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HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 228 of 2005

- Bhodal Ram

---- Petitioner

Versus

- State of Madhya Pradesh (Now Chhattisgarh) and others

---- Respondent

For Petitioner

Ms. Renu Kochar, Advocate

For Respondent/State

Shri Shashank Thakur, Govt. Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

08/03/2016

1. This writ petition was originally filed before the erstwhile Madhya Pradesh State Administrative Tribunal as an original application bearing OA No.317 of 1990 under Section 19 of the Administrative Tribunals Act, 1985.
2. The petitioner is assailing the legality and validity of the order passed by the concerned Superintendent of Police on 18.03.1986 discharging him from the service w.e.f. 01.04.1986 and the appellate order as well as the order passed in mercy petition, whereby his appeal & mercy petition against the said penalty have been rejected.
3. Relying on the law laid down by the Supreme Court in **State of U.P. v. Shatrughan Lal and another¹** and this

¹ (1998) 6 SCC 651

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Court in **Bilaspur Raipur Kshetriya Gramin Bank and others v. Ram Prasad Khande²**, Ms. Renu Kochar, learned counsel appearing for the petitioner, would submit that the enquiring authority has not given sufficient opportunity to the petitioner to prove his innocence and to defend himself, therefore, the impugned order deserves to be set aside. Learned counsel would further submit that the enquiry officer has recorded a perverse finding that the charges have been proved, despite there being glaring disparity in the oral evidence and the corresponding documentary evidence.

4. The petitioner joined the service as Constable on 21.12.1977. During his service career, the petitioner was inflicted with minor punishments on 15 occasions and 1 major penalty. He was issued a charge sheet in the year 1985, *inter alia*, alleging that he did not proceed to Village Rajnagar for service of summons, but wrongly reported of visiting that village and serving the summons. The second charge was for remaining unauthorizedly absent from 07.09.1984 to 17.09.1984. In the third charge, it was alleged that the petitioner remained unauthorizedly absent from duty during the period 16.00 hours to 20.00 hours on 09.10.1984 and in the fourth charge, it was said that on 09.10.1984, he went to village Dumla and misbehaved with Mst. Zahuran Bi and her husband Salamat Miyan.

5. The enquiry officer found all the charges to be proved. It was specifically found that instead of going to village Rajnagar, the petitioner forced one Vasudev, father of the witness namely; Chandu to make signature of Chandu on the service report and thereafter reported that he had gone to village Rajnagar for service of summons on Chandu, but due to non-availability of Chandu, signature was obtained from his father Vasudev. In the enquiry, the story narrated by the petitioner was found incorrect in view of the statement of Vasudev, who was examined by the enquiry officer.
6. Similarly, for the second charge the petitioner has failed to produce any application seeking leave from 07.09.1984 to 17.09.1984. The petitioner had proceeded on leave for his treatment, as he had developed abscess, however, he did not report back to the duty nor submitted any application for extension of leave. Since abscess is not such an ailment, which would have required him to be admitted in any hospital, the petitioner was found to remain unauthorizedly absent.
7. Although the enquiry officer observed that Zahuran Bi had almost turned hostile, however, the fact of petitioner's absence from 16.00 hours to 20.00 hours on 09.10.1984 has been proved from the *rojnamacha sanha* recording his absence. Even if Zahuran Bi has turned hostile, the fact

that the petitioner had gone to her place has been found proved by the enquiry officer.

8. Ms. Kochar, learned counsel appearing for the petitioner, would also argue that the finding recorded by the enquiry officer is perverse.

9. The Supreme Court in **General Manager (Operations) State Bank of India and another v. R. Periyasamy**³, it has been observed in para-9 thus:-

"9. In State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaya⁴, 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 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

3 (2015) 3 SCC 101}

4 (2011) 4 SCC 584

B.C. Chaturvedi v. Union of India⁵, Union of India v. G. Ganayutham⁶, Bank of India v. Degala Suryanarayana⁷ and High Court of Judicature of Bombay v. Shashikant S. Patil⁸.)"

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

10. In view of the well settled principle of law, this Court is unable to agree with the aforestated submission of the learned counsel for the petitioner. It is not a case, where there is absolute lack of evidence in respect of the charges. Similarly, there are materials available on record and it is not a case of perversity, therefore, in view of the concurrent findings recorded by the enquiry officer, the appellate authority and the authority hearing the mercy petition, this Court finds it difficult to interfere with the findings.
11. The other argument concerning non-supply of 7 documents, which were introduced later on, it is to be seen that the documents have been referred as 7 documents, but it is nowhere reflected that any of those 7 documents and no other documents have been relied by the enquiry officer to prove the guilt of the petitioner. If those 7 documents were not the only documents to record the finding against the petitioner, but were some of the documents which have also been relied upon along with the documents already supplied to the petitioner, it is not a case, where non-supply of documents has prejudiced the

5 (1995) 6 SCC 749

6 (1997) 7 SCC 463

7 (1999) 5 SCC 762

8 (2000) 1 SCC 416

case of the petitioner. In any case the petitioner has not come out with a specific plea that which of the documents have prejudiced his case and non supply of the documents would render the entire exercise vitiated.

12. As a result, the writ petition, *sans* merit, is liable to be and is hereby dismissed, leaving the parties to bear their own costs.

Sd/-
Prashant Kumar Mishra
Judge

Gowri