

ORISSA HIGH COURT: CUTTACK

W.P.(C) NO. 11779 OF 2018

In the matter of an application under Articles 226 and 227 of the Constitution of India.

AFR

Jnanedranath Mohanta Petitioner

-Versus-

Commissioner-cum-Secretary Opp. Parties
to Govt., Home Department,
Govt. of Odisha and others

For Petitioner : M/s Manas Pati,
S. Kar, P.Das, S.S. Pati,
H. Roy and B. Panda,
Advocates.

For Opp. Parties : Mr. S. Rath,
Addl. Standing Counsel
[O.P. Nos.1 to 4]

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
HONOURABLE MR. JUSTICE G. SATAPATHY**

Date of hearing: 23.08.2022 :: Date of judgment : 30.08.2022

DR. B.R. SARANGI, J. The petitioner, who was working as a
Constable in the office of the Superintendent of Police,

Mayurbhanj, has filed this writ petition seeking to quash the order dated 04.09.2015 passed by the Superintendent of Police, Mayurbhanj in Mayurbhanj Departmental Proceeding No.5 of 2002 (Annexure-3) imposing punishment of dismissal from service treating the period of suspension from 18.01.2002 to 07.05.2002 as such; as well as the order dated 04.08.2016 passed by the appellate authority, viz., D.I.G. of Police, Eastern Region, Balasore (Annexure-4) confirming the order of punishment; so also the order dated 05.05.2018 passed by the Odisha Administrative Tribunal, Principal Bench, Bhubaneswar, in O.A. No. 2134 of 2016, as at Annexure-5, affirming the order of punishment imposed by the disciplinary authority as well as the order of confirmation passed by the appellate authority.

2. The factual matrix of the case, in brief, is that the petitioner, while working as a Constable under Superintendent of Police, Mayurbhanj, Departmental Proceeding No.5 of 2002 was initiated against him for

gross misconduct, indiscipline, negligence and unauthorized absence from duty. It was alleged that while the petitioner was deputed to Rairangpur for sessions guard duty on 13.01.2002, his reliever reported to SDPO, Rairangpur. But he neither took his departure from CSI, Rairangpur nor from SDPO, Rairangpur, instead fled keeping his rifle in Rairangpur Sub-Treasury Guard. It was further alleged that on 16.01.2002, while he was driving a car rashly and negligently it dashed against a mini truck near Rairangpur Golei causing damage to the mini truck and after the accident he abused one Sapan Kumar Dey, the driver of that mini truck, assaulted him causing injuries on his person and snatched away cash of Rs.800/- so also a wrist watch. Consequentially, a criminal case was registered as Rairangpur P.S. Case No.3 of 2002.

2.1 The departmental proceeding was enquired into by appointing enquiry officer, who submitted his report to the disciplinary authority and ultimately the order dismissing the petitioner from service w.e.f.

08.01.2006, treating the period of suspension from 18.01.2002 to 07.05.2002 as such, was passed on 04.09.2015. Against the said order of punishment, the petitioner preferred appeal before the DIG of Police, Eastern Region, Balasore, who rejected the same vide order dated 04.08.2016. Challenging the said order, the petitioner approached the tribunal by filing O.A. No. 2540 of 2013 and after due adjudication, the tribunal, quashed the order of punishment as well as the confirming order passed by the appellate authority and directed the authority to proceed with the enquiry afresh by giving due opportunity to the petitioner to cross-examine the witnesses who were examined during the enquiry and after the enquiry is concluded, if he is found guilty, he may be given opportunity to submit his show cause and thereafter proceeded to conclude the enquiry.

2.2 In compliance of the above order, enquiry was conducted afresh by giving due opportunity to the petitioner to cross-examine the witnesses and the

enquiry officer, after conducting the enquiry, concluded the same and submitted his report holding that the petitioner was guilty of the charges. On receipt of such inquiry report, the disciplinary authority, namely, S.P., Mayurbhanj, issued notice of show cause on 18.08.2015 to which the petitioner submitted reply. Thereafter, a second show cause notice was issued to the petitioner and on receipt of the same, he submitted his reply. Thereafter, the order of dismissal from service and treating the period of suspension from 18.01.2002 to 07.05.2002 as such was passed. Against the said order of punishment, the petitioner preferred appeal before the appellate authority, which was ultimately rejected and the order of punishment was confirmed. Against the order of the appellate authority, the petitioner approached the tribunal by filing O.A. No. 2134 of 2016, which was disposed of vide order dated 05.05.2018 affirming the order of punishment imposed by the disciplinary authority, which was confirmed by the appellate authority. Hence, this writ petition.

