



A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P. C.(OAC) No.2489 of 2005

(In the matter of an application under Articles 226 and 227 of the Constitution of India)

Rohit Kumar Sahu

....

Petitioner

-versus-

***Director General and Inspector of
General of Police, Orissa Cuttack
and others***

Opposite Parties

Appeared in this case:-

For Petitioner

:

Mr. M.K. Khuntia, Advocate

For Opposite Parties

:

Mr. Gyanaloka Mohanty,
Learned Standing Counsel

CORAM:

JUSTICE A.C. BEHERA

JUDGMENT

Date of hearing : 18.02.2026 / date of judgment : 26.02.2026

A.C. Behera, J. This writ petition has been filed by the petitioner against the Opposite Parties praying for setting aside(quashing) an order dated 07.06.2004 vide Annexure-4 passed in Proceeding No.16 of 2003 by the Commandant, O.S.A.P., 4th Battalion, Rourkela(Opposite Party No.3) against the petitioner for his removal from the service w.e.f. 07.06.2004 as well as the order of confirmation to that Annexure-4 passed by the I.G. of Police SAP, Orissa, Cuttack(Opposite Party No.2) and D.G. of Police,



Orissa, Cuttack (Opposite Party No.1) in appeal and revision respectively and to direct the Opposite Parties to reinstate him (petitioner) in his service giving anti-dated effect and also to direct to the Opposite Parties to treat the period of suspension as duty.

2. The case of the petitioner is that, he (petitioner-Rohit Kumar Sahu) was properly selected in an interview as a Sepoy and on dated 07.07.1989, he was duly appointed as a Sepoy and his number was Sepoy/335. He was posted at 4th Battalion, Rourkela. Accordingly, since 07.07.1989, he was discharging his duties with utmost devotion, commitment and stainless to all concerned. His service carrier was spotless, unblemished. While, he was continuing as a Sepoy, he was elected on dated 23.08.2002 as the Secretary of Branch Association, 4th Battalion O.S.A.P.

On dated 04.12.2003, he was commanded by his immediate superior to go on deputation to Barbil Police Station in the district of Keonjhar, but, to that effect no written order was issued. So, the petitioner made a representation on dated 05.12.2003 to the Commandant, O.S.A.P., 4th Battalion, Rourkela (Opposite Party No.3) not to depute him to Barbil Police Station, as the same is outside the Battalion of the Headquarters in view of the letter of A.I.G. dated 22.06.1985. Because, he is the Secretary of Branch Association, 4th



Battalion and it is required for him to be stationed at Headquarters, as in the said letter, it was specifically indicated that, the office bearers of the Association, i.e., President, Secretary and Cashier should be stationed at Headquarters.

While, his representation vide Annexure-1 series was under consideration, a show-cause was issued to him on dated 10.12.2003 vide Annexure-2 alleging disobedience of the order of his superior, then, a departmental proceeding vide Proceeding No.16 dated 10.12.2003 was initiated against him and enquiry was conducted. The Enquiring Officer submitted report in Proceeding No.16 of 2003 vide Annexure-3 stating that, the charge framed against him(petitioner) relating to his disobedience to the order of his superior is proved.

3. On the basis of the said enquiry report vide Annexure-3, the Disciplinary Authority, i.e., Opposite Party No.3 passed an order on dated 07.06.2004 vide Annexure-4 removing/dismissing him(petitioner) from the service w.e.f. 07.06.2004 on the ground of his gross utter indiscipline conduct and disobedience of the order of the authority assigning the reasons that,

“conduct of the petitioner, i.e., refusing to receive Command Certificate to proceed for Government duty and disobedience to the order of the authority does not deserve him to continue in a disciplined



Police Department. His continuance in the department will be poisonous to the disciplined department, which will reflect to the other forces and his suspension period w.e.f. 09.12.2003 A.M. to 11.12.2003 P.M.(total three days) is treated as such.”

4. On being dissatisfied with the above removal of the petitioner from the service passed on dated 07.06.2004 vide Annexure-4 by the Disciplinary Authority(Opposite Party No.3), he (petitioner) challenged the same by preferring an appeal vide B.O. No.1056 of 2005 before the I.G. of Police, SAP, Orissa, Cuttack(Opposite Party No.2), but, the said appeal of the petitioner was rejected as per order vide Annexure-5 passed by the Opposite Party No.2 concurring / confirming the removal/dismissal order passed against the petitioner from his service as per Annexure-4 by the Opposite Party No.3.

To which, the petitioner challenged by filing a revision before the D.G. of Police, Orissa Cuttack(Opposite Party No.1), but, the said revision of the petitioner was also dismissed as per Annexure-B confirming the order passed in Annexures-4 and 5.

5. On being aggrieved with the orders of dismissal of the petitioner from his service passed by the Opposite Parties in Annexures-4, 5 and B, he(petitioner) challenged the same by filing O.A. No.2489(C) of 2005 on dated 30.12.2005 before the Administrative Tribunal, Cuttack Bench,



Cuttack being the petitioner against the Opposite Parties praying for a declaration that, the order of his removal from service as per order dated 07.06.2004 passed by the Opposite Parties are non-est in the eye of law and to direct the Opposite Party to reinstate him in his service with anti-dated effect and to direct the Opposite Parties to treat the period of suspension as duty.

6. Having been noticed from the State Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.2489(C) of 2005, the Opposite Parties filed their counter affidavits taking their stands that, when, the petitioner without receiving the Command Certificate regarding his deputation to Barbil Police Station, he intentionally and deliberately disobeyed the order of the competent authority and when, the said charge against him was duly established, then, his removal from his service is neither illegal nor unreasonable. Therefore, O.A. No.2489(C) of 2005 filed by him(petitioner) is liable to be dismissed.

7. Subsequent thereto, due to the abolition of the Orissa Administrative Tribunal, the O.A. No.2489(C) of 2005 filed by the petitioner was taken over by the High Court for its disposal as per law and that O.A. No.2489(C) of 2005 was numbered as this W.P.C(OAC) No.2489 of 2005.



8. I have already heard from the learned counsel for the petitioner and learned Standing Counsel for the State.

9. On perusal of the Annexures-1, 2, 3, 4, 5 and B, it appears that, *“the finding of guilt of the charge against the petitioner in the disciplinary proceeding No.16 for his disobedience to the order of his immediate superior for non-receiving the Command Certificate relating to his deputation to Barbil Police Station is not erroneous.*

For which, there is no scope to interfere with the finding of guilt of the petitioner by the disciplinary authority, i.e., Opposite Party No.3 and the confirmation of the same by the Opposite Party Nos.2 and 1 in appeal and revision.”

10. During the course of hearing of the writ petition, the learned counsel for the petitioner contended that, the punishment imposed against the petitioner as per Annexure-4 by the Opposite Party No.3 and the confirmation of the same by the Opposite Party Nos.2 and 1 regarding his removal from service for his single fault, i.e., for non-receiving the Command Certificate relating to his deputation from his immediate superior is grossly disproportionate to the proved charge, for which, the punishment imposed against the petitioner for his removal/dismissal from the service is shockingly harsh and excessive, the same is liable to be modified/reduced.



To which, learned Standing Counsel for the State vehemently objected contending that, the above conduct of the petitioner, i.e., his disobedience to the direction of his immediate superior, i.e., non-receiving Command Certificate relating to his deputation to Barbil Police Station is against the character of an employee of the disciplined police department and also contended that, when, he(petitioner) being the servant of the disciplined police department disobeyed the direction of his immediate superior, then, his service in the said department is no more beneficial and the order of his removal/dismissal from the service is proper.

11. Now, it will be seen, whether the above imposed penalty, i.e., removal/dismissal of the petitioner from his service for his single fault, i.e., for non-receiving the Command Certificate relating to his deputation from his immediate superior is proper commensurating the proved charge against him (petitioner) or the said punishment is shockingly disproportionate.

12. It is the settled propositions of law that, *“disciplinary proceedings are meant not really to punish the guilt, but, to keep the administrative machinery unsullied by getting rid of bad elements.*



Even if, by misconduct of an employee, the employer does not suffer any financial loss, he can be removed from service in a case of loss of confidence.

Loss of confidence cannot be subjective, but, there must be objective of facts, which would lead to a definite inference of apprehension in the mind of the employer regarding trustworthiness of the employee and which must be alleged and proved.”

13. Here in this matter at hand, the petitioner had joined in his service as a Sepoy on dated 07.07.1989 and he was removed from his service on dated 07.06.2004 and as such, by the time of his removal from the service as per order vide Annexure-4 passed by the Opposite Party No.3, he(petitioner) had already served about fifteen years and during the said period of his service, there was no stigma/blemish in his service since 07.07.1989 to 07.06.2004.

What is the proportionate in the quantum of punishment non-commensurating with the proved charge and the scope/limit of interference with the quantum of punishment has already been clarified in the ratio of the following decisions:-

(i) In a case between ***Ranjit Thakur vrs. Union of India and others*** : reported in ***(1987) 4 SCC-611*** that,

Referring to the proportionality in the quantum of punishment, the Apex Court observed that, when the punishment is shockingly



disproportionate to the misconduct proved, then, only the court can interfere with such punishment.

(ii) In a case between ***P. Areya Reddy vrs. Presiding Officer, Labour Court, Bhubaneswar and another*** : reported in ***111(2011) CLT-797*** that,

If the punishment awarded is disproportionate to the gravity of misconduct, it would be arbitrary and violative of mandate of Article-14 of the Constitution of India, 1950, in that case court can interfere with such awarded punishment.

(iii) In a case between ***Shakil Ahmad vrs. Union of India and four others*** : reported in ***2022 SSC Online Allahabad-1937*** that,

When the punishment is found to be outrageously disproportionate to the nature of charge, principle of proportionality comes into play. The court should take into account that, the punishment is not vindictive or unduly harsh. It should not be disproportionate to the offence so as to shock the conscience and amount in itself to a conclusive evidence of bias. Irrationality and perversity are recognized grounds of judicial review.

(iv) In a case between ***B.C. Chaturvedi vrs. Union of India and others*** : reported in ***AIR 1996 (SC)-484*** that,

Disciplinary authority and on appeals, appellate authority are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty.

If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.(Para-18)

(v) In a case between ***S.R. Tiwari vrs. Union of India***: reported in ***(2013) 6 SCC-602*** that,

While discussing scope of judicial review the Supreme Court observed that Courts can interfere with quantum of punishment only where the punishment awarded is found to be shockingly disproportionate to the gravity of misconduct. It is only in extreme case which on the facts show perversity or irrationality that there can be a judicial review of punishment and Court should not interfere merely on compassionate grounds.



(vi) In a case between ***V. Ramana vrs. A.P. S.R.T.C. and others*** : reported in **(2005) 7 SCC-338** that,

With regard to disproportionate of punishment, the Supreme Court compared the Indian law with the English Law on judicial review and placing reliance of several previous judgments concluded that, every administrative order should not suffer from any arbitrariness.

Scope of judicial review as to quantum of punishment is permissible, only, if it is found that, it does not commensurate with the gravity of charge and if the court comes to the conclusion that, the quantum of punishment is shocking to the conscience of the Court, in the sense that, it was in defial of logic and moral standards.

Therefore, in the normal course, if the punishment imposed is shockingly disproportionate, it is open to the Court to direct the disciplinary authority to reconsider the penalty imposed or to shorten the litigation in exceptional cases, the Court itself can impose appropriate punishment by recording cogent reasons.

(vii) In a case between ***Chairman-cum-Managing Director Coal India Ltd. and another vrs. Mukul Kumar Choudhuri and others(Para-19)*** : reported in **(2009) 15 SCC-620** that,

The doctrine of proportionality is a well recognized concept of judicial review in Indian jurisprudence.

What is otherwise within the discretionary domain and sole power of the decision maker to quantify punishment, once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention, if exercised in a manner, which is out of proportion to the fault.

Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review.

(viii) In a case between ***Jai Bhagwan vrs. Commissioner of Police and others*** : reported in **(2013) 11 SCC-187** that,

When a punishment is so excessive or disproportionate to the offence as to shock the conscience of the Court is seen as unacceptable even when the courts are slow and generally reluctant to interfere with the quantum of punishment. The doctrine of proportionality can be invoked by superior courts and Tribunals as one of the facets of judicial review. Held punishment of dismissal imposed for kind of misconduct proved was grossly disproportionate.



14. Here in this matter at hand, when the petitioner has rendered his service successfully for a considerable continuous period about fifteen years without any blemish/stigma in his service during that period and when, his aforesaid long period of service rendered by him(petitioner) has been set aside by the order of dismissal/removal from his service passed by the Opposite Party No.3 in Annexure-4 and when, the said order of dismissal/removal from his service has been confirmed by the Opposite Party Nos.2 and 1 as per Annexures-5 and B for his single fault in a single incident, i.e., for non-receiving the Command Certificate from his superior relating to his deputation, then, at this juncture, such dismissal/removal of the petitioner from his service as per Annexure-4 and the confirmation of the same as per Annexures-5 and B by the Opposite Parties is shockingly disproportionate to the above proved charge against him, as the imposed punishment against him(petitioner) for his removal/dismissal from the service debarring him(petitioner) to get any service benefit even during the period, he had rendered his service successfully is not commensurating with the above charge proved against him(petitioner).

Because, as per law, in case of imposition of extreme penalty against an employee like the petitioner, i.e., removal/dismissal from the service debarring him(petitioner) to get any sort of service benefits, there



must have an observation in the impugned order of his removal from service that,

“no other punishment, than, his dismissal from the service is suitable for the misconduct proved against him(petitioner) and the proved charge against him(petitioner) is so serious in nature that, which would only attract the penalty of dismissal/removal from the service and no other lesser punishment is permissible for him(petitioner) under law, but the Opposite Parties have not done so.”

15. On this aspect, the propositions of law has already been clarified in the ratio of the following decisions:-

(i) In a case between **Deputy Inspector General of Police, CRPF and others vs. Ahhilesh Kumar** : reported in (2007) 6 SLR-438 that,

When, allegations leveled against the respondent were not so serious in nature, which would have attracted the penalty of dismissal from service, then the penalty of dismissal from the service can be reduced/modified.

(ii) In a case between **Inderjit vs. Punjab and Haryana High Court and another** : reported in (2011) 1 SCC(L&S)-249 that,

Penalty of dismissal imposed on the appellant due to his absence from duty found disproportionate.

(iii) In a case between **Indu Bhusan Dwivedi vs. State of Jharkhand and another** : reported in (2011) 1 SCC(L&S)-64 that,

Failure to remain at headquarters during the period of suspension was not sufficient to impose extreme penalty of dismissal.

(iv) In a case between **Surendra Prasad Shukla vs. State of Jharkhand and others** : reported in (2011) 1 SCC(L&S)-372 that,



The appellant was working as Head Constable. He was found guilty by the disciplinary authority on the basis of the report of the enquiring officer in respect of the charge proved against him, i.e., for recovery of a stolen car from his Government quarter and he was dismissed from his service. The appellate authority and revisional authority agreed with the disciplinary authority.

Held, as the long period of service rendered by the applicant was set aside by the order of dismissal on the above ground, then, his dismissal from service was shockingly disproportionate to the above negligence proved against him. Therefore, his dismissal from the service was modified to compulsory retirement.

16. Here in this matter at hand, when the petitioner being a Government servant as a Sepoy in police department has rendered his service to the department in a disciplined manner since 07.07.1989 to 07.06.2004 for a period about fifteen years, then at this juncture, he(petitioner) should not have been punished with dismissal from his service on being deprived to get his pension and other benefits as per law for the period, to which, he had rendered his service successfully.

17. Therefore, the punishment imposed against him(petitioner) as per Annexure-4 by the Opposite Party No.3 and the confirmation to the same as per Annexures-5 and B by the Opposite Party Nos.2 and 1 regarding his removal/dismissal from his service w.e.f. 07.06.2004 shocks the conscience of this Court.

18. For which, it is held that, the said punishment imposed against the petitioner is disproportionate to the above charge proved against him(petitioner) and the imposed punishment against the petitioner for his removal/dismissal from the service is not commensurating with the



alleged single misconduct of the petitioner for non-receiving the Command Certificate from his superior relating to his deputation.

19. Therefore, this Court, in order to shorten the litigation, it is felt proper for the reduction of the punishment imposed against the petitioner by the Opposite Party No.3 in Annexure-4 and the confirmation of the same by the Opposite Party Nos.2 and 1 in Annexures-5 and B from the dismissal/removal of his service to compulsory retirement modifying/moulding the said punishment in order to entitle the petitioner to get his pension and other benefits as per law for his service since 07.07.1989 to 07.06.2004 instead of sending the matter back to the disciplinary authority again.

20. As such, without making any interference with the finding of guilt recorded against the petitioner, it is felt proper to interfere only with the quantum of punishment imposed by the Opp. Parties against him(petitioner) under Annexures-4, 5 and B for its reduction/modification to the extent as indicated above.

21. For which, this writ petition filed by the petitioner is to be allowed in part.

22. In result, this writ petition filed by the petitioner is allowed in part.



The punishment imposed against the petitioner by the Opposite Party No.3 in Annexure-4 and the confirmation of the same in Annexures-5 and B by the Opposite Party Nos.2 and 1 relating to the removal/dismissal of the petitioner from his service is modified to one compulsory retirement of the petitioner from his service with effect from the date, i.e., 07.06.2004, from which, the order of dismissal was given effect to in Annexure-4.

The petitioner shall be entitled to admissible pension and other retirement benefits in accordance with the rules governing the field.

Therefore, the Opposite Parties including the Opposite Party No.3 are directed to release all the retirement benefits including the pension in favour of the petitioner, to which, he (petitioner) is eligible as per law within a period of three months from the date of receipt of this judgment.

The Registry is directed to communicate the copies of this judgment immediately to the petitioner as well as Opposite Parties.

With the aforesaid modification of the punishment imposed against the petitioner, this writ petition filed by the petitioner is disposed of finally.

(A.C. Behera)
Judge