

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 3353 of 2011

Eastern Coalfields Ltd.

Vs.

Sri Uttam Bouri & Ors.

For the Petitioner : Mr. Susanta Paul,
Ms. Madhumanti Chakraborty.

For the Respondents : None.

Hearing concluded on : 14.07.2025

Judgment on : 24.07.2025

Shampa Dutt (Paul), J.:

1. The writ application has been preferred challenging the order of reference dated 30th May, 2005 and the impugned award dated 31st May, 2010 passed by the Central Government Industrial Tribunal – cum-Labour Court, Asansol Reference No. 45 of 2005 on 31.05.2010.
2. The petitioner Eastern Coalfields Limited has preferred the present writ application stating that the respondent No. 1 was a permanent

employee of the petitioner company as an Under Ground Loader (154583) at the Dhemomain Colliery under Sodepur Area.

- 3.** The respondent no.1 remained in unauthorized absenteeism from 28th February, 1997 till the date of issuance of the charge sheet i.e. 9th October, 1998. Consequently a charge sheet bearing No. DMC/C-6/22/98/684 dated 9th October, 1998 was issued. The respondent no. 1 was in the habit of unauthorized absenteeism on earlier occasions also. His attendance in the year 1995 was 159 days and in the year 1996 was 154 days.
- 4.** The respondent no. 1 did not give any reply to the aforesaid charge sheet and consequently it was decided to hold an enquiry to enquire into the charges levelled against the respondent no. 1 in the charge sheet dated 9th October, 1998.
- 5.** Despite 3 notices being sent to the respondent no. 1 under registered post with A/D at his home address to participate in the Enquiry proceedings, the Respondent No. 1 neither appeared in the enquiry nor did he gave any reply to the said notices . Consequently the Enquiry officer was left with no other alternative but to hold the enquiry ex-parte.
- 6.** The Enquiry Officer submitted his report holding that the respondent no. 1 was guilty of the charges that were levelled against him in the charge sheet dated 9th October, 1995.
- 7.** The Chief General Manager, Sodepur Area of the petitioner Company who was the Disciplinary Authority in relation of the Respondent No. 1 concurred with the findings of the Enquiry Officer

and ordered for dismissal of the respondent no. 1 from service as would be evident from the letter dated 26th April, 1999.

- 8.** Long after the said order of dismissal, the respondent No. 2 on behalf of the respondent No. 1 raised a purported industrial dispute before the conciliatory machinery of the Government of India, Ministry of Labour. The conciliation having failed, the Government of India, Ministry of Labour, the respondent No. 4 herein by an order No. L-22012/101/2004/IR(CM-II) dated 30th May, 2005 referred the following dispute for adjudication by the respondent No. 3:-

“Whether the action of the management of Dhemomain Colliery of Sodepur Area of ECL in dismissing Sri Uttam Bouri, Under Ground Loader (UM No. 154583) is legal and justified? If not, to what relief is the said workman concerned entitled?”

- 9.** The petitioner company was not served with any notice from the tribunal for appearance before the tribunal. The petitioner company some time in September, 2010 got information that an ex parte award has been passed by the tribunal on 31st May, 2010.
- 10.** The said ex parte award has been challenged before this Court. The relevant part of the award /order under is reproduced below:-

“.....The management preferred not to contest the claims of workman. At the fag-end of the case the learned counsel for the management, Sri P.K.Goswami simply made his appearance on 2.2.10 and filed hazira without any authority of the management. No pleading was filed by the management.

