

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
WA No.583 of 2019

(Arising out of order dated 20.09.2019 passed by learned Single Judge in
WPS- 355 of 2013)

Jeevandas Vaishnav S/o Shri Tilakdas Vaishnav Aged About 59 Years, R/o
Urdana, Deepapara, Raigarh, P.S. Civil Line, Tahsil and District Raigarh,
Civil and Revenue District Raigarh, Chhattisgarh.

---- Appellant

Versus

1. State of Chhattisgarh Through Secretary, Panchayat and Village Department of Home (Police), Mahanadi Bhavan, Mantralay, Raipur, Chhattisgarh.
2. Director General of Police, Police Head Quarter, Raipur, District Raipur, Chhattisgarh.
3. Inspector General of Police, Bilaspur Range, Bilaspur, Chhattisgarh.
4. Superintendent of Police Raigarh, District Raigarh, Chhattisgarh.

-----Respondents

For Appellant	: Shri M.K. Sinha, Advocate.
For State	: Shri Ghanshyam Patel, Govt. Advocate.

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Judgment on Board

Per PR Ramachandra Menon, CJ
06.01.2020

1. Heard on I.A. No. 01/2019 an application for condonation of delay of 08 days in filing the present appeal. After hearing both the sides, we deem it appropriate to condone the delay of 08 days. It is ordered accordingly.
2. Interference declined by the learned Single Judge with regard to the challenge raised against the finalization of the disciplinary proceedings against the member of a disciplined force is put to challenge in this appeal.
3. The sequence of events reveals that the petitioner, who was appointed as a Constable in the Police Department on 01.04.1985, was found having consumed alcohol and was stated as misbehaved with the higher officials, also disobeying the orders, under which circumstance Annexure P-1 charge sheet was issued, specifically raising three charges against him.

The domestic enquiry was conducted in accordance with the relevant rules and as per the report submitted by the Enquiry Officer, the delinquent employee was found guilty in respect of Charges No.1 & 3, whereas the second charge, as to the alleged non obedience of the orders given by the higher authorities, was held as 'not proved'.

4. The matter was considered by the Disciplinary Authority and after perusal of the relevant records, a finding was arrived at, that the guilt was proved in respect of the charges, as observed by the Enquiry Officer. In the said circumstance, punishment of dismissal was awarded as per Annexure P/5 dated 01.11.2003, which was sought to be challenged by filing an appeal before the Inspector General of Police, Bilaspur, where interference was declined and the appeal was dismissed as per the order dated 10.02.2004. The appellant/petitioner took up the said order before this Court by filing a writ petition. The main ground raised was that, there was no adequate evidence to arrive at a finding that the appellant/petitioner was 'under the influence of alcohol' so as to impose the penalty of dismissal. It was also pointed out that, though a doctor was examined, no blood test or urine test was conducted and as such, the capital punishment imposed upon the petitioner was liable to be interdicted. The prayer was resisted from the part of the Government/police and after hearing both the sides, the learned Single Judge passed the final verdict on 29.09.2019, whereby the writ petition came to be dismissed, which is under challenge.
5. The learned counsel for the appellant submits that total miscarriage of justice has been resulted, insofar as the specific challenge raised by the appellant/writ petitioner was not properly adverted to by the learned Single Judge and that the finding rendered is virtually without following the mandate of the verdict passed by the Supreme Court on the point. The

learned counsel submits that, by virtue of the law declared by the Supreme Court in the matter of **Munna Lal v. Union of India and Ors** reported in **2010 (3) SLR 768**, medical evidence was very much necessary to prove the allegation positively and in the absence of sufficient proof, the Disciplinary Authority ought not to have imposed the penalty of dismissal from service. The appellant has also mentioned that there was violation of the principles of natural justice and no sufficient opportunity was given to him in the course of enquiry, as raised in Grounds B & C in the memorandum of appeal.

6. On going through the verdict passed by the learned Single Judge and the materials on record, it is seen that the main ground pressed before the Court was with regard to the 'adequacy of evidence', contending that, though the petitioner was found as 'consumed alcohol' with reference to the smell as deposed by the doctor, it was not enough to arrive at a finding that he was 'under the influence of alcohol' to impose the punishment of dismissal from service. This Court finds it difficult to accept the said proposition. The appellant, being the member of a disciplined force, was bound to keep the dignity and decorum of the force and the question is only whether he had consumed alcohol while on duty and whether any evidence was adduced in the inquiry to reach the finding. The discussion made by the learned Single Judge in Paragraph Nos. 6 & 7 shows that, in the inquiry, the fact that the petitioner was subjected to medical examination, was brought on record. The doctor by name Smt. Meena Patel, who examined the petitioner, clearly deposed that there was strong smell of alcohol and that the petitioner/delinquent employee had consumed alcohol. The fact that it was in the course of discharging his duties is also borne by the record. The learned Judge also referred to

various instances in the past, whereby the petitioner, despite being a member of the police force was inflicted with 4 major punishments and 11 minor punishments, as discussed in Paragraph No.7 We find it appropriate to extract the said paragraph so as to avoid repetition of the facts and sequence of events:

“7. State counsel on the contrary referring to the allegations levelled against the petitioner first referred to the conduct of the petitioner wherein charge No. 3 itself speaks that petitioner's conduct in the past was not befitting the police personnel as he was subjected to four major punishment and 11 minor punishment. The petitioner on an earlier occasion on the charge of having been found under the influence of liquor was inflicted with a punishment of stoppage of one annual increment with cumulative effect and he was also warned for the same allegations of being in the regular habit of being found to be under the influence of liquor on a couple of occasions. State counsel further referring to the enquiry report Annexure P-4 wherein the conduct of the petitioner has been elaboratedly discussed and that petitioner was also subjected to medical examination and Dr. Smt. Meena Patel Medical Practitioner was also examined before the enquiry officer and who has clearly narrated the fact that smell of liquor was coming from the mouth of the petitioner. She suggested that he had consumed liquor, though Medical Practitioner did not find petitioner to be under the intoxicated state. State counsel further submits that since services of the petitioner was under the Police Establishment there is a great element of discipline which police personnels are bound to maintain. One such area is also ensuring that in the course of discharging their duties they should ensure that they are not under the influence of alcohol. Thus, for all the aforesaid reasons, the State counsel prayed for rejection of the writ petition.”

7. This is supported by the further observations made in Paragraph No.10 & 11 which are to the following effect :

“10. There is no dispute to the extent that enquiry officer has found that charge No. 2 has not been sufficiently proved. Given the facts that charge No. 2 has not been proved by the enquiry officer, we only need to confine ourselves to the charge No. 1 & Charge No.3. Charge No.1 is the charge which is primarily alleging is of the incident on 02.03.2003. The allegations primarily is in respect of consumption of liquor and not being in a normal state for discharging his duties. If we look into the evidences which have been gathered by the enquiry officer, it would clearly reveal that there is sufficient witnesses who were examined in this regard and supporting evidences led by the Doctor who had examined the petitioner on 02.03.2003 i.e. Dr. Meena Patel in her deposition she has clearly stated that she found the petitioner to have consumed alcohol but she did not find the petitioner to be in an intoxicated condition. In the deposition, doctor has said that she did not conduct any specific test like Blood test etc. for ascertaining the petitioner to be under the influence of the liquor but she has made a categorical statement that petitioner was smelling strong of alcohol when she examined. There is no malafides alleged against the Doctor for giving a false statement or false evidences against the petitioner. Now what stands established from the aforesaid evidences is that the petitioner undoubtedly was under the influence of liquor. It may be that petitioner would not be in an intoxicated condition but was under the influence of liquor as is evident from the witnesses who have been examined before the enquiry officer.”

