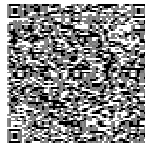


2024:PHHC:071883



CWP-16784-2016 1

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

109 CWP-16784-2016
Date of Decision : 21.05.2024

BIKRAMJIT SINGH ... PETITIONER

Versus

UNION OF INDIA & ORS ... RESPONDENTS

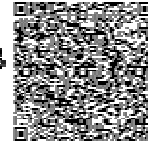
CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Mansur Ali, Advocate
 Mr. Imran A. Ali, Advocate
 Mr. Anarpreet Kooner, Advocate
 Ms. Amanprie Kaur, Advocate
 Mr. Vikas Sheel Verma, Advocate
 for the petitioner.

 Ms. Shreyansi Verma, Central Govt. Counsel
 for the respondent-UOI.

JAGMOHAN BANSAL, J. (Oral)

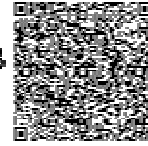
1. The petitioner through instant petition under Articles 226/227 of Constitution of India is seeking setting aside of orders dated 03.01.2015 (Annexure P-5) whereby petitioner has been dismissed from service; order dated July' 2015 (Annexure P-7) and order dated 07.10.2015 (Annexure P-9) whereby appeal and representation have been dismissed.



2. The petitioner joined Border Security Force as Constable on 20.04.2012. He completed his basic training form STC, BSF, Bangalore and joined his unit on 26.03.2013. He came to be implicated in FIR No.155 dated 01.10.2013 under Sections 21, 29, 61, 85 of Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Sarhali, District Tarn Taran. He was arrested on 01.10.2013 and released on bail on 11.09.2014. He as per impugned orders was supposed to report to his unit on 19.09.2014 whereas he reported on 15.11.2014 i.e. after a period of 58 days. He again absented himself without leave from 17.11.2014 and reported back on 15.12.2014. In this way, the petitioner, at the first instance, remained absent from duty for a period of 58 days and thereafter for 29 days.

3. The respondent initiated proceedings against the petitioner in terms of provisions of BSF Act, 1968 (for short '1968 Act'). A Summary Security Force Court (for short 'SSFC') was constituted and the petitioner came to be tried by Commandant. It is apt to notice here that SSFC is presided by Commandant. SSFC vide order dated 03.01.2015 held the petitioner guilty for absence from duty at the first instance for 58 days and thereafter 29 days. The said Court ordered to dismiss him from service.

4. The petitioner feeling aggrieved from order of dismissal preferred an appeal before appellate authority which came up for consideration before Inspector General who vide order dated 21.07.2015 dismissed his appeal. The appellate authority formed an opinion that



appellant has given proof of indiscipline by involving in smuggling of narcotic substance and thereafter remained absent from duty without leave. It is against the discipline and reputation of the Force. The petitioner further preferred representation before the Government which came to be dismissed by order dated 07.10.2015.

5. Learned counsel for the petitioner *inter alia* contends that the petitioner has been awarded punishment of dismissal from service in terms of Section 19(a) of 1968 Act. There is allegation against the petitioner that he remained absent from duty on one occasion for 58 days and on another occasion for 29 days. The petitioner attempted to join three times, however, respondent did not permit to join, resultantly, absence from duty of 58 days occurred. The second time delay is less than 30 days which does not warrant serious punishment. The petitioner is seriously disputing the fact that he remained absent from duty for 58 days. The petitioner has been awarded punishment of dismissal from service in terms of Section 19 of 1968 Act. As per Section 19 of 1968 Act, the Security Force Court may award sentence of 03 years or less, however, it is not competent to award punishment of dismissal from service. In support of his contention, learned counsel for the petitioner relies upon judgment of Division Bench of Delhi High Court in **Som Beer Singh (EX.CT) vs. Union of India, 1997 (70) DLT 421.**

Mr. Mansur Ali, Advocate further submits that punishment of dismissal from service is disproportionate to the alleged offence. The appellate authority was swayed by pending criminal case. The petitioner



has been acquitted vide judgment dated 23.03.2017 passed by Judge, Special Court/Additional Sessions Judge, Tarn Taran, thus, quantum of punishment needs to be re-considered.

