

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16233 of 2014

Ashok Kumar Singh son of Subahan Singh Resident of village - Khartari, P.O. Khartari, P.S. Chiraiya, District - East Champaran, at present dismissed Sepoy / 441, P.S. Char Pokhari, District - Bhojpur

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary.
2. General and Administrative Department, Govt. of Bihar, Patna
3. The Director General of Police, Bihar, Patna
4. Deputy Inspector General of Police Sahabad Region, Dehri-on-Sone, Bihar
5. Superintendent of Police, Bhojpur, Ara, Bihar
6. Police Inspector, Jagdishpur, Bhojpur, Bihar
7. Officer - in - Charge of Char Pokhari, Bhojpur
8. Circle officer, Char Pokhari, Bhojpur
9. Sri Shankar Yadav son of Late Arjun Yadav Resident of village - Kasab, P.S. Udwant Nagar, District - Bhojpur

... .. Respondent/s

Appearance:

For the Petitioner/s : Mr. Sunil Kumar No. III, Advocate
For the Respondent/s : Mr. Sunil Kr. Mandal, SC-24

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date : 20-07-2023

1. The present writ petition has been filed for quashing the order dated 07.12.2011, passed by the Superintendent of Police, Bhojpur at Ara, i.e. the respondent no.5, whereby & whereunder the petitioner has been dismissed from service, as also for quashing the appellate order dt. 05.9.2012, passed by the Deputy Inspector General of Police, Sahabad Region, Dehri-on-sone,



i.e. the respondent no.4. The petitioner has also prayed for quashing of the order dated 04.11.2013, passed by the Director General of Police, Patna, i.e. the respondent no.3, whereby the memorial filed by the petitioner has been rejected.

2. The brief facts of the case, according to the petitioner, are that he was appointed on the post of Sepoy on 08.08.1990, and subsequently, a complaint dated 04.10.2010 was filed before the respondent no.5 by one Shankar Yadav, i.e. the private respondent no.7 herein, alleging that the petitioner had assaulted him as also he had opened fire from his weapon leading to the villagers creating a law and order problem. Thereafter, a departmental proceeding was initiated against the petitioner vide memo dated 24.01.2011 and a show-cause notice was issued to him on 06.02.2011. Subsequently, a memo of charge was issued to the petitioner on 17.02.2011, whereafter the petitioner had appeared before the enquiry officer and filed his reply on 20.02.2011, *inter alia* stating therein that the allegations levelled against him are false. The enquiry officer had conducted an enquiry and had submitted his enquiry report dated 15.04.2011, whereafter the respondent no.5 had issued a second show-cause notice dated 30.10.2011 to the petitioner, as to why he should not be dismissed from service, to which the petitioner had filed a



reply on 23.11.2011, whereupon the impugned order dated 07.12.2011, dismissing the petitioner from service, has been passed by respondent no.5. The petitioner had then filed an appeal before the respondent no.4, however, the same was rejected by an order dt. 5.9.2012, whereafter, a memorial was filed, however, the same has also been rejected by the impugned order dated 04.11.2013, passed by the respondent no.3.

3. The learned counsel for the petitioner has submitted that an illegal order of dismissal of the petitioner from service has been passed by the respondent no.5, without any application of mind and the petitioner was not examined by the doctor to ascertain as to whether he is or he is not an alcoholic, apart from the fact that the complainant, namely, Shankar Yadav has not made any statement against the petitioner, thus the departmental enquiry suffers from a serious *lacuna*. It is also submitted that the past conduct of the petitioner has not been taken into account and the punishment of dismissal from service has been inflicted upon the petitioner, which, in any view of the matter, is excessive and not commensurate to the offences alleged.

4. *Per contra*, the learned counsel for the respondent-State has submitted that there is no irregularity in the procedure



adopted by the respondents in conducting the departmental proceedings, hence this Court would not sit in appeal and re-appreciate the evidence, thus no interference is required with the order of punishment dated 07.12.2011. The learned counsel for the respondent-State has further submitted that while the petitioner was posted at Charpokhari Block as DAP guard on 04.10.2010, he had assaulted one Shankar Yadav, whereafter he had dragged him towards block guard room, however, upon seeing the said incident, villagers had arrived there and chased him, whereupon he ran towards the guard room and had climbed the block representative building from where he started firing indiscriminately, leading to the then Commanding Officer and the Station House Officer, Charpokhari reporting the matter to their superior, whereupon, the aforesaid departmental proceeding in question was initiated on the charge that the petitioner had badly assaulted the aforesaid Shankar Yadav and injured him, whereafter he had fired indiscriminately, after the villagers had assembled to protest his behavior, resulting in the villagers creating a road block causing inconvenience to the public at large and maligning the image of the police. The petitioner had then filed his show-cause reply & had participated in the departmental proceeding, whereupon the enquiry officer