3. Mr. Manas Pati, learned counsel for the petitioner at the outset contended that in compliance of the order dated 08.05.2015 passed in O.A. No.2540 of 2013, the opposite parties are bound to conduct the enquiry by affording opportunity to the petitioner to cross-examine all the witnesses those who were examined during the enquiry and, as such, the disciplinary authority, having not satisfied with the reply, issued a second show cause notice to the petitioner and passed the final order imposing punishment on 04.09.2015, which is illegal, arbitrary and contrary to the settled position of law. It is further contended that on the basis of the charges framed against the petitioner, the punishment of dismissal from service and treating the period of suspension as such is shockingly disproportionate, for which the Court can interfere with the same. It is further contended that enquiry was conducted in a perfunctory manner without examining the vital witnesses, therefore, the punishment so imposed cannot sustain in the eye of

law. As such, there was no proceeding initiated against the petitioner during his 25 years of service and he had never been communicated any adverse CCR, rather, he was awarded for his satisfactory performance from D.G. of Police. It is alternatively contended that since the punishment imposed against the petitioner is shockingly disproportionate, the Court may interfere with the quantum of punishment and modify the same to compulsory retirement so that the petitioner can get some financial benefits.

To substantiate his contention, learned counsel for the petitioner has relied upon the judgment of the apex Court in the cases of **Umesh Kumar Pahwa v. The Board of Directors Uttarakhand Gramin Bank**, 2022 LiveLaw (SC) 155; **Brijesh Chandra Dwivedi (Dead) v. Sanya Sahayak**, Civil Appeal No.7382 of 2021 disposed of on 25.01.2022; **Girish Bhushan Goyal v. BHEL and another**, (2014) 1 SCC 82; and of this Court in the case of **Arjun Charan Sahoo v. State of Odisha**; 2017 (II) OLR 60.

4. Mr. S. Rath, learned Addl. Standing Counsel appearing for the State-opposite parties vehemently contended that on the basis of the charge framed, the petitioner being a police personnel, after conducting enquiry in due compliance of the principles of natural justice, punishment was imposed by the disciplinary authority and the same was confirmed by the appellate authority, which is well justified. As such, the tribunal has taken note of each stages of the proceeding lucidly and come to a finding that at each stage due opportunity was given in compliance of the order passed by the tribunal in earlier O.A. No. 2540 of 2013. Therefore, the punishment so imposed, which has been confirmed by the tribunal, is well justified and, as such, the same does not require any interference of this Court.

5. This Court heard Mr. Manas Pati, learned counsel appearing for the petitioner and Mr. S. Rath, learned Addl. Standing Counsel appearing for the State-opposite parties by hybrid mode. Pleadings having been

exchanged between the parties, with the consent of learned Counsel for the parties this writ petition is being disposed of finally at the stage of admission.

6. At the outset, it is profitable to note the charges, which were framed against the petitioner:-

“C/488 Jnanendra Nath Mohanta of Mayurbhanj district is charged with gross misconduct, indiscipline, negligence of duty and unauthorized absence from duty in that:-

While he was posted to hdqrs. A.P.R he was deputed to Rairangpur on 14.09.2001 for session guard duty. On 13.1.2002 though his reliever reported to SDPO, Rairangpur and performed Session Guard duty in his place, he neither took his departure from C.S.I. Rairangpur Court nor from SDPO, Rairangpur instead he fled away keeping his Rifle in Rairangpur Sub-Treasury guard.

On 16.1.2002 night while he was driving a car bearing registration No. OSS-5179 rashly and negligently dashed against a Mini Truck bearing reg. No. OSM-3322 near Rairangpur Golei causing damage to the Mini truck. After the incident/accident he abused Sapan Kumar Dey and assaulted him causing injuries on his person and by the by snatched away cash of Rs. 800/- and wrist watch.

He is therefore directed to show cause within 15 days of receipt of this notice as to why suitable disciplinary action will not be taken against him in the event of the charge being proved against him.

Any representation that he wish to make either orally in writing; will be duly considered by the authority competent to pass final order before passing such order.”

7. On the basis of the charges framed against the petitioner, though enquiry was conducted and punishment was imposed, the same was challenged by the petitioner before the tribunal in O.A. No. 2540 of 2013, which was disposed of vide order dated 08.05.2015 by quashing the order of punishment imposed by the disciplinary authority and confirmed by the appellate authority, and remitting the matter back to the authority for fresh inquiry by giving due opportunity to the petitioner to cross-examine the witnesses, who were examined during the enquiry.