6. Per contra, Ms. Shreyansi Verma, Central Govt. Counsel submits that the matter needs to be examined in the light of Sections 19 and 48 of 1968 Act. From the conjoint reading of both Sections, it is evident that dismissal from service is one of the punishment prescribed under the Act. The Security Force Courts are competent to award sentence in the form of imprisonment as well as dismissal from service. Death sentence is severe punishment and imprisonment for life is lesser punishment and dismissal from service is lesser than imprisonment. The petitioner was rightly awarded punishment of dismissal from service. Section 19 of 1968 Act provides for punishment in the form of imprisonment upto 03 years, however, Security Force Court is competent to award lesser punishment and dismissal from service in terms of Section 48 of 1968 Act is lesser punishment. The petitioner remained absent from duty on first occasion for 58 days and on second occasion for 29 days. He was liable to punishment and Court has rightly awarded punishment. The question of attempt to join duty is a purely disputed question of fact and all the authorities have passed order after considering all the issues raised by the petitioner. The scope of interference at this level is very limited and Court cannot look into disputed questions of fact. As per Section 11 of 1968 Act read with Rule 177 of Border Security Force Rules, 1969 (for short 'Rule'), Commandant is competent

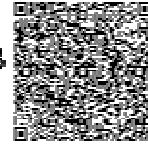


authority to dismiss or remove any person other than gazetted officer or a subordinate officer from service. The impugned order was passed by Commandant and he was quite competent to dismiss the petitioner from service.

Ms. Shreyansi Verma, Central Govt. Counsel in support of her contentions relied upon judgment of Hon'ble Supreme Court in **Union of India and others vs. Subrata Nath, in C.A. No.7939-7940 of 2022, decided on 23.11.2022** and **Anil Kumar Upadhyay vs. The Director General, SSB and others, Civil Appeal No.2707 of 2022, decided on 20.04.2022.**

7. I have heard the arguments of learned counsel for the parties and perused the record with their able assistance.

8. The conceded position emerging from record is that the petitioner joined respondent-Force on 20.04.2012. He came to be arrested on 01.10.2013 in FIR No.155 dated 01.10.2013. He was released on bail on 11.09.2014 and reported to his unit on 15.11.2014. Thus, he remained absent from duty from 19.09.2014 to 14.11.2014. He again absented himself from 17.11.2014 to 14.12.2014. The Commandant who conducted proceedings as SSFC found the petitioner guilty of absence from duty and awarded him punishment of dismissal from service. He preferred an appeal before the appellate authority which came to be dismissed. He unsuccessfully preferred a representation before Government. The Special Judge acquitted him vide judgment dated 23.03.2017.



9. From the obtained factual position, scrutiny of record and arguments of both sides, the following questions arise for the consideration of this Court:

(i) Whether petitioner in terms of Sections 19 of BSF Act, 1968 could be awarded punishment of dismissal from service?

(ii) Whether punishment of dismissal from service was proportionate to alleged offence of absence from duty?

10. To answer above referred questions, it would be apposite to have bird's eye view of Sections 19, 48 and 49 of 1968 Act which are reproduced as below:

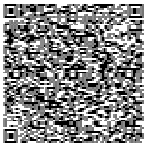
19. Absence without leave.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) absents himself without leave; or

(b) without sufficient cause overstays leave granted to him; or

(c) being on leave of absence and having received information from the appropriate authority that any battalion or part thereof or any other unit of the Force, to which he belongs, has been ordered on active duty, fails, without sufficient cause, to rejoin without delay; or

(d) without sufficient cause fails to appear at the time fixed at the parade or place appointed for exercise or duty; or



- (e) when on parade, or on the line of march, without sufficient cause without leave from his superior officer, quits the parade or line of march; or
- (f) when in camp or elsewhere, is found beyond any limits fixed, or in any place prohibited, by any general, local or other order, without a pass or written leave from his superior officer; or
- (g) without leave from his superior officer or without due cause, absents himself from any school when duly ordered to attend there,

shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned.

X X X X X

48. Punishments awardable by Security Force Courts.—

(1) Punishments may be inflicted in respect of offences committed by persons subject to this Act and convicted by Security Force Courts according to the scale following, that is to say,—

- (a) death;
- (b) imprisonment which may be for the term of life or any other lesser term but excluding imprisonment for a term not exceeding three months in Force custody;
- (c) dismissal from the service;
- (d) imprisonment for a term not exceeding three months in Force custody;
- (e) reduction to the ranks or to a lower rank or grade or place in the list of their rank in the case of an under-officer;



(f) forfeiture of seniority of rank and forfeiture of all or any part of the service for the purpose of promotion;

(g) forfeiture of service for the purpose of increased pay, pension or any other prescribed purpose;

(h) fine, in respect of civil offences;

(i) severe reprimand or reprimand except in the case of persons below the rank of an under-officer;

(j) forfeiture of pay and allowances for a period not exceeding three months for an offence committed on active duty;

(k) forfeiture in the case of person sentenced to dismissal from the service of all arrears of pay and allowances and other public money due to him at the time of such dismissal;

(l) stoppage of pay and allowances until any proved loss or damage occasioned by the offence for which he is convicted is made good.

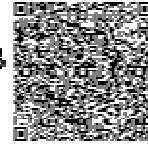
(2) Each of the punishments specified in sub-section (1) shall be deemed to be inferior in degree to every punishment preceding it in the above scale.

49. Alternative punishments awardable by Security Force Courts.—Subject to the provisions of this Act, a Security Force Court may, on convicting a person subject to this Act of any of the offences specified in Sections 14 to 45 (both inclusive) award either the particular punishment with which the offence is stated in the said sections to be punishable or, in lieu thereof, any one of the punishments lower in the scale set out in Section 48 regard being had to the nature and degree of the offence.



11. From the perusal of Sections 48 and 49 of BSF Act, it is quite evident that legislature has prescribed different punishments which may be awarded to a delinquent employee. Punishments prescribed in Section 48 of BSF Act, on the basis of severity, are in descending order. The most severe punishment is death sentence and thereafter comes imprisonment for life or any other lesser term but more than 3 months in force custody. Thereafter comes dismissal from service. A Security Force Court on conviction may award either punishment prescribed in Sections 14 to 45 (both inclusive) or any other punishment prescribed under Section 48. Chapter III of 1968 Act deals with offences. It comprises of Sections 14 to 47. Different sections commencing from Section 14 specify different punishments for different offences. The quantum of punishment depends upon nature of offence. In all the sections punishment has been prescribed in the form of death sentence or imprisonment for a term. There is no section which prescribes punishment of dismissal from service. The simple reason for not specifying punishment of dismissal from service is that imprisonment for a term, as per Section 48 is more severe punishment than dismissal from service. An authority is empowered to award punishment by way of imprisonment for a term or such less punishment as is prescribed in the Act.

12. Section 19 provides that on conviction by a Security Force Court, a delinquent employee shall be liable to suffer imprisonment for a term which may extend to 3 years or such less punishment as is

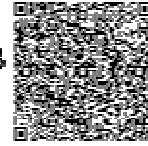


prescribed in the Act. In Section 48, it is clearly provided that dismissal from service is a lesser punishment than punishment of imprisonment of 3 years. Section 49 makes it further clear that a Security Force Court may award any one of punishments lower in scale set out in Section 48 having regard to nature and degree of the offence.

13. From the conjoint reading of Sections 19, 48 and 49 of 1968 Act, it is evident that as per Section 19 in case of absence from duty, Court may grant sentence of imprisonment for a term which may extend to 3 years or such less punishment as is mentioned in the 1968 Act. As per Section 48, imprisonment for 3 years is higher in scale than punishment of dismissal from service. Thus, a Security Force Court may award any punishment of imprisonment to the extent prescribed in Section 19 as well as any other punishment mentioned in Section 48 of the Act.

14. In the case in hand, the petitioner was found guilty of commission of offence punishable under Section 19 (a), thus, he could be awarded punishment of imprisonment of 3 years or any other lesser punishment as specified in Section 48 of the Act.

15. The petitioner has further pleaded that punishment of dismissal from service is disproportionate to the alleged offence. The respondent being Armed Force is a disciplined force. It is well-known fact that discipline is foundation of every Organization especially Armed Force. The petitioner absented himself on two occasions. On the first occasion, he remained absent for 58 days and on the another occasion for



29 days.

