

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 3152 of 2013**

Ramesh Kumar Sahu, S/o Pachkour Sahu, Aged about 52 years, Ex. Head Constable No. 1450, Dumartalab, Near Girls Hostel Amanaka, Raipur, P.S. Azad Chowk, Civil and Revenue Distt. Raipur, Chhattisgarh.

---Petitioner

Versus

1. State of Chhattisgarh, Through Chief Secretary, Mantralaya, Mahanadi Bhawan, New Raipur, Chhattisgarh.
2. Home Department, Through the Secretary, Mantralaya, Mahanadi Bhawan, New Raipur, Chhattisgarh.
3. Inspector General of Police, Shankar Nagar Road, Raipur, Chhattisgarh.
4. Superintendent of Police, Collectorate Building, Raipur, Chhattisgarh.

---Respondents

For Petitioner :- Mr. Vinod Kumar Sharma, Advocate
For State :- Mr. Animesh Tiwari, Dy. A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

23/09/2021

1. Petitioner herein calls in question the order dated 05/03/2011 (Annexure P/5) by which his mercy appeal has partly been allowed and the order of his dismissal has been converted into order of compulsory retirement whereas petitioner was inflicted with penalty of dismissal from service by order dated 24/05/2010 (Annexure P/3) which has been affirmed by the Appellate Authority vide order dated 13/08/2010 (Annexure P/4).
2. Mr. Vinod Kumar Sharma, learned counsel for the petitioner, would submit that petitioner has wrongly been dismissed from service vide order dated (Annexure P/3) holding that on 23/01/2010, petitioner intentionally and deliberately threw the badge of one Constable Kamlesh Verma in the ditch/drain which has amounted to serious misconduct in accordance with Chhattisgarh Civil Services (Conduct) Rules, 1965. The punishment of dismissal from service is a major punishment which could not have been inflicted upon the petitioner for his alleged misconduct and moreover, the punishment of dismissal from service has now been converted into compulsory retirement, which is disproportionate to the misconduct of the petitioner, as such, the

punishment of dismissal from service inflicted upon the petitioner which has now been converted into compulsory retirement is liable to be set aside.

3. Mr. Animesh Tiwari, learned State counsel, would submit that petitioner being a Police Constable himself committed a serious misconduct for which the major punishment of dismissal from service has rightly been inflicted upon him and it has now been converted into compulsory retirement which is strictly in accordance with law.

4. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.

5. True it is that petitioner, being a Police Constable himself, misbehaved with another Police Constable and threw his name badge into the ditch/drain, but the question is whether it amounts to major misconduct warranting punishment of dismissal from service now converted into compulsory retirement.

6. It is well-settled that punishment which can be imposed upon the employee after being found guilty in a departmental enquiry, are generally

grouped under 'major penalties' and 'minor penalties'. It has also been observed that punishment should serve as a warning to others rather than inflicting vengeance on the delinquent Government servant. It needs to be mentioned that this Court, in cases of departmental enquiries and the findings recorded therein does not exercise the powers of appellate Court/authority. The jurisdiction of this Court in such cases is very limited for instance where it is found that the domestic enquiry is vitiated because of non-observance of principles of natural justice, denial of reasonable opportunity; findings are based on no evidence, and or the punishment is totally disproportionate to the proved misconduct of an employee.

7. It is also well-settled that while exercising the power of judicial review, the Court will not substitute its own judgment for the decision of the disciplinary authority unless:

- (I) the order shocks the conscience of the Court;
- (ii) no reasonable man would impose such punishment;
- (iii) the decision-maker must have taken leave of his senses.

8. In the matter of Bhagat Ram v. State of H.P.¹ it has been held by the Supreme Court that punishment or penalty to be imposed must be commensurate with the gravity of the misconduct. A disproportionate penalty would be violative of Article 14 of the Constitution. (see also: State of U.P. v. Raj Pal Singh²). Likewise, in the matter of State of Karnataka v. H Nagaraj³ Their Lordships of the Supreme Court have held that judicial review will be competent when the punishment was totally irrational i.e. in outrageous defiance of logic.

9. Reverting to the facts of the present case in light of the aforesaid principles of law laid down by Their Lordships of the Supreme Court, it is quite vivid that in the present case, the petitioner has been inflicted with major punishment of dismissal from service which has now been converted into compulsory retirement holding that he, being a Police Constable himself, threw the badge of another Police Constable into the ditch/drain and thereby, committed serious misconduct which is in violation of Rule 3(1) of the Rules of 1965. The

1 (1983) 2 SCC 442

2 (2010) 5 SCC 783

3 (1998) 9 SCC 671

misconduct of the petitioner as found proved against him may amount to minor penalty but the action of the respondents inflicting major penalty of dismissal from service and then converting it into compulsory retirement is totally irrational and in outrageous defiance of logic and it is in violation of Article 14 of the Constitution of India. No reasonable man would have imposed the penalty that has been imposed by the Disciplinary Authority and which has slightly been modified by the Appellate Authority. Accordingly, the 05/03/2011 (Annexure P/5) converting the major penalty of dismissal from service inflicted upon the petitioner into compulsory retirement is hereby quashed and ordinarily this Court would have reverted the matter to the Disciplinary Authority, but since the order of the Disciplinary Authority was passed in the year 2010, in order to ensure finality of disciplinary proceeding and looking to the misconduct of the petitioner, minor penalty of stoppage of two increments with non-cumulative effect is inflicted upon him. The petitioner will be entitled for all the consequential service benefits except for backwages. The question of backwages will be

considered by the Appointing Authority strictly in accordance with law within two months from the date of receipt of a copy of this order.

10. With the aforesaid observations, this writ petition is allowed to the extent indicated herein-above. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet