



**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No.21725 of 2010**

(An application under Articles 226 & 227 of the Constitution of India)

**Manoj Kumar** .... **Petitioner**

-versus-

**Union of India & Others** .... **Opposite Parties**

**For Petitioner** : **Mr. S.P. Jena, Advocate**

**For Opposite Parties** : **Mr. B. Das, Sr. Panel Counsel**

**CORAM:**

**JUSTICE G. SATAPATHY**

**DATE OF HEARING : 23.08.2024**

**DATE OF JUDGMENT: 20.11.2024**

**G. Satapathy, J.**

**1.** This is a writ petition by the petitioner seeking/praying to quash the final order dated 19.12.2009 passed by the Commandant, C.I.S.F. Unit NALCO, Angul-OP No.4 in the Departmental Proceeding imposing penalty of removal from service with immediate effect with period of suspension from 27.07.2009 to 19.12.2009 treated as such under Annexure-5, order dated 09.02.2010 passed by the



Deputy Inspector General, EZ containing articles of charge under Annexure-7 and the order dated 15.07.2010 passed by the Revisional Authority-cum-Director, East Zone Head Office, Patna under Annexure-9 confirming such penalty of the petitioner.

**2.** For better appreciation and clarity, the relevant facts as recapitulated in precise are that the petitioner, who was a Constable in Central Industrial Security Force (C.I.S.F.) joined in service on 19.04.2003 and while continuing as such in C.I.S.F. at NALCO, Angul, he was deployed in 'C' shift duty from 2100 hours to 0500 hours in the intervening night of 26/27.07.2009 at Railway Gate No.I of C.P.P. NALCO, Angul and at about 0435 hours, he left his duty post unauthorized and went to Watch Tower No.4, where Constable Ravindra Kumar Dubey was deployed for the sentry duty in same shift and the petitioner, thereafter, asked the said Constable Ravindra Kumar Dubey to get down from the Watch Tower, but when the later got down from the Watch Tower, the petitioner stabbed on his neck, as a result,



he (Constable Dubey) sustained bleeding injury and was immediately shifted to NALCO Township Hospital after First Aid for further treatment and accordingly, Mr. Ravindra Kumar Dubey was treated at hospital and had got stitches on his wound.

On the above incident, OP No.4 on 09.08.2009 issued a charge sheet against the petitioner under Rule 36 of CISF Rules, 2001 alleging gross misconduct and indiscipline in official duty. Accordingly, a departmental enquiry was conducted on the aforesaid charge sheet which culminated in submission of enquiry report by the Enquiring Officer. On consideration of the enquiry report together with the representation of the petitioner, OP No.4 passed the final order under Annexure-5 which was unsuccessfully challenged by the petitioner before the Appellate Forum and Revisional Forum. Finding no way out, the petitioner challenges his dismissal order from service which was confirmed in appeal and revision by filing this writ petition on the ground that OP No.4 has based his findings upon no evidence, but



by relying upon personal opinion which is arbitrary and not acceptable.

**3.** In the course of hearing of the writ petition, Mr. Swoyam Prabhu Jena, learned counsel for the petitioner has assailed the findings and penalty order of the Disciplinary Authority which was confirmed in Appellate as well as Revisional forum, mainly on the following grounds:-

*(i) There is no evidence to show that the petitioner has left his duty post unauthorized,*

*(ii) The findings recorded by the Disciplinary Authority was on the basis of his personal opinion and the dispute between both the Constables was purely personal in nature &*

*(iii) No eye witness to the occurrence was there nor anything was seized from the place of occurrence and no witnesses has stated regarding the involvement of the petitioner.*

On the backdrop of aforesaid submission, Mr. Jena has prayed to quash Annexures-5, 7 & 9.

On the other hand, Mr. Bimbisar Das, learned Senior Panel Counsel appearing for opposite parties has forcefully submitted that the scope of judicial review against the order of Disciplinary Authority is very limited and unless the findings are so perverse, it cannot be



interfered with in exercise of power under Article 226 of Constitution of India and in this case, not only the order of dismissal of the petitioner from service as handed over by the Disciplinary Authority is confirmed in appeal, but also in revision and thereby, the factual aspect cannot be appreciated to find out another view. It is also submitted by Mr. Das that law is fairly well settled, unless the punishment/penalty is shockingly disproportionate, the writ Court normally would not interfere in the findings in the Disciplinary Proceeding and in this case, the petitioner having been found guilty in the Departmental Proceeding for stabbing and injuring a colleague on duty is not entitled to any leniency and the penalty of dismissal of service as imposed on the petitioner cannot be considered to be shockingly disproportionate so as to make it liable for interference. Mr. Das has accordingly, prayed to dismiss the writ.

**4.** After having considered the rival submissions upon hearing the learned counsel for the parties, there appears no dispute that the petitioner was facing a Departmental Proceeding on following articles of charges as communicated to him by the authority:-



