$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 29.10.2025
Judgment pronounced on:17.12.2025

\+ W.P.(C) 1499/2023

M GANGI SETTY .....Petitioner

Through: Mr. Nikhil Bhardwaj, Adv.

versus

UNION OF INDIA AND ORS .....Respondents

Through: Ms. Pratima N. Lakra, CGSC with Mr. Shailendra Kumar Mishra, Ms. Kanchan Shakya, Mr. Shivansh Bansal and Mr. Priyam Sharma, Advs. for UOI with Insp. Prahalad Devenda, CISF and SI. Atul Sen, CISF.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT

% 17.12.2025

OM PRAKASH SHUKLA, J.

1. The petitioner has filed the present writ petition under Article 226 of the Constitution of India praying for: (i) quashing and setting aside of dismissal order dated 21.09.2020 passed by the Group Commandant, Central Industrial Security Force[1], appellate order dated 25.01.2021, and order dated 10.01.2022 whereby the revision petition was rejected by the Assistant Commandant, CISF; (ii) a direction to the respondents to reinstate the petitioner to service with consequential benefits; (iii) quashing and setting aside the charge sheet dated 14.04.2020; (iv)

[1] "CISF", hereinafter

directing the respondents to take disciplinary action against Respondent Nos. 6 and 7 for beating the petitioner.

FACTUAL MATRIX

2. The facts leading up to the filing of the present petition are that the petitioner was recruited in the CISF on 15.07.1986. He rendered his services for almost 34 years and was serving as a Constable (General Duty) in the CISF at the time of the alleged incident. The petitioner was deployed for duty at the Ahirwadi Watch Tower of SSTPP Solapur plant with a lathi.

3. On the morning of 02.04.2020, the petitioner reported to the Watch Tower for a 12-hour shift from 6 am to 6 pm. During the course of his shift, around afternoon, an inspection was carried out by a unit vigilance committee comprising Assistant Commandant (Executive)[2] Malkeet Singh, Inspector (Executive)[3] F.B. Kinikar, and Head Constable (General Duty)[4] R. Kamate. During the personal search of the petitioner, he was found in possession of a mobile phone and a bag containing personal documents while on duty. It is stated that these items were confiscated by the team as they were prohibited while on duty as per the Standing Order dated 29.07.2017.

4. Upon such discovery and consequent confiscation, as recorded in the dismissal order, the petitioner allegedly became agitated, thereby, a

[2] "AC/Exe", hereinafter
[3] "Insp/Exe", hereinafter
[4] "HC/GD", hereinafter

scuffle ensued between the petitioner and the members of the vigilance committee. The details surrounding the scuffle are disputed by both sides. The petitioner sustained injuries and was initially taken to NTPC Kotnis Hospital and thereafter shifted to Ashwini Sahakari Rugnalaya, Solapur, where a CT scan revealed that the petitioner had suffered a scalp hematoma and a nasal fracture. He was discharged on 04.04.2020 and subsequently visited for a follow-up as an outdoor patient on 11.04.2020, whereupon the following injuries were noted: "blunt head injury, facial injury, fracture nasal bone".

5. It is pertinent to mention that in the meanwhile, the petitioner was placed under suspension from the day of the inspection itself, with immediate effect, *vide* order dated 02.04.2020 issued by Assistant Commandant, CISF. Thereafter, on 14.04.2020, the petitioner was charged with the following offences under Rule 36 of the CISF Rules, 2001:

> *"**Article of Charge -I***
>
> *CISF No. 864502232 Const/GD M Gangi Setty of CISF Unit SSTPP Solapurwas deployed for 12 hours duty on 02.04.2020 from 0600 hrs to 1800 hrs at Ahirwadi Watch Tower of SSTPP Solapur plant. In the course of checking of duty posts of the Plant, the Unit vigilance committee, consisting of AC/Exe Malkeet Singh, CISF No.872244212 Insp/Exe F.B. Kinikar and CISF No. 943190288 HC/GD R Kamate, visited Ahirwadi Watch Tower duty post at about 1315 hrs. During checking of the duty post and frisking of CISF No. 864502232 Const/GD M. Gangi Setty, some personal documents of CISF No. 864502232 Const/GD M Gangi Setty were found at the duty post besides his mobile phone, hidden in his shoe. These articles, on being found in the possession of Const/GD M. Gangi Setty unauthorisedly, by No.872244212 Insp/Exe F B Kinikar, No.864502232 Const/GD M Gangi Setty abused the committee members in a very arrogant and indisciplined manner & assaulted No.872244212 Insp/Exe F B Kinikar. No.864502232 Const/GD M Gangi Setty also assaulted AC/Exe Malkeet Singh when the latter tried to intervene. This act on the part of above Const/GD amounts*

to gross indiscipline and in- subordination being a member of disciplined armed Force like CISF. Hence, the charge.

Article of Charge-II

CISF No.864502232 Const/GD M Gangi Setty of CISF Unit SSTPP Solapur was deployed for 12 hours duty on 02.04.2020 from 0600 hrs to 1800 hrs at Ahirwadi Watch Tower of SSTPP Solapur plant. The Unit vigilance committee, consisting of AC/Exe Malkeet Singh, CISF No.872244212 Insp/Exc F.B. Kinikar and CISF No. 943190288 HC/GD R Kamate, visited Ahirwadi Watch Tower duty post at about 1315 hrs. and during frisking of above Const/GD, a mobile phone, hidden in his shoe was found, even though instructions have been issued, by the Unit administration, that no personnel will bring mobile phones to the duty post. This act on the part of above Const/GD amounts to gross indiscipline and violation of good orders of his seniors. Hence, the charge.

Article of Charge-III

CISF No.864502232 Const/GD M Gangi Setty of CISF Unit SSTPP Solapur was awarded with 14 minor penalties during his course of service at various units by several disciplinary authorities on different misdemeanours committed by him. Though, ample opportunity was given him, said Const/GD did not mend himself and displayed incorrigible character by repeatedly indulging in indiscipline acts. This act on the part of above Const/GD amounts to gross dereliction of duty, indiscipline and violation of good orders of his seniors. Hence, the charge."

6. The petitioner denied all three charges levelled against him and an enquiry officer was appointed on 08.05.2020 to conduct an enquiry into the veracity of the aforesaid charges, wherein the statements of the petitioner, five prosecution witnesses and three court witnesses[5] were recorded, purportedly, in the presence of the petitioner. After examining the evidence produced by both the parties, the enquiry report recorded that during the inspection on 02.04.2020, the petitioner became aggressive and argued with his superior officers, attempted to snatch a mobile phone from them, tried to attack the officers with a lathi, sustained injuries in the process of snatching the lathi, and thus started

[5] "CW", hereinafter

bleeding from his nose. Based on the statements of the officers conducting the search, a brief video recording of the scuffle, and refusal by the petitioner to cross-examine witnesses, all the three charges levelled against the petitioner were found to be proved beyond reasonable doubt.

7. The petitioner submitted his reply to the enquiry report on 18.09.2020, and subsequently, the impugned dismissal order dated 21.09.2020 was issued, noting that the petitioner had a blemished service record, with several penalties imposed upon him, and had failed to improve his conduct or adhere to the high standards expected from members of the Force. Aggrieved thereby, the petitioner preferred an appeal against the dismissal order, which was rejected *vide* order dated 25.01.2021, holding that he had failed to maintain the discipline expected of a uniformed officer and had engaged in acts of misconduct, and placed reliance on fourteen prior penalties imposed sporadically throughout his service. The petitioner thereafter filed a revision petition, which was rejected *vide* order dated 10.01.2022, being devoid of merit, as the petitioner failed to bring forth any new material facts warranting interference with the earlier orders.

8. Aggrieved by the aforesaid, including the dismissal from service and the consequential denial of pension and other retirement benefits, the petitioner approached this Court by way of the present writ petition.

SUBMISSIONS OF BOTH PARTIES

9. Mr. Nikhil Bhardwaj, learned Counsel for the petitioner, submitted that the punishment of dismissal imposed on the petitioner

was excessively harsh and disproportionate, since it discounted the 34 years of service rendered by the petitioner and left him without pension or other retirement benefits. It was submitted that the petitioner was severely beaten by the vigilance committee members, leading to serious injuries. Further, that the petitioner was not supplied with the evidence relied upon in the enquiry report which, coupled with the fact that no other member of the Force consented to be his "defence assistant", rendered the petitioner unable to prove his innocence. The petitioner asserts that the authorities predetermined his dismissal without fair consideration and failed to weigh in the mitigating circumstances or consider the proportionality of punishment. Further, it was contended that the respondent did not duly consider the reply filed by the petitioner to the enquiry report since the reply was filed on 18.09.2020 evening and the dismissal order was passed on 21.09.2020, whereby 18th and 19th were non-working days, i.e., Saturday and Sunday.

10. It was submitted by the learned Counsel that the incident of 02.04.2020 was pre-planned by the members of the vigilance committee in order to get hold of the petitioner's phone, which contained colorable evidence against the conduct of AC/Exe Malkeet Singh and other officers of the CISF. It was submitted that the officers of the vigilance committee held a personal grudge against the petitioner. The petitioner had earlier made several complaints against them, *vide* letter dated 11.12.2019 regarding the arbitrary suspension order passed by AC/Exe Malkeet Singh and *vide* letter dated 23.12.2019 against AC/Exe Malkeet Singh and Insp/Exe F. B. Kinikar for running the unit as per their own wishes. Hence, the members of the vigilance committee were already infuriated with the petitioner and had targeted the

petitioner by way of a surprise inspection. It was submitted that the petitioner carried a bag on his duty to keep his tiffin, not knowing that there were some personal documents in the bag. The members of the vigilance committee were confiscating the personal documents found in the bag of the petitioner to which the petitioner objected, as according to him, a proper procedure of handing over should be followed and a seizure/confiscation document must be furnished, which further agitated the vigilance committee. It was submitted that while frisking the petitioner, the mobile phone slid down from a hole in his pant pocket; however, the vigilance committee members have painted a different picture regarding the same, stating that the mobile phone was found in the shoe of the petitioner.

11. The learned Counsel further submitted that the petitioner could carry his mobile phone on duty, provided he sought prior approval of higher authority, and that the petitioner had taken permission from his senior, i.e., Sub-Inspector (Executive) J. Karunakaran, Shift In-Charge. It was submitted that the petitioner was carrying a mobile phone since his daughter was pregnant and had gone for medical treatment during the COVID-19 lockdown. The learned Counsel emphasized that one member of the vigilance committee even took a video of the incident, but the same does not record the actions of the members of the vigilance committee towards the petitioner which instigated him.

12. The learned Counsel submitted that the petitioner was beaten up by the members of the vigilance committee which resulted in a blunt head injury, facial injury, and a fracture of the nasal bone; however, the doctor at NTPC hospital was falsely informed that the petitioner fell

from a height resulting in those injuries. The learned Counsel highlighted that the aforesaid explanation was subsequently contradicted by the respondents when they took the stand that the petitioner suffered injury while trying to snatch the lathi from the hands of Insp/Exe Kinikar. There is no evidence on record to show that the petitioner assaulted any member of the vigilance committee. There are no injury marks on them, and the video recording also does not depict the petitioner assaulting the respondents.

13. It was further submitted that the documents relied upon to prove the charges levied against the petitioner were not supplied to the petitioner for the purpose of cross-examination, and the petitioner was not prepared to effectively enter a defence or cross-examine the witnesses during the enquiry.

14. With regard to charge-III imposed on the petitioner, it was contended that all the prior punishments were based on trivial grounds, and there has never been a finding of moral turpitude or corruption in any of the previous penalties on the petitioner.

15. The learned Counsel for the petitioner placed reliance on ***Ram Kishan v. Union of India***[6] to show that punishment of dismissal from service imposed on him was harsh and disproportionate with respect to the charges framed and hence prayed for the reduction in the quantum of punishment awarded to the petitioner by impugned order dated 21.09.2020.

[6] **(1995) 6 SCC 157**

16. *Per contra*, Ms. Lakra, the learned Counsel for the respondents, submitted at the outset that the writ petition is liable to be dismissed since the entire cause of action and departmental proceedings occurred in Navi Mumbai; residence and/or communication in New Delhi is not sufficient to attract the writ jurisdiction of courts in Delhi. In support, reliance was placed on ***Union of India v. Adani Exports Ltd.***[7] and ***ONGC v. Utpal Kumar Basu***[8] to contend that courts in New Delhi lack territorial jurisdiction. It was submitted that the grounds available for judicial review are limited since it is not akin to an appeal on merits, and as per the decision in ***CISF v. Santosh Kumar Pandey***[9]**,** the writ courts should not reassess evidence or punishment awarded unless due process or principles of natural justice are violated.

17. The learned Counsel submitted that the petitioner was found guilty after the conduct of a lawful enquiry into the allegations levied against him. It was asserted that the enquiry was conducted with procedural propriety, due opportunity was afforded to the petitioner to enter his defence, thereby natural justice was protected. It was also asserted that the findings were arrived at based on sufficient and cogent evidence to prove the assault on superiors and possession of a mobile phone while on duty by the petitioner, coupled with a history of fourteen prior punishments. The findings of the enquiry and the impugned dismissal order were upheld at the appellate and revisional stage. It was also highlighted that the petitioner was afforded due opportunity to defend himself throughout the proceedings. The allegation advanced by

[7] **(2002) 1 SCC 567**
[8] **(1994) 4 SCC 711**
[9] **2022 SCC OnLine SC 1734**

the petitioner of assault at the hands of the vigilance committee is baseless since the petitioner only suffered minor nasal injuries during the scuffle, which was a result of the petitioner himself trying to snatch the lathi. It was submitted that the "blunt head injury" was consistent with the findings in the enquiry report and that the petitioner's version was not substantiated.

18. With regard to non-supply of documents, it was submitted that all the documents relied upon in order to prove the charges against the petitioner were duly furnished to him beforehand, by placing reliance on the signatures of the petitioner while receiving the said documents. Further, the reply to the enquiry report filed by the petitioner on 18.09.2020 was duly considered prior to issuing the impugned dismissal order dated 21.09.2020, as the competent authority was functional on the relevant date and had adequate opportunity to examine the same. Consequently, any allegations of bias, medical neglect, and non-supply of documents are baseless, and the evidence on record corroborates the official version.

19. It was submitted that charges I and II against the petitioner were duly proved by the video recording and corroborated by the statements of the vigilance committee members. It was submitted that the lack of independent witnesses was because the incident had occurred inside a restricted watch tower, wherein only the petitioner and the vigilance committee members were present.

20. With respect to charge III, it was submitted that disciplinary authorities, especially in the uniformed Forces, may look at past

conduct of an officer while determining the penalty to be imposed. To buttress this view, reliance was placed on ***State of Punjab v. Ex-Constable Satpal Singh***[10]**.** It was further submitted, with respect to the proceedings before disciplinary authorities, that once findings are corroborated by cogent evidence and due process is adhered to, interference by virtue of Article 226 of the Constitution of India is unwarranted.

21. Pertaining to the quantum of punishment, it was submitted that the reliance placed by the petitioner on ***Ram Kishan*** (supra) is untenable, as that case involved mere verbal abuse, whereas the charge in the instant case pertained to assault and threats to superior officers. In contrast, the Apex Court in ***UOI v. J. Ahmed***[11] held that dismissal from service is justified in cases of misconduct and indiscipline, especially wherein the devotion to duty and integrity have been compromised.

22. The learned Counsel highlighted that the officers of uniformed Forces are subject to higher standards of discipline, by placing reliance on ***State of Punjab v. Ram Singh, Ex-Constable***[12] and ***Director General, RPF v. Ch. Sai Babu***[13]. Hence, acts of indiscipline by uniformed officers warrant strict action.

REASONING AND ANALYSIS

[10] **2025 SCC OnLine SC 1848**
[11] **(1979) 2 SCC 286**
[12] **(1992) 4 SCC 54**
[13] **(2003) 4 SCC 331**

23. We have heard the learned Counsel for both parties at length, perused the materials on record and have given our thoughtful consideration to the present *lis*.

24. At the very outset, we deem it appropriate to deal with the objection raised by the respondents pertaining to the territorial jurisdiction of this Court. The said contention cannot be sustained in light of the fact that part of the cause of action arose within the territorial jurisdiction of this Court, since the headquarters of the CISF is situated in Delhi.

25. Further, before delving into the facts of the present petition, it is pertinent to note that the powers conferred upon a writ court under Article 226 of the Constitution of India with respect to interference with the findings of disciplinary authorities is limited and confined to narrow contours laid down by a plethora of judgments of the Hon'ble Supreme Court, as discussed hereinafter.

26. The main consideration before this Court is whether, in the facts and circumstances of the present case, the dismissal order warrants any interdiction, or whether the quantum of punishment imposed on the petitioner ought to be interfered with.

27. This Court is mindful that judicial review is not the equivalent of an appeal, rather, as held in ***B.C. Chaturvedi v. UOI & Ors.***[14], it is the *"review of the manner in which the decision is made"*. It was also

[14] **(1995) 6 SCC 749**

held therein that the discretionary power of a disciplinary authority to impose a punishment may be interfered with if it is grossly disproportionate to the allegations. The writ courts may interfere in cases of violation of principles of natural justice, manifest injustice or such procedural impropriety that may hinder the interests of justice. We reproduce the relevant excerpt below:

> *"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.*
>
> *****
>
> *18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They 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 the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

28. In ***Chairman & Managing Director, V.S.P. & Ors. v. Goparaju Sri Prabhakara Hari Babu***[15], it was held as follows:

"21. Once it is found that all the procedural requirements have been complied with, the courts would not ordinarily interfere with the quantum of punishment imposed upon a delinquent employee. The superior courts only in some cases may invoke the doctrine of proportionality. If the decision of an employer is found to be within the legal parameters, the jurisdiction would ordinarily not be invoked when the misconduct stands proved."

29. In ***UOI & Ors. v. Subrata Nath***[16]**,** the scope of interference by the High Courts was discussed. The relevant paragraphs are reproduced hereinbelow:

"15. It is well settled that courts ought to refrain from interfering with findings of facts recorded in a departmental inquiry ***except in circumstances where such findings are patently perverse or grossly incompatible with the evidence on record, based on no evidence****. However, if principles of natural justice have been violated or the statutory regulations have not been adhered to or there are malafides attributable to the Disciplinary Authority, then the courts can certainly interfere.*

*****

22. To sum up the legal position, being fact finding authorities, both the Disciplinary Authority and the Appellate Authority are vested with the exclusive power to examine the evidence forming part of the inquiry report. On finding the evidence to be adequate and reliable during the departmental inquiry, the Disciplinary Authority has the discretion to impose appropriate punishment on

[15] **(2008) 5 SCC 569**
[16] **Civil Appeal Nos. 7939-7940 of 2022 in SLP (C) No. 3524-25 OF 2022**

the delinquent employee keeping in mind the gravity of the misconduct. However, in exercise of powers of judicial review, the High Court or for that matter, the Tribunal cannot ordinarily reappreciate the evidence to arrive at its own conclusion in respect of the penalty imposed unless and ***until the punishment imposed is so disproportionate to the offence that it would shock the conscience of the High Court/Tribunal or is found to be flawed for other reasons****, as enumerated in* ***P. Gunasekaran*** *(supra). If the punishment imposed on the delinquent employee is such that shocks the conscience of the High Court or the Tribunal, then the Disciplinary/Appellate Authority may be called upon to re-consider the penalty imposed. Only in exceptional circumstances, which need to be mentioned, should the High Court/Tribunal