IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Partha Sarathi Chatterjee

WPCT 225 of 2023

Subal Makhal
-Versus-
Indian Red Cross Society & Ors.

For the petitioner : *Mr. Pritam Chowdhury.*

For the respondents : *Mr. Sudip Krishna Datta.*

Hearing is concluded on : *7th August, 2024.*

Judgment On : **28th August, 2024**

Tapabrata Chakraborty, J.

1. The present writ petition has been preferred challenging an order dated 08.02.2023 passed by the learned Tribunal in the original application (in short, OA), being OA 511 of 2017.

2. The petitioner's case is that he was appointed to the post of labourer (Group-D) in the Indian Red Cross Society (in short, the said Society) on 22.05.1979 and was granted temporary status with effect from 01.04.1980. On the basis of a complaint lodged on 03.08.1994 by the respondent no.5, a criminal case being B.D.N. (E) B Case no. 100/3/8/1994 under Section 409 of Indian Penal Code (in short, IPC) was registered and in connection with the same, the petitioner was arrested on 06.08.1994 and released on bail 23.08.1994. In the midst thereof, the respondent no.2 *vide* memo dated 11.08.1994 placed the petitioner under deemed suspension and thereafter a chargesheet was issued to him by the respondent no.2 *vide* memo dated 17/25.04.1995 and the respondent no.5, who lodged the police complaint, was appointed as the Presenting Officer in the disciplinary proceeding *vide* memo dated 04.07.1995. Upon conducting an inquiry, a report was forwarded to the petitioner *vide* memo dated 27.03.1998 to which the petitioner duly replied and 06.03.1999. About 9 years thereafter, the respondent no.4 *vide* memo dated 22.07.2008 intimated the petitioner that the respondent no.2 has ordered for imposing a punishment of removal from service. About 5 years thereafter the criminal case initiated against the petitioner and others being Special Case no. 81 of 1995 was disposed of by a judgment dated 03.08.2013 and the petitioner was found not guilty of the charge under Section 409 of IPC and was acquitted. As the charges in the departmental proceeding and the criminal trial were identical, the petitioner, upon acquittal, submitted a representation on 13.09.2013 with a prayer to review the order of removal and as the same was not considered, the

petitioner through his learned advocate submitted a further representation on 20.06.2016. Pursuant thereto, the Deputy Secretary of the said Society issued a memo dated 02.09.2016 rejecting the petitioner's claim. Challenging *inter alia* the said order, the petitioner preferred OA 511 of 2017.

3. The learned Tribunal by the order impugned refused to exercise discretion in favour of the petitioner and dismissed the OA observing that the charges levelled against the petitioner in the departmental inquiry and in the criminal proceeding cannot be said to be similar and that the petitioner's claim was a belated one.

4. Mr. Chowdhury, learned advocate appearing for the petitioner submits that the proof and evidence pertaining to the charges in the disciplinary proceeding stands negated by the findings of the competent Court in the criminal trial. Thus, prior to disposal of the criminal proceeding, the petitioner was not in a position to urge that the findings of the disciplinary authority contained in the impugned order of removal are not sustainable. In view thereof, the petitioner submitted the prayer for review of the order of removal immediately after the verdict in the criminal trial. In the said conspectus, the finding of the learned Tribunal that the petitioner's claim was a belated one is not sustainable. The conduct of the petitioner did not on the whole warrant to castigate him as a negligent litigant. Such argument, as urged, was, however, glossed over by the learned Tribunal.

5. He submits that a perusal of the chargesheet dated 17/25.04.1995 would reveal that the charges in Articles I, II and IV emanate from the charge

under Article III. In Article I it was alleged that the petitioner had left the work place without any permission or intimation to the appropriate authority. In Article II it was alleged that the petitioner did not return to duty point in spite of being so asked by his superior. In Article IV it was alleged that the petitioner had ran away from office premises without any intimation or permission of the appropriate authority. All the three charges were pertaining to an alleged incident on 30.07.1994 and were attributable to the charge under Article III wherein it was alleged that on 30.07.1994 the petitioner directly assisted one Mr. Nemai Mitra to hide the cloth sheeting. Thus, the finding of the learned Tribunal as regards dissimilarity of the charges in the disciplinary proceeding and the criminal proceeding is not sustainable in law in as much as the charges are identical and similar, the evidence, witnesses and circumstances are one and the same in both the proceedings. The petitioner was acquitted in the criminal proceeding upon full consideration of the evidence as the prosecution miserably failed to establish the charges. In the said conspectus, the learned Tribunal erred in law in refusing to exercise discretion in favour of the petitioner. Such infirmity warrants interference of this Court. Reliance has been placed upon the judgment delivered in the case of *Ram Lal versus State of Rajasthan and others*, reported in *(2024) 1 SCC 175*.

6. Mr. Datta, learned advocate appearing for the respondents, however, denies and disputes the contention of the petitioner and submits that a perusal of the judgment delivered in the criminal case would reveal that there was a theft but due to lack of evidence such theft could not be

attributed to the petitioner. In view thereof, it cannot be argued that the said judgment had even ironed out the preponderance of probability towards commission of such offence and the involvement of the petitioner in the incident on 30.07.1994.

7. He argues that four charges were levelled against the petitioner in the disciplinary proceeding. All the said charges are distinct. The charge under Article I was that the petitioner left the work place without any permission or intimation to the appropriate authority displaying lack of devotion to duty. The charge under Article II was that the petitioner did not abide by the direction of his superior and as such there was utter insubordination and negligence of duty on his part. The charge under Article IV was that the petitioner had run away from the office premises without any permission or intimation to the appropriate authority displaying lack of integrity and devotion to duty. Whereas the charge under Article III was that the petitioner had directly assisted one Mr. Mitra to hide the cloth sheeting and to divert Sri R.K.Mukherjee away from the spot by playing various tricks. In the said conspectus, it cannot be argued that since the petitioner was acquitted of the charge under Section 409 of IPC in the criminal trial, his culpability pertaining to the other delinquencies also needs to be ignored.

