

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

W.P.A. 23994 of 2014

**P. Kasiviswanathan @ P. K. Viswanathan
-Vs-
Union of India & Ors.**

For the Petitioner	: Mr. Amalesh Roy Ms. Mousumi Bhowal
For the respondents/U.O.I.	: Ms. Susmita Saha Dutta Mr. Madhu Jana
Heard on	: 26.06.2024, 16.07.2024, 26.09.2024, 21.11.2024, 13.01.2025, 07.04.2025
Judgment on	: 19.05.2025

Ananya Bandyopadhyay, J.:-

1. The petitioner has approached this Court seeking issuance of a writ in the nature of mandamus commanding the respondent authorities to forthwith rescind, recall and/or withdraw the order dated 30th November, 2007 passed by the Disciplinary Authority, the order dated 29th March, 2008 passed by the Appellate Authority, and the order dated 13th October, 2008 passed by the Revisioning Authority.
2. The petitioner being a Head Constable in the Central Industrial Security Force was, at the material point of time, posted at the Durgapur Steel Plant, a unit requiring strict vigilance and security surveillance by personnel of the CISF. It is submitted that while the petitioner was

performing general shift duty from 08:00 hours to 18:00 hours on 10th June, 2005, an incident occurred involving a private dumper vehicle bearing registration no. WB-39-1291. The said dumper approached entry Gate No. 2 of the plant premises but was not intercepted for checking by the personnel stationed at the gate.

3. It had been recorded that the dumper exited the plant premises at around 17:55 hours at a high speed without stopping for security clearance, and the same was chased by an official of the Durgapur Steel Plant Management by a jeep from the stripper bay to Gate No. 2. The petitioner was deployed during "B" shift duty at SH-29. Based on the incident and subsequent reports, the petitioner was held to have committed gross misconduct, negligence, and dereliction of duty. Being an under officer of a disciplined force, the petitioner's conduct was adjudged as falling below the expected standard of alertness and responsibility.
4. The Disciplinary Authority, by order dated 30th November, 2007, found the petitioner guilty of the alleged misconduct. A disciplinary proceeding was initiated against the petitioner, and after recording the statements of witnesses and documentary evidence, the findings of the inquiry officer were accepted. The petitioner was held responsible for failing to intercept the vehicle and allowing a security breach to occur within the protected industrial premises. The disciplinary authority imposed a penalty which was thereafter affirmed by the Appellate Authority by its order dated 29th March, 2008. The petitioner filed a revision petition challenging the disciplinary and appellate orders, but the same was dismissed by the Revisioning Authority on 13th October, 2008.

5. The petitioner had impugned the aforesaid orders on the ground that the disciplinary proceedings were not conducted in accordance with law and that there was no direct act or omission attributable to the petitioner which could be construed as constituting misconduct. The petitioner had submitted that he was not posted at the gate through which the dumper exited, and the responsibility for interception of vehicles lay with the personnel manning Gate No. 2. It had been submitted that there was no material or eyewitness evidence that specifically implicated the petitioner in the incident of 10th June, 2005 and that the inquiry was held without ensuring compliance with the principles of natural justice.
6. The petitioner had further submitted that the authorities failed to appreciate the defence raised during the proceedings and did not consider the absence of any past record of misconduct. It had also been submitted that the punishment imposed was disproportionate and not commensurate with the nature of the alleged lapse. The denial of opportunity to lead defence evidence and the lack of any consideration by the Appellate and Revisioning Authorities of the detailed grounds raised by the petitioner had been contended as amounting to non-application of mind. It is in this background that the petitioner had prayed for interference with the impugned orders passed by the Disciplinary, Appellate and Revisioning Authorities and sought reinstatement with consequential benefits.
7. The Learned Advocate representing the petitioner submitted that a conjoint reading of the testimonies of M.K. Patra (CW-1), A.K. Arya (CW-2), P.M. Barman (DW-1), and R. Subba (DW-3), along with the documentary evidence such as the daily incoming/outgoing register

(Exhibit 5 and 5(2)) and the daily outgoing register (Exhibit 6), made it evident that the petitioner had been deployed at a tower approximately 15 to 20 feet above ground level solely for the purpose of making entries of outgoing vehicles in the said register. It was urged that the central issue in the present case concerned the nature of the petitioner's duty while stationed on the said tower—whether he was to stop and check outgoing vehicles or merely make entries in the daily outgoing register.

