

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 2261 of 2011**

Om Prakash Pandey (Dead), through Legal Heirs.

1a. Smt. Sandhya Pandey, W/o. Late Om Prakash Pandey, Aged about 39 years,

1b. Atul Pandey, S/o. Late Om Prakash Pandey, Aged about 19 years,

1c. Kumari Ruchi Pandey, D/o. Late Om Prakash Pandey, Aged about 17 years (minor)

1d. Nitin Pandey, S/o. Late Om Prakash Pandey, Aged about 16 years (minor)

(Petitioners No.1c and 1d are minors, through their natural guardian mother Smt. Sandhya Pandey)

All are R/o. Bazar Road, Lakhanpur, In front of Dharmshala, Post Office and Police Station Lakhanpur, District Surguja, Chhattisgarh

---- Petitioners**Versus**

1. The State of Chhattisgarh, through: the Secretary, Home Department, Mantralaya at D.K.S. Bhawan, Raipur, Chhattisgarh
2. The Director General of Police, Chhattisgarh, P.H.Q. Raipur, Chhattisgarh
3. The Inspector General of Police, Surguja Range, Ambikapur, District Surguja, Chhattisgarh
4. The Superintendent of Police, Surguja, Ambikapur, District Surguja, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. V.K. Pandey, Advocate
For State	:	Mr. V. R. Tiwari, Addl. A.G.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****02/07/2020**

1. The present writ petition has been filed impugning the order dated 05.03.2011 (Annexure P/1), passed by the Director General of Police rejecting the appeal preferred by the petitioner. The petitioner has also challenged the order dated 29.06.1999 (Annexure P/2) passed by the Inspector General of Police, Bilaspur range rejecting the First Appeal

preferred by the petitioner affirming the impugned order (Annexure P/3) dated 18.11.1996 issued by the Superintendent of Police dismissing the petitioner from service.

2. Pending the writ petition, the original petitioner Om Prakash Pandey died on 28.03.2013, thereafter his legal heirs i.e. the wife and children have substituted themselves in the present writ petition in order to pursue the writ petition. Accordingly, the legal heirs were brought on record and since then it is they, who are contesting the matter.
3. The facts of the case is that the petitioner Om Prakash Pandey was appointed under the respondents as a Constable vide order dated 19.07.1991, in between, the petitioner was issued with a charge-sheet dated 29.06.1999 contemplating departmental enquiry. After the conclusion of the departmental enquiry, the inquiry officer submitted his report based upon which the impugned order (Annexure P/3) dated 18.11.1996 was passed, whereby the petitioner was inflicted with the punishment of removal from service.
4. Being aggrieved by the said order, the petitioner preferred a First Appeal before the Inspector General of Police, the First Appellate Authority, who vide Annexure P/2 dated 29.06.1999 rejected the appeal. Thereafter the petitioner preferred a petition before the State Administrative Tribunal challenging the aforesaid two orders Annexure P/3 and P/2, registered as O.A. No. 4883/2000. The State Administrative Tribunal was later abolished and the matter was transferred to the High Court of Chhattisgarh, where it was renumbered as WP(S) No. 2076/2005. The said writ petition finally came up for hearing on 11.10.2010, on which date the matter was disposed of with a direction to the petitioner to prefer a Second Appeal/Mercy Appeal to

the Director General of Police, who in turn was directed to decide the same. The petitioner immediately preferred Second Appeal before the Director General of Police on 18.11.2010, which now vide the impugned order (Annexure P/1) has been rejected leading to the filing of the present writ petition.

5. The contention of the petitioner assailing the aforesaid three orders is that the findings of the respondents in firstly dismissing him from service and the rejection of the two appeals later on are totally perverse finding without proper application of mind and without any basis. According to the petitioner, the disciplinary proceedings initiated against him was in respect of two categorical charges. The second charge would become effective only in the event of the first charge being established, which in the instant case has not been established and therefore the findings is a perverse finding. According to the petitioner, there has been no cogent substantial material available with the Department or which was produced before the Inquiry officer with which it could be held that the charges leveled against the petitioner or the misconduct alleged stood proved. It was contended that the allegations leveled against the petitioner stood disproved as the complainant himself has not supported the case of the Department before the Inquiry officer and since the complainant himself has not supported the case of the petitioner, the Inquiry officer could not have given a finding of the charges standing proved. The petitioner further contended that on the initial complaint made by the complainant, a police case also was registered, however subsequently, the complainant himself filed an affidavit before the Court hearing the matter and finally the petitioner was acquitted in that criminal case.

Thus neither before the Inquiry officer nor before the criminal Court has the complainant supported the Department or the prosecution so far as the alleged misconduct committed by the petitioner is concerned. The further contention of the petitioner is that since the charge No.1 itself is not proved, the respondents therefore could not have, only on the basis of the past antecedent of the petitioner, dismiss him from service.

6. Per contra, the State counsel opposing the petition would submit that it is a case where the charges leveled against the petitioner stood proved from the facts and circumstances of the case and also from the materials that were adduced before the Inquiry officer. The State counsel referring to the documents in the writ petition itself would show that it is a case, where the proper charge-sheet was issued on 08.08.1996 and in the charge-sheet the allegation primarily so far as the charge No.1 was that of the petitioner unauthorizedly leaving the place of duty on 27.05.2006 had gone to Lakhanpur and there in a hotel run by the complainant Satyanarayan Jaiswal and his son Santosh entered into an altercation, which later on converted into a free fight and he also had used filthy language/abuses upon the complainant and his son. That such act of the petitioner was totally unbecoming of a police personal and also in violation of the provisions of the Police Regulations. It was the further contention of the learned Additional A.G. that after the charge-sheet was issued, a full fledged departmental enquiry was conducted. Based upon the evidences collected in the course of the departmental enquiry, charges were found to be proved and a report was submitted to the Disciplinary Authority, who in turn vide order dated 18.11.1996 before the punishment of removal from service. According to the State counsel,

there is no illegality as such on the part of the respondents in issuing with the order of removal from service. The State counsel further drew the attention of the Court to the charge No.2 highlighting the aspect that in the short service between 1991-18-11-96 (i.e. the year of appointment, Annexure P/3 till the present order of termination was issued) the petitioner had already been terminated from service on three occasions for his act of misconduct and each time on appeal, the Department had taken him back in service, which itself shows that the petitioner inspite of three earlier termination orders had never improved upon his conduct and thus, he was not fit remain in the police Department. Thus the impugned order do not warrant any interference by this Court. It was also the contention of the State counsel that even in the criminal case that was registered against the petitioner, it is not an honourable acquittal that he has got. The documents enclosed with the writ petition clearly reflects that the petitioner and the complainant had entered into a compromise on the basis of which the criminal case was closed and the petitioner was given a technical acquittal. This according to the State counsel cannot be construed as a clean acquittal or to say that the complainant has not supported the case of the prosecution. For all these reasons the State counsel prayed for dismissal of the writ petition.

7. Having heard the contentions put forth on either side and on perusal of record, admittedly the petitioner namely Om Prakash Pandey was appointed as a Constable in the year 1991. He stood terminated vide order dated 18.11.1996 (Annexure P/3). In these 5-6 years period, the police personal was terminated on three earlier occasions for acts of misconduct. However, on an appeal by the petitioner to the higher

authorities he was taken back in service with a hope that he would improve upon his conduct, character and temperament.

8. In the instant case, the allegations is that on 27.05.1996 the said original petitioner had unauthorizedly gone to Lakhanpur and created a ruckus in the hotel run by the complainant Satyanarayan Jaiswal. There it is said that the petitioner had also entered into a fight and had also assaulted the complainant, who had immediately lodged a complainant in the police in this regard, where a case was also registered against the petitioner. In course of time, the petitioner was issued with a charge-sheet on 08.08.1996 contemplating departmental enquiry. Thereafter a departmental enquiry was conducted and the petitioner was inflicted with the order of punishment.
9. Now what has to be seen is whether it can be said that the complainant in the instant case has not supported the case of the Department to prove the charges? Whether there are other materials available on record to reach to a conclusion as to the charges stand proved or not?
10. It would be relevant at this juncture to refer to the principles of law, so far as the scope of interference in a disciplinary proceedings by the High Court as has been dealt by the Hon'ble Supreme Court time and again. Supreme Court in this regard in the case of S. R. Tewari Vs. Union of India, (2013) 6 SCC 602 in paragraph 19, 20 & 21 have held as under :-

“19. In the case of CIT v. Mahindra & Mahindra Ltd., AIR 1984 SC 1182, this Court held that various parameters of the court's power of judicial review of administrative or executive action on which the court can interfere had been well settled and it would be redundant to recapitulate the whole catena of decisions. The Court further held:

“11.It is a settled position that if the action or decision is perverse or is such that no reasonable body of persons, properly informed, could come to, or has been arrived at by the authority misdirecting itself by adopting

a wrong approach, or has been influenced by irrelevant or extraneous matters the court would be justified in interfering with the same.”

- “20. The court can exercise the power of judicial review if there is a manifest error in the exercise of power or the exercise of power is manifestly arbitrary or if the power is exercised on the basis of facts which do not exist and which are patently erroneous. Such exercise of power would stand vitiated. The court may be justified in exercising the power of judicial review if the impugned order suffers from mala fide, dishonest or corrupt practices, for the reason, that the order had been passed by the authority beyond the limits conferred upon the authority by the legislature. Thus, the court has to be satisfied that the order had been passed by the authority only on the grounds of illegality, irrationality and procedural impropriety before it interferes. The court does not have the expertise to correct the administrative decision. Therefore, the court itself may be fallible and interfering with the order of the authority may impose heavy administrative burden on the State or may lead to unbudgeted expenditure. (Vide: [Tata Cellular v. Union of India](#), AIR 1996 SC 11; People’s Union for [Civil Liberties & Anr. v. Union of India & Ors.](#), AIR 2004 SC 456; and [State of N.C.T. of Delhi & Anr. v. Sanjeev](#) alias Bittoo, AIR 2005 SC 2080).”
- “21. [In Air India Ltd. v. Cochin International Airport Ltd.](#), AIR (2000) SC 801, this Court explaining the scope of judicial review held that the court must act with great caution and should exercise such power only in furtherance to public interest and not merely on the making out of a legal point. The court must always keep the larger public interest in mind in order to decide whether its intervention is called for or not.”

11. A similar view has also been taken by the Supreme Court in the case of **Sanjay Kumar Singh Vs. Union of India & Ors.**, AIR 2012 SC 1783 and also in the case of **Union of India & Others Vs. Bodupalli Gopalaswami**, (2011) 13 SCC 553, wherein the Supreme Court has in a very categorical terms held that in departmental enquiry proceedings the scope of Court's are very limited. It has been reiterated by the Supreme Court that in a disciplinary proceeding matters the Court cannot substitute its own finding and thus by replacing the finding arrived at by the authority that too after detailed appreciation of the evidence brought on record. It has been repeatedly held by the Supreme Court under Article 226 of Constitution , the High Court does not sit as an appellate authority over the findings of the disciplinary authority as also the appellate authority. It has also been repeatedly

held by the Supreme Court that the High Court under Article 226 would not reappreciate the entire evidence and come to a different and independent finding.

12. The Supreme Court again in the case of **Union of India & Others Vs. P. Gunasekaran, (2015) 2 SCC 610**, in paragraph 12 & 13 of the said judgment has held as under :-

“12. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence.