had submitted the enquiry report dated 15.04.2011, finding the charges levelled against the petitioner to have been proved. The Ld. counsel for the respondent-State has further submitted that the petitioner has wrongly stated in the writ petition that his conduct has been throughout good, however, the fact remains that on several occasions, the petitioner has been found drunk on duty and has been punished for the same in the past as well. It is also submitted that the petitioner has got two black marks in his service records, pertaining to the departmental proceedings conducted at Jehanabad and Arwal. It is further submitted that a bare perusal of the enquiry report would show that the witnesses, namely, Sriniwas, the then Circle Officer, Charpokhari, District-Bhojpur at Ara and Sri Jahangir Ansari, the then Officer-in-charge, Charpokhari Police have fully corroborated the incident, in their respective statements made before the enquiry officer and they have both stated that the petitioner had badly beaten the aforesaid Shankar Yadav & when the villagers had accumulated there, he had fired indiscriminately resulting in the villagers becoming agitated and restless, whereafter they had blocked the road and created commotion.

5. Having heard the learned counsel for the parties and having perused the materials on record, this Court finds that the



petitioner is alleged to have assaulted the aforesaid Shankar Yadav and when the villagers had accumulated at the alleged place of occurrence, the petitioner had engaged in indiscriminate firing resulting in the villagers creating a road block and causing law and order problem, as also leading to the image of the police being maligned. A departmental proceeding was initiated, wherein the petitioner had participated, and ultimately, enquiry officer, considering the evidence on record, had submitted his enquiry report dt. 15.04.2011, wherein he had found the charges levelled against the petitioner to have been proved. The respondent no.5 had then issued second show-cause notice dated 30.10.2011 and after considering the reply of the petitioner, has passed the order of punishment dt. 7.12.2011, dismissing the petitioner from his service, which was challenged by the petitioner by filing an appeal, however, the appeal was rejected by an order dated 05.09.2012, passed by the respondent no.4. The petitioner had then filed a memorial, however, the same has also been rejected by an order dated 04.11.2013, passed by the respondent no.3.

6. It is a well settled law that under Articles 226 & 227 of the Constitution of India, neither evidence can be re-appreciated nor interference can be made with the conclusion of the enquiry proceedings, if the same has been conducted, in accordance with



law nor this Court can go into the reliability/ adequacy of evidence or interfere if there is some legal evidence on which findings are based and on the contrary this Court can only consider whether enquiry has been held by the competent authority and whether the same has been held in accordance with the procedure established by law. Since in the present case this Court does not find any infirmity in the procedure followed by the disciplinary authority as also it does not find that there has been any violation of the principles of natural justice, this Court does not find any reason to interfere with the disciplinary proceeding in question. Thus, there being no illegality in the conduct of the departmental proceedings, there is no occasion to interfere with the conclusion of the disciplinary authority.

7. The aforesaid aspect of the matter has been considered by the Hon'ble Apex Court in a judgment rendered in the case of ***Union of India & Ors. vs. P. Gunasekaran***, reported in (2015) 2 SCC 610, paragraph nos. 12 to 16, 20 & 21 whereof are reproduced herein below:-

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the



disciplinary authority and was also endorsed by the Central Administrative Tribunal. 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 Articles 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) reappreciate 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.

14. In one of the earliest decisions in State of A.P. v. S. Sree Rama Rao [AIR 1963 SC 1723], many of the above principles have been discussed and it has been concluded thus:

“7. ... The High Court is not constituted in a proceeding under Article 226 of the Constitution as a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode



of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution.”

15. *In State of A.P. v. Chitra Venkata Rao [(1975) 2 SCC 557], the principles have been further discussed at paras 21-24, which read as follows: (SCC pp. 561-63)*

“21. The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in State of A.P. v. S. Sree Rama Rao [AIR 1963 SC 1723]. First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a



petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and



if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.

