

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

-AND-

**The Hon'ble Dr. A. K. Chanda
MEMBER(A)**

J U D G E M E N T

-of-

Case No. OA-70 of 2015(MA-06 of 2015)

Prasun Bhattacharya.....Applicant.

-Versus-

State of West Bengal & others....Respondents

**For the Applicants :- Mr. Sambhu Nath De,
Learned Advocate**

**For the State Respondents :- Mr. Manujendra Narayan Roy,
Learned Advocate**

Judgement delivered on : 19-03-2018

**The Judgement of the Tribunal was delivered by :-
Hon'ble Dr. A. K. Chanda, Member (A)**

J U D G E M E N T

In this application, the Applicant has, inter alia, prayed for a direction upon the Respondents to set aside the order of his dismissal from service dated 08-10-2013 passed by the Disciplinary Authority, namely, the Deputy Commissioner of Police (HQ), Barrackpore Police Commissionerate, in Barrackpore Police Commissionerate case no. 14 dated 02-05-2013 against the Applicant as well as the order passed on 27-12-2013 by the Appellate Authority, namely, the Commissioner of Police, Barrackpore -Police Commissionerate, affirming the aforesaid order passed by the Disciplinary Authority. He has also prayed for a direction upon the Respondents to reinstate him in service after setting aside the aforesaid impugned orders.

2. The case of the Applicant, in short, is that he joined as a Probationary Sub-Inspector of Police, West Bengal on 02-04-2009 at Belghoria Police Station, after completion of his basis training. On joining, he was assigned 2 (two) cases which he made over within a week. Thereafter, a new Officer-in-Charge took joined the Belghoria Police Station on 04-01-2010. The said officer regularly assigned cases to him for investigation. In the middle of February, 2010, the Applicant was sent for training in counter insurgency operation under Indian Army. After the training was over, he again joined at Belghoria Police Station. Subsequently, he was transferred to Barrackpore Police Commissionerate on 14-03-2013.

3. It is the case of the Applicant that all of a sudden on 02-05-2013 the Respondent no. 4, namely, the Deputy Commissioner of Police (HQ), Barrackpore Police Commissionerate served upon him a charge memo whereby he was charged with gross negligence, misconduct, disobedience, ulterior motive and dereliction of duty unbecoming of a member of a disciplined police officer. It was alleged in the said charge memo that during his incumbency at Belghoria Police Station, he was entrusted with as many as 122 cases for investigation but despite several instructions given by the Respondent no. 4, he did not complete the investigation of 38 number of cases. It was also alleged that he had shown in the pending list of Belghoria P.S. that he had disposed 84 cases in final form. But from the report of G.R.O., Barrackpore Court, it is revealed that out of 84 cases, he had deposited only 14 cases and in respect of the remaining 70 cases he did not deposit the original C.D.s along with report in final form at G.R.O., Barrackpore Court. It was also alleged in the charge memo that because of his motivated, mala fide intention and unprofessional activities, the prime accused got released from the cases and thereby the de facto complainant was deprived from getting justice.

4. Based on the above charges, a departmental proceeding was initiated against the Applicant for violation of Rule No. 117/261 of Police Regulations of Bengal, Volume I, 1943, Section 23 of the Police Act, 1861 and Rule 3 and 4 of West Bengal Government Servants' Conduct Rules, 1959 and he was directed to state in writing within 7(seven) days whether he pleaded guilty to

the charges or would prefer an open enquiry. In response, he denied and disputed the allegations.

5. The Disciplinary Authority, however, being not satisfied with his explanation, started an open enquiry and appointed an Enquiry Officer for the purpose. After completion of the enquiry, the Inquiry Officer submitted his findings holding the Applicant guilty of the charges against him. Thereafter, the Disciplinary Authority served a copy of the enquiry report upon the Applicant holding him guilty of the charges along with a proposed punishment of dismissal from service together with a direction upon him to submit his reply to the findings in the enquiry report as well as the proposed punishment of dismissal from the service. On receipt of the same, the Applicant submitted his reply on 11-09-2013 wherein he contended that the Enquiry Officer came to his findings only on the basis of the statements of the prosecution witnesses as well as the exhibits and did not consider the defence statement of the Applicant. He also pleaded that he was not guilty of the charges as alleged and that he has been implicated in the proceeding without any cogent reason. Therefore, in the interest of fair play and justice, he may be exonerated from the charges. Unfortunately for him, however, the Disciplinary Authority was not impressed with his reply and issued the final order dismissing the Applicant from service w. e. f. 08-10-2013. It was also stipulated in the final order that the Applicant is not entitled to get pension and other retrial benefit except G.I. and G.P.F.

