

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 3988 of 2011

Eastern Coalfields Ltd.

Vs.

Shri Magaram Bouri & Ors.

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

For the Respondent : Mr. Ashok Prasad (through VC).

Hearing concluded on : 14.07.2025

Judgment on : 25.07.2025

SHAMPA DUTT (PAUL), J. :

1. The writ application has been preferred challenging the order of reference dated 29th February, 2000/7th March, 2000 and the impugned award dated 26th May, 2010 passed by the Central Government Industrial Tribunal, Asansol.
2. The petitioner company's case is that the respondent No.1 was working as an Underground Loader at Maize Colliery and he remained absent from his duty unauthorisedly since 10th December, 1997 and as such was charge sheeted by the petitioner company vide charge sheet No. MC/D-1/89/113/98/969 dated 18th March, 1998 for his acts of Misconduct.

- 3.** The respondent No.1 submitted his reply to the charge sheet but as the explanations offered by the Respondent No.1 was found to be unsatisfactory, a Departmental enquiry was held.
- 4.** The respondent No.1 duly participated in the enquiry proceeding and all reasonable opportunities were given to the ex-workman to defend his case in accordance with the principles of Natural justice. The Enquiry Officer after conclusion of his Enquiry proceeding submitted his findings before the appointing Authority and the charges of misconduct were duly established in the report submitted by the Enquiry Officer.
- 5.** Prior to imposition of punishment upon the Respondent No.1, he was given an opportunity vide letter No.BA/PD/DIS/98/2733 dated 28th August, 1998 to submit his objection, if any, in respect of the findings of the Enquiry Officer and the respondent No.1 submitted his explanation to the competent authority by his letter dated 5.10.1998.
- 6.** Thereafter the disciplinary authority after careful consideration of the charge sheet, enquiry proceeding, report of the enquiry and other relevant documents, considering the past record of service of the Respondent No.1, applying his mind independently and considering the gravity of misconduct duly established and proved in the enquiry

proceeding, imposed upon the respondent No.1 an order of dismissal from service.

7. The respondent No.2 raised a purported industrial dispute on behalf of the Respondent No. 1 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-22012/401/99/IR(CM-II) dated 29th February, 2000/7th March, 2000 referred the following dispute for adjudication by the respondent No.3:-

"Whether the action of the management of Moira Colliery of M/s. ECL, in dismissing Sh. Magaram Bouri, Underground Loader is legal and justified? If not, to what relief the workman is entitled ?".

8. The Tribunal by an order dated 27th April, 2005 held that the enquiry was valid and fair.
9. The specific case of the petitioner is that the parties only filed the documents before the Tribunal but said documents were not tendered through any witness. Despite thereof the Tribunal marked a Medical Certificate produced by the respondent No.1 as Exhibit W/1. It is settled proposition in law that unless the enquiry is declared to be invalid by an Industrial Tribunal or a Labour Court, as the case may be,

there is no scope to adduce fresh evidence to substantiate whether the charges have been proved or not.

10. It is further stated that in the instant case, the Tribunal has held that the Enquiry was valid and fair and as such there was no question of adducing any fresh evidence to substantiate whether the charges have been proved or not. The Tribunal by marking the said Medical Certificate as Exhibit W/1 has traveled beyond the scope of its jurisdiction.

11. **Finally the tribunal by the award under challenge dated 26th May, 2010 held as follows:-**

*“.....Looking to the one page enquiry report it is found that the emphasis in the enquiry has been given for the past record and habitual absence of the workman instead of the pleaded fact of the management that workman was never prevented by the sickness. Strangely enough it was claimed that the medical papers are not filed before them though fact remains that **the workman was treated in the company hospital and certificate (Ext. W/11) has been issued. It does not appear that fair opportunity has been given to the workman to file the documents or to place his contention at all during the enquiry proceeding. Denial of natural justice is very much glaring. The enquiry proceeding is held totally devoid of fairness***

and propriety entailing summary dismissal of the workman by the management. It seems that the management was bent upon to remove the workman from the job by any means and stage managed the show of enquiry. At any rate, the action of the management of Moira colliery of M/s. ECL in dismissing Shri Magaram Bouri, underground loader is not legal and justified. Same is liable to be set aside. **The workman is entitled to be reinstated with back wages from the date of his dismissal.** He is not entitled for wages for the period of absence before initiation of disciplinary action if not covered by leave. Further, under the peculiar circumstances 25 (Twenty five)% cut from the wages for the pendentilite period is considered just and proper. The management is directed to disburse the monetary benefits to the workman within two months of the notification pending regularization of service papers on reinstatement. 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 needful action.

**Sd/-
Presiding Officer”**

12. The petitioner's company has challenged the award on the ground that the tribunal was wrong in granting backwages even though the employee could not prove that he was not gainfully employed during the interim period.
13. 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.”*

- 14.** 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."

15. 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 in 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.

16. 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 13.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.”

17. It appears from the award under challenge that the Presiding Officer has admitted evidence which was not part of the enquiry proceedings and has categorically observed that the employee was not allowed to present his papers and documents and as such was not given a fair hearing.
18. In the present case, it appears that in the report of the enquiry officer it has been held that the employee is a habitual defaulter but **there is no specific observation/details of being a habitual defaulter in the said order.** There is nothing to show in the enquiry and the evidence recorded by the enquiry officer that the employee was a habitual defaulter.

19. It also appears that the report of the enquiry officer who conducted the proceedings is without any specific findings and by passing an **unreasoned order** in the form of a report, found the employee guilty. The total process of dismissal of the employee in this case has been conducted **against the principle of natural justice being perverse** and as such the tribunal rightly decided the said issue.
20. The findings of the tribunal thus being in accordance with law, this Court finds no reason to interfere with the same.
21. **Writ petition having no merit stands dismissed.**
22. Petitioner to comply with the order of the tribunal within 30 days from the date of this order.
23. All connected application, if any, stands disposed of.
24. Interim order, if any, stands vacated.
25. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously after due compliance.

[Shampa Dutt (Paul), J.]