### **ARTICLE-I**

*An act of gross misconduct, indiscipline and unbecoming act on the part of No.034550218 Constable Manoj Kumar of CISF Unit Nalco Angul, in that while he was deployed in 'C' shift duty from 2100 hrs to 0500 hrs in the intervening night of 26/27.07.2009 at Railway Gate No.1 of CPP, Nalco, Angul, at about 0435 hrs he left his duty post un- authorisedly and went to Watch Tower No.4 where No.064400549 Constable Ravindra Kumar Dubey was deployed for sentry duty in the same shift. No.034550218 Constable Manoj Kumar asked No.064400549 Constable Ravindra Kumar Dubey to get down from the watch tower. While the later was coming, No.034550218 Constable Manoj Kumar abruptly stabbed on the neck of No.064400549 Constable Ravindra Kumar Dubey, as a result he sustained severe bleeding injury. Immediately Constable Ravindra Kumar Dubey was sent to Plant First AID by a Vehicle available at the gate and thereafter to Nalco Township Hospital, for further treatment. The doctor of Nalco Hospital treated Constable Ravindra Kumar Dubey and stitches the wound and released with the advice to attend the regular doctor in the morning. Being a member of the discipline Force No.034550218 Constable Manoj Kumar has displayed an act of gross misconduct, Indiscipline and assaulted on an on duty Constable, which not at all expected from a Force member. Hence the Charge.*

### **ARTICLE-II**

*No.034550218 Constable Manoj Kumar of CISF Unit NALCO Angul is an appointee of the year 2003. During his short tenure of service, he has been awarded 03 minor punishments by different Disciplinary Authorities for various indisciplined acts which show that he is basically an indisciplined Constable.*

It is also not in dispute that the enquiry was conducted wherein the charges are found to have been



established by the Department as held by the Enquiring Officer who after analyzing the evidence upon providing opportunity to the petitioner had recorded his findings in the enquiry report and the copy of the enquiry report was supplied to the petitioner, who submitted his representation to such enquiry report disputing the charges on the plea of no evidence, whereafter the Disciplinary Authority on consideration of such representation of the petitioner passed the final order under Annexure-5 imposing the penalty of removal from service with immediate effect on the petitioner and treating the period of suspension as such. It is also not in dispute that the petitioner had unsuccessfully carried an appeal as well as revision in which aforesaid penalty on the petitioner was confirmed.

**5.** What cannot be disputed is that the entire endeavor of the writ petitioner is for assailing the evidence adduced by the Department in the domestic enquiry, but it is more than a rule that the scope of writ Court in interfering with order of Disciplinary Authority in Departmental Enquiry is very limited and appreciation of evidence is impermissible. It is not open to the writ Court



to return with a finding that on appreciation of evidence on record, another view is possible. The law in this regard is very well settled by the Apex Court in ***Union of India & Others vs. Dalbir Singh; (2021) 11 SCC 321***, wherein the Apex Court has quoted with approval the paragraph-12 of the decision in ***Union of India vs. P. Gunasekaran; (2015) 2 SCC 610*** which reads as under:-

*"12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:*

- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*





*(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*

*(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*

*(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*

*(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*

*(i) the finding of fact is based on no evidence.*

**6.** A careful glance of the aforesaid rulings of the Apex Court, it is ample clear that 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 only to determine whether the inquiry was held by a competent officer; or whether rules of natural justice are complied with; or whether the findings or conclusions are based on some evidence; or the authority concerned entrusted with the power to hold inquiry had jurisdiction,



power and authority to reach a finding of fact or conclusion, but such finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of 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 in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence led in the domestic enquiry. The Court may interfere only when the authority in Departmental Proceeding held it against the delinquent officer in a manner inconsistent with the rules of natural justice or in gross violation of statutory rules prescribing the mode of inquiry or the conclusion/findings reached by the disciplinary authority is based on no evidence, but the conclusion or finding is on the basis of some evidence, the Court must go glow to interfere with such finding or conclusion on the ground that reappreciation of evidence is impermissible in writ jurisdiction.



7. It is, however, contended on behalf of the petitioner that the findings arrived at by the Disciplinary Authority is based on no evidence, but the enquiry report clearly discloses that the Disciplinary Authority has given findings on each and every charge and concluded that the charge has been clearly established. The order under Annexure-5 is the stamp of approval by the authority which not only carefully appreciates the evidence led by the department, but also duly considers the defence of the petitioner. The standard of proof as required in Disciplinary Proceeding is different from the standard of proof in a criminal case and in the former it is "preponderance of probability", whereas in the later it is "beyond reasonable doubt". It is not disputed that the injured was also examined in the enquiry and he had well supported the allegation made against the petitioner in his evidence. When the finding of the Enquiring Officer is not only upheld by the Disciplinary Authority, but also is confirmed by the Appellate as well as Revisional Authority, the charges established against the petitioner cannot be stated to have been based on the personal opinion of the Disciplinary Authority.



**8.** On re-consideration of the penalty imposed on the petitioner to be shockingly disproportionate, it appears that the findings arrived at by the Disciplinary Authority appears to be quite reasonable, since the petitioner was found guilty of the charges of criminal misconduct for stabbing his colleague on duty and such misconduct is not only grave, but also heinous and unbecoming on the part of a person employed in a discipline department like CISF and thereby, after having duly discussed with the findings arrived at by the Enquiring Officer in the enquiry report, the Disciplinary Authority has come to a conclusion that the charged officer while on duty had attacked and stabbed another Constable on duty and such criminal misconduct is highly inconsistent towards discharge of duty by the petitioner and subversive of force discipline. It can, therefore, be quite convincingly considered that the punishment/penalty as awarded to the petitioner is not disproportionate to his criminal misconduct, rather it is commensurate to it. Consequently, no ground is made out by the petitioner to interfere with the findings of the Disciplinary Authority, so also the Appellate and Revisional Authority.



**9.** In the result, the writ petition being devoid of any merit stands dismissed on contest, but there is no order as to costs.

**(G. Satapathy)  
Judge**

*Orissa High Court, Cuttack,  
Dated the 20<sup>th</sup> day of November, 2024/S.Sasmal*