

**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 Mrs. Urmita Datta (Sen)
MEMBER (J)**

-AND-

**The Hon'ble Mr. P. Ramesh Kumar
MEMBER (A)**

J U D G E M E N T

-of-

Case No. OA-1189 of 2014

Ram Ratan Kuwar.....Applicant.

-Versus-

State of West Bengal & others....Respondents

**For the Applicants :- Mrs. Sonali Mitra,
Learned Advocate**

**For the State Respondents :- Mr. B. P. Roy,
Learned Advocate**

Judgement delivered on : :- 4th March, 2020.

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

J U D G E M E N T

The instant application has been filed praying for the following reliefs :

- (A) An order be passed by setting the said alleged reasoned order dated 27-08-2014 passed by the Commandant, SAP, 7th Battalion, Kalyanpur, Asansol-5;**
- (B) An order be passed by setting aside the order of the Disciplinary Authority dated 04-01-2006 as well as the order of the Appellate Authority dated 28-03-2006 passed in connection with proceeding no. 6/2005 in view of the findings of the Learned criminal court below on the self same cause of action by which the applicant has been honourably acquitted;**
- (C) An order be passed directing the authority concerned to reconsider the punishment order of the applicant by examining the judgment dated 31-12-2013 passed by the Learned Criminal court below in G.R. Case No. 650/2005 in terms of the order dated 18-08-2009 passed by this Hon'ble Tribunal in O.A No. 1902 of 2006 forthwith;**
- (D) An order be passed directing the respondents to re-instate the applicant in service with all consequential benefits since he has been honourably acquitted in the criminal proceedings being G.R. Case No. 650/2005;**
- (E) Pass such other or further order or orders, direction or directions as the Learned Tribunal may deem fit and proper;**

2. As per the applicant, he was served with a charge sheet dated 07-07-2005, wherein it was alleged that while he was posted on deputation to STC Kanyanpur Camp, he came to Battalian Head Quarter Kalyanpur without any permission from the competent authority on 04-05-2005 and

forcibly entered into a room of barrack no. 3/7 of ground floor, E-Block, in which one constable called Indrajit Das was accommodated. He unlocked the door of that room and also the Iron Trunk in absence of Indrajit Das and stolen his money containing approximately Rs. 6,000/- (Rupees Six thousand) only for wrongful gain; he was also charged with unauthorized leave from battalion head quarter, Kalyanpur from 21-05-2005 to 24-05-2005 without any leave from the competent authority and further he was again proceeded to avail 6(six) days P.L. w.e.f. 18-06-2005 to 23-06-2005 but he resumed his duty on 27-06-2005 after over staying 3(three) days without any permission from the competent authority. In response to the charge sheet dated 07-07-2005, the applicant submitted his reply on 24-07-2005 denying the charges leveled against him. As per the applicant, the aforesaid disciplinary proceeding was initiated mainly on the basis of theft of certain amount from the trunk of one constable called Indrajit Das from the barrack room on 04-05-2005 and to that effect the said Indrajit Das lodged a complaint before the competent police station on 04-05-2005 and on the basis of such complaint, one criminal case was initiated being Asansol(N) P.S. Case No. 106 of 2005 dated 06-05-2005 under Section 379 and 411 of IPC.

3. In the meantime, departmental proceeding was initiated and the applicant had submitted his written statement of defense on 24-10-2005. However the Enquiry Officer held him guilty vide his Enquiry Report dated 25-10-2005 (Annexure-C). Subsequently, the Disciplinary Authority issued second Show Cause Notice dated 03-11-2005 (Annexure-D) proposing a penalty of dismissal from service and accordingly the applicant replied to the same on 11-11-2005 by categorically denying the findings of the enquiry officer. Ultimately the Disciplinary Authority vide his order dated 04-01-2006 had imposed penalty of dismissal (Annexure-E). Being aggrieved with, the applicant had filed statutory appeal before the competent authority on 16-01-2006 (Annexure-F). However the Disciplinary Authority without assigning any reasons, had affirmed the Disciplinary Authority's order without application of mind vide Order dated 28-03-2006. Being aggrieved with, the Disciplinary Authority as well as the Appellate Authority's order the applicant filed one OA-1902 of 2006

