

RATHIN GHOSH

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v.

WEST BENGAL STATE ELECTRICITY DISTRIBUTION  
COMPANY LTD. & ORS.

(Civil Appeal No.5633 of 2019)

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JULY 29, 2019

**[ASHOK BHUSHAN AND NAVIN SINHA, JJ.]**

*Service Law – West Bengal State Electricity Board Employees' Service Regulations – Regns. 61 and 62– Appellant was Superintending Engineer in the respondent-Company – On 09.01.2008, tender was issued by the Company for procurement of 10 lakh meters – Various bids received by the Company on 08.02.2008 –On 26.03.2008, the appellant received personal invitation from an organization to attend a presentation organised in New Delhi – Bids were opened and the successful bidder was declared – Appellant got his to and fro air tickets booked from the travel agents of the successful bidder – Disciplinary proceedings initiated against the appellant – Appellant was dismissed from service – Challenged – Dismissed – Writ Petition filed by the appellant – Allowed – Appeal before the Division Bench – Allowed – Held: Charges against the appellant were twofold (i) attending the seminar without any permission from higher authorities (ii) availing the hospitality of the successful bidder, as appellant's air fare was borne by them, while he was officially dealing with them in the pending tender process – Appellant attended the presentation on 17.04.2008 with prior information to his superior officer – Casual leave application of the appellant having been sanctioned by his superior officer by order dated 24.04.2008, ex post facto, the sting of first charge goes away – Further, there is no material on record showing that the successful bidder made any payment for the appellant's air tickets – It was the appellant who made the payment of Rs.12,350/- against the bill raised by the travel agent – Money receipt was filed in the proceedings, which was not disbelieved – Also, the tender in question was ultimately cancelled, hence it is not a case of any benefit obtained from the successful bidder out of the tender –Further, imposition of punishment of withholding of pension*

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- A *in proceedings under Service Regulations are illegal and without jurisdiction, as for withholding of pension, there has to be separate proceeding under the 1985 Regulations – Punishment imposed in the present case is disproportionate to the charge, shocking the conscience of the Court – Dismissal order set aside – Appellant's resignation letter dated 13.05.2008 be treated as voluntary retirement – Appellant entitled to all benefits accruing to him on retirement as on that date – Further directions issued – West Bengal State Electricity Board Employees'(Death-Cum-Retirement Benefit) Regulations, 1985 – Regns. 11-A and 6(i).*
- B *Service Law – Disciplinary proceedings – Interference by Court – Scope of – Discussed.*

**Allowing the appeal, the Court**

- HELD: 1.1** The casual leave application for 17.04.2008 having been sanctioned by Additional Chief Engineering (Distt. Testing) by order dated 24.04.2008 *ex post facto*, the sting of charge goes away. Further, it is on the record that the appellant had informed his superior, Additional Chief Engineer (Distt. Testing) on 16.04.2008 itself about his programme to attend the presentation at New Delhi. The Additional Chief Engineer (Distt. Testing) was produced by employer as PW4 in support of the charges, who in his statement has clearly mentioned about the invitation by the appellant having been placed before him and appellant having intimated in the evening of 16<sup>th</sup> April, 2008 prior to leaving for New Delhi that he was going to New Delhi for attending the meeting. It is further stated by the witness that the appellant informed him regarding his intention to attend the meeting on 17.04.2008. Thus, the appellant attended the presentation at New Delhi with the prior information to his superior officer and also shown his invitation. The invitation was not any official invitation but was in the personal name of the appellant. Even if it is assumed that appellant was required to obtain prior written permission from the Company to go to attend the meeting, he having informed his superior officer in advance before going to attend the presentation, the charge of any such misconduct is not made out, which may warrant extreme punishment of dismissal. 'M/s. SM' has not made any payment for the air tickets nor is there any material on the record to show
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that such payment was made. The appellant has made the payment on 28.04.2008 for an amount of Rs.12,350/- against the bill raised by the Travel Agency dated 18.04.2008, money receipt dated 28.04.2008 was filed in the proceedings, which has not been disbelieved, thus, it was the appellant, who made the payment for the journey from Delhi-Calcutta and Calcutta-Delhi. Inquiry Officer was not right in his conclusion that getting ticket booked through the Travel Agent by 'M/s. SM' is equivalent to borrowing money by the appellant from 'M/s. SM'. The conclusion of the Inquiry Officer is perverse and not supported by the material on record. [Paras 14-16] [1186-F-H; 1187-A-H; 1188-A]