6. Being aggrieved by the final order passed by the Disciplinary Authority, the Applicant preferred an appeal before the Appellate Authority,

namely, Commissioner of Police, Barrackpore Police Commissionerate, praying for setting aside the final order and to reinstate him in service. In his appeal petition, he stated that the charges against him do not reflect any misconduct or moral turpitude on his part. The charges relate to alleged lapses in timely completion of investigation and submission of report in final form/charge sheet and as such these do not at all come within the purview of misconduct. He also pleaded that the proceeding against him was drawn up without taking into consideration that he was a fairly new recruit who had joined the Belghoria Police Station as Probationary Sub-Inspector in the year 2009 only. Despite being a fresher in service, he was assigned too many cases for investigation by his superior officer although he did not have sufficient experience for investigation of such cases. He made every effort to complete the investigation within a reasonable period, but due to heavy pressure of work, he was not in a position to complete the work. There was no mala fide intention or ill motive on his part. It is unfortunate that the Disciplinary Authority imposed on him the strictest punishment of dismissal from service without considering the provision of Regulation 856 of Police Regulation of Bengal, 1943 since there was no instance of moral turpitude on his part. Apart from that, his past conduct has also not been taken into consideration in imposing such a harsh punishment. In all fairness, therefore, the final order passed by the Disciplinary Authority should be set aside and he may be reinstated in service. The Appellate Authority, however, failed to consider his case in proper perspective and affirmed the punishment imposed by the Disciplinary Authority.

7. Being aggrieved, the Applicant has filed the present application challenging the final order and the Appellate order praying for setting aside the impugned orders and or his reinstatement in service.

8. Appearing on behalf of the Applicant, Mr. Sambhu Nath De, Ld. Advocate, questioned the impugned orders mainly on the following grounds :-

- (i) that the impugned orders suffer from non-application of mind. There is no Rule in the Police service to dismiss a person until and unless the allegations against him are proved by a competent Court of law. As such the impugned orders are perverse and bad in law.
- (ii) that the enquiry officer submitted his findings in the enquiry report without considering the materials on record. The Disciplinary Authority, therefore, should not have issued the second show cause notice on the basis of such erroneous findings of the enquiry officer. As such the final order passed by the Disciplinary Authority suffers from non-application of mind. The order of the Appellate Authority also failed to take into account such lapses in the final order and erroneously affirmed such erroneous final order. The appellate order, therefore, also suffers from non-application of mind and as such is liable to be set aside.
- (iii) that the final order was passed without taking into consideration his general character and the nature of his past service as required under

Regulation 856 of the Police Regulations of Bengal, Vol. I, 1943. As such the impugned is bad in law.

- (iv) that the punishment imposed by the Disciplinary Authority as affirmed by the Appellate Authority too harsh and is shockingly disproportionate compared to the charges against him and as such is liable to be set aside.

9. Challenging the contentions of the Applicant, Mr. Manujendra Narayan Roy, Learned Advocate for the State Respondents, submitted that it will be apparent from records that the Applicant did not complete the investigation of 38 cases and kept them pending with him in spite of repeated instructions from the Officer in charge, Belghoria Police Station.

