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**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SANJIV KHANNA; BELA M. TRIVEDI, JJ.**

FEBRUARY 24, 2022

CIVIL APPEAL NOS.1622-1623 OF 2022 (@SLP (C) No(s). 18110-18111/2018

UNION OF INDIA & ORS. *VERSUS* MANAGOBINDA SAMANTARAY

Constitution of India, 1950; Article 226 - Judicial Review Of Disciplinary Proceedings - Disciplinary Proceedings - The courts would not interfere unless the exercise of discretion in awarding punishment is perverse in the sense the punishment imposed is grossly disproportionate - Quantum of punishment is within the discretionary domain and the sole power of the decision-making authority once the charge of misconduct stands proved - While exercising the power of judicial review, the court do not assume the role of the appellate authority. Writ jurisdiction is circumscribed by limits of correcting errors of law, procedural error leading to manifest injustice or violation of principles of natural justice. The decision are also disturbed when it is found to be ailing with perversity. (Para 9)

Constitution of India, 1950; Article 226 - CISF Rules, 2001 ; Rule 52 - Appellate power under Rule 52 of the CISF Rules, 2001, cannot be equated with power of judicial review exercised by constitutional courts. (Para 9)

Police Force - Discipline is the essence of the organization and structure of police force. No indulgence or latitude can be granted when the case is of violence and assault on the officer who had checked and reprimanded the respondent. To condone the misconduct will have ramifications. Discipline in the police force cannot be compromised. (Para 10)

Summary - Appeal against High Court judgment setting aside punishment of dismissal awarded by appellate authority and restoring lesser punishment awarded by disciplinary authority - Partly allowed - Punishment of dismissal imposed by the Appellate Authority was not grossly disproportionate to the quantum of the offence.

(Arising out of impugned final judgment and order dated 11-01-2018 in WA No. 469/2014 11-01-2018 in WA No. 143/2015 passed by the High Court Of Orissa At Cuttack)

For Petitioner(s) Ms. Aakanksha Kaul, Adv. Ms. Swarupama Chaturvedi, Adv. Mr. Harish Pandey, Adv. Mr. A.K. Sharma, Adv. Mr. B. V. Balaram Das, AOR

For Respondent(s) Mrs. K. Sarada Devi, AOR Mr. C. S. Panda, Adv. Mr. R. Vijaynandan Raddy, Adv. Mr. B.B. Panda, Adv.

J U D G M E N T

Leave granted.

2. This case has a checkered history. The respondent - Managobinda Samantaray, a constable in the Central Industrial Security Force (CISF), detailed on a 'C' shift duty on the intervening night of 3rd and 4th of January 2000, for patrolling between Watch Tower No. 5 and Watch Tower No. 6 of National Thermal Power Corporation Plant, Kaniha was found to be sleeping at Watch Tower No. 5 by Officer ASI/Exe. B. Panda. It is alleged that the respondent had abused, misbehaved and assaulted the officer on the right shoulder with a short lathi. ASI/Exe. B. Panda was taken to the hospital for treatment.

3. The respondent was placed under suspension on 4th January 2000, and was served with the charge sheet. In the enquiry the charges were established and proved. The Disciplinary Authority vide order dated 15th July 2000 while agreeing that the charges were proved, took a lenient view and imposed penalty of reduction of pay by two stages, from Rs. 3425/- to Rs. 3275/- in the time scale of pay for a period of three years with immediate effect. Further, it was directed the respondent would not earn any increment of pay during the period of reduction and that on the expiry of three years, the reduction would have the effect of postponing his future increments of pay. The period of suspension commencing from 4 th January 2000 till the receipt of the order would be treated as non-duty for all purposes. For this period the respondent would not be entitled to any more pay and allowances except the subsistence allowance.

4. The respondent preferred an appeal before the Appellate Authority. The Appellate Authority on consideration issued Show Cause Notice dated 21st November 2000, under Rule 47(2) (c)(i)¹ read with 31(a)² of Central Industrial Security Force, Rules 1969 for enhancement of punishment to that of dismissal from service. The respondent was directed to explain why the proposed enhancement of punishment should not be imposed. Thereafter, the Appellate Authority passed an order dated 23rd January 2001, dismissing the respondent from service.