8. As is evident from the record, by granting opportunity to the petitioner to cross-examine the witnesses, the enquiry officer though conducted the inquiry afresh and submitted his report on 14.08.2015 finding the petitioner guilty of charges, but failed to explain in the enquiry report as to what irreparable loss was caused to the Government by keeping the Rifle in Rairangpur Sub-Treasury Guard. It is the practice to keep the Service Rifle by every staff at Sub-Treasury at

Rairangpur for the purpose of its safety. In the criminal case, on the selfsame charge, i.e., abusing the driver of other vehicle, the petitioner was acquitted by the competent criminal court as the prosecution failed to prove the charge, but this aspect was not taken into account while finding the petitioner guilty in the disciplinary proceeding. As regards going out without obtaining departure certificate, as alleged in the charge memo, as no relieve order was issued to the petitioner question of obtaining departure certificate does not arise. As the authorities were biased against the petitioner, while conducting the enquiry, such fact was not appreciated by the disciplinary authority as well as appellate authority. Needless to say, if the petitioner was acquitted in the criminal case and the prosecution was not able to prove the charge, in that case, the enquiry officer could not have come to a conclusion and found the petitioner guilty of the selfsame charge. As such, the enquiry having been conducted without any application of mind and with a prejudicial manner

punishment has been imposed on the petitioner pursuant to second enquiry conducted, as per direction of the tribunal. Therefore, the enquiry officer, disciplinary authority and the appellate authority have acted against the petitioner with a gross prejudicial manner and with a biased mind to confirm their own punishment imposed by them in the first enquiry. More so, the punishment imposed on the allegation pointed out in the charge itself is shockingly disproportionate. Therefore, in exercise of power under judicial review, though the scope in the matter of imposition of penalty is very limited, but the Court can interfere with the punishment only if it is found that the same is shockingly disproportionate to the charges found to be proved. Since there was procedural irregularity in the order imposing penalty, the tribunal interfered with the same in O.A. No. 2540 of 2013 and quashed the order of punishment and remitted the matter back to the enquiry officer for fresh adjudication, vide order dated 08.05.2015. But, instead of reducing the punishment

by causing fresh inquiry, the order of punishment was imposed against the petitioner which was confirmed by the appellate authority. Therefore, the manner of conducting the second enquiry, in compliance of the direction given by the tribunal, and imposition of penalty thereof, considering the gravity of misconduct alleged against the petitioner and knowing fully well that against one charge the petitioner has already been acquitted in criminal case, it would be arbitrary, unreasonable and violative of Article 14 of the Constitution of India.

9. It is trite law that the quantum of punishment imposed against the petitioner has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review would ensure that even on an aspect, which is otherwise within the exclusive province of the Court

Marshal, if the decision of the Court even as to sentence is an out ranges defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review. Though the apex Court held time and again that Court cannot normally substitute own conclusion or penalty. But if the penalty imposed by an authority shocks the conscience of the Court, it would appropriately mould the relief either directing the authority to reconsider the penalty imposed and in exceptional and rare cases, in order to shorten the litigation itself, impose appropriate punishment with cogent reasons in support thereof. This view has been taken by the apex Court in the cases of **Ranjit Thakur v. Union of India**, AIR 1987 SC 2386; **Union of India v. Giriraj Sharma**, AIR 1994 SC 215; **B.C. Chaturvedi v. Union of India**, AIR 1996 SC 484.

10. Therefore, two alternatives can be found out that either the Court has to remit the matter back to the authority for reconsideration of the punishment or

to shorten the litigation the Court can think of substituting its own views as to the quantum of punishment in the place of punishment awarded by the competent authority. But, in the present case, even after remand, the authorities are bent upon to impose penalty of dismissal from service, as they are biased against the petitioner, even though it was brought to the notice of the Court at the time of second inquiry that the petitioner was acquitted from the criminal charges, as the prosecution failed to prove the allegation against him.

11. So far as keeping the Rifle in the Rairangpur Sub-Treasury is concerned, that is the mode available to keep the armory in the treasury and in that case if the petitioner has kept the same in the treasury for safety of the Rifle, it cannot be said that punishment can be imposed, as has been done in the instant case by the disciplinary authority and the appellate authority. Furthermore, nothing has been placed on record as to what irreparable loss has been caused to

the Government by keeping the Rifle in the Rairangpur Sub-Treasury. More so, as regards non-obtaining of departure certificate, as alleged in the charge memo, it was vehemently urged by learned counsel for the petitioner that since no relieve order was issued to the petitioner, question of obtaining departure certificate does not arise. Consequentially, if all these aspects would be taken into consideration together, it cannot be said that the petitioner has committed such a gross error or misconduct so as to face a punishment of dismissal from service. Therefore, causing an inquiry on a vague charge, as the same does not give a clear picture to the petitioner to make an effective defence, because he may not be aware as to what the allegation against him is and what ground of defence he can put in the rebuttal thereof. As such, in a domestic inquiry, charges must be clear and specific so that the delinquent can meet the vague charges. More so, when the petitioner has already been acquitted in the criminal case instituted against him for the alleged rash and

negligent driving of vehicle, the opposite party-authorities would have taken a lenient view and, as such, the punishment imposed by them is shockingly disproportionate to the charges levelled against the petitioner.

