

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

LPA No. 293 of 2024
Reserved on : 18.07.2026
Pronounced on : 21.08.2026
Uploaded on : 21.08.2026

Sh. Rax Pal

...Appellant

Versus

State of Himachal Pradesh and others

...Respondents

Coram

The Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice.
The Hon'ble Mr. Justice Bipin C. Negi, Judge.

Whether approved for reporting?¹ **Yes**

For the appellant : M/s Anshul Jairath and Piyush Mehta, Advocates.

For the respondents : Mr. Rakesh Dhaulta, Additional Advocate General.

G.S. Sandhawalia, Chief Justice

The appellant seeks consideration of the judgment passed by the learned Single Judge, in ***Civil Writ Petition No. 422 of 2020***, titled ***Rax Pal Vs. State of Himachal Pradesh and others***, dated 14.06.2024, whereby the learned Single Judge had dismissed the petition, while upholding the order dated 01.11.2019 (Annexure P-1), whereby, the employee as such, had been removed from his service after putting in more than 19 years of service. The order of appeal having been dismissed on 08.01.2020 (Annexure P-2), was also accordingly upheld.

¹ Whether reporters of the local papers may be allowed to see the judgment?

2. The reasoning which weighed with the learned Single Judge qua upholding the said orders was that inquiry had been conducted under Rule 14 of the CCS(CCA) Rules, 1965 and charges had been proved against the petitioner. The Disciplinary Authority had concurred with the inquiry report and imposed the major penalty on the ground that the employee on his transfer to Kaza, District Lahaul & Spiti, vide order dated 30.08.2018, had not joined there till 07.02.2019.

3. The argument as such, that the misconduct was not of such magnitude which called for infliction of such a major penalty and was disproportionate to his alleged misconduct on account of the fact that he had approached the State Administrative Tribunal and had been protected and that his wife was serving at the Government Senior Secondary School Jawalamukhi and as per the Policy, he was entitled to be posted where his spouse was posted and his parents were old and ailing and education of his child would have suffered, did not find favour with the learned Single Judge.

4. It was noticed that after his joining also on 07.02.2019, he had left the station and proceeded on leave on the next day without informing his superior/supervisory officer and thereafter, again remained absent till 20.03.2019.

5. The background of the case as such was accordingly

noticed that the transfer order dated 30.08.2018, was subject matter of challenge and the repeated representations which had been made alongwith the repeated filing of the applications before the erstwhile State Administrative Tribunal and eventually approaching the Apex Court, after having got no concession before this Court on 15.11.2018. Thereafter, he had been directed to join on 28.01.2019 by the Apex Court within 10 days, on account of the fact that he had not joined his place of posting and had been suspended on 07.12.2018, and his headquarters was also fixed at Kaza.

6. Resultantly, learned Single Judge had relied upon the judgment of the Apex Court passed in ***Deputy General Manager (Appellate Authority) and others Vs. Ajai Kumar Srivastava, (2021) 2 Supreme Court Cases 612***, to hold that matters involving disciplinary proceedings had their limitations and the scope of judicial review could not be extended to the examination or correctness of the reasonableness of the decision of the authority as a matter of fact.

7. It was accordingly held that the petitioner had no justification in not complying with the Administrative Order and transfer being incidence of service, he was bound to obey. Resultantly, the audacity shown by him to defy and disobey the Administrative Orders without any lawful justification, was a case

of gross indiscipline by a government servant.

8. Reliance was also placed upon another judgment of the Apex Court, passed in ***Union of India and others Vs. Constable Sunil Kumar, (2023) 3 Supreme Court Cases 622***, to come to the conclusion that the removal from service was not strikingly or shockingly disproportionate to the charge of misconduct.

9. The argument raised that the subordinate authority to the disciplinary authority had passed the order on Appeal and it was accordingly held that the order had been signed by the delegated authority, which was permissible in law. Apparently, the dismissal order had been passed by the Principal Secretary (Agriculture), whereby the Special Secretary (Agriculture) had passed the Order on the delegated powers given since the Agricultural Minister had decided the appeal.

Question for consideration:-

10. The sole question which arises in the present Letters Patent Appeal is only whether the punishment of removal from service after 19 years, would be justified in the facts and circumstances on account of the fact that it was a case whereby the petitioner had been posted from Kangra to Kaza and apparently, he was agitating for his rights and seeking legal redressal, and whether the order of removal from service was

shockingly disproportionate or not.

Background of the case:-

11. A perusal of the order dated 01.11.2019 would go on to show that on account of the charge-sheet served upon the employee dated 21.12.2018, an inquiry officer had been appointed on 29.04.2019 and inquiry report had been submitted on 06.08.2019. The petitioner had been given the right of making a representation under Rule 15(2) of the CCS(CCA) Rules, 1965. He had made a representation dated 03.10.2019, effective part of which reads as under:-

“I submit that on the issue of an order of my transfer from Development Block Dehra, Distt Kangra to Kaza, Distt Lahoul & Spiti, I moved the judicial forum and my absence from duty has been fully protected by orders of the State Administrative Tribunal and High Court by 31 December, 2018. Again the Apex Court had allowed time till 7th February, 2019 to join and to submit report of joining which part has also been compiled by me. Thus the Apex Court directive being final, the entire period of absence has been covered by Court orders. This has also been reflected in the Inquiry Report. The latitude afforded by the Apex Court also tacitly allows regularization of my absence.

The guidelines of transfer not being followed in my case, gave me a passport to challenge the same and grant of stay of transfer order confirms a prima facie case as also balance of convenience in my favour and the time afforded by the State Courts and the Apex Court to join duty by 7th February 2019, before which I have joined, hence, there is no willful disobedience of orders of the superior authority.

It may be appreciated that my not obeying the

orders of superior is not one of deliberate in character but due to circumstances beyond control. Even if construed as deliberate, the act is indeed one of peccadilloes in nature as otherwise the courts would not have treated it as venial and granted me time to resume duties. I sincerely apologize for the inconvenience caused to the administration due to my relatively long absence, which however, as rightly reflected in the Inquiry Report, has been practically condoned by grant of time.

The act of mine is not to be treated a misconduct in view of indulgence given by court. However, I will not allow such a situation to recur and thus earnestly request your good self to drop the proceedings against me, for which act of kindness, I shall ever be obliged."

12. The disciplinary authority, however, did not accept the apology as such and noticed that he was transferred on 30.08.2018 and he had filed an O.A., in which directions had been passed on 10.09.2018 to consider his representation. He had been heard on 27.09.2018 and it was noticed that he was posted in and around Kangra and Dharamsala since 1999 and he had never served in a Tribal Area, and therefore, he was directed to join at Kaza vide order dated 28.09.2018. He had preferred another O.A No. 6013/2018, which was disposed of, to be treated as a representation and decided after giving an opportunity of being heard vide order dated 04.10.2018 and thereafter, he was heard in detail and his conduct was found to be full of arrogance and defiance.

13. On examination of his earlier track record, it was noticed that on his earlier transfer to Shillai in Sirmour District, on 12.07.2017, he had filed an O.A. before the Tribunal and speaking order had been passed directing him to join there and again, the matter had been referred to the Secretary (Agriculture), to the Government of Himachal Pradesh, for fresh decision and he again was directed to join at Shillai, but he had never joined his duties and approached the Tribunal for the third time. On 12.02.2018, another order had been passed by the Secretary (Agriculture), directing him to join at Shillai and having approached the Tribunal for the 4th time, he had got an order of cancellation of his transfer. Apparently, thereafter, when he was transferred in August 2018, the procedure was repeated.

14. It was also noticed that he had filed 6 O.As. and in the personal hearing given on 16.10.2018, he had refused to join at Kaza, and therefore, it was found that he had arrogance and defiance. He having persistently approached the Tribunal and after getting dismissal on 31.10.2018, he did not join. This Court had decided CWP No. 2718 on 15.11.2018, whereby relief prayed therein, had been declined. It is a matter of fact that his wife was working in the Education Department and on account of the transfer policy, he was given liberty to file a representation and approach the authority for his adjustment.

15. The detailed order had been passed on 27.11.2018, rejecting his representation and then he had made a representation to the Chief Minister, which was held to be the violation of Service Rules. He had been placed under suspension vide order dated 07.12.2018 with his headquarter in the office of the ADC, Kaza, but he did not comply with the order. The Apex Court had also dismissed his SLP No. 2164 of 2019 on 28.01.2019 (Annexure P-9), by directing him that he should join his duty within 10 days.

16. It is thus apparent that apart from the litigation which had accrued in pursuance of the order under challenge dated 30.08.2018, the disciplinary authority also kept into account the earlier litigation which had been initiated in the year 2017, which was not the subject matter of consideration or the charge, as is clear from the memorandum of charge-sheet (Annexure P-12), that the appellant, who was working as Subject Matter Specialist at Dehra, District Kangra, had failed to join the duty at Kaza as APO even after lapse of more than 4 months time. Apparently, these factors also unnecessarily weighed with the punishing authority to impose the extreme punishment of removal of service to come to the conclusion that it was a grave misconduct on his part and encourage indiscipline in the department.

Factors not kept in mind and the law on the issue:-

17. The appeal filed before the authority is categorical to the extent that the punishment was disproportionate and he had 19 years of service. The appellate authority, however, did not examine this aspect, while upholding the order of removal, though reliance had been placed in the Appeal (Annexure P-18) on the judgment of the Apex Court passed in ***Raghubir Singh Vs. Haryana Roadways, (2014) 10 Supreme Court Cases 301***, wherein it was held that the punishment was disproportionate. He had also mentioned that his was a couple case and that his mother-in-law had attained the age of more than 80 years and suffering from multiple ailments and was also a Tuberculosis patient. His son was stated to be suffering from throat cancer and there was no one to look after him except the appellant himself. It was also mentioned that even his old aged mother was completely bedridden and dependent upon him and therefore, there were adverse family circumstances and thus he had been approaching the competent Courts and was unable to join at Kaza.

18. In ***Raghubir Singh's*** case (supra), the Apex Court was examining the issue regarding his unauthorized absence on account of his involvement in a criminal case. Resultantly, it was held that the doctrine of proportionality is a well recognized one

and the action of the employer cannot be disproportionate to the gravity of the misconduct. It was accordingly held that said action had hampered the lives of the employee and his family members and was highly disproportionate to the gravity of misconduct and shocked the conscience of the Court.

19. The Apex Court in ***Ranjit Thakur Vs. Union of India and others, (1987) 4 Supreme Court Cases 611***, has held that the doctrine of proportionality has to be kept in mind as part of the concept of judicial review to the offence and the penalty as such should not shock the conscience. Similarly, the principle of proportionality was also discussed in ***Union of India and another Vs. G. Ganayutham, (1997) 7 Supreme Court Cases 463*** and in ***Deputy Commissioner Kendriya Vidyalaya Sangathan and others Vs. Hussain, (2013) 10 Supreme Court Cases 106***.

20. In ***Union of India Vs. P. Gunasekaran, (2015) 2 Supreme Court Cases 610***, the punishment of compulsory retirement, which was interfered with the High Court, was restored by holding that the Court would not go into the proportionality of punishment unless it shocks its conscience.

21. In ***UT of Dadra & Nagar Haveli Vs. Gulabhia M. Lad, (2010) 5 Supreme Court Cases 775***, it was held that the imposition of punishment would be dependent on host of factors

including the gravity of misconduct, past conduct, the nature of duties, the responsibility of the position and the discipline required and ordinarily, the Court would not substitute its opinion.

22. In ***S.R. Tewari Vs. Union of India, (2013) 6 Supreme Court Cases 602***, it was held that the right of the Court to consider the circumstances under which the misconduct was committed and that it might have forced the employee to act in a certain manner though he had not intended to do so, would have also to be taken into consideration. It was further held that if some evidence on record is acceptable and it could be relied upon, the conclusions would not be treated as perverse and the aspect of shortening the litigation was to be kept into consideration and the Court could impose appropriate punishment by recording cogent reasons regarding the quantum as such, while examining the issue of proportionality.

23. In ***Civil Appeal No. 3565 of 2009***, titled ***Jagdish Singh Vs. Punjab Engineering College & Ors.***, decided on 14.05.2009, the Apex Court was dealing with an employee who was a Sweeper and had remained absent for 15 days on 4 occasions in the month of February and March, 2004 and a dismissal order from service had been passed and the same had been upheld by the Writ Court. The Apex Court had placed reliance upon its judgments passed in ***V. Ramana Vs.***

A.P.S.R.T.C and others, (2005) 7 Supreme Court Cases 338, and ***Kerala Solvent Extractions Ltd. Vs. A. Unnikrishnan and another, (1994) 1 SCALE 631,*** and had come to the conclusion that he was not a habitual absentee and the problem was of his daughter's issue with her in-laws and therefore, the order of removal was modified to that of stoppage of two increments with cumulative effect.

24. In ***Civil Appeal No. 13402 of 2015***, titled ***Sahab Singh (D) through Lrs. Vs. Director General, RPF, Rail Bhawan and others***, decided on 26.11.2025, the employee was on the post of constable of the Railway Protection Force and there were charges of being involved in a criminal case and that he had been arrested and detained. Resultantly, he was dismissed on that ground. The order was converted to an order of compulsory retirement even though the appellant was no longer alive and giving the family the benefits of pension, by noticing that he had 17 years of service and there was an honourable acquittal in the criminal proceedings against the family members of the deceased and accordingly, the dismissal from service was held to be wholly disproportionate and modified.

25. Recently, the Apex Court in ***Surekha Domaji Bele Vs. Executive Engineer, Testing Division, MSEDCL, 2026 INSC 639***, was dealing an order of dismissal of service on

account of the fact that there was a charge-sheet regarding misbehavior, disobedience of superior officers, tampering with official documents, negligence in discharge of duty and misuse of company property. The matter had been taken before the Labour Court and unsuccessfully ended. Thereafter, it had come to the Apex Court, through the High Court of Bombay, Nagpur Bench and all the issues had been decided against the employee, including the issue of proportionality.