¹47. Consideration of Appeals – (2) In case of an appeal against an order imposing any of the penalties specified in rule 31 the appellate authority shall consider, - (i) setting aside, reducing, confirming or enhancing the penalty;

²31. Nature of Penalties – The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a member of the Force, namely – a) Dismissal;

5. The respondent had, thereupon, preferred a Writ Petition before the High Court of Odisha- O.J.C. No. 556 of 2001, which was allowed vide judgment dated 17th October 2011, inter-alia, holding that the order dated 23rd January 2001 was improper and had violated the principles of natural justice as the Appellate Authority had failed to notice and consider the application filed by the respondent seeking extension of time to file reply to the Show Cause Notice. On perusal of the records it was noticed that as per the order sheet the draft order was prepared by the subordinate staff and was simply approved by the Appellate Authority without due consideration and application of mind.

The matter was remitted to the Appellate Authority to re-examine the case afresh after giving an opportunity to the respondent to file reply. The respondent was given six weeks' time to file reply. The judgment of the High Court dated 17.10.2001 was not challenged and has attained finality.

6. Pursuant to the remand, the Appellate Authority examined the matter and, on consideration, passed an order of dismissal on 18th February 2012. This order on the question of the charges and quantum of punishment observed:-

“6...the fact remains that the conclusion reached by the enquiry officer on the charges framed against him are duly supported by the depositions of PW-I, PW-II, CW-I, CW-II and medical report dated 04.01.2000. As regards second article of charge. Based on the evidences of PW-I and PW-II and medical report dated 04.01.2000, the fact is established well that on 04.01.2000 at about 0020 hrs, the appellant while being on duty in night shift for patrolling from Tower No.5 to 6 had misbehaved and assaulted ASI/Exe B Panda (PW-2) when he was on night checking duty of his duty post. Further plea taken by the appellant that it crucial material like X-ray and medical report were not provided to him, does not have legs to stand on the face of the material facts held in the case file. On contrary, the fact remains that soon after the appellant had misbehaved and assaulted ASI/Exe B Panda (PW-II) while he on checking duty of his duty post, his X-ray was done and treated hi the TTPS, Kaniha Hospital and a copy of the such X-ray report was provided to him on 11.05.2000 as requested by him as to facilitate him to use it as his effective defence. Likewise, the contention of the appellant that the appellate authority invoked colorable exercise of power by denying the legitimate claims in terms of reasonable opportunity being afforded to him, does not have any merit and hence not tenable. Since during the entire process of departmental enquiry, the appellant did not raise such issue of being deprived of reasonable opportunity, the allegation now raised by him at belated stage that he was denied reasonable opportunity, the allegation now raised by him at belated stage that he was denied reasonable opportunity is nothing but after thought. On contrary, what transpires from the material facts held in the case flies is that the departmental enquiry was conducted strictly as per laid down procedure in which the appellant was afforded all reason opportunities to defend his case, His further contention that the show cause notice has been issued upon the appeal preferred by him wherein he had prayed for exoneration of the punishment and the principle of equity warrants that there should not be any enhancement of punishment upon the appeal, is not tenable and appears to be misleading in as much as in the light of provision contained under rule 52 of CISF Rules, 2001 (Amended rules, 2003), the appellate authority is vested with the powers either to appellate authority is vested with the powers either to enhance or reduce the penalty imposed the disciplinary authority and therefore, there was nothing wrong on the part of appellate authority, if he proposed to enhance the penalty after, in his considered opinion, the punishment awarded to him was found disproportionately on lesser side vis-à-vis- the gravity of the poverty charges against him.

7. In view of foregoing discussions, I find that none of the contention raised by the appellant in his reply to the show cause notice is convincing. Also the appellant has not produced any plausible ground to discredit the evidences held in the case file. On contrary, the charges are

held duly proved against him based on the clinching evidences held on record. In my considered opinion, since the act of misdemeanor that he misbehaved and assaulted his senior while on duty comes within the preview of serious misconduct, he deserves to be dealt with sternly. In these circumstances, the proposal made vide show cause notice dated 21.11.2000 to enhance the penalty from 'Reduction of pay by two stages i.e from Rs. 3425/- to Rs. 13275/- in the time scale of pay for a period; of 03 years with Immediate effect, with further direction that he will not earn increments of pay during the period of reduction and that on expiry of this period the reduction will have the effect of postponing his future Increment of pay to that of 'Dismissal form service' hereby confirmed."

