person is tussling with civic police near the Old Collectory more. Some other persons were also gathered there. I approached there and saw that he is our police personnel. I told him that why are you quarrelling with them in the morning. He told me to open the barricade in loud voice. I told him to go by the side of jail road and also acknowledged him that if I allowed you, other persons shall also have to be allowed who were standing there with their bikes and vehicles. This will create trouble. He again told me with loud voice to open the barricade; otherwise result would not be good. To avoid any further tussle I was going to leave that place, but he used slang language. Then I again went to him and told him that being police personnel why did he use abusive language by mentioning the Rank. Then he became more furious and I tried to take out his bike's key bike so that he does not flee away before my superior comes. But then

he pushed me so that I cannot take out key of his bike. With the push I was pushed a little and hence could not take out the keys. So, I took out my mobile to inform my superior. Then he threw my mobile phone. I picked my phone but the PDA screen had been broken, however, the phone was still working. Then I requested T.I. saheb and O/C, Traffic to come near old collector more as soon as possible. After a few minutes T.I. Saheb and SI Binay Sarkar babu came on the spot and then I informed them about the incident. T.I. Saheb after hearing about the incident told Obaidullah to go through another road. Then after completing my duty, I went to traffic office and submitted a written complaint to Dy. SP, Sadar Traffic, Murshidabad.

**PW 7 – Shri Goutam Chakraborty, Inspector Sadar Traffic Berhampore, Murshidabad**

**CHIEF:** On 01.01.2017 I was working as T.I. (traffic inspector) . On that day as per order by S.P. Msd I along with detailed officers and forces were engaged on duty for controlling the vehicles in connection with “Nirmal Barrack Square Project”. The said duty was detailed from 05.00 hrs to 07.00 hrs in the morning. Armed ASI Sandip Sarkar called me over phone at about 06.45 hrs. I along with SI-Binoy Sarkar of Berhampore PS reached there. When we reached the old collectory more we saw Obaidulla and Sandip were engaged in an altercation. On hearing the fact, I told

Obaidulla to go by the side road Sandiup showed me the mobile phone with cracked PDA Screen. It fell down during tussle with the C.O. Then I managed to control the situation and Obaidullah went away through the side road. I informed the matter to Dy. SP, Traffic, Msd over phone. Then the ASI Sandip Das submitted a written complaint to Berhampore Sadar Traffic office after performing duty and I forwarded the complaint as per departmental procedure.

**CROSS:**

1. Did you see the tussle?

PW 7: No, I did not see.

2. Did you take any statement of civic police

PW 7: No, They told me orally.

3. The report which you submitted is not accurate!

PW 7: Whatever report I have forwarded is accurate.”

On the basis of all these depositions of the P.W.s, the Enquiry Officer has observed the follow grounds;

“ \* C.O. in his examination mentioned that T.I. came to the place of incidence after ASI Sandip Das went to call him. However, both P.W. 6 and P.W. 7 mentions that when matter seemed to be out of control, P.W. 6 called P.W. 7 to come and resolve the issue. P.W. 1 – P.W. 4 do not mention anything about mobile call.

- C.O. says there was no public present there, however, Barrack square field being a very busy area is bound to have large public

presence. P.W. 6 mentions about people standing there and P.W. 5 also mentions about crowd when he came at the place of incidents with P.W. 7.

- None of the P.W. s mentions any abusive and filthy language being used by P.W. 6 (ASI Sandip Das) except the charged officer himself at the time of incidence.

Hence looking at all these circumstances such as intervention of T.I. and a senior SI, Statements of P.W. 3 and P.W.4, it can safely be assumed that an altercation definitely happened between C.O. and P.W. 6 (ASI Santip Das). Being an officer of the rank of constable, the C.O. did not restrain himself in engaging into a tussle with an ASI it was only when the T.I. (P.W. 7) intervened the situation could be controlled. Also as pointed out by the C.O. P.W. 6 used filthy language (though no P.W. s corroborate it), if that be the situation a complaint from C.O. is expected. However, no such complaint from his side was made. Further, there was public there and such an act of C.O. tarnishes the image of police in the eyes of public. Lastly, being police personnel himself the C.O. did not cooperate with police personnel there who were only working on the order of SP Murshidabad for swift flow of traffic.

Hence, I am submitting my findings of proceeding against charged constable/127 Md.

**Obaiudullah Sk. Necessary actions may be taken as deemed fit.”**

In the above circumstances, in my opinion, the aforementioned judgements of the Hon'ble Apex Court is squarely applicable in the instant case and the Disciplinary Authority should appoint a Presenting Officer to come to a fair findings as Enquiry Officer failed to consider the different depositions of the P.W.s and come to a perverse findings.

From the perusal of deposition of different P.W.s as well as findings of Enquiry Officer, it is clear that he did not taken care of the deposition of P.W.s, specially P.W. Nos. 3, 4, 5 but observed contrary. Thus the findings of Enquiry officer is perverse and liable to be declared as invalid. Further the Disciplinary Authority and Appellate Authority also did not consider the same while coming to their decision. Even the Enquiry officer himself led the examination in chief of the prosecution witnesses by putting question in absence of Presenting officer.

It is true that there is no specific provision for engagement of Presenting officer in the Police Regulation of Bengal, 1943. But undisputedly, the said Regulation does not also prohibit engagement of the Presenting officer. In the instant case, in absence of the Presenting officer, enquiry proceeding would not be conducted effectively as the witnesses produced by the prosecution could not be examined properly in effective manner in order to establish the charge labeled against the applicant herein. Thus a departmental enquiry cannot be conducted in a casual manner in the absence of Presenting officer; otherwise, it becomes difficult for the Enquiry officer to conduct the enquiry proceeding in an unbiased manner in the absence of the Presenting officer as the said Enquiry officer some time had to

perform the duties which are required to be discharged normally by the Presenting officer.

10. In view of the above observations, I quash and set aside the Appellate Authority's order dated 17.12.2017 as well as Disciplinary Authority's order dated 31.08.2017 and Enquiry Report dated 04.08.2017. As both the order was passed on the basis of the findings of the Enquiry Authority, there is a scope of biasness and violation of natural justice exists. Therefore, I remand back the matter to the Disciplinary Authority to start a denovo enquiry by way of following the settled principle of natural justice by appointing both Enquiry as well as Presenting Officer after granting the applicant a fair opportunity to place his case and to communicate the final decision by way of reasoned and speaking order with in a period of six months from the date of receipt of the order. Accordingly, the O.A. is disposed of with the above observations and direction with no order as to costs.

**URMITA DATTA (SEN)**  
**MEMBER (J)**