

AFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****WPS No. 3207 of 2005**

Birbal Singh

---- **Petitioner****Versus**

State Of M.P.(now Chhattisgarh )and Ors.

---- **Respondents**


---

|                |   |                                                   |
|----------------|---|---------------------------------------------------|
| For Petitioner | : | Mr. Parag Kotecha and Mr. Waquar Nair, Advocates. |
| For State      | : | Mr. B. Gop Kumar, Dy. A.G.                        |

---

**S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava****Order On Board****01/12/2016**

Heard learned counsel for the parties and also perused the departmental enquiry record produced by the State counsel.

1. The petitioner filed an original application before the then, Madhya Pradesh State Administrative Tribunal Bench at Raipur, which has been transferred to this Court after abolition of the Tribunal.

2. The petitioner has assailed legality and validity of an order of dismissal from service passed by the respondent Superintendent of Police on allegation of misconduct in respect of which a departmental enquiry was conducted against the petitioner. Vide order dated 28.04.1998, penalty of dismissal from service were imposed. The petitioner submitted an appeal, which was considered as a mercy appeal by the Director General of Police and dismissed.

3. During the period the petitioner was working as Head Constable in reserved police at Jagdalpur, an incident happened on 04.06.1997 in the Police Station, wherein it was alleged that the petitioner entered in the Police Station in drunken state and misbehaved with the colleagues staff and officers, abused and destroyed furnitures, register of police station and thereby exhibited an act of indiscipline constituting misconduct. A preliminary enquiry was initiated and after having been satisfied that a case of institution of regular departmental enquiry is necessitated, charge

sheet was issued to the petitioner. The petitioner submitted his reply to the charge sheet, thereafter, enquiry officer was appointed. The prosecution examined number of prosecution witnesses. The petitioner was allowed to cross-examine. The petitioner did not lead any oral evidence in his defence. Enquiry report was supplied and thereafter, the disciplinary authority/Superintendent of Police, Bastar imposed penalty of dismissal from service, affirmed in appeal.

4. Learned counsel for the petitioner argued that in the departmental enquiry, evidence which have been led by the prosecution does not inspire confidence because the statements given by the prosecution witnesses are not quite coherent but suffer from contradictions with regard to the behaviour of the petitioner and also regarding the placement of the petitioner in the lockup. It is alleged that the Panchnama which has been made a basis to rely upon the oral testimony of the prosecution witnesses has not been supported by all the signatories. Out of five signatories of Panchnama, only Baliram proved his signature in Panchnama but has stated that he prepared Panchnama as per the direction of SDO Police and Shri Heersingh Netam. Birendra Das and Kartikram, other prosecution witnesses have not spoken about preparation of Panchnama and they signing the document. Remaining two witnesses of Panchnama, Prempanigrahi and Shivkumar were not examined by the prosecution. Therefore, the Panchnama is highly doubtful.

5. Next submission is that there is no medical report prepared upon medical examination of the petitioner to prove, by clinching evidence, that he had consumed alcohol but the enquiry officer only on the basis of oral evidence, has reached the conclusion regarding drunkenness of the petitioner. Further submission of learned counsel for the petitioner is that the petitioner was, in fact, telling the other police official to take action against violators of law in the area and it was in connection of that the dispute arose in which, he was falsely implicated. It is also submitted that the preliminary enquiry was conducted behind the back of the petitioner therefore, the statement recorded in preliminary enquiry could not be taken into consideration to substantiate the charges. Last but not the least, it is submitted that even if the charges are found to be proved, taking into consideration that the petitioner was working in the naxallite

area under severe stress, looking to the entire circumstances of the case and the situation which was obtaining in the police station, imposition of a penalty of dismissal is shockingly disproportionate to the gravity of misconduct. In support of submission, learned counsel for the petitioner places reliance upon the judgments in cases of **Ram Kishan Vs. Union of India and Others**<sup>1</sup>, **Preetpal Belchandan Vs. State of Chhattisgarh and others and other connected cases**<sup>2</sup>, **Nirmala J. Jhala v. State of Gujarat and another**<sup>3</sup>.

6. On the other hand, learned State counsel replied that the petitioner was member of disciplined force and that he entered in the police station in a drunken state and created nuisance by abusing his colleagues officer and staff in the police station, on duty and destroyed furnitures and records. The extent of overt act of the petitioner was so much so that he had to be kept inside the lockup for sometime to prevent continuance of nuisance. This has been clearly stated by number of prosecution witnesses and minor contradictions do not affect the credibility of the case of the prosecution. He also submits that Baliram was one of the witnesses of the Panchnama who had actually prepared also and he has supported preparation of Panchanama. He has proved his signature. The preliminary statement have not been made a basis to hold the charges proved but it is the substantive evidence collected during enquiry by the enquiry officer which formed basis to record finding of guilt. It is lastly submitted that the petitioner was a member of disciplined force and the act committed by the petitioner is a grave misconduct, therefore, imposition of the penalty of dismissal from service does not warrant any interference.

