

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Madhuresh Prasad

AND

The Hon'ble Justice Prasenjit Biswas

F.M.A. 1843 of 2015

Jaspal Singh

Vs.

Union of India & Ors.

For the Appellant : Mr. Sujit Bhattacharya

For the Union of India : Mr. Sunil Kr. Singhanian

Heard on : 14.05.2026

Judgment on : 14.05.2026

MADHURESH PRASAD, J.:

1. The Intra Court Appeal arises out of an order dated 17.12.2014 passed by the Hon'ble Single Judge in W.P. No. 15843 (W) of 2006 dismissing the petitioner's writ petition. The petitioner had assailed the order of dismissal dated 16.01.1995 of the Disciplinary Authority, subsequent to an enquiry.

The petitioner also assailed the order of the Appellate Authority dated 22.08.1995 rejecting his appeal.

2. Heard the learned advocate for the appellant and the learned advocate for the Union of India.
3. The petitioner, a Constable in the force was found absent from roll call at 17.00 hours on 13.02.1994. The petitioner was confronted with such lapse/misconduct by the Assistant Sub-Inspector, namely one A. R. Khan. He thereafter assaulted the Assistant Sub-Inspector, at 17.30 hours on the same date.
4. The above facts led to issuance of a charge memo dated 23.04.1994. The petitioner chose not to submit his written statement of defence and was proceeded against in the enquiry. He appeared before the Enquiry Officer in the enquiry being conducted by the competent authority, namely the Deputy Commandant of the Force.
5. The enquiry was conducted in respect of two articles of charges:
 - (i) that the petitioner was found absent from roll call on 13.02.1994 at about 17.00 hours.
 - (ii) that the petitioner assaulted CISF No. 70460071 ASI/Exe, A. R. Khan with belt on 13.02.1994 at 17.30 hours while he was returning to the barrack from Quarter Guard resulting in the ASI/Exe A. R. Khan sustaining injury.
6. The petitioner admitted the first charge in the enquiry.
7. In respect of the second charge, the Enquiry Officer examined four prosecution witnesses. PW-1 was the victim ASI/Exe A. R. Khan himself.

PW-2 was a Head Constable/GD P. Dayapuran. PW-3 was another Head Constable/GD N. Sethi. PW-4 was another Constable, namely P.K.G. Nair.

8. The petitioner was afforded an opportunity to cross-examine these four witnesses. PW-1 relied upon several documents, including the document relating to the assessment of his injury and treatment thereof with reference to the medical documents. He also relied upon one Exhibit No. 24 wherein the charge sheeted Constable (writ petitioner) admitted that he hit the ASI.
9. The petitioner contested the second charge and cross-examined the PWs. From the cross-examination of the PWs it is submitted by the learned advocate representing the writ petitioner/appellant that there is stark inconsistency between their statements made before the Enquiry Officer. He has drawn attention of the Court towards the cross-examination of PW2, 3 and 4 to submit that in the cross-examination they have specifically stated that they had not seen the incident of the ASI being assaulted by the petitioner. He, therefore, submits that in view of the inconsistency, in the cross-examination of the three witnesses there was no basis for the Enquiry Officer to arrive at a conclusion regarding the charge no. 2 being proved.
10. It is further submitted that the scope of judicial review is very narrow and is confined to the decision making process and not the decision itself. However, if there is a procedural irregularity or if the Enquiry Officer fails to take into consideration relevant material, or admits material which is irrelevant, as has been done in the present case such findings are vulnerable to interference by the Writ Court in exercise of judicial review under Article 226 of the Constitution of India.

11. The way in which the charges have been held proved and resulted in the extreme punishment of dismissal being awarded to the writ petitioner is shocking to the conscience. The quantum of punishment also is highly excessive and disproportionate to the allegations, considering the manner in which the charges have been held proved. The punishment, therefore, was required to be interfered with by the Hon'ble Single Judge. In support of his submission he relied upon a decision of the Hon'ble Apex Court in the case of ***Ranjit Thakur –Vs.- Union of India and others*** reported in ***AIR 1987 SC 2386***.
12. The learned advocate for the Union of India on the other hand submits that the contours of judicial review by now are well established. The petitioner's attempt to invoke the jurisdiction of the Intra Court Appeal for reassessment of the material and to sit in appeal over the decision of the Disciplinary Authority accepting the enquiry report is beyond the scope of judicial review. He submits that there was sufficient material before the Enquiry Officer and, therefore, the order of the Hon'ble Single Judge rejecting the writ petition does not require any interference.
13. We have considered the rival submissions. At the very outset we would take into consideration the settled scope of judicial review in respect of a departmental proceeding. We consider it apposite to refer to recent judgment of the Hon'ble Apex Court in the case of ***Union of India and Others –Vs.- P. Gunasekaran*** reported in ***(2015) 2 SCC 610***. The contours being settled, universal and binding, the Writ Court was required to confine itself within the scope of judicial review. We, therefore, are of the

opinion that the petitioner cannot be permitted to assail the findings of the Enquiry Officer before this Court as if the Court was hearing an appeal. In judicial review the court's scrutiny is limited to the decision making process and not the decision itself.

14. Insofar as the submission regarding admissibility of inadmissible material, or the failure to take into consideration admissible material we considered such submission, and for the said purpose perused the enquiry report.
15. PW-1 is the victim ASI. He supported the allegation before the Enquiry Officer not only by making oral submissions but with reference to medical documents to sustain the allegation regarding the injuries inflicted upon him by the petitioner. He also placed a written admission of the petitioner (Exhibit-24). During cross-examination the writ petitioner posed only one question to PW-1. The question was "*whether on 20.02.1994 he has submitted apology and prayed for pardon from A. R. Khan to which the PW-1 replied in the affirmative*". Such submissions of apology will not obliterate the statements of PW-1 nor does it in any way discredit the writ petitioner's admission regarding assault upon the PW-1, contained in the Exhibit-24. This exhibit-24 constitutes one amongst other material before the Enquiry Officer. Once there was material to support the conclusion of the Enquiry Officer, we are of the considered view that sufficiency of the same is not open to scrutiny by this Court in exercise of judicial review under Article 226 of the Constitution of India. We, therefore, do not find any reason to interfere with the order passed by the Hon'ble Single Judge dismissing the petitioner's writ petition.

16. Insofar as the other issue regarding the punishment being shocking to conscience outrageously excessive and disproportionate to the allegations/misconduct we find no force in such submission. The quantum of punishment, is required to be decided having regard to the nature of service, the misconduct and other mitigating circumstances, if any. There is no mitigating circumstance in the present case. Insofar as the nature of services is concerned, the petitioner was serving a Central Armed Forces (CISF) as a Constable. Dedication to duty, commitment and discipline, therefore, are of paramount consideration in such a service. The same does not leave any scope for considering the nature of misconduct of assaulting a superior, force officer, with any leniency whatsoever.
17. The learned Advocate in support of his submission regarding a disproportionate punishment relied upon decision of the Apex Court in the case of ***Ranjit Thakur*** (*supra*). The judgment lays down a proposition in this regard which is binding on this court. As per the judgment the sentence has to suit the offence and the offender. If the penal consequences are found to be excessive, vindictive and shocking to the conscience the same would be liable to interference. This decision, however, does not apply to the facts and circumstances of the present case, noted above. The punishment of dismissal cannot be said to be disproportionate, outrageously, excessive or shocking to the conscience when viewed keeping in the background the proved misconduct against the writ petitioner, a constable, of assaulting a superior officer in an armed force.
18. The appeal is dismissed.

19. The learned advocate for the appellant further submits that this Court should observe that if there is any admissible dues payable to the petitioner, the authority would be obliged to pay the same. Observations in this regard have been made by the Hon'ble Single Judge in the order under appeal, which we have not interfered with. Therefore, it is needless to make any such observation. The petitioner would be at liberty to avail the benefit of the observations of the Hon'ble Single Judge.
20. Urgent Photostat Certified copy of this order, if applied for, be supplied to the parties upon compliance with all necessary formalities.

(MADHURESH PRASAD, J.)

(PRASENJIT BISWAS, J.)