16. The petitioner was arrested on 01.10.2013 and he was released on bail on 11.09.2014. As per petitioner, he was actually released from judicial custody on 18/19.09.2014. As per impugned orders, the petitioner was supposed to report to his unit on 19.09.2014 whereas he actually reported on 14.11.2014. He again absented himself from 17.11.2014 to 14.12.2014. Concededly, the petitioner was embroiled in a criminal case and that too under Section 21 and 29 of NDPS Act, 1985. He was released on bail on 18.09.2014, however, he was not acquitted on said date, thus, he was duty bound to pursue the trial pending against him before Judge, Special Court/Additional Sessions Judge, Tarn Taran. He has been finally acquitted. The trial Court in its judgment dated 23.03.2017 has found that as per FIR, the petitioner was arrested on 02.10.2013 whereas as per statement of Constable Mithundev Nath, he was picked up by police on 30.09.2013. The Court has further found that the matter was investigated by Inderjit Singh who was not permanent ASI. The Investigating Officer-Inderjit Singh is facing many corruption charges and multiple FIRs have been registered against him. The Court further found entire investigation doubtful. The relevant extracts of the judgment dated 23.03.2017 are reproduced as below :

29. In the case in hand Investigation Officer, Inspector Inderjit Singh is not permanent ASI and is in the substantive rank of Head Constable. This is not so admitted by him but also has been proved by defence through statement of DW1 HCP Ved No. 1223/KPT. This has made Inspector Inderjit



Singh incompetent to apprehend the accused for violating the provisions of NDPS Act, 1985.

30. *Apart from it the accused Rashpal Singh has suffered a confessional statement while he was in custody in another case bearing FIR No. 41 dated 18.06.2013, registered under Section 21/29 of NDPS Act, 1985 and Section 25 of Arms Act, 1959, at another Police Station Sarai Amanat Khan. In the said FIR No.41 the accused was got declared innocent. This Court fails to understand as once the confession was made, while being in custody in FIR No.41, why they were got declared innocent in that FIR, then why new FIR was registered, which the prosecution has also remained unable to explain, which raises a very big doubt as to the fair investigation of the matter; especially when the Investigation Officer, Inspector Inderjit Singh is facing so many corruption charges admitted by him while appearing in the witness box as PW7 in his cross-examination. The FIR No. 89 of 2006, registered at Police Station D. Division, Amritsar, under Prevention of Corruption Act, FIR No. 80 dated 11.04.1998, registered at Police Station Goraya, under Prevention of Corruption Act, FIR No.1 of 2015, registered at Police Station Vigilance Bureau, Mohali, under Prevention of Corruption Act and FIR No.75 dated 02.06.2003, registered at Police Station C Division, Amritsar, under Prevention of Corruption Act, are registered against him. The credential of the police official otherwise becomes doubtful once so many cases under Prevention of Corruption Act are registered against him which are always witnessed by two official witnesses.*

31. *Apart from it the recoveries have taken place after suffering of disclosure statements. Once it was so it was*



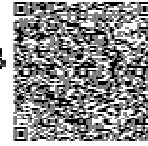
incumbent upon the police party to join at least two independent respectable persons from public to lend credence to the alleged recovery, which has not taken place at all.

32. Apart from that prosecution was required to produce and prove the remaining of Heroin left after drawing of samples, including representative samples. Neither the same has been produced and proved in the Court nor any proof of its destruction has been led. This has further raised a big doubt as to the prosecution story.

33. Apart from that no Pakistani Mobile Phone/sim has been recovered in the case in hand to prove it that the accused through using of said mobile phones/sims have smuggled the alleged Heroin. No proof has been led to connect the accused with each other by proving the ownership of mobile phones to connect it through call details.

34. Apart from it as per prosecution case accused Bikramjit Singh was apprehended on 02.10.2013 as per Memo arrest Ex.PW7/G. However, the prosecution witness PW6 Constable Mitundev Nath No. 07198027 has deposed in his cross examination that the said accused was picked up by the police on 30.09.2013. This shows that the prosecution case is not as per the actual facts and circumstances, which raises a doubt as to its authenticity.

35. In these facts and circumstances and in the light of said discussion and observations, this Court is of an opinion that the prosecution has failed to discharge its onus of proving its case regarding the commission of offence under trial by the accused beyond any reasonable shadow of



doubts, resulting in giving the benefit of doubt to the accused.

