

WP(S) 1881/05

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BEFORE THE M.P. STATE ADMINISTRATIVE TRIBUNAL AT
JABALPUR.

W.P. 14587/03

O. A. NO. 273/2000.

APPLICANT

:

Virendra Pratap Singh S/o Ram
Naresh Singh, R/o Village & Post
Daultapur Baliya, (U.P.)

V E R S U S

RESPONDENTS

:

1. State of M. P.
through Secretary Home
Department Vallabh Bhawan,
Bhopal.
2. Police Director General of
Police M. P. Bhopal.
3. D. I. G. Police, &
S.A.F. Bhilai.
4. Senani, 27 Batalian Special
Armed Force, Mana Distt.
Raipur.

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APPLICATION U/S-19 OF THE ADMINSTRATIVE TRIBUNAL
ACT 1985.

(32)

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 1881 of 2005**

- Virendra Pratap Singh

---- Petitioner

Versus

- State of MP And Others

---- Respondent

For Petitioner : Shri Vinod Deshmukh, Advocate.
For Respondents : Shri YS Thakur, Deputy Advocate General.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****17/03/2016**

1. This petition was originally filed as OA No.273/2000 before the M.P. State Administrative Tribunal challenging the legality and validity of the order dated 9.3.99 passed by the Commandant 22nd Battalion, Mana Raipur and the appellate order passed by the DIG, Bhilai on 7.5.99 and the order on his mercy petition passed by the DGP on 5.10.99. By the said orders, the petitioner has been inflicted penalty of removal from service and his mercy petition was also dismissed.
2. The petitioner was appointed as Constable on 20.2.1992. He was served with a charge sheet (Annexure-A/1) carrying imputation that while his posting at Manpur, a seriously naxal affected area, he created nuisance and has violated peace and tranquility in the barrack after taking liquor and while using filthy language, criminally

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intimidated the colleagues.

3. In a duly constituted and conducted departmental enquiry, charges were found proved, therefore, the Commandant imposed penalty of removal from service.
4. Shri Deshmukh, learned counsel for the petitioner would submit that while imposing punishment, the petitioner's past conduct has been considered, which is not permissible in law. He would also submit that penalty of removal from service is shockingly disproportionate to the nature of misconduct, therefore, the writ petition deserves to be allowed. He would also submit that proper opportunity of hearing was not afforded to the petitioner in the enquiry proceeding which has vitiated the whole enquiry.
5. Per contra, Shri YS Thakur, learned Deputy Advocate General would submit that charge against the petitioner was of serious nature and the same was found proved by the enquiry officer, therefore, the said finding need not be interfered with in exercise of writ jurisdiction. He would submit that past conduct of the petitioner was also a part of particulars of charges, therefore, non-mentioning of the same in the charges would neither vitiate the enquiry nor the finding of guilt can be interfered with. He would also submit that full opportunity of hearing was afforded to the petitioner in the departmental enquiry.
6. I have heard learned counsel for the parties and perused the documents including record of the enquiry proceeding which has been produced by the Deputy Advocate General before the Court.
7. Records of the enquiry proceeding do not reveal any such violation of the procedure which has prejudiced the petitioner in his defence. Shri Shekharanand, Company Commander; Khushal Singh, Head Constable; Sher Bahadur, Constable; Bartu Ram, Constable;

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Rambaran Singh, Constable; Patwar Singh and Kripashankar, Constables were examined by the enquiry officer and they were present at the time of the incident. They have categorically stated that the petitioner came to barrack in a state of intoxication and created nuisance by using filthy language and criminally intimidated other constables.

8. Apart from oral statements of the above stated witnesses who were present in the barrack, medical report of the petitioner is also available wherein he was found to have consumed liquor. Thus oral statements are fully corroborated by the medical evidence and the medical evidence has been duly proved by the physician who conducted the petitioner's medical examination.
9. In **General Manager (Operations) State Bank of India and another Vs. R. Periyasamy**, (2015) 3 SCC 101}, it has been observed in para-9 thus:-

“9. In *State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaya*¹, this Court observed as follows: (SCC p. 587, para 7)

“7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the

¹ (2011) 4 SCC 584

findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide *B.C. Chaturvedi v. Union of India*², *Union of India v. G. Ganayutham*³, *Bank of India v. Degala Suryanarayana*⁴ and *High Court of Judicature of Bombay v. Shashikant S. Patil*⁵.)”

It is not necessary to multiply authorities on this point. Suffice it to say that the law is well settled in this regard.”

10. Submission in respect of consideration of past conduct also fails to impress this Court because firstly past conduct was part of particulars of charges, therefore, the petitioner was not taken by surprise when the said past conduct was considered and appreciated by the disciplinary authority or by the appellate authority and secondly, perusal of the orders would demonstrate that past conduct has been considered at the stage when the authority was considering as to what penalty would be appropriate in the given fact situation. Thus, the disciplinary authority, while considering the proportionality of the penalty to be imposed on the petitioner had considered his past conduct which is permissible in law. In fact, this shows due application of mind by the disciplinary authority. It clearly appears that the petitioner was involved in commission of offence under Section 354 of the IPC when he was posted in Bastar district. On an earlier occasion also he had misbehaved with other colleagues during duty hours in a state of intoxication but he was let off with minor penalty. During that proceeding, the petitioner had submitted an undertaking that if he indulges in such activities in future, he would be ready to accept penalty of removal from service. The petitioner has not been removed from service on the basis of his undertaking

2 (1995) 6 SCC 749

3 (1997) 7 SCC 463

4 (1999) 5 SCC 762

5 (2000) 1 SCC 416

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but because of the nature of misconduct which he has committed quite often.

11. For all the afore-stated reasons, this Court does not find any substance in this writ petition, which deserves to be and is hereby dismissed.

Sd/-

Judge
(Prashant Kumar Mishra)

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