10. Furthermore, in the pending list of Belghoria Police Station, the Applicant noted that he had disposed 84 cases assigned to him by submitting police report in final form. But, on scrutiny, it was found from the report of the GRO, Barrackpore Court that out of the said 84 cases, he had submitted only 14 case dockets before the Ld. Court and in respect of the remaining 70 cases, he did not submit the original case dockets along with the relevant documents in final form at Barrackpore Court . He was instructed to furnish the copies of receipt/challan in respect of all cases for which he had submitted the case dockets in final form before the Ld. Court through G.R.O., Barrackpore Court, but he failed to produce the same. Because of such motivated, mala fide intention and unprofessional activities on his part, the prime accused got released from the cases and thereby the de facto

complainant was deprived of justice. Such negligence, disobedience and dereliction of duty on his part was highly detrimental to the discipline and image of the police force and unbecoming of a Police Officer in uniform and violative of Rule 117/261 of Police Regulations of Bengal, Vol. I, 1943, Section 23 of Police Act, 1861 and Rule 3 & 4 of West Bengal Government Servants' Conduct Rules, 1959. Accordingly, a Disciplinary proceeding was drawn up against the Applicant and an Enquiry officer was appointed for the purpose.

11. Continuing his submission, Mr. Roy stated that the enquiry into the charges against the Applicant was conducted strictly in accordance with the procedure laid down in the regulations. The Applicant was afforded with all opportunities to defend his cause so that there was no denial of natural justice. He was allowed access to all documents relied upon by the prosecution and was also allowed to cross-examine the prosecution witnesses. After completion of the enquiry, E.O. submitted his findings wherein he clearly opined that the charges against the Applicant were established. Thereafter, the Disciplinary Authority, having gone through the enquiry report and other relevant materials on record, served upon the Applicant a copy of the Enquiry report on 08-08-2013. On 14-08-2013, the Applicant was heard in person by the Disciplinary Authority. During the personal hearing, he could not give any satisfactory explanation regarding the pendency of cases assigned to him at Belghoria Police Station and admitted his guilt. Having regard to the facts of the case and materials on record, the Disciplinary Authority was of the opinion that the charges against the Applicant were serious in nature and that his continuance in service would be highly prejudicial to the interest of public

service. Accordingly, he was of the opinion that it was a fit case for dismissal from service. However, for the sake of natural justice, he served upon the charged officer a second show cause notice on 22-08-2013 directing him to explain within 10-09-2013 as to why he should not be dismissed from service.. As the Applicant failed to give any satisfactory reply to the show cause notice the Disciplinary Authority, having gone through the documents on records, namely, charge memo, deposition of PWs, document exhibited, statement of defence, the findings submitted by the E.O. as well as the service book of the Applicant passed the final order dated 08-10-2013 dismissing the Applicant from service w. e. f. 08-10-2013 (P.M).

12. In this context, Mr. Roy also submitted that the aforesaid final order was passed by the Disciplinary Authority, inter alia, after taking into account the service book of the Applicant that contained all his relevant service particulars and, therefore, the contention of the Applicant that his past records/performance were not taken into account before passing the final order has no basis at all.

13. Continuing further, Mr. Roy submitted that the Applicant preferred an appeal against the final order passed by the Disciplinary Authority. The Appellate order was passed on 27-12-2013 in which the Appellate Authority observed, inter alia, that the proceeding against the Applicant was held in a fair and impartial manner. The enquiry was held in strict adherence to the regulations laid down for the purpose and that there was no denial of natural justice inasmuch as the charged officer was afforded with all the opportunities of defending his cause. The Appellate Authority also gave an opportunity to

the Applicant to appear before him in person. Accordingly, the Applicant appeared before the Appellate Authority on 23-12-2013. In course of hearing, he apparently begged for excuse due to his family problem.

14. Thereafter, on consideration of the materials on record and the gravity of the charges against the Applicant, the Appellate Authority affirmed the final order passed by the Disciplinary Authority.

15. Based on the above, Mr. Roy contended that there is no irregularity or illegality in orders passed by the Disciplinary Authority and the Appellate Authority. The prayer of the Applicant, he argued, is devoid of any merit and is liable to be set aside.