7. Thereupon, the respondent had preferred Writ Petition (C) No. 5515/2012 before the High Court of Orissa, which was allowed vide order dated 7th November 2014 on the ground that the punishment of dismissal was shockingly disproportionate to the quantum of the offence. The respondent would be entitled to 50% back wages for the period 23rd January 2001, till the order of dismissal passed on 18th February 2012 along with interest @ 8%. Order of reinstatement of service was passed.

8. The respondent and the appellant preferred cross-appeals before the Division Bench of the High Court of Orissa, which were disposed of by the impugned judgment dated 11th January 2018. The Division Bench dismissed the appeal preferred by the Union of India and affirmed the order passed by the Single Judge, setting aside the punishment of dismissal passed by the Appellate Authority and restored the punishment of reduction of pay etc. imposed by the Disciplinary Authority. In other words, the order of reinstatement of the respondent was upheld. Directions given for payment of 50% back-wages from 23rd January 2001 to 18th February 2012 have not been commented upon and set aside. In other words, these directions have been upheld.

9. Impugned judgment by the Division Bench is difficult to sustain as it equates appellate power under Rule 52 of the CISF Rules, 2001, with power of judicial review exercised by constitutional courts. Rule 52³ of the CISF Rules, 2001 empowers the appellate authority to examine whether the penalty imposed is excessive, adequate or inadequate and pass consequential order confirming, enhancing, reducing or setting aside the penalty.

³**Rule 52 - Consideration of appeals** - (1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of rule 33 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

(2) In the case of an appeal against the order imposing any of the penalties specified in rule 34, or enhancing any penalty imposed under the said rules, the appellate authority shall consider –

(a) Whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) Whether the findings of the disciplinary authority are warranted on the basis of the evidence on the record ; and

(c) whether the penalty or the enhanced penalty imposed is excessive, or adequate, or inadequate and pass orders;

(i) Confirming, enhancing, reducing or setting aside the penalty; or

(ii) Remitting the case to the authority which imposed or enhanced the penalty, or to any other authority with such direction as it may deem fit in the circumstances of the case.

(iii) No order imposing enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity as far as may be in accordance with the provisions of rule 37, of making a representation against such enhanced penalty.

Provided that - (i) If such enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (i) to (v) of rule 34 and an inquiry under rule 36 has not already been held in the case, the appellate authority shall, subject to the provisions of rule 39, itself hold such an inquiry or direct that such inquiry be held in accordance with rule 36 and thereafter on a consideration of the proceedings of such inquiry make such orders as it may deem fit; and

(ii) If the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clause (i) to (v) of rule 34 and an inquiry under rule 36 has already been held in the case, the appellate authority shall make such orders as it may deem fit.

In the present case, the procedure requiring issue of show-cause notice and compliance with the principles of natural justice is made. Quantum of punishment is within the discretionary domain and the sole power of the decision-making authority once the charge of misconduct stands proved. Such discretionary power is exposed to judicial interference if exercised in a manner which is grossly disproportionate to the fault, as the constitutional courts while exercising the power of judicial review do not assume the role of the appellate authority. Writ jurisdiction is circumscribed by limits of correcting errors of law, procedural error leading to manifest injustice or violation of principles of natural justice.⁴ The decision are also disturbed when it is found to be ailing with perversity.⁵ On the question of quantum of punishment, the court exercising the power of judicial review can examine whether the authority has been a reasonable employer and has taken into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and excluded irrelevant matters.⁶ In the context of quantum of punishment these aspects are examined to consider whether there is any error in decision making process. On merits of the quantum of punishment imposed, the courts would not interfere unless the exercise of discretion in awarding

punishment is perverse in the sense the punishment imposed is grossly disproportionate.