7. The case of the petitioner, as pleaded in the petition before this Court, does not show that there has been any procedural defect in the decision making process so as to say that the petitioner's right to defend himself was in any manner adversely affect. It is not a case where there has been violation of principle of natural justice in the sense that the petitioner was not allowed to examine the prosecution witnesses or that he was not given opportunity to lead oral and documentary evidence.

8. The entire case of the petitioner hinges upon the appreciation of

---

1 (1995) 6 SCC 157  
 2 2015(3) CGBCLJ 270  
 3 AIR 2013 SC 1513

evidence on record.

9. The submission that Panchnama is doubtful, is based on the ground that other signatories of Panchnama have not supported or not examined. True, it is that two witnesses namely Birendra Das and Kartikram were examined during departmental enquiry and they have not spoken about the panchnama, however, Baliram who had prepared Panchnama has emphatically stated that Panchnama was prepared by him and he has also proved his signature. The objection taken to the veracity of the statement on the ground that he was compelled by the SDO police to prepare Panchnama in a particular manner, upon due appreciation, deserves rejection. He has only stated that he was ordered by the SDO Police to prepare Panchnama. There is nothing in the statement to say that he had prepared Panchnama with the contents which were tutored by the SDO Police. The statement as it reads naturally only means that SDO police directed him to prepare Panchnama and not to prepare Panchnama in a particular manner.

10. The witnesses of the prosecution, more than one, have clearly stated in their statement that at about 23 hrs. in the night, the petitioner entered in the police station and he was found to be in drunken state, he abused his colleagues, staff, created nuisance so much so that he had to be temporarily apprehended to discontinue nuisance. The witnesses have stated regarding the petitioner being in drunken state which is based on their visual appearance of the petitioner. True, it is that there is no medical examination, but the evidence on record shows that the attempt was made to take petitioner for medical examination, he resisted it and because of his conduct, it became difficult to take him for medical examination. But then, the witnesses have clearly stated regarding petitioner being intoxicated.

11. The contradictions with regard to exact hour of the night when the incident happened is very trivial. The statement of all the witnesses shows that the incident happened sometime in the night and therefore, one or two small differences, may not be so imperative so as to completely discard case of the prosecution. Further the legal position is very well settled by the Supreme Court in the catena of decision that the standard of proof required in departmental enquiry is only preponderance of

probability and it is not necessary to prove the charges beyond reasonable doubt which is requirement in criminal proceeding. In one of the decision, in the case of **Nirmala J. Jhala (supra)** and doctrine of proof beyond reasonable doubt was held inapplicable.

**“6.LEGAL ISSUES: I. Standard of proof in a Departmental Enquiry which is Quasi Criminal/Quasi Judicial in nature :**

**A. In M. V. Bijlani v. Union of India and Ors.**, AIR 2006 SC 3475, this Court held :

“... Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidences to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures.” (Emphasis added) (See also : **Narinder Mohan Arya v. United India Insurance Co. Ltd. & Ors**, AIR 2006 SC 1748; **Roop Singh Negi v. Punjab National Bank and Ors**, AIR 2008 SC (Supp) 921; and **Krushnakant B. Parmar v. Union of India & Anr**, (2012) 3 SCC 178).

**B. In Prahlad Saran Gupta v. Bar Council of India & Anr**, AIR 1997 SC 1338, this court observed that when the matter relates to a charge of professional mis-conduct which is quasi-criminal in nature, it requires proof beyond reasonable doubt. In that case the finding against the delinquent advocate was that he retained a sum of Rs. 15,000/- without sufficient justification from 4-4-1978 till 2-5-1978 and he deposited the amount in the Court on the latter date, without disbursing the same to his client. The said conduct was found by this Court as "not in consonance with the standards of professional ethics expected from a senior member of the profession". On the said fact- situation, this court imposed a punishment of reprimanding the advocate concerned.

**C. In Harish Chandra Tiwari v. Baiju**, AIR 2002 SC 548, this court made a distinction from the above judgment stating the facts in the aforesaid decisions would speak for themselves and the distinction from the facts of this case was so glaring that the misconduct of the appellant in the present case was of a far graver dimension. Hence, the said decision was not of any help to the appellant for mitigation of the quantum of punishment.

**D. In Noor Aga v. State of Punjab & Anr**, AIR 2009 SC (Supp) 852 , it was held that the departmental proceeding being a quasi judicial one, the principles of natural justice are required to be complied with. The Court exercising power of judicial review are entitled to consider as to whether while

inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. (See also: [Roop Singh Negi v. Punjab National Bank & Ors](#), AIR 2008 SC (Supp) 921; [Union of India & Ors. v. Naman Singh Sekhawat](#), (2008) 4 SCC 1; and [Vijay Singh v. State of U.P. & Ors](#), AIR 2012 SC 2840).

[E. In M. S. Bindra v. Union of India & Ors](#) , AIR 1998 SC 3058, it was held:

“While evaluating the materials the authority should not altogether ignore the reputation in which the officer was held till recently. The maxim "Nemo Firut Repente Turpissimus" (no one becomes dishonest all on a sudden) is not unexceptional but still it is salutary guideline to judge human conduct, particularly in the field of Administrative Law. The authorities should not keep the eyes totally closed towards the overall estimation in which the delinquent officer was held in the recent past by those who were supervising him earlier. To dunk an officer into the puddle of "doubtful integrity" it is not enough that the doubt fringes on a mere hunch. That doubt should be of such a nature as would reasonably and consciously be entertainable by a reasonable man on the given material. Mere possibility is hardly sufficient to assume that it would have happened. There must be preponderance of probability for the reasonable man to entertain doubt regarding that possibility. Only then there is justification to ram an officer with the label 'doubtful integrity'.”

F. In High Court of Judicature at Bombay through its [Registrar v. Udaysingh & Ors](#), AIR 1997 SC 2286, this Court held :

“The doctrine of ‘proof beyond doubt’ has no application. Preponderance of probabilities and some material on record would be necessary to reach a conclusion whether or not the delinquent has committed misconduct.”

G. In view of the above, the law on the issue can be summarised to the effect that the disciplinary proceedings are not a criminal trial, and in spite of the fact that the same are quasi-judicial and quasi- criminal, doctrine of proof beyond reasonable doubt, does not apply in such cases, but the principle of preponderance of probabilities would apply. The court has to see whether there is evidence on record to reach the conclusion that the delinquent had committed a misconduct. However, the said conclusion should be reached on the basis of test of what a prudent person would have done. The ratio of the judgment in Prahlaad Saran Gupta ( AIR 1997 SC 1338) (supra) does not apply in this case as the said case was of professional misconduct, and not of a delinquency by the employee.”

12. Therefore, while examining the evidence on record within the scope of judicial review, the aforesaid principle is required to be kept in view.

13. As far as findings are concerned, the enquiry officer and disciplinary authority have relied upon prosecution witnesses. It is not a case where the finding is without any evidence on record. The attempt made by learned counsel for the petitioner is more to seek re-appreciation of evidence which is not permissible in these proceedings. The scope of judicial review under Article 226 of the Constitution of India in a matter of departmental enquiry was also considered by the Supreme Court in the case of **Nirmala J. Jhala (supra)** and it was held-

**“6.III. Scope of Judicial Review :**

(i) It is settled legal proposition that judicial review is not akin to adjudication on merit by re-appreciating the evidence as an Appellate Authority. The only consideration the Court/Tribunal has in its judicial review, is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence. The adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the Court in writ proceedings. (Vide: [State of T.N. & Anr v. S. Subramaniam](#), AIR 1996 SC 1232; [R.S. Saini v. State of Punjab](#), (1999) 8 SCC 90; and [Government of Andhra Pradesh & Ors. v. Mohd. Nasrullah Khan](#), AIR 2006 SC 1214)

(ii) [In Zora Singh v. J.M. Tandon & Ors.](#), AIR 1971 SC 1537, this Court while dealing with the issue of scope of judicial review, held as under:

“The principle that if some of the reasons relied on by a Tribunal for its conclusion turn out to be extraneous or otherwise unsustainable, its decision would be vitiated, applies to cases in which the conclusion is arrived at not on assessment of objective facts or evidence, but on subjective satisfaction. The reason is that whereas in cases where the decision is based on subjective satisfaction if some of the reasons turn out to be irrelevant or invalid, it would be impossible for a superior Court to find out which of the reasons, relevant or irrelevant, valid or invalid, had brought about such satisfaction. But in a case where the conclusion is based on objective facts and evidence, such a difficulty would not arise. If it is found that there was legal evidence before the Tribunal, even if some of it was irrelevant, a superior Court would not interfere if the finding can be sustained on the rest of the evidence. The reason is that in a writ petition for certiorari the superior Court does not sit in appeal, but exercises only supervisory jurisdiction, and therefore, does not enter into the question of sufficiency of evidence.” (Emphasis added)

(iii) The decisions referred to hereinabove highlights clearly, the parameter of the Court’s power of judicial review of administrative action or decision. An order can be set-aside if it is based on extraneous grounds, or when there are no grounds at all for passing it or when the grounds are such that, no one can reasonably arrive at the opinion. The Court does not sit as a Court of Appeal but, it merely reviews the manner in which the decision was made. The Court will not normally exercise its power of judicial review unless it is found that formation of belief by the statutory authority suffers from malafides, dishonest/corrupt practice. In other

words, the authority must act in good faith. Neither the question as to whether there was sufficient evidence before the authority can be raised/examined, nor the question of re-appreciating the evidence to examine the correctness of the order under challenge. If there are sufficient grounds for passing an order, then even if one of them is found to be correct, and on its basis the order impugned can be passed, there is no occasion for the Court to interfere. The jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. This apart, even when some defect is found in the decision-making process, the Court must exercise its discretionary power with great caution keeping in mind the larger public interest and only when it comes to the conclusion that overwhelming public interest requires interference, the Court should intervene.”

