

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 338 of 2010**

Khushi Ram Sandilya S/o. Let. Shri Tekram, Age about 39 years, R/o Village: Thakurdiya P.S. Navaarh, Distt.-Janjgir-Champa (CG)

---- Petitioner**Versus**

1. State of Chhattisgarh Through : Home (Police) Department, D.K.S. Bhawan, Raipur (CG)
2. Superintendent of Police, Janjgir-Champa (CG)
3. Inspector General of Police, Raipur (CG)

---- Respondents

For Petitioner	:	Mr.Jitendra Gupta, Advocate
For Respondents	:	Mr. Dhiraj K. Wankhede, Govt.Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****08/12/2015**

1. The petitioner was working as Treasury Guard duly appointed by the Superintendent of Police, Bilaspur. He remained absent from his duties without prior information from 9.1.2005 to 2.2.2005 leading to preliminary inquiry on 18.3.2005 and regular departmental enquiry on 14.6.2005. The petitioner was suspended and the Superintendent of Police, Janjgir-Champa inflicted penalty of removal against him on 30.1.2006, against which, the

petitioner preferred an appeal before the Inspector General of Police, which also suffered the same fate. Thereafter, mercy appeal was filed before the Director General of Police, which too was dismissed.

2. Feeling aggrieved against his order of removal, order of affirmation and dismissal of mercy appeal, the present writ petition has been filed on the ground that punishment imposed on the petitioner for his alleged unauthorized absent for 15 days is strikingly disproportionate to the misconduct alleged to have been committed by him and therefore, the order impugned deserves to be set aside.
3. Mr.Jitendra Gupta, learned counsel appearing for the petitioner, would submit that for delay of unauthorized absence of 15 days, infliction of penalty of removal is highly arbitrary apart from being disproportionate and therefore, the impugned order be set aside.
4. Mr.Dhiraj Wankhede, learned Government Advocate for the State/respondents, would oppose the writ petition.

5. I have heard learned counsel appearing for the parties, given thoughtful consideration to the submissions raised therein and also gone through the record with utmost circumspection.
6. The fact remains that the petitioner was removed from his service on 30.1.2006 for his misconduct as he remained absent from his duty from 19.1.2005 to 2.2.2005 while he was posted as Treasury Guard.
7. Question that arises for consideration is whether the penalty of removal is disproportionate to the guilt of the petitioner.
8. It is not in dispute that there is no other charge of misconduct against the petitioner except remaining absent from duty for 15 days.
9. Regulation 214 of the M.P. Police Regulations prescribes all the punishment to be imposed against any member of subordinate Police Service and removal of service is also one of the penalties for misconduct.
10. It is true that the petitioner remained absent for 15 days,

but penalty of removal for absence of 15 days appears to be disproportionate and excessive to the guilt/misconduct alleged to have been committed by an employee. Neither the Superintendent of Police, Bilaspur has adverted to the quantum of punishment nor in appeal it has been looked upon by the Inspector General of Police and Director General of Police. The punishment of dismissal from service for absence of 15 days appears to be strikingly disproportionate.

11. The following judgments may be noticed herein profitably:-

In the matter of Shri Bhagwan Lal Araya v. Commissioner of Police, Delhi and others¹, in which delinquent police constable remained absence for two months and eight days and he was inflicted with the penalty of removal, the Supreme Court has set aside the penalty of removal and directed the delinquent employee to be reinstated in service.

12. Similarly, in the matter of Union of India and others v.

¹ (2004) 4 SCC 560

P.Gunasekaran², Their Lordships of the Supreme Court have laid down the law qua scope of interference in the quantum of punishment and it has been held as under:-

20. Equally, it was not open to the High Court, in exercise of its jurisdiction under Articles 226/227 of the Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the court. In the instant case, the disciplinary authority has come to the conclusion that the respondent lacked integrity. No doubt, there are no measurable standards as to what is integrity in service jurisprudence but certainly there are indicators for such assessment. Integrity according to *Oxford Dictionary* is “moral uprightness; honesty”. It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence, etc. In short, it depicts sterling character with firm adherence to a code of moral values.

21. The impugned conduct of the respondent working as Deputy Office Superintendent in a sensitive department of Central Excise, according to the disciplinary authority, reflected lack of integrity warranting discontinuance in service. That view has been endorsed by the Central Administrative Tribunal also. Thereafter, it is not open to the High Court to go into the proportionality of punishment or substitute the same with a lesser or different punishment.”

24. The Central Administrative Tribunal, in the order dated 1-2-2001 in OA No.521 of 2000, after elaborately discussing the factual as well as the legal position, has come to the conclusion that the punishment of compulsory retirement is not

² (2015) 2 SCC 610

outrageous or shockingly to its conscience, it was not open to the High Court to interfere with the disciplinary proceedings from stage one and direct reinstatement of the respondent with back wages.”

13. In **B.C.Chaturvedi v. Union of India and others**³, the Supreme Court has held that it is for the disciplinary authority to impose appropriate penalty to the delinquent employee and observed as under:-

“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 cogent reasons in support thereof.”

14. Applying the law laid-down by Their Lordships of the Supreme Court in the aforesaid judgments, I find that penalty of removal from service for unauthorised absence for 15 days is shockingly high and disproportionate to the

³ AIR 1996 SC 484

misconduct of the guilty which he is held to have committed in discharge of his official duty and therefore, matter is remitted to the disciplinary authority i.e. Superintendent of Police, Janjgir-Champa to consider the question of punishment afresh in the light of the principles laid down by the Supreme Court in above stated judgments and to pass appropriate order keeping in mind the punishment has to be reasonable and in consonance with the misconduct of the delinquent.

- 15.** As a fall out and consequence of the aforesaid discussion, the writ petition is allowed and order dated 31.1.2006 (Annexure P/1) passed by the Superintendent of Police, Janjgir-Champa, order dated 11.9.2006 (Annexure P-2) affirming the order passed by the Superintendent of Police, Janjgir-Champa dated 31.1.2006 by the Inspector General of Police, Bilaspur Range, Bilaspur and order dated 23.7.2008 dismissing mercy appeal by the Director General of Police, Raipur are hereby set aside. The matter is remitted to the Superintendent of Police, Janjgir-Champa for consideration afresh. The Superintendent of Police, Janjgir-Champa shall pass the order within 45 days from

the date of production/communication of certified copy of this order. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-