Rajesh Kumar Vs State of Tripura and Ors.

Court: Gauhati High Court (Agartala Bench)

Date of Decision: March 28, 2008

Citation: (2008) 4 GLR 7

Hon'ble Judges: U.B.Saha, J

Bench: Single Bench

Advocate: P.K.Biswas, P.Majumdar, T.D.Majumdar, Advocates appearing for Parties

Judgement

1. The petitioner, a Nb/Sub(Clk) by filing this writ petition has prayed for quashing the order of the Commandant, 8 Bn, TSR (IRIII), respondent

No. 4 herein dated 21.7.2007 (Annexure4 to the writ petition) whereby and whereunder he was reverted to the rank of Hav (Clk) from the rank

of Nb/Sub (Clk) for a period of three years with immediate effect and also the order dated 20.11.2007 (Annexure6 to the writ petition) passed by

the Deputy Inspector General of Police AP (Adm & Trg), respondent No. 3 herein whereby and whereunder the appeal preferred by the

petitioner against the aforesaid order dated 21.7.2007 was dismissed.

2. Heard Mr. P.K. Biswas, learned counsel for the petitioner and Mr. T.D. Majumder, learned Addl. Govt. Advocate appearing for the State

respondents.

3. Preface of the petitioner"s pleaded case is as follows :

The petitioner, a Nb/Sub (Clk) while discharging his duties in the said capacity under 8th Battalion of Tripura State Rifles (for short "8th Bn. TSR")

he was placed under suspension by the Commandant of the said Battalion of TSR by an order dated 21.6.2006 with immediate effect on the

ground that a criminal case was pending against him and he was released on bail in connection with the aforesaid criminal case when he

surrendered before the court. A disciplinary proceeding was initiated against him by the Commandant of the 8th Bn. TSR, respondent No. 4

herein, being the disciplinary authority vide memo dated 15.2.2006 (Annexure1 to the writ petition) under rule 14 of the Central Civil Services

(Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as "the CCS (CCA) Rules, 1965") read with rule 40 of TSR (Discipline,

Control, Service Conditions, etc. (DCSC) Rules, 1986 ("Rules of 1986") for commission of offence under section 12(1) of TSR Act, 1983 on

allegation that the petitioner took money from Rfn(GD) Indresh Roy and other members of 9th Bn. TSR and accordingly, the disciplinary authority

framed specific charges against the petitioner. But the petitioner by filing written statement denied all the charges levelled against him and as such an

enquiry officer was appointed for conducting the inquiry into the charges. Initially, the petitioner himself crossexamined the witnesses produced by

the presenting officer, but subsequently he wanted to engage a defence assistant and his prayer was allowed and accordingly his defence assistant

participated in the proceeding. While the disciplinary proceeding was on board, the petitioner filed an application on 7.10.2006 to the enquiry

officer for allowing his engaged defence assistant to crossexamine those witnesses whose evidences were closed on being crossexamined by the

petitioner himself. But as no order was passed on the said application, the petitioner again filed similar application, which was neither rejected nor

allowed by the enquiry officer. On the contrary, the enquiry officer concluded the examination of the witnesses and submitted his report to the

disciplinary authority along with the proceeding and the disciplinary authority on perusal of the report submitted by the enquiry officer awarded the

punishment as stated supra vide order dated 21.7.2007 holding that the charges levelled against the petitioner have been proved. Consequent

thereto, the petitioner preferred an appeal to the statutory appellate authority on the ground that the inquiry has not been done in accordance with

the procedure and the said inquiry was conducted in violation of the principles of natural justice, as the petitioner was not provided with the

reasonable opportunity to crossexamine the prosecution witnesses. It is also averred that the petitioner was not supplied with a copy of the inquiry

report relying on which the disciplinary authority awarded the punishment without recording his independent findings for which the petitioner has

been seriously prejudiced. But the appellate authority without considering the grounds taken by the petitioner dismissed the appeal by a

nonspeaking order. Hence, the instant writ petition.

4. The respondents contested the case of the petitioner by way of filing a detailed counteraffidavit denying the allegations made by the petitioner in

his writ petition.

5. The questions arise for consideration in this case are

(i) Whether the delinquent officer is entitled to reexamine the witnesses who were crossexamined ;

(ii) Whether nonfurnishing of copy of the inquiry report to the delinquent officer ipso facto prejudicial to him for violation of the principles of natural

justice and consequent thereto the disciplinary proceeding stands vitiated;

(iii) Whether the disciplinary as well as the appellate authorities are bound to give reasons even if they agree to or adopt the findings of the inquiring

authority.