8. We have heard the learned advocates appearing for the parties at length and we have given our anxious consideration to the facts and circumstances of the case.

9. Indisputably, the employees of the said Society are governed by the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (in short, the 1965 Rules). The findings as regards the allegations in the disciplinary proceeding stood contradicted by the findings of the Court in the criminal trial and only thereafter the petitioner could have filed the application for review of the order of removal. As such, the period spend from the date of removal till the date of filing of the review application after disposal of the criminal trial cannot be attributed to the petitioner nor can it be urged that the petitioner was responsible for such delay. It is also not a case that due to such lapse of time any right accrued in favour of any other incumbent. Interference of the learned Tribunal, as sought for in the OA, would also not have led to reinvigoration of a claim which had attained finality. In view thereof, the OA ought not to have been dismissed on a finding that the petitioner's claim was a belated one.

10. Records would reveal that all the prime witnesses in the disciplinary proceeding were also examined in the criminal proceeding. The allegations in both the proceedings were almost identical and centered around an alleged act of breach of trust on the part of the petitioner and others. A reading of the entire judgment in the criminal trial would reveal that the petitioner was acquitted after full consideration of the prosecution evidence. The prosecution could not establish that the petitioner was entrusted with any property and on the contrary the Superintendent of Stores and the Storekeeper were the custodian of all articles received by the said Society. The Court has looked at the issues from all relevant angles but the

ingredients of entrustment and commitment were found to be lacking and the inevitable conclusion was that accused persons could not be convicted under Section 409 of IPC.

11. The prosecution suspected the petitioner's conduct. But the suspicion cannot, in law, be treated as evidence against the petitioner. Mere suspicion should not be allowed to take the place of proof even in domestic enquiries. It may be that the technical rules which govern criminal trials in Courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules. We have very carefully considered the evidence led but we are unable to hold that on the record, there is any evidence which can sustain the finding that Article III has been proved against the petitioner.

12. As per the settled position of law, even in a case where the punishment is found to be disproportionate to the misconduct committed, the matter is to be remitted to the disciplinary authority for imposing appropriate punishment/penalty which as such is the prerogative of the disciplinary authority. However, today, as the petitioner has retired, it would be iniquitous to direct the petitioner to contest a proceeding from the stage of supply of the inquiry report.

13. The petitioner had worked for about 30 years in the said Society and he had no antecedent. Measure, magnitude and degree of misconduct needs

to be taken into consideration for weighing the proportion. Regard being had to the facts involved and the nature of post held by the petitioner, we are of the opinion that the doctrine of proportionality is invokable and the equities need to be balanced among the parties.

14. The disciplinary proceeding was initiated against the petitioner in the year 1995. The respondents took more than thirteen years to complete the same and all along the petitioner was kept under suspension till the date of his removal in the year 2008. The criminal trial was concluded thereafter in the year 2013 and the petitioner's prayer for review was turned down in the year 2016. The OA preferred thereafter in the year 2017 was dismissed in the year 2023. The petitioner had thus remained trapped in a purgatorial legal rigmarole since the year 1995. The order of punishment was passed on 22.07.2008 and during pendency of the litigation the petitioner attained the age of superannuation on 30.04.2013. He has been out of employment for more than thirteen years, which on its own merit, is a matter of great suffering, agony and ignominy. This is an appropriate case for this Court to soothe the wounds and agonies by putting an end to the already protracted legal proceedings. No further purpose would be served by applying the penal sword upon a deadwood.

15. In view of the discussion made above, we find that the punishment of removal imposed on the petitioner was far too harsh in the facts and circumstances of the case and to put a quietus to the matter, it would be appropriate to direct substitution of the punishment of dismissal. Since in a

case where the original punishment is set aside, only to be substituted by a new punishment, pursuant to an order of judicial review, then ordinarily such substituted punishment would relate back to the date of original punishment. The petitioner at present is aged about 69 years and is having a family and the punishment as imposed is the highest punishment and the same severely affects the livelihood of the respondent and his family. Accordingly, the order of removal dated 22.07.2008 and the order dated 02.09.2016 rejecting the petitioner's prayer for review are set aside and the respondents are directed to impose a punishment of reduction to a lower stage in the time scale of pay for a period of period of two years without any cumulative effect. The petitioner shall be deemed to have been reinstated with all continuity in service effective from the date of removal.

16. There can be no precise formula nor any *'cast iron rule'* for grant of back wages. In the instant case, the criminal complaint was lodged in the year 1994, the disciplinary proceeding was initiated in the year 1995 and the petitioner was removed in the year 2008. He was acquitted in the year 2013, his prayer for review was refused in the year 2016 and the OA was dismissed in the year 2023. The dispute had thus continued since the year 1995 till 2023 for a period of more than 28 years. In the totality of the facts and circumstances of the case, in our opinion, a balance would be maintained and the interest of justice would be subserved through issuance of a direction upon the respondents to disburse 50% of the back wages together with all consequential benefits to the petitioner.

17. Accordingly, the respondents are directed to disburse the back wages and all retiral benefits in favour of the petitioner within a period of 8 weeks from the date of communication of this order.

18. With the above observations and directions, the writ petition and the connected applications, if any, are disposed of.

19. There shall, however, be no order as to costs.

20. Urgent Photostat certified copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Partha Sarathi Chatterjee, J.) **(Tapabrata Chakraborty, J.)**