26. While deciding the 5th issue-whether the punishment of dismissal was disproportionate, it was noticed that the acts as such could not be reclassified as minor lapses but the employee had rendered 21 years of service having joined in 1985 and the allegations having been raised in the year 2006 and the dismissal order having been passed in the year 2017, it was evidently held that dismissal is a very severe form of penalty and not only impacts the employee but also the dependents and the authority must be very careful in imposing the same. Resultantly, it was held that the allegations appeared to arise out of internal office functioning and service related conflict and did not play out in the public domain. The dismissal order was set aside and the matter was remanded to pass a reasonable penalty within 8 weeks. The relevant portion reads as under:-

“106. Dismissal from service is the severest form of

penalty which can be inflicted on a delinquent employee in service jurisprudence. It brings the relationship of employer and employee to an end permanently, and ordinarily deprives the employee of the incidents of past service, including retiral benefits. It does not lead merely to the loss of the existing source of income for the employee but also for the dependent family members. Thus, it will have a devastating effect not only on the dismissed employee but also on all those who are dependant on the employee. Because of the severity of its impact not only on the employee but also to his dependents, the disciplinary authority must be very careful in seeking to impose the severest form of punishment of dismissal.

It further carries consequences beyond immediate cessation of employment. It leaves a permanent stigma on the service record of the employee concerned, and may impair future employment prospects, particularly in public employment, statutory bodies, public sector undertakings and other regulated establishments where antecedents and service record are material. For this reason, dismissal must remain reserved for cases where the misconduct is of the most serious nature where elements of synthetic consideration would be undesirable and inappropriate.”

27. The judgment relied upon by the learned Single Judge in **Ajai Kumar Srivastava's** case (supra), was a case of self-misappropriation of the bank's money, by holding fake credits, and criminal proceedings had also been initiated. The learned Single Judge had come to the conclusion that a great prejudice had occurred and the disciplinary authority had passed a non-speaking order, which order had been upheld by the Division Bench, which was subject matter of challenge.

Resultantly, it was held that powers conferred under Article 226 or Article 32 or Article 136 of the Constitution of India, is circumscribed by limits of correcting errors of law and the strict rules of evidence were not applicable to the departmental inquiry proceedings and several charges had been levied for grave misconduct. In such circumstances, the view had been taken that in banking business, absolute devotion, integrity and honesty is a *sine qua non* for every bank employee and thus the said judgment would not be applicable in the facts and circumstances of this case, as the removal is on account of non-joining the place of posting while challenging the transfer order.

28. Similarly, in ***Constable Sunil Kumar's*** case (supra), the employee was a serving C.R.P.F personnel and had consumed country liquor while on duty and threatened senior officers. The order of dismissal had thus been passed. The same had been set aside by the Division Bench on the ground that he was not on active duty and the extreme penalty of dismissal could not be passed. In such circumstances, keeping in view the fact that the employee was working in a disciplined force, the observations came that the order of penalty cannot be said to be disproportionate, rejecting the argument that he had 11 years of service. Thus, the Apex Court had kept in mind the fact that the employee as such was a man in uniform and the charges of

misbehaviour or threatening to have consequences and giving threats to police, was a major misconduct and the said judgment is liable to be distinguished.

29. Accordingly, keeping in view the above, this Court is of the considered opinion that keeping in view the 19 years of long service of the appellant and the fact that there were family circumstances which constrained the employee from joining at Kaza, which is admittedly a Tribal Area and having a working wife and two elders in the house, including the child, who was suffering from the throat cancer, the punishment of removal of service is very extreme. Therefore, to shorten the litigation, this Court is of the considered opinion that the said judgment can be substituted by way penalty of compulsory retirement, with all consequential benefits, as it shocks the conscience of the Court. The employer had a host of other major penalties under Rule 11 of CCS (CCA) Rules to be imposed in the form of stoppage of increments with cumulative effect, reduction in pay grade or post and reduction to the lower time scale, which had not been done and the appellate authority also failed to look into this aspect.

30. Resultantly, the appeal is allowed and the order dated 01.11.2019 of removal of service, which was upheld in an appeal vide order dated 08.01.2020 and further upheld by the learned Single Judge in a Civil Writ Petition No. 422 of 2020, vide

order dated 14.06.2024, are set aside and the said order is modified to the extent that the employee would be compulsorily retired from the date of removal from service and would get all consequential benefits. The needful be done within 8 weeks.

31. Accordingly, the present appeal is disposed of. Pending miscellaneous application(s), if any, also stands disposed of accordingly.

(G.S. Sandhawalia)
Chief Justice

(Bipin C. Negi)
Judge

August 21, 2026
(Shivank Thakur)