6. Mr. Biswas, learned counsel for the petitioner has contended that there is no finding in the order of the disciplinary authority as well as in the

order of the appellate authority on the charges framed against the petitioner as well as the petitioner was also not furnished with a copy of the

inquiry report though the order of punishment was passed by the disciplinary authority only on perusal of the inquiry report and for nonsupply of

the copy of the inquiry report the petitioner has been seriously prejudiced. More so, the disciplinary authority failed to pass a speaking order,

which was his bounden duty and nonpassing of such a speaking order is itself arbitrary to the core and as such an arbitrary order cannot be upheld

by a court of law. In support of his aforesaid submission, Mr. Biswas relied on the decision of the Apex Court in The State of Punjab, etc. v.

Bakhtawar Singh and others etc., AIR 1972 SC 2083, particularly paras 12 and 13.

Mr. Biswas further contended that the impugned order of punishment is the evidence of nonapplication of mind by the disciplinary authority. He

also tried to controvert the contentions raised by the respondents in their counteraffidavit, inter alia, that the petitioner has been given two chances

for reexamination of the witnesses. Not only that nondisposal of the representation of the petitioner by the respondents has also displayed their

conduct towards the petitioner.

Learned counsel for the petitioner finally submits that the wrong committed by the disciplinary authority was followed by the appellate authority

while he dismissed the appeal as he did not express any reason in support of his order dismissing the appeal.

7. Mr. Dutta Majumder, learned Addl. Govt. Advocate appearing for the State respondents submits that the charges levelled against the petitioner

are serious in nature he being a member of the disciplinary force and the order of punishment passed by the disciplinary authority and upheld by the

appellate authority is just and proper. He also contends that mere nonfurnishing of copy of the inquiry report to the delinquent officer will not ipso

facto violates the principles of natural justice unless the delinquent officer makes out a specific case of prejudice for such nonfurnishing of copy of

the inquiry report. In support of his aforesaid submission, Mr. Dutta Majumder referred paragraphs 8 and 9 of the decision of the Apex Court in

Om Prakash Mann v. Director of Education (Basic) and Others, (2006) 7 SCC 558.

Mr. Dutta Majumder also contends that it is not necessary for the disciplinary authority to give any separate reason while he was agreeing with the

findings of the inquiring authority and on similar principle the appellate authority is also not bound to pass a reasoned order while he agrees to or

adopt the views/findings of the disciplinary authority at the time of disposal of the appeal. In support of his aforesaid submission, Mr. Dutta

Majumder referred paragraphs 9 to 11 of the decision of the Apex Court in National Fertilizers Ltd. and Another v. P.K. Khanna, (2005) 7 SCC

597.

Before conclusion of his argument, Mr. Dutta Majumder referring to paragraph 14 of the counteraffidavit filed by the respondents contended that

the application of the delinquent officer dated 7.10.2006 was not entertained by the enquiry officer on the ground that the same was not submitted

within the stipulated date and more so, the if enquiry officer had already completed the inquiry and the petitioner did not respond to the

communication of the inquiry officer dated 27.9.2006 ''within the stipulated date, i.e., 4.10.2006.

8. Before stepping into the discussion on the submission of the learned counsel for the parties, it would be better for proper understanding of the

matter to reproduce the articles of charges levelled against the petitioner in the disciplinary proceeding. Accordingly, the same are reproduced

hereunder :

ARTICLEI

That the said No. 92021065 Nb/Sub (Clk) Rajesh Kumar of 8th Bn. TSR (IRIII) while functioning as I/C establishment section in Main Office of

9th Bn. TSR committed an act of misconduct in the year 2004, in that he took money from Rfh. (GD) Indresh Roy and others of 9th Bn. TSR

illegally. His this Act constitutes a misconduct under section 12(1) of TSR Act. 1983.

