



2026:CGHC:19185

AFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****WPS No. 2310 of 2020****Reserved on : 10.04.2026****Delivered on : 25.04.2026**

Rameshwar Yadav S/o Shiyaram Yadav Aged About 45 Years Ex-Peon Civil Court Gariyaband, District Raipur Present Address Room No. 12, Ward No. 1, Labhandi, Suraj Nagar, Raipur District Raipur Chhattisgarh.

... Petitioner(s)**versus**

- 1** - District Judge Raipur District Raipur Chhattisgarh.
- 2** - State Of Chhattisgarh Through The Principal Secretary Law, Mahanadi Bhawan, Atal Nagar, Raipur District Raipur Chhattisgarh.
- 3** - High Court Of Chhattisgarh Through Registrar General High Court Of Chhattisgarh, Bodri Bilaspur Chhattisgarh.

---- Respondents

For Petitioner : Mr. Bidya Nand Mishra, Advocate.

For Res. No. 1 & 3 : Mr. Ranbir Singh Marhas, Ms. Shweta Mishra & Ms. Anushka Sharma, Advocates.

For State/ Res. No. 2 : Mr. Rishi Raj Pithawa, Dy. Govt. Advocate.

Hon'ble Shri Narendra Kumar Vyas, J.**CAV ORDER**

1. This petition has been filed by the petitioner assailing the order dated 21.07.2016 (Annexure P/8) passed by respondent No. 1/District & Sessions Judge, Raipur by which services of the petitioner have been terminated. The petitioner has also assailed the order dated 22.06.2019 (Annexure P/11) passed by respondent No. 3/Registrar



General, High Court of Chhattisgarh by which appeal preferred by the petitioner against order of termination, has been rejected.

2. The brief facts as reflected from records are that:-

(A) The petitioner was working as Peon in the Civil Court, Gariyaband, District Raipur and a charge-sheet dated 05.05.2015 (Annexure P/1) was issued against him alleging unauthorized absence from duty without sanctioned leave from 25.03.2015 till the date of issuance of the charge-sheet which is misconduct as provided in the Chhattisgarh Civil Services (Conduct) Rules, 1965 (for short "the Rules, 1965"). A departmental enquiry was conducted wherein the establishment of District Court and defence witnesses were examined and the Enquiry Officer in his report dated 31.03.2016 has found proved the charges levelled against the petitioner. Thereafter, a show cause notice dated 05.04.2016 was issued to the petitioner, to which he submitted his explanation and also sought personal hearing. After granting personal hearing, the Disciplinary Authority/District Judge, Raipur issued punishment order dated 21.07.2016 (Annexure P/8) imposing penalty of dismissal from service, disqualifying him from future government employment taking into consideration the past record of the petitioner.

(B) Being dissatisfied with the aforesaid punishment, the petitioner preferred an appeal before respondent No. 3/Registrar General, High Court of Chhattisgarh which has been rejected vide order dated 22.06.2019. Being aggrieved with the order of dismissal as well as the rejection of appeal, the petitioner has filed the present writ petition contending that the learned District Judge has taken into consideration the alleged past conduct of the petitioner while imposing the extreme



penalty of removal from service without putting the petitioner to notice or affording him an opportunity to explain the same, thus the impugned orders are illegal and liable to be set aside by this Court. It has been further contended that it is settled principle of law that if any material adverse to the delinquent employee is relied upon, must be disclosed to him and non-disclosure amounts to violation of principles of natural justice, therefore, the punishment order is liable to be set aside on this count alone. It has been further contended that the petitioner had already suffered deduction of salary for the period of alleged absence, which itself constitutes a minor penalty, thus imposition of removal from service for the same misconduct amounts to double jeopardy. It has been further contended that absenteeism though a misconduct, does not involve moral turpitude, corruption, or dishonesty as it is a technical or administrative lapse, therefore, imposition of the extreme penalty of removal from service is wholly disproportionate and arbitrary.

(C) It has been further contended that the appellate authority rejected the petitioner's departmental appeal by a non-speaking order without assigning any reason which is in violation of Chhattisgarh Civil Services (Classification, Control & Appeal) Rules, 1966 (for short "the Rules, 1966") as well as principle of natural justice. It has been further contended that the punishment of removal from service is shockingly disproportionate to the charge of absenteeism as it is harsh and not commensurate with the gravity of misconduct. It has been further contended that the petitioner is a Class-IV employee belongs to a poor economic background and removal from service has deprived him and his family of their only source of livelihood and would pray for setting



aside the impugned orders and would pray for reinstatement in service with full back-wages and continuity of service.

3. Respondents No. 1 & 3 have filed their return mainly contending that the petitioner while working as Peon in Civil Court, Gariyaband, remained unauthorizedly absent from duty from 25.03.2015 without any sanctioned leave, therefore, a departmental enquiry was conducted after issuing a charge sheet, wherein adequate opportunity of hearing was afforded to him and the Enquiry Officer found the charges of unauthorized absence proved. It has been further contended that after issuance of show cause notice and granting personal hearing, the Disciplinary Authority (District Judge) imposed the punishment of removal from service considering the gravity of misconduct and past record of the petitioner. It has been further contended that the petitioner is a habitual absentee and even during the pendency of the enquiry proceedings, he continued to remain absent without leave which adversely affected the functioning of the Court. As such, the imposition of punishment is legal, justify and does not warrant interference by this Court. It has been further contended that the appellate authority has passed the well reasoned order and deduction of salary is not penalty, therefore, the subsequent punishment of dismissal from service, does not fall within the ambit of double jeopardy, as such the punishment imposed upon the petitioner is justified and would pray for dismissal of the writ petition.
4. The petitioner has filed rejoinder contending that the charge-sheet is vague and contrary to Rule 14(3) of the Rules, 1966, as it does not contain definite and distinct articles of charge, statement of imputations



& list of documents and witnesses. It has been further contended that invocation of Rule 3 of the Rules, 1965 is not applicable to the present facts of the case. It has been further contended that the enquiry proceedings were conducted in violation of principle of natural justice as the enquiry officer has not considered the defence evidence which clearly establishes that the petitioner had submitted leave application but no acknowledgment was given and the petitioner was regularly attending bungalow duty of judicial officer. These material facts remained unrebutted in cross-examination but were completely ignored in the enquiry report.

5. It has been further contended that the penalty of dismissal is grossly disproportionate as the Disciplinary Authority relied upon past service records (734 days leave), which were never part of the charge-sheet, thereby violating settled legal principles. It has been further contended that it is well settled position of law that past conduct cannot be considered unless it forms part of the charge-sheet and an opportunity of defence is given and would pray for allowing the writ petition.
6. Respondents No. 1 & 3 have filed additional return wherein it has been contended that the charge-sheet issued to the petitioner was clear, specific, and free from any ambiguity. It has been further contended that this Court while exercising jurisdiction under Article 226 of the Constitution, cannot re-appreciate evidence recorded in departmental proceedings. The enquiry was conducted lawfully and the findings are based on proper appreciation of evidence. It has been further contended regarding consideration of past service record that the same is permissible and relevant, especially in view of the petitioner's



continued misconduct. The petitioner was a habitual absentee and remained absent even during the pendency of the enquiry, thereby adversely affecting court's functioning and would pray for dismissal of the writ petition.

7. Learned counsel for the petitioner reiterating the contentions made in the writ petition would submit that the learned District Judge has taken into consideration the alleged past conduct of the petitioner while imposing the extreme penalty of removal from service without putting the petitioner to notice or affording him an opportunity to explain the same, therefore, the impugned order stands vitiated. To substantiate his submission, he would refer to the judgment rendered by Hon'ble the Supreme Court in case of **State of Mysore Vs. K. Manche Gowda [1963 SCC OnLine SC 50]**, **Krushnakant B. Parmar Vs. Union of India & another [(2012) 3 SCC 178]**, **State of Punjab & others Vs. Ex. C. Satpal Singh [2025 LiveLaw (SC) 857]**, judgment passed by this Court in case of **Sujeet Kumar Sahu Vs. State of Chhattisgarh through Secretary, School Education Department, Mantralaya, Mahanadi Bhawan & others [2025 SCC OnLine Chh 12880]**, **Shiv Poojan Garg Vs. State of Chhattisgarh & others [2025: CGHC: 38564]**.
8. On the other hand, learned counsel for respondents No. 1 & 3 opposing the submissions made by learned counsel for the petitioner would submit that the past conduct of the petitioner was part of his service record which has rightly been considered for determining the quantum of punishment as there is no requirement of separate notice if the conduct forms part of the record already known to the petitioner. He



would further submit that the deduction of salary for the period of absence is not a punishment but a natural consequence of “no work, no pay” therefore, the principle of double jeopardy is not attracted. He would further submit that the petitioner was habitual absentee and habitual absenteeism seriously affects discipline in public service. Even if it does not involve moral turpitude, it constitutes grave misconduct, especially where the employee shows disregard for duty. Hence, removal from service is justified. He would further submit that the explanation submitted by the petitioner was duly considered but found unsatisfactory. The disciplinary authority is the best judge of facts, and its findings should not be interfered with unless perverse. The appellate authority, after considering the material on record, affirmed the findings of the disciplinary authority and merely because the order is brief, does not render it invalid. He would further submit that the punishment imposed is commensurate with the gravity of misconduct, particularly considering the petitioner’s past record and repeated absenteeism. He would further submit that the sympathy or financial hardship cannot be a ground to interfere with a lawful order of punishment as the discipline in public service must be maintained and would pray for dismissal of the writ petition.

9. Learned State counsel adopts the submission made by learned counsel for respondents No. 1 & 3.
10. I have heard learned counsel for the parties and perused the documents placed on record with utmost satisfaction.
11. From the submissions of the parties, the Points emerged for determination by this Court are:-



Point No. 1 : “Whether consideration of past records/conduct of the delinquent employee/petitioner without notice, vitiates the order of punishment?”

Point No. 2 : “Whether this Court in exercise of Article 226 of the Constitution of India can re-appreciate the evidence or material placed in the disciplinary proceedings as if appellate authority and can interfere in the quantum of punishment imposed by the Disciplinary Authority?”

Submission, discussion and finding on Point No. 1

12. To appreciate this Point, it is expedient for this Court to extract Rule 10 of the Rules, 1966 which provides imposition of penalty and provides Disciplinary Authority competent to take disciplinary action. Rule 10 of the Rules, 1966 as well as the charge-sheet dated 05.05.2015 issued to the petitioner which read as under:-

“Part V – Penalties and Disciplinary Authorities

10. Penalties.- The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely :-

Minor penalties :- (i) Censure;

(ii) Withholding of his promotion;

(iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of order;

(iv) [withholding of increments of pay or stagnation allowance; [Substituted by Notification No. 6-2-76-3-(I), dated 24-3-1976.] Major Penalties :-

(v) reduction to a lower stage in the time scale of pay for a specified period with further directions as to whether or not, the Government servant will earn increments of pay or the stagnation allowance, as the case may be, during the period, on such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the further increments of his pay or stagnation allowance;

Note. - The expression "reduction to a lower stage in the time scale of pay" shall also include reduction of pay from the stage of



pay drawn by a Government servant of account of grant of stagnation allowance of any].

(vi)reduction to a lower time scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the Government servant to the time scale of pay, grade, post or service from which he was reduced, with or without further directions regarding conditions of restoration to the grade or post or service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or service;

(vii)compulsory retirement;

(viii)removal from service which shall not be a disqualification for future employment under the Government;

(ix)dismissal from service which shall ordinarily be a disqualification for future employment under the Government;

[x x x] [Omitted by Notification No. 6-4-77-3-I, dated 26-9-1977.]

Explanation. - The following shall not amount to a penalty within the meaning of this rule, namely :-

(i)withholding of increments of pay of a Government servant for his failure to pass any departmental examination in accordance with the rules or orders governing the service to which he belongs or post which he holds or the terms of his appointment;

(ii)stoppage of a Government servant at the efficiency bar in the time scale of pay on the ground of his unfitness to cross the bar;

(iii)non-promotion of a Government servant, whether in a substantive or officiating capacity, after consideration of his case, to a service, grade or post for promotion to which he is eligible;

(iv)reversion of a Government servant officiating in a higher service, grade or post to a lower service, grade or post, on the ground that he is considered to be unsuitable for such higher service, grade or post or on any administrative ground unconnected with his conduct;

(v)reversion of a Government servant, appointed on probation to any other service, grade or post, to his permanent service, grade or post during or at the end of the period of probation in accordance with the terms of his appointment or the rules and orders governing such probation;

(vi)replacement of the services of a Government servant, whose services had been borrowed from the Union Government or any other State Government, or an authority under the control of any Government, at the disposal of the authority from which the service of such Government servant had been borrowed;



(vii) compulsory retirement of a Government servant in accordance with the provisions relating to his superannuation or retirement;

(viii) termination of the services;

(a) of a Government servant appointed on probation, during or at the end of the period of his probation, in accordance with the terms of his appointment or the rules and orders governing such probation; or

(b) of a temporary Government servant appointed until further orders on the ground that his services are no longer required; or

(c) of a Government servant, employed under an agreement, in accordance with the terms of such agreement.

आरोप पत्र

यह कि आप व्यवहार न्यायालय, गरियाबंद में भृत्य के पद पर पदस्थ रहते हुये दिनांक 21.09.2015 से 03.12.2015 तक लगातार बिना कोई अवकाश स्वीकृत कराये स्वेच्छयापूर्वक अपने कर्तव्य से अनुपस्थित रहें, जो एक शासकीय सेवक के लिये अशोभनीय हैं तथा शासकीय कार्य के प्रति लापरवाही एवं उदासीनता को द्योतक है।

आपका उक्त कृत्य छत्तीसगढ़ सिविल सेवा (आचरण) नियम 1965 के नियम 3 एवं 7 के प्रतिकूल एवं छत्तीसगढ़ सिविल सेवा (वर्गीकरण, नियंत्रण एवं अपील) नियम 1966 के नियम-10 के अंतर्गत दंडनीय है।”

13. The erstwhile Government of Madhya Pradesh has issued circular in General Book Circular Part No. 1 at Serial No. 30 regarding imposition of penalty to the Government servant. In that circular, the general instruction regarding imposition of punishment, conduction of enquiry, suspension after enquiry, preliminary enquiry, regular departmental enquiry, procedure after completion of enquiry, removal from service and dismissal, compulsory retirement, minor penalty has been provided. Paragraph 30 of this part of the circular, it has provided guideline for imposition of penalty while considering the past service record of a government servant and issued following directions. Clause 30 reads as under:-

“General.-Relevant extracts from book circulars containing general instructions are given below:-



20. After a departmental enquiry has been held in accordance with the Classification Rule 55, the following procedure should be followed:-

xxx

xxx

xxx

(v) Whenever it is proposed to take the previous bad record of the Government servant concerned into consideration in the assessment of punishment, and such record did not form subject of any specific charge at the enquiry, it is necessary to set out that record specifically in the show cause notice as a ground of the proposed action. Copies of the previous bad record should also be furnished.”

14. From perusal of the charge-sheet, it is quite vivid that the past record was not the subject matter of the charge-sheet and from perusal of punishment order dated 21.07.2016 issued by the Disciplinary Authority/ District and Sessions Judge while imposing the punishment of dismissal from service has taken into consideration the past record of the petitioner. The operative part of the order reads as under:-

“अपचारी कर्मचारी दिनांक 14.04.2016 से अब तक कुल 99 दिनों से लगातार स्वेच्छापूर्वक अनाधिकृत रूप से बिना पूर्व अनुमति एवं आवेदन पत्र के कर्तव्य से अनुपस्थित है। इस प्रकार अपचारी कर्मचारी पूरे सेवा के दौरान स्वेच्छापूर्वक अनाधिकृत रूप से कर्तव्य से अनुपस्थित रहने का आदी है जो उनके शासकीय कार्य के निर्वहन के प्रति उनकी उदासीनता एवं कदाचरण को दर्शाता है। इनके स्वैच्छिक अनाधिकृत रूप से अनुपस्थिति के आचरण में सुधार की संभावनाये प्रतीत नहीं होती। उक्त तथ्यों को दृष्टिगत रखते हुये ऐसे कर्मचारी की शासकीय सेवा में रखा जाना उपयुक्त प्रतीत नहीं होता है।

प्रकरण की सम्पूर्ण परिस्थितियों पर विचारोपरान्त मेरा निष्कर्ष है कि, अपचारी कर्मचारी को छ.ग. सिविल सेवा (वर्गीकरण, नियंत्रण एवं अपील) नियम 1966 के नियम 10 (9) के स्थान पर छ.ग. सविल सेवा (वर्गीकरण, नियंत्रण एवं अपील) नियम 1966 के नियम 10 (8) के अंतर्गत सेवा से हटाया जाना, जो कि शासन के अधीन भावी नियोजन के लिये अनर्हता न होगी, की मुख्य शास्ति के दण्ड से दण्डित किया जाना ही उचित होगा।

अतः अपचारी कर्मचारी श्री रामेश्वर यादव, भृत्य, व्यवहार न्यायालय, गरियाबंद को विचारित एवं प्रमाणित कदाचरण हेतु छ.ग. सविल सेवा (वर्गीकरण, नियंत्रण एवं अपील) नियम 1966 के नियम 10 (8) के अंतर्गत सेवा से हटाया जाना, जो कि शासन के अधीन भावी नियोजन के लिये अनर्हता न होगी, की मुख्य शास्ति के दण्ड से दण्डित किया जाना ही उचित होगा, की मुख्य शास्ति के दण्ड से दण्डित किया जाता है।”



15. Thus, it is quite vivid that the Disciplinary Authority has taken into consideration the past record of the petitioner wherein he has already been punished, was not the subject matter of the charge-sheet and Rule 10 of the Rules, 1966 does not provide to have cumulative effect of continued misconduct proving in incorrigibility and completely unfit for services. Even from perusal of order of dismissal, it is quite vivid that the past record/ misconduct was effective consideration for imposing major penalty of dismissal from service, therefore, it is incumbent upon the Disciplinary Authority to disclose the past record in the show cause notice and the document regarding his past record should have been supplied to the petitioner. Thus, the impugned order dated 21.07.2016 (Annexure P/8) and the order dated 22.06.2019 (Annexure P/11) passed by the appellate authority are against the law laid down by Hon'ble the Supreme Court in case of **Ex. C. Satpal Singh** (supra) wherein it has been held as under:-

“29. A plain reading of Rule 16.2(1) of the Rules of 1934 suggests that it consists of two parts, the first part where the punishment of dismissal can be awarded to the delinquent for the gravest act of misconduct. However, in the second part, the punishment can be awarded as a cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service. While imposing punishment for such continued misconduct proving incorrigibility and complete unfitness for police service, the length of service of the offender is required to be taken into consideration, which is missing in the case of the first part of Rule 16.2(1) of the Rules of 1934.

31. In light of the judicial precedents cited above, when the factual matrix of the present case is appreciated, it is seen that the reference to the fact of forfeiture of 17 years of service of the respondent as a result of his absence from service on previous occasions was in exclusion or independent of the misconduct for which the enquiry officer has found him guilty. The consideration of the past misconduct of the respondent was not the effective reason for dismissing him from the service. The disciplinary authority had mentioned the past misconduct of the respondent



only for adding the weight to the decision of imposing the punishment.

32. We have perused the show cause notice and the order of dismissal passed against the respondent. After going through the same, it is clear that penalty of dismissal is a consequence of proved misconduct. Therefore, the order impugned is within the first part of Rule 16.2(1) of the Rules. While passing the order dismissing the appeal, the disciplinary authority recorded the finding that the act of absence of the respondent from duty is a grievous act of misconduct. The respondent was appointed as a constable in the Punjab Armed Forces and then transferred to the Commando Force, which is a disciplined force. The authority while passing the order has referred to his previous act of absence from duty besides proving an gravest act of misconduct leading to the order of dismissal.”

16. Thus, the dismissal from service taking into consideration the past service record, is against the rules governing the field i.e. the circulars and directions issued by the State Government as well as the law laid down by Hon'ble the Supreme Court, therefore, the dismissal order dated 21.07.2016 (Annexure P/8) as well as the order of rejection of appeal dated 22.06.2019 (Annexure P/11) deserve to be set aside and accordingly, they are set aside. Thus, **Point No. 1** determined by this Court, is answered in favour of the petitioner and against the respondents.

Submission, discussion and finding on Point No. 2

17. Further submission of learned counsel for the petitioner that the petitioner was discharging his duty in the residence of Additional District Judge as deposed by the defence witness No. 2- Chunni Lal Yadav, has not been considered by the Enquiry Office while holding misconduct to be found proved, is being examined by this Court. From the evidence of Chunni Lal Yadav (DW-2), it is quite vivid that the said witness in his cross-examination has admitted that since he is not



holding the post of Naib Nazir, therefore, he cannot say that the delinquent was posted in the resident of Additional District Judge. The record of the case would clearly demonstrate that the witness examined by the petitioner itself have deposed that the petitioner is habitual of taking leave and he also remained absent in so many occasions without any leave. Thus, the finding of the Enquiry Officer that misconduct has been found proved cannot be found faulty or suffers from perversity or illegality. Even otherwise, it is well settled position of law that in the enquiry proceeding, this Court cannot reappreciate the evidence or material placed in the enquiry as an appellate authority. The finding of this Court is fortified from the judgment of Hon'ble the Supreme Court in case of **The State of Rajasthan & others Vs. Bhupendra Singh [2024 INSC 592]** wherein it has been held in paragraphs 27, 28 & 29 as under:-

“27. The legal position was restated by two learned Judges in State of Uttar Pradesh v Man Mohan Nath Sinha, (2009) 8 SCC 310:

‘15. The legal position is well settled that the power of judicial review is not directed against the decision but is confined to the decision-making process. The court does not sit in judgment on merits of the decision. It is not open to the High Court to reappreciate and reappraise the evidence led before the inquiry officer and examine the findings recorded by the inquiry officer as a court of appeal and reach its own conclusions. In the instant case, the High Court fell into grave error in scanning the evidence as if it was a court of appeal. The approach of the High Court in consideration of the matter suffers from manifest error and, in our thoughtful consideration, the matter requires fresh consideration by the High Court in accordance with law. On this short ground, we send the matter back to the High Court.’

28. Turning our gaze back to the facts herein, we find that the learned Single Judge and the Division Bench acted as Courts of Appeal and went on to re-appreciate the evidence, which the above- enumerated authorities caution against. The present coram, in Bharti Airtel Limited v A S Raghavendra, (2024) 6 SCC 418, has laid down:



‘29. As regards the power of the High Court to reappraise the facts, it cannot be said that the same is completely impermissible under Articles 226 and 227 of the Constitution. However, there must be a level of infirmity greater than ordinary in a tribunal's order, which is facing judicial scrutiny before the High Court, to justify interference. We do not think such a situation prevailed in the present facts. Further, the ratio of the judgments relied upon by the respondent in support of his contentions, would not apply in the facts at hand.’ (emphasis supplied)

29. Evidently, while reappraisal of facts and evidence is not impermissible by the High Court, the infirmity in the underlying order has to be greater than ordinary. It is not the respondent's case that due to omissions by the appellants in substantive and/or procedural compliances, prejudice has ensued to him. Let us examine the aspect independently too. The facts reveal that an earlier removal order was quashed, and a copy of the Enquiry Report alongwith the RPSC's opinion was supplied to the respondent. The respondent, thereafter, received an opportunity to submit a written representation, which he availed of. Further, he was afforded an opportunity of hearing as well. In this view, we are unable to find any violation of the principles of natural justice.”

