

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 401 of 2012**

Sunil Kumar Pujari S/o Kunwar Singh Pujari, aged about 32 years,
Jail Warder, District Jail, Dantewada (CG)

---- Petitioner**Versus**

1. State of Chhattisgarh through Department of Home, Jail and Police Affairs, DKS Bhawan, Raipur (CG)
2. Inspector General of Police, Jail Evam Sudharatmak Sevaye, Chhattisgarh
3. The Jail Superintendent, Central Jail, Jagdalpur (CG)
4. Jail Superintendent, District Jail Dantewada (CG)

---- Respondents**Writ Petition (S) No. 501 of 2012**

Jaiprakash Kannouje S/o Mahesh Ram, aged about 46 years, Head
Jail Warder, District Jail, Dantewada (CG)

---- Petitioner**Versus**

1. State of Chhattisgarh through Department of Home, Jail and Police Affairs, DKS Bhawan, Raipur (CG)
2. Director General of Police, Jail Evam Sudharatmak Sevaye, Chhattisgarh
3. The Jail Superintendent, Central Jail, Jagdalpur (CG)
4. Jail Superintendent, District Jail Dantewada (CG)

---- Respondents

For Petitioner	:	Shri Malay Kumar Bhaduri, Advocate
For State	:	Shri R. K. Gupta, Dy. Advocate General

Hon'ble Shri Justice P. Sam Koshy**Order On Board****17/09/2018**

Challenge in the present two writ petitions is to the order of punishment dated 11.05.2011 Annexure P-5 whereby the petitioners have been inflicted with punishment of reduction of pay scale to a lower stage of time pay scale. Challenge is also to the order of the appellate authority dated 13.01.2011 passed by the Inspector General of Police, Jail Evam Sudharatmak Sevaye, CG.

2. Brief facts of the case relevant for adjudication of the present dispute is that the two petitioners in the two writ petitions were working at District Jail, Dantewada as Jail Warder and Head Jail Warder. On 16.12.2007 there was a jail break in the District Jail, Dantewada and 299 jail inmates escaped. The petitioners were prosecuted departmentally for the alleged act in which 299 jail inmates escaped. They were charged for the misconduct showing laxity in discharging their duties as Jail Warder as well as Head Jail Warder on the relevant date of incident. A departmental enquiry was contemplated and the Enquiry Officer after conclusion of the enquiry submitted his report to the Disciplinary authority on 13.04.2010. Based on the report of the Enquiry Officer, the Jail Superintendent, Central Jail, Jagdalpur passed an order of punishment dated 11.05.2007 inflicting the petitioners with an order of reduction of pay scale below the lower stage of time pay scale.

3. The petitioners immediately preferred an appeal to the Inspector General of Police, Jail Evam Sudharatmak Sevaye, CG against the said

punishment and the IG vide impugned order dated 13.01.2011 rejected the appeal of the petitioners holding it to be devoid of merits.

4. Contention of the counsel for the petitioners assailing the order of punishment as well as the order of appellate authority is that the authority concerned has not properly appreciated the evidence which has come on record while imposing the petitioners with punishment. That the Disciplinary Authority has also ignored the aspect that the Enquiry Officer had given a report in favour of the petitioners and there was no scope of inflicting punishment against the petitioners. Counsel for the petitioners referring to the analysis given by the Enquiry Officer in Annexure P-4 in WPS 401/12 i.e. part of the enquiry report submitted that the analysis itself would clearly reflect that the petitioners were not at fault in any manner in the escaping of the inmates from the jail on the said date. He drew the attention of the Court to the manner in which the petitioner Sunil Kumar Pujari was brutally assaulted by the inmates before escaping and the petitioner also tried to lay emphasis that the said Sunil Pujari also sustained bullet injuries. Counsel for the petitioner submitted that the enquiry would also show that there has been no substantial material or cogent evidence brought before the enquiry officer with which he could have held that charge no. 2 & 3 has been conclusively proved and established. For all these reasons, the writ petitions deserve to be allowed and the impugned orders deserve to be set aside/quashed.

5. State counsel opposing the petition tried to harp on the submission that the scope of judicial review would not permit this Court to threadbare go into the evidences which have been collected in the course of enquiry proceeding. It was the contention of the State Counsel that in exercise of

power under Article 226/227 of the Constitution of India, this Court would not substitute itself as the second appellate authority or would conduct a roving enquiry as to the evidence which has been brought before the enquiry officer to give a finding whether the petitioners were guilty or not for the charges leveled against them. In this context, State counsel relied upon the judgment of the Supreme Court in the case of Union of India and others vs P. Gunasekaran reported in (2015) 2 SCC 610 so far as the analysis made by the enquiry officer is concerned. Contention of the State counsel is that the analysis of the Enquiry Officer cannot be read in isolation. On the contrary, the entire enquiry report would have to be taken into consideration while reaching to the conclusion whether the finding given by the Enquiry Officer is just and reasonable or not.

6. Having heard the contentions put forth on either side and on perusal of the record it would be relevant at this juncture to refer to the charges levelled against each of the petitioners where the basic charge against them is that they had shown laxity in discharging their duty and they had permitted the inmates to assemble at one place on the said date which enabled them to gang up in a group and plan for their escaping after assaulting the guards on duty.