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1.2 Insofar as the appellant's role in providing for technical specifications for tender and his role in selection of 'M/s. SM' in acceptance of technical bid or in decision regarding acceptance of tenders, the appellant had no role to play. PW4, the Additional Chief Engineer (Distt. Testing), who was produced on behalf of the employer in support of the charges, himself in his statement has clearly stated about the role of the appellant. The statement of PW4, who was produced on behalf of the employer, clearly indicates that the appellant was neither a member of the committee nor he was present during the discussion of the core committee, who was authority competent to accept the tenders. The appellant was not involved in any manner. Furthermore, neither any allegation nor any material regarding appellant having got any kind of benefit from 'M/s. SM' in any manner was produced. The tender specification by specification notice NO. P-28/2007-08 was ultimately cancelled, hence it is not a case of any benefit obtained from 'M/s. SM' out of the tenders. [Paras 17, 18] [1188-B-C; 1188-G-H; 1189-A-C]

1.3 Disciplinary authority has exclusive power to impose appropriate punishment keeping in view the magnitude and gravity of misconduct. The punishment to be imposed on a delinquent employee has to be proportionate to the charge and in event punishment is disproportionate, the delinquent has to be held to be given discriminatory treatment violating Article 14. The High Court and Supreme Court can interfere with the punishment imposed by the disciplinary authority when it shocks conscience of the Court. The present is a case where the

- A punishment is so disproportionate to the charge that it clearly shocks the conscience of the Court. The charges which were held to be proved were not any such charges on which punishment of dismissal could have been imposed. Further, when the payment of air ticket which was got prepared by Travel Agent of 'M/s. SM' was ultimately made by the appellant, which was not believed in the proceedings and no other material or evidence extending any benefit to 'M/s. SM' were on the record, there was no occasion of awarding extreme punishment. [Para 20] [1189-G-H; 1190-A-C]
- C 1.4 Regulation 62 does not contain any punishment of permanent withholding of pension for life time or forfeiture of gratuity. In the proceedings drawn against the appellant under West Bengal State Electricity Board Employees' Service Regulations, which have been adopted by the Company, no punishment could have been awarded as permanent withholding of pension for life time or forfeiture of gratuity. Single Judge has dealt with the issue and rightly concluded that the disciplinary authority committed jurisdictional error in imposing the above punishments. The Division Bench in the impugned judgment has sought to justify the punishment of withholding the pension and forfeiture of gratuity by referring to West Bengal State Electricity Board Employees'(Death-Cum-Retirement Benefit) Regulations, 1985 (hereinafter referred to as "Regulations, 1985", which contain provisions as Regulation 11A dealing with withholding of pension. The Board has right to withhold pension in certain cases in the circumstances as mentioned in Regulation 11A(2). The pre-condition for withholding pension as enumerated in Regulation 11A(2):- "...if the pensioner is found in a departmental or judicial proceeding to have been guilty of grave misconduct or negligence during the period of his service...". The scheme of the Regulation indicates that the power to withhold the pension has to be exercised when proceedings are drawn under Regulations, 1985. Further, what is contemplated is withholding of pension of pensioner, which power has to be exercised qua a pensioner, the appellant having never retired from service nor was a pensioner, there was no occasion for exercising of power under Regulation 11A of Regulations, 1985. Even for argument, it is assumed if before retirement of a person power under

Regulation 11A can be exercised, there has to be separate proceeding under Regulations, 1985 for withholding of pension with notice under Regulations, 1985 for proposed action. Present is a case where disciplinary authority has drawn proceeding against the appellant under the West Bengal State Electricity Board Employees' Service Regulations and not any proceeding is drawn under Regulations, 1985. The imposition of punishment of withholding of pension while in proceeding under WBSEBES Regulations are illegal and without jurisdiction. The order passed by the disciplinary authority, thus, suffered from the above jurisdictional error. The judgment of the Division Bench is not sustainable. The judgment of the Single Judge is upheld to the extent it has set aside the dismissal order. The appellant has already submitted his resignation on 13.05.2008, which was not accepted by the respondent. As recorded in the order dated 09.10.2018, Supreme Court proposed that the resignation letter be treated as a voluntary retirement and the appellant be entitled to all benefits accruing to him on retirement as on that date. The ends of justice be served in setting aside the dismissal order by directing that resignation letter of the appellant be treated as voluntary retirement with further direction to treat the appellant as voluntarily retired on that date and to compute all benefits accruing to the appellant including gratuity and pension as admissible on that date. The respondents to compute the entire benefits of the appellant and make the payment within a period of two months from today. In event, the payment is not made within two months of this order, such payment shall carry interest at the rate of 6% per annum. [Paras 23-27] [1191-D-H; 1192-A-H; 1193-A-H; 1194-A-D]

*B.C. Chaturvedi v. Union of India and Others*  
(1995) 6 SCC 749 : [1995] 4 Suppl. SCR 644  
– relied on.

Case Law Reference

[1995] 4 Suppl. SCR 644      relied on      Para 1 9

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5633  
of 2019

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A From the Judgment and Order dated 20.09.2017 of the High Court at Calcutta in FMA No. 3536 of 2015

Shyam Divan, Sr. Adv., Udayaditya Banerjee, Swarnendu Chatterjee, Advs. for the Appellant.

B Yasobant Das, Sr. Adv., Saurabh Mishra, Abhishek Singh, Ms. Samridhi Pal, Ms. Aashna Bhatia, Onkar Singh, Arun Verma, Advs. for the Respondents.

The Judgment of the Court was delivered by

**ASHOK BHUSHAN, J.**

C 1. This appeal has been filed challenging the judgment of the Calcutta High Court dated 20.09.2017 allowing the writ appeal filed by the respondent. The respondent has filed appeal before the Division Bench of the Calcutta High Court questioning the judgment of learned Single Judge passed in Writ Petition No.2712(W) of 2010 – Rathin Ghosh

D vs. West Bengal State Electricity Distribution Company Limited, whereby the writ petition was allowed setting aside the dismissal order of the appellant with all consequential benefits.

E 2. The appellant was appointed as Graduate Engineer (Training) in the year 1985 in the West Bengal State Electricity Board, which subsequently was restructured and reorganized to form the West Bengal State Electricity Distribution Company Ltd. (hereinafter referred to as 'Company'). The appellant on account of his work and conduct was promoted to different posts and in the year 2007, he was holding the post of Superintending Engineer. In February, 2007 he was asked to prepare a draft specification of single-phase static meters. The draft specification

F submitted by the appellant was approved by the competent authority, which technical specifications were to be provided to all bidders and was an open document. Tender No.P-2/2007-08/(P-II) was published for purchase of 20 lakh meters which tender was cancelled for technical reasons. Fresh specifications drafted by Advisor (Security and Vigilance)

G and settled by Additional Chief Engineer (District Testing) was approved by all Technical Directors of the Board of Directors and the Chairman-cum-Managing Director. The Tender No.P-28/2007-08 was issued by the Company for procurement of 10 lakh meters on 09.01.2008. Nineteen bids along with their respective sample meters were received by the Company on 08.02.2008. The samples of the meters were sent to the

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Additional Chief Engineer (Testing) for evaluation. On 13.03.2008 the said meters were tested by a team of officers and technicians which included the appellant. On 26.03.2008, the appellant received the personal invitation from an organization IEEMA to attend a presentation organised in New Delhi. On testing of sample meters by the team of officers, only four bidders were found technically qualified which also included one bidder-M/s. Secure Meters. The Chairman of the Company on 31.03.2008 approved the opening of the price bids of the three technically suitable bidders, bids were opened and M/s. Secure Meters was declared the successful bidder to the highest rate. Other two bidders were also successful bidders having offered rates lower than M/s. Secure Meters. On 16.04.2008, the appellant informed his immediate superior Officer, Additional Chief Engineer (Distt. Testing) about his going to New Delhi to attend IEEMA's Conference. The appellant got his Air Tickets booked from Globe Travel Agents, who were the travel agents of M/s. Secure Meters for to and fro visit to Delhi. On 17.04.2008, the appellant attended the IEEMA Conference at New Delhi and returned on 17.04.2008 to Calcutta itself. On 18.04.2008, the Globe Travel Agency raised an invoice of Rs. 12,350/- for the return air ticket of the appellant upon M/s. Secure Meters as the booking was done through them. On 24.04.2008, on an enquiry by the Corporate Vigilance Department of the Company to Globe Travel Agency about the appellant's ticket, which informed that the payment towards the aforesaid invoice was still due. On 28.04.2008, the appellant paid the entire amount of Rs.12,350/- to M/s. Secure Meters for payment of the aforesaid invoice raised by Globe Travel Agency. On 29.04.2008, the respondent-Company suspended the appellant and initiated disciplinary proceedings. The appellant was suspended alleging gross misconduct tarnishing the image of the Company.

