

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Special Appeal Writ No. 873/2023

Pawan Prajapati S/o Sh. Asha Lal Prajapati, Aged About 51 Years, R/o House No. 255/3, Dhan Mandi, Inside Delhi Gate, Kumahar Mohalla, Ajmer.

----Appellant

Versus

1. Union of India, Through its Secretary, Ministry of Home Affairs, New Delhi.
2. Director General of Police, Border Security Force, 10, C.G.O. Complex, Lodhi Road, New Delhi- 3.

----Respondents

Connected With

D.B. Special Appeal Writ No. 77/2024

1. Union of India, Through its Secretary, Ministry of Home Affairs, New Delhi.
2. Director General of Police, Border Security Force, 10, C.G.O. Complex, Lodhi Road, New Delhi-3.

----Appellants

Versus

Pawan Prajapati S/o Shri Asha Lal Prajapati, Aged About 51 Years, Resident of H. No. 255/3, Dhan Mandi, Inside Delhi Gate, Kumahar Mohalla, Ajmer (Raj.)

----Respondent

For Appellant(s)	:	Mr. Ashish Kumar, Adv. in SAW No.77/2024 Mr. Sunil Samdaria, Adv. with Mr. Arihant Samdaria, Adv. in SAW No.873/2023
For Respondent(s)	:	Mr. Sunil Samdaria, Adv. with Mr. Arihant Samdaria, Adv. in SAW No.77/2024 Mr. Ashish Kumar, Adv. in SAW No.873/2023

HON'BLE THE ACTING CHIEF JUSTICE MR. SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE SANGEETA SHARMA

1. **Date of Conclusion of arguments** : **09/01/2026**
2. **Date on which the judgment was reserved** : **09/01/2026**
3. **Whether the full judgment or only the operative part is pronounced** : **Full judgment**
4. **Date of pronouncement** : **27/02/2026**

Per Mrs. Sangeeta Sharma, J:

1. The present D.B. Special Appeal(Writ) Nos. 873/2023 and 77/2024 have been preferred against the judgment dated 19.07.2023 rendered by the learned Single Judge in S.B. Civil Writ Petition No. 9900/2005, in which the following orders and directions were passed:-

"22. ...the impugned orders dated 08.03.2004 and 31.08.2004 are quashed and set aside. The matter is remitted back to the appropriate authority for passing reasoned and speaking order after following the provisions contained under Chapter VII of the Rules of 1969 after granting opportunity of hearing to both sides within a period of three months from the date of receipt of certified copy of this order.

23. As a result, this petition is allowed in part. The respondents are directed to reinstate the petitioner back in service but he will not be entitled to get any back-wages from the date of his removal from service till his reinstatement."

2. Aggrieved by the aforesaid judgment, the appellant-writ petitioner has preferred D.B. Special Appeal(Writ) No. 873/2023, seeking grant of back-wages and further assailing that part of the impugned judgment whereby the matter has been remitted to the competent disciplinary authority for passing a fresh order.
3. On the other hand, the respondent-Union of India has filed D.B. Special Appeal(Writ) No. 77/2024, calling in question the interference with the disciplinary proceedings and the consequential direction for reinstatement of the appellant.

4. Since both the appeals emanate from the same judgment and involve common factual matrix as well as interconnected questions of law, they are being heard together and are disposed of by this common judgment. For the sake of convenience, D.B. Special Appeal(Writ) No. 873/2023 is treated as the leading appeal, and the parties are referred to in accordance with their respective status therein.

5. The factual conspectus giving rise to the present appeals is that the appellant was appointed as Constable (General Duty) vide order dated 12.01.1995. On 27.10.2003, the appellant was sanctioned eight days' casual leave for the period from 27.10.2003 to 04.11.2003, and was required to report back for duty on 05.11.2003.

6. The appellant had reserved a train ticket for 04.11.2003, but he did not resume duty on the stipulated date citing the sudden cardiac illness of his mother. He subsequently rejoined duty voluntarily on 20.01.2004.

7. Consequent thereto, the respondent-department initiated departmental proceedings against the appellant on the charge of overstay of leave, which culminated in an order of dismissal dated 08.03.2004, passed by the Summary Security Force Court (hereinafter referred to as "SSFC"). The statutory appeal preferred by the appellant was dismissed by the Appellate Authority vide order dated 31.08.2004.

8. Aggrieved by the aforesaid orders, the appellant approached this Court by filing a writ petition, inter alia, alleging procedural

irregularities, violation of the principles of natural justice, and dis-proportionality of punishment, which ultimately culminated in the impugned judgment dated 19.07.2023.

9. In the present Special Appeals, it is evident that both sides, namely the appellant as well as the respondent–Union of India, are aggrieved by the judgment rendered by the learned Single Judge but for different reasons. The appeals, therefore, require a careful examination of the parties’ respective grievances to assess the legality and sustainability of the impugned judgment.

10. On behalf of the appellant, it has been contended, in substance, that although the learned Single Judge had rightfully set aside the order of dismissal and directed reinstatement of the appellant in service, however, the denial of back-wages for the period from the date of dismissal till reinstatement is wholly arbitrary and bereft of any cogent reasons.

11. It has further been contended that the direction issued by the learned Single Judge remanding the matter to the disciplinary authority for passing fresh orders after a lapse of nearly nineteen years would only result in protracting the litigation and is manifestly contrary to the settled principles governing service jurisprudence.

12. With regards to the question of territorial jurisdiction, the counsel submitted that since the partial cause of action arose in Rajasthan as the impugned order of the Appellate Authority was served upon him at his native place (Ajmer) which is well within the territorial jurisdiction of this court.

13. In support of the aforesaid submissions, learned counsel for the appellant placed reliance upon the judgments of the Hon'ble Supreme Court in ***Nirbhay Singh Suliya v. State of Madhya Pradesh & Anr.; 2026 SCC OnLine SC 8, and Allahabad Bank & Ors. v. Krishna Narayan Tiwari; (2017) 2 SCC 308, Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidhyalaya & Ors.; (2013) 10 SCC 324; Nawal Kishore Sharma vs. UOI and Ors, (2014) 9 SCC 329.***

14. Per contra, learned counsel appearing for the respondent contended that the learned Single Judge transgressed the permissible limits of judicial review by interfering with the disciplinary proceedings without undertaking an examination of the nature, gravity, and seriousness of the misconduct alleged against the appellant. It was submitted that the scope of interference in disciplinary matters being limited, the learned Single Judge erred in setting aside the disciplinary action without adjudicating the case on its merits.

15. It was further urged that the writ petition was allowed solely on the ground that the impugned orders were non-speaking, without addressing or deciding vital issues arising in the matter, including the question of territorial jurisdiction, compliance with the procedural requirements prescribed under the BSF Rules, the alleged plea of guilt, and the appellant's habitual absenteeism. On these premises, it was contended that the impugned judgment could not be sustained in law and deserved to be set aside, with a

consequential direction for remand of the matter to the learned Single Judge for fresh consideration in accordance with law.

16. In support of the aforesaid submissions, learned counsel for the respondent placed reliance upon the judgments of the Hon'ble Supreme Court in ***S.N. Mukherjee v. Union of India; (1990) 4 SCC 594, Union of India & Ors. v. IC-14827 Major A. Hussain; (1998) 1 SCC 537, Union of India v. Dinesh Kumar; (2010) 3 SCC 161, Union of India v. Mudrika Singh; (2021) SCC OnLine SC 1173, State of Punjab & Ors. v. Ex. C. Satpal Singh; 2025 SCC OnLine SC 1848, and Deepak Dnyandev Jadhav v. Union of India & Ors.; SLP (Civil) No. 529/2018.***

17. Heard learned counsel for the parties and carefully examined the pleadings, documents, and material placed on record along with the decisions cited. The aforesaid rival contentions raise important questions of law touching upon the following points: *Territorial Jurisdiction; compliance of procedural rules; Requirement of detailed reasoned order; disproportionately of punishment; the propriety of remand after an inordinate lapse of time*, etc. These issues, which lie at the core of the present controversy, are examined and answered in the succeeding paragraphs in accordance with the facts of the case, the governing legal principles, and the requirement of coherence and reasoned adjudication.

