

OA-619 OF 2015

J U D G E M E N T

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

- a) Order/orders be passed to quash the charges.
- b) Order/orders be passed to quash the enquiry Report, Final Order as well as the Appellate Order.
- c) Order be passed directing Respondent authority to issue an order to keep the issue in question at rest and to make the position at normal from the date of issuance of suspension order as if there is no charge, no suspension.
- d) Order/orders be passed as the Hon'ble Tribunal may deem fit and proper. The aforesaid reliefs are sought for on the following grounds:-
 - i) For that the stoppage of 5 increments with cumulative effect are not at all in accordance with the provisions of the Police Regulation of Bengal, 1943, as it is major punishment.
 - ii) For that, prolongation of suspension period must be recorded in writing, failing which it is not sustainable in the eye of law, what is apparent in the instant case.
 - iii) For that, when the punishment of dismissal of a person was modified to the extent of reinstatement in which the dismissal period was declared as spent on duty on condition of his past service records, the

confirmation of suspension period and that of stoppage of increment with cumulative effect is nothing but self contradictory as well as self explanatory too, which is bad in law.

The case of the applicant is as follows :-

- i) The applicant joined the police service on 11.09.2003 as Constable. Subsequently, he was posted to the Indian Reserve Battalion under the control of Commandant 1st I.R. Battalion, Durgapur and was deputed to Silda camp under Police Station Binpur, Jhargram, Paschim Medinipur to combat with the maoist activities in Jangal Mahal area.
- ii) While posted at Silda camp, a resentment occurred amongst and the police forces deputed/posted at the said camp protesting for bad accommodation and food provided to them as well as some organizational matters.
- iii) As per the applicant in spite of repeated requests for consideration of upliftment of the then prevailing bad situation in relation to accommodation and other allied problems as well as scarcity of light, water supply combined with unhealthy conditions compounded with fear psychosis no steps had been taken by the authority.
- iv) In such a situation, a sit in demonstration took place in front of the camp by the police personnel of the camp to mark as their protest against the inhuman attitude of the authority on 20.09.2011 and 21.09.2011 to

their grievances. As a result, high ranking officers rushed to the camp and when some of the officers approached towards the gate of the camp in the dark evening, it is alleged that some police personnel blew their hooters and prevented the officials to enter the camp.

- v) However, the applicant was isolatedly marked as one of the demonstrators, who was put under suspension vide order dated 13.10.2011 and was released from the said suspension vide order dated 08.11.2013. In the meantime, he was served with a charge sheet dated 13.10.2011. However, on the basis of a purported enquiry report dated 28.09.2012, the Disciplinary Authority inflicted punishment of dismissal on 13.11.2013 (Annexure-A collectively).

3. Being aggrieved with, the applicant preferred an appeal dated 16.12.2013 before the Appellate Authority. However, the Appellate Authority vide his order dated 26.06.2014, without giving any reason, had modified the punishment to the tune of withholding of future increment for next five years with cumulative effect and also confirm the suspension period (Annexure-B collectively). Being aggrieved with this, he has filed the instant application.

4. It has been submitted by the applicant that though mass demonstration had taken place on 20.09.2011 and 21.09.2011, however, surprisingly, the applicant was marked as one of the demonstrator even in the deep darkness and was charge sheeted in this respect. It has been further submitted that on the perusal of the list of 23 witnesses, it would be evident that the Disciplinary Authority himself is in three in one capacity, who has acted as (i) preliminary enquiry authority and had lodged General Diary (ii) as

PW 1 in the list of witnesses as well and (iii) Disciplinary Authority. Thus the disciplinary proceedings is void ab initio as no one can be judge of his own cause, as held by the Hon'ble Apex Court in the case of Ashok Kumar Jadav Vs. State of Hariyana and Others reported in AIR 1987 SC 454. Therefore, a person, who himself is a prosecution witness, cannot act as a Disciplinary Authority. Thus any order passed out of this proceeding is not free from bias. In support of his contention, he has referred the case of the State of Uttaranchal Vs. Kharag Singh reported in 2008 (2) SCC (L & S) 898. However, it has been submitted that though the Appellate Authority modified the order of dismissal by way of reducing it to withholding of 5 (five) increments with cumulative effect, however, the said Appellate Order was also non speaking one. Thus, it is not legally sustainable as held by the Hon'ble High Court. He has referred the following cases :-

1. 2011 (1) CHN (CAL) 287 Rousanara Khatun (Bibi)

Vs.

The State of West Bengal & Others.

2. 2010 (1) CLJ (CAL) 170 Sudhir Kumar Saha

Vs.

The State of West Bengal & Others.

Further, it has been submitted that Shri KalyanKumar Mallick, Commandant, 1st India Reserve Battalion Durgapur, though in his charge sheet, has alleged that the applicant had misbehaved with Shri T.K. Sharma, I.C. on 20.09.2011, though the Inspector In-charge of Binpur P.S. had taken name of some other personnel in his deposition but name of the applicant was not there. Further wherein it has been specifically stated that other persons are just present but not supporting the hooliganism, even then the applicant had been charge sheeted and has been punished. Though some persons whose name was in the G.D.,

however, neither they were charge sheeted nor punished. Therefore, the whole proceedings is biased and without any valid ground. It is further submitted that on the perusal of the proceedings/statement of witnesses, it would be evident that most of the PWs did not identify him in named him for taking part in hooliganism. Thus, the allegation is baseless. Therefore, the whole proceeding is liable to be quashed.

