

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(S) No. 7258 of 2016

Nasim, Son of Roshan, Resident of Banpure, P.O.- Dondula,
P.S.- Bagodar, District- Girdih (Jharkhand) ... Petitioner
Versus

1. The Union of India, through the General Manager, E.C. Railway, Hajipur P.O., P.S. & District- Hajipur (Bihar).
 2. The Divisional Railway Manager, E.C. Railway, Dhanbad Division, Dhanbad, P.O., P.S. & District- Dhanbad (Jharkhand).
 3. The Divisional Engineer (3), E.C. Railway, Dhanbad Division, Dhanbad, P.O., P.S. & District- Dhanbad (Jharkhand).
 4. The A.E.N., Latehar, E.C. Railway, Dhanbad Division, Dhanbad, P.O., P.S. & District- Dhanbad (Jharkhand).
 5. Sr. Divisional Engineer, E.C. Railway, Dhanbad Division, Dhanbad, P.O., P.S. & District- Dhanbad (Jharkhand).
- ... Respondents

...
CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE ARUN KUMAR RAI

For the Petitioner : Mr. Prem Mardi, Advocate
For the Respondents : Mr. Prashant Pallav, A.S.G.I.
: Ms. Shreya Shukla, A.C. to A.S.G.I.

...
Order No.08/dated 19.01.2026
Per Sujit Narayan Prasad, J.

The instant writ petition is directed against the order dated 15.02.2013 passed in O.A. No. 53 of 2012 (R) by the learned Central Administrative Tribunal, Patna Bench, (Circuit Court at Ranchi) whereby and whereunder the order of punishment passed by the Disciplinary Authority as also the Appellate Authority have been refused to be interfered with by dismissing the original application.

2. The brief facts of the case, as per the pleading made in the writ petition, as has been incorporated from the pleading of the original application reads as under:

The petitioner was working as D.C./Gangman under P.W.I., Tori under E.C. Railway, Dhanbad Division.

On 08.07.1992, the petitioner was placed under suspension on the allegation of mis-conduct.

On 13.08.1992 by registered post and on 30.12.1992 by ordinary post, the petitioner submitted non engagement certificates which is a pre-condition for receiving subsistence allowance.

On 08.09.1992, the petitioner was served with a major penalty memorandum on allegations of giving false attendance and confining a gangmate named Sharfuddin and mis-behaving with Shri R.P. Saha, AEN/Latehar.

On 03.09.1993 and 15.12.1993, the petitioner represented against non-payment of subsistence allowance to him with effect from 08.07.1992.

On 27.12.1993, the petitioner sent a registered letter addressed to Inquiry Officer that as no subsistence allowance was being paid to him, he is not in a position to attend the disciplinary proceedings and inquiry at Latehar. According to the petitioner, his defence helper also brought this fact to the notice of the Inquiry Officer about non-payment of subsistence

allowance but no order was passed, and the inquiry was conducted *ex parte*.

It is the case of the petitioner that in spite of repeated request for payment of subsistence allowance before the Disciplinary authority and the Inquiry Officer, the petitioner was not paid the subsistence allowance and instead of payment an *ex-parte* departmental proceeding were concluded against the petitioner.

On 23.09.1994, the petitioner received copy of the inquiry report, which revealed that the proceedings were conducted *ex-parte* behind his back. On 05.10.1994, the petitioner made a representation to the Respondent No.3 drawing his attention to procedural lapses and biased approach of the Inquiry Officer including denial of reasonable opportunity to defend his case.

Finally, the Disciplinary Authority vide order dated 24.03.1995 removed the petitioner from service.

Thereafter, the petitioner made appeal against the removal order dated 24.03.1995. Since the appeal was not disposed of by the appellate authority, the petitioner filed O.A.No.858 of 2003, which was disposed of on 18.11.2003 with a direction to the DRM, E.C. Railway, Dhanbad to dispose of the appeal within three months

from the date of receipt of the order by passing a reasoned and speaking order in accordance with law.

Since, in spite of the said order of the Tribunal, no order was passed by the appellate authority, the petitioner filed a contempt petition and while disposing the contempt petition, by an order dated 16.03.2005 in CCPA 84 of 2004 it could be known that the DRM is not the appellate authority to whom the Tribunal had directed rather the Sr. DEN, Dhanbad is the appellate authority whom the appeal should have been submitted and for technical reason, the appeal has not been attended.

The Tribunal directed a copy of the order to be addressed to the appellate authority with a direction to dispose of the appeal on merit by a speaking order within a period of three months from the date of receipt of the order.

On 11.5.2006, the Sr. DEN [Coordination], East Central Railway passed impugned order.

Aggrieved with the findings of the disciplinary authority and order of the Appellate Authority that the petitioner is not fit to be retained in Railway service, he filed OA before CAT, Patna Bench in 2006 and that was numbered as O.A. No. 710 of 2006, however, after

transfer of the case to Ranchi Circuit Bench it has been numbered as O.A. No. 53 of 2012.

Thereafter vide order dated 15.02.2013 the O.A. No. 53 of 2012 has been dismissed against which the present writ petition has been preferred on the ground that the appellate authority did not exercise his mind and passed a mechanical order which is not legally tenable under law and the same need to be set aside in the larger interest of justice.

3. It is the case of the writ petitioner that while he was working as Gangman he was departmentally proceeded and removed from service vide order dated 24.03.1995.

4. The writ petitioner has carried the said order to the Appellate Authority but the Appellate Authority has also declined to interfere with the same vide order dated 11.05.2006.

5. The writ petitioner being the employee of the Central Government working under the Indian Railway has invoked the jurisdiction conferred to the Central Administrative Tribunal and has made an application by challenging the order passed by the Disciplinary Authority and the Appellate Authority dated 24.03.1995 and 11.05.2006 respectively. The learned tribunal has declined to interfere with the aforesaid order by not accepting the ground which was agitated that due to non-payment of the subsistence allowance, a prejudice has been

caused to him. The order passed by the Tribunal has been assailed before this Court.

Submission of the learned counsel for the writ petitioner:

6. The following grounds have been taken by the learned Counsel appearing for the writ petitioner:

- (i) The learned Tribunal has not taken into consideration, in right perspective, the prejudice was caused due to non-disbursement of the subsistence allowance and due to non-disbursement of the said allowance the writ petitioner could not take part in the departmental proceeding and aforesaid ground is the main ground taken before the Tribunal in assailing the impugned order of punishment of removal from service.
- (ii) The ground has also been taken that no proper opportunity of hearing was given before passing the order of removal from service.

7. Learned Counsel appearing for the petitioner, based upon the aforesaid grounds, has submitted that the order passed by the Tribunal, therefore, needs interference by quashing and setting aside the same.

Submission of the learned counsel for the respondent:

8. Per contra, Mr Prashant Pallav, learned A.S.G.I. assisted by Ms. Shreya Shukla, A.C. to A.S.G.I. has submitted that there is no error in the order passed by the Tribunal reason being that

the issue of non-disbursement of the subsistence allowance has well been considered and by referring the reason thereof the learned Tribunal has come to the conclusive finding that the non-payment of subsistence allowance has not caused any prejudice, since, headquarter of the writ petitioner, in course of his suspension, was in the District of Latehar which was the place of the enquiry.

9. The contention has been made that the issue of non-supply of the memorandum of charge or inquiry report is not worth to be taken into consideration by this Court, since, this Court is not exercising the original jurisdiction rather this Court is only exercising the power of judicial review to assess the legality and propriety of the finding recorded by the learned Tribunal in exercise of power conferred under Article 226 of the Constitution of India.

10. It has been contended that the learned Tribunal has taken into consideration the fact in entirety. So far as the fact about non-supply of the memorandum of charge is concerned, the same has not been pleaded since it was not a ground taken before the Tribunal but even accepting the said ground which is being agitated herein it would be evident from the enquiry report as has been appended with the instant writ petition that the finding of the enquiry report has well been supplied to the writ petitioner.

11. It has further been contended that the said enquiry report itself suggest that the writ petitioner has fully participated in the proceeding and not only that he has also produced the defence witnesses.

12. It has been contended that it is the petitioner who after putting his appearance in the enquiry proceeding, subsequently, has refrained himself in participating the enquiry proceeding. But even then, the process of the natural justice has well been followed and after taking into consideration the charge proved the Disciplinary Authority has inflicted the punishment of removal from service based upon the gravity of charge.

13. The learned A.S.G.I., based upon the aforesaid grounds, has submitted that the impugned order, therefore, may not be interfered with.