22. Again, this Court in Railway Board v. Niranjan Singh [(1969) 1 SCC 502] said that the High Court does not interfere with the conclusion of the disciplinary authority unless the finding is not supported by any evidence or it can be said that no reasonable person could have reached such a finding. In Niranjan Singh case [(1969) 1 SCC 502] this Court held that the High Court exceeded its powers in interfering with the findings of the disciplinary authority on the charge that the respondent was instrumental in compelling the shutdown of an air compressor at about 8.15 a.m. on 31-5-1956. This Court said that the Enquiry Committee felt that the evidence of two persons that the respondent led a group of strikers and compelled them to close down their compressor could not be accepted at its face value. The General Manager did not agree with the Enquiry Committee on that point. The General Manager accepted the evidence. This Court said that it was open to the General Manager to do so and he was not bound by the conclusion reached by the committee. This Court held that the conclusion reached by the disciplinary authority should prevail and the High Court should not have interfered with the conclusion.

23. The jurisdiction to issue a writ of certiorari



under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a tribunal, a writ can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point & the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. (See Syed Yakoob v. K.S. Radhakrishnan [AIR 1964 SC 477]).

24. The High Court in the present case assessed the entire evidence and came to its own conclusion. The High Court was not justified to do so. Apart from the aspect that the High Court does not correct a finding of fact on the ground that the evidence is not sufficient or adequate, the evidence in the present case which was considered by the Tribunal cannot



be scanned by the High Court to justify the conclusion that there is no evidence which would justify the finding of the Tribunal that the respondent did not make the journey. The Tribunal gave reasons for its conclusions. It is not possible for the High Court to say that no reasonable person could have arrived at these conclusions. The High Court reviewed the evidence, reassessed the evidence and then rejected the evidence as no evidence. That is precisely what the High Court in exercising jurisdiction to issue a writ of certiorari should not do.”

16. These principles have been succinctly summed up by the living legend and centenarian V.R. Krishna Iyer, J. in State of Haryana v. Rattan Singh [(1977) 2 SCC 491]. To quote the unparalleled and inimitable expressions:

“4. ... in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor textbooks, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fair play is the



basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good.”

20. Equally, it was not open to the High Court, in exercise of its jurisdiction under Articles 226/227 of the Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the court. In the instant case, the disciplinary authority has come to the conclusion that the respondent lacked integrity. No doubt, there are no measurable standards as to what is integrity in service jurisprudence but certainly there are indicators for such assessment. Integrity according to Oxford Dictionary is “moral uprightness; honesty”. It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence, etc. In short, it depicts sterling character with firm adherence to a code of moral values.

21. The impugned conduct of the respondent working as Deputy Office Superintendent in a sensitive department of Central Excise, according to the disciplinary authority, reflected lack of integrity warranting discontinuance in service. That view has been endorsed by the Central Administrative Tribunal also. Thereafter, it is not open to the High Court to go into the proportionality of punishment or substitute the same with a lesser or different punishment. These aspects have been discussed



at quite length by this Court in several decisions including B.C. Chaturvedi v. Union of India [(1995) 6 SCC 749], Union of India v. G. Ganayutham [(1997) 7 SCC 463], Om Kumar v. Union of India [(2001) 2 SCC 386], Coimbatore District Central Coop. Bank v. Employees Assn. [(2007) 4 SCC 669], Coal India Ltd. v. Mukul Kumar Choudhuri [(2009) 15 SCC 620] and the recent one in Chennai Metropolitan Water Supply [Chennai Metropolitan Water Supply & Sewerage Board v. T.T. Murali Babu, (2014) 4 SCC 108].”

8. As far as the contention of the learned counsel for the petitioner, to the effect that the punishment of dismissal from service is harsh, this Court finds that the petitioner is a member of a Disciplined Force, hence, he was not only expected to follow the rules, but also should have had control over his actions and any abrasion and deviation in discharge of his duties would definitely entail a punishment of dismissal and the same cannot be stated to be shocking to the conscience of the Court, hence, there is no scope of interference as far as the quantum of punishment is concerned. In this regard, this Court would refer to a judgment, rendered by the Hon’ble Apex Court in the case of ***Union of India & Others vs. Diler Singh***, reported in **(2016) 13 SCC 71**, paragraphs no. 22 to 27 whereof are reproduced herein below:-

“22. The aforesaid analysis reveals that the Division



Bench has clearly held that the delinquent employee, being a member of the Force, could not have left the camp without prior permission. It has also opined that when a personnel is posted in a camp, he is not free to move as per his choice even during the period when he is not on duty. However, as is manifest, the Division Bench has opined that the imposition of dismissal as a punishment, which is a major one, could not have been imposed by the disciplinary authority. The said opinion has been expressed without referring to the position of law that has been clearly laid down in Ghulam Mohd. Bhat [(2005) 13 SCC 228]. Thus, the basic premise is erroneous.