The High Court can only see whether:

- a. the enquiry is held by a competent authority;**
- b. the enquiry is held according to the procedure prescribed in that behalf;**
- c. there is violation of the principles of natural justice in conducting the proceedings;**
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;**
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;**
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;**
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;**
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;**
- i. the finding of fact is based on no evidence.”**

“13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

- (i). re-appreciate the evidence;**
- (ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;**
- (iii). go into the adequacy of the evidence;**
- (iv). go into the reliability of the evidence;**
- (v). interfere, if there be some legal evidence on which findings can be based.**
- (vi). correct the error of fact however grave it may appear to be; (vii). go into the proportionality of punishment unless it shocks its conscience.”**

13. The plain reading of the aforesaid judicial pronouncement makes it very clear that, so far as the scope of interference by the High Court is

concerned, it is very limited and confined only to the extent of ascertaining whether the findings of the respondents is erroneous or manifestly arbitrary or the finding is such which is not based on the materials produced before the Inquiry officer. The Courts have also been empowered to interfere in the event if the finding is totally perverse or is contrary to the evidence on record or there is any technical flaw in the conducting of the departmental enquiry. Now, if we look into the findings arrived at by the Disciplinary Authority so also by the two Appellate Authorities, it would clearly reflect that the authorities concerned have dully appreciated the entire factual matrix of the case, the evidences which have been adduced and the nature of allegation which were leveled against the petitioner.

14. They have also taken into consideration the past antecedent of the petitioner, who in a short span of just about 5-6 years of service already was terminated on three occasions, and on appeal he was brought back in service, inspite of that, there was no improvement so far as his conduct and temperament is concerned. Further, if we look into the records of the writ petition, it would reveal that even in respect of the criminal case, which was registered, he did not get a clean acquittal as from the record it appears that when the matter was pending before the concerned Magistrate, a Lok Adalat was conducted, where in the complainant and the petitioner both appeared and on the basis of a compromise entered into between the parties, the petitioner was given an order of acquittal in his favour.
15. It would be noteworthy at this juncture to mention that the standard of proof required for proving a case before an Inquiry officer or the Disciplinary Authority is entirely different with the standard of proof

required in a criminal case for proving a charge. In a departmental enquiry, it is the principles of preponderance of probability, which has to be applied, whereas in a criminal case it is the proof beyond reasonable doubt, which is required for holding a person guilty. It is a settled position of law that while exercising the power under Article 226/227 of the Constitution of India, the High Court cannot re-appreciate the evidence or interfere with the conclusions in the inquiry if the same is conducted in accordance with [law](#), which in the instant case is not under challenge. The High Court also cannot go into the aspect of adequacy of evidence or the reliability of evidence. The Hon'ble Supreme Court has been time and again reiterated the principles, that a High Court exercising the writ jurisdiction would not decide a disciplinary matter, as if it is a Court of appeal. That the High Court would not sit over the decision of the authorities holding a departmental enquiry against a public servant unless for some cogent reasons the inquiry is vitiated or the conclusion arrived at is totally perverse or based on irrelevant and extraneous consideration.

16. In the instant case, the development, which transpired on 27.05.1996 when the petitioner is said to have unauthorizedly gone to Lakhanpur and have created a ruckus in the hotel of the complainant Satyanarayan Jaiswal including assaulting him and his son, Santosh Jaiswal. The complainant was sent for medical examination by the police authorities and a criminal case was also registered against the petitioner herein. The criminal case subsequently was disposed of by a compromise. These are some facts taken note of by the Disciplinary Authority coupled with the allegation of the three earlier termination orders issued to the petitioner in a short span of time.

17. The findings arrived at by the Disciplinary Authority, so also by the Appellate Authorities clearly compels this Court to hold that the authorities have passed the order after due consideration of the materials collected during the course of the departmental enquiry and also the materials available on record with the Department.
18. In view of the aforesaid discussions and the judicial pronouncements referred to in the preceding paragraphs and also taking note of the fact that nature of power conferred on this Court under Article 226 is only supervisory nature not that of appellate jurisdiction this Court does not find any strong case made out by the petitioners to interfere with the findings arrived at by the Disciplinary Authority so also by the two Appellate Authorities.
19. The writ petition thus being devoid of merit deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved