

OA 672 of 2017**J U D G E M E N T**

The instant application has been filed praying for following relief :-

- a) The final order dated 2.5.2015 and the Order of the appellate authority passed in District Proceeding case No. 30/14 dated 19.11.2014 be set aside and/or quashed and the applicant be allowed to remain in his actual position as if he had not been punished at all and prepare his Service Book accordingly.
- b) Respondent be directed to produce all the relevant documents before this Hon'ble Tribunal so that conscionable justice may be given.

On 05.10.2014, while the applicant was in official duty, one Sabana Bibi, Respondent No. 6 along with another person came to him and told that one Nazmul Haque, (who was arrested by the applicant, is her brother). She also said that since the next day is Eid-Ul-Joha, if the applicant release the said accused from the police station, she is ready to fulfill the demand of any amount of money. However, as per the applicant, he refused the same and said that since Nazmul is an accused in a criminal case, it is not possible for him to release the said accused person from the Police Station. The said accused person would be produced before the Court, where he can obtain bail. Thereafter, the said lady being refused, left the police station. Subsequently, the applicant came to know on 08.10.2014 that the said lady had lodged a written complaint against him alleging that the applicant demanded Rs. 30,000/- from her and also told that if she does not fulfill his demand, his brother will be falsely implicated in a NDPS case.

Thereafter the SDPO, Murshidabad vide Memo dated 15.10.2014 forwarded the case to the Superintendent of Police with recommendation to suspend the applicant for his conduct and the applicant was charge sheeted vide Memo dated 19.11.2014 (P/2)

wherein it has been alleged that the applicant had demanded a illegal gratification amounting to Rs. 30,000/- from Sabana Bibi with an assurance not to implicate her brother i.e. Nazmul Hoque in fake NDPS Act case.

The applicant participated in the said proceedings, however, the Enquiry Authority on his findings held the applicant guilty of charges and submitted his report dated 30.04.2015 and on the basis of the said report, the Disciplinary Authority imposed a punishment of stoppage of increment for consecutive two years with future effect, which is a major punishment (Annexure p/4). Being aggrieved with, the applicant preferred an appeal before the Appellate Authority, However, the said Appellate Authority also affirmed the Final Order vide his Appellate Order dated 13.07.2015 (P/5)

Being aggrieved with, the applicant has preferred this application.

As per the applicant, in the Charge Sheet, there was only one charge that the applicant had demanded Rs. 30,000/- as illegal gratification from Sabana Bibi. However, from the perusal of the findings as well as statement of the witnesses, it would be evident that the complainant herself had deposed that she had offered bribe to the C.O. and there was no allegation that the applicant had accepted the said gratification. Therefore, the findings of the Enquiry Authority is perversed. Further, the Enquiring Authority himself has observed in his findings that the said Sabana Bibi stated in a deposition that she had offered bribe to the C.O. which is contradictory to allegation. Even then in findings, the charge has been claimed to be proved, thus is liable to be set aside. It has been further submitted that even major punishment has been imposed upon the applicant on such contradictory findings. Therefore, according to the applicant, the penalty also harsh and shocking in view of findings of Enquiring Authority.

The respondents have filed their reply wherein it has been submitted that the applicant had threatened one Sabana Bibi to implicate her brother in NDPS case if she did not pay Rs. 30,000/-

to him at the earliest. In this regard the said Sabana Bibi submitted a written complaint on 08.10.2014 before the SDPO, Domkol, who in turn asked the said Sabana Bibi to call the applicant over phone in his presence and put that call on loudspeaker mode. Accordingly, the said lady called the applicant over phone and as per SDPO, the applicant repeated the same demand over phone, therefore, he was called in OR Pt.I wherein the applicant accepted that he demanded the bribe from the complainant.

As per the respondents, the Departmental Proceeding was duly drawn up against the applicant and the Enquiring Authority after granting opportunity of examination and cross examination of two prosecution witnesses and two defence witnesses and relevant documents, had submitted his findings holding the applicant as guilty and on the basis of that the applicant has been imposed with a punishment for forfeiture of increments for two consecutive years with future effect. Therefore, as per the respondent, as the applicant has been given opportunity in the Departmental Proceedings, the Court should not entertain judicial review of the impugned orders.