14. It has been contended that so far as the ground which has been agitated on behalf of the writ petitioner that the subsistence allowance has not been paid which is also found to be not sustainable in view of the fact that delinquent employee/writ petitioner has left the Head-quarters without any permission and thus, it apparent that writ petitioner has violated the rule and thereby left the headquarters without any permission which is an essential, requisite and ingredient for payment of subsistence allowance as such the argument has

been advanced that if the petitioner himself is at fault, he cannot be allowed to take advantage of his fault.

Analysis

15. This Court has heard the learned Counsel for the parties at length. The issue which requires consideration in the present case is as to whether the impugned order passed by the Tribunal declining to interfere with the order passed by the Administrative Disciplinary Authority dated 24.03.1995 and upheld by the Appellate Authority on 11.05.2006 of the order of removal is to be interfered with under the power of judicial review as conferred to this Court to be exercised under Article 226 of the Constitution of India by the Constitution Bench Judgment rendered by the Hon'ble Apex Court in the case of **L. Chandra Kumar Vs. Union of India & Ors.** reported in **(1997) 3 SCC 261**.

16. This Court in order to consider the aforesaid issue and before advertng to the factual aspect needs to refer herein the underline principle to interfere with the adjudication made by Central Administrative Tribunal as per the power conferred by virtue of the amendment carried out in the Constitution as under Article 323 (A) of the Constitution of India.

17. The aforesaid issue has been settled by the Constitution Bench of the Hon'ble Apex Court in the case of **L. Chandra Kumar Vs. Union of India & Ors.(supra)** wherein The Hon'ble Apex Court has been pleased to hold that the order passed by

the learned Tribunal, therefore, will be amenable under Article 226 of the Constitution of India under the power of judicial review. The Hon'ble Apex Court has also given the status of the Tribunal to the Court of first instance. The relevant paragraph conferring power to be exercised by the High Court under Article 226 having taken into consideration at paragraph 99 thereof, for ready reference, the said paragraph is being referred herein:

"99. In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the

Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated."

18. It is evident from the proposition laid down in the said paragraph that the High Court has been conferred with the power of judicial review to be exercised under the power conferred under Article 226 of the Constitution of India.

19. We are conscious the power which is to be exercised under the ambit of judicial review can only be exercised if there is any error apparent on the face of the record or the order suffers from any jurisdictional error.

20. The error apparent on the face of the order means that if the order appears on its face having with error, then only the power of judicial review is to be exercised.

21. In the case of ***West Bengal Central School Service Commission vs. Abdul Halim, (2019) 18 SCC 39***, their Lordships have been pleased to hold at paragraph-30 that the power of judicial review must be exercised by the Court after determining that the impugned is vitiated by an error apparent on the face of the record and not the same has been established by a process of reasoning. Paragraph-30 of the aforesaid judgment is being referred as under:

"30. In exercise of its power of judicial review, the Court is to see whether the decision impugned is vitiated by an apparent error of law. The test to determine whether a decision is vitiated by error apparent on the face of the record is whether the error is self-evident on the face of the record or whether the error requires examination or

argument to establish it. If an error has to be established by a process of reasoning, on points where there may reasonably be two opinions, it cannot be said to be an error on the face of the record, as held by this Court in Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale [Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale, AIR 1960 SC 137] . If the provision of a statutory rule is reasonably capable of two or more constructions and one construction has been adopted, the decision would not be open to interference by the writ court. It is only an obvious misinterpretation of a relevant statutory provision, or ignorance or disregard thereof, or a decision founded on reasons which are clearly wrong in law, which can be corrected by the writ court by issuance of writ of certiorari.”

22. In the case of **T.C. Basappa vs. T. Nagappa and Anr., (1955) 1 SCR 250**, their Lordship have held that the patent error in a decision can be corrected by writ of certiorari, when it is manifested by the error apparent on the face of the proceedings. The relevant portion of the aforesaid judgment is quoted hereunder:

“11. ... An error in the decision or determination itself may also be amenable to a writ of certiorari but it must be a manifest error apparent on the face of the proceedings e.g. when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by certiorari but not a mere wrong decision.”

23. Thus, on the basis of the aforesaid settled legal position it is evident that the power of judicial review can be exercised, if error on the face of the order impugned, challenged under the Article 226 of Constitution of India, appears to be there.

24. This Court in order to consider as to whether the order passed by the Tribunal suffers from any error apparent on the face of record or in violation of principle of natural justice, which is the ground taken on behalf of the petitioner as per the ground referred hereinabove is re-adverting to the factual aspect of the case.

25. Herein the issue of observance of principle of natural justice is raised. This Court has found from the material available on record, particularly, the enquiry report as has been annexed as Annexure-10 wherefrom it is evident that the writ petitioner was served with the memorandum of charge along with the notice to put his appearance before the enquiry officer. He has been represented by his legal representative, namely one Mr. P.K. Mitra. Enquiry report reflects that although altogether three charges have been inflicted, for ready reference, all the three charges are being referred herein:

THE ARTICLE OF CHARGES:

Article-I

Shri. Nasim has given false attendance on 06.07.92 for the days 07.7.92 and 08.7.92 in favour of him and his co-workers who are attached in the do casualised Gang having tent at Kalari (except the staff who were on sick leave and engaged for chowkidar) after snatching the Master Sheet from Shri. Basarat Gangman who was deputed by Shri. S. Biswas, PW1/Torpa to hand over the said Master Sheet to Shri. Banahi G/ Man.

Thus, he was violated rule 3(1) (i) (ii) (iii) of the Railway Service Conduct Rule 1966. He has also violated the GR No. 2.05 (1), 2 (b), 2.06 (a) (b), 2.07 & 2.08 (1).

Article -II

On 09.7.92 Shri. Nasim has confined a Sarfuddin Permanent Gangmate with the tent pole by using a hoe taking law and order in his own hand and also taken the signature of Shri. Sarfuddin on three blank papers forcibly.

Thus, he has violated Rule 39 (1) (i) (ii) (iii) of the Railway Service Conduct Rule 1966. He has also violated the GR No. 2.05 (c), & GR No. 2.11 (2).

Article-III

Shri. Nasim has misbehaved and used unparliamentary languages with Shri. R.P. Saha, AEN/Lohardaga on 08.7.92. Shri. Nasim has thrown away the suspension memo issued by AEN/Lohardaga on 08.7.92. He has also caught the shirt of Shri. R.P. Saha, AEN/Lohardaga and used blow with clenched fist two time just left side shoulder of Sh. R.P. Saha, AEN/Lohardaga on 08.7.92. He has also threatened Sh. R.P. Saha AEN/Lohardaga to kill him at any time.

Thus, he has violated rule 3(1)(i)(ii)(iii) of the Railway Service Conduct Rule, 1966. He has also violated the GR No. 2.05-2 (c), 2.06 (a) (b), 2.11-2(b).

26. It is further evident that the statement and imputation of misconduct have also been referred and thereafter the enquiry proceeding has proceeded. It further appears from the enquiry report that the defence witnesses have also been examined, charge wise.

27. It is further evident that so far as the charge No.1 as contained in Article-I altogether 8 witnesses have been produced on behalf of the defence. So far as the Article No.2 is concerned, the three witnesses have been examined on behalf of the Disciplinary Authority. So far as the charge as contained in Article No.3 is concerned altogether 10 defence witnesses have been examined.

28. Therefore, from the aforesaid it is evident that the ample opportunity has been given to examine the prosecution witnesses and based upon the same the inquiry Officer has arrived with the conclusion as available in the enquiry report which is being referred herein:

Conclusion

After going through the case in detail and after considering all the factors, the circumstances and the evidences produced by the defence, prosecution witnesses, the Police Investigating Officer of this case, the Medical Officer and the other witnesses of this case the Enquiry Officer came to the conclusion as detailed below:-

The delinquent staff Sh. Nasim is held guilty for the following charges (i.e. the following charge has been established to be true) :-

1. *Shri. Nasim is held responsible for disobeying the order of shifting his work place from Khelari to Hindra as well as forcibly giving false attendance for the days 07.7.92 & 08.7.92 in favour of all the staff except who are on Sick, Leave and work as chowkidar.*

Thus, he has violated Rule 3(1)(i)(ii)(iii) of the Railway Service Conduct Rule 1966. & GR No. 2.05 (a) (b), 2.06 (a) & (b), 2.07 and 2.08(1).

2. *Shri Nasim is held responsible for disobeying and humiliating the suspension order of Shri. R.P. Saha the then AEE/LHBE by throwing away the suspension memo he has acted in the most indisciplined manner. He is responsible for abusing (using unparliamentary languages) in presence of Rly. Staff and others.*

Thus, he has violated Rule 3 (1) (i) (ii) & (iii) of the Railway Service Conduct Rule 1966 and GR No. 2.06 (a) & (b), 2.10 (b).

3. *Shri. Nasim held responsible for beating and man-handling Shri. R.P. Saha the then AEE/LHBE as well as for threatening Shri. R.P. Saha to kill him.*

Thus, he has violated Rule 3 (1) (i) (ii) (iii) of the Rly. Service Conduct Rule 1966. He has also violated the G.R. No. 2.05 (a) (b), 2.09 (a) (b), 2.11 (a) (b).

29. The said enquiry report has been forwarded to the Disciplinary Authority. It appears from Annexure-12 dated 24.03.1995 that the copy of the report including the findings of the Enquiry Officer has been given to the petitioner. There is no denial with respect to the aforesaid fact, however, the learned counsel for the petitioner has emphatically argued that neither the memorandum of charge has been supplied nor the copy of the enquiry report has been served. But what is being argued on behalf of the writ petitioner that is contrary to his own document, since, so far as the non-supply of the memorandum of charge is concerned as the ground is being taken if that be so, then there would not have been any examination of the defence witnesses as would be reflected from the enquiry report itself.

30. The issue of non-supply of the enquiry report is concerned, although there is no specific stand having been taken before the Tribunal and even in this writ petition, but it appears from the order of Disciplinary Authority that the copy of the enquiry report has been supplied to the delinquent employee, the writ petitioner as would be evident from Annexure-12 dated 24.03.1995.

31. The order of removal from the service has been passed, taking into consideration, the gravity of the charges. The petitioner has challenged the order passed by the Disciplinary Authority in an appeal before the appellate authority, but when the same was not being disposed of, then the writ petitioner had made an application before the Tribunal being Original Application No. 858 of 2003 which was disposed of vide order dated 18th November, 2003 directing the Appellate Authority to dispose of the appeal.

32. The Appellant Authority thereafter has disposed of the appeal declining to interfere with the order passed by the disciplinary authority. The order passed by the disciplinary authority and the appellate authority dated 24.03.1995 and 11.05.2006 respectively have been challenged by filing another original application being O.A. No. 53 of 2012(R). The same has been dismissed vide order dated 15.02.2013 against which the present writ petition has been preferred.

33. The ground which has been taken that due to non-disbursement of the subsistence allowance, a serious prejudice has been caused to the writ petitioner. There is no quarrel upon the issue that if a delinquent employee has been put under suspension, then as per the provision made in the civil services classification (control and appeal) Rule, applicable to the concerned delinquent employee, the subsistence allowance is to

be paid during the course of suspension. The headquarter is to be fixed for the aforesaid purpose by the Disciplinary Authority.

34. The learned Tribunal has referred a ground in not accepting the fact of causing prejudice due to non-disbursement of the subsistence allowance for the reasons that the headquarter of the writ petitioner was fixed in the District of Latehar, the place, where the enquiry was directed to be conducted but the petitioner had left the head-quarter without prior permission of the authority concerned.

35. The ground was taken on behalf of the Respondent-Railway that no disbursement of subsistence allowance has been occasioned by the writ petitioner himself for the reason that as per the Fundamental Rule the subsistence grant/allowance is only to be paid in favour of the suspended employee, who has been suspended in contemplation of Departmental proceeding but the writ petitioner himself remained absent from head-quarter and violated the norm of Railway servants (discipline and appeal) Rules 1968.

36. At this juncture, the question is that the writ petitioner is to show his bona fide and if he intends to take a ground causing prejudice due to the conduct of the disciplinary authority, then he should be fair in his conduct. The subsistence allowance is to support the delinquent employee, in course of suspension, if he/she is in the headquarter and only in those circumstances, the subsistence allowance is to be paid to the suspended

employee to achieve the object and intent of the Rule 53 (2) of the Fundamental Rules.

37. Therefore, if the petitioner has himself violated the statute, now he intends to take advantage of his failure which is not permissible on the principle that a wrong doer cannot be allowed to take advantage of this own wrong.