ARTICLEII

That No. 92021065 Nb/Sub (Clk) Rajesh Kumar of 8th Bn. TSR (IRIII) while functioning in the capacity of I/C Establishment in 9th Bn. TSR

made corrupt practices in that took money, i.e., Rs. 3,000 (Rupees three thousands) from Rfn. (GD) Indresh Roy of 9th Bn. TSR, Rs. 1,000 +

2,000 = 3,000 (Rupees three thousands) from Rfn. (GD) Badhan Patari, he asked for Rs. 10,000 (Rupees ten thousand) from Rfn. (GD) Deepraj

Singh Bist for making good entries in his service book. Rs. 2,000 (Rupees two thousand) from Rfn. (GD) Tilu Ahamed and Rs. 2,000 (Rupees

two thousand) from Shri Ali Ajjeem father of Rfn. (GD) Tilu Ahamed and Rs. 1,000 (Rupees one thousand) from Rfn. (GD) Sidharta Roy all of

them of 9th Bn. TSR for providing them illegal privilege in the capacity of Establishment Clerk, which is illegal remuneration, from above mentioned

Riflemen, in exercise of his official function forbearing to do official act which was otherwise his duty. Thus, he has committed misconduct under

section 12(1) of TSR Act, 1983.

9. Now, this court is looking into the submissions of the learned counsel appearing for the rival parties, the contentions raised in the pleadings and

the questions arise for decision in the instant writ petition.

10. While examining the first point arises for decision, inter alia, that whether the delinquent officer is entitled to reexamine those witnesses who

were earlier crossexamined by him, this court is of the opinion that once the petitioner crossexamined the witnesses he has no right to reexamine

those witnesses only on the ground that on earlier occasion those witnesses were examined by himself, not by his defence assistant unless the

delinquent officer makes out a specific ground for such reexamination. More so, it appears from the record that the petitioner himself has stated

that the himself would act as defence assistant in connection with the disciplinary proceeding before the engagement of Shri Tushar Kanti

Bhattacharjee as his defence assistant. Therefore, it cannot be said that the enquiry officer failed to discharge his duties, rather the petitioner himself

invited the situation for rejection of his application for reexamination of the witnesses as he did not answer to the radiogram dated 27.9.2006

whereby he was asked to submit his documents and the names of witnesses in support of his defence in connection with the disciplinary proceeding

by 4.10.2006 positively for taking further action. Therefore, it cannot be said that rejection of the prayer of the petitioner for reexamination of the

witnesses is a procedural defect and he has been prejudiced for such rejection of his prayer. More so, there is no allegation of mala fide and/or

bias on the part of the enquiry officer for such rejection of the prayer of the petitioner for reexamination of the witnesses.

11. The point No. (ii), inter alia, that whether nonfurnishing of copy of the inquiry report to the petitioner ipso facto prejudicial to the petitioner and

consequent thereto the disciplinary proceeding stands vitiated is no longer res integra as by this time it has been settled that nonsupply of copy of

inquiry report to the delinquent officer shall not so facto vitiate the disciplinary proceeding unless the delinquent officer shows as to how and in

what manner he has been prejudiced for nonfurnishing of the copy of the inquiry report.

12. Before referring to the decisions on the aforesaid point, it would be proper for this court to discuss what is ''prejudice''. ''Prejudice'' means

preconceived judgment or a judgment before decision. According to the Block''s Law Dictionary (Sixth Edition), ''prejudice'' is a fore judgment,

bias, partiality, preconceived opinion. More particularly it can be said that ''prejudicial'' means disadvantageous, harmful, etc. According to

Webster''s Third New International Dictionary (Vol. II), 1966 Edition, page 1788, ''prejudice'' means injury or damage due to some judgment or

action of another : preconceived judgment or opinion : an opinion or judgment formed beforehand or without due examination : to injure or damage

by some judgment or action usu. Now, question arises whether it is necessary for the petitioner to show how and in what manner he has been

affected for nonfurnishing of the copy of the inquiry report and not only that such nonfurnishing itself is a disadvantageous one for preferring the

statutory appeal as of his right embodied under the statute.

13. In Managing Director, ECIL, Hyderabad & Ors. v. K. Karunakar & Ors., AIR 1994 SCW1050, the Apex Court held

... The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the

individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in

fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and

circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a

perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the

guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an ""unnatural expansion of natural justice"" which

in itself is antithetical to justice.

It was further opined :

... If after hearing the parties, the Court/Tribunal comes to the conclusion that the nonsupply of the report would have made no difference to the

ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not

mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts

should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for

setting aside or not setting aside the order of punishment (and not any internal appellate or revisional authority), there would be neither a breach of

the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would

have made a difference to the result in the case that it should set aside the order of punishment.