18. As regards the respondents' objection relating to territorial jurisdiction, it is an admitted fact that the appellate order dated

31.08.2004 and subsequent communications were served upon the appellant at his native place at Ajmer, Rajasthan. In the present case, after preferring the statutory appeal against the order dated 08.03.2004 passed by the SSFC, the appellant came back to his native place at Ajmer and the order of the Appellate Authority dated 31.08.2004 was served upon him at Ajmer, Rajasthan. *In the case of **Nawal Kishore Sharma (Supra)*** the Hon'ble Supreme Court held that:

17. A copy of the letter was sent to the appellant at his native place in Bihar where he was staying after he was found medically unfit. It further appears that the appellant sent a representation from his home in the State of Bihar to the respondent claiming disability compensation. The said representation was replied by the respondent, which was addressed to him on his home address in Gaya, Bihar rejecting his claim for disability compensation. It is further evident that when the appellant was signed off and declared medically unfit, he returned back to his home in the district of Gaya, Bihar and, thereafter, he made all claims and filed representation from his home address at Gaya and those letters and representations were entertained by the respondents and replied and a decision on those representations were communicated to him on his home address in Bihar. Admittedly, the appellant was suffering from serious heart muscle disease (dilated cardiomyopathy) and breathing problem which forced him to stay in his native place, wherefrom he had been making all correspondence with regard to his disability compensation. Prima facie, therefore, considering all the facts together, a part or fraction of cause of action arose within the jurisdiction of the Patna High Court where he received a letter of refusal disentitling him from disability compensation.

19. The facts in the aforementioned case are similar to the facts of the present case as the impugned orders passed by the Appellate Authority, has been served upon the appellant within the territorial jurisdiction of this Court thereby attracting Article 226(2) of the Constitution of India. Therefore, even a small fraction of cause of action occurring within the court's jurisdiction

is sufficient to entertain the petition. The objection regarding territorial jurisdiction is, therefore, devoid of merit and is rejected.

20. To delve into the issue of procedural compliance, it is apposite to reproduce the relevant provisions of the Border Security Force Rules, 1969(hereinafter referred as 'BSF Rules') which deals with the procedure of issuing charge-sheet, hearing of charges against enrolled person and recording of evidence against such person.

"43. Offence report.- Where it is alleged that a person subject to the Act 1 [other than an officer or a Subordinate Officer] has committed an offence punishable thereunder the allegation shall be reduced to writing in the form set out in Appendix IV.

44. Charge Sheet.- Where it is alleged that an officer or a Subordinate Officer has committed an offence punishable under the Act, the allegation shall be reduced to writing in the form set out in Appendix VI.

45. Hearing of the charge against an enrolled person.- [(1) The charge shall be heard by the Commandant of the accused in the following manner:-

(i) The charge and statements of witnesses, if recorded, shall be read over to the accused.

(ii) If written statements of witnesses are not available, or where the Commandant considers it necessary to call any witness, he shall hear as many witnesses as he may consider essential to enable him to determine the issue.

(iii) Wherever witnesses are called by the Commandant, the accused shall be given opportunity to cross-examine them.

(iv) Thereafter, the accused shall be given an opportunity to make a statement in his defence.]

(2) After hearing the charge under sub-rule (1), the commandant may,-

(i) award any of the punishments which he is empowered to award, or

(ii) dismiss the charge, or

(iii) remand the accused, for preparing a record of evidence or for preparation of an abstract of evidence against him, or

(iv) remand him for trial by a Summary Security Force Court:

Provided that, in cases where the Commandant awards more than 7 days' imprisonment or detention

he shall record the substance of evidence and the defence of the accused:

Provided further that, he shall dismiss the charge if in his opinion the charge is not proved or may dismiss it if he considers that because of the previous character of the accused and the nature of the charge against him it is not advisable to proceed further with it:

Provided also that in case of all offences punishable with death a record of evidence shall be taken:

[Provided further that in case of offences under Sections 14, 15, 17, 18 and offence of 'murder' punishable under Section 46 of the Act, if the accused has absconded or deserted, the Commandant shall hear the charge in his absence and remand the case for preparation of the record of evidence.]

48. Record of evidence.- (1) *[The officer ordering the record of evidence] may either prepare the record of evidence himself or detail another officer to do so.*

(2) *The witnesses shall give their evidence in the presence of the accused and the accused shall have right to cross-examine all witnesses who give evidence against him.*

[Provided that where statement of any witness at a court of inquiry is available, examination of such a witness may be dispensed with the original copy of the said statement may be taken on record. A copy thereof shall be given to the accused and he shall have the right to cross examine if he was not afforded an opportunity to cross examine the witness at the court of Inquiry.]

(3) *After all the witnesses against the accused have been examined, he shall be cautioned in the following terms; "You may make a statement if you wish to do so, you are not bound to make one and whatever you state shall be taken down in writing and may be used in evidence." After having been cautioned in the aforesaid manner whatever the accused states shall be taken down in writing.*

(4) *The accused may call witnesses in defence and the officer recording the evidence may ask any question that may be necessary to clarify the evidence given by such witnesses.*

(5) *All witnesses shall give evidence on oath or affirmation:*

Provided that, no oath or affirmation shall be given to the accused nor shall be cross-examined.

(6) (a) *The statements given by witnesses shall ordinarily be recorded in narrative form and the officer recording the evidence may, at the request of the accused, permit any portion of the evidence to be recorded in the form of question and answer.*

(b) *The witnesses shall sign their statements after the same have been read over and explained to them.*

[(6A) The provisions of section 89 of the Act shall apply for procuring the attendance of witnesses before the officer preparing the Record of Evidence.]

(7) Where a witness cannot be compelled to attend or is not available or his attendance cannot be procured without an undue expenditure of time or money and after the officer recording the evidence has given a certificate in this behalf, a written statement signed by such witness may be read to the accused and included in the record of evidence.

(8) After the recording of evidence is completed the officer recording the evidence shall give a certificate in the following form:-

"Certified that the record of evidence ordered by.....Commandantwas made in the presence and hearing of the accused and the provisions of rule 48 have been complied with".

21. Perusal of the record indicates that, from the procedural standpoint, no serious infirmities are apparent, and we are unable to accept the submission advanced on behalf of the appellant. The material on record shows that the appellant was granted eight days' casual leave from 27.10.2003 to 04.11.2003, but he failed to report back on expiry of the sanctioned leave and rejoined duty only on 20.01.2004, thereby overstaying for a period of 77 days.

22. The respondents have contended that the appellant was served with the offence report on 03.02.2004 and was duly informed of the allegation against him, specifying the charge under Section 19(b) of the Border Security Force Act. Pursuant thereto, an inquiry was conducted and statements of witnesses were recorded on 11.02.2004, 12.02.2004 and 16.02.2004, prior to issuance of the charge-sheet dated 01.03.2004. It has been submitted that Rule 45 of BSF Rules provides for hearing of charges and that the record of evidence can be prepared at that stage. Further, the proviso to Rule 48(2) of BSF Rules also permits recording of statements at an earlier stage.

23. Insofar as the allegation of procedural non-compliance is concerned, the record of evidence was conducted in the presence of the appellant, and there is nothing to demonstrate that he was denied the opportunity to cross-examine witnesses or to present his defence. On the contrary, the record indicates that such opportunity was afforded, which the appellant chose not to avail. Once an opportunity has been provided, the requirement of procedural fairness stands satisfied, and the delinquent cannot subsequently contend that the proceedings were vitiated on that ground. The appellant in the present case participated in the proceedings without raising any contemporaneous objection regarding the alleged procedural irregularities, and therefore cannot be permitted to challenge the same belatedly after conclusion of the proceedings. In statutory appeal (Annexure-6 of the writ petition) preferred against the order dated 08.03.2004, while accepting overstay of leave for 77 days the only prayer made by the appellant is that the punishment imposed upon him of dismissal from the service may kindly be reduced to a reasonable extent and order of SSFC be modified.

24. How far the contention raised by the appellant that the disciplinary proceedings stood vitiated on account of non-compliance with Rule 43 of the BSF Rules does not merit acceptance. The offence report clearly indicated the nature of the allegation and the statutory provision under which action was proposed, thereby sufficiently apprising the appellant of the case he was required to meet. Rule 43 of BSF Rules does not contemplate a detailed disclosure akin to a formal charge-sheet

but only requires that the allegation be reduced into writing so as to inform the accused of the offence alleged.

25. Insofar as the submission regarding supply of documents only twenty-four hours prior to trial is concerned, Rule 63(6) of BSF Rules expressly provides that in the case of a SSFC the period of four days contemplated under Rule 63(4) of BSF Rules shall stand reduced to twenty-four hours. The procedure adopted, therefore, cannot be said to be contrary to the statutory framework. It is also not the appellant's case that he sought any adjournment or additional time for preparation of defence which was refused.

26. It is well settled that the scope of judicial review in disciplinary proceedings is limited and the High Court does not sit as an appellate authority over the findings recorded by the competent authority. Interference is warranted only where the inquiry is conducted in violation of statutory provisions or principles of natural justice resulting in prejudice, or where the findings are perverse or unsupported by evidence. Mere procedural irregularities which do not go to the root of the matter cannot vitiate the proceedings. The Supreme Court in ***Union of India v. P. Gunasekaran, (2015) 2 SCC 610***, has emphasised that courts should refrain from interfering with disciplinary action unless substantial illegality or miscarriage of justice is demonstrated. In the present case, no such grave procedural infirmity is made out, and the learned Single Bench exceeded the

permissible limits of judicial review in setting aside the disciplinary action. The court held as under:

12. ...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.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

- (i) reappreciate the evidence;
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii) go into the adequacy of the evidence;
- (iv) go into the reliability of the evidence;
- (v) interfere, if there be some legal evidence on which findings can be based.
- (vi) correct the error of fact however grave it may appear to be;
- (vii) go into the proportionality of punishment unless it shocks its conscience.

27. Furthermore, in the case of **CISF vs. Abrar Ali; (2017) 4 SCC 507**, a three Judges Bench of the Hon'ble Supreme Court has confirmed the law laid down in the case of **Gunasekaran (supra)**. Additionally, in the case of **Union of India vs Subrata Nath; 2022 SCC Online SC 1617**, the Hon'ble Apex Court held as under:-

"14. Citing the decision in *State of Orissa v. Bidyabhushan Mohapatra* [*State of Orissa v.*

Bidyabhushan Mohapatra, 1962 SCC OnLine SC 106 : AIR 1963 SC 779] , it was contended that keeping in mind the gravity of the established misconduct, the disciplinary authority has the power to impose a punishment on the delinquent officer and such a punishment is not open for review by the High Court under Article 226 of the Constitution of India. It was also sought to be urged on behalf of the appellants that the past conduct of the respondent can be taken into consideration while awarding penalty, subject to the condition that the same is made a part of a separate charge, as was done in the instant case. In support of the said submission, the learned counsel cited *Central Industrial Security Force v. Abrar Ali.*"

28. So far as the contention of the learned counsel for the appellant regarding the recording of reasons is concerned, citing the verdict of the Hon'ble Apex Court in the case of **S.N. Mukherjee vs Union of India; (1990) 4 SCC 594**, wherein, it is held that reasons are required to be given by the appellate authority. The relevant para has been reproduced as under:

"39. The object underlying the rules of natural justice "is to prevent miscarriage of justice" and secure "fair play in action." As pointed out earlier the requirement about recording of reasons for its decision by an administrative authority exercising quasi-judicial functions achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making. Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provision to that effect as those contained in the Administrative Procedure Act, 1946 of U.S.A. and the Administrative Decisions (Judicial Review) Act, 1977 of Australia whereby the

orders passed by certain specified authorities are excluded from the ambit of the enactment. Such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of the enactment. The public interest underlying such a provision would outweigh the salutary purpose served by the requirement to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case."

29. It is pertinent to note that the reliance placed by the appellant on the aforesaid judgment is entirely misplaced and devoid of merit. The said judgment primarily addresses the mandatory requirement of passing a detailed and reasoned order, but this obligation arises in those cases where the relevant provisions of the statute or legislature have expressly mandated such a detailed order. The underlying principle enunciated therein comes into play only in situations where, notwithstanding a clear and explicit legislative mandate to furnish a detailed order, the concerned authority fails to do so.

30. Additionally, in **S.N. Mukherjee (Supra)**, the Court categorically held that no reasoned order is required from the confirming authority. This principle underscores that while procedural fairness is essential in disciplinary proceedings, the confirming authority is not obligated to provide detailed reasons for its decision, particularly in the sentences recorded in the court martial and similar forums. The relevant portion of the judgment has been reproduced herein under:-

48. For the reasons aforesaid it must be held that reasons are not required to be recorded for an order passed by the confirming authority confirming the findings and sentence recorded by the court martial as well as for the order passed by the Central Government dismissing the post-confirmation petition. Since we have arrived at the same conclusion as in Som Datt Datta case [(1969) 2 SCR 177 : AIR 1969 SC 414 : 1969 Cri LJ 663] the submission of Shri Ganguli that

the said decision needs reconsideration cannot be accepted and is, therefore, rejected.

31. On the same lines, the Supreme court in the case of **Dinesh kumar (supra)** held as follows:

23. In this backdrop, it is clear that the provisions for the SSFC and the appellate authority are pari materia, more particularly in case of Rule 149 and Section 117(2) of the Act, with the provisions which were considered in both the above authorities. Therefore, there cannot be any escape from the conclusion that as held by the Constitution Bench, the reasons would not be required to be given by the SSFC under Rule 149 or by the appellate authority under Section 117(2) of the Act. This position is all the more obtained in case of SSFC, particularly, as the legislature has chosen not to amend Rule 149, though it has specifically amended Rule 99 w.e.f. 9-7-2003. It was pointed out that in spite of this, some other view was taken by the Delhi High Court in Nirmal Lakra v. Union of India [(2003) 102 DLT 415] . However, it need not detain us, since Rule 149 did not fall for consideration in that case. Even otherwise, we would be bound by law declared by the Constitution Bench in S.N. Mukherjee v. Union of India

32. The proceedings have been duly conducted by the SSFC in accordance with the prescribed statutes and therefore, in the present case, there is no requirement of detailed order under Rule 149 of BSF Rules, or by the appellate authority under Section 117 of BSF Act, as the case may be, thereby rendering the appellant's reliance on the aforesaid judgment wholly inapplicable.

33. Moreover, it is well settled that in disciplinary proceedings, particularly in matters concerning uniformed forces, substantial compliance with the prescribed procedure is sufficient and minor deviations which do not affect the fairness of the process or cause prejudice to the delinquent cannot be a ground to invalidate the action taken. The appellant has failed to establish that any alleged irregularity went to the root of the matter or resulted in miscarriage of justice. As departmental enquiry is based on the

preponderance of the evidence and the principles laid down in the law of evidence are not strictly applicable, the same would, therefore, not have strict application to departmental proceedings.

34. To sum up the legal position, this Court is of the considered opinion that being fact finding authorities, both the Disciplinary Authority and the Appellate Authority are vested with the exclusive power to examine the evidence to be adequate and reliable.

35. We have gone through the record of the present case, this Court is not inclined to interfere in the departmental proceedings, particularly when the conclusions are based upon facts proved on the basis of evidence available on record and the appellant was afforded ample opportunity of hearing during the enquiry. We find that the findings with regard to proof of guilt are justified and thus, not liable to be interfered with. The finding of the learned Single Bench that the disciplinary proceedings stood vitiated on account of procedural lapses cannot be sustained. Consequently, there remains no question of remanding the matter back to the disciplinary authority.

36. As far as the question of quantum of punishment is concerned, the Hon'ble Apex Court in the case of ***State of Punjab vs. Ram Singh Ex-Constable, (1992) 4 SCC 54***, held that before awarding an order of dismissal from service, it shall be mandatory that the dismissal order should be made only when there are gravest acts of misconduct, since it impinges upon the pensionary rights of the delinquent. Sometimes a misconduct of a

minor character, which does not by itself warrant an order of dismissal, but due to continued acts of misconduct produces an insidious cumulative effect on service morale, may be a ground to take a lenient view of giving an opportunity to reform. Despite giving such opportunities, if the delinquent proved to be incorrigible and found completely unfit to remain in service, then to maintain discipline in the service, instead of dismissing the delinquent, a lesser punishment of compulsory retirement or demotion to a lower grade or rank, or removal from the service without affecting his future chance of reemployment, if any, may meet the ends of justice.

37. In the present case, the appellant on four occasions had overstayed leave granted to him and on two occasions, absented himself from duty without leave. Consequently, penalties were inflicted for the same. The charge against the appellant in this matter pertains to an overstay of leave, which, though undoubtedly a lapse in discipline in a uniformed force, does not by itself necessarily warrant the extreme major penalty of dismissal from service, particularly when the record indicates that the appellant had joined duties on his own and had explained his absence on account of serious illness of his mother. It is not a case of desertion. It emerges that the delinquent had leave at his credit and one good entry in his record, which could have been considered while determining the quantum of punishment. Disciplinary action must bear a reasonable nexus with the gravity of the misconduct and cannot be imposed mechanically without considering the mitigating circumstances. The Hon'ble Apex Court

in the matter of **Ranjit Thakur vs. Union of India; (1987) 4 SCC 611**, while dealing with the sentence imposed by the Court Martial and elaborating upon the extent of the judicial review, observed as under:

"25. Judicial review generally speaking, is not directed against a decision, but is directed against the "decision-making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review. In Council of Civil Service Unions v. Minister for the Civil Service [(1984) 3 WLR 1174 (HL) : (1984) 3 All ER 935, 950] Lord Diplock said:

"Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognised in the administrative law of several of our fellow members of the European Economic Community;. . ."

38. Furthermore, the above view also finds its support from the **CISF v. Abrar Ali, (2017) 4 SCC 507**. The relevant para is reproduced below:-

19. Though we are of the view that the High Court ought not to have interfered with the order passed by the disciplinary authority, the penalty of dismissal

from service is not commensurate with delinquency. The respondent was found guilty of desertion of the Force for a period of five days and not improving his conduct in spite of imposition of penalties on three occasions earlier. For the above delinquencies, the penalty of dismissal from service is excessive and harsh. In our view, the penalty of compulsory retirement would meet the ends of justice. We are informed by the counsel for the appellants that the respondent is entitled for pension as he has completed 10 years of service. In order to avoid any controversy, we direct that the respondent shall be entitled for notional continuity of service till the date of completion of minimum service required to make him eligible for pension. He will not be entitled for payment of salary and allowances for that period.

39. Taking guidance from the settled proposition of law, we are of the considered view that the appellant is guilty of overstaying the sanctioned leave; however, this is not a case of desertion, as the appellant voluntarily rejoined duty and there is one good entry in his service record. The imposition of a major penalty, therefore, is found to be shockingly disproportionate and not commensurate with the misconduct alleged against the appellant.

40. Accordingly, this Court is of the opinion that while the findings recorded in the departmental inquiry with respect to the proof of misconduct do not warrant interference, the punishment imposed vide order dated 08.03.2004 and confirmed by the Appellate Authority vide order dated 31.08.2004 deserves to be modified. In our view, the penalty of compulsory retirement would meet the ends of justice. In view of the observations made hereinabove:

- The D.B. Special Appeal(Writ) No.873/2023 is partly allowed and D.B. Special Appeal(Writ) No.77/2024 is dismissed.
- The punishment awarded to the appellant vide order dated 08.03.2004, as confirmed by the Appellate Authority vide

order dated 31.08.2004, stands modified in the aforesaid terms.

- We direct that the appellant shall be entitled to notional continuity of service till the date of completion of the minimum qualifying service required to make him eligible for pension. However, he shall not be entitled to payment of salary or allowances for the said period. Necessary consequential orders shall be issued by the respondent-department(s) within a period of six weeks from the date of this judgment.

41. Pending application(s), if any, shall also stand disposed of.

(SANGEETA SHARMA),J

(SANJEEV PRAKASH SHARMA), ACTING CJ