38. The law is well settled that a wrong doer cannot be allowed to take advantage of its own wrong, reference in this regard be made to the judgment rendered by Hon'ble Apex Court in the case of ***Kusheshwar Prasad Singh v. State of Bihar, (2007) 11 SCC 447*** wherein it has been held that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, “a wrongdoer ought not to be permitted to make a profit out of his own wrong. For ready reference paragraphs 15 and 16 are being quoted hereunder as:—

“15. In Union of India v. Major General Madan Lal Yadav [(1996) 4 SCC 127] the accused army personnel himself was responsible for delay as he escaped from detention. Then he raised an objection against initiation of proceedings on the ground that such proceedings ought to have been initiated within six months under the Army Act, 1950. Referring to the above maxim, this Court held that the accused could not take undue advantage of his own wrong. Considering the relevant provisions of the Act, the Court held that presence of the accused was an essential condition for the commencement of trial and when the

accused did not make himself available, he could not be allowed to raise a contention that proceedings were time barred. This Court (at SCC p. 142, para 28) referred to Broom's Legal Maxims (10th Edn.), p. 191 wherein it was stated: "It is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognised in courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure."

*16. It is settled principle of law that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. **It is sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, "a wrongdoer ought not to be permitted to make a profit out of his own wrong"**.*

39. The second ground has been taken that non-supply of the memorandum of charge or complete enquiry report. Although it appears that the said ground was not before the Tribunal, since, no reference to that effect has been made in the order passed by the Tribunal.

40. But the said ground is not worth to be considered in a situation where this Court is exercising power of judicial review as conferred under Article 226 of the Constitution of India in the light of the judgment passed by the Hon'ble Apex Court in the case of **L. Chandra Kumar** (supra). However, the matter would have been different if this writ Court would have exercised the power under its original jurisdiction, but that is not the case herein, since, we are considering the error if committed by the learned Tribunal so as to come to the conclusion that due to

non-consideration of a fact the Tribunal has committed error said to be error apparent on the face of the order.

41. This Court, therefore, is of the view that pleading made in the writ petition is not going to help the writ petitioner if that part has not been taken before the Tribunal. But even though we have considered the said argument in the ends of justice and for the aforesaid purpose we have gone through the enquiry report and other material evidence as has been brought on record by the writ petitioner himself. The enquiry report is in detail having referred the three Article of charges, as quoted and referred hereinabove. The writ petitioner has fully participated through his legal representative. He has produced the defence witnesses to defend the charges Article wise. The copy of the enquiry report has also been submitted. Therefore, it cannot be said that there is any procedural irregularity rather the principle of natural justice has been followed.

42. This Court, in view of the aforesaid is of the view that it is incorrect on the part of the writ petitioner to take the ground that there is violation of principle of natural justice rather it is the writ petitioner who himself has taken adjournments after adjournments but even then, the time was allowed to the writ petitioner to put his defence.

43. The learned Tribunal, particularly, on the basis of the fact that no prejudice has been caused due to non-disbursement of the subsistence allowance because the writ petitioner himself

left the head-quarter without prior permission of the authority concerned and furthermore the headquarter of the writ petitioner was fixed at the place where the enquiry was going on and as such it cannot be said to be acceptable that living in Latehar, he was not in a position to join in the enquiry. But even then, as would be evident from the enquiry report, the writ petitioner was well represented by his defence helper.

44. The learned Tribunal basing upon the aforesaid has come to the conclusion that there is no error in the order passed by the Disciplinary Authority having been upheld by the Appellate Authority considering the nature of gravity of charge.

45. This Court in the entirety of facts and circumstances and further taking into consideration the principle which is to be exercised as conferred to be exercised under the power of judicial review as per the Judgment rendered by the Hon'ble Apex Court in the case of **L. Chandra Kumar (supra)** is of the view that it is not the case where there is any error apparent on the face of the order or the disciplinary authority has inflicted the punishment without observing the principle of natural justice. Hence, this case is not coming under the principle to be followed by way of judicial review.

46. Accordingly, this Court is of the view that the order passed by the Tribunal needs no interference and as such this writ petition is hereby dismissed.

47. Pending interlocutory application, if any, also stands disposed of.

(Sujit Narayan Prasad, J.)

(Arun Kumar Rai, J.)

19th January, 2026
P.K.S./Suman-
AFR