36. Accordingly, giving the benefit of doubt to the accused they stands acquitted from the charge of commission of an offence punishable under Section 21/29 NDPS Act, 1985. File is ordered to be consigned to Judicial Record Room.

17. From the findings recorded by trial Court, it is evident that the petitioner was not acquitted on technical or procedural infirmities. He has been fully exonerated/acquitted by trial Court. The Supreme Court has time and again reminded that High Court cannot examine factual position and disturb findings recorded by departmental authorities. The Court has further held that High Court cannot re-quantify quantum of punishment, however, if Court finds that punishment awarded is disproportionate to alleged offence, the Court may ask the authorities to re-consider quantum of punishment.

18. In **Om Kumar v. Union of India, (2001) 2 SCC 386** a matter came up for hearing on account of an order of Supreme Court dated 4.5.2000 proposing to re-open the quantum of punishments imposed in departmental inquiries on certain officers of the Delhi Development Authority who were connected with the land of the DDA allotted to M/s. Skipper Construction Co. It was proposed to consider imposition of higher degree of punishments in view of the roles of these officers in the said matter. The question posed before the court was whether the right punishments were awarded to the officers in accordance with well known principles of law or whether the punishments required any upward



revision. Proportionality as a constitutional doctrine has been highlighted in as follows:

*"30. On account of a Chapter on Fundamental Rights in Part III of our Constitution right from 1950, Indian Courts did not suffer from the disability similar to the one experienced by English Courts for declaring as unconstitutional legislation on the principle of proportionality or reading them in a manner consistent with the charter of rights. Ever since 1950, the principle of "proportionality" has indeed been applied vigorously to legislative (and administrative) action in India. While dealing with the validity of legislation infringing fundamental freedoms enumerated in Article 19(1) of the Constitution of India - such as freedom of speech and expression, freedom to assemble peaceably, freedom to form associations and unions, freedom to move freely throughout the territory of India, freedom to reside and settle in any part of India - this Court has occasion to consider whether the restrictions imposed by legislation were disproportionate to the situation and were not the least restrictive of the choices. The burden of proof to show that the restriction was reasonable lay on the State. "Reasonable restrictions" under Articles 19(2) to (6) could be imposed on these freedoms only by legislation and courts had occasion throughout to consider the proportionality of the restrictions. In numerous judgments of this Court, the extent to which "reasonable restrictions" could be imposed was considered. In **Chintamanrao v. State of M.P. [AIR 1951 SC 118: 1950 SCR 759]** Mahajan, J. (as he then was) observed that "reasonable*



*restrictions" which the State could impose on the fundamental rights "should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public". "Reasonable" implied intelligent care and deliberation, that is, the choice of a course which reason dictated. Legislation which arbitrarily or excessively invaded the right could not be said to contain the quality of reasonableness unless it struck a proper balance between the rights guaranteed and the control permissible under Articles 19(2) to (6). Otherwise, it must be held to be wanting in that quality. Patanjali Sastri, C.J. in **State of Madras v. V.G. Row [AIR 1952 SC 196: 1952 SCR 597: 1952 Cri LJ 966]**, observed that the Court must keep in mind the "nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time". This principle of proportionality vis-a-vis legislation was referred to by Jeevan Reddy, J. in **State of A.P. v. McDowell & Co. (1996) 3 SCC 709** recently. This level of scrutiny has been a common feature in the High Court and the Supreme Court in the last fifty years. Decided cases run into thousands.*

31. *Article 21 guarantees liberty and has also been subjected to principles of "proportionality". Provisions of the Criminal Procedure Code, 1974 and the Indian Penal Code came up for consideration in **Bachan Singh v. State of Punjab [(1980) 2 SCC 684]** the majority upholding the legislation. The dissenting judgment of Bhagwati, J. (see **Bachan Singh v. State***

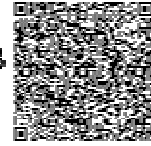


of Punjab (1982) 3 SCC 24 dealt elaborately with "proportionality" and held that the punishment provided by the statute was disproportionate.

