

J U D G E M E N T

1. The instant application has been filed praying for following reliefs:
 - a) Order / orders be passed to quash the charge for initiation of the instant Disciplinary Proceeding;
 - b) Order / orders be passed to quash the findings of the Enquiry Officer and final order passed by Disciplinary Authority in the instant proceeding.
 - c) Order / orders be passed to quash the Appellate order passed in the instant proceeding.
 - d) Order / orders be passed to restore the position before implementation of the final order as well as the Appellate order as if there is no proceeding.
 - e) Order / orders be passed as deemed fit by the Hon'ble Tribunal deemed fit and proper.
2. As per the applicant, during the service period, he was posted on different places including Burdwan GRPS during September 2012 and was subsequently transferred to Howrah GRPS in December 2013. However, the applicant was served with a Charge Sheet dated 25.01.2014 (Annexure A) on the basis of a complaint made by one Munshi Hasmat Ali under Burdwan Police Station. It is further stated that one FIR was lodged being Burdwan P.S. Case No.501 of 2014 dated 22.01.2014 (Annexure B) against the Officer-in-Charge, GRP, Burdwan along with one Sub-Inspector of Police and three other constables on the basis of a complaint made by one Munshi Hasmat Ali. (Simultaneously, one criminal case was started on the basis of the said FIR). The applicant filed his written statement of defence on 09.09.2014 (Annexure C). However, the Disciplinary Authority had inflicted punishment of stoppage of one increment permanently on 15.01.2015 (Annexure E), against which the applicant has preferred one Appeal dated 13.02.2015, which was disposed of vide order dated 10.03.2015 (Annexure-F) upholding the Disciplinary Authority's order.
3. As per the applicant, in the meantime, the complainant had withdrawn his complaint with a declaration on the basis of which one FRMF was submitted by the I.O. in the criminal case, which was accepted by the Chief Judicial Magistrate, Burdwan on 30.08.14 (Annexure D) and on the basis of which ultimately the applicant was discharged from the said criminal case on 10.07.2018. Therefore, as per the applicant as the basis of initiation of disciplinary proceeding

as well as criminal proceeding has already been withdrawn by the complainant himself and was accepted by the department as well as by the competent court of law. Therefore, the disciplinary order is liable to be quashed

4. The respondents have filed their written statements where it has been submitted that the disciplinary authority has come to a conclusion after careful examination of evidences and after applying his judicious mind. However, with regard to the acceptance of the FRMF by the Ld. Chief Judicial Magistrate, Burdwan, it has been stated that since there was no order regarding discharging of the applicant from the charges. Therefore, the acceptance of FRMF cannot be taken into consideration. Moreover, on writ petition was filed by the defacto complainant under WP No.1585(W) of 2014 before the Hon'ble High Court, Calcutta, alleging inaction of the police authority, which is still pending. Therefore, as per the respondents, as there is no bar to proceed with departmental proceeding and criminal proceeding simultaneously, the disciplinary authority has rightly passed the punishment order.
5. The applicant has filed his rejoinder, where it was submitted that the aforesaid writ petition being WP No.1585(W) of 2014 has already been dismissed on 04.05.2018. As the applicant has already been discharged from the criminal case on the basis of FRMF and the writ petition has also been dismissed, therefore, the punishment order dated 15.01.2015 is liable to be set aside. The applicant further submitted that in the FRMF submitted by the I.O. on the basis of an allegations made in the FIR, it was stated that the allegations against the accused person named in the FIR are found baseless and therefore, they may kindly be discharged from the case which was accepted by the competent criminal court. Further, the complainant did not raise any objection for such acceptance of FRMF, which was recorded in the said order dated 30.08.2014. During the course of hearing, the counsel for the applicant has placed the order dated 10.07.2018 passed in GR Case No.156 of 2014.
6. Heard both the parties and perused the records. It is further noted that one disciplinary proceeding and one criminal proceeding both were initiated against the applicant on the basis of a complaint made by the complainant called one Munshi Hasmat Ali. However, subsequently the said complainant had withdrawn the complaint against the applicant and the enquiry officer of the criminal case on the basis of said withdrawal had filed one FRMF before the criminal court, which was accepted by the said competent court of law on

30.08.2014 and subsequently the applicant was discharged from the charges on the basis of such submission made on behalf of the respondent as well as by the complainant (since he did not object for such acceptance as recorded in order dated 30.08.2014). Even the writ petition filed by the de-facto complainant for police inaction before the Hon'ble High Court was also dismissed on 4.5.2018. Therefore, in our considered opinion the basis of the initiation of the disciplinary proceeding is no more in existence after withdrawal of the complaint and acceptance of FRMF.

In view of the above, we quash and set aside the Charge Sheet, Disciplinary Authority's order dated 15.01.2015 and Appellate Authority's order dated 10.03.2015 and respondents are directed to grant the consequential benefit to the applicant. Accordingly, the O.A. is disposed of with above observations and direction with no order as to cost.

P. RAMESH KUMAR
MEMBER(A)

URMITA DATTA (SEN)
MEMBER (J)