

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble Justice Sujoy Paul

And

The Hon'ble Justice Smita Das De

FMA 1537 of 2016

Yeshveer

Vs.

Union of India and others

For the appellant : Mr. Pradip Kumar Roy, Sr. Adv.
Ms. Shruti Mitra, Adv.
Ms. Sumedha Mukhopadhyay, Adv.

For the respondent Union of India: Mr. Bishambhar Jha, Adv.
Mr. Uttam Basak, Adv.

Hearing concluded on : 10.09.2025

Judgment on : 12.09.2025

SUJOY PAUL, J.:

1. This *intra* court appeal takes exception to the order of learned Single Judge dated 15.12.2015 passed in WP 25130(W) of 2015 whereby the learned Single Judge dismissed the writ petition wherein the appellant assailed the disciplinary proceedings and punishment order.

Admitted facts:-

2. The appellant was working as a constable in Central Industrial Security Force (CISF) and at the relevant time was posted in Bongaigaon Refinery and Petrochemicals Limited, Bongaigaon (BRPL). He was deployed at the main gate for the purpose of security. The department issued a major penalty charge-sheet to the appellant on 11th December, 2008. Three charges were

leveled against the appellant. The appellant denied the charges in *toto*. Dissatisfied with the appellant's reply, the disciplinary authority appointed an enquiry officer. The enquiry officer, in turn, recorded the evidence and prepared his enquiry report and found all the charges as proved against the appellant. The disciplinary authority agreed with the enquiry officer and by order dated 10th June, 2009 imposed punishment of 'removal' from service.

3. Aggrieved, the appellant preferred an appeal before the appellate authority. The appellate authority after considering the points raised in appeal, passed the appellate order dated 20th August, 2009 and modified/substituted the punishment by imposing punishment of 'reduction of pay to the stage from Rs.6990/- (PB) + Rs.2000/- (GP) to Rs.6460/- (PB) + Rs.2000/- (GP) in the time scale of pay for a period of three years w.e.f. 12.06.2009 with further direction that appellant will not earn increment of pay during the period of reduction and that on the expiry of this period, the reduction will have the effect of postponing his future increment of pay'.

4. The appellant unsuccessfully challenged the appellate order by filing a revision on 28.06.2010 which came to be dismissed on 28th November, 2010 (Annexure P/6).

5. The appellant filed WP 25130(W) of 2015 to assail the appellate order and disciplinary proceedings. The said writ petition was dismissed on 15.12.2015. The order of learned Single Judge and disciplinary proceedings are subject matter of challenge in this intra-court appeal.

Contention of the appellant:

6. Learned senior counsel for the appellant submits that sheet-charge is bad in law because (i) It is vague and ambiguous in nature. The charge-sheet should be clear and definite. One of the charges against the appellant is that during his absence, 16 strangers entered the industrial premises and 8 came out of the premises. However, their names and identity were not disclosed. This charge is vague in nature and is liable to be interfered with. (ii) The charge no.3 is bad in law because this charge relates to misconduct allegedly committed by the appellant in the year 2007 for which the appellant was already adequately punished. This previous misconduct and punishment could not have formed basis for framing charge no.3.

7. In other words, it was argued that for a misconduct committed in 2007, the appellant has already been punished and imposition of punishment by including previous misconduct amounts to imposing second punishment for the same misconduct.

8. The next submission is that the factual backdrop of the matter shows that the case of prosecution is based on a CCTV footage which is recorded in an electronic document i.e. C.D. The PW5 Shri Anjan Jyoti Baruah entered the witness box and clearly stated that he has not recorded the said C.D. and not deposed anything which gives sanctity to the C.D. The remaining prosecution witnesses have deposed that they have not found the appellant as absent during the period of duty and therefore, the prosecution could not establish its case as per the principle of 'preponderance and probability'.

9. The learned senior counsel for the appellant further submits that the presenting officer asked each and every witness about the C.D. It is admitted fact that in the C.D., the hours were wrongly recorded and as per the allegation, the appellant was absent from 5:15 pm to 5:59 pm whereas the C.D. shows the time between 6:32 hrs. to 6:59 hrs. It was therefore, humanly impossible to record the absence in the CCTV between 5:15 and 5:59 hrs. The recording time is admittedly between 6:32 and 6:59 hrs. It is strenuously contended that the whole story of prosecution is founded upon this defective C.D. which cannot form the basis of punishment on the appellant.

10. The learned senior counsel for the appellant further urged that the delinquent employee can be punished in the departmental enquiry only when charges are proved with utmost clarity. In the instant case, the defective C.D. is insufficient to prove charges against the appellant and said C.D. cannot be a reason to punish the appellant. Apart from this, no prosecution witness could establish the identity of the persons who allegedly entered or went out the BRPL premises during the alleged absence of the appellant. For these cumulative reasons, the learned senior counsel submits that the punishment order and appellate order are bad in law.