The union is said to have filed an affidavit but same is ignored not being sworn an affidavit before any competent authority. However, as discussed above, the claim of the workman that being prevented by sickness he could not join duties and that he was refused to join when he reported for duties have not join duties and that he was refused to join when he reported for duties have not been refuted. On a look to the enquiry proceeding papers it appears that enquiry has been held in absence of the workman and there is no sufficient proof that he failed to participate despite sufficient notice. Hence, the finding is devoid of fairness and propriety. There is no allegation against the workman that he is a habitual defaulter of duties. There is no proof of his gainful employment during pendent lite period. The punishment of dismissal is undoubtedly the extreme one and disproportionate too against absence of a short period. As such, it is held that action of the management of Dhemomain colliery in dismissal Sh. Uttam Bouri from services is not legal and justified. He is entitled to be reinstated with back wages and all consequential benefits. In the peculiar circumstances, however, 50% cut of wages for period shall be just and proper. He shall not be entitled for wages for the period of absence if not covered by leave. Monetary benefits be disbursed within two months of the notification pending regularization of service papers. Hence, it is ordered.

ORDER

Let an award be and same is passed in terms of the above findings. Copy of the award be sent to the Ministry of Labour, Govt. of India, New Delhi, for information and needful action.

**Sd/-
PRESIDING
OFFICER."**

- 11. In the writ application** in spite of due service the workman has chosen not to contest. It is the contention of the petitioner company that no notice was served upon the petitioner for the hearing of the Reference by the Central Government Industrial Tribunal, Asansol.

12. It appears from the award that there is no finding of the Presiding Officer that the management was duly served. The only observation is that the management preferred not to contest. It is stated that on getting an information, learned counsel for the management appeared, but the Presiding Officer without any specific reasoning held that the dismissal of the workman was not legal and justified.
13. The Tribunal directed reinstatement with back wages and all consequential benefits to the workman. The Tribunal further held that *“in the peculiar circumstances, however, 50 % of wages for the period shall be just and proper and that the workman shall not be entitled for wages for the period of absence, if not covered by leave”*.
14. The petitioner relies upon the judgment of the Hon’ble Supreme Court in ***Kendriya Vidyalyaya Sangathan and anr. –vs- S.C. Sharma, AIR 2005 SC 768, para 15 at page 770.***
15. The judgment is relied upon in support of the petitioner’s contention that an employee is entitled to back wages only after he proves that he was not gainfully employed in the interim period and as there is no materials on record to show whether he was gainfully employed or not, the employee is not entitled to any back wages.
16. It appears from the enquiry report that the workman did not appear before the enquiry officer in spite of proper notice. It also appears from the record that the enquiry was held on 13.3.1999 and it has been categorically noted that the workman in the year 1995 worked for 159 days. In the year 1996 for 154 days and was absent from February 1997 till date (13.3.1999) of the enquiry.

17. As the enquiry report shows that in spite of three days being fixed for hearing in the proceedings, the employee did not appear in spite of receiving notice and till date of enquiry that is March 1999 (13.3.1999) from February 1997 the employee was absent, the authority thus found him guilty for unauthorized absence since 28.2.1997 till 13.3.1999.
18. In ***Airports Authority of India vs Pradip Kumar Banerjee***, in ***Civil Appeal No(s). 8414 of 2017***, decided on February 04, 2025, the Supreme Court held:-

“32. *It is trite law that in disciplinary proceedings, it is not necessary for the Disciplinary Authority to deal with each and every ground raised by the delinquent officer in the representation against the proposed penalty and detailed reasons are not required to be recorded in the order imposing punishment if he accepts the findings recorded by the Enquiry Officer. Our view stands fortified by the decision of this Court in **Boloram Bordoloi v. Lakhimi Gaolia Bank**, (2021) 3 SCC 806, wherein it was held:-*

“11. . . . Further, it is well settled that if the disciplinary authority accepts the findings recorded by the enquiry officer and passes an order, no detailed reasons are required to be recorded in the order imposing punishment. The punishment is imposed based on the findings recorded in the enquiry report, as such, no further elaborate reasons are required to be given by the disciplinary authority. . . .”