before this Tribunal, which was disposed of by order dated 18-08-2009 by directing the Disciplinary Authority to reconsider the punishment of the petitioner, if and when, the applicant will procure the order of the Disciplinary Authority shall examine the judgement and wherein the position of law shall dispose of the same in accordance with Rule. In the meantime, the applicant was honourably acquitted from the criminal case vide judgement dated 31-12-2013 (Annexure-G collectively).

It has been submitted by the applicant that against the acquittal order of the criminal Court, no appeal has been preferred by the respondent. Therefore the judgement dated 31-12-2013 has attained its finality. After being acquitted from the criminal Court, the applicant made a representation before the respondent on 06-05-2014 praying for reinstatement, which was not considered by the respondent authority. Being aggrieved with, the applicant again filed one OA No. 771 of 2014, which was disposed of vide order dated 05-08-2014 by directing the Disciplinary Authority to consider the application of the applicant dated 05-05-2014 and to take a decision within a stipulated period of time. In view of the order passed by this Tribunal in OA No. 1902 of 2006, the respondent had passed impugned order dated 27-08-2014 without considering the judgement passed by the Ld. Criminal Court and this Tribunal's order passed in OA No. 1902 of 2006 (Annexure-I). Being aggrieved with, he has filed the instant application.

It has been submitted by the applicant that on the self-same cause of action, one criminal case was filed against him wherein he has been acquitted honourably and with regard to charge of unauthorized absence, in his reply dated 11-11-2005, he has categorically mentioned that for his over stay of 4(four) days, he has already submitted medical certificate, which was exhibited as 7/1 and 7/3. However those materials were not considered while imposing the punishment of dismissal neither it was denied by the respondent. However they have imposed the punishment of dismissal.

4. The Counsel for the respondents have filed written statement wherein they have stated that as per settled law criminal proceeding and

departmental proceeding can go side by side and as the applicant was granted proper opportunity to defend his case, the Disciplinary Authority has rightly imposed punishment. Therefore they have prayed for dismissal of the instant application.

5. The applicant has filed his rejoinder wherein he has denied and disputed the contention of the respondents. As per the applicant, he was not allowed to cross examine the witnesses and further no one from the witnesses had seen him to steal money from the room of Shri Indrajit Das. The entire departmental proceeding was initiated and continued only on the basis of suspicion and on the basis of statement of one Sentry Shri Pradip Gupta who had only claim to see him inside the barrack not inside the room or stealing the money. It has been further submitted that the criminal case was also filed on the self-same charges wherein the applicant was honourably acquitted. Therefore as per the Apex Court decision his dismissal order should be reconsidered and he should be reinstated.

6. Heard the Counsel of both the parties. The main charge is theft which is unbecoming of govt. servant. But the department could not sustain this charge as accused has been acquitted honourably by the Court and it was not challenged by the respondents, which clearly indicates that they have accepted the innocence of the applicant. The second charge of unauthorized absence, which was submitted by the applicant by a medical certificate was also not negated by the department and hence accepting his claim as sick in this period. Even if we take unauthorized absence as a charge punishment imposed is completely disproportionate to the charge framed. There was no mention of unauthorized absence like this repeatedly. Hence as the first charge could not be established and for second charge punishment being disproportionate, we are quashing the order with a direction to revisit the decision by Respondent No. 1 after reinstating him within 4 (four) weeks with consequential benefits which is admissible as per rules, keeping in mind the observations of this Tribunal and to communicate the same by way of reasoned and speaking order within a period of 10(ten) weeks from the date of receipt of this order.

7. Accordingly, the OA is disposed of with the above observations and direction with no order as to cost.

P. RAMESH KUMAR
MEMBER (A)

URMITA DATTA(SEN)
MEMBER(J)