

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

BEFORE:

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

W.P.A. 8655 OF 2023

**SUSANTA KUMAR BAKSHI
VS.
UNION OF INDIA & ORS.**

For the Petitioner : Mr. Soumya Majumder,
ld. Senior Counsel,
Ms. Mayuri Ghosh
..... advocates

For the Respondent
nos. 1 to 4 : Mr. Souvik Nandy,
Mr. Anjan Chakraborty
.... advocates

Reserved on : 12.12.2024

Judgment on : 28.03.2025

Hiranmay Bhattacharyya, J.:-

1. In this writ petition the petitioner has prayed for setting aside the enquiry report dated 29.04.2021, the penalty order dated 25.08.2021 and the order of the appellate authority dated 13.01.2022.
2. Petitioner joined the service of Central Reserve Police Force (for short "CRPF") on 27.07.1998 in the post of Constable General Duty (for short "CT GD") and his service was confirmed by the controlling authority on and from 27.07.1990. The petitioner was promoted to the post of Sub Inspector (Radio Operator, SI RO) from 04.07.2014 to 24.08.2021 and was attached with 3rd Signal Battelion and was posted at Saltlake. While the petitioner was discharging his duty as a Sub Inspector (Administration) at 3rd wireless battelion, Head Office on 01.03.2020, a complaint was lodged by one Gora Chand Samui (Constable/General Duties) alleging indecent behaviour

towards his wife by one Sunil Kumar Suman (Head Constable/ Radio Operator). The petitioner was called for a preliminary hearing on 06.04.2020 and, thereafter, a memorandum dated 10.06.2020 containing the articles of charge was served upon the petitioner alleging that he abused a junior member namely Gora Chand Samui thereby causing injury to his eyes, nose and lips by landing blow on him. Thereafter, an Inquiry Officer was appointed to inquire into the charges levelled against the petitioner and a Presenting Officer was also appointed. The Inquiry Officer submitted his report dated 29.04.2021, holding charges levelled against the petitioner has been established. By an Office Order dated 25.08.2021, the Deputy Inspector General (CRPF) being the 4th respondent awarded the major punishment of compulsory retirement with full pensionary benefits and gratuity under the provisions of Rule 40 of the CCS (Pension) Rules, 1972. Being aggrieved, by the order dated 25.08.2021, petitioner preferred an appeal before the Inspector General of Police (Commandant & IT). The third respondent being the appellate authority rejected the appeal by an order dated 06.05.2022 thereby upholding the order of the disciplinary authority dated 25.08.2021. Being aggrieved, petitioner has approached this Court.

3. Mr. Majumder, learned Senior Counsel appearing in support of the writ petition contended that considering the nature of the incident as alleged by the complainant, the charges of negligence and insubordination against the petitioner who was a Sub-Inspector, could not have been framed. He contended that when the alleged incident took place, the petitioner was busy in connection with his duties in relation to a program where His Excellency the Hon'ble Governor was to visit the campus and the Constable/ complainant caused hindrance to the due discharge of his duties by the petitioner. He further contended that amongst the prosecution witnesses only the complainant and his wife were eye witnesses and since the complainant was facing disciplinary proceeding at the relevant point of time, he and his wife were interested witnesses. In course of his argument, Mr. Majumder placed the evidence of the prosecution witnesses in details and contended that it is evident from the said evidence that the complainant namely Gora Chand Samui laid hands on his superior i.e., the petitioner herein and also that the complainant was in an intoxicated condition. Mr. Majumder further contended that there is divergence between the depiction of the incident in the complaint by the complainant and his wife with their oral deposition in the enquiry proceedings. He further contended that the charges levelled against the petitioner is vague as the alleged utterances does not find place in the chargesheet. Mr. Majumder further contended that the prosecution witnesses excepting the complainant and his wife are all hearsay evidences. Mr. Majumder contended that the disciplinary

authority applied different tests while assessing the evidences of the prosecution witnesses and the defence witnesses as such authority disbelieved the evidence of Sunil Kumar Suman, a defence witness as an interested witness since disciplinary proceeding was pending against him but on the contrary, placed reliance upon the evidence of the complainant against whom a disciplinary proceeding was also pending.