⁴B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749

⁵Pravin Kumar v. Union of India, (2020) 9 SCC 471

⁶Chairman-cum-Managing Director, Coal India Ltd. & Another v. Mukul Kumar Choudhuri & Others, (2009) 15 SCC 620

10. In the instant case, the respondent was a constable in CISF, a specialized police force responsible for providing security to strategic establishments like the Department of Space, the Department of Atomic Energy, and premises of establishments fundamental to Indian economy. Given the nature of the appellant's force, sense of integrity, commitment, discipline, and camaraderie is paramount. Discipline is the essence of the organization and structure of police force.⁷ No indulgence or latitude can be granted when the case is of violence and assault on the officer who had checked and reprimanded the respondent. To condone the misconduct will have ramifications. Discipline in the police force cannot be compromised.⁸ In the background of facts, and as the respondent had not even expressed any remorse or pleaded a good ground for having acted in the manner he did, we do not accept that the punishment of dismissal imposed by the Appellate Authority by order dated 8th February 2012 was grossly disproportionate to the quantum of the offence.

⁷Supra note 4, at page 10

⁸Arashdeep Singh v. Armed Forces Medical College (2005 SCC OnLine Bom 198)

11. The next issue relates to payment of subsistence allowance during the period from 4th January 2000, the date on which the respondent was suspended, till 15th July 2000, the date on which the Disciplinary Authority had passed an order for reduction of payment. The appellants have to pay subsistence allowance to the respondent for this period in accordance with the CISF Rules. It is unclear whether, in fact, the respondent was paid subsistence allowance for this period.

12. On or after 16th July 2000 till the first order of dismissal was passed on 23rd January 2001, the respondent would be entitled to payment of salary in terms of the order passed by the Disciplinary Authority on 15th July 2000. It appears that this payment has not been made. The appellants would be liable to make this payment.

13. In view of the judgment of the High Court of Orissa dated 17th October 2011, the order passed by the Appellate Authority dismissing the respondent from service was set aside with an order of remit to the Appellate Authority for a fresh decision. Rule 33 (3) of the CISF Rules, 2001, which applies reads:-

“33. Suspension

xx xx xx

3. Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an enrolled member of the Force under suspension is set aside in appeal or on review under these rules and the case is remitted for further enquiry or action or with any other directions, the orders of his suspension shall be deemed to have continued in [force] on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in [force]⁹ until further order.”

⁹Subs. By G.S.R. 462(E), dated 23rd May, 2003 (w.e.f. 9-6-2003).

14. In terms of Rule 33(3) of the CISF Rules, 2001, the respondent is to be treated as being under suspension from 23rd January 2001 when the first order passed by the Appellate Authority dismissing the respondent from service, till 18th February 2012, when the second and final order was passed by the Appellate Authority dismissing the respondent from service.

15. The respondent for this period being under suspension would be entitled to subsistence allowance. The appellants have not paid the subsistence allowance for this period, which must be paid to the respondent.

16. Accordingly, we dispose of the present appeals on the following terms and directions: -

16.1. The Order passed by the Appellate Authority dated 18th February 2012 dismissing the respondent from service is upheld.

16.2. The respondent would be entitled to subsistence allowance already paid or if not paid @ 50% of his salary etc. for the period 4th January 2000 till 15th July 2000.

16.3. The respondent would be entitled to his salary in terms of the order dated 15th July 2000 as passed by the Disciplinary Authority till the order dated 23rd January 2001 passed by the Appellate Authority.

16.4. The respondent would be entitled to subsistence allowance @ 50% of his salary etc., for the period between 24th January 2001 to 18th February 2012.

16.5. As there has been delay on the part of the appellants in payment of the subsistence allowance/ and salary, they shall make the payment within six weeks from today along with interest @ 7% per annum from the date payment was due and payable, till payment is made. The respondent would provide details of his bank account to which the said payment would be electronically made. The appellants will also furnish to the respondent a detailed calculation, with regard to the computation made towards the subsistence allowance, salaries and the interest component as awarded above.

17. The appeals are partly allowed and disposed of in the aforesaid terms.

18. Pending application(s) stands disposed of.