14. Mr. T.D. Majumder, learned Covt. Advocate rightly pointed out the observations of the Apex Court in paras 8 and 9 of the judgment in Om

Prakash Mann (supra) wherein the Apex Court held

8. The second ground that no copy of the enquiry report had been furnished to the appellant thereby violating the principle of natural justice has

also no substance. On this ground the learned Judge recorded a finding that the appellant was unable to show as to how he has been prejudiced

for nonfurnishing of the copy of the report. We agree with the finding of the learned Judge of the High Court.

9. By now it is wellsettled principle of law that the doctrines of principle of natural justice are not embodied rules. They cannot be applied in a

straitjacket formula. To sustain the complaint of violation of principle of natural justice one must establish that he has been prejudiced by the

nonobservance of the principle of natural justice. As held by the High Court the appellant has not been able to show as to how he has been

prejudiced by nonfurnishing of the copy of the enquiry report. The appellant has filed a detailed appeal before the appellate authority which was

dismissed as noticed above. It is not his case that he has been deprived of making effective appeal for nonfurnishing of copy of enquiry report. He

has participated in the enquiry proceedings without any demur. It is undisputed that the appellant has been afforded enough opportunity and he has

participated throughout the enquiry proceedings. He has been heard and allowed to make submission before the Enquiry Committee"".

From the above, it is clear that to sustain the complaint with regard to violation of principle of natural justice, one must establish that he has been

prejudiced by nonobservance of the principle of natural justice.

15. After going through the contentions of the learned counsel for the parties and the records, it appears that the petitioner for the first time raised

the plea of his prejudice before the appellate authority, but when he raised such plea, he failed to establish how and in what manner he has been

prejudiced for nonfurnishing of copy of the enquiry report. It further appears from the record that the petitioner was allowed to represent by

defence assistant and personally heard by the disciplinary authority as well before imposing the award of punishment by which he was reverted

from the rank of Nb/Sub (Clk) to Hav (Clk) for a period of three years. There is no such materials on record from where a court can come to a

conclusion that the disciplinary authority formed any opinion before passing the impugned order of punishment for which the petitioner in any way

was injured from exercising his any of the rights including the right to appeal. Hence, according to this court the plea of prejudice for nonfurnishing

of copy of the enquiry report fails and since the petitioner has failed to show as to how and in what manner he has been prejudiced, it can be easily

held by this court that there was no violation of principle of natural justice and hence, the question of vitiating the disciplinary proceeding does not

arise at all.

16. Now, the only question remains for this court to answer is whether the disciplinary as well as the appellate authorities are bound to give

reasons even if they agree to or adopt, the findings of the inquiring authority.

17. Mr. Biswas, learned counsel for the petitioner submits that failure of the disciplinary authority as well as the appellate authority to pass speaking

order by giving reasons is nothing but nonapplication of their mind. In support of this contention, he referred paragraphs 12 and 13 of Bakhtawar

Singh (supra}. For better appreciation, the aforesaid two paragraphs are quoted hereunder :

12. Now coming to Shri Rajinder Pal Abrol, all the charges levelled against him related to alleged acts and omissions prior to his appointment as a

member of the Board. That apart, the order of the Minister removing him does not disclose that he had applied his mind to the material on record.

That order does not show what charges against Shri Abrol have been established. The order reads:

I have gone through the charges and the explanation furnished by Shri R.P. Abrol. From the material on the file, I am definitely of the opinion that

he is not a fit person to be retained as parttime member of the Electricity Board. I, therefore, order that Shri Abrol may be removed from

membership under subclause (iv) of clause (e) of subsection (1) of Section 10 of the Electricity Supply Act, 1948.

C.M. may kindly see. After C.M. has seen, immediate orders be issued.

Sd/ Sohan Singh Basi

I.P.M.

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13. This order cannot be said to be a speaking order. It is arbitrary to the core. Such an order cannot be upheld. Hence, it is not necessary to go

into the other contentions advanced on behalf of Shri Abrol.