8. It was pointed out that the Enquiry Officer, while acknowledging the petitioner's deployment at the tower, nonetheless concluded that the petitioner was expected to check vehicles from that height. The learned Advocate for the petitioner argued that no prosecution, court, or defence witness testified that the petitioner had been directed to check vehicles from the tower in addition to making register entries. It was further submitted the Enquiry Officer arrived at an adverse presumption based solely on a notation in the duty deployment register of Gate No. 2A dated 10.06.2005, where the term "checking/entry" had been subsequently altered by striking through the word "checking." The finding that vehicles could be properly checked from a tower of such height was characterised as perverse.

9. In the concluding part of his report, the Enquiry Officer held that the petitioner had failed to stop and check a dumper carrying nut coke from Durgapur Steel Plant, but such finding was not supported by any documentary or oral evidence establishing that the petitioner was assigned the duty of stopping or checking said dumper. In agreeing with the Enquiry Officer, the Disciplinary Authority relied upon the duty deployment register produced by the petitioner himself, asserting that the

word “checking” had been later struck through. It was submitted that such findings were based on pure assumptions and lacked evidentiary support from any of the witnesses. The Disciplinary Authority’s finding that the petitioner was detailed for both checking and entry of vehicles was similarly unsupported.

10. The Disciplinary Authority further opined that the petitioner had failed in his primary responsibility to stop the dumper at the gate for checking and that this lapse was grave, especially given the petitioner’s length of service. The learned Advocate representing the petitioner argued that the Enquiry Officer and Disciplinary Authority were guided by extraneous considerations and had thus failed to reach a fair and impartial conclusion. It was submitted that their conclusion—that the petitioner failed to stop and check a dumper—was unsupported by any evidence and went beyond the scope of the charge itself. Reliance was placed upon 2015 (2) SCC 610, 2006 (4) SCC 713, and 2021 (12) SCC 569.
11. The learned Advocate representing the petitioner submitted that no finding had been recorded in the disciplinary proceeding indicating that the petitioner acted with any ill motive in the discharge of his duties. It was urged that mere negligence or an innocent mistake does not constitute “misconduct.” Reference was made to AIR 2007 Cal 29. In his appeal, the petitioner had specifically pointed out how the Enquiry Officer and Disciplinary Authority had been swayed by factors unrelated to the evidence on record. It was argued that the Appellate Authority had failed to appreciate these submissions and had not applied its mind, contrary to the ratio laid down in the decision cited in 2006 (4) SCC 713.

12. It was submitted that the petitioner had also presented a comparative chart showing that the basis of both the criminal and disciplinary proceedings was identical—the facts, the acts alleged, and the complicity of the petitioner and other CISF personnel were all the same. Although it is settled that departmental proceedings do not require the same standard of proof as criminal proceedings, where the underlying facts and witnesses are the same and the criminal court has honourably acquitted the accused, it would be unjust and oppressive to sustain a departmental finding to the contrary. Reliance was placed upon the decisions cited in 2013 (1) SCC 598, 2013 (7) SCC 685, 1999 (3) SCC 679, 2006 (5) SCC 446, and 2008 (15) SCC 657.
13. The learned Advocate representing the petitioner submitted that both proceedings were based on the same transaction, and the definition of “same transaction” was drawn from the decision cited in 2001 (4) SCC 350. It was argued that the ratio in the decision cited in 2011 (4) SCC 584, had no application to the facts of the present case. Instead, the decision in G.M. Tank’s case was apposite, especially since the petitioner had not allowed the disciplinary order to attain finality by failing to challenge it. Reference was made to the decision cited in 2011 (4) Cal LT 303 (HC).
14. The learned Advocate representing the petitioner pointed out that P.M. Barman, the Sub-Inspector who played a central role, had been punished with compulsory retirement in the related disciplinary proceeding. Similarly, A.K. Arya, Inspector and Court Witness in the present case, was awarded only a minor penalty. It was highlighted that the Enquiry Officer had recorded a finding that the incident occurred because Constable

Debasis Paul, who had been stationed at Gate No. 2A and was wearing a yellow T-shirt, had allowed the dumper to leave unchecked. Constable Paul's dismissal was subsequently set aside by the Hon'ble Court, and he was reinstated. It was submitted that in this context, the punishment of removal from service imposed upon the petitioner was manifestly disproportionate and shocks the conscience. Reliance was placed upon the decision cited in 2000 (3) SCC 450, 2003 (8) SCC 9, 2016 (14) SCC 1, and 2022 (13) SCC 329.

15. The learned advocate for the respondents submitted that by an order dated 18.01.2024, an Hon'ble Co-ordinate Bench of this Hon'ble Court had granted liberty to the respondents' counsel to produce the relevant Standard Operating Procedure (SOP) relating to the allotment of duties to charged officers. In compliance, a translated English version of the SOP concerning duty allotments at CISF Unit, DSP, Gate No.2A, Durgapur, duly signed by the Chief Commandant, CISF Unit DSP, Durgapur, was placed before the Hon'ble Co-ordinate Bench on 18.03.2024 and was retained with the record.

16. The learned advocate for the respondents submitted that the petitioner, namely P. Kashi Viswanathan @ P.K. Viswanathan, was posted as Head Constable at CISF Unit, DSP, Gate No.2A, Durgapur, at the relevant point of time. As per the said SOP, the duty of a Head Constable included fully checking the loaded goods entering through the gate to confirm alignment with the challan, and upon finding any discrepancy, to inform the gate in-charge and act per instructions. The challan was to be signed only after such verification. Therefore, the learned advocate submitted that failure on the part of the petitioner to check and confirm the loaded dumper

amounted to gross misconduct, negligence, and dereliction of duty as a member of a disciplined force.

17. The learned advocate for the respondents placed reliance upon the judgment passed on 10.07.2024 by this Hon'ble Court in the case of *Josdev Dabas vs. Union of India and Ors.*, where the petitioner therein was also a constable posted on the day of the incident involving the dumper exiting through Gate No.2A without checking. Reference was made to paragraph 4 of the said judgment where the learned advocate for the appellant in that case had submitted that the incident occurred at Gate No.2 and not Gate No.2A, and that the FIR related to Gate No.2. However, it was pointed out in paragraph 13 that five prosecution witnesses deposed before the Enquiry Officer and established that the dumper exited through the gate where the appellant had been posted. The appellant's failure to prevent the exit, despite duty requirements, led to a finding that the charge stood proved. The disciplinary authority found no irregularity and imposed removal from service. In paragraph 14, it was observed that the criminal and disciplinary proceedings were not identical and that the appellant could not rely on the criminal judgment to claim exoneration in departmental proceedings. It was held that the quantum of punishment lay within the domain of the disciplinary authority, and the nature of the charge coupled with the punishment imposed did not warrant a finding of disproportionality.
18. The learned advocate for the respondents submitted that the written notes of argument filed on behalf of the petitioner revealed no violation of the rules of natural justice. It was submitted that the finding of misconduct was based on evidence, that the disciplinary enquiry had

been conducted in accordance with the statutory rules, and that the findings of the disciplinary authority did not suffer from perversity. It was further argued that the penalty imposed was not disproportionate to the proven misconduct. The learned advocate placed reliance on the findings of the Division Bench in F.M.A. No. 339 of 2023 in Jasdev Dabas, wherein it was reiterated in paragraph 15 that the quantum of punishment was within the authority of the disciplinary body and that the nature of the charge proved warranted the punishment imposed.

19. Reliance was placed on the decision reported in (2021) 11 SCC 321: (2021) SCC Online SC 768 (Union of India & Ors. vs. Dalbir Singh), where the Hon'ble Supreme Court held that in departmental proceedings, the burden of proof was not equivalent to that in a criminal trial and that the enquiry must proceed on the basis of probabilities of misconduct.
20. The learned advocate also relied on the decision cited in (2022) 6 SCC 563: 2022 SCC Online SC 345 (State of Karnataka & Anr. vs. Umesh), where the Hon'ble Supreme Court laid down the permissible parameters for judicial review. It was submitted that judicial review could be invoked only where (a) rules of natural justice had not been complied with; (b) the finding of misconduct was not based on any evidence; (c) statutory rules governing disciplinary enquiries had not been observed; (d) the findings suffered from perversity; or (e) the penalty imposed was disproportionate to the proven misconduct. It was urged that none of these parameters were attracted in the present case.
21. Though the scope of Writ Court to re-appreciate evidence is limited, however, in case of glaring inconsistencies and anomalies apparent on the face of the records can be addressed. The petitioner claimed to have been

assigned duty of recording entries of outgoing vehicle in the concerned register after conforming the signatures on the vehicle pass by SI/Exe.(In-Charge of Gate 2A), HC/GD and Constable who were detained on duty for checking of outgoing vehicle at a general shift duty from 8 hours to 18 hours working in Central Industrial Security Force (C.I.S.F.) Unit, DSP, Durgapur performing duty in 'D' Coy on the relevant date, i.e., 10.06.2005. The main charge visited against the petitioner was failure to stop and check a loaded dumper being No. WB-39/1291 exited from the DSP through Gate No.2A of the DSP at about 17:50 hrs. The petitioner defended himself against the said charge by asserting to have been performing his duty stationed at the tower which was above 15-20 feet from the ground floor. According to the petitioner, he was duty bound to record the entry of the outgoing vehicles in the concerned register and not checking the same from such a height. Moreover, it was not his exclusive duty to check the vehicles and he was not in a position to prevent the vehicle on its move towards the gate of exit from his position at the tower.

22. Duty register of 10.06.2005 indicated that the petitioner was assigned duty of entry of outgoing vehicles through Gate No.2A which he had signed at serial no.4 of the said register while reporting to duty on that day. None of the prosecution witnesses stated the petitioner to have been present at Gate No.2A and was negligent in his duty to stop the dumper in its motion or even had been instrumental to grant a free passage of way to the said dumper.

23. The Enquiry Officer did accept the fact that the petitioner was posted at the tower as aforesaid, however, claimed his position was convenient to

check the movement of vehicles and stop the same from advancing on its way.

24. This Court is of the opinion both the Disciplinary Authority as well as the Appellate Authority had evasively dealt with the propositions, evidence cited by both the parties and the materials on record. The findings of the Enquiry Committee cannot rule out absurdities and impracticalities. The punishment was based on preconceived notions, assumptions and presumptions with a closed mind. Since the principle of natural justice had not been violated and the process of the disciplinary proceedings had been conducted in accordance to service rules, the area of interference of this Court is restricted only to the extent of pointing out the variance, irrational and illogical conclusion that the petitioner could have checked and stopped the dumper on its way of exit from Gate No.2A sitting at a distance away from the gate at a height of 15-20 feet from the ground and failure to do so, resulted in his removal from service.

25. The punishment in the opinion of this Court; in absence of moral turpitude, dishonest intention and wrongful gain to have deliberately allowed the dumper loaded with articles single-handedly to exit through Gate No.2A; had been absent in the charges which should not have, therefore, thrust the punishment of removal from service upon the petitioner which had been disproportionate and harsh according to the understanding and realization of this Court.

26. The Hon'ble Supreme Court held the following in ***Ranjit Thakur v. Union of India***¹:-

"Re contention (d):

¹ (1987) 4 SCC 611

25. *Judicial review generally speaking, is not directed against a decision, but is directed against the “decision-making process”. The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review. In Council of Civil Service Unions v. Minister for the Civil Service [(1984) 3 WLR 1174 (HL) : (1984) 3 All ER 935, 950] Lord Diplock said:*

“Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call ‘illegality’, the second ‘irrationality’ and the third ‘procedural impropriety’. That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of ‘proportionality’ which is recognised in the administrative law of several of our fellow members of the European Economic Community;. . .”

26. *In Bhagat Ram v. State of Himachal Pradesh [(1983) 2 SCC 442 : 1983 SCC (L&S) 342 : AIR 1983 SC 454] this Court held: [SCC p. 453, SCC (L&S) p. 353, para 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.”

The point to note, and emphasise is that all powers have legal limits.

27. *In the present case the punishment is so strikingly disproportionate as to call for and justify interference. It cannot be allowed to remain uncorrected in judicial review.”*

27. The Hon’ble Supreme Court held the following in **Sheel Kr. Roy v. Ministry of Defence**²:-

“17. Fairness and reasonableness in the action of the State whether in a criminal proceeding or otherwise are the hallmark of Article 14 of the Constitution of India. The doctrine of proportionality is one of the grounds on the basis whereof the power of judicial review could be exercised. It was so held in Ex-Naik Sardar Singh v. Union of India [(1991) 3 SCC 213].

28. The following was held by the Hon’ble Supreme Court in **Dev Singh v. Punjab Tourism Development Corpn. Ltd**³:-

“6. A perusal of the above judgments clearly shows that a court sitting in appeal against a punishment imposed in the disciplinary proceedings will not normally substitute its own conclusion on penalty, however, if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court, then the court would appropriately mould the relief either by directing the disciplinary/appropriate authority to reconsider the penalty imposed or to shorten the litigation it may make an exception in rare cases and impose appropriate punishment with cogent reasons in support thereof. It is also clear from the abovenoted judgments of this Court, if the punishment imposed by the disciplinary authority is totally disproportionate to the

² (2007) 12 SCC 462

³ (2003) 8 SCC 9

misconduct proved against the delinquent officer, then the court would interfere in such a case.”

29. The Hon’ble Supreme Court held the following in **Jai Bhagwan v. Commr. of Police**⁴:-

“10. What is the appropriate quantum of punishment to be awarded to a delinquent is a matter that primarily rests in the discretion of the disciplinary authority. An authority sitting in appeal over any such order of punishment is by all means entitled to examine the issue regarding the quantum of punishment as much as it is entitled to examine whether the charges have been satisfactorily proved. But when any such order is challenged before a Service Tribunal or the High Court the exercise of discretion by the competent authority in determining and awarding punishment is generally respected except where the same is found to be so outrageously disproportionate to the gravity of the misconduct that the Court considers it be arbitrary in that it is wholly unreasonable. The superior courts and the Tribunal invoke the doctrine of proportionality which has been gradually accepted as one of the facets of judicial review. A punishment that is so excessive or disproportionate to the offence as to shock the conscience of the Court is seen as unacceptable even when courts are slow and generally reluctant to interfere with the quantum of punishment. The law on the subject is well settled by a series of decisions rendered by this Court. We remain content with reference to only some of them.

xxx

13. Reference may also be made to the decisions of this Court in Union of India v. G. Ganayutham [(1997) 7 SCC 463 : 1997 SCC (L&S) 1806] , Sardar Singh v. Union of India [(1991) 3 SCC 213 : 1991 SCC (Cri) 503 : 1991 SCC (L&S) 975 : (1992) 19 ATC 325] and Om Kumar v. Union of India [(2001) 2 SCC 386 : 2001 SCC (L&S) 1039] , which reiterate the same proposition.”

⁴ (2013) 11 SCC 187

30. The Hon'ble Supreme Court held the following in **Anil Kumar Upadhyay v. SSB**⁵:-

“14. On the judicial review and interference of the courts in the matter of disciplinary proceedings and on the test of proportionality, few decisions of this Court are required to be referred to.

15. In Om Kumar [Om Kumar v. Union of India, (2001) 2 SCC 386 : 2001 SCC (L&S) 1039] , this Court, after considering the Wednesbury principles and the doctrine of proportionality, has observed and held that the question of quantum of punishment in disciplinary matters is primarily for the disciplinary authority and the jurisdiction of the High Courts under Article 226 of the Constitution or of the Administrative Tribunals is limited and is confined to the applicability of one or other of the well-known principles known as “Wednesbury principles”. In Wednesbury case [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 (CA)] , it was observed that when a statute gave discretion to an administrator to take a decision, the scope of judicial review would remain limited. Lord Greene further said that interference was not permissible unless one or the other of the following conditions was satisfied, namely, the order was contrary to law, or relevant factors were not considered, or irrelevant factors were considered, or the decision was one which no reasonable person could have taken.

16. In B.C. Chaturvedi [B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749 : 1996 SCC (L&S) 80] , in para 18, this Court observed and held as under : (SCC p. 762)

“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,

⁵ (2022) 20 SCC 608

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.”

17. *In Lucknow Kshetriya Gramin Bank [Lucknow Kshetriya Gramin Bank v. Rajendra Singh, (2013) 12 SCC 372 : (2013) 3 SCC (L&S) 159] , in para 19, it is observed and held as under : (SCC p. 382)*

“19. The principles discussed above can be summed up and summarised as follows:

19.1. When charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities.

19.2. The courts cannot assume the function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority.

19.3. Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the court.

19.4. Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The

court by itself cannot mandate as to what should be the penalty in such a case.

19.5. The only exception to the principle stated in para 19.4 above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct were identical or the co-delinquent was foisted with more serious charges. This would be on the doctrine of equality when it is found that the employee concerned and the co-delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge-sheet in the two cases. If the co-delinquent accepts the charges, indicating remorse with unqualified apology, lesser punishment to him would be justifiable.”

31. Moreover, the petitioner had been acquitted of the charges under Sections 379/411/420/34 of the Indian Penal Code in connection with Durgapur P.S. Case No.171/2005 dated 11.06.2005 by judgment and order dated 05.07.2018.

32. It appeared that the allegations in the complaint as well as the report in the article of charges are similar as mentioned below:-

“The departmental proceeding and the criminal case are based on identical and similar set of facts and the charge in a departmental proceeding and the charge before the criminal court are one and the same.

<i>Allegations in FIR</i>	<i>Statement of Article of Charge against the petitioner</i>	<i>Statement of Imputation of Misconduct against the petitioner</i>
<i>This is to inform you that during 'B' shift of 10.06.05 at about 17.45 hrs. the</i>	<i>"That No. 814462568 HC/GD P.K. Biswanathan of CISF Unit DSP, Durgapur while performing in General</i>	<i>No.814462568 HC/GD P.K.Viswanathan while performing duty in 'D'</i>

undersigned received a telephone call from Shri S.K. Roy, Senior Technician, Coal site office, RMD. Shri Roy informed that while going toward SCR-4 (RMDP) with Shri Prabir Paul, Technician for empty wagon placement for iron ore loading, they observed that a DSP loader was loading nut coke into a private dumper bearing no. WB-39-1291 and the RMHP coke crusher site the DSP loader operator was Shri R. Prasad. When they apprehended the loader and dumper, the dumper	shift duty from 0800 hrs to 1800 hrs on 10.6.05 at Gate No. 2A DSP for checking of outgoing vehicle under the jurisdiction of 'D' Coy has failed to stop and check of one dumper bearing No. WB-39-1291 loaded with nut coke of DSP Management unauthorisedly as required while the said dumper passed through Gate No. 2A at about 1755 hours on 10.6.2005 though the said loaded dumper chased by DSP Management officials by a jeep from stripper Bay to Gate No. 2A and HC/GD D.P. Singh who deployed in 'B' shift duty at SH-29. Thus the act of No. 814462568 HC/GD P.K. Viswanathan of this unit tantamount to gross misconduct, negligence and dereliction of duty being an under officer of disciplined Force. Hence the charge.	Coy of CISF Unit DSP Durgapur was detailed to perform general shift from 0800 hrs to 1800 hrs on 10.6.05 at Gate No. 2A of DSP for checking of outgoing vehicle under the immediate supervision of SI/Exe P.M. Barman of 'D' Coy. During his performance of duty a private dumper bearing No. WB-39/4291 loaded with nut coke unauthorisedly came at Gate No. 2A at about 17.55 hours on the evening of 10.6.2005 and the said loaded vehicle was not stopped by him with the help of other personnel so detailed at the Gate for checking as required while the said dumper was chased by Shri Tanmoy Sarkar, AGM Shri Amar Sarkar, Jr. Manager, Shri Anindo Ghosh, Manager by a jeep from stripper bay to Gate No. 2A and also
--	--	---

<i>immediately left the site and rushed away.</i> <i>On being informed about the above, the undersigned along with Shri Aninda Ghosh, Manager (RM) and Shri A. Sarkar, the Jr. Manager (RM) immediately took the departmental jeep and left for coal site office. At the stripper Bay crossing the aforesaid dumper with nut coke ... crossed us the dumper was being chased by Shri Roy and Shir Paul of RMD on their motor cycle.</i> <i>Both the groups from Raw Material Dept. give chase to the dumper. The route taken by the dumper was along Section Mill Road. The dumper was running</i>		<i>followed by other two employees of DSP Shri P.Pal and Shri S.K. Roy, Sr. Tech by riding of a motor cycle. The said dumper was also chased by the duty sent at SH-29 duty post. HC/GD D.P. Singh who was detailed in 'B' Shift duty and had also seen the material loaded in the dumper. Although the said dumper was apprehended later on hear the ASP barrack which is located far away from the area of DSP and found the dumper as an empty. Further Sri A.K. Virmani GM/Services asked to personnel so detailed for duty at the Gate about the non-checking of the said dumper loaded with nut coke before passing away through the gate but they did not bother to reply. Thus, the act of No.814462568 HC/GD</i> <i>P.K.Viswanathan of CISF Unit DSP Durgapur</i>
---	--	--

very fact and could not be overtaken. The dumper approached the material entry gate of Gate No. 2. The dumper was not stopped by CISF personnel for checking although there were least 4 (four) CISF personnel at the gate. A person with yellow T-Shirt standing at the gate with the CISF personnel was signaling the dumper to leave the plant premises. The dumper left the plant at high speed without stopping at about 17.50 hrs. the undersigned enquired from the CISF personnel standing at the gate as to how the dumper left without checking. The CISF men did not give any reply. The dumper has		misconduct tantamount to gross and negligence dereliction of duty being an under officer of disciplined Force.
--	--	---

<i>allegedly removed DPS nut coke from the plant premises.</i>		
--	--	--

The nature of the criminal case launched against the petitioner and other CISF personnel on the basis of evidence and material collected against them during enquiry and investigation and as reflected in the charge-sheet, factors mentioned are one and the same. In fact the charges, evidence and circumstances are one and the same, as set out hereunder:

<i>Particulars of Documents</i>	<i>Disciplinary Proceeding</i>	<i>Criminal Trial</i>
<i>Photo copy of letter of Shri Anindo Ghosh, Mar (RM) and Shri Sarkar, AGM (RM), DSP Durgapur Addressed to GM/Services, DSP Durgapur dated 10.06.2005</i>	<i>Photo copy of letter of Shri Anindo Ghosh, Mar (RM) and Shri T. Sarkar, AGM (RM), DSP Durgapur Addressed to GM/Services, DSP Durgapur dated 10.06.2005</i>	
<i>Photo copy of the Duty Deployment register page dated 10.06.2005 at Gate No. 2A of DSP Durgapur.</i>	<i>Photo copy of the Duty Deployment register page dated 10.06.2005 at Gate No. 2A of DSP Durgapur.</i>	<i>Photo copy of the Duty Deployment register page dated 10.06.2005 at Gate No. 2A of DSP, Durgapur.</i>
<i>Photo copy of FIR No. 498005 dated 10.06.2005.</i>	<i>Photo copy of FIR No. 498005 dated 10.06.2005.</i>	<i>FIR is the basis of the Charge Sheet.</i>
<i>Photo copy of daily Incoming/outgoing vehicle register dated 9/10.6.2005.</i>	<i>Photo copy of daily Incoming/outgoing vehicle register dated 9/10.6.2005.</i>	<i>Photo copy of daily Incoming/outgoing vehicle register dated 9/10.6.2005.</i>

<i>Photo copy of Daily outgoing vehicle eg later dated 10.06.2005:</i>	<i>Photo copy of Daily outgoing vehicle eg later dated 10.06.2005:</i>	
<i>(i) WB-37-1664, (II) WB-1388, (iii)WB-37-2478 (iv) WB-37-6352 (v) WB-07-2405</i>	<i>(i) WB-37-1664, (II)WB-1388, (iii)WB-37-2478 (iv) WB-37-6352 (v) WB-07-2405</i>	
<i>Photo copy of duty deployment chart of "B" Shift of "F" Coy</i>	<i>Photo copy of duty deployment chart of "B" Shift of "F" Coy</i>	
<i>Any other documents, the E.O. may like to examine.</i>	<i>Any other documents, the E.O. may like to examine.</i>	
<i>Dumper bearing registration no. WB-39-1291</i>	<i>The offending dumper was also part of the criminal proceeding</i>	<i>In the seizure list in connection with the criminal.</i>
<i>One gate pass no. 42043 of vehicle no. WB-39-1291</i>	<i>Document was supplied as one of the relied upon documents to the petitioner.</i>	<i>In the Seizure list of the criminal proceeding.</i>

Same witnesses examined in the disciplinary proceeding and in the criminal trial:

<i>Name of witnesses</i>	<i>Disciplinary proceeding</i>	<i>Criminal Trial</i>
<i>Prabir Pal</i>	<i>Prabir Pal</i>	<i>Prabir Pal</i>
<i>S.K. Roy</i>	<i>S.K. Roy</i>	<i>S.K. Roy</i>
<i>Tanmoy Sarkar</i>	<i>Tanmoy Sarkar</i>	<i>Tanmoy Sarkar</i>
<i>Amar Sarkar</i>	<i>Amar Sarkar</i>	<i>Amar Sarkar</i>

<i>Anindo Ghsoh</i>	<i>Anindo Ghsoh</i>	<i>Anindo Ghsoh</i>
<i>A.K. Virmani</i>	<i>A.K. Bhirmani</i>	<i>A.K. Bhirmani</i>
<i>No. 96459006 H.C/GD D.P. Singh</i>	<i>H.C/GD D.P. Singh</i>	
<i>Anurag Kumar Arya, Inspector of CISF Commandant</i>		<i>Anurag Kumar Arya, Inspector of CISF Commandant</i>

33. The Hon'ble High Court held the following in ***Maharana Pratap Singh v. State of Bihar***⁶:-

“47. While an acquittal in a criminal case does not automatically entitle the accused to have an order of setting aside of his dismissal from public service following disciplinary proceedings, it is well-established that when the charges, evidence, witnesses, and circumstances in both the departmental inquiry and the criminal proceedings are identical or substantially similar, the situation assumes a different context. In such cases, upholding the findings in the disciplinary proceedings would be unjust, unfair, and oppressive. This is a position settled by the decision in *G. M. Tank (supra)*, since reinforced by a decision of recent origin in *Ram Lal v. State of Rajasthan*³¹.

48. To assess the degree of similarity between the charges, evidence, witnesses, and circumstances in the disciplinary and criminal proceedings, it is indeed crucial to review the materials placed before the Court where such an issue arises. However, we regret, absence of the departmental file has disabled us from looking into the same.

⁶ 2025 SCC OnLine SC 890

xxx

55. *Law is trite that while exercising its powers under Articles 226 and 227 of the Constitution, the High Court does not exercise powers that are available to an appellate court. It is the decision-making process that falls for scrutiny. Be that as it may, the High Courts can rectify errors of law or procedural irregularities, if any, that lead to a manifest miscarriage of justice or breach of the principles of natural justice. Law is also well-established that the standards for establishing a guilt in disciplinary proceedings differ from those applicable to criminal proceedings. However, it is equally true that departmental authorities are obligated to provide a fair opportunity to the parties involved, and what constitutes a fair opportunity must be determined based on the facts and circumstances of each case, as has been laid down in State of Mysore v. Shivabasappa Shivappa Makarpur.*

56. *It is well-established that any action resulting in penal or adverse consequences must be consistent with the principles of natural justice. To sustain a complaint of natural justice violation, based on lack of opportunity for cross-examination, the party alleging the violation must show that prejudice was caused, as affirmed by this Court in L.K. Tripathi v. State Bank of India.”*

34. Under the facts and circumstances of this case, this Court not only finds the punishment to be disproportionate but in view of the petitioner to have been acquitted from the criminal case being G.R. Case No.580 of 2005 (T.R. NO.559/14) by the Learned Judicial Magistrate 2nd Court, Durgapur on 05.07.2018 wherein the allegations in both the proceedings as aforesaid are similar as cited above, the punishment of the order of the Disciplinary Authority dated 30.11.2007, order of the Appellate Authority dated 29.03.2008 and the order of the Revisioning Authority dated 30.10.2008 are set aside.

35. In view of the above discussions, the instant writ petition being WPA 23994 of 2014 is allowed.

36. Back wages from the date of discontinuation of the petitioner's service be accounted for his retiral benefits along with other statutory relief be disbursed within 60 days of communication of this order.

37. There is no order as to costs.

38. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)