32. *So far as Article 14 is concerned, the courts in India examined whether the classification was based on intelligible differentia and whether the differentia had a reasonable nexus with the object of the legislation. Obviously, when the courts considered the question whether the classification was based on intelligible differentia, the courts were examining the validity of the differences and the adequacy of the differences. This is again nothing but the principle of proportionality. There are also cases where legislation or rules have been struck down as being arbitrary in the sense of being unreasonable [see **Air India v. Nergesh Meerza** [(1981) 4 SCC 335 (SCC at pp. 372-373)]. But this latter aspect of striking down legislation only on the basis of "arbitrariness" has been doubted in **State of A.P. v. McDowell and Co.** (1996) 3 SCC 709."*

19. In **Bhagat Ram v. State of Himachal Pradesh, (1983) 2 SCC 442**, the Apex Court held that any penalty which is disproportionate to the gravity of misconduct would be violative of Article 14 of the Constitution of India. The relevant extracts of the judgment read as:

"15. ... It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution. ..."



20. A Division Bench of this Court in ***Bhag Singh vs. Punjab & Sind Bank Baldev Singh, 2005 (6) SLR 464*** has adverted with question of acquittal, honorable acquittal, benefit of doubt etc. The Court has held that mere use of expression “benefit of doubt” or “not proved beyond reasonable doubt” by the trial Court or the appellate Court, cannot be permitted to convert an acquittal on the ground of no evidence, to something less than that. The concepts of “Honourable Acquittal”, “fully exonerated” or “acquitted of blame” are all unknown to the Criminal Procedure Code, 1973. Therefore, the term “benefit of doubt” cannot detract impact of the acquittal.

21. A two-judge Bench of Hon'ble Supreme Court in ***Joginder Singh vs. Union Territory of Chandigarh, 2015 (2) SCC 377*** while advertizing with appointment on the post of Constable has adverted with question of acquittal vis-a-vis honourable acquittal. The Court has held that acquittal of a person is an “honourable” acquittal in every sense and purpose. A candidate should not be deprived from being appointed to the post, in the public employment, by declaring him as unsuitable to the post even though he was acquitted in the criminal case registered against him. It is apt to notice that in the said case, the appellant therein was acquitted by trial Court still he was denied appointment to the post of Constable. The relevant extracts of the judgment read as :

“16. However, advertizing to the criminal proceeding initiated against the appellant, we would first like to point out that the complainant did not support the case of the prosecution as he failed to identify the assailants and further

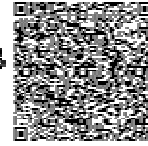


admitted that the contents of Section 161 CrPC statement were not disclosed to him and his signatures were obtained on a blank sheet of paper by the investigating officer. Further, Sajjan Singh, who was an eyewitness of the case, who was also injured, had failed to identify the assailants. Both the witnesses were declared hostile on the request of the prosecution.

17. The learned Additional Sessions Judge, Bhiwani held that the prosecution has not been able to prove in any way the allegations against the appellant. Thus, the learned Judge held that the prosecution had miserably failed to prove the charges levelled against the appellant in the criminal proceedings. Therefore, we are in agreement with the findings and judgment of the learned Additional Sessions Judge and are of the opinion that the acquittal of the accused from the criminal case was an honourable acquittal.

18. The learned counsel has rightly placed reliance upon the decision of this Court in Inspector General of Police v. S. Samuthiram [(2013) 1 SCC 598 : (2013) 1 SCC (Cri) 5661 : (2013) 1 SCC (L&S) 229] of which relevant paragraph is extracted as under : (SCC p. 609, para 24)

“24. The meaning of the expression ‘honourable acquittal’ came up for consideration before this Court in RBI v. Bhopal Singh Panchal [(1994) 1 SCC 541 : 1994 SCC (L&S) 594 : (1994) 26 ATC 619] . In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions ‘honourable acquittal’,



‘acquitted of blame’, ‘fully exonerated’ are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression ‘honourably acquitted’. When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.”

(emphasis supplied)

19. Further, an acquittal of the appellant is an “honourable” acquittal in every sense and purpose. Therefore, the appellant should not be deprived from being appointed to the post, in the public employment, by declaring him as unsuitable to the post even though he was honourably acquitted in the criminal case registered against him.

20. Further, undisputedly, there has been no allegation of concealment of the fact that a criminal case was registered against him by the appellant. Thus, the appellant has honestly disclosed in his verification application submitted to the selection authority that there was a criminal case registered against him and that it ended in an acquittal on account of compromise between the parties involved in the criminal case, he cannot be denied an opportunity to qualify for any post including the post of a Constable.