16. Refuting the contention of the Respondent, the Applicant filed a rejoinder. Mr. De, Ld. Advocate of the Applicant, contended that the impugned proceeding was initiated against the Applicant without taking into consideration that he was a new recruit and had joined at Belghoria Police Station as Probationary Sub-Inspector (PSI) in the year 2009 only. The authorities also failed to consider that he was burdened with too many cases for investigation though his superior officer was fully aware that he was yet to gather sufficient experience for investigation of such cases. The Applicant had tried his level best to handle the cases assigned to him within a reasonable period of time, but could not complete the investigation due to heavy pressure of other miscellaneous duties allotted to him. There was no mala fide intention and/or ill motive on his part.

17. Elaborating further, Mr. De pointed out that between January 2010 and March 2013, the Applicant was entrusted with 122 cases for investigation and submission of report. But, in reality he was not assigned so many cases. , In particular, Belghoria P.S. case no. 327 of 2008, though shown as entrusted to him, was not actually handed over to him. Therefore, although the charge against the Applicant was that he kept 84 cases pending, it was not factually correct. Furthermore, the GRO Barrackpore Court is not the sole custodian of all the cases. There are several other Additional District Judge Courts and that some of the case reports were lying before the ADJ Court also. Mr. De also questioned the contention of the Respondents that any prime accused managed to get release due to action/inaction on the part of the Applicant. He submitted that though such an allegation was leveled against the Applicant in the charge memo, the Respondents have nowhere cited any instance to show that the prime accused therein got released because of any purported inaction on the part of the Applicant. Mr. De also submitted that detailed progress reports of the cases were also submitted by the Applicant to the officer- in- charge Belghoria Police Station from time to time.

18. Continuing his submission, Mr. De stated that Rules 117/261 of Police Regulations of Bengal, Volume-I, 1943, Section 23 of the Police Act, 1861 and Rule no. 3 & 4 of West Bengal Government Servants' Conduct Rules, 1959 are not at all applicable in the present case because the Applicant has not violated any provision of these Rules. Moreover the purported negligence or disobedience on the part of the Applicant as alleged had ever been brought to his notice before initiating the departmental proceeding against him. Therefore, he cannot be held liable for the negligence or

disobedience as alleged. Mr. De also contended that the Enquiry officer relied upon the prosecution witnesses and the exhibited documents, but did not consider the statements of the witnesses or the contents of the exhibited documents. Therefore the findings of the enquiry officer suffer from non-consideration of relevant facts and non-application of mind. Furthermore, the submissions of the Applicant were also not heeded at the time of personal hearing, it is not a fact that the Applicant admitted any guilt at the time of personal hearing. He had only stated that in addition to the cases assigned to him, he also performed many other law and order duties such as P.C. duty, R.T. duty and P.S. duty including one Municipal Election and Assembly Election duty. As a result, the investigation work was badly affected. There was no mala fide intention or ill motive on his part. The Disciplinary Authority also failed to consider his reply to the second show cause notice at the time of passing the final order dated 08-10-2013. While passing the final order, he primarily relied on the report of the enquiry officer which suffers from non application of mind as pointed out earlier. The final order as such suffers from serious infirmities. Last but not the least, the quantum of punishment inflicted on him is shockingly disproportionate to the gravity of charges against him. The Disciplinary Authority imposed the strictest punishment of dismissal from service without paying any heed to the provision of Regulation 856 of order 1943 since there was no allegation of moral turpitude against him.

19. Mr. De also questioned the action of both the Disciplinary Authority and the Appellate Authority on the ground that they failed to consider the past service which is essential as per Police Regulations of

Bengal. Therefore, he contended, both the dismissal order and the appellate order affirming the same are patently bad in law and liable to be quashed.

20. We have carefully heard the Ld. Counsels of both sides and have also perused the materials on record. At the very outset, we would like to point that it is settled position of law that in case of a departmental proceeding, the scope for judicial review is limited with the primary focus not on the decision but on the decision making process. Of course, it is also incumbent on the part of the Disciplinary Authority as well as the Appellate Authority to ensure that their decisions are not arbitrary, unreasonable, capricious or mala fide in nature and that in taking the decisions all relevant facts have been taken into consideration and that no irrelevant fact has been relied upon in reaching the decisions. This would be the touchstone based on which we may now proceed to examine the validity of the impugned orders challenged in this application.