The applicant has filed his rejoinder wherein he had reiterated his submission already in the OA , however, he has denied the submission of the respondents as he was forced by the SDPO to write said admission, which was not corroborated by the complainant herself during the enquiry rather the findings of the Enquiring Authority is contrary to his own observation. Therefore, the Tribunal has every right to entertain the instant application.

I have heard the parties and perused the records. In the aforesaid document of the case, the applicant was charge sheeted vide Memo dated 19.11.2014 with following charges :-

- a) "During your incumbency at Jalangi PS you demanded an illegal gratification amounting Rs. 30,000/- (Rupees thirty thousand) from Sabana Bibi w/o Ajbar Ali of Vill-Sitanagar, P.O. Sagarpara under Jalangi PS with an assurance not to implicate of her brother name Nazibul Hoque in fake NMDPS Act who was arrested on

04.10.2014 in c/w Jalangi PS case No. 797/14 dated 09.09.2014 u/s 399/402 IPC. You thereby committed serious misconduct and dereliction of duty which is tantamount to violation of Rule No. 3 & 4 of West Bengal Government Servants' Conduct Rule, 1959.

- b) Your misconduct tarnished the image of the department before eyes of the general public which tantamount to violation of Rule No. 3 & 4 of West Bengal Government Servants' Conduct Rule, 1959.”

From the perusal of the enquiry report wherein the enquiry authority had recorded the submission of the complainant Sabana Bibi, PW 2 and subsequently DW 1 also stated that the complainant had offered bribe. Further the enquiry authority in his findings has observed inter alia :-

“From the analysis of the facts and evidence on record and documentary evidence and perusal of statement of defence submitted by the charged officer, it has revealed that :-

1. PW -1, Shri Arijit Sinha, IPS, the then SDPO, Domkal Murshidabad stated in his deposition regarding the allegation of corruption submitted by Sabana Bibi over which he submitted a report vide his Memo No. 1598/14 dated 15.10.2014 alongwith a written explanation submitted by the C.O. admitting the allegation brought against him. In Cross Examination the C.O. has declined. As to so, the C.O. admitted the allegation and report brought against him.
2. PW -2, Sabana Bibi stated in her deposition that she had offered bribe to the C.O., which is contradictory to her allegation submitted against the C.O.
3. Additional PW-1, SI Rajesh Datta stated in his deposition that the C.O. appeared before the Disciplinary Authority on 22.04.2015 that the charged officer was appeared before the Disciplinary

Authority on 20.10.2014 in ORR Part-I vide Sl. No. 64/14 dated 20.10.2014 wherein he failed to submit any satisfactory explanation. Thus the C.O. had no satisfactory explanation, he tried to create a situation by submitting DWs and written statement of defence and he has short excuse.

4. DW-1, Anowar Hossain stated in his deposition that the bribe of an amount of Rs. 30,000/- was offered to the C.O. but he did not disclose whether the C.O. was admitted the offer or otherwise. As to so, it might be the C.O. was agreed of the bribe.
5. DW – 2, Shri Suvojit Sarkar stated in his deposition that he alongwith Sabana Bibi requested the C.O. for releasing arrested Nazbul Haque but no good. Hence, there is arising a contradiction between the statement of Sabana Bibi, DW-1, Anowar Hossain and DW-2.

So, it is crystal clear from the analysis of the facts and evidence on record and documentary evidence and on perusal of the statement of defence by the C.O., it reveals that the both charges leveled against the C.O., ASI-780 Mir Jalaluddin is proved without any shadow of doubt”.

From the above, it is observed that the findings of the Enquiring Officer is self contradictory. In one hand he himself observed that the deposition of the complainant is contradictory to her complaint, in the other hand, in his findings, he stated that both the charges are proved without any shadow of doubt. Therefore, the finding of the Enquiry Authority is perverted as the Enquiry Authority himself has observed that the submission of the complainant is contrary to her own complaint. In that case, imposition of major penalty is also harsh, as the basis of the complaint has been denied or contradicted by the complainant herself in her deposition.

Therefore, I quash and set aside the Enquiry Report and consequently Final Order as well as Appellate Order and remand back the matter to the Enquiring Authority to conduct enquiry de novo after granting the applicant opportunity and considering the evidences in proper manner. Further, Disciplinary Authority is directed to complete the Departmental Proceeding within a period of six months and communicate his decision by way of reasoned and speaking order to the applicant. Accordingly, OA is disposed with the above observation and direction with no order as to costs.

URMITA DATTA(SEN)
MEMBER (J) Acting Chairperson.