

WP(C) No. 444 of 2020

Date of order: 22.03.2022

Union of India & Ors. Vs. No. 5450016 Dharamvir Singh

**Coram:**

**Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice**  
**Hon'ble Mr. Justice W. Diengdoh, Judge**

**Appearance:**

For the Petitioner/Appellant(s) : Dr. N. Mozika, Sr. Adv. with  
Ms. L. Jana, Adv.

For the Respondent(s) : Ms. P. Agarwal, Adv.

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

**JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)**

The petition under Article 226 of the Constitution is directed against an order of March 15, 2019 passed by the Guwahati Bench of the Central Administrative Tribunal on the respondent's petition before it. The respondent had challenged a punishment order of removal from service handed down to him by communication of March 25, 2016. The final order in the disciplinary proceedings also found that the period during which the respondent was absent would be treated as unauthorised absence from duty and the salary and emoluments paid would be recovered.

2. By the order of March 15, 2019, the Tribunal held "that though a semblance of disciplinary proceedings was attempted ... but no proper inquiry was actually conducted." According to the Tribunal, the respondent herein was not given any opportunity to defend himself nor furnished the record of pleadings on which the charge was founded. In such circumstances, the operative part of the order, found at paragraph 12 thereof, recorded as follows:

"12. ... As such, we found that the inquiry purported to have been conducted by the respondent authorities was highly vitiated, bad in law and liable to be set aside. Accordingly, the Disciplinary

Authority's order No. 112015/A (Discp)/HT-21Sect/2016 dated 25.03.2016 is hereby set aside and quashed. The applicant may be reinstated with immediate effect with all consequential benefits. The period of absence, however, may be settled by granting him leave as admissible to the applicant.”

3. Ordinarily, when an order of punishment passed on the culmination of any disciplinary proceedings is challenged, there are, primarily, three avenues open to the forum looking into the validity of the action or the punishment awarded: the challenge may be repelled; or, the punishment may be undone or reduced; or, the proceedings may be quashed in full or in part, with or without liberty to start afresh or from a specified stage.

4. It is the third limb that was resorted to in this case and, without the order expressly providing otherwise, the implication thereof is that the proceedings stand quashed without the employer having any authority to revive the same. Such a drastic order may be passed, but only upon the forum recording a satisfaction that the very show-cause notice on the basis of which the disciplinary proceedings were initiated was bad. Judicial precedents instruct that it is a tall order for a show-cause notice to be quashed, just like an FIR may be quashed only in the rare case when no ingredients of any offence is made out therein.

5. The order speaks of procedural lapses that resulted in serious prejudice and the respondent herein not being afforded an opportunity to adequately defend himself. The order does not refer to the proceedings being bad *ab initio*. There is no observation as to the mendacity of the show-cause notice issued or the charges forwarded or the statement of imputation of conduct pertaining thereto. Indeed, it appears that what the Tribunal intended was to only quash and set aside the order of punishment and not quash the proceedings; but it failed to expressly give leave for the employer to continue with the disciplinary proceedings from the show-cause stage or from any other subsequent stage.

6. Accordingly, the order dated March 15, 2019 passed by the Tribunal is modified by not interfering with that part thereof that quashed the penalty and the final order passed in the disciplinary proceedings, but by granting leave to the writ petitioner-employer to continue with the proceedings from

the stage of the reply to the charges having been filed by the respondent. If no reply was used, the respondent will be entitled to furnish his reply within a fortnight of the employer calling upon him to do so. The further proceedings will be conducted by affording a reasonable opportunity to the respondent to defend himself and any report furnished in course thereof or order passed therein should not be unduly influenced by the order of the Tribunal.

7. The entire exercise should be completed by the employer by August 31, 2022 and the respondent will not be entitled to seek any adjournment in course of the proceedings.

8. WP(C) No. 444 of 2020 is disposed of.

9. There will be no order as to costs.

**(W. Diengdoh)**  
**Judge**



**(Sanjib Banerjee)**  
**Chief Justice**

Meghalaya  
22.03.2022  
"Sylvana PS"