GAHC010199752017

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WRIT PETITION (C) No. 4737/2017

Shri Bhupendra Nath Deka, S/o Late Chittra Mohan Deka, Resident of Village Batikuriha, Post Office Bhella Under Barpeta Police Station, District – Barpeta, Assam - 781309.

……***Petitioner***

-Versus-

1. State of Assam represented by the Commissioner and Secretary, Judicial Department, Government of Assam, Dispur, Guwahati-6.
2. Gauhati High Court, represented by the Registrar General, Gauhati High Court, Guwahati-1.
3. Chief Judicial Magistrate, Barpeta, Assam-781301.
4. Additional Chief Judicial Magistrate, Barpeta, Assam-781301.

……***Respondents***

Advocates :

Petitioners : Mr. K. Sarma, Advocate

Respondent no. 1 : Mr. B.J. Talukdar, Senior Counsel
: Mr. P.K. Medhi, Advocate

Respondent nos. 2, 3 & 4 : Mr. H.K. Das, Standing Counsel
Gauhati High Court
: Mr. N.K. Sharma, Advocate.

Date of Hearing, Judgment & Order : 29.02.2024

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
JUDGMENT & ORDER [ORAL]

The writ petitioner seeking to invoke the extra-ordinary and discretionary jurisdiction of this Court under Article 226 of the Constitution of India, has preferred the instant writ petition assailing an Order under Memo no. CJM/BAR/2017/598[A] dated 16.03.2017 passed by the learned Chief Judicial Magistrate, Barpeta as the Appointing Authority-cum-Disciplinary Authority in a discipline proceeding, D.P. no. 1/2013. By the impugned Order dated 16.03.2017, the Appointing Authority-cum-Disciplinary Authority had imposed a penalty of stoppage of three increments without cumulative effect under Rule 7[ii] of the Assam Services [Discipline and Appeal] Rules, 1964 upon the petitioner as the delinquent.

2. The sequence of events which have led the petitioner to prefer the present writ petition can be exposited, in brief, as follows :-

2.1. The petitioner was initially appointed as a Lower Division Assistant [LDA] in the establishment of the learned Chief Judicial Magistrate, Barpeta [the respondent no. 3] on 01.02.1982. Thereafter, the petitioner was transferred to the establishment of the learned Sub-Divisional Judicial Magistrate, Bajali, Pathsala on 01.03.1996 and at the time of preferring the writ petition, the petitioner was serving as an Upper Division Assistant [UDA] in the said establishment.

2.2. On 10.05.2002, a First Information Report [FIR] came to be lodged by the then Assistant Executive Engineer, Assam State Electricity Board [ASEB], Barpeta Road Division before the Officer In-Charge, Barpeta Police Station stating *inter alia* that the accused persons, named therein, had illegally connected electricity in their respective houses situate at Borbila and Batikuriha villages. The FIR mentioned that such illegal connections of electricity were done with overhead electricity lines through hooking from their respective houses and finding such illegal connections, the ASEB got them disconnected. On the basis of the said FIR, a crime case, Barpeta Police Station Case no. 177/2002 was registered for commission of offences under Section 379, Indian Penal Code r/w Section 39 of the Electricity Act. The petitioner was arrested during the course of investigation of the said case as the petitioner and few other persons were implicated as accused persons therein. After completion of investigation, the police submitted a charge sheet against four accused persons including the petitioner herein.

2.3. Initially, all the four accused persons appeared before the learned trial

court but subsequently, one of the accused persons, Pramod Chandra Das failed to appear to face the trial and the learned trial court, after declaring him as an absconder, proceeded with the trial against the other three accused persons. The learned trial court of Additional Sessions Judge [FTC] at Barpeta finding *prima facie* materials against the accused persons, framed the charge under Section 135[1][a] of the Electricity Act. When the accused persons pleaded not guilty, the trial proceeded and in the course of the trial, the prosecution examined four witnesses including the Investigating Officer to bring home the charge against the accused persons. The defence case was one of total denial but the accused persons did not adduce any evidence in defence.