33. *All that is required on the part of the Disciplinary Authority is that it should examine the evidence in the disciplinary proceedings and arrive at a reasoned conclusion that the material placed on record during the course of enquiry establishes the guilt of the delinquent employee on the principle of preponderance*

of probabilities. This is precisely what was done by the Disciplinary Authority and the Appellate Authority while dealing with the case of the respondent.

39. In the wake of the above discussion, we hold that the Division Bench, while exercising the intra-court writ appellate jurisdiction clearly erred in interfering with the **concurrent findings recorded by the Disciplinary Authority, the Appellate Authority as affirmed by the learned Single Judge.**”

19. The Supreme Court in the **State of Rajasthan and others – vs – Heem Singh, in Civil Appeal No. 3340 of 2020 decided on 29th October, 2020** held :-

“33. In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review. This is for a valid reason. The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The judge does not assume the mantle of the disciplinary authority. Nor does the judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on context and subject. The first end of the spectrum is founded on deference and autonomy – deference to the position of the disciplinary authority as a fact finding authority and autonomy of the employer in maintaining discipline and efficiency of the service. At the other end of the spectrum is the principle that the court has the jurisdiction to

interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has recognized it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. Judicial craft lies in maintaining a steady sail between the banks of these two shores which have been termed as the two ends of the spectrum. Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review. To determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the court that there is some evidence to support the charge of misconduct and to guard against perversity. But this does not allow the court to re-appreciate evidentiary findings in a disciplinary enquiry or to substitute a view which appears to the judge to be more appropriate. To do so would offend the first principle which has been outlined above. The ultimate guide is the exercise of robust common sense without which the judges' craft is in vain.

20. A writ Court has the jurisdiction in such proceedings to only ensure that the person aggrieved has had a fair trial and that principle of natural justice was followed while deciding the case and as to whether the punishment given is proportionate to the offence committed. A writ Court cannot go into the details of evidence recorded and as to the discrepancies of the said finding and proceedings conducted by a disciplinary authority.
21. In ***Central Industrial Security Force and Ors. Vs. Abrar Ali, (2017) 4 SCC 507***, the Supreme Court held:-

“13. Contrary to findings of the Disciplinary Authority, the High Court accepted the version of the Respondent that he fell ill and was being treated by a local doctor without assigning any reasons. It was held by the Disciplinary Authority that the Unit had better medical facilities which could have been availed by the Respondent if he was really suffering from illness. It was further held that the delinquent did not produce any evidence of treatment by a local doctor. The High Court should not have entered into the arena of facts which tantamount to re-appreciation of evidence. It is settled law that re-appreciation of evidence is not permissible in the exercise of jurisdiction under Article 226 of the Constitution of India.

14. In **State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaiya** reported in (2011) 4 SCC 584, this Court held as follows:

“7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic inquiry, nor interfere on the ground that another view is possible on the material on record. If the inquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (**Vide B.C. Chaturvedi v. Union of India** [(1995) 6 SCC 749: 1996 SCC (L&S) 80: (1996) 32 ATC 44], **Union of India v. G.**

Ganayutham [(1997) 7 SCC 463: 1997 SCC (L&S) 1806], Bank of India v. Degala Suryanarayana [(1999) 5 SCC 762: 1999 SCC (L&S) 1036] and High Court of Judicature at Bombay v. Shashikant S. Patil.”

15. In Union of India & Ors. v. P. Gunasekaran reported in (2015) 2 SCC 610, this Court held as follows:

“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, re-appreciating even the evidence before the inquiry 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 re-appreciation of the evidence. The High Court can only see whether:

- (a) the inquiry is held by a competent authority;*
- (b) the inquiry 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) re-appreciate the evidence;

(ii) interfere with the conclusions in the inquiry, 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.”

16. We are in agreement with the findings and conclusion of the disciplinary authority as confirmed by the appellate authority and revisional authority on Charge 1. Indiscipline on the part of a member of an Armed Force has to be viewed seriously. It is clear that the respondent had intentionally disobeyed the orders of his superiors and deserted the Force for a period of 5 days. Such desertion is an act of gross misconduct and the respondent deserves to be punished suitably.