4. Mr. Majumder further contended that the enquiry was conducted in an illegal manner as the authorities traversed beyond the charges. In support of such contention he placed reliance upon the decision of the Hon'ble Supreme Court in the case of **Narinder Mohan Arya vs. United India Insurance Co. Ltd. and Others** reported at **(2006) 4 SCC 713**. He further contended that the disciplinary authority traversed beyond the charges while passing the penalty order as there is no finding in the order of the disciplinary authority with regard to negligence or insubordination. He further contended that the charges levelled against the petitioner cannot be construed as a misconduct but at best be said to be a contributory offence or a case of reaction of the petitioner on provocation. He submitted that not possessing certain qualities cannot be said to be a misconduct and in support of such contention he placed reliance upon a decision of the Hon'ble Supreme Court in the case of **Union of India and Others vs. J. Ahmed** reported at **(1979) 2 SCC 286**. He further contended that the disciplinary authority as well as the appellate authority proceeded to decide the charges on the basis of the conduct of the petitioner during the enquiry without framing any additional charges against the petitioner. Mr. Majumder contended that if during the trial further charges are revealed against a delinquent then additional charges are to be framed and after putting the delinquent on notice against such additional charges the trial has to proceed. He contended that the petitioner was not put on notice on the materials which were relied upon in course of the enquiry proceedings which resulted in violation of the principles of natural justice. Mr. Majumder further contended that the enquiry officer acted as a prosecutor as he himself asked questions to the prosecution witnesses which were not merely clarificatory in nature. He contended that the enquiry officer could not have assumed the role of a prosecutor and in support of such contention he placed reliance upon a decision of the Hon'ble Supreme Court in the case of **Mohd. Yunus Khan vs. State of Uttar Pradesh and ors.** reported at **(2010) 10 SCC 539**. Mr. Majumder contended that if the punishment awarded is shockingly disproportionate to the charges proved, the writ court can substitute the major punishment with the minor one. In support of such contention he placed reliance upon a decision of the Hon'ble Division

Bench in the case of ***Indian Oil Corporation Ltd. vs. Panchanan Manna*** reported at **1999 (1) LLN 748**.

5. Mr. Nandi learned advocate appearing for the Union of India seriously disputed the contentions made by Mr. Majundar. He contended that the petitioner was charged with misconduct including use of abusive language and misbehaviour and physical altercation with a junior colleague namely **Mr. Gora Chand Samui** and his wife. A preliminary enquiry was conducted and it was observed that allegations against the petitioner were prima facie established. Thereafter, a departmental enquiry was conducted as per the Central Civil Services (Classification Control and Appeal) Rules, 1965. Mr. Nandi contended that during the departmental enquiry the statements of the prosecution witnesses and defence witnesses were recorded. The departmental enquiry was conducted fairly and in accordance with the established guidelines but the charged official intentionally delayed the proceedings. He contended that abusive behaviour and physical altercation clearly falls within the definition of “misconduct” and in support of such contention he placed reliance upon the definition of “misconduct” from the Garner’s Black Dictionary (8th Edition). He further contended that the disciplinary authority and the appellate authority took a lenient approach and awarded the penalty of compulsory retirement with full pensionary benefit instead of inflicting the punishment of dismissal or termination. Mr. Nandi, further contended that enquiry proceedings were conducted by strictly adhering to the principles of natural justice. The petitioner was afforded reasonable opportunities to produce evidence and cross examine the witnesses. He further contended that despite being given numerous opportunities, the petitioner refused to appear before the enquiry officer during mutual hearings and declined to sign the recorded statements of the prosecution witness as well as his own statements. The petitioner, according to Mr. Nandi, adopted dilatory tactics and levelled baseless and vague allegations against the Inquiry Officer. He further contended that the charges levelled against the petitioner have been proved as would be evident from the evidence of the wife of the complainant namely Shrabani Samui. The conduct of the petitioner not only violates the principles of discipline but also reflects poorly on the leadership qualities that are expected from a senior officer like that of the petitioner.
6. Mr. Nandi submitted that the scope of interference by the High Court in exercise of power of judicial review under Article 226 of the Constitution of India against the orders passed by the disciplinary authorities is very limited. He submitted that judicial review is not an appeal from a decision but a review of the manner in which a decision is made. He contended that when an enquiry is conducted on the charges of misconduct by a public