3. The appellant, who had 22 years unblemished service to his credit, felt hurt by the act of the Company suspending him. The appellant on 13.05.2008 submitted his resignation to the Company. The appellant in his resignation letter mentioned that his order of suspension is an act of vengeance instigated by the parties whose personal agenda had been disturbed by his honest intentions. The appellant also expressed his willingness to pay the Company three months salary in lieu of notice. A charge-sheet dated 28.05.2008 was submitted. The charge-sheet was served on the appellant on 28.05.2008 for proposed enquiry to be held under Regulations 61 and 63 of WBSEB Employees' Service

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- A Regulations. The appellant submitted his reply. The charge-sheet also listed several documentary evidences including invitation from IEEMA dated 17.04.2008, the attendance sheet of participants in the presentation held on 17.04.2008 at New Delhi.
4. The charge-sheet also enlisted the list of witnesses who were
- B proposed to be examined in support of the charge-sheet. On 10.06.2008, the appellant received communication that his resignation had not been accepted due to the non-completion of the disciplinary proceedings. On 20.06.2008, the appellant submitted a detailed reply to show-cause. The reply did not find favour with the Company and disciplinary enquiry was initiated. Witnesses were cross-examined by the appellant. Inquiry Officer
- C submitted his findings on 26.12.2008. The findings were forwarded to the appellant by letter dated 30.12.2008 by the respondent. The Inquiry Report found charges proved against the appellant. The appellant submitted his representation on 24.01.2009 to the findings in the enquiry. The Company issued a second show-cause notice dated 28.03.2009.
- D Second show-cause notice was issued to the appellant which also mentioned the proposed punishment of dismissal from service, permanent withholding of pension for life time, forfeiture of entire gratuity and non-payment beyond the subsistence allowances during the suspension period. Reply to the second show-cause notice was also submitted by the appellant. The disciplinary authority passed an order on 02.06.2009 by
- E which following punishments were awarded:
- F “I have considered the gravity of the misconduct and the circumstances under which the misconduct was committed. Considering all aspects in open mind including the past service records, I finally impose the following punishment upon Sri Rathin Ghosh, Superintending Engineer (E) (under suspension):-
- G (i) Dismissal from service.
- (ii) Permanent withholding of pension for lifetime.
- (iii)forfeiture of entire gratuity.
- (iv)The period of suspension in respect of Sri Rathin Ghosh, S.E.(E) is hereby confirmed. He will not earn anything beyond the subsistence allowances payable to him during the period of suspension.
- H This order takes immediate effect.”

5. The appeal filed by the appellant against the order of punishment was also dismissed. It was communicated to the appellant on 10.11.2009. Aggrieved against the punishment order as well as order dismissing the appeal Writ Petition No.2712(W) of 2010 was filed by the appellant. The writ petition was heard by the learned Single Judge and by judgment dated 29.06.2015 learned Single Judge allowed the writ petition by following order:

“For the reasons discussed above, the entire disciplinary proceeding including the order of suspension dated 29<sup>th</sup> April, 2008, the charge sheet dated 25<sup>th</sup> May, 2008, the enquiry report dated 26<sup>th</sup> December, 2008, the order of punishment dated 2<sup>nd</sup> June, 2009 and the appellate authority order dated 10<sup>th</sup> November, 2009 are set aside and quashed. The respondents are directed to reinstate the petitioner within 6 weeks from the date of communication of this order and to start payment of the petitioner’s monthly salaries and other allowances, month by month.

The respondents are also directed to treat the petitioner in service without any break as if no order of dismissal was ever issued to the petitioner. The petitioner will also be entitled to receive full back wages for the period he was not paid the salaries in view of issuance of the order of dismissal which has been quashed in the writ application. The respondents are further directed to calculate the back wages payable to the petitioner in terms of this order and to disburse the same through 4 equal monthly instalments, the first of which should be paid within a period of 6 weeks from the date of communication of this order.

With such observations and directions, the writ application is disposed of.”

6. The respondent aggrieved by the judgment of learned Single Judge has filed the appeal before the Division Bench of the Calcutta High Court. The Division Bench by its judgment dated 20.09.2017 allowed the appeal and set aside the judgment of the learned Single Judge. Aggrieved by the judgment of the Division Bench, this appeal has been filed by the appellant.

7. Notice was issued by this Court on 24.11.2017. The respondent appeared and the matter was heard by this Court on 09.10.2018. This Court on 09.10.2008 passed following order:

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- A "Learned counsel for the petitioner had submitted a letter of resignation on 13.05.2008.

By way of settlement, it is proposed that the resignation letter be treated as a voluntary retirement and the petitioner will be entitled to all benefits accruing to him on retirement as on that date.

- B This will also necessarily mean that the departmental proceedings against the petitioner initiated by the respondents will stand quashed without going into the merits of the case.

- C Learned counsel for the petitioner says that this is acceptable to him. However, learned counsel for the respondent says that he would like to take instructions in this regard.

List the matter after three weeks."