19. Though we are of the view that the High Court ought not to have interfered with the order passed by the Disciplinary Authority, the penalty of dismissal from service is not commensurate with delinquency. The Respondent was found guilty of desertion of the Force for a period of five days and not improving his conduct in spite of imposition of

penalties on three occasions earlier. For the above delinquencies, the penalty of dismissal from service is excessive and harsh. In our view, the penalty of compulsory retirement would meet the ends of justice. We are informed by the counsel for the Appellants that the Respondent is entitled for pension as he has completed 10 years of service. In order to avoid any controversy, we direct that the Respondent shall be entitled for notional continuity of service till the date of completion of minimum service required to make him eligible for pension. He will not be entitled for payment of salary and allowances for that period.”

22. The petitioner company following due process dismissed the employee from the service.
23. It appears from the award under challenge that the order is not a reasoned one and without granting any opportunity to the management, the Presiding Officer came to the conclusion that there is no proof of gainful employment of the employee during the *pendente lite* period and held that the punishment of dismissal as extreme one and disproportionate against **the absence of short period** and found the dismissal to be not legal and justified.
24. This Court finds that the findings of the Presiding Officer is clearly not in accordance with law. There being no detailed reasons and no proper findings against the report of the enquiry officer. **The finding of the Presiding Officer to the extent that “absence of short period” is without any discussion and is clearly not on the basis**

of records and also not supported by any materials before the Court.

25. It appears that Presiding Officer has also not looked into the details of the enquiry report wherein it has been categorically noted that the employee worked only for 159 days in 1995, 154 days in 1996 and was absent from 28.2.1997 till 13.3.1999, that is date of conclusion of the enquiry proceeding.
26. If this is not “unauthorized absence” then what is? As to why the Presiding Officer came to the conclusion that the absence was of short period is completely beyond the understanding of this Court.
27. When the Tribunal is considering the dismissal on the basis of an enquiry report, it is the duty of the Presiding Officer to consider every materials being the enquiry report and the papers relating to the Proceedings in the present case. There is no such discussion or reasoning and the order suffer from serious irregularity and is, thus liable to be set aside.
28. According to the guidelines in (Para 15) of **Central Industrial Security Force and Ors. Vs. Abrar Ali, (Supra)**, this court finds that, in the present case:-
 - (a) The enquiry/review was done by a competent authority;
 - (b) It was done according to the procedure prescribed in that behalf;
 - (c) It has been done keeping with the principles of natural justice.

(d) The proceedings and the decisions are fair, keeping in mind the petitioner's past conduct in a disciplined force.

(e) The procedure and conclusion in the disciplinary proceeding has been conducted in accordance with law, there being no irregularity.

29. Considering the said facts, the order of the Presiding Officer dated 31.5.2010 passed in Reference No. 45 of 2005 is **set aside**, as in the present case, there is sufficient evidence in the enquiry proceeding to support the charge of mis conduct and there is no perversity, and thus the interference of the tribunal was not called for.

30. The reference which is as follows:-

“ THE SCHEDULE

Whether the action of the management of Dhemomain Colliery of M/s ECL in dismissing Sh. Uttam Bouri from services is legal and justified? If not, to what relief an individual is entitled?”

is answered by this Court that the action of the management of Dhemomian Colliery of M/s ECL in dismissing Sh. Uttam Bouri from services is legal and justified and the employee is not entitled to any relief under the law, save and except if any leave is due to him the same may be adjusted and in case of such adjustment if any amount is due, the same shall be paid at the earliest to the employee concerned. The employee shall also be entitled to all the benefits, if any, to which a dismissed employee is entitled under the law.

- 31. WPA 3353 of 2011 is allowed.**
- 32.** All connected application, if any, stands disposed of.
- 33.** Interim order, if any, stands vacated.
- 34.** Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)