

IN THE HIGH COURT OF JHARKHAND AT RANCHI

(Letters Patent Appellate Jurisdiction)

L.P.A No. 779 of 2019

1. Union of India through Director General, Railway Protection Force, Ministry of Railway, Rail Bhawan, PO-New Delhi, PS-Sansad Marg, New Delhi
 2. The Director General, Railway Protection Force, Ministry of Railway, Rail Bhawan, PO-New Delhi, PS-Sansad Marg, New Delhi
 3. The Chief Security Commissioner, Railway Protection Force, East Central Railway, Hajipur, PO & PS-Hajipur, District-Vaishali
 4. The Senior Divisional Security Commissioner, Railway Protection Force, Dhanbad Division, East Central Railway, Dhanbad, PO & PS-Dhanbad, District-Dhanbad
- ... Appellants**

Versus

Pankaj Prakash, s/o Sri Tripurari Prasad, r/o Sri Siddhi Niwas, Buxidih Road, PO-Giridih, PS-Giridih Town, District-Giridih

... Respondent

**CORAM: HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR
HON'BLE MR. JUSTICE RATNAKER BHENGRA**

For the Appellant	: Mr. Anil Kumar, A.S.G.I
	Mr. Vikash Kumar, C.G.C
For the Respondent	: None

O R D E R
13th July 2023

Per, Shree Chandrashekhara, J.

The Union of India through Director General of Railway Protection Force and other authorities of the Railway Protection Force have approached this Court against the order dated 14th June 2019 passed in W.P.(S) No. 2644 of 2011 by which the writ Court has interfered with the punishment order on the ground that the respondent-authorities have failed to advert to the stand put forth by the delinquent Sub-Inspector of the Railway Protection Force post at Patrattu, that no period for completion of investigation has been stipulated under any rules, circulars etc. of the railway.

2. The writ Court has held as under:

"5. Having heard learned counsel for the parties, this court finds that the points raised in Para 8 of the writ petition have not been properly replied to by the respondents, which is apparent from the statement made in Para 28 of the counter affidavit, wherein the respondents have merely said that the contentions are not correct. In this paragraph, it is not

explained as to what is the stipulated period of investigation. The punishment order may be minor in nature, but in the facts and circumstances of this case is not desirable.

6. The order dated 12.6.2009 passed by the disciplinary authority, the Appellate order dated 11.11.2009 and Revisional order dated 06.9.2011 are quashed.

7. The writ petition is allowed.”

3. Mr. Anil Kumar, the learned A.S.G.I would submit that whether or not the punishment awarded to the delinquent Sub-Inspector was “desirable” is an issue which exclusively falls within the domain of the departmental authority and the writ Court shall not interfere with the order of punishment in a proceeding for *certiorari*.

4. No doubt a writ Court exercising jurisdiction under Article 226 of the Constitution of India is denuded of its powers to interfere with the findings of fact recorded by the departmental authority in a properly constituted domestic enquiry, except where it is demonstrated that such findings of fact are not based on the materials on record and thus perverse. This seems to be not a case pleaded by the writ petitioner that the departmental enquiry was conducted in breach of the rules of natural justice or contrary to the extant Discipline and Appeal Rules. The punishment of “withholding of one annual increment with no cumulative effect” can also not be said to be such that shocks the conscience of the Court so as to invite interference of the writ Court.

5. In “*B.C. Chaturvedi v. Union of India*” (1995) 6 SCC 749 the Hon'ble Supreme Court has observed as under:

12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority

to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

6. With the aforesaid principles in mind, we have formed an opinion that there is no merit in this Letters Patent Appeal and therefore no indulgence should be granted in this matter. This opinion we have formed on perusal of the materials on record particularly the reply of the delinquent Sub-Inspector to the charge-memo dated 15th January 2009.

7. Along with the charge-memo, imputations of allegation which were supplied to the delinquent Sub-Inspector read as under:

"Charges: "Gross negligence of duty and disobedience of order in that he was entrusted with the enquiry of RPF Post/PTRU Case No. (1) 06/08 dt. 15.02.08, (2) 07/08 dt. 24-02-08, (3) 17/08 dt. 19-04-08, (4) 21/08 dt. 21-01-08 and (5) 27/08 dt. 15-07-08 all under 3RP(UP) Act were handed over on 16-07-08, 24-02-08, 19-04-08, 21-05-08 & 19-07-08 respectively but he failed to complete the enquiry within the stipulated period as such he is charged under RPF rule 146.2(i) & 147(i) & (ii)."

8. On a glance at the aforementioned imputations what at once comes to our mind is that there is no reference of any rule regarding stipulated period for completion of the enquiry. No doubt an enquiry is required to be completed within a reasonable period but then what appears from the charge-memo dated 15th January 2009 is that as many as five cases were entrusted to the delinquent Sub-Inspector, out of which three were registered

between 21st January 2008 to 15th February 2008, RPF Post/PTRU Case No. 17 of 2008 was registered on 19th April 2008 and 5th case on 15th July 2008 all under section 3 of the Railway Property (Unlawful Possession) Act, 1966. It further appears that these cases were handed over for investigation to the delinquent Sub-Inspector in quick succession. We further find that in his reply dated 18th March 2009 the delinquent Sub-inspector has given details regarding investigation conducted by him in RPF Post/PTRU Case No. 6 of 2008 and, having regard to the volume of work entrusted to him, there cannot be a doubt that he has conducted investigation in RPF Post/PTRU Case No. 6 of 2008 with all promptitude.

9. The punishment order dated 12th June 2009 is a cryptic order which does not take into consideration the defence put forth by the delinquent Sub-Inspector. Similarly the appellate order dated 11th November 2009 records that the delinquent has failed to prove that “the punishment order is unsustainable”. In our opinion the procedure adopted by the departmental authorities while inflicting punishment of withholding of one increment without cumulative effect is seriously flawed and cannot be countenanced in law. It is common knowledge that the test in a departmental proceeding is preponderance of probability and the delinquent government employee is not required to prove his defence beyond reasonable doubt. In fact this is not a test even in a criminal trial where an accused is entitled for benefit of doubt.

10. Having regard to the aforesaid facts and circumstances in the case, L.P.A No. 779 of 2019 is dismissed.

(Shree Chandrashekhar, J.)

(Ratnaker Bhengra, J.)