

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURWPS No. 7157 of 2008

1. Ramrajya Pandey S/o Shri Ramawatar Pandey, aged about 37 years, R/o Village Pachori, Post Afrid, Via-Bamhanidih, Distt. Janjgir-Champa (CG).

---- Petitioner

Versus

1. State Of Chattisgarh, through Secretary, Department of Home Affairs, DKS Bhavan, Raipur (CG).
2. Director General of Police, Police Headquarter, Raipur, Dist. Raipur (CG).
3. Inspector General of Police, Bilaspur Range, Bilaspur (CG).
4. Superintendent of Police, Janjgir-Champa (CG).

---- Respondent

For Petitioner	Shri Akshay Uppal, Advocate on behalf of Shri Sunil Otwani, Advocate
For Respondent/State	Shri Rajendra Tripathi, Panel Lawyer

Hon'ble Shri Prashant Kumar Mishra, JOrder On Board12/12/2019

1. Petitioner has called in question the order of penalty of removal from service passed by the Superintendent of Police, Janjgir-Champa on 17-3-2005 (Annexure-P/1). The petitioner is also challenging the appellate order passed by the Inspector General of Police, Bilaspur Range, Bilaspur, on

31-8-2005 (Annexure – P/2) and the order passed by the Director General of Police on 22-5-2007 (Annexure – P/5) dismissing his mercy appeal.

2. Petitioner was served with a charge sheet on 5-10-2004 levelling two charges, one for violating Rule 3 of the Chhattisgarh Civil Services(Conduct) Rules, 1965 and the other for showing act of indiscipline by colluding with the criminals, despite previous departmental actions and thus violating Regulation 64 (4) of the Police Regulations.
3. The facts constituting the charge are that on receiving secret information that gambling is going on in an organised manner in the house of one Sushil Shukla occupied by Sanjeev Guha a raid was conducted by the Janjgir Police in the intervening night of 6th /7th August, 2004 in which the petitioner was caught red handed as part of the gambling team. The petitioner was arrested and crime was registered against him along with several other accused persons. The petitioner was served with the charge sheet including list of witnesses and list of documents. Before issuing the charge sheet, a preliminary enquiry was also conducted wherein it was, *prima facie*, found that the petitioner was guilty of being involved in committing gambling.

4. In course of the departmental enquiry the Presenting Officer examined six witnesses namely; PW-1 Santosh Tiwari, PW-2 Har Prasad, PW-3 A.R. Quereshi, PW-4 M.R. Mandavi, PW-5 Rajeev Sharma, and PW-6 Manoj Bajpai. In all 11 documents were exhibited in course of examination of witnesses. All the witnesses have deposed that the petitioner was caught red handed while being involved in gambling on the relevant date and time. The Enquiry Officer eventually found that both the charges are duly proved. Petitioner was served with the report of the Enquiry Officer calling for his reply/representation to which he submitted that independent witnesses have not been examined, therefore, the charges against him have not been proved.
5. It is the settled proposition of law that findings recorded by the Enquiry Officer and accepted by the disciplinary authority cannot be unsettled by the High Court in exercise of extraordinary writ jurisdiction under Article 226 of the Constitution of India.
6. In ***General Manager (Operations) State Bank of India and another v 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*, 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 *B.C. Chaturvedi v. Union of India*, *Union of India v. G. Ganayutham*, *Bank of India v. Degala Suryanarayana* and *High Court of Judicature of Bombay v. Shashikant S. Patil*.)”

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

7. This Court has also perused the entire record of the departmental enquiry proceedings to examine whether the Enquiry Officer has followed the principles of natural justice

and whether the finding of guilt recorded by the Enquiry Officer suffers from any perversity, however, despite deep scrutiny this Court has not been able to find out any such perversity in the findings recorded by the Enquiry Officer or violation of principles of natural justice in conduct of enquiry.

8. It is also argued that the penalty of removal from service is disproportionate to the nature of misconduct committed by the petitioner, therefore, the penalty deserves to be interfered.
9. It is the well settled proposition of law that in the matter of imposition of sentence, the scope of interference is very limited and restricted to exceptional cases. The jurisdiction of the High Court, to interfere with the quantum of punishment is limited and cannot be exercised without sufficient reasons. The High Court, although has jurisdiction in appropriate cases, to consider the question in regard to the quantum of punishment, but it has a limited role to play. It is now well settled that the High Courts, in exercise of powers under Article 226, do not interfere with the quantum of punishment unless there exist sufficient reasons therefor. The punishment imposed by the disciplinary authority or the appellate

authority unless shocking to the conscience of the court, cannot be subjected to judicial review. Having examined the material, I have not found the penalty to be grossly disproportionate.

10. Petitioner was a Constable at the relevant time. He was found involved in gambling. The raid was conducted by the Officer of the rank of Additional Superintendent of Police. The petitioner along with 5 other persons were caught red handed along with cash and playing cards. The witnesses have clearly deposed against him.
11. The petitioner being member of uniformed service, if he is found involved in gambling it is a very serious misconduct, therefore, it does not entail lesser penalty. It is the trite law that police to be more discipline and sincere than any other Government servant [See: ***Commissioner of Police, New Delhi and Another v Mehar Singh*** reported in (2013) 7 SCC 685)].
12. As a sequel, the instant writ petition, *sans substratum*, is liable to be and is hereby dismissed, leaving the parties to bear their own cost(s).

Sd/-

Gowri

Judge
Prashant Kumar Mishra