- D 8. When the matter was again taken by this Court on 09.04.2019, learned counsel for the respondents submitted that the proposal recorded in the order of this Court on 09.10.2018 is not acceptable to the respondents and the matter be heard on merits. Consequently, the appeal was heard on 16.07.2019.

- E 9. Before we notice the submissions of the learned counsel for the parties, it is necessary to notice the substance of charges, which were levelled against the appellant. The Division Bench of the High Court in the impugned judgment has itself noticed twofold charges in the following words:

- F "23 The charges against the delinquent employee were two folds i.e. (i) he gave a presentation in the seminar on 17.04.2008 at New Delhi hosted by IEEMA without having any permission from his higher authority (ii) he availed the hospitality of SML as his air fare from Kolkata to New Delhi on 16<sup>th</sup> April, 2008 and return journey from New Delhi to Kolkata on 17<sup>th</sup> April, 2008 was borne by SML when he was officially dealing with SML in the tender process, which was pending finalization for placement of orders to the successful company of suppliers. He thus placed himself under pecuniary obligation under SML."

- G 10. Shri Shyam Divan, learned senior counsel assisted by Shri Udayaditya Banerjee, learned counsel for the appellant contends that

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the appellant had unblemished service of 22 years and the charges which were levelled against the appellant were not correct. Learned counsel for the appellant submits that with regard to Charge No.1 of his attending a presentation at New Delhi invited by IEEMA, he had already informed his immediate superior Officer before leaving for Delhi with regard to his absence on 17.04.2008. His application for casual leave was also allowed on 24.04.2008. Hence, no misconduct was committed by the appellant inviting any punishment. With regard to charge No.2, learned counsel submits that with regard to tender Notice No.P-28/2007-08(PC-II) the appellant was merely involved in preparation of specifications and the technical report was submitted by the Additional Chief Engineer(Distt. Testing), which was sent to separate committee comprising higher official to take decision. The appellant was neither a member of the core committee nor he was present during the discussion of core committee where decision was taken. Neither there is any allegation nor any kind of benefit or favour has been accepted by the appellant from M/s. Secure Meters nor the appellant has caused any loss to the Company. Tender Notice No.P-28/2007-08 was subsequently cancelled. Insofar as booking of air tickets by Globe Travel Agency is concerned, no payment of bill was paid by M/s. Secure Meters rather payment was made by the appellant of the bill amount of Rs.12,345/- to M/s. Secure Meters, receipt of which was filed during the inquiry. The Inquiry Officer without adverting to relevant aspects proceeded and submitted the report in premeditated manner and proceeded to hold charges proved. The appellant in his representation against the findings of the Inquiry Officer has given all facts and material to prove that findings are perverse but disciplinary authority without adverting to those material and facts held the charges proved. In any view of the matter, charge of attending IEEMA presentation on 17.04.2008 without previous permission of employer was not such a charge on which punishment of dismissal could have been awarded. Further, insofar as air tickets obtained from Travel Agent of M/s. Secure Meters are concerned, the payment of air tickets was never made by M/s. Secure Meters but was made by the appellant, receipt of which was filed in the inquiry proceedings which having not been disbelieved, there is no other material or evidence of any kind of obtaining pecuniary benefit from M/s. Secure Meters by the appellant. Further, there being no material or charge for any kind of favour or benefit extended by the appellant to M/s. Secure Meters, present was not a case of awarding punishment of dismissal. Awarding

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- A punishment of dismissal of the appellant is disproportionate and deserves to be set aside. It is further submitted that punishment of permanent withholding of pension for life time and forfeiture of entire gratuity by the order of the disciplinary authority is without jurisdiction, which punishment could not have been imposed in the disciplinary proceedings which were initiated under the West Bengal State Electricity Board Employees' Service Regulations adopted by WBSBCL.

- B 11. Shri Yasobant Das, learned senior counsel, appearing for the respondent refuting the submissions of the appellant contends that the charges having been proved in the inquiry proceedings, learned Single Judge committed error in interfering with the punishment. The appellant had official dealing with M/s. Secure Meters and it was not expected from such officer in obtaining any benefit from such bidder, the appellant obtained air tickets from M/s. Secure Meters and utilized its hospitality, which is a misconduct inviting punishment under Service Rules and Service Regulations.
- C 12. Learned counsel for the respondents has supported the impugned judgment of the Division bench of Calcutta High Court. It is further submitted that Company has lost confidence in the appellant and the direction of the learned Single Judge to reinstate the appellant with back wages was uncalled for. It is submitted that Company cannot reinstate a person who has lost confidence of the Company.