18. According to this court, the facts of Bakhtawar Singh (supra) is totally different from the case in hand. In that case the charges levelled against

the delinquent officer, namely Shri Rajinder Pal Abrol related to alleged act and omission prior to his appointment as a member of the board. That

apart, the order of the Minister removing the said delinquent officer does not disclose that he had applied his mind in the materials on record. But in

the instant case, it appears from the order of the disciplinary authority dated 21.7.2007 (Annexure4 to the writ petition) that he had carefully gone

through the enquiry report and found that the enquiry officer conducted the enquiry as per rules and procedure on the subject and the delinquent

officer was given full opportunity. Not only that the enquiry officer informed the delinquent officer regularly before recording the statement of

prosecution witnesses, to attend the proceeding and defend his case. The disciplinary authority also recorded in his order that from the findings of

the enquiry officer it is clearly established that the charged Nb/Sub (Clk) Rajesh Kumar habitually attempted to accept money from TSR personnel

in exercising official function and accepted money in his official capacity as the I/C establishment of 9th Bn. TSR (IRIV). After perusal of the

enquiry report, the disciplinary authority called the delinquent officer on 21.7.2007 for personal hearing and after hearing the petitioner and looking

into his family liability and poor economic background, the disciplinary authority took the lenient view and passed the impugned order of reversion.

Therefore, it cannot be said that the disciplinary authority did not apply his mind while passing the impugned order. According to this court, the

moment the disciplinary authority agrees to or adopts the findings/views of the enquiry authority; the findings views expressed and/or passed by the

enquiry authority no longer remain its views, rather leading to the views of the disciplinary authority on application of the doctrine of merger.

Hence, it is not necessary for the disciplinary authority to give any separate findings or reasons after the findings of the enquiry authority he accepts

or adopts.

19. In the instant case, it appears from the record of the disciplinary proceeding that the disciplinary authority accepted and/or agreed to or

adopted the findings of the inquiring authority. Hence, no separate finding is required to be given by the disciplinary authority. On similar principle

since the appellate authority agreed to or adopted the findings/views of the disciplinary authority in the appeal filed by the petitioner and passed an

order, it was also not necessary for the appellate authority to pass its order with detailed reasons as the reasons stated by the disciplinary authority

ultimately became the findings/views of the appellate authority. The aforesaid observation of this court is supported by the decision of the Apex

Court in National Fertilizers Ltd. (supra) as relied on by Mr. T. Dutta Majumder, learned Addl. Govt. Advocate wherein the Apex Court

particularly in paras 9, 10 and 11 specifically held that disciplinary authority is required to give reasons only when it disagrees with the findings of

the enquiry officer and not when it concurs with that findings. For better appreciation, paras 9, 10 and 11 of the aforesaid decision are reproduced

herein below :

9. Apart from misreading the enquiry officer''s report, the High Court also misapplied the law. The various decisions referred to in the impugned

judgment make it clear that the disciplinary authority is required to give reasons only when the disciplinary authority does not agree with finding of

the enquiry officer. In this case the disciplinary authority had concurred with the findings of the enquiry officer wholly. In Ram Kumar v. State of

Haryana the disciplinary authority after quoting the content of the chargesheet, the deposition of witnesses as recorded by the enquiry officer, the

finding of the enquiry officer and the explanation submitted by the employee passed an order which, in all material respects, is similar to the order

passed by the disciplinary authority in this case. Learned counsel appearing on behalf of the respondent sought to draw a distinction on the basis

that the disciplinary authority, had in Ram Kumar case itself quoted the details of the material. The mere quoting of what transpired would not

amount to the giving of any reasons. The reasons were in the penultimate paragraph which we have said virtually used the same language as the

impugned order in the present case. This court dismissed the challenge to the order of punishment in the following words :

''8. In view of the contents of the impugned order, it is difficult to say that the punishing authority had not applied his mind to the case before

terminating the services of the appellant. The punishing authority has placed reliance upon the report of the enquiry officer which means that he has

not only agreed with the findings of the enquiry officer, but also has accepted the reasons given by him for the findings. In our opinion, when the

punishing authority agreed with the findings of the enquiry officer and accepts the reasons given by him in support of such findings, it is not

necessary for the punishing authority to again discuss evidence and come to the same findings as that of the enquiry officer and give the same

reasons for the findings. We are unable to accept the contention made on behalf of the appellant that the impugned order of termination is vitiated

as it is a nonspeaking order and does not contain any reason. When by the impugned order the punishing authority has accepted the finding as of

the enquiry officer and the reasons given by him, the question of noncompliance with the principles of natural justice does not arise. It is also

incorrect to stay that the impugned order is not a speaking order''.

We respectfully adopt the view. The position is further clarified by Rule 33 of the Employees (Conduct, Discipline and Appeal) Rules. It reads as

follows :

1. The disciplinary authority, if it is not itself the enquiring authority may, for reasons to be recorded by it in writing remit the case to the enquiring

authority for fresh or further enquiry and report and the enquiring authority shall thereupon proceed to hold further enquiry according to the

provisions of rule 32 as far as may be.