servant, the Court/ Tribunal is to determine whether the enquiry was held by a competent officer or whether the rules of natural justice are applied with. The Courts or the Tribunal may interfere where the authority held the proceedings against the delinquent officer in violation of the statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. He further contended that the High Courts or the Tribunal while exercising the power of judicial review cannot formally substitute its own conclusions on penalty and impose some other penalty. In support of the aforesaid contentions Mr. Nandi placed reliance upon the decision of the Hon'ble Supreme Court in the case of ***Union of India and Ors. vs. Harjeet Singh Sadhu*** reported at (2001) 5 SCC 593; ***State Bank of India vs. Ram Lal Bhaskar and Another*** reported at (2011) 10 SCC 249; ***B.C. Chaturvedi vs. Union of India and Others*** reported at (1995) 6 SCC 749; ***State Bank of Bikaner and Jaipur vs. Nemi Chand Nalwaya*** reported at (2011) 4 SCC 584 ***Chairman & Managing Director V.S.P. and Others vs. Goparaju Sri Prabhakara Hari Babu*** reported at (2008) 5 SCC 569.

7. Heard the learned advocates for the parties and perused the materials placed.
8. The alleged incident took place on 01.03.2020. A complaint was lodged against the petitioner with regard to the incidents that allegedly took place on 01.03.2020. A departmental enquiry under Section 11(1) of the Central Reserve Police Force Act, 1949 (for short "CRPF Act 1949") read with Rule 27 of the Central Reserve Police Force Rules, 1955 (for short "CRPF Rules 1955") was initiated against the petitioner, who was holding the post of SI/RO of 3 Signal Battalion, CRPF, by issuance of a Charge Memorandum dated 06.06.2020. After the memorandum of charges was served upon the petitioner he submitted a written representation on the Memorandum of Charges but the reply by the charged official to the memorandum of charges were found to be devoid of any merit and an enquiry officer was appointed to inquire into the charges framed against the charged official/petitioner herein. A Presenting Officer was also appointed to present a case on behalf of the disciplinary authority in support of the articles of charges in the departmental enquiry proceedings.
9. The Inquiry Officer submitted the enquiry report dated 29.04.2021. The Inquiry Officer held that the charge in item no. 1 has been established fully.
10. The disciplinary authority in exercise of powers conferred upon him under Section 11(1) of the CRPF Act 1949 read with Rule 27 of CRPF Rules 1955 awarded the punishment of "compulsory retirement" with full beneficiary

benefits and gratuity under the provision of Rule 40 of CCS (Pension Rules 1972) from the date of issue of the order dated 25.08.2021. Petitioner was given liberty to prefer an appeal against the said order dated 25.08.2021 to the appellate authority. Pursuant to the said liberty, petitioner filed an appeal petition dated 27.08.2021. The appellate authority, by an order dated 06.05.2022, rejected the said appeal by holding that the punishment of compulsory retirement with full beneficiary benefits and gratuity awarded to the petitioner is commensurate with the gravity of the offences committed by him.

11. Before entering into the factual aspect it would be relevant to take note of the proposition of law laid down by the Hon'ble Supreme Court with regard to the scope of interference under Article 226 of the Constitution of India against the orders passed by the authorities in the departmental enquiry proceedings.
12. In **B.C. Chaturvedi** (supra) it was held that the disciplinary authority is the sole judge of facts and where appeal is presented, the appellate authority must be given co-extensive power to reappraise the evidence or the nature of punishment. In a disciplinary enquiry the strict proof of legal evidence and findings on that evidence are not relevant. It was further held that judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives a fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an enquiry is conducted on the charges of misconduct by public servant, the Court/ Tribunal is to determine whether the enquiry was held by a competent officer or whether rules of natural justice are applied with. The finding and conclusions of the authorities must be based on some evidence and when the authority accepts that findings and conclusions receive support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent in the rules of natural justice or in violation of statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding. After considering various decisions of the Hon'ble Supreme Court in paragraph 18 of the said reports it was held thus-

“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.”

