

**2022 LiveLaw (SC) 1036**

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**SANJIV KHANNA; J., J.K. MAHESHWARI; J.**

**CIVIL APPEAL NO. 8671 OF 2015; December 16, 2022**

**CISF AND OTHERS *versus* SANTOSH KUMAR PANDEY**

**Summary - Supreme Court upholds dismissal of a CISF personnel who was found to have harassed a couple at night - Condemns moral policing by police.**

**Service Law - Interference with disciplinary proceedings under Article 226 of the Constitution -The writ court, when disciplinary action is challenged, is primarily concerned with examination of the decision making process, which requires satisfaction that the competent authorities have held inquiry as per the prescribed procedure, and have duly applied their mind to the evidence and material placed on record, without extraneous matters being given undue consideration, and the relevant factors have been cogitated. The conclusions of fact, which are based upon evaluation and appreciation of evidence, when meticulously reached by the authorities, should not be interfered with merely because the court may have reached at a different conclusion. (Para 17)**

**Constitution of India, 1950; Article 226- Judicial review is not akin to adjudication of the case on merits, and adequacy or inadequacy of evidence, unless the court finds that the findings recorded are based on no evidence, perverse or are legally untenable in the sense that it fails to pass the muster of the Wednesbury principles. Power of the High Court under Articles 226 and 227 of the Constitution of India enables exercise of judicial review to correct errors of law, including procedural law, leading to manifest injustice or violation of principles of fairness, without normally venturing into reappreciation of evidence.**

*For Appellant(s) Mr. Arvind Kumar Sharma, AOR*

*For Respondent(s) Mr. Rakesh Uttamchandra Upadhyay, AOR*

**J U D G M E N T**

**SANJIV KHANNA, J.**

This appeal, which has been preferred by Central Industrial Security Force<sup>1</sup> and two others, takes exception to the judgment dated 16.12.2014 in Special Civil Application No. 13718 of 2004, whereby the High Court of Gujarat has allowed the writ petition preferred by Respondent No.1 – Santosh Kumar Pandey and directed his reinstatement in service with 50% back wages from the date of his removal.

2. Respondent No. 1 – Santosh Kumar Pandey, who was working as a constable with the CISF, was posted at the Greenbelt Area of the IPCL Township, Vadodara, Gujarat, where he was charge-sheeted *vide* memorandum dated 28.10.2001 on allegations of misconduct, which allegations we shall refer to in some detail subsequently. Respondent No.1 – Santosh Kumar Pandey having denied the allegations, Deputy Commandant - N.K. Bharadwaj was appointed as the Inquiry Officer, who *vide* his report dated 28.01.2002 held that the charges levelled against Respondent No.1 – Santosh Kumar Pandey stand proven. Respondent No.1 – Santosh Kumar Pandey made a representation, and thereby questioned the inquiry report and claimed that he should be exonerated of the charges.

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<sup>1</sup> For short, "CISF".

The disciplinary authority, however, *vide* order dated 23.02.2002, agreed that the charges were proved and penalty of removing Respondent No. 1 – Santosh Kumar Pandey from service was imposed. Respondent No.1 – Santosh Kumar Pandey had preferred an appeal that was rejected by the appellate authority *vide* order dated 08.05.2002. Revision petition filed by the Respondent No.1 – Santosh Kumar Pandey was rejected *vide* order dated 08.04.2003.

3. These orders, including the inquiry report, were challenged by Respondent No.1 – Santosh Kumar Pandey *vide* Special Civil Application No. 13718 of 2004, which, *vide* impugned judgment, has been allowed, as per the directions set out above.

4. The reasoning given by the High Court for allowing the Writ Petition is to be found in paragraphs 8, 9 and 10 of the impugned judgment, which for convenience, are reproduced below:

“8. We have gone through the evidence came on record. Mahesh B. Chaudhry who is the complainant gave his statement on 27.10.2001 before the CISF Officer. In his examination, the complainant has narrated the aforesaid story, but in the cross examination, he had admitted that the petitioner has returned the watch and he has got his article back and he does not want to take any action against the petitioner. He has also admitted in the question put by the Inquiry Officer as regards to the illicit demand to spend some time with his fiancée as his fiancée has also seen the incident.

9. (X)<sup>2</sup> who is fiancée of complainant Mahesh B. Chaudhry has also been examined and she has clearly and categorically stated that she was little aware, but what was told to his fiancée Mahesh, she has not heard. Of course, she saw him giving watch to the petitioner.