2. The disciplinary authority shall, if it disagrees with the findings of the enquiring authority on any article of charge, record its reasons for such

disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

3. If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in

rule 29 should be imposed on the employee shall, notwithstanding anything contained in rule 37, make an order imposing such penalty.

4. It the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that no penalty is called for, it may

pass an order exonerating the employee concerned.

10. It is apparent from subrule (2) that the disciplinary authority is not required to record its reasons if it concurs with the enquiry officer''s findings

in contradiction with the situation in which the disciplinary authority disagrees with the findings of the enquiring authority. Only in the latter case

does subrule (2) expressly mandate that the disciplinary authority shall, if it disagrees with the findings of the enquiry officer record its reasons for

such disagreement as well as its own findings on such charges.

11. The respondent''s reliance on the decision in M.D.Ecil v. B. Karunakar is misplaced. That decision relates to the right of a delinquent officer to

a copy of the enquiry officer''s report. In the course of the judgment, the court had no doubt said that the report of the enquiry officer is required to

be furnished to the employee to make proper representation to the disciplinary authority before such authority arrives at its own finding with regard

to the guilt or otherwise of the employee and the punishment, if any, to be awarded to him. By using the phrase ""its own finding"" what is meant is an

independent decision of the disciplinary authority. It does not require the disciplinary authority to record separate reasons from those given by the

enquiry officer. The concurrence of the disciplinary authority with the reasoning and conclusion of the enquiry officer means that the disciplinary

authority has adopted the conclusion and the basis of the conclusion as it own. It is not necessary for the disciplinary authority to restate the

reasoning.

20. In National Fertilizers Ltd. (supra), the Apex Court discussed Rules 32 and 33 of the National Fertilizers Limited Employees (Conduct,

Discipline and Appeal) Rules, which are para materia to rules 14 and 15 of the CCS (CCA) Rules, 1965 respectively. Therefore, the answer to

the point No. (iii) is also given in negative.

21. In Dharamraj Kumar Singh v. Union of India & Others, 2007 LAB. I.C. 2680 a Division Bench of this court held that discipline in the force is

the sine qua non and if the member of such disciplined force becomes indiscipline like the delinquent petitioner, consequence will be nothing but

nullification of the force, which is recognized by virtue of its discipline. In Union of India v. Narain Singh, (2002) 5 SCC 11, the Apex Court also

observed that insofar as punishment imposed on the member of a disciplined force is concerned, power of writ court to interfere with such

punishment is severely restricted and ought to be rightly exercised. By now it is wellsettled principles of law that judicial review is not against the

decision, rather against the decisionmaking process and it is also the duty of the charged employee to maintain the position of trust, honesty and

integrity for which he was employed and when the said honesty, integrity and trust are in question in a disciplinary proceeding, he cannot expect

that the disciplinary authority will not take any action against him. This Court is opinion that whenever the disciplinary authority found any

indiscipline in the disciplinary force, that has to be checked with iron hand so that for one person the entire force should not be demoralized. The

aforesaid views of this court get support from the decision of the Apex Court in the case of Regional Manager, U.P.S.R.T.C. v. Hoti Lal, AIR

2003 SCW 801, wherein their Lordships in para 14 observed as under :

14. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to

deal with the matter leniently. Misconduct in such cases has to bo dealt with iron hands. Where the person deals with public money or is engaged

in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in

that background, conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of

learned Single Judge upholding the order of dismissal.

22. In the instant case when the alleged charge of monitory transaction has been proved, it cannot be said that the order of punishment is severe in

nature, rather as it appeared from the record, the disciplinary authority looking into the family liability of the petitioner and his poor economic

background took the lenient view and passed the impugned order of reversion. Hence, it cannot be said that the punishment is disproportionate to

the alleged offence.

23. In view of the aforesaid observations and reasons, this court is unable to accept the submission of Mr. P.K. Biswas, learned counsel for the

petitioner and at the same time finds force in the submission of Mr. T.D. Majumder, learned Addl. Govt. Advocate appearing for the State

respondents. Consequently, this court is of the view that the impugned orders dated 21.7.2007 (Annexure4 to the writ petition) and 20.11.2007

(Annexure6 to the writ petition) do not call for any interference by this court.

24. In the result, the instant writ petition being devoid of any merit is hereby dismissed leaving the parties to bear their own cost.