13. In **Ram Lal Bhaskar** (supra) the Hon’ble Supreme Court reiterated the proposition of law laid down by the Hon’ble Supreme Court in the case of **State of A.P. vs. S. Sree Rama Rao** reported at **AIR 1963 SC 1723** wherein it was held that the High Court is not constituted in a proceeding under Article 226 of the Constitution as a Court of Appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is concerned to determine whether the enquiry is held by the authority competent in that behalf, and according to the procedure/prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence.
14. In paragraph 13 of the said reports the Hon’ble Supreme Court held that in a proceeding under Article 226 of the Constitution the High Court does not sit as an appellate authority over the findings of the disciplinary authority and so long as the findings of the disciplinary authority are supported by some evidence the High Court does not reappreciate the evidences and come to a different and independent finding on the evidence.
15. In **Harjeet Singh Sadhu** (supra) it was held that the truth or correctness or the adequacy of the material available before the authority cannot be revalued or weighed by the Court while exercising power of judicial review. Even if some of the material, on which the action is taken is found to be irrelevant, the Court would still not interfere so long as there is some relevant material available on which the action can be sustained.

16. The proposition of law laid down by the Hon'ble Supreme Court in **B.C.Chaturvedi** (supra) was reiterated by the Hon'ble Supreme Court in **State Bank of Bikaner and Jaipur** (supra).
17. On the issue as to whether the High Court while exercising the power of judicial review can interfere with the quantum of punishment imposed upon a delinquent, the Hon'ble Supreme Court in **B.C.Chaturvedi** (supra) held that the disciplinary authority and on appeal the appellate authority, being fact finding authorities have been invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. It was held that the High Court while exercising the power of judicial review cannot formally substitute its own conclusion on penalty and impose some other penalty. It is only if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court, 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 or rare cases, impose proper punishment with cogent reasons in support thereof.
18. In **Goparaju Sri Prabhakara Hari Babu** (supra) it was held that once it is found that all the procedural requirements have been complied with, the courts would not ordinarily interfere with the quantum of punishment imposed upon a delinquent amply. The superior courts only in some cases may invoke the doctrine of proportionality.
19. Now keeping in mind the aforesaid proposition of law laid down by the Hon'ble Supreme Court this Court has to decide as to whether the enquiry report, the penalty order of the disciplinary authority and the appellate order call for interference.
20. It is well settled that in a domestic enquiry fairness in procedure is a part of the principles of natural justice. The Hon'ble Supreme Court in **Narinder Mohan Arya** (supra) held that the Inquiry Officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject matter of the charges is wholly illegal. It was further held therein that suspicion or presumption cannot take the place of proof even in a domestic enquiry.
21. Therefore, in order to decide as to whether the Inquiry Officer traversed beyond the charges it would be beneficial to take note of the charges levelled against the petitioner.
22. The charge levelled against the petitioner was that while he was posted as SI/RO at three Signal Battalion, CRPF he has exhibited misconduct and

negligence of duty/ignoring orders of 01.03.2020 at round 1300 hours near the Men's Club where he abused his subordinate force namely Gora Chand Samui, Constable (General Duty) in abusive language and had assaulted him with punches which caused injuries in his eyes, nose and face.

23. After reading the said charge it appears that it was alleged that the petitioner was negligent in performing his duties and ignored the orders, he uttered abusive languages to a subordinate member of the force and have also assaulted him with punches which caused injuries in his eyes, nose and face. The enquiry officer in the enquiry report dated 29.04.2021 held that the petitioner heard abuses at his junior colleague who had come to him to make report regarding misbehaviour with his wife and the petitioner assaulted him as a result of which the complainant sustained injury on his eye, nose and lips.
24. After going through the materials placed this Court finds that there are evidences to show that the complainant sustained injuries on his eyes, nose and lips but the question that arises is whether such injuries were caused by the petitioner or the same is the result of a scuffle at the relevant point of time.
25. The statements of ten prosecution witnesses have been recorded but none of the said prosecution witnesses excepting the complainant namely Gora Chand Samui and his wife namely Shrabani Samui were the eye witnesses to the said incident.
26. In reply to the question as to whether Gora Chand Samui laid his hand on the petitioner, Shrabani Samui the wife of the complainant admitted that her husband had laid his hand for his defence and not for assaulting him because four jawans had caught him. Thus, from the said statement of Shrabani Samui it is evident that four jawans were eye witnesses to the said incident.
27. However, for reasons best known to the prosecution, no step was taken to examine the said four jawans who were eye witnesses to the said incident as would be evident from the statement of the wife of the complainant. Instead the Inquiry Officer placed reliance on the evidence of the complainant and his wife.
28. Non examination of the four jawans who were independent eye witnesses to the alleged incident and, therefore, are material witnesses is fatal and for such reason an adverse interference has to be drawn against the prosecution for failure on their part to examine such material witnesses. This Court also fails to understand as to why the evidence of Sunil Kumar

Sumon was disbelieved merely on the ground that a disciplinary proceeding was pending against him. If such was the reason for not relying upon the evidence of Sunil Kumar Sumon, the evidences of the complainant could not also have been relied upon as a disciplinary proceeding was also pending against him.

29. After going through the evidence of the prosecution witnesses excepting the complainant and his wife, this Court finds that the evidence of the other witnesses is hearsay evidence. It is well settled that hearsay evidence is a very weak evidence. From the evidence of the prosecution witnesses more particularly the evidence of the wife of the complainant it appears to this Court that the injury caused to the complainant was during the scuffle between the petitioner and the complainant. After going through the evidence of eye witnesses who were present at the time of the alleged incident this Court is of the considered view that it has not been proved that the petitioner was solely responsible for such injury.
30. With regard to the utterance of abusive languages by the petitioner as alleged by the complainant this Court finds that same has not been proved by the independent eye witnesses.
31. In ***State of Uttar Pradesh and Others vs. Saroj Kumar Sinha*** reported at **(2010) 2 SCC 772** the Hon'ble Supreme Court held that an enquiry officer being a quasi judicial authority is in the position of an independent adjudicator and he is not supposed to be the representative of the disciplinary authority. His function is to examine the evidence presented by the department and to see as to whether the evidence is sufficient to hold that the charges are proved.
32. It is well settled that the object behind appointment of Presenting Officer is to avoid any allegation of bias. The Inquiry Officer should be impartial and have an open mind till the inquiry is completed. It is equally well settled that in order to arrive at the truth or to obtain clarifications, the Inquiry Officer can put questions to the prosecution witnesses as also the defence witnesses. However, in the absence of the Presenting Officer if the Inquiry Officer acts as a Prosecutor, a presumption of bias arises.
33. As to whether the Inquiry Officer also acted as Presenting Officer has to be decided after examination of the materials on record. For such limited purpose this Court has examined the materials on record including the inquiry report.
34. After going through the materials on record this Court finds that the Inquiry Officer has put questions to the prosecution witnesses and after going

through the questions this Court is of the considered view that the same was not clarificatory in nature but the Inquiry Officer acted as a representative of the disciplinary authority. For such reason this Court holds that the enquiry proceedings got vitiated as the same was conducted with the closed mind and cannot be said to be wholly unbiased.

35. Merely because of the fact that the charged officer/ petitioner herein was given opportunity to submit written representations against memorandum of charges and to lead evidence in support of the defence case and to cross examine the witnesses, principles of natural justice cannot be said to be strictly adhered to as the same has been conducted by the Inquiry Officer as a representative of the disciplinary authority.
36. After going through the penalty order this Court finds that the disciplinary authority only took note of the conduct of the petitioner during the enquiry proceedings without considering as to whether the enquiry proceeding was conducted in a proper manner. The disciplinary authority also did not consider the fact of non examination of the independent eye witnesses to the alleged incident as well as the effect of the admissions made by the wife of the complainant in her evidence.
37. The appellate authority being the last fact finding authority ought to have considered as to whether the evidence could connect the charges with the ultimate findings and conclusions of the disciplinary authority. The appellate authority proceeded on the basis that 10 witnesses were cited by the prosecution without venturing to consider the quality of the evidence as well as the effect of non-examination of the independent eye witnesses to the alleged incident.
38. To the mind of this Court the appellate authority failed to perform its duty as the last fact finding authority.
39. In view of the aforesaid discussion, this Court holds that there is infirmity in the decision making process.
40. For all the reasons as aforesaid this Court is inclined to interfere with the report of the Inquiry Officer dated 29.04.2021, the penalty order dated 25.08.2021 and the appellate order dated 06.05.2022. Accordingly the enquiry report dated 29.04.2021, the penalty order dated 25.08.2021 and the appellate order dated 06.05.2022 are set aside and quashed.
41. The respondent authorities are directed to reinstate the petitioner in service forthwith with full backwages and all consequential benefits. The respondents are directed to release the backwages and all consequential

benefits in accordance with law as expeditiously as possible positively within a period of four weeks from the date of receipt of a server copy of this order.

42. Accordingly, the writ petition stands allowed.
43. There shall be, however, no order as to costs.
44. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)

(P.A.-Sanchita)