7. That the Enquiry Officer has given a report, however, surprisingly, the Enquiry Officer after discussing with the charges levelled against each of the petitioners has given a small analysis of the evidences which have been collected. A perusal of the analysis given in the Enquiry report conducted in respect of the two petitioners it would reveal that the Enquiry Officer himself was prima facie of the view that the petitioners were helpless taking into consideration the manner in which the attack took

place on the petitioners and the manner in which the inmates escaped from the jail. In spite of making such an analysis, the Enquiry Officer in conclusion has held that the two of the charges levelled against each of the petitioners stand proved.

8. It is necessary at this juncture to refer to the enquiry report which has dealt with the enquiry proceedings and the evidences which have come on record. In respect of the charges levelled against each of the petitioners what clearly reflects is that the prosecution has not sufficiently proved the charges before the Enquiry Officer. In other words, what clearly reflects is that for proving the respective charges which were levelled against the petitioners it was necessary for the Department to have adduced cogent evidence to establish the nature of duties, the materials provided to the petitioners while on duty and in spite of providing all necessary facilities and instructions, there has been a laxity on the part of the petitioners or a lapse on their part in ensuring the safety of the jail and providing security to the inmates.

9. The allegation against petitioner Sunil Kumar Pujari is that he had not used the Walkie-talkie for the purpose of alerting other security guards. Similarly, he had not blown whistle for alerting other persons in jail. So far as the charge against petitioner Jaiprakash is concerned, it is the allegation that he had permitted the inmates to assemble at one place at one time which made things easy for the inmates for breaking the jail and also attacking the guards on duty in the jail.

10. Now, the enquiry report is silent as to the evidence which has been collected during the course of the enquiry to ascertain whether any Walkie-talkie was given to Sunil Pujari or in the same way there is no evidence to

show that Jai Prakash had in fact violated the normal practice of calling the inmates separately phase by phase for the purpose of lunch during the hour. On the contrary, there was a categorical denial by the two petitioners in respect of the charges levelled against each of them. Under the circumstances, taking into consideration the analysis made by the Enquiry Officer in respect of the two petitioners and also the fact that there is no material to show that the charges have been conclusively proved by leading cogent evidence before the Enquiry Officer, the finding appears to be a perverse finding.

11. Another aspect which needs consideration at this juncture is that the incident that took place on 16.12.2007 was a very serious incident where 299 jail inmates escaped from District Jail Dantewada. It is hard to believe that such an incident could have occurred only on account of the lapse of two petitioners. Moreover, the petitioner in WPS No. 501/2012 Jaiprakash in his reply to the charge levelled against him has specifically said that this was the practice prevalent in the said jail even before he had joined duty in the said jail. If that be so, it cannot be said that there was a deviation in the practice in jail by the said Jai Prakash. Similarly, there is no evidence to establish the fact that Sunil Pujari was issued with a Walkie-talkie which he had not used on the said day. On the contrary, if the analysis of the Enquiry Officer is taken into account, it reveals that the inmates of the jail had first assaulted Sunil Pujari and in the course he had also received bullet injury and fracture injury on his hand as is evident from his evidence as discussed by the Enquiry Officer in his enquiry report. Under the given circumstances, it cannot be said that there was any sort of laxity or lapse shown by the two petitioners.

12. So far as the judgment which has been relied upon by the learned counsel for the State is concerned, this Court is fully conscious of the parameters or the scope of the judicial review under Article 226 of the Constitution of India in a disciplinary proceeding. The law laid down by the Hon'ble Supreme Court in the said judgment is an authority on the said issue. However, in paragraph-12 itself the Supreme Court while discussing on the scope of judicial review has held that while dealing with a disciplinary proceeding the High Court would only see apart from the other conditions that the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable man could have arrived at such conclusion. Likewise it was also observed by the Supreme Court that they could also scrutinise the evidence and reach to the conclusion whether the finding of fact is based on no evidence. This by itself means that given the aforesaid two situations the High Court in exercise of its power under Article 226 of the Constitution of India would have the powers under judicial review to interfere with the disciplinary proceeding particularly the finding of an Enquiry Officer in a departmental enquiry.

13. For the reasons discussed in the preceding paragraphs particularly the analysis made by the Enquiry Officer in his enquiry report pertaining to the two petitioners, this Court has no hesitation in holding that conclusion that the conclusion arrived at by the Enquiry Officer for both the cases was without any basis and evidence and also without any cogent material adduced by the department during the enquiry proceeding. This Court is also of the opinion that the overall manner in which the Enquiry has been conducted and the two petitioners have been punished seems to be an eye

wash at the hands of the respondents in respect of the incident of a jail break wherein almost 300 inmates of the jail had escaped.

14. Thus, the two punishment orders and the Appellate Authority's order for the aforesaid reasons are not sustainable and the same deserve to be and are accordingly set aside with consequences to follow.

15. Accordingly, both the writ petitions stand allowed.

**Sd/-
(P. Sam Koshy)
Judge**