14. Submission of learned counsel for the petitioner quite possibly may lead to a conclusion that another view is possible if one were way to believe or disbelieve evidence on record. But then, that exercise would not be undertaken by this Court in exercise of jurisdiction under Article 226 of Constitution of India. It is not a case where finding are absolutely perverse that it would become imperative for the writ Court to interfere with those findings. Last submission of learned counsel for the petitioner is that in the circumstances of the case, even if the charges held proved, imposition of penalty of dismissal from service would be shockingly disproportionate.

15. The legal position with regard to the scope of judicial review in the matter of quantum of penalty has been examined by the Supreme Court in plethora of decisions, a few of them need mention.

In the case of **Mithilesh Singh vs. Union of India and others**<sup>4</sup>, it was held -

“9. The only other plea is regarding punishment awarded. As has been observed in a series of cases, the scope of interference with punishment awarded by a disciplinary authority is very limited and unless the punishment appears to be shockingly disproportionate, the Court cannot interfere with the same. Reference may be made to a few of them. (See: B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749, State of U.P. V. Ashok Kumar Singh, (1996) 1 SCC 302, Union of India v. G. Ganayutham, (1997) 7 SCC 463, Union of India v. J.R. Dhiman, (1999) 6 SCC 403 and Om Kumar v. Union of India, (2001) 2 SCC 386.”

In another decision in the case of **State of U.P. v.**

---

4 (2003) 3 SCC 309

**Jaikaran Singh<sup>5</sup>**, it was held -

“g.....Normally, the Court in exercise of power under Article 226 does not interfere with the quantum of punishment alone if the charges are established against the delinquent and there is no lacuna in the procedure adopted in the departmental proceedings. But at times if the Court feels that the punishment inflicted is grossly unjust and shocks the conscience then in appropriate cases the Court may interfere.....”

16. In all the decisions, it has been consistently held that the scope of interference by this Court with quantum of punishment is very limited; that unless the Court is satisfied that the punishment is shockingly disproportionate to the gravity of misconduct, interference would not be called for. Moreover, it has also been held that what punishment has to be imposed in a given case would depend upon the nature and gravity of misconduct, nature of service, the circumstances in which it had happened and other attending relevant circumstances. That is the decision of the Supreme Court in the case of **Ram Kishan (supra)**.

17. The petitioner was a member of disciplined force. He entered the police station at late hour in the night. He was in a drunken state. Not only that, he started quarreling with his colleagues which has been clearly stated by number of prosecution witnesses. He also hurled abuses. The extent of nuisance created by the petitioner was so much so that it became imperative to apprehend atleast for sometime temporarily. This speaks volume of his overt act. The submission of learned counsel for the petitioner is that he was posted as constable in naxalite area therefore, he was under stress, cannot be accepted. There is hardly any material on record to show that for any particular reason, the petitioner was in disturbed state of mind. In fact, the petitioner has been changing his stand. For the first time in his appeal, he stated that the genesis of dispute was that he was raising grievance that proper action is not being taken against lawbreakers in the area. This does not find place in his reply to the charge sheet meaning thereby, it was afterthought. If the standard of proof required in departmental enquiry is only preponderance of probability and not beyond reasonable doubt, only on the ground that the petitioner was not subjected to medical examination, consistent evidence of more than one prosecution witnesses that he was in drunken state supported by the contents of Panchnama prepared at the spot and proved by Birendra Das, by itself is sufficient to record finding of petitioner being

---

5 (2003) 9 SCC 228

in a drunken state.

18. In view of the above consideration, I do not find that there is any ground made out in the law to warrant interference with the impugned order. The petition is, therefore, dismissed.

19. Before parting with this case, I must note that the manner in which, authority has decided the appeal is far from being satisfactory. The order speaks nothing and is completely mechanically in nature. Normally, this Court would have sent the matter back to the appellate authority to reconsider the matter but the submission of learned counsel for the petitioner that at this stage, after about 20 years, it would be atrocious to the petitioner to send him back in the hands of appellate authority to seek appellate remedy, this Court proceeded to examine the matter itself within the scope of judicial review permissible under the law.

**Sd/-**  
**(Manindra Mohan Shrivastava)**  
Judge

Rekha