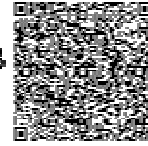
21. Reliance has been placed on the decision of this Court in *Deptt. of Home, A.P. v. B. Chinnam Naidu* [(2005) 2 SCC 746 : 2005 SCC (L&S) 323] which states herein : (SCC p. 750, para 9)

“9. A bare perusal of the extracted portions shows that the candidate is required to indicate as to whether he



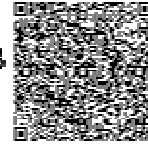
has ever been convicted by a court of law or detained under any State/Central preventive detention laws for any offences whether such conviction is sustained or set aside by the appellate court, if appealed against. The candidate is not required to indicate as to whether he had been arrested in any case or as to whether any case was pending. Conviction by a court or detention under any State/Central preventive detention laws is different from arrest in any case or pendency of a case. By answering that the respondent had not been convicted or detained under preventive detention laws it cannot be said that he had suppressed any material fact or had furnished any false information or suppressed any information in the attestation form to incur disqualification. The State Government and the Tribunal appeared to have proceeded on the basis that the respondent ought to have indicated the fact of arrest or pendency of the case, though Column 12 of the attestation form did not require such information being furnished. The learned counsel for the appellants submitted that such a requirement has to be read into an attestation form. We find no reason to accept such contention. There was no specific requirement to mention as to whether any case is pending or whether the applicant had been arrested. In view of the specific language so far as Column 12 is concerned the respondent cannot be found guilty of any suppression.”

(emphasis supplied)



22. As noticed above, Section 48 of 1968 Act has prescribed different punishments which may be inflicted in respect of offences committed by persons subject to said Act. The scale of punishment has been prescribed in descending order. Dismissal from service falls under Clause (c) of sub-Section (1) of Section 48 of 1968 Act. The competent authority has power to grant lower sentence which may be forfeiture of service, severe reprimand, forfeiture of pay and allowances for a period not exceeding three months, stoppage of pay and allowances etc. Section 19 of 1968 Act does not provide that in case of absence from duty without leave, the delinquent would be liable to punishment of dismissal from service. The said Section prescribes maximum sentence i.e. 03 years imprisonment. It is discretion of authorities to grant lower punishment. There cannot be straitjacket formula or cut and dry formula to determine quantum of sentence. It is the competent authority which having regard to nature and gravity of offence, object for commission of alleged offence, age, family background, past service record etc. of the delinquent, has to determine quantum of punishment.

23. In the case in hand, the petitioner remained absent from duty from 19.09.2014 to 14.11.2014 and 17.11.2014 to 14.12.2014. Virtually, he had remained absent from duty from 19.09.2014 to 15.12.2014. He was implicated in a criminal case. The trial Court has recorded detailed findings while acquitting him. He has not been acquitted on technical or procedural infirmities. From the perusal of findings recorded by appellate authority, it is evident that pending criminal trial swayed it. The



petitioner has been acquitted, however, he has been dismissed from service. The absence from duty was apparently on account of pending criminal proceedings and he himself came to join his duty. He was not a habitual absentee. He was a permanent employee. By dismissing from service, the respondent has indirectly awarded punishment for an offence which he did not commit.

24. The Supreme Court time and again has held that in case Court finds that punishment awarded by authority is disproportionate to alleged misconduct, the Court should remand the matter to competent authority to reconsider quantum of punishment. This Court finds that in the present case, the punishment awarded is disproportionate to alleged offence, thus, matter needs to be re-considered qua quantum of sentence.

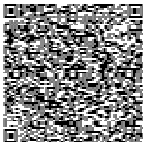
25. In view of above discussion and findings, answer to aforementioned questions is as below:

(i) The petitioner for absence from duty could be awarded punishment of dismissal from service.

(ii) The punishment of dismissal from service awarded to petitioner is dis-proportionate to alleged offence.

26. In the above backdrop, this Court is of the considered opinion that quantum of punishment needs to be re-considered. To cut the litigation short, the matter is remanded back to appellate authority instead of Summary Security Force Court. The needful shall be done within three months from today.

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27. Disposed of.

(JAGMOHAN BANSAL)
JUDGE

21.05.2024
anju

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>