

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

**W.P.(S). No. 5214 of 2011**

Ali Ahmad, s/o. late Mathura Ahmad ..... **Petitioner**  
**Versus**

1. The State of Jharkhand through the Home Secretary, Govt. of Jharkhand, Ranchi.
2. The Director General of Police, Govt. of Jharkhand, Ranchi.
3. The Inspector General of Police, Kolhan Range, Bokaro.
4. The Deputy Inspector General of Police, Koyala Range, Bokaro.
5. The Superintendent of Police, Dhanbad.

..... **Respondents.**

**CORAM: HON'BLE DR. JUSTICE S.N.PATHAK**

For the Petitioner : Mr. Anshuman Kumar, Advocate  
For the Respondents : Mr. Rahul Saboo, GP-II  
Mr. Kunal Chandra Suman, AC to GP-II

***12/ 17.01.2024***      Heard the parties.

2. Petitioner has approached this Court with a prayer for issuance of writ in the nature certiorari for quashing the force order No. 2679 of 1999, whereby respondent No. 5 has imposed the punishment of dismissal from service.

Petitioner further prayed for quashing and setting aside the order dated 25.10.2008 and 31.07.2010 by which the appeal and memorial preferred by the petitioner stood rejected and the order of punishment has been affirmed.

Petitioner has also prayed that after quashing the aforesaid orders respondents be directed to reinstate the petitioner in service with all consequential benefits.

3. The brief facts of the case is that in the year 1997 while the petitioner was posted as Hawaldar at Dhanbad he proceeded on leave w.e.f. 13.09.1997 and was supposed to join the duty on 18.09.1997 but he could not join on time as he fell ill and was under treatment of Dr. Brajendra Singh, PMCH Dhanbad. Though the petitioner intimated about his illness to his higher authorities through Registered Post but inspite of the same, the Superintendent of Police issued memo of charge against the petitioner and

initiated departmental proceeding against the petitioner. It is the further case of petitioner that neither any opportunity was given nor any intimation was sent to the petitioner regarding the same and even on conclusion of enquiry, the enquiry report was not served to the petitioner. Subsequently, only on the basis of enquiry report, the Superintendent of Police, Dhanbad vide Force Order No. 2679/ 1999 issued order of punishment dismissing the petitioner from service. Against the said order of dismissal, the petitioner preferred Appeal and Memorial which also stood rejected and the order of dismissal was affirmed by the two Authorities.

Aggrieved by the same, the petitioner has knocked the door of this Court.

4. Mr. Anshuman Kumar, learned counsel appearing for the petitioner vociferously argues that the impugned orders are not tenable in the eyes of law. Learned counsel further argues that merely on the basis of enquiry report, the punishment was inflicted by the Disciplinary Authority. Learned counsel further argues that the Appellate Authority and the Revisional Authority without considering defence taken by the petitioner have mechanically affirmed the order of punishment inflicted by the Disciplinary Authority. As such, the impugned orders are not tenable in the eyes of law and fit to be quashed and set aside. Learned counsel further argues that the departmental proceeding was conducted ex-parte since the petitioner was not informed about initiation of such proceeding and behind his back the same was conducted. Even the copy of enquiry report was not supplied to the petitioner and the Superintendent of Police, Dhanbad merely on the basis of findings returned by the Enquiry Officer has inflicted the punishment of dismissal from service which is a major punishment. Even the Appellate Authority and the Revisional Authority have not considered the defence taken by the petitioner and mechanically affirmed the order of punishment by rejecting the Appeal and Memorial preferred by the petitioner. Learned counsel submits that for the aforesaid facts and reasons, the impugned orders are not tenable in the eyes of law and the same are fit to be quashed and set aside and the respondents be directed to reinstate the petitioner into service with all consequential benefits.

5. Learned counsel representing the respondent-State by vehemently opposing the contention of learned counsel for the petitioner submits that order of Disciplinary Authority was passed after taking into consideration the enquiry report, hence the same was subsequently affirmed by the Appellate Authority as well as by the Revisional Authority. Learned counsel further argues that in a Police Force indiscipline cannot be tolerated. The petitioner who is the member of Police Force has remained absent unauthorizedly beyond the period of leave sanctioned in his favour which cannot be tolerated and therefore, the punishment order is fully justified, which was later on affirmed by the Appellate Authority as well as the Revisional Authority. Learned counsel further argues that on 06.01.2023, this Court directed the respondents to produce the original file of the departmental proceedings which they have produced before the Court. Drawing attention of the Court towards the original records of the departmental proceeding related to petitioner, it was submitted that ample opportunity of hearing has been given to the petitioner and after following the cardinal principle of natural justice, the order of dismissal has been passed holding the petitioner guilty of charge. Learned counsel further argues that law is well settled that this Court sitting under Article 226 of the Constitution cannot reappraise the evidences.

6. Having heard the rival submissions of learned counsel for the parties and upon perusal of the documents brought on record, this Court is of the considered view that no case is made-out for the interference for the following facts and reasons:

- (I) The findings of the enquiry officer were taken into consideration and the punishment order was passed by the Disciplinary Authority assigning cogent and valid reasons. The same was affirmed by the Appellate Authority as well as by the Revisional Authority, which requires no interference.
- (II) Nothing has been brought on record to show that there was any procedural laches in the proceedings rather a full-fledged enquiry was conducted following the provisions of natural justice by extending the petitioner ample opportunity of being heard.