- D 13. We have considered submissions of the learned counsel for the parties and perused the records.
- E 14. The substance of the charges against the appellant as noted in the impugned judgment dated 20.09.2017 and extracted above were twofold. Insofar as charge of attending the seminar on 17.04.2008 without having any permission from higher authorities, suffice it to say that the casual leave application for 17.04.2008 having been sanctioned by Additional Chief Engineering (Distt. Testing) by order dated 24.04.2008 ex post facto the sting of charge goes away. Further, it is on the record that the appellant had informed his superior, Additional Chief Engineer (Distt. Testing) on 16.04.2008 itself about his programme to attend the presentation at New Delhi. The Additional Chief Engineer (Distt. Testing), Shri Subrata Kumar Das was produced by employer as PW.4 in support of the charges, who in his statement has clearly mentioned about the invitation by the appellant having been placed before him and appellant
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having intimated in the evening of 16<sup>th</sup> April, 2008 prior to leaving for New Delhi that he was going to New Delhi for attending the meeting. It is further stated by the witness that the appellant informed him regarding his intention to attend the meeting on 17.04.2008. Following was stated by PW4 in his cross-examination:

“The CO had shown me the letter (Ex.13) received from IEEMA by himself. Sri Ghosh, CO informed me regarding his intention to attend meeting on 17.04.2008. The CO had intimated me on 16.04.2008 in the evening prior to leaving New Delhi that he was going to New Delhi for attending the said meeting I never restrained or forbidden the CO from going to New Delhi.”

15. Thus, the appellant attended the presentation at New Delhi with the prior information to his superior officer and also shown his invitation. The presentation organized by IEEMA was a programme organised by a private organisation on the subject of presentation MIOS (Meter Inter Operative System), which subject was relevant and beneficial to all who were concerned with the subject. The invitation was not any official invitation but was in the personal name of the appellant. The appellant has never been nominated nor has been sent by the Co. for the presentation. Even if it is assumed that appellant was required to obtain prior written permission from the Company to go to attend the meeting, he having informed his superior officer in advance before going to attend the presentation, the charge of any such misconduct is not made out, which may warrant extreme punishment of dismissal.

16. Now, coming to the second charge as noted above i.e. appellant availed the hospitality of M/s. Secure Meters as his air-fare from Calcutta to Delhi on 16.04.2008 and return journey on 17.04.2008 was paid by M/s. Secure Meters when he was officially dealing with M/s. Secure Meters, one of the tenderers. Suffice it to say that M/s. Secure Meters has not made any payment for the air tickets nor is there any material on the record to show that such payment was made. The appellant has made the payment on 28.04.2008 for an amount of Rs.12,350/- against the bill raised by the Travel Agency dated 18.04.2008, money receipt dated 28.04.2008 was filed in the proceedings, which has not been disbelieved, thus, it was the appellant, who made the payment for the journey from Delhi-Calcutta and Calcutta-Delhi. Inquiry Officer was not right in his conclusion that getting ticket booked through the Travel Agent by M/s. Secure Meters is equivalent to borrowing money by the

- A appellant from M/s. Secure Meters. The conclusion of the Inquiry Officer is perverse and not supported by the material on record.

17. It is further relevant to notice that insofar as the appellant's role in providing for technical specifications for tender and his role in selection of M/s. Secure Meters in acceptance of technical bid or in B decision regarding acceptance of tenders, the appellant had no role to play. PW4, the Additional Chief Engineer (Distt. Testing), who was produced on behalf of the employer in support of the charges, himself in his statement has clearly stated about the role of the appellant. In the above reference with regard to notice No.P-28/2007-08 and its details, following statement was made by PW4:

- C "Tenders specifications vide Notice No.P-28/2007-08 (P-II) was actually prepared by the Advisor(S&V) and finally settled by the Adviser (S&V) and myself. Sri.P.Biswas, SE and Sri Ghosh, CO assited me in the process. The specification, which was referred above, was presented by the Adviser (S&V) in a meeting where all the Technical Directors were present. The Chairman and myself were also present there. Sri Ghosh, CO was not present in that meeting. I formed a team of engineers and technicians to test the sample meters submitted by the bidders. The testing reports as in Ext.7A, Ext.7B, Ext.7C respectively were prepared in an D approved format of the Company. The meter testing was made as per pre-scheduled date and representative from S&LP Wing and other interested bidders were allowed to witness the testing. In the instant case the engineers of the S&LP Wing were present during testing. I have not received any complaint from any bidders E regarding the testing of meters so far I remember. After completion of the testing by the respective officers and technical to whom it was allotted, I personally made certain sample checking and being fully satisfied I submitted technical evaluation report in this regard. After I send the technical evaluation report a separate core committee comprising higher officials take decision towards the F acceptance of the technical evaluation report. The CO was neither a member of the core committee nor he was present during the G discussion of the core committee."