The respondents have filed their written statement, wherein they have basically reiterated the charges alleged against the applicant. It is also submitted that the incumbent/applicant took leading part of the agitation and instigated others to create chaos and indisciplined activities in the form of agitation. Even the applicant gave his byte to the media and he was easily marked from the media footage. Therefore, he has been rightly punished.

The applicant has filed his rejoinder denying the contentions made by the respondents.

We have heard both the parties and perused the records. During the course of hearing, the respondents were asked to provide certain information against queries made by this Tribunal vide order dated 06.09.2018 by filing a supplementary affidavit dated 10.04.2019 which is as follows:-

Sl. No.	Queries made by the Tribunal	Information provided by the Respondents
1.	Since a mass agitation took place, how many constables were served with charge sheet ?	07 (seven) Constable were served with charge sheet.
2.	Out of which how many have been dismissed?	07 (seven) Constable have been dismissed out of 07 (Seven).
3.	Out of dismissed candidates how many have approached this Tribunal?	Out of the dismissed candidate 06 (six) have approached this Hon'ble Tribunal.
4.	Was the punishment similar to all ?	Yes, the punishment was similar to all.

5.	Was there any other punishment inflicted in any of the cases of punished employees?	No, any other punishment inflicted when they have been dismissed. After appellate order punishment inflicted as next 05 (five) years increment withheld and also the suspension period confirmed.
6.	Were there any other persons, who were mentioned in GD but not issued with memo/charge sheet? If so, how many of them?	14 Constable who were being marked in GDE, vide Binpur PS GDE Nos. 955 and 965 dated 21.09.2018. But out of them only 04 (four) constable who were issued Memo/Charge sheet and rest of 10 (ten) constable who were not issued any Memo /Charge sheet, but they were not being marked in GDE.
7	Reasons for being left out? Etc.	Found no reasonable ground.

It has been noted that K.K. Mallick, Commandant, 1st Battalion filed one G.D. before the Inspector In-charge, Binpur P.S. (Annexure-A) with regard to the unruly agitation specifically naming 13 police personnel on 21.09.2011 as well as 22.09.2011 (Annexure-A) and the same person had put the applicant under suspension on 13.10.2011 under Regulation 858 (ii) read with Regulation 880 of P.R.B. Vol.-I and also issued charge sheet on 13.10.2011 alleging interalia :-

- 1) You cocked fire arms with you without any justified reason and aimed at Senior Officers and warned to open fire if they (senior officers) approach the main gate of the camp.
- 2) You used abusive and filthy languages towards senior officers present outside the main gate.

- 3) You were instigating others to resort to chaos and refusal to speak to the Commandant and the Asstt. Commandants and went on shouting, "We shall only talk to the CM".
- 4) You misbehaved with and manhandled Sri T.K. Sharma, Inspector-in-Charge, Binpur P.S. while he visited the camp on 20.09.2011 and snatched the official papers from him.
- 5) When the Commandant and other officers tried to open the gate forcefully, you shouted, "Don't enter or else I shall commit suicide".
- 6) You misbehaved with and manhandled the ASI of the camp.

Further, in the said charge sheet, the name of the disciplinary authority is found against the Sl. No. 1 of list of witnesses. Therefore, admittedly the disciplinary authority himself has filed the General Diary and has become witness in the same proceedings.

Hon'ble Apex Court in the case of Ashok Kr. Yadav Vs. State of Haryana has held that one should not be judged of his own case, which violates the principle of natural justice.

Hon'ble Apex Court in the case of State of Uttranchal & Ors. Vs. Kharag Singh has held that if an officer is a witness to any of the incidence, which is the subject matter of the enquiry or enquiry was initiated on a report of the officer, then in all fairness he should not be the enquiring officer and if the said position becomes known if the appointment of the said officer the steps to be taken to see that the said task which should be assigned to some other officer.

As, in the instant case Shri K.K. Mallick, who had issued the charge sheet, was also PW I witness in the said proceedings, even he had filed the General Diary also, therefore, in view of the principle laid down by the Hon'ble Apex Court, the charge sheet is void ab initio. It is further noted that though the applicant was alleged for mishandling the superiors during the agitation, however, in the General Diary filed by the disciplinary authority himself, the name of applicant could not be found. Moreover, as per the respondents, out of 13 person, who was named in the G.D. filed on 21.09.2011, only 10 constables were issued charge sheet and rest 4 constables were not issued any memo of charge sheet and even no reasonable ground / non action has been shown in supplementary affidavit. Moreover, as per the respondents the whole incidence was occurred at dark night. Therefore, in our considered opinion the charges against the applicant is vague one and is not sustainable. Even most of the PWs did not identify him during that examination and cross examination process. It is also noted that the applicant had taken all these point in his reply dated 13.04.2012. However, the disciplinary authority as well as appellate authority did not considered the same and had come into conclusion only on the basis of submission of PWs i.e. Mr. K.K. Mallick, who had also issued the charge sheet. The disciplinary authority without considering his submission and had shown any reasons for rejection of his submission, had passed the impugned orders. Therefore, we quash and set aside the entire disciplinary proceedings including the charge sheet, enquiry report, disciplinary authorities order dated 13.11.2013 and appellate authorities order dated 26.06.2014. However, the authority would be at liberty to take appropriate steps against the applicant as per law, if so desire. Accordingly the OA is disposed of with the above observation and no order as to costs.

P. RAMESH KUMAR
MEMBER (A)

URMITA DATTA(SEN)
MEMBER (J)