10. Indisputably, on going through the entire evidence available on record, entire case against the petitioner rests only on the sole testimony of Mahesh B. Chaudhry-complainant. In our evaluation of evidence of the complainant, his evidence is also not consistent. As per his say, his fiancée has also seen the incident, but his fiancée has clearly stated before the Inquiry Officer that she has not seen the incident. Now, only question remains as regards snatching/taking away watch from the complainant Mahesh B. Chaudhry. In respect of the said allegation also, the evidence on record clearly reveals that watch was already returned and, therefore, even the complainant has given in writing to the official of CISF that his watch is already returned by the present petitioner and, therefore, he does not want to take any action against him and he withdrew the complaint.”

5. In our opinion the reasoning given by the High Court is faulty on both facts and law. To avoid prolixity, as there is a short issue that arises for consideration, we are not separately referring to the arguments by both sides, as these have been considered during the course of our reasoning.

6. We begin by referring to the allegation of misconduct by Respondent No.1 – Santosh Kumar Pandey, on the intervening night between 26.10.2001 and 27.10.2001, when he was posted as a Constable on night duty at the Greenbelt Area of the IPCL Township, Vadodara, Gujarat. As per the chargesheet, on 27.10.2001 at about 1:00 a.m., Mahesh B. Chaudhry and his fiancée had passed through the area on motorcycle and had stopped in the corner, which is when Respondent No.1 – Santosh Kumar Pandey had come forward and had questioned them. Respondent No.1 – Santosh Kumar Pandey taking advantage had told Mahesh B. Chaudhry that he would like to spend some time with his fiancée. When Mahesh B. Chaudhry had protested and did not agree, Respondent No.1 – Santosh Kumar Pandey had asked Mahesh B. Chaudhry to give something to him. Mahesh B. Chaudhry had then given the watch he was wearing to Respondent No.1 –

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<sup>2</sup> Identity suppressed to maintain privacy.

Santosh Kumar Pandey. On the next day, i.e. 27.10.2001, at about 8:00 p.m., Mahesh B. Chaudhry came back to the P.T. Gate with his friend Pradip Raghavan and had reported the incident. Senior officers took notice. Mahesh B. Chaudhry wrote a written complaint stating the facts. Respondent No.1 – Santosh Kumar Pandey was called and confronted. What transpired has been recorded and noted in the inquiry report, and the same will be noticed below, when we refer to the statements of the witnesses.

7. Mahesh B. Chaudhry in his statement has affirmed that on 26.10.2001, he and his fiancée had proceeded to see/play Navratri Garba. The P.T. Gate was closed and they consequently decided to return home. On their way back, they had stopped, which is when Respondent No.1 – Santosh Kumar Pandey had questioned them about their presence at that place at that time. Mahesh B. Chaudhry had informed Respondent No.1 – Santosh Kumar Pandey that the girl with him was his fiancée, and that they had come there to play Garba. Respondent No.1 – Santosh Kumar Pandey was not satisfied, and in spite of repeated pleas by Mahesh B. Chaudhry, he would not let them go home. Respondent No.1 – Santosh Kumar Pandey told Mahesh B. Chaudhry that he wanted to spend time with his fiancée. Mahesh B. Chaudhry did not agree. Then Respondent No.1 – Santosh Kumar Pandey had insisted that Mahesh B. Chaudhry must give something to him to allow them to go. Thereupon, Mahesh B. Chaudhry had told Respondent No.1 – Santosh Kumar Pandey that he has a watch which, in the circumstances, he was forced to hand over to Respondent No.1 – Santosh Kumar Pandey. Thereafter, Mahesh B. Chaudhry and his fiancée were allowed to leave and they returned home. The next day, Mahesh B. Chaudhry, along with his friend Pradip Raghavan, to whom he had narrated the incident, came back to the P.T. Gate to retrieve the watch. At the P.T. Gate, they had interacted with the constable on duty who was posted there at that time. The constable had then called the officers on duty from the CISF Office to whom he recounted the entire incident. Respondent No. 1 – Santosh Kumar Pandey was called and questioned by the officers. He was asked whether he had taken Mahesh B. Chaudhry's watch. Initially, Respondent No. 1 – Santosh Kumar Pandey denied having taken the watch. Mahesh B. Chaudhry and Pradip Raghavan went outside. After some time, Respondent No. 1 – Santosh Kumar Pandey had asked Mahesh B. Chaudhry and Pradip Raghavan to wait. Respondent No. 1 – Santosh Kumar Pandey came back and returned the watch to Mahesh B. Chaudhry. Mahesh B. Chaudhry had, accordingly, informed the officers and gave in writing that he would not like to take any action against Respondent No. 1 – Santosh Kumar Pandey. In response to the questions put by the Inquiry Officer, Mahesh B. Chaudhry admitted that the watch was returned at *Undera Chowk* in the presence of Pradip Raghavan. Further, he was afraid and had therefore given his watch to Respondent No. 1 – Santosh Kumar Pandey. Lastly, his fiancée had seen him give the watch to Respondent No. 1 – Santosh Kumar Pandey.

