

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.609 of 2022

In
Civil Writ Jurisdiction Case No.10065 of 2013

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1. The Union of India through Home Secretary, Government of India, New Delhi.
 2. The Inspector General, CRPF, Bihar Sector, Patna, Bihar.
 3. The Deputy Inspector General Administration, Bihar Sector, Patna.
 4. The DIG, CRPF, Muzaffarpur Range, Bihar.
 5. The DIG, CRPF, Agartala Range, Tripura.
 6. The Commandant, 190 Battalion, CRPF, Chatra, Jharkhand.

... .. Appellant/s

Versus

No. 911120653 Hawaldar/General Duty Datta Singh @ Dhatta Singh S/o Late Sri Handi Ram, R/o Village- Bajaheda, P.O.- Mudoti, P.S.- Nagar, District- Bharatpur, Rajasthan.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Awadhesh Kumar Pandey, Sr. CGC
		Mr. Abhishek Verma, Advocate
For the Respondent/s	:	Mr. Akshay Ashish, Advocate

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date : 06-02-2025

Heard learned Advocates for the parties.

2. A Constable was proceeded against departmentally for remaining absent unauthorisedly for a period of 13 days. He had remained absent earlier for 36 days also. These two unauthorised absence of the concerned Sepoy led to his being charge-sheeted on



17.09.2011 and in the departmental proceeding, he was saddled with the imposition of penalty of compulsory retirement on 20.03.2012.

3. He challenged the aforementioned punishment primarily on the ground of it being disproportionate and harsh, which was allowed by the learned Single Judge vide his judgment dated 31.08.2022 passed in CWJC No. 10065 of 2013. The learned Single Judge held that such major penalty of compulsory retirement for unauthorised absence for few days is too harsh and called for an interference on that score alone. Certain instances were quoted by the learned Single Judge where such harsh punishment was interfered with.

4. As such, the matter was remitted to the disciplinary authority to impose lesser penalty and extend all monetary and service benefits to the employee within the timeline prescribed in the judgment.

5. The primary challenge to this judgment of remand on the issue of quantum of punishment, asking



the disciplinary authority to reduce the punishment on grounds of proportionality is in a way stated to be impermissible as this falls in the domain of the disciplinary authority and the opinion of the Court cannot be substituted for the same.

6. The issue has remained debatable till date.

7. In ***Jarnail Singh vs. Secretary, Ministry of Home Affairs; (1993) 1 SCC 47***, it was held that questioning the quantum of punishment on the ground of it not being commensurate with the gravity of the misconduct would not be permissible in law.

8. However, later in ***Ranjit Thakur vs. Union of India and Ors.; (1987) 4 SCC 611***, the principle of proportionality was referred to, but it was clarified that a Court could look into it only if it arrived at a finding that the punishment was shockingly disproportionate and then only there could be any interference on that ground.

9. In ***Union of India and Anr. vs. G. Ganayutham; (1997) 7 SCC 463***, a Division Bench of



Supreme Court after surveying all such judgments with respect to testing the proportionality of the quantum of punishment in the administrative side and the Court dealing with as the second Court of review, formulated and summarized the issue as hereunder:-

“(1) To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision is illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the materials before him and within the framework of the law, have arrived at.

(2) The court would not interfere with the administrator’s decision unless it was illegal or suffered from procedural impropriety or was irrational — in the sense that it was outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English administrative law in future is not ruled out.

(3) The position in this country, in



administrative law, is that the courts/tribunals will only play a secondary role while the primary judgment as to the reasonableness will remain with the executive or the administrative authority. The secondary judgment of the court is to be based on Wednesbury principles.

(4) However, whether the Courts in our country will apply the principle of proportionality and assume a primary role, is *left open*, to be decided in an appropriate case where such action is alleged to offend the fundamental freedoms.”

10. In the aforementioned judgments of the Supreme Court, the observations of ***Ranjit Thakur*** (*supra*) was taken into account and in that instance there was interference by the Court with the punishment only after coming to the conclusion that it was absolutely irrational and defied the Wednesbury principle.

11. Similar views have been sounded in ***Indian Oil Corporation Ltd. and Anr. vs. Ashok Kumar***



Arora; (1997) 3 SCC 72 and Rathin Ghosh vs. West Bengal State Electricity Distribution Company Limited and Ors.; (2021) 16 SCC 695.

12. In fact, in almost all the decisions referred to above, it has been postulated that normally the issue with respect to quantum of punishment ought to be left to the disciplinary authority, but if the sentencing appears to be absolutely irrational and shocking to common sense, it could be interfered with. At this stage also, a Court exercising its jurisdiction under Article 226 of the Constitution of India would have a discretion either to take a call to lessen the punishment or remand it to the disciplinary authority to take a decision with respect to lessening the quantum of punishment.

13. Tested on such principles and the facts of the present case, we find that the learned Single was right in observing that for the unauthorised absence of approximately 13 and 36 days of an employee, even though he was serving in the police force, the punishment



of compulsory retirement was too harsh.

14. The learned Single Judge did not at all advert to the procedural formalities which was not even challenged by the respondent.

15. We, therefore, find that the learned Single Judge has not acted beyond the jurisdiction which he could have exercised under Article 226 of the Constitution of India and the facts of the present case warrant such a remand to the disciplinary authority for considering lessening the quantum of punishment.

16. Finding no merit in this appeal, we dismiss it.

17. The interlocutory application/s, if any, also stands disposed of.

(Ashutosh Kumar, ACJ)

(Partha Sarthy, J)

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