21. From the materials available on record, it transpires that the impugned proceeding has been conducted in accordance with the relevant regulations. Admittedly, the Applicant was supplied with list of documents relied upon in course of the enquiry, he was also allowed to cross-examine the prosecution witnesses and was afforded with all opportunity to defend his cause. He was also given opportunity of personal hearing by both the Disciplinary Authority and the Appellate Authority. There was, therefore, no denial of natural justice. It is true that the Applicant has complained of non-application of mind on the part of the Enquiry Officer, Disciplinary Authority and the Appellate Authority, but he has not made out any specific case as to

the basis of such complaint. He has alleged that the Disciplinary Authority imposed on him the harshest punishment of dismissal of service without paying any heed to the provision of Regulation 856 of the Police Regulations of Bengal, Vol. I, 1943 that requires that while awarding punishment, the general character of the offender and the nature of his past service shall be taken into consideration. In this context, Mr. Roy has drawn our attention to the final order dated 08-10-2013 passed by the Disciplinary Authority wherein it has been expressly mentioned that the said order has been passed after taking into consideration, inter alia, the service book of the Applicant. Mr. Roy submitted that the service book of the Applicant contains all his relevant service particulars needed for complying with requirement of Regulation 856 of the Police Regulations of Bengal, Vol. I, 1943. As such the Disciplinary Authority duly complied with the aforesaid provision of the Police Regulations of Bengal, Vol. I, 1943.

22. In the light of the above, we are of the opinion that there was as such no procedural irregularity or illegality in the conduct of the impugned proceeding.

The proceeding was duly conducted in accordance with the relevant regulations and there was no denial of natural justice. There is no material before us to infer that there was non-application of mind or that the decision was arbitrary or mala fide in nature.

23. We may now turn to the challenge to the impugned orders on the ground that the punishment imposed on the Applicant is shockingly disproportionate to the gravity of the charges against him. Before we proceed

to delve into this issue, we consider it necessary to observe that vide the charge memo dated 02-05-2013, the Applicant was charged with ulterior motive and it was alleged because of his motivated, mala fide intention, the prime accused got released from the cases depriving the de facto complainant from justice. This is indeed a serious charge which, if proved, may, most appropriately, lead to the dismissal of a police officer from service. But, in our opinion, there is nothing on record to show that these allegations against the Applicant have been established. Shorn of this charge, the punishment imposed on the Applicant by way of dismissal from service, in our opinion, is indeed shockingly disproportionate compared to the charges established against him, namely, disobedience and dereliction of duty unbecoming of a police officer. In fact, Regulation 856 of the Police Regulations of Bengal, Vol. I, 1943 also stipulates that officers shall avoid undue harshness in awarding punishments and shall discriminate carefully between offences connoting moral turpitude and minor offences. Therefore, in the interest of equity and justice as ordained by the doctrine of proportionality, we consider that it would be fair and proper for the concerned Respondents to impose on the Applicant a lesser punishment proportionate to the charges established against him.

24. In view of the above, having regard to the factual matrix of the present case as well as the materials on record, we are of the opinion that there is no irregularity or illegality in the manner in which the departmental proceeding has been conducted against the Applicant or in the findings/conclusions reached by the Respondents in regard to the charges established against him. However, for reasons discussed above, we are of the

opinion that the punishment of dismissal from service imposed on the Applicant is shockingly disproportionate to the charges established against him. Accordingly, we set aside the final order dated 08-10-2013 as well as the Appellate order dated 27-12-2013 with the direction upon the Disciplinary Authority that he shall reconsider the matter and pass a fresh order by way of imposing any punishment, as deemed fit and proper, other than the punishment of dismissal/ removal/ compulsory retirement from service, proportionate to the gravity of the charges established against the Applicant. It is further directed that the Disciplinary Authority shall pass the aforesaid order within four weeks from the date of receipt of this order. A copy of the order so passed must be communicated to the Applicant within one week thereafter.

25. The O. A. is thus disposed of. No costs.

DR. A.K. CHANDA
MEMBER (A)

URMITA DATTA (SEN)
MEMBER(J)