23. In the impugned order, the writ court has, after reproducing the passage from Akhilesh Kumar [(2007) 6 SLR 438], opined that the controversy is covered by the judgment rendered by the High Court of Calcutta. It is extremely significant to note that the learned Single Judge has not even made an effort to appreciate the decision in Ghulam Mohd. Bhat [(2005) 13 SCC 228] though the same was relied upon by the learned first appellate Judge. Thrust of reasoning of the first appellate court was that a major punishment of dismissal could be imposed in law. It is quite unfortunate that the High Court has dislodged the finding without any analysis but reproducing a passage from the Calcutta High Court which had not referred to the ratio laid down by a two-Judge Bench of this Court in Ghulam Mohd. Bhat case [(2005) 13



SCC 228]. Thus, the conclusion arrived at by the High Court is wholly unsustainable.

*24. The learned counsel for the respondent has submitted that even if the charges have been proven, the punishment of dismissal in the obtaining factual matrix is absolutely harsh and shocking to the conscience. It is his submission that the punishment is disproportionate. The respondent was a part of the disciplined force. He has left the campus without prior permission, proceeded to the market, consumed liquor & quarrelled with the civilians. It has been established that he had consumed liquor at the market place, and it has been also proven that he had picked up quarrel with the civilians. It is not expected of a member of the disciplined force to behave in this manner. The submission, as has been noted earlier, is that the punishment is absolutely disproportionate. The test of proportionality has been explained by this Court in *Om Kumar v. Union of India* [(2001) 2 SCC 386], *Union of India v. G. Ganayutham* [(1997) 7 SCC 463] and *Union of India v. Dwarka Prasad Tiwari* [(2006) 10 SCC 388].*

25. In Dwarka Prasad Tiwari, it has been held that unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court/tribunal, there is no scope for interference. When a member of the disciplined force deviates to such an extent from the discipline and behaves in an untoward manner which is not



conceived of, it is difficult to hold that the punishment of dismissal as has been imposed is disproportionate and shocking to the judicial conscience.

26. We are inclined to think so as a member of the disciplined force, the respondent was expected to follow the rules, have control over his mind and passion, guard his instincts and feelings and not allow his feelings to fly in fancy. It is not a mild deviation which human nature would grant some kind of lenience. It is a conduct in public which has compelled the authority to think and, rightly so, that the behaviour is totally undisciplined. The respondent, if we allow ourselves to say so, has given indecent burial to self-control, diligence and strength of will power. A disciplined man is expected, to quote a few lines from Mathew Arnold:

*“We cannot kindle when we will
The fire which in the heart resides,
The spirit bloweth and is still,
In mystery our soul abides:
But tasks in hours of insight will'd
Can be through hours of gloom fulfill'd.”*

Though the context is slightly different, yet we have felt, it is worth reproducing.

27. Consequently, the appeal is allowed, the judgment and decree [Diler Singh v. Union of India, 2012 SCC OnLine P&H 19043] passed by the High Court is set aside and that of the first appellate court is restored and the suit instituted by the respondent-



plaintiff stands dismissed. In the facts and circumstances of the case, there shall be no order as to costs.”

9. Consequently, this Court finds that in the present case, the charges levelled against the petitioner are grave, as can be culled out from the preceding paragraphs, which have also stood proved, hence such indiscipline cannot be viewed lightly, apart from the fact that the petitioner’s conduct in the past has also been poor and he has been inflicted with two black marks in different departmental proceedings held qua him, thus, this Court finds that the punishment inflicted upon the petitioner is not disproportionate to the charges levelled against him, hence this aspect of the matter is answered against the petitioner.

10. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, this Court does not find any merit in the present writ petition, hence the same stands dismissed.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	06.09.2023
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