18. The above statement of PW4, who was produced on behalf H of the employer, clearly indicates that the appellant was neither a member of the committee nor he was present during the discussion of the core

committee, who was authority competent to accept the tenders. Further, insofar as specification regarding Notice No.P-28/2007-08, it was clearly stated that specification was prepared by the Adviser (S&V) and finally decided by the Adviser (S&V) himself, i.e., Additional Chief Engineer (Distt. Testing). The appellant was not involved in any such manner. Furthermore, neither any allegation nor any material regarding appellant having got any kind of benefit from M/s. Secure Meters in any manner was produced. The tender specification by specification notice NO. P-28/2007-08 was ultimately cancelled, hence it is not a case of any benefit obtained from M/s. Secure Meters out of the tenders. The immediate officer under whom appellant was working himself spoke about the tender and further spoke that:- “....I can depose that the CO never lacking in his sincerity and integrity towards his work.”

19. We are conscious of the scope of judicial review by the High court and this Court in reference to disciplinary proceedings. A three Judge Bench of this Court in **B.C. Chaturvedi vs. Union of India and others, (1995) 6 SCC 749**, in paragraph 18 has laid down parameters of judicial review in the disciplinary proceedings to the following effect:

“18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”

20. There cannot be any dispute to the proposition that disciplinary authority has exclusive power to impose appropriate punishment keeping in view the magnitude and gravity of misconduct. The punishment to be imposed on a delinquent employee has to be proportionate to the charge and in event punishment is disproportionate, the delinquent has to be

- A held to be given discriminatory treatment violating Article 14. The test as has been approved by this Court is that the High Court and this Court can interfere with the punishment imposed by the disciplinary authority when it shocks conscience of the Court. The present is a case where the punishment is so disproportionate to the charge that it clearly shocks the conscience of the Court. The charges which were held to be proved were not any such charges on which punishment of dismissal could have been imposed. Further, when the payment of air ticket which was got prepared by Travel Agent of M/s. Secure Meters was ultimately made by the appellant, which was not disbelieved in the proceedings and no other material or evidence extending any benefit to M/s. Secure Meters were on the record, there was no occasion of awarding extreme punishment.

21. Another aspect, which needs to be noticed is that disciplinary authority while imposing the punishment of dismissal from service has also awarded (a) permanently withhold of pension for life time; (b) forfeiture of his entire gratuity. The proceedings were initiated against the appellant under Regulations 61 and 63 of WBSEB Employees' Service Regulations, which is clear from following statement in the charge-sheet:
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- “The undersigned proposes to hold an enquiry under Regulation 61 & 63 of WBSEB Employees' Service Regulations since adopted by WBSEDCL, against Sri Rathin Ghosh, Superintending Engineer (E) (Under suspension) attached to Distribution Testing Department.”

22. The West Bengal State Electricity Board Employees' Service Regulations are on record. Regulation 61 deals with act of misconduct.
- F Regulation 62 which deals with punishment is as follows:

- G
- “Regulation 62. Without prejudice to the provisions of any law for the time being in force, an employee who is found to be guilty of any act of misconduct or of any breach of discipline is punishable as indicated below, according to the gravity of the breach or misconduct. The punishment will not only depend on the findings in the case under review, but also on his record. The imposition of penalties may be ordered by the Secretary or by the respective appointing authorities or any other officers of the Board empowered in this behalf.

- (1) Censure A
- (2) Withholding of increment or Promotion
- (3) Suspension
- (4) Reduction to a lower post or time-scale or to a lower stage in the time-scale B
- (5) Recovery from pay of any sum as a measure of punishment forming part of any pecuniary loss caused to the Board by wilful negligence or breach of orders
- (6) Removal from service which does not debar future employment C
- (7) Dismissal from service which ordinarily debars future employment.”

23. It is relevant to notice that Regulation 62 does not contain any punishment of permanent withholding of pension for life time or forfeiture of gratuity. In the proceedings drawn against the appellant under West Bengal State Electricity Board Employees' Service Regulations, which have been adopted by the Company, no punishment could have been awarded as permanent withholding of pension for life time or forfeiture of gratuity. Learned Single Judge has dealt with the issue and has rightly concluded that the disciplinary authority committed jurisdictional error in imposing the above punishments. The Division Bench in the impugned judgment has sought to justify the punishment of withholding the pension and forfeiture of gratuity by referring to West Bengal State Electricity Board Employees'(Death-Cum-Retirement Benefit) Regulations, 1985 (hereinafter referred to as “Regulations, 1985”, which contain provisions as Regulation 11A dealing with withholding of pension. Pension has been defined in Regulation 6(i) as: “Pension” except when the term pension is used in contradistinction to gratuity, includes gratuity. Regulation 11A which is relevant for the present case is as follows:

“11A : (1) The pension of an officer may be withheld in whole or in part under an order of the Board passed not later than three years after the date of retirement to meet any sum due under the liability incurred by such officer to the Board.

H

- A (2) Right of the Board to withhold pension in certain cases : The Board reserves to itself the right of withholding or withdrawing the pension or any part of it whether permanently or for specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to the Board, if the pensioner is found in a departmental or judicial proceeding to have been guilty of grave misconduct or negligence during the period of his service, including service rendered on re-employment after the retirement : Provided that-
- B (a) Such departmental proceeding if instituted while the officer was in service whether before his retirement or during his re-employment shall after the final retirement of the officer be deemed to be a proceeding under this Regulation and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service.
- C (b) Such departmental proceedings, if not instituted while the officer was in service before his retirement or during his re-employment—
- D (i) Shall not be instituted save with the sanction of the Board;
- E (ii) Shall not be in respect of any event which took place more than four years before such institution and
- F (iii) Shall be conducted by such authority and in such place as the Board may direct and in accordance with the procedure applicable to the departmental proceedings in which an order of dismissal from service could be made in relation to the officer during his service;
- G (c) No such judicial proceeding, if not instituted while the officer was in service whether before his retirement or during his re-employment shall be instituted in respect of the cause of action which arose or an event which took place more than four years before such institution.
- H [Ref: Office Order No.4232 dtd.23.11.1987]
- Provided further that the pension of an employee may be released in rarest of the rare cases by the Chairman of the Board even during pendency of the criminal proceedings against the employee where the Chairman of the Board is entirely satisfied that the following conditions are fulfilled:-

(i) There is a reasonable possibility of acquittal from all charges leveled against the employee in the pending criminal proceedings. A

(ii) The conduct of the employee during his tenure in service was otherwise satisfactory in all respects.

(iii) The criminal proceeding arises out of due discharge of the official duties by the employee. B

[Ref: Office Order No.5676 dated 21.01.1999]"

24. There is no doubt that Board has right to withhold pension in certain cases in the circumstances as mentioned in Regulation 11A(2). C The pre-condition for withholding pension as enumerated in Regulation 11A(2):- "...if the pensioner is found in a departmental or judicial proceeding to have been guilty of grave misconduct or negligence during the period of his service..."

25. The scheme of the Regulation indicates that the power to withhold the pension has to be exercised when proceedings are drawn under Regulations, 1985. Further, what is contemplated is withholding of pension of pensioner, which power has to be exercised qua a pensioner, the appellant having never retired from service nor was a pensioner, there was no occasion for exercising of power under Regulation 11A of Regulations, 1985. Even for argument, it is assumed if before retirement of a person power under Regulation 11A can be exercised, there has to be separate proceeding under Regulations, 1985 for withholding of pension with notice under Regulations, 1985 for proposed action. Present is a case where disciplinary authority has drawn proceeding against the appellant under the West Bengal State Electricity Board Employees' Service Regulations and not any proceeding is drawn under Regulations, 1985. The imposition of punishment of withholding of pension while in proceeding under WBSEBES Regulations are illegal and without jurisdiction. The order passed by the disciplinary authority, thus, suffered from the above jurisdictional error. D E F G

26. In view of the foregoing discussions, we are unable to sustain the judgment of the Division Bench. We upheld the judgment of the learned Single Judge to the extent it has set aside the dismissal order. H

- A        27. Now, we come to the question of relief which the appellant may be entitled in the facts of the present case. As noticed above, the appellant has already submitted his resignation on 13.05.2008, which was not accepted by the respondent. As recorded in the order dated 09.10.2018, this Court has proposed that the resignation letter be treated as a voluntary retirement and the appellant be entitled to all benefits accruing to him on retirement as on that date. We are of the view that the ends of justice be served in allowing this appeal setting aside the dismissal order by directing that resignation letter of the appellant dated 13.05.2008 be treated as voluntary retirement with further direction to treat the appellant as voluntarily retired on that date and to compute all benefits accruing to the appellant including gratuity and pension as admissible on that date. The respondents are directed to compute the entire benefits of the appellant and make the payment within a period of two months from today. In event, the payment is not made within two months of this order, such payment shall carry interest at the rate of 6% per annum. The appeal is allowed to the above extent.

Divya Pandey

Appeal allowed.