18. Thus, the submission made by the petitioner that the enquiry has been conducted in violation of principle of natural justice, deserves to be rejected and accordingly, it is rejected.
19. Further submission of learned counsel for the petitioner is that since the past record was not subject of charge sheet, therefore, the dismissal order is bad in law, is being considered by this Court. It is well settled position of law that the imposition of punishment is managerial function of the employer and whether the imposition of punishment is disproportionate or not, the judicial scrutiny and interference, if at all, has to be based on reasons in support of the Court's ultimate satisfaction that the disciplinary authority has faltered in exercise of his discretion. In such a situation, the Court may adopt one of two course; it may remit the matter to the competent authority for reconsideration of the punishment, or in the rarest of cases, it may substitute the punishment while supporting such a course with cogent



reasons. Hon'ble the Supreme Court in case of **Punjab & Sind Bank**

Vs. Sh. Raj Kumar [2026 INSC 313] has examined the power of interference in quantum of punishment by the High Court and has held in paragraphs 9 & 10 as under:-

“9. What follows from the precedents noted above is that courts should exercise restraint while interdicting orders of punishment. Normally, no court in exercise of its power of judicial review should interfere with an order of punishment imposed on a delinquent as a measure of disciplinary action by the competent authority and substitute its own judgment for that of the former. This is premised on the reason that the disciplinary authority is the best judge of the situation, and the requirements of maintaining discipline within the work force. While it is not the law that the courts should invariably stay at a distance when legality and/or propriety of a particular punishment is questioned, judicial scrutiny of the disciplinary action by way of punishment could arise only if the circumstances are such that no reasonable person would impose the punishment which is questioned and/or such punishment has the effect of shocking the conscience of the court. To put in simpler words, interference could be warranted if it appears to the court that the disciplinary authority has ‘used a sledgehammer for cracking a nut’. A punishment, which is strikingly or shockingly disproportionate and is not commensurate with the gravity of misconduct, proved to have been committed in course of inquiry or otherwise, would border on arbitrariness and offend Article 14 of the Constitution.

10. Where a court, upon due consideration, arrives at the conclusion that the punishment imposed is disproportionate, its intervention is circumscribed in nature. Judicial scrutiny and interference, if at all, has to be based on reasons in support of the court’s ultimate satisfaction that the disciplinary authority has faltered in the exercise of his discretion. In such a situation, the court may adopt one of two courses: it may remit the matter to the competent authority for reconsideration of the punishment; or, in the rarest of cases, it may substitute the punishment while supporting such a course with cogent reasons.”

20. Considering the fact that the past record of the petitioner was not subject matter of the charge-sheet nor the rule or circular issued by the Government provides consideration of the past record without notice to the chargesheeted employee when the past record is not subject matter of charge-sheet, therefore, the impugned order dated 21.07.2016 (Annexure P/8) as well as 22.06.2019 (Annexure P/11) are



set aside. Consequently, **Point No. 2** determined by this Court, is answered against the petitioner and in favour of the respondents.

21. Now the matter is remitted back to the Disciplinary Authority for deciding the matter afresh by providing the copy of past record to the petitioner and affording proper opportunity of hearing to the petitioner and decide the same within four months from the date of receipt of copy of this order. The Disciplinary Authority is directed to consider the effect of imposed penalty, if any for the past period of absenteeism which was not subject matter of the charge-sheet while imposing afresh quantum of punishment.
22. Accordingly, the writ petition is **allowed in part** to the extent indicated hereinabove.

Sd/-
(Narendra Kumar Vyas)
Judge

Arun