

2025 LiveLaw (SC) 668

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SURYA KANT; J., NONGMEIKAPAM KOTISWAR SINGH; J.

May 20, 2025

CIVIL APPEAL NO. OF 2025 (Arising out of SLP(C) No.18628/2019)

UNION OF INDIA & ORS. *versus* NO.900224364 CONST/G.D. JAGESHWAR SINGH

Constitution of India; Articles 14, 16 and 21 - Service Law - Disciplinary Action - Moral Turpitude - Dismissal from Service - Proportionality of Punishment - Doctrine of Proportionality - This doctrine forbids the competent authority to act arbitrarily, vengefully or so harshly that the punishment awarded to a delinquent employee pricks the conscience of the court. Held, Respondent-Constable was a member of a disciplined Para Military Force and was posted in sensitive border area. He was obligated to perform his duties and guard the cash boxes with utmost dedication, honesty, commitment and discipline. Contrary to the faith and trust reposed in him by his superiors, he broke open the cash box. On being found guilty of gross misconduct involving moral turpitude, relying on confessional statement and evidences, it is duty of Disciplinary authority to impose a punishment on Respondent. This duty increases especially in Para military forces. All the members of the force must note that there is zero tolerance for such brazen misconduct, where the guardian of the cash box became its looter. The genuineness of the respondent's confession has not been doubted by the High Court. High Court ought not to have exercised its discretionary jurisdiction to compel the authorities to impose a punishment less than dismissal from service. Misconduct proved against respondent is so grave and alarming that any punishment less than dismissal from service would prove inadequate and insufficient. High Court ought not to have applied doctrine of proportionality herein. Appeal allowed. (Paras 10, 11)

[Arising out of impugned final judgment and order dated 27-09-2018 in SPA No.200/2013 passed by the High Court of Uttarakhand at Nainital]

For Petitioner(s): Mr. Brijender Chahar, A.S.G. Mr. Digvijay Dam, Adv. Mr. Sarthak Karol, Adv. Ms. B. Sunita Rao, Adv. Mr. Vivek Narayan Sharma, Adv. Mr. Arvind Kumar Sharma, AOR Mr. Shreekant Neelappa Terdal, AOR

For Respondent(s): Ms. Neema, Adv. Mr. Rajesh, AOR

ORDER

1. Leave granted.
2. The Union of India and the Indo Tibetan Border Police (in short, the "ITBP") are in appeal against the order dated 27.09.2018 passed by a Division Bench of the High Court of Uttarakhand, whereby the order dated 08.11.2012 rendered by a learned Single Judge has been upheld. The cumulative fact of both the orders is that the respondent, who was dismissed from service, has been granted relief with respect to the quantum of punishment and a direction has been issued to the appellants to reconsider whether the order of dismissal could be reduced to any lesser punishment.
3. The respondent was recruited as a Constable in ITBP on 30.11.1990. He was performing the duty of Sentry during the intervening night of 04.07.2005/05.07.2005 at Kote. In the Kote, cash boxes of 'A', 'B', 'XE' and 'T' Coys were kept. The respondent knew that the cash box contained lakhs of rupees for disbursement to the Coy personnel. The

respondent allegedly broke open the lock of the Kote, took the cash, concealed the cash box about 200 yards away from the Kote, and ran away from the Post.

4. When the incident came to the notice of the Company Commander, he immediately made a search of the nearby area as well as the vehicle going towards Uttar Kashi, but the respondent could not be traced. The Company Commander then reported the matter to the Commanding Officer of the Battalion. This followed an FIR on 06.07.2005 registered against the respondent. The FIR was followed by a Court of Enquiry, in which it was duly established that respondent was guilty of committing the crime. In fact, on being arrested, the respondent confessed his complicity, and pursuant to the findings given by the Summary Force Court, he was dismissed from service on 14.11.2005. In the said enquiry, the respondent was found guilty on all five charges. He filed a departmental appeal, which was dismissed. The respondent thereafter approached the High Court through a writ petition. The learned Single Judge of the High Court rejected the respondent's contention that confession was made under threat or coercion and categorically held that, "I am unable to accept this belated plea as conduct of the petitioner does not demonstrate that it was procured under threat and coercion. It would have been open for the petitioner to approach the closest police station for recording his protest that confessional statement has been obtained by threat." The learned Single Judge, thus, firmly held that the story of involuntary confession was unacceptable.

5. Learned Single Judge thereafter delved into the issue of quantum of punishment and observed that the Disciplinary Authority has straightaway passed the extreme punishment of dismissal from service. It was opined that the proportionality principle was not followed, and as such, the order of dismissal from service as well as the Appellate order "suffer from serious infirmity and illegality as it is a question of taking away of livelihood of a particular person."

6. The learned Single Judge, thereafter, observed that respondent did not deny, rather cooperated with the Disciplinary Authority, himself, making it clear that he was guilty of the misconduct. This amounted to "clear conscience and repentance". This change in mind, according to the High Court, stood as a marker that the respondent sought to rectify himself. It is after these observations that the learned Single Judge concluded as follows:

"I, therefore, keep both the orders in abeyance for its operation and I direct the Appellate Authority, who is a superior one, with an independent mind and without being influenced by the earlier decision, shall consider the question of quantum of punishment in the facts and circumstances of this case and in the process, the petitioner should be heard personally with service of notice. In the event, the order of dismissal is reduced to any sort of punishment lesser than dismissal one then the earlier orders will stand set aside and the fresh order, which might be passed will be in operation. Consequently, the petitioner will get benefit to that extent."

7. The Union of India and ITBP preferred an IntraCourt Appeal, which has been summarily dismissed by a Division Bench of the High Court *vide* the impugned order, after finding that "there is no illegality or perversity in the order dated 08.11.2012, rendered by learned Single Judge". It was also observed that the only direction issued was to reconsider the quantum of punishment, which must be commensurate with the alleged misconduct.

8. Still aggrieved, the appellants are before this Court. On 02.08.2019, notice was issued and operation of the order of the High Court was stayed.

9. We have heard learned Additional Solicitor General of India on behalf of the appellants and Ms. Neema, a bright and brilliant young lawyer, on behalf of the respondent.

10. As a general principle, not only in service jurisprudence but also in other branches of law, the doctrine of proportionality is deeply embedded as a part of constitutionalism. Traces of this doctrine are visible through Articles 14, 16, and 21 of our Constitution. The doctrine of proportionality forbids the competent Authority to act arbitrarily, vengefully, or so harshly that the punishment awarded to a delinquent employee pricks the conscience of the Court. For example, when the punishment of dismissal is awarded on a trivial issue, the Court will be well within its jurisdiction to question the quantum of punishment and annul it. However, the enforcement of the maxim varies from case to case as the facts and circumstances of each case are necessary parameters to decide how to invoke this principle.

11. In the instant case, the respondent was a member of a disciplined Para Military Force. He was posted in a sensitive border area. He was performing the duties of Sentry on the consequential night, fully aware of the cash amount lying in the cash box. The respondent, was obligated to perform his duties and guard the cash boxes with utmost dedication, honesty, commitment, and discipline. However, contrary to the faith and trust reposed in him by his superiors, he broke open the cash box. He has, therefore, committed robbery of the cash amount, which he was designated to protect. The allegation has been duly proved against the respondent in the Summary Court Proceedings based upon the multiplicity of evidence, including the confessional statement made by respondent. The fairness of the summary enquiry or the genuineness of the respondent's confession has not been doubted by the High Court. Furthermore, a positive finding, upholding the enquiry as well as the voluntary confession, has been returned. On being found guilty of gross misconduct involving moral turpitude, it became the bounden duty of the Disciplinary Authority to impose a befitting punishment upon the respondent. This duty is amplified, especially in Para Military Forces, where discipline, ethics, loyalty, dedication to service, and reliability are essential to the job. All members of the force must note that there is zero tolerance for such brazen misconduct, where the guardian of the cash box became its looter.

12. The past service record of the respondent also dissuades any sympathy. It is on record that he was found guilty of minor misconducts on eight separate occasions, where punishments were awarded. It may be true that the previous punishments would ordinarily not be a factor to determine the quantum of punishment with respect to the subject misconduct. However, the High Court's reasoning, that "livelihood of a person, has to be evaluated keeping the overall conduct of an official," would fail to overcome the undesirable trails of misconduct left by the respondent over the years. The High Court ought not to have exercised its discretionary jurisdiction to compel the Authorities to impose a punishment less than dismissal from service. In fact, the misconduct proved against the respondent is so grave and alarming that any punishment less than dismissal from service would prove inadequate and insufficient.

13. For the reasons afore stated, we allow the appeal; set aside the impugned order dated 27.09.2018 and order dated 08.11.2012 of the High Court to the extent of directing reconsideration of the punishment imposed; and consequently, dismiss the writ petition filed by the respondent before the High Court. Ordered accordingly.