12. In **Umesh Kumar Pahwa** (supra), the apex Court came to a definite finding that the order of removal from service can be said to be disproportionate to the charges of misconduct held to be proved. Therefore, the apex Court interfered with the quantum of punishment imposed and substituted the punishment from that of removal of service to that of compulsory retirement.

13. In **Brijesh Chandra Dwivedi** (dead), mentioned supra, the apex Court in paragraph-12 of the said judgment had come to a conclusion to the following effect:-

“12. However, at the same, considering the statement of the employee at the time of the enquiry and the explanation given by him that on going to duty on taking the vehicle from battalion, he had not consumed the liquor and

after the accident with the objective to suppress the fear on coming to battalion and on parking the vehicle, he went directly to bus terminal, Ghazipur and consumed 100 ml of country made wine, though has not been accepted but that might be plausible and considering his 25 years of long service and fortunately it was a minor accident which resulted into some loss to the vehicle and considering the fact that the employee has since died, we find that the punishment of dismissal can be said to be too harsh and may be treated one for compulsory retirement.”

14. In **Girish Bhusan Goyal** (supra), the apex Court interfered with the quantum of punishment imposed on the petitioner, as he was terminated from service just six days prior to his retirement, whereby there was no further possibility of any increment, his last one year increment was liable to be deducted from the arrears, which he was statutorily entitled to.

15. In **Arjun Charan Sahoo** (supra), this Court held that since the punishment imposed was related to unauthorized absence and not related to his integrity and moral turpitude and, as such, the order of dismissal would be harsh considering the fact that there was also other punishment provided in Rule 836 of the Orissa Police Rules regarding compulsory

retirement, since the petitioner had already rendered 17 years of service and if the order of punishment of compulsory retirement would be awarded in place of the order of dismissal, the purpose of the department would be served and awarding of punishment of compulsory retirement would be just and proper and, thereby, quashed the order of dismissal from service.

16. The cumulative effect of all these judgments, as discussed above, gives an irresistible conclusion that for a trivial allegation, imposition of punishment of dismissal from service is shockingly disproportionate. Applying the same analogy to the case at hand, keeping in view the charges levelled against the petitioner, this Court, in exercise of power of judicial review, can either remit the matter back to the authority for re-enquiry or interfere with the quantum of punishment imposed by the disciplinary authority. But then, since the matter was once remitted back and the authorities acted prejudicially to the interest of the petitioner reaffirming their views and, as such, instead of only permitting the

petitioner to cross-examine the witnesses have started de-novo enquiry, which itself is contrary to the order passed by the tribunal, and once again imposed punishment of dismissal from service, by treating the period of suspension as such, when the petitioner has already been acquitted from the criminal charge, which is also one of the charges levelled against him in the departmental proceeding.

17. In view of such position, to subserve the interest of justice, equity and fair play, since the punishment imposed on the petitioner is shockingly disproportionate, this Court, in exercise of power under judicial review, holds that punishment of dismissal from service, as imposed on the petitioner, is too harsh and the same should be modified to one of compulsory retirement and this Court directs accordingly. Consequentially, the order dated 04.09.2015 passed by the Superintendent of Police, Mayurbhanj in Mayurbhanj Departmental Proceeding No.5 of 2002 (Annexure-3) imposing the punishment of dismissal

from service, by treating the period of suspension from 18.01.2002 to 07.05.2002 as such, the order dated 04.08.2016 passed by the appellate authority, viz., D.I.G. of Police, Eastern Region, Balasore vide Annexure-4 confirming the order of punishment; and the order dated 05.05.2018 passed in O.A. No. 2134 of 2016, as at Annexure-5, affirming the order of punishment imposed by the disciplinary authority and the order of confirmation passed by the appellate authority, are modified to the extent indicated above.

18. In the result, the writ petition is allowed leaving the parties to bear their own costs.

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DR. B.R. SARANGI,
JUDGE

G. SATAPATHY, J. I agree.

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G. SATAPATHY,
JUDGE

Orissa High Court, Cuttack
The 30th August, 2022, Ashok/GDS