8. These facts, as stated by Mahesh B. Chaudhry, and as the events had unfolded on 27.10.2001, stand affirmed in the statements made before the Inquiry Officer by Kamaljit Singh, R.K. Das, V.K. Gautam and R.C. Savita. They have confirmed that Respondent No. 1 – Santosh Kumar Pandey was posted on night duty during the intervening night between 26.10.2001 and 27.10.2001. On 27.10.2001 Mahesh B. Choudhry had come to the P.T. Gate and made the complaint that was recorded in writing. Mahesh B. Choudhry had identified Respondent No. 1 – Santosh Kumar Pandey as the person who had harassed and stalked them, stated that he wanted to spend time with his fiancée and, upon refusal had asked Mahesh B. Chaudhry to give something to him. Respondent No. 1 – Santosh Kumar Pandey had taken the watch from Mahesh B. Chaudhry. Later on,

Mahesh B. Chaudhry had returned to the CISF Office and had informed the officers that Respondent No. 1 – Santosh Kumar Pandey had returned the watch.

9. On behalf of Respondent No. 1 – Santosh Kumar Pandey, our attention was drawn to the statement made by Pradip Raghavan who had oscillated and did not, in our opinion, depose truthfully. When confronted and questioned by the Inquiry Officer, Pradip Raghavan did accept that he and Mahesh B. Chaudhry had proceeded to the CISF Office to make the complaint, that was written by Mahesh B. Chaudhry and was signed by him at the bottom. Further, he had signed his statement recorded on 27.10.2001. His claim that the statements had not been read to and heard by him is unreal and farcical. Equally, the pretence that he did not know the conversation that had taken place in the CISF Office is unbelievable and unworthy of any credence. On being questioned, Pradip Raghavan had accepted that, thereafter, he and Mahesh B. Chaudhry along with Respondent No. 1 – Santosh Kumar Pandey had gone to *Undera Chowk*.

10. Our attention was also drawn to the statement of the fiancée, whose identity has been suppressed to protect her privacy. She did accept having gone with Mahesh B. Chaudhry to see Garba on the night of 26.10.2001 at IPCL Township, but as the gate was closed, they decided to go back home. On their way, when they stopped and were talking to each other, Respondent No. 1 – Santosh Kumar Pandey came there and spoke to Mahesh B. Chaudhry for some time. She claimed that she had not heard the conversation between Mahesh B. Chaudhry and Respondent No. 1 – Santosh Kumar Pandey but had seen Mahesh B. Chaudhry giving the watch to Respondent No. 1 – Santosh Kumar Pandey. On being questioned by the Inquiry Officer, her explanation was that she could not hear anything because she was asked to stand at some distance and that she was frightened and was crying. We would not read her statement as exonerating, or even contradicting to the version given by Mahesh B. Chaudhry. She was a young girl and it is obvious would have felt anxious and awkward. It is understandable as she would not have liked being subjected to personal and private questions. These are facts of life that have to be accounted for when we evaluate and pass judgments. A holistic and pragmatic approach is required, especially when the Evidence Act is not applicable; and even where the Evidence Act applies, the enactment gives discretion on matters of evaluation, analysis and appraisal of evidence.

11. Learned counsel for Respondent No. 1 – Santosh Kumar Pandey had drawn our attention to the statement given by Abdul Ghani, who was present when the inquiries were made from Respondent No. 1 – Santosh Kumar Pandey on 27.10.2001. He had stated that Respondent No. 1 – Santosh Kumar Pandey, on being questioned by the Company Commander, had accepted that he had seen Mahesh B. Chaudhry and his fiancée, who had stopped their motorcycle at the corner of the road. Respondent No. 1 – Santosh Kumar Pandey claimed that he had seen both of them cuddling each other and he had gone near them and asked what they were doing. Mahesh B. Chaudhry and his fiancée had replied normally and stated that they had stopped there. Abdul Ghani had also confirmed that, on being further questioned by the Company Commander, Respondent No. 1 – Santosh Kumar Pandey had accepted that he had asked for the watch from Mahesh B. Chaudhry. Respondent No. 1 – Santosh Kumar Pandey had admitted to the Company Commander that he had made a mistake and that he was sorry.

12. Respondent No. 1 – Santosh Kumar Pandey had appeared as a defence witness wherein he had accepted that he was posted on night duty on the intervening night of 26.10.2001 and 27.10.2001 and that at about 01:00 a.m., one girl and one boy stopped their motorcycle and were doing something wrong. Thereafter, he had questioned them.



He had also scolded them. Respondent No. 1 – Santosh Kumar Pandey claimed that they, out of anger had complained against him at the P.T. Gate on 27.10.2001. He denied the allegations and stated that the facts were false and fabricated.

13. The Inquiry Officer, in his report, has elaborately marshalled and evaluated the entire evidence regarding the incident on the intervening night of 26.10.2001 and 27.10.2001 and the happenings on 27.10.2001 after Mahesh B. Chaudhry and Pradip Raghavan had made a complaint. The watch was subsequently returned by Respondent No. 1 – Santosh Kumar Pandey to Mahesh B. Chaudhry.

14. The order passed by the disciplinary authority considers the objections raised by Respondent No. 1 – Santosh Kumar Pandey, and refers to the statements and evidence on record to hold that the charges were proven. On the question of withdrawal of the complaint, he elaborated that Respondent No. 1 – Santosh Kumar Pandey had returned the watch and thereupon, Mahesh B. Chaudhry had returned to the CISF Office and made a written request stating that he would like to withdraw the complaint. We agree that the letter to withdraw the complaint will not nullify or exonerate Respondent No. 1 – Santosh Kumar Pandey of the charges. Respondent No. 1 – Santosh Kumar Pandey had accepted he had taken the watch from Mahesh B. Chaudhry on the intervening night of 26.10.2001 and 27.10.2001, which was returned after Mahesh B. Chaudhry had made a written complaint on 27.10.2001. On return of the watch, Mahesh B. Chaudhry had made a written request to withdraw the complaint.

15. Paragraph 8 of the impugned judgment only partially records and refers to the facts stated by Mahesh B. Chaudhry, but does not refer the background, including the incident on the intervening night of 26.10.2001 and 27.10.2001. Significantly, the High Court did accept that Respondent No. 1 – Santosh Kumar Pandey had returned the watch that he had taken from Mahesh B. Chaudhry. The last portion of the said paragraph, in fact, admits that Mahesh B. Chaudhry, on being questioned, had stated that Respondent No. 1 – Santosh Kumar Pandey had made a demand of spending time with his fiancée.

16. Paragraph 9 of the impugned judgment refers to the statement made by the fiancée of Mahesh B. Chaudhry but fails to notice the fact that the fiancée had got engaged the very next day after the incident to Mahesh B. Chaudhry. We have already referred to her statement. It would have been traumatic and agonising for her to narrate the incident before the officers and that too in the presence of Respondent No. 1 – Santosh Kumar Pandey. She, therefore, while accepting her presence, had preferred to state that she had not heard anything as she was standing at a distance and had seen Mahesh B. Chaudhry giving the watch to Respondent No. 1 – Santosh Kumar Pandey.

17. We have reservations regarding the reasoning given in paragraph 10 of the impugned judgment as it fails to take notice and properly apply the law of judicial review. Judicial review is not akin to adjudication of the case on merits, and adequacy or inadequacy of evidence, unless the court finds that the findings recorded are based on no evidence, perverse or are legally untenable in the sense that it fails to pass the muster of the *Wednesbury* principles<sup>3</sup>. Power of the High Court under Articles 226 and 227 of the Constitution of India enables exercise of judicial review to correct errors of law, including procedural law, leading to manifest injustice or violation of principles of fairness, without normally venturing into reappreciation of evidence<sup>4</sup>. The writ court, when disciplinary action is challenged, is primarily concerned with examination of the decision-making

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<sup>3</sup> See Paragraph 14 in *Central Industrial Security Force and Others v. Abrar Ali*, (2017) 4 SCC 507.

<sup>4</sup> See Paragraphs 12-16 in *Union of India and Others v. P.Gunasekaran*, (2015) 2 SCC 610.

process, which requires satisfaction that the competent authorities have held inquiry as per the prescribed procedure, and have duly applied their mind to the evidence and material placed on record, without extraneous matters being given undue consideration, and the relevant factors have been cogitated. The conclusions of fact, which are based upon evaluation and appreciation of evidence, when meticulously reached by the authorities, should not be interfered with merely because the court may have reached at a different conclusion. Thus, error of law, is apparent in the reasoning vide paragraph 10 of the impugned judgment.

**18.** On the question of proportionality of punishment, we have to observe that the facts in the present case are startling and distressing. Respondent No. 1 – Santosh Kumar Pandey is not a police officer, and even police officers are not required to do moral policing, ask for physical favour or material goods.

**19.** In view of the aforesaid factual and legal position, we accept the appeal and set aside the impugned judgment. Accordingly, Special Civil Application No. 13718 of 2004 filed by Respondent No. 1 – Santosh Kumar Pandey before the High Court will be treated as dismissed. The order of removal from service passed by the disciplinary authority is upheld. In the facts of the case, there shall be no order as to costs.

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