11. The learned senior counsel for the appellant also urged that the learned Single Judge has not considered his arguments and points on which disciplinary proceeding was called in question and has passed a sketchy order whereby interference was declined. The appellant deserved a decent hearing after filing of counter affidavit and exception because a major punishment was imposed on the appellant.

The contention of the CISF/employer:

12. Mr. Jha, learned counsel for the department supported the impugned order. He submits that there was no vagueness in the charge-sheet. The charge no.3 is clear and specific. The appellant is not disputing that he faced disciplinary proceedings in the year 2007 and suffered punishment. The charge-sheet gives reference to the previous punishment which shows his misconduct and therefore charge-sheet cannot be said to be vague or illegal on this account.

13. Learned counsel further submits that the scope of interference by this court in a disciplinary proceeding is limited. This court is not required to re-appreciate the evidence. If decision making process is violative of principle of natural justice or **Central Industrial Security Force Rules, 2001 (Rules of 2001)** and such violation caused any prejudice, interference can be made. Interference can also be made if punishment is shockingly disproportionate. By placing reliance on **AIR 1996 Supreme Court 1561** (*State of U.P. and others vs. Nand Kishore Shukla and another*), Mr. Jha points out that even if one charge is proved and the said charge is sufficient to affirm the punishment, interference cannot be made. Reference is made to a Division Bench judgment in the case of **Union of India vs. R. Kasivelu** in MAT 2290 if 2024 decided on 09.07.2025 to put forth the argument that the nature of job in para-military force is totally different. The said force is a disciplined force and the misconduct has to be examined from that point of view. It is further submitted that doctrine of proportionality was also considered in the said judgment.

14. Mr. Jha further submits that the defence submission of the appellant itself shows that he has admitted the charges. To elaborate, learned counsel for the department urged that so far charge no.3 is concerned, the factum of undergoing previous punishment is not in dispute. In this case, it is admitted by the appellant that he suffered a previous punishment and therefore charge no.3 or decision of the authority to punish him cannot be said to be illegal.

15. So far, charge nos.2 and 3 are concerned, learned counsel submits that there is an admission of the appellant in relation to charge no.2 as well. The appellant was subjected to disciplinary proceedings in view of the material available on record and all the authorities namely enquiry officer, disciplinary authority, appellate authority and revisional authority who are authorities to record finding of fact have considered the entire record and taken a plausible view which does not warrant any interference from this court.

16. Parties confine their argument to the extent indicated above.

17. We have heard at length and perused the record.

Analysis:

Vagueness of Charge:

18. In principle, there is no difficulty in accepting the contention of the learned counsel for the appellant that charges leveled against the delinquent employee must be clear and definite. In absence thereof, the employee does not get the opportunity to properly defend himself. Thus, charges must be framed with accuracy and precision. However, the criticism on of the present

charge-sheet is not acceptable because the allegation against the constable is that he left the gate unguarded for some time and certain strangers entered the gate unauthorizedly. It was not necessary for the prosecution to mention names of such strangers. The core issue is whether appellant left the gate unguarded. The identification of such persons, their names etc. is of no relevance. Thus, we are unable to hold that charge-sheet was vague and liable to be interfered with.

19. So far criticism on of charge no. 3 is concerned, we are unable to persuade ourselves with the line of argument of learned senior counsel for the appellant. Merely because description of previous misconduct and punishment is mentioned in Article of Charge III, the charge-sheet and disciplinary proceeding will not become illegal. The previous misconduct and charge is mentioned for the purposes of deciding the question of quantum of punishment. It is rather in the benefit of the delinquent employee that disciplinary authority disclosed that previous misconduct and punishment is part of a charge so that employee can put forth his defence. It was open to the employee to apprise the disciplinary authority whether such punishment mentioned in Article of Charge III was interfered with departmentally or by a court of competent jurisdiction.

20. It is apposite to consider certain judgments of Supreme court wherein Court opined that to punish an employee based on past record, it is proper to mention it in the charge-sheet itself. The relevant paragraphs of these judgments reads thus:

In the case of **State of Mysore v. K. Manche Gowda**, 1963 SCC OnLine SC 50, it was held that:

“8. Before we close, it would be necessary to make one point clear. **It is suggested that the past record of a government servant, if it is intended to be relied upon for imposing a punishment, should be made specific charge in the first stage of the enquiry itself and, if it is not so done, it cannot be relied upon after the enquiry is closed and the report is submitted to the authority entitled to impose the punishment.** An enquiry against a government servant is one continuous process, though for convenience it is done in two stages. The report submitted by the Enquiry Officer is only recommendatory in nature and the final authority which scrutinizes it and imposes punishment is the authority empowered to impose the same. **Whether a particular person has a reasonable opportunity or not depends, to some extent, upon the nature of the subject-matter of the enquiry. But it is not necessary in this case to decide whether such previous record can be made the subject matter of charge at the first stage of the enquiry. But, nothing in law prevents the punishing authority from taking that fact into consideration during the second stage of the enquiry, for essentially it relates more to the domain of punishment rather than to that of guilt. But what is essential is that the government servant shall be given a reasonable opportunity to know that fact and meet the same.**”
(Emphasis Supplied)

In the case of **Union of India v. Bishamber Das Dogra**, (2009) 13 SCC 102, it was recorded as under:

“24. In *State of Mysore v. K. Manche Gowda* [AIR 1964 SC 506] **this Court held that the disciplinary authority should inform the delinquent employee that it is likely to take into consideration the past conduct of the employee while imposing the punishment unless the proved charge against the delinquent is so grave that it may independently warrant the proposed punishment.**”
(Emphasis Supplied)

In the case of **Mohd. Yunus Khan v. State of U.P.**, (2010) 10 SCC 539:

“35. **However, in case of misconduct of a grave nature, even in the absence of statutory rules, the authority may take into consideration the indisputable past conduct/service record of the delinquent for “adding the weight to the decision of imposing the punishment if the fact of the case so required”.**”
(Emphasis Supplied)

21. In the light of these judgments, no fault can be found in the action of insertion of charge no. 3 in the charge-sheet. At the cost of repetition, such insertion is only for the purpose of deciding the question of punishment by considering the past record. The charge no. 3 thus, does not attract double jeopardy doctrine.

22. Much emphasis is laid by learned senior counsel for the appellant on the C.D. produced in the departmental enquiry. It is submitted that said C.D. is in fact footage of CCTV and the time of absence is not matching. To be more specific, the argument of learned senior counsel is that appellant allegedly remained absent from 5:15 pm to 5:59 pm whereas the C.D. shows the time of recording between 6:32 hrs. to 6:59 hrs. The contention is that when recording of CCTV started from 6:32 hrs., there was no occasion to record appellant's absence for a time prior to the time of recording i.e. 5:15 pm to 5:39 pm. On the first blush, the argument appears to be attractive but lost much of its shine on closer scrutiny of the record of disciplinary proceeding. Pertinently, in statement of imputation of misconduct in support of Article of charge no. 1 itself, the disciplinary authority recorded that CCTV timing was advanced by one hour which was confirmed by PW-5 A.J. Baruah. Since, CCTV timing was advanced, this technical argument regarding impossibility of recording is not acceptable.

23. This is trite that strict principles of Evidence Act are not applicable to the disciplinary proceedings. The degree of proof as per 'preponderance of probability' is applicable and not that 'charges must be proved beyond reasonable doubt'. If there is some evidence to bring home the guilt that is sufficient in the departmental enquiry. Importantly, in the cross-examination of the appellant, he categorically admitted in answer to question no. 11 that the duty of constable was to remain on the gate and ensure that no unauthorized person enters and no material of the plant goes out of the plant by way of theft. In answer to question no. 12 he admitted that when he left

the gate and visited ATM to withdraw money, he did not inform the shift in-charge about his movement. The appellant informed that he requested constable D.K. Rana to take care of appellant's duty during his absence. In reply to the next question, appellant candidly admitted that he came back from ATM and found that constable D.K. Rana who was entrusted with the work of security of the gate by the appellant during his absence was absent. In view of this statement of appellant, there is no manner of doubt that appellant left the gate unguarded for some time and when he came back, the person who was entrusted to look after appellant's work by him was also absent.

24. In our considered opinion, the appellant was entrusted with a very sensitive job being a member of para-military discipline force. The appellant was not supposed to leave the gate unguarded and without permission. It is also not of much importance whether during the period of absence of appellant in the main gate of factory, actually certain persons entered or came out or not. The negligence of appellant in keeping the gate unguarded itself is a serious misconduct. In a case of this nature, where security of a factory gate was in the hands of appellant, he was expected to remain on the gate during his entire duty. In case of any emergency, he should have informed his shift in-charge and after alternative arrangement of security is made, he could have left the factory gate. We are not impressed with the argument that prosecution has not established the identity of persons who entered the factory premises during the said period and hence punishment is bad in law.

25. As held by Supreme Court in ***Nand Kishore Sukhla (supra)*** the scope of interference in disciplinary proceeding is limited. If decision making process is polluted and runs contrary to the principles of natural justice and such violation has caused serious prejudice to the employee, interference can be made. However, in the instant case, no such violation of principles of natural justice could be established.

26. The punishment can be interfered with if it shocks the conscience of this Court. This Court cannot sit as an appellate authority to reweigh the evidence. In the instant case, the appellate authority found that punishment was disproportionate and therefore, reduced/substituted it. We are unable to hold that substituted punishment is not commensurate to the misconduct. Putting it differently, we are unable to hold that the substituted punishment imposed by appellate authority is shockingly disproportionate.

27. In view of foregoing analysis, in our opinion, there is no serious flaw in the decision making process. This is also not a case of no evidence. There is no perversity in the findings. The appellate authority has already reduced the punishment. The modified punishment is not shockingly disproportionate. Thus, we find no reason to interfere in this matter.

28. *Intra* court appeal fails and hereby **dismissed**.

(SUJOY PAUL, J.)

I agree.

(SMITA DAS DE, J.)