(III) Admittedly, when the order of punishment was affirmed upto the Revisional Authority, this Court refrains itself from interfering with the same.

7. The Hon'ble Apex Court in the case of **B.C. Chaturvedi Vs. Union of India & Ors., reported in (1995) 6 SCC 749** has held thus:

*“ The High Court does not act as appellant authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to the decision of a case on merit as an appellate authority.”*

(ii) *Insufficiency of materials cannot be a ground to annul the findings of the Enquiry Officer neither can a substituted view be taken in place of Enquiry officer/disciplinary authority in cases of departmental proceeding.*

The Hon'ble Apex Court in case of **Apparel Export Promotion Council v. A.K. Chopra**, reported in **(1999) 1 SCC 759** has held as under:

*16. The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to reappraise the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some*

*other punishment or penalty. Both the learned Single Judge and the Division Bench of the High Court, it appears, ignored the well-settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the court, in exercise of the power of judicial review, is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process. Lord Hailsham in Chief Constable of the North Wales Police v. Evans<sup>1</sup> observed:*

*“The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches, on a matter which it is authorized or enjoined by law to decide for itself, a conclusion which is correct in the eyes of the court.”*

*22. In the established facts and circumstances of this case, we have no hesitation to hold, at the outset, that both the learned Single Judge and the Division Bench of the High Court fell into patent error in interfering with the findings of fact recorded by the departmental authorities and interfering with the quantum of punishment, as if the High Court was sitting in appellate jurisdiction. From the judgments of the learned Single Judge as well as the Division Bench, it is quite obvious that the findings with regard to an “unbecoming act” committed by the respondent, as found by the departmental authorities, were not found fault with even on reappreciation of evidence. The High Court did not find that the occurrence, as alleged by the complainant, had not taken place. Neither the learned Single Judge nor the Division Bench found that the findings recorded by the enquiry officer or the departmental appellate authority were either arbitrary or even perverse. As a matter of fact, the High Court found no fault whatsoever with the conduct of enquiry. The direction of the learned Single Judge to the effect that the respondent was not entitled to back wages and was to be posted outside the city for at least two years, which was upheld by the Division Bench, itself demonstrates that the High Court believed the complainant’s case fully for otherwise, neither the withholding of back wages nor a*

*direction to post the respondent outside the city for at least two years was necessary. The High Court in our opinion fell in error in interfering with the punishment, which could be lawfully imposed by the departmental authorities on the respondent for his proven misconduct. To hold that since the respondent had not “actually molested” Miss X and that he had only “tried to molest” her and had “not managed” to make physical contact with her, the punishment of removal from service was not justified, was erroneous. The High Court should not have substituted its own discretion for that of the authority. What punishment was required to be imposed, in the facts and circumstances of the case, was a matter which fell exclusively within the jurisdiction of the competent authority and did not warrant any interference by the High Court. The entire approach of the High Court has been faulty. The impugned order of the High Court cannot be sustained on this ground alone. But there is another aspect of the case which is fundamental and goes to the root of the case and concerns the approach of the Court while dealing with cases of sexual harassment at the place of work of female employees.*

8. Further, in case of **Union of India & Ors. vs. P. Gunasekaran**, reported in **(2015) 2 SCC 610**, the Hon’ble Apex Court has clearly observed that, *“High Court in exercise of its powers under Articles 226 and 227 cannot venture into appreciation of evidence or interfere with conclusions in enquiry proceedings if the same are conducted in accordance with law, or go into reliability/ adequacy of evidence, or interfere if there is some legal evidence on findings are based, or correct error of fact however grave it may be, or go into proportionality of punishment unless it shocks conscience of court”*.
9. The Hon’ble Apex Court in case of **State of Bihar & Ors. vs. Phulpari Kumari**, reported in **(2020) 2 SCC 130** has held as under:

*“6. The criminal trial against the respondent is still pending consideration by a competent criminal court. The order of dismissal from service of the respondent was pursuant to a departmental inquiry held against her. The inquiry officer examined the evidence and concluded that the charge of demand and acceptance of illegal gratification by the respondent was proved. The learned Single Judge and the Division Bench of the High Court committed an error in reappreciating the evidence*

*and coming to a conclusion that the evidence on record was not sufficient to point to the guilt of the respondent:*

*6.1. It is settled law that interference with the orders passed pursuant to a departmental inquiry can be only in case of “no evidence”. Sufficiency of evidence is not within the realm of judicial review. The standard of proof as required in a criminal trial is not the same in a departmental inquiry. Strict rules of evidence are to be followed by the criminal court where the guilt of the accused has to be proved beyond reasonable doubt. On the other hand, preponderance of probabilities is the test adopted in finding the delinquent guilty of the charge.*

*6.2. The High Court ought not to have interfered with the order of dismissal of the respondent by re-examining the evidence and taking a view different from that of the disciplinary authority which was based on the findings of the inquiry officer.”*

Since the charges relate to indiscipline and dereliction of duties, this Court is of the view that no illegality or any infirmity has been committed by the respondents in inflicting the punishment of dismissal from service. The Police Force is a disciplined force and each and every Police Personnel is required to maintain utmost discipline. Even iota of indiscipline attracts punishment.

**10.** As a sequitur to the aforesaid observations, judicial pronouncements and legal propositions, the writ petition merits dismissal and the same is hereby dismissed.

**(Dr. S.N. Pathak, J.)**