



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No.14984/2013

R. Magadaiah Ex Constable S/o Shri Rangaiah, Age-43 years R/o Shambu Devana Halli, Post-Madbal, P.S. Magadi, District-Bangalore (Karnataka)

-----Petitioner

Versus

1. I.G. CRPF, Rajasthan Sector, Kendriya Sadan, Block-B, IIIrd Floor, Vidhyadar Nagar, Jaipur (Rajasthan)
2. ADIG, Group Centre 1st, CRPF, Ajmer (Rajasthan)

-----Respondents

For Petitioner(s)	:	Mr.Sunil Kumar Singh, (through VC)
For Respondent(s)	:	Mr.Anand Sharma with Ms.Priyanka Gupta

JUSTICE ANOOP KUMAR DHAND

Order

Reserved on : 27/01/2025

Pronounced on : 05/02/2025

Reportable

1. By way of filing of this petition, a challenge has been led to the impugned order dated 11.10.2008, by which the petitioner has been dismissed from service. Aggrieved by the aforesaid order, the petitioner preferred a departmental appeal, however, the same was also rejected vide order dated 27.09.2012 and the order passed by the Disciplinary Authority dated 11.10.2018 was upheld.

2. Learned counsel for the petitioner submits that the petitioner was granted leave with effect from 26.08.2007 till 25.10.2007 on account of back pain, however, he could not report on the duty



and submitted an application before the higher authorities for extension of his leave. Counsel submits that the petitioner was arrested and confined and thereafter, charge-sheet was served upon him with the charge that he entered into the room of a fellow Constable un-authorizedly and stayed there. Counsel submits that when the Departmental Enquiry was conducted against the petitioner, statements of the wife of the fellow Constable, i.e., Poornima were recorded wherein she denied the allegations levelled against the petitioner, hence, under these circumstances, the services of the petitioner should not have been dismissed. Counsel submits that this material fact has been overlooked by the Disciplinary Authority as well as by the Appellate Authority while passing the orders impugned, hence, under these circumstances, interference of this Court is warranted.

3. *Per contra*, learned counsel for the respondents opposed the arguments raised by counsel for the petitioner and submitted that the petitioner being a member of the disciplined force was expected to adhere to discipline, but he overstayed beyond the period of sanctioned leave. Counsel submits that the petitioner was posted at Bangalore and he was transferred to Ajmer, but he did not report at Ajmer and subsequently, he was found crossing the campus of the respondents at Bangalore and unauthorizedly entering the room of his fellow Constable. Counsel submits that such conduct of the petitioner was not warranted, as per the Rules prevailing, hence, under these circumstances, the charge-sheet was served upon the petitioner wherein the statements of not only



the wife of his fellow Constable, but also the other witnesses, namely, A. S. Durrani, M.R. Chandran, Usha Sethi, K.R.V. Nair, V.M. Melar Sethi, L Suresh, Girdhari Lal, Sunil Kumar Yadav & Prabhu Singh Meena, were recorded and an opportunity of cross-examination was also afforded to the petitioner and after conclusion of the enquiry, the guilt of the petitioner was found to be proved and thereafter, the matter was sent to the Disciplinary Authority who has taken a decision to terminate the petitioner from service. Counsel submits that copy of the Enquiry Report was supplied to the petitioner before passing the order impugned. Counsel submits that the petitioner has submitted a delayed appeal after a lapse of more than three years from the date of passing of the order impugned, however, the appeal was also rejected by the Appellate Authority by passing a reasoned and cogent order dated 27.09.2012, which requires no interference by this Court. Counsel submits that no perversity whatsoever in the departmental enquiry has been pointed out by the petitioner, hence, under these circumstances, this Court cannot act as a reviewing authority, to re-appreciate the evidence recorded during the disciplinary proceedings.

4. In support of his contentions, the counsel for the respondents has placed reliance upon the judgment passed by the Hon'ble Apex Court in the case of **Union of India & Anr. Vs. B.C. Chaturvedi** reported in **(1995) 6 SCC 750**. Counsel submits that in view of the submissions made herein above, the instant petition is liable to be rejected.



5. Heard and considered the submissions made at Bar and perused the material available on record.

6. Perusal of the record indicates that a charge-sheet under Section 11 (1) of the Central Reserve Police Force Act, 1949 (for short, "the Act of 1949") read with Rule 27 of the Central Police Force Regulation, 1995 was served upon the petitioner alleging therein that being a member of the Central Reserve Police Force (for short, "the C.R.P.F."), he misbehaved and did misconduct by entering into the C.R.P.F. campus on 25.03.2008 (during his absence after expiry of leave period) and entered into the residential house (quarter) of Band Constable, L. Suresh, where only his wife and young child were present. Finding this suspicious, the petitioner was asked by the patrolling R.P. on Duty to come out from the quarter, but when he attempted to flee, he was apprehended. Such an act and conduct amounts to gross misconduct.

7. Upon receiving the charge-sheet, the petitioner submitted his reply and pleaded not guilty. Thereafter, an enquiry was conducted, wherein statements of 13 witnesses were recorded. Except the witness Poornima, all other 9 witnesses deposed against the petitioner. Although Poornima denied the occurrence of alleged incident dated 25.03.2008 while most of the other witnesses have stated that the petitioner entered into the residential quarter of the Band Constable, L. Suresh, and he did not come out when asked to do so, hence, was apprehended. The Enquiry Officer held the petitioner guilty of misconduct and found the charges against him to be proved.



8. On the basis of the above Enquiry Report the Disciplinary Authority decided to dismiss the petitioner from services vide impugned order dated 11.10.2008. Against which, the petitioner submitted an appeal before the Appellate Authority, however, the same was also rejected vide impugned order dated 27.09.2012 and subsequently, his revision petition too came to be rejected.

9. The star witness Poornima w/o Band Constable, L. Suresh, did not support the charges levelled against the petitioner when her statements were recorded during the course of enquiry. A specific question was asked to her that, "Whether the Band Constable R. Magadaiah (the petitioner) entered her quarter No.326 Type-II or not?" Which she answered in negative and stated that no one came into her quarter. She further stated that she is unaware of the fact that from where the petitioner was apprehended. While the other witnesses have stated a different story that the petitioner was present in quarter No.326 Type-II and when he was asked to come out, he tried to flee, and was caught by the authorities.

10. The allegation of unauthorized entry of the petitioner into quarter No.326 Type-II was proved by the witnesses during the domestic enquiry. On the basis of this fact, the petitioner was found guilty of misconduct and accordingly, he was dismissed from service.

11. Now the questions which remain for consideration of this Court are, "Whether unauthorized entry of the petitioner in the quarter of fellow Constable amounts to such gross misconduct, which warrants punishment of dismissal from service" and



"Whether for such conduct, the punishment of dismissal from service is proper or inappropriate?"

12. This Court is conscious enough about the scope of judicial interference on the decision of the Disciplinary Authority. The scope of interference is very narrow and limited in such like matters, but the High Court has powers of moulding the relief in case where the punishment/penalty imposed shocks the judicial conscience.

(12.1) The Hon'ble Apex Court in the case of **B.C. Chaturvedi** (supra), has held in paras 12, 2 and 5 as under :-

"12. 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 fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held that proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in



violation of statutory rules prescribing the mode of inquiry 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 never reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

"2. This appeal and the companion appeal filed by the Union of India arise from the order of the Administrative Tribunal in O.A. No. 609 of 1986 dated March 14, 1989. Appellant's integrity, while he was working as Income-tax Officer, had come under cloud. On an investigation made by the C.B.I., it had stated to the respondent that though the evidence collected during investigation disclosed that the appellant had assets disproportionate to his known source of income, as the evidence was not strong enough to lay prosecution under Section 5(1)(e) of the Prevention of Corruption Act, 1947 (for short, 'the Act'), the competent authority might proceed against the appellant in a departmental inquiry."

"5. While resisting the contention, the learned Counsel for the Union argued that the Tribunal was not empowered to appreciate the evidence nor to consider the evidence on merits to reach a finding whether the appellant was in possession of disproportionate assets. The Tribunal went wrong in appreciating the evidence. The disciplinary authority had undoubted power and authority to impose punishment. On the facts found by the Inquiry Officer and disciplinary authority that the appellant was in possession of the assets disproportionate to the known source of his income, the Tribunal was unjustified in interfering with the punishment of dismissal from service, and ordering for compulsory retirement, instead."

(12.2) The doctrine of proportionality is thus well recognised concept of judicial review and if it is found that the punishment is disproportionate, then it remains open for the court to interfere under its limited scope of judicial review.



(12.3) The principles of proportionality of punishment vis-a-vis misconduct have been recognised by the Courts of various European countries as well as British Courts. It has time and again been held that if the punishment imposed on an employee is out of proportion, the Court has power to interfere with the same.

In **Council of Civil Service Unions v. Minister for the Civil Services** reported in **(1984) 3 All. E.R. 935**, it has observed that:

"...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'. This 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...."

Their Lordships of the Supreme Court also recognised the theory of proportionality of punishment when they said that "an order imposing punishment, which is shockingly disproportionate or is highly excessive having regard to the gravity of misconduct, is liable to be declared as arbitrary and thus violative of Articles 14 and 16 of the Constitution of India."

(12.4) In **Bhagat Ram v. State of Himachal Pradesh** reported in **(1983) II LLJ 1 SC**, the Apex Court held: (P-7)

"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...".

(12.5) Hon'ble Apex Court in the case of **Chairman cum Managing Director, Coal India Limited v. Mukul Kumar Choudhuri** reported in **(2009) 15 SCC 620**, has dealt with the doctrine of proportionality and the limited scope of High Court under judicial review in paras

19, 20, 21 and 22 as under:-

"19. The doctrine of proportionality is, thus, well-recognized concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision-maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review.

20. One of the tests to be applied while dealing with the question of quantum of punishment would be : would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment.

21. In a case like the present one where the misconduct of the delinquent was unauthorized absence from duty for six months but upon being charged of such misconduct, he fairly admitted his guilt and explained the reasons for his absence by stating that he did not have any intention nor desired to disobey the order of higher authority or violate any of the Company's Rules and Regulations but the reason was purely personal and beyond his control and, as a matter of fact, he sent his resignation which was not accepted, the order of removal cannot be held to be justified, since in our judgment, no reasonable employer would have imposed extreme



punishment of removal in like circumstances. The punishment is not only unduly harsh but grossly in excess to the allegations.

22. Ordinarily, we would have sent the matter back to the appropriate authority for reconsideration on the question of punishment but in the facts and circumstances of the present case, this exercise may not be proper. In our view, the demand of justice would be met if the Respondent No. 1 is denied back wages for the entire period by way of punishment for the proved misconduct of unauthorized absence for six months."

13. In fact, the Hon'ble Supreme Court has held that interference with the quantum of penalty, should only be justified in compelling and strong circumstances which must be explicitly recorded and such interference cannot be based on misplaced sympathy or generosity. Considering the said concept of rendering justice, this court has no hesitation to hold as far as the present case on hand is concerned, that interference is called for, which is not based on misplaced sympathy or generosity, but on the basis of rendering equitable justice which is a hallmark of judicial review, as exercised by this Court under its constitutional jurisdiction under Article 226 of the Constitution of India.

14. This Court, as stated above, has to take into consideration the interests of both the employee and the employer while administering justice without being unduly influenced by any sympathetic considerations. On the basis of over all facts and circumstances as discussed and narrated above, this Court is of the considered view that there must be fairness in all the administrative decisions, particularly when imposing punishment, which deprives an employee of his livelihood, such a decision not



only impacts the employee, but also has serious consequences for their family members.

15. Although allegations have been levelled against the petitioner that he overstayed after expiry of the sanctioned leave period, but no charge was framed in this regard while serving charge-sheet upon the petitioner. In the absence of serving any charge-sheet to this effect and without affording any due opportunity of hearing to the petitioner, the respondents were not justified in treating the above act of the petitioner as misconduct.

16. Looking to the peculiar facts and circumstances of the case and the fact that the petitioner unauthorizedly entered into the staff quarters of fellow employee and did not come out when he was called upon to do so by the officials and that he tried to run and was caught, such an act on the part of the petitioner definitely amounts to misconduct. It is true that discipline is the hallmark of the disciplined forces and its members are not expected to violate the discipline by entering into the residence of fellow members and disobey the command of the higher officers, but the act of the petitioner is not such which warrants his dismissal from service. Such a heavy punishment of "dismissal from service" for the above act or conduct of the petitioner is disproportionate. The Disciplinary Authority could have awarded a lesser penalty upon the petitioner in accordance with law.

17. Bearing in mind the celebrated doctrine of proportionality, the impugned order dated 11.10.2008 and the appellate order dated 27.09.2012 so also the Revision Order dated 15.01.2013 are quashed and set aside. The matter is remitted to the



appropriate authority for reconsideration on the question of punishment and for passing appropriate orders within a period of three months from the date of receipt of the certified copy of this order.

18. Consequently, the instant petition is allowed in part.

19. Parties are left free to bear their costs.

(ANOOP KUMAR DHAND),J

Aayush Sharma /80