11. Given the aforesaid facts, charge No. 1 has been rightly held by the enquiry officer to have been proved. If we take into consideration, charge No. 1 and when read it with charge No.3 it shows the fact that petitioner is a habitual offender. In

the past he has been inflicted with four major punishment. One major punishment was for identical charge of having been found under the influence of liquor. Apart from four major punishments, the petitioner has also been subjected to nine minor punishment. In addition, the petitioner on a couple of occasion was also warned for being under the influence of the alcohol while on duty. When all these facts are taken note of and charge No.1 is read along with Charge No.3, this Court has no hesitation in reaching to the conclusion that the present would not be a case where the allegations levelled against the petitioner can be subject to be trivial in nature. It also is not a case where the petitioner's punishment can said to be highly disproportionate as the petitioner in the past have been given punishment for the same nature of offence. Petitioner has been warned on couple of occasion in the past and petitioner himself had promised that he would not commit any further misconduct, yet, the petitioner repeats the same offence which shows the attitude and conduct of the petitioner and also reflects that he is a person who is incorrigible. Therefore, this further reduces the scope of interference of this Court in the disciplinary proceedings initiated by the department which has been passed also taking into consideration the entire past services of the petitioner.

8. It has been held by the Apex Court on many an occasion, that adequacy of evidence is not a matter which could be examined by this Court in exercise of its jurisdiction in a disciplinary proceeding. The finding of the Enquiry Officer was considered by the disciplinary authority in the light of the materials on record and an independent assessment was made while passing Annexure P-5 order. This again was considered by the Appellate authority, who dismissed the appeal as devoid of any merit, vide Annexure P-6 order. This was subjected to meticulous analyses by the learned

Single Judge and a finding has been rendered on the basis of the relevant facts and figures, which is quite in order.

9. The remaining question is with regard to the applicability of the judgment passed by the Supreme Court in **Munna Lal's case**. It is a settled law, that judgment cannot be read as a statute and it has to be read and understood in the light of specific facts and circumstances as dealt with in the particular case. In the instant case, it is not the first instance whereby the appellant has been proceeded against in respect of an instance of consuming alcohol during duty time. The antecedents have already been brought on record. The fact that the appellant was proceeded against and was imposed with major punishment on four occasions, apart from minor punishments under 11 different circumstances, is not disputed. On an earlier occasion, in connection with similar instance of misconduct i.e. consumption of liquor during duty hours, the appellant was inflicted with the punishment of 'reduction of one annual increment with cumulative effect' and was seriously warned not to repeat the same in future. The evidence reveals that the leniency shown in the earlier instances has not caused the conduct to be improved in any manner and that the appellant was virtually repeating the very same misconduct, unmindful of the consequences. It was in the said circumstance, that the authorities concerned were constrained to inflict the punishment of dismissal from service as per Annexure A-5, which stands affirmed by the appellate authority vide Annexure P-6. Interference has been declined by the learned single Judge in the said circumstance, by dismissing the writ petition. We do not find any tenable ground to interfere with the said verdict.

10. The submission of the learned counsel for the appellant that, in the absence of any urine test or blood test, the misconduct cannot be held as proved, is not liable to be accepted. This is for the reason that, the strict rules of evidence, as applicable in the field of criminal jurisprudence, are not attracted to disciplinary proceedings, where the preponderance of probabilities is sufficient. To quote the words of Justice V. R. Krishna Iyer, (as he then was), 'there is no allergy to hearsay evidence, provided it has reasonable nexus and credibility'. We find support from the ruling in **State of Haryana and Ors. vs Rattan Singh** reported in **(1982) 1 LLJ 46 SC** and **J.D. Jain vs. Management of State Bank of India & Ors** reported in **1982 1 LLJ 54**. Above all, 'misplaced sympathy is an evil', as made clear by the Apex Court in a catena of decisions.

11. The appeal is devoid of any merit. It stands dismissed accordingly.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge