

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7343 of 2018

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Ranjan Kumar Son of Late Mani Lal Gupta, Resident of Village-
Bhagwanganj, Police Station- Bhagwanganj in the district of Patna.

... .. Petitioner/s

Versus

1. Bihar State Power Holding Company Ltd. through its Chairman-cum-Managing Director, Vidyut Bhawan, Baily Road, Patna.
2. The Chairman-cum-Managing Director, Vidyut Bhawan, Baily Road, Patna.
3. South Bihar Power Distribution Company Ltd. through its Managing Director, Vidyut Bhawan, Baily Road, Patna.
4. The Managing Director, South Bihar Power Distribution Company Ltd. Vidyut Bhawan, Baily Road, Patna.
5. The General Manager Human Resources/Administration, South Bihar Power Distribution Company Ltd. Vidyut Bhawan, Baily Road, Patna.
6. The Deputy General Manager Human Resources/Administration, South Bihar Power Distribution Company Ltd. Vidyut Bhawan, Baily Road, Patna.
7. The Electrical Superintending Engineer, Electric Supply Circle, Bhojpur at Ara under South Bihar Power Distribution Company Ltd.
8. The Electrical Executive Engineer, Electric Supply Division, Ara, Bhojpur under South Bihar Power Distribution Company Ltd.
9. The Assistant Electrical Engineer, Electric Supply Sub-Division, Jagdishpur at Bihiyan in the district of Bhojpur under South Bihar Power Distribution Company Ltd.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ranjeet Kumar, Adv.
For the SBPDCL	:	Mr. Kumar Priya Ranjan, Addl. S.C. Mr. Sandeep Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 09-07-2024

Learned counsel for the petitioner and learned counsel for the South Bihar Power Distribution Company Ltd. were heard on 02.07.2024 and thereafter, the Court has dictated the part order on the said date. The order which is being passed today is in continuation of the order dated 02.07.2024.

2. Learned counsel for the South Bihar Power Distribution Company Ltd. submits that the present

departmental proceeding and appellate order in which a minor punishment has been imposed upon the delinquent-petitioner has been completely in accordance with law.

3. Learned counsel for the petitioner has raised primarily two objections in the departmental proceeding. In the first objection, he submits that the departmental proceeding has been concluded without any evidence. He further submits that the second show cause notice has been issued in which disagreement memo has been made in gross violation of Rules 18(3) and 18(4) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'the Rules of 2005'). In this regard, he submits that there was no violation as upon considering the materials before the Conducting Officer. The disciplinary authority also looked into those materials and took a different decision at all. Therefore, he has not made any wrong because under Rule 18 of the Rules of 2005, this power is already embedded in the disciplinary authority that he may disagree on the findings of the Conducting Officer. He further submits that from the inquiry report, it transpires that the Presenting Officer was present before the inquiry and also submitted his written argument.

4. Learned counsel for the South Bihar Power Distribution Company Ltd. relied on a judgment rendered in the

case of *Union of India & Ors. Vs. Ex-Constable Ram Karan* reported in *(2022) 1 SCC 373*, wherein it has been held that the imposition of punishment has to be made by the disciplinary authority considering all those documents and affirmed by the appellate authority following the rule of procedure, as well as natural justice, then in that case, the scope of review is limited because the writ Court is not hearing the appeal. The writ Court has just to look about the illegality of the order, natural justice and established procedure.

5. Upon considering the arguments and from perusal of the records, it transpires to this Court that Rules 18(3) and 18(4) of the Rules of 2005 states as follows:-

“(3) The disciplinary authority shall forward or cause to be forwarded a copy of the inquiry report, together with its own findings, if any, as provided in sub-rule (2), to the government servant who may submit, if he or she so desires, his or her written representation or submission to the disciplinary authority within fifteen days.

(4) The disciplinary authority shall consider the representation or submission, if any, submitted by the Government

Servant before proceeding further in the manner specified in sub rules (5) and (6).”

6. It would be apposite to quote the relevant paragraph 10 of the judgment rendered in the case of **Ram Kishan Vs. Union of India & Ors.** reported in **AIR 1996 SC 255** on which the petitioner has relied, as follows:-

“10. The next question is whether the show cause notice is valid in law. It is true, as rightly contended by the counsel for the appellant, that the show cause notice does not indicate the reasons on the basis of which the disciplinary authority proposed to dis-agree with the conclusions reached by the inquiry officer. The purpose of the show cause notice, in case of disagreement with the findings of the enquiry officer, is to enable the delinquent to show that the disciplinary authority is persuaded not to dis-agree with the conclusions reached by the inquiry officer for the reasons given in the inquiry report or he may offer additional reasons in support of the finding by the inquiry officer. In that situation, unless the disciplinary authority gives specific reasons in the show cause on the basis of which the findings of the inquiry officer in that behalf is based, it would be difficult for the delinquent to satisfactorily

give reasons to persuade the disciplinary authority to agree with the conclusions reached by the inquiry officer. In the absence of any ground or reason in the show cause notice it amounts to an empty formality which would cause grave prejudice to the delinquent officer and would result in injustice to him. The mere fact that in the final order some reasons have been given to disagree with the conclusions reached by the disciplinary authority cannot cure the defect. But, on the facts in this case, the only charge which was found to have been accepted is that the appellant had used abusive language on the superior authority. Since the disciplinary authority has said that it has agreed partly to that charge, the provisional conclusion reached by the disciplinary authority in that behalf even in the show cause notice, cannot be said to be vague. Therefore, we do not find any justification to hold that the show cause notice is vitiated by an error of law, on the facts in this case.”

7. This Court also feels it necessary to quote paragraph 23 onwards of the judgment rendered in the case of ***Union of India & Ors. Vs. Ex-Constable Ram Karan (Supra)***, as under : -

“23. The well-ingrained principle of law is that it is the disciplinary authority, or the appellate authority in appeal, which is to decide the nature of punishment to be given to the delinquent employee. Keeping in view the seriousness of the misconduct committed by such an employee, it is not open for the courts to assume and usurp the function of the disciplinary authority.

24. Even in cases where the punishment imposed by the disciplinary authority is found to be shocking to the conscience of the court, normally the disciplinary authority or the appellate authority should be directed to reconsider the question of imposition of penalty. The scope of judicial review on the quantum of punishment is available but with a limited scope. It is only when the penalty imposed appears to be shockingly disproportionate to the nature of misconduct that the courts would frown upon. Even in such a case, after setting aside the penalty order, it is to be left to the disciplinary/appellate authority to take a call and it is not for the court to substitute its decision by prescribing the quantum of punishment. However, it is only in rare and exceptional cases where the court might to shorten the litigation may think of substituting its own view as to the quantum of punishment in place of punishment awarded by the competent authority that too after assigning cogent reasons.

25. The principles have been culled out by a three-Judge Bench of this Court way back in B.C. Chaturvedi v. Union of India [B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749 : 1996 SCC (L&S) 80] wherein it was observed as under : (SCC p. 762, para 18)

“18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”

26. *It has been further examined by this Court in Lucknow Kshetriya Gramin Bank v. Rajendra Singh [Lucknow Kshetriya Gramin Bank v. Rajendra Singh, (2013) 12 SCC 372 : (2013) 3 SCC (L&S) 159] as under : (SCC p. 382, para 19)*

“19. The principles discussed above can be summed up and summarised as follows:

19.1. When charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities.

19.2. The courts cannot assume the

function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority.

19.3. Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the court.

19.4. Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The court by itself cannot mandate as to what should be the penalty in such a case.

19.5. The only exception to the principle stated in para 19.4 above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct were identical or the co-delinquent was foisted with more serious charges. This would be on the doctrine of equality when it is found that the employee concerned and the co-delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge-sheet in the two cases. If the co-delinquent accepts the charges, indicating remorse with unqualified apology, lesser punishment to him would be justifiable.”

27. Adverting to the facts of the instant case, the High Court, in our considered view, fell in error in interfering with the punishment, which could lawfully be imposed by the departmental authorities for his proven misconduct. The High Court should not have substituted its own discretion for that of the authority. What punishment was required to be imposed, in the facts and circumstances of the case, was a matter which fell exclusively within the jurisdiction of the competent authority and the interference made by the High Court is in a cavalier manner while recording the finding of penalty to be disproportionate without taking into consideration the seriousness of the misconduct committed by the respondent which is unpardonable and not sustainable in law.

28. Before we may conclude, we would like to observe that the employees who are in civil services, their disciplinary matters are being governed by their respective Services (Classification, Control and Appeal) Rules and for the sake of instance, we take note of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter being referred to as “the 1965 Rules”). The nature of penalties has been provided under Part V and removal and dismissal from service are in the category of “Major penalties”. If the misconduct is found proved, looking into the gravity and the nature of misconduct, either of the punishment i.e. removal or dismissal from service, could be inflicted upon the civil servant after holding disciplinary enquiry for imposing major penalties if held guilty as provided under Part IV of the 1965 Rules

and this is what being ordinarily understood.

29. The following penalties under the scheme of 1965 Rules may, for good and sufficient reasons and as hereinafter provided can be imposed on a government servant, namely:

*“11. Penalties.— * * **

Minor penalties.—

(i) censure;

*(ii)-(iii)(a) * * **

(iv) withholding of increments of pay;

Major penalties.—

*(v)-(vi) * * **

(vii) compulsory retirement;

(viii) removal from service, which shall not be a disqualification for future employment under the Government;

(ix) dismissal from service which shall ordinarily be a disqualification for future employment under the Government.”

30. In the instant case, the disciplinary matters of members of the force for minor punishments are being governed under Section 11 of the 1949 Act and if any nature of more heinous offence/less heinous offence being committed, if found proved, member of the Force shall be punishable for imprisonment for a specified term as being referred to under Section 9 and Section 10 of the 1949 Act and at the same time, dismissal and removal from service are being considered to be the minor punishments as reflected from Section 11(1) of the 1949 Act. If the allegation is found proved, the competent authority may award in lieu of, or in addition to, suspension or

dismissal any one or more of punishments to a member of the Force whom he considers to be guilty of disobedience, neglect or duty, or remissness in the discharge of any duty or of other misconduct with confinement in the quarter-guard or removal as indicated under clauses (d) and (e) of Section 11(1) of the 1949 Act.

31. The scheme of the 1949 Act of which reference has been made was completely overlooked by the High Court of Delhi and while keeping in mind the standards of examining the misconduct of a civil servant, interference has been made in the quantum of punishment which may not apply to member of the disciplined force and, in our considered view, the interference made by the High Court in substituting punishment in the instant case is unsustainable and deserves to be set aside.

32. Consequently, the appeal succeeds and is allowed. The impugned judgment of the High Court of Delhi dated 11-2-2016 is quashed and set aside. No costs.

33. Pending application(s), if any, stand disposed of.”

8. Here in the present case, upon going through the discussions of the Hon'ble Supreme Court's judgments, which is of 1996 and subsequent views of 2022, it transpires to this Court that there is limited scope for interference in the writ, particularly, in the departmental proceeding, until and unless there must not be gross violation of the established rule, violation of natural justice and disproportionate punishment.

9. From bare perusal of the inquiry report, it transpires to this Court that the evidences have been taken place. It also transpires to this Court that the proceeding has been conducted before the Presenting Officer.

10. From perusal of the second show cause, it transpires to this Court that the reasons have been assigned by the disciplinary authority which is well within his power and the procedure established and, particularly, in the light of restriction imposed by the Hon’ble Supreme Court upon the writ Court that the writ Court is not the appellate Court.

11. In the aforesaid background, this Court is not inclined to interfere into the decision of the departmental proceeding, as well as the appellate authority and hence, the present writ application stands dismissed.

(Dr. Anshuman, J)

sadique/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	NA
Transmission Date	16.07.2024.