2.4. The learned trial court after appreciation of evidence, reached a finding that the accused persons – Bhupendra Nath Deka [the petitioner] and Ajit Das had committed the offence by connecting their houses with illegal electric connections through hookings from the main electric line of the concerned area without any authority. The learned trial court found the two accused persons including the petitioner, guilty of the offence under Section 135 [1][a] of the Electricity Act and had accordingly convicted both of them. The learned trial court was of the view that because of the seriousness of the offence, the accused persons could not be dealt with either under Section 360, Code of Criminal Procedure, 1973, [Cr.P.C] or under Section 4 of the Probation of Offenders Act, 1958. After hearing the accused persons on the point of sentence under Section 235[2], Cr.P.C., the learned trial court by its Judgment and Order dated 15.09.2012, convicted both the accused persons under Section 135[1][a] of the Electricity Act and sentenced them to pay a fine of Rs. 5,000/- [Rupees Five Thousand] each, in default of payment of the fine, to undergo simple

imprisonment for a period of 2 [two] months. One of the accused persons viz. Gobinda Talukdar was acquitted on benefit of doubt and he was set at liberty forthwith.

2.5. On being so convicted and sentenced by the Judgment and Order in Sessions Case no. 4/2011, the petitioner deposited the fine amount of Rs. 5,000/- before the learned trial court of Additional Sessions Judge [FTC] at Barpeta on 12.10.2012.

2.6. After being convicted and sentenced in Sessions Case no. 4/2011, the petitioner was served with a Show Cause Notice dated 15.10.2012 by the respondent no. 3 as the Disciplinary Authority stating that it had come to the notice of the Disciplinary Authority that the petitioner-noticee was found involved in a criminal offence under Section 135[1][a] of the Electricity Act under which he had been found guilty and convicted by the learned trial court of Additional Sessions Judge [FTC], Barpeta on 15.09.2012 in Sessions Case no. 04/2011 with imposition of a fine of Rs. 5,000/-. By the Show Cause Notice, the Disciplinary Authority had conveyed that being a government servant whose conditions of services were governed by the provisions of the Assam Services [Discipline and Appeal] Rules, 1964 ['the 1964 Rules' or 'the Rules, 1964', for short], the petitioner shall have to show cause as to why disciplinary action against him should not be taken under Rule 6 r/w Rule 7 r/w Rule 10[1] of the 1964 Rules as the offence committed by the petitioner was found to be an offence involving moral turpitude. The petitioner was asked to submit his reply to the Show Cause Notice within a period of 15 days from 15.10.2012.

2.7. The Show Cause notice was followed by a Memorandum of Charge dated 20.06.2013. By the Memorandum of Charge, the petitioner was directed to show cause under Rule 9 of the 1964 Rules r/w Article 311 of the Constitution of India as to why any of the penalties as specified in Rule 7 of the 1964 Rules should not be imposed upon the petitioner based on the Statement of Allegations annexed therewith. As per the Statement of Allegation which accompanied the Memorandum of Charge, the petitioner while serving as the Upper Division Assistant [UDA] in the establishment of the Sub-Divisional Judicial Magistrate, Bajali, Pathsala was found to have been convicted in Sessions Case no. 4/2011 and was sentenced to pay a fine of Rs. 5,000/- under Section 135[1][a] of the Electricity Act and though the petitioner was found to have deposited the fine amount but the act amounted to an act involving moral turpitude, misconduct and in violation of the service discipline. The charge sheet was accompanied with a List of Documents and a List of Witnesses. The List of Documents consisted of [i] a certified copy of the Judgment and Order dated 15.09.2012, [ii] the petition submitted by the petitioner on 12.10.2012 for deposit of the fine amount of Rs. 5,000/-; and [ii] a receipt dated 12.10.2012, acknowledging receipt of the fine amount of Rs. 5,000/-. The List of Witnesses included a Bench Assistant and the Additional Public Prosecutor.

3. In the Reply to the Memorandum of Charge sheet, submitted on 01.07.2013, the petitioner had admitted that he had deposited the fine amount of Rs. 5,000/- in compliance of the Judgment and Order dated 15.09.2012 passed in Sessions Case no. 04/2011. The petitioner had further informed that he had already preferred a criminal appeal before this Court on 14.12.2012 and the said criminal appeal had been registered and numbered as Criminal Appeal

no. 169/2013. As the said criminal appeal was pending on the date of submission of the Reply to the Memorandum of Charge, that is, on 01.07.2013, the petitioner requested the Disciplinary Authority not to proceed further in the disciplinary proceeding on the basis of the Memorandum of Charge and had prayed for keeping the disciplinary proceeding in abeyance till the outcome of the criminal appeal, Criminal Appeal no. 169/2013.

4. The criminal appeal, Criminal Appeal no. 169/2013 came up for consideration on 25.07.2013 before the appellate court. It was submitted on behalf of the petitioner appellant therein that he could be released on probation of good conduct under Section 4 of the Probation of Offenders Act, 1958. In view of such prayer made on behalf of the petitioner-appellant, the appellate court while dismissing the criminal appeal, had modified sentence by allowing the petitioner-appellant to go on probation of good conduct under Section 4 of the Probation of Offenders Act, 1958 within a period of 4 [four] weeks therefrom after execution of a bond to the satisfaction of the learned trial court.

4.1. After the Order dated 25.07.2013 of the appellate court, the petitioner approached the learned trial court of Additional Sessions Judge [FTC], Barpeta on 27.08.2013 seeking leave to execute a bond in terms of the appellate court's order. The learned trial court considered the petition and the Order dated 13.07.2013 of the appellate court and allowed the petitioner to go on probation of good conduct after executing a bond under Section 4 of the Probation of Offenders Act, 1958.

5. The disciplinary proceeding which was initiated by Memorandum of Charge

dated 20.06.2013 had proceeded, in the meantime, before the Enquiry Officer, that is, the Additional Chief Judicial Magistrate, Barpeta. The Enquiry Officer heard the Presenting Officer as well as the the delinquent, that is, the petitioner. The Enquiry Officer took note of the fact that the petitioner had already been convicted and sentenced by a court of competent jurisdiction in Sessions Case no. 4/2011 under Section 135[1][a] of the Electricity Act vide the Judgment and Order dated 15.09.2012. The Enquiry Officer also took note of the fact that the petitioner had already deposited the fine amount before the learned trial court immediately thereafter on 12.10.2012 and it was after the dismissal of the criminal appeal by the High Court vide Order dated 25.07.2013 with the condition that the petitioner could be allowed to be released on probation of good conduct, the petitioner executed the bond on 27.08.2013. The Enquiry Officer had, thus, observed that on the basis of such materials on record, the only point that remained to be decided was whether the fact of releasing the delinquent on probation had diluted the offence committed by the petitioner and has mitigated his moral turpitude. Observing that the offence committed by the petitioner showed his total disregard and disrespect towards his duty vis-a-vis his official position as well as to the society, the Enquiry Officer in his Enquiry Report dated 02.05.2016 had reached a finding that the act committed by the petitioner would fall in the category of offences involving moral turpitude and the fact of his release on probation of good conduct would not mitigate his guilt.

6. The Enquiry Report dated 02.05.2016 submitted by the Enquiry Officer in D.P. no. 1/2013 was thereafter, forwarded to the petitioner by the Disciplinary Authority on 22.12.2016 asking the petitioner to furnish his comments on the Enquiry Report within a period of 15 days for taking further follow-up action as

per law and rules thereof. On receipt of the Enquiry Report, the petitioner submitted a Representation before the Disciplinary Authority to drop the disciplinary proceeding drawn up against him.

7. The Disciplinary Authority concurred with the findings of the Enquiry Officer that the act committed by the petitioner would fall in the category of offences involving moral turpitude. The Enquiry Report was accepted by the Disciplinary Authority and the Disciplinary Authority was of the opinion that the case was a fit case for awarding penalty under Rule 7 of the 1964 Rules. The Disciplinary Authority had observed that the fact of releasing the petitioner on probation of good conduct would not mitigate his guilt and the Disciplinary Authority did not find any reason to entertain the Representation submitted by the petitioner with the prayer to drop the disciplinary proceeding. The Disciplinary Authority, who was also the Appointing Authority, had by the Order dated 16.03.2017, imposed a penalty of stoppage of three increments without cumulative effect as per the provisions under Rule 7[ii] of the Assam Services [Discipline and Appeal] Rules, 1964 upon the petitioner.

8. I have heard Mr. K. Sarma, learned counsel for the petitioners; Mr. B.J. Talukdar, learned Senior Counsel assisted by Mr. P.K. Medhi, learned counsel for the respondent no. 1; and Mr. N.K. Sharma, learned counsel representing Mr. H.K. Das, learned Standing Counsel, Gauhati High Court for the respondent nos. 2, 3 & 4.

9. Mr. Sarma, learned counsel for the petitioners has submitted that the learned appellate court by Order dated 25.07.2013 had modified the sentence

from fine of Rs. 5,000/- to release on probation of good conduct under Section 4 of the Probation of Offenders Act, 1958 and since there was nothing adverse in the subsequent period, the impugned Order dated 16.03.2017 of the Disciplinary Authority is liable to be set aside. He has further contended that the procedure prescribed for disciplinary proceeding under the 1964 Rules was not followed during the course of the disciplinary proceeding and as a result, the disciplinary proceeding stood vitiated. It is his further submission that the penalty imposed on the petitioner is harsh and disproportionate to the nature of alleged misconduct. He has submitted that as the petitioner has retired from service, in the meantime, on reaching age of superannuation, the same has serious adverse effect on the pensionary benefits of the petitioner. In support of his submissions, Mr. Sarma, learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court of India in State of Uttar Pradesh and others vs. Saroj Kumar Sinha, reported in [2010] 2 SCC 772.

10. In response, Mr. N.K. Sharma has submitted that release of an offender on probation of good conduct under Section 4 of the Probation of Offenders Act, 1958 would not imply that the conviction has been removed. It is only the sentence which has been converted to one of release of the offender on probation of good conduct. As regards the procedure followed in the course of the disciplinary proceedings, he has submitted that there is no violation of the principles of natural justice. The petitioner himself during the course of the disciplinary proceeding had admitted that he had been convicted and sentenced for committing theft of electricity. As regards the submission advanced by the petitioner that the penalty is harsh and disproportionate, it has been controverted by submitting that the petitioner was earlier imposed a penalty of

withholding of three increments with cumulative effect by an Order dated 05.02.2011. The petitioner had never challenged the said penalty, meaning thereby, he had accepted the said penalty. It is the second occasion the petitioner has been imposed a penalty under the 1964 Rules and as such, it cannot be said that the penalty imposed is harsh and disproportionate. To buttress his submissions, Mr. Sharma has referred to the decisions of the Hon'ble Supreme Court of India in Union of India and others vs. Bakshi Ram, reported in [1990] 2 SCC 426, and Sushil Kumar Singhal vs. Regional Manager, Punjab National Bank, reported in [2010] 8 SCC 573.

11. Mr. Talukdar, learned Senior Counsel appearing for the respondent no. 1 has also submitted in similar lines as Mr. Sarma and has further submitted that the petitioner has already been leniently dealt with and as such, the present case is not a case for any interference.

12. I have considered the submissions of the learned counsel for the parties and have also perused the materials brought on record by the parties through their pleadings. I have also gone through the decisions cited by the learned counsel for the parties in support of their respective submissions.

13. There is no dispute to the factual matrix, as already narrated in paragraphs 2 to 6 above. The petitioner was convicted of the offence under Section 135[1][a] of the Electricity Act and was sentenced to pay a fine of Rs. 5,000/-, in default of payment of fine, to undergo simple imprisonment for a period of 2 [two] months. Section 135 of the Electricity Act is an offence in connection with theft of electricity. As per Section 135[1][a], whoever, dishonestly, taps, makes

or causes to be made any connection with overhead, underground or underwater lines or cables, or service wires, or service facilities of a licensee or supplier as the case may be; so as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both. The allegation against the petitioner was that he made illegal connection of electricity for his residential house with the overhead wire through hooking. The learned trial court after appreciation of the evidence led by the prosecution, had reached the finding that the prosecution had established that the petitioner illegally connected the electric connection without making any payment and the illegal electricity connection was detected and subsequently disconnected by the officials of the ASEB. When the petitioner preferred the appeal before this Court vide Criminal Appeal no. 169/2013, the appeal came to be dismissed by an Order dated 25.07.2013. It was on the prayer of the petitioner as the appellant that he could be released on probation of good conduct under Section 4 of the Probation of Offenders Act, 1958, the appellate court had modified the sentence from a fine of Rs. 5,000/- to one on release on probation of good conduct on execution of a bond.

14. As per sub-section [1] of Section 4 of the Probation of Offenders Act, 1958, when any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released

on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behavior, provided, that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond. From a reading of the provision contained in sub-section [1] of Section 4 of the Probation of Offenders Act, 1958, it is evidently clear that the Court having regard to the circumstances of the case including the nature of the offence and the character of the offender, can release an offender on probation of good conduct if it is found expedient instead of sentencing him at once to any punishment. Thus, it is clear that when a court releases an offender on probation of good conduct, the conviction part does not stand obliterated, meaning thereby, the conviction part remains and it is only the sentence part which the offender does not have to undergo if he is released on probation of good conduct.

15. The Hon'ble Supreme Court of India in Bakshi Ram [supra] has held that a Court while invoking the provisions of Section 3 or Section 4 of the Probation of Offenders Act, 1958 does not deal with the conviction; it only deals with the sentence which the offender has to undergo. Instead of sentencing the offender, the Court releases him on probation of good conduct. The conviction however, remains untouched and the stigma of conviction is not obliterated. It has been observed in Sushil Kumar Singhal [supra] to the effect that conviction in a criminal case is one part of the case and release on probation is another. Grant

of benefit of the provisions of the Probation of Offenders Act, 1958 only enables the delinquent not to undergo the sentence on showing his good conduct during the period of probation. It has been held to the effect that conviction of an employee in an offence permits the Disciplinary Authority to initiate disciplinary proceeding against the employee or to take appropriate steps for his dismissal/removal only on the basis of his conviction. An employee cannot claim a right to continue in service merely on the ground that he had been given the benefit of probation under the Probation of Offenders Act, 1958.

16. In the case of the petitioner here, with his release on probation of good conduct pursuant to the Order dated 25.07.2013 of the appellate court the conviction of the petitioner under Section 135[1][a] of the Electricity Act did not get obliterated. Moral turpitude means anything contrary to honesty, modesty or good morals. It has been held in Sushil Kumar Singhal [supra] that conviction of a person in a crime involving moral turpitude impeaches his credibility as he has been found to have indulged in activities opposed to honesty. The petitioner herein was serving in the establishment of the respondent no. 3 at the relevant point of time and his indulgence of the petitioner in an act of theft of electricity is, in the considered view of this court, an offence involving moral turpitude.

17. The disciplinary proceeding against the petitioner was initiated on 20.06.2013 with the service of the Memorandum of Charge of even date preceded by the Show Cause Notice dated 15.10.2012, that is, only after his conviction by the Judgment and Order dated 15.09.2012. Clause [2] of Article 311 of the Constitution of India has *inter-alia* prescribed that no member of a civil service of a State or no member who holds a civil post under the State shall

be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. It has been held in The Divisional Personnel Officer, Southern Railway and another vs. T.R. Chellappan, reported in [1976] 3 SCC 190, to the effect an analysis of the provisions of Article 311[2][a] of the Constitution would clearly show that the said constitutional guarantee contemplates three stages of departmental inquiry before an order of dismissal, removal or reduction can be passed, namely, [i] that on receipt of a complaint against a delinquent employee charges should be framed against him and a departmental inquiry should be held against him in his presence; [ii] that after the report of the departmental inquiry is received, the appointing authority must come to a tentative conclusion regarding the penalty to be imposed on the delinquent employee; and [iii] that before actually imposing the penalty a final notice to the delinquent employee should be given to show cause why the penalty proposed against him be not imposed on him. The clause [a] of second proviso to Article 311[2] dispenses with those stages of disciplinary proceeding when an employee is convicted on a criminal charge. The reason for the proviso is that in a criminal trial the employee has already had a full and complete opportunity to contest the allegations against him and to make out his defence. In the criminal trial, *firstly*, charges are framed to give clear notice regarding the allegations made against the accused, *secondly*, the witnesses are examined and cross-examined in his presence and by him; and *thirdly*, the accused is given full opportunity to produce his defence and it is only after hearing the arguments that the Court passes the final order of conviction or acquittal. In these circumstances, therefore, if after conviction by the Court a fresh departmental inquiry is not dispensed with, it will lead to unnecessary

waste of time and expense and a fruitless duplication of the same proceeding all over again. It has been observed that the founders of the Constitution had thought for these reasons that where once a delinquent employee has been convicted of a criminal offence that should be treated as a sufficient proof of his misconduct and the disciplinary authority can have the discretion to impose the penalties referred to in Article 311[2], namely, dismissal, removal or reduction in rank. It has been clarified that clause [a] of second proviso to Article 311[2] is an enabling provision and it does not enjoin or confer a mandatory duty on the disciplinary authority to pass an order of dismissal, removal or reduction in rank the moment an employee is convicted. This matter is left completely to the discretion of the Disciplinary Authority. Rule 10 of the Rules, 1964 has *inter alia* provided that notwithstanding the procedure prescribed for imposing penalties in Rule 9 of the 1964 Rules, where a penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, the Disciplinary Authority may consider the circumstances of the case and pass such orders thereon as it deems fit. Rule 10 of the 1964 Rules has incorporated the principles enshrined in clause [a] of second proviso to Article 311[2] of the Constitution with a non-obstante clause. Thus, the contention advanced on behalf of the petitioner that the procedure prescribed for disciplinary proceeding in the Rules, 1964 was not followed cannot be countenanced in view of the constitutional provision contained in clause [a] of the second proviso to Article 311[2] coupled with the provision contained in Rule 10 of the 1964 Rules with the non-obstante clause. The facts and circumstances involved in the case of Saroj Kumar Sinha [supra], referred to by the learned counsel for the petitioner, is not a case of imposition of penalty pursuant to any conviction on a criminal charge involving moral turpitude and

therefore, the said decision is not found applicable to the case of the petitioner.

18. The rules involving in the case in hand is the Assam Services [Discipline and Appeal] Rules, 1964. It is to be borne in mind that the Disciplinary Authority in the case in hand did not proceed to impose penalty of either dismissal or removal or reduction in rank. It has imposed the penalty of stoppage of three increments without cumulative effect. In the course of disciplinary proceeding, the petitioner had himself clearly admitted about his conviction for the offence under Section 135[1][a] of the Electricity Act. Moreover, after the submission of the Enquiry Report, the Enquiry Report was duly forwarded to the petitioner asking for his comments. The only plea advanced by the petitioner in his Representation was that it would be harsh on him if any penalty was imposed. It was submitted that since he was released on probation of good conduct, the disciplinary proceeding initiated against him was to be dropped. Such a plea cannot be countenanced in view of the settled position of law that there is no obliteration of the conviction due to release of an offender on probation of good conduct, as alluded hereinabove.

19. With regard to the contention that the penalty imposed upon the petitioner is harsh and disproportionate on him, it is found that the petitioner was earlier visited with a penalty of stoppage of three increments with cumulative effect by an Order dated 05.02.2011. The petitioner did not challenge the said order of imposition of penalty. If a Disciplinary Authority decides to inflict a punishment of penalty of stoppage/withholding of increments, the Disciplinary Authority is also required to decide simultaneously whether or not such stoppage/withholding of increment will have a permanent effect on the future

increments. The penalty of withholding of increment is imposed either without effect on further increments or with permanent effect on future increments finds place in Rule 7[ii] of the Rules, 1964 and as per Rule 9[ii] of the 1964 Rules, a penalty of withholding of increments is a minor penalty. Therefore, the penalty of stoppage of three increments without cumulative effect imposed upon the petitioner under Rule 7[ii] of the 1967 Rules is a minor penalty, which does not give any permanent effect on the future increments. Therefore, the contention that the penalty of stoppage of three increments without cumulative effect will have harsh effect and impact on the pensionary benefits of the petitioner who has already retired, is completely misplaced.

20. It is settled that the question of the choice and quantum of penalty is within the jurisdiction and discretion of the Disciplinary Authority. It should not be so disproportionate to the offence as to shock the conscience. In exercise of the extra-ordinary and discretionary jurisdiction under Article 226 of the Constitution of India, this Court exercising power of judicial review can only examine whether the penalty imposed upon a delinquent is so harsh and disproportionate to shock the conscience. It is trite to say that the Court cannot act as a Disciplinary Authority and imposes a particular penalty. Having regard to the entire fact situation obtaining in the case in hand, the Court is not persuaded to reach a view that the penalty imposed upon the petitioner is shockingly harsh and grossly disproportionate.

21. In view of the discussion made above and for the reasons assigned therein, this Court finds that none of the grounds contended on behalf of the petitioner can be accepted. Consequently, the present writ petition is found to

be bereft of any merits and is liable to be dismissed. It is accordingly dismissed. There shall, however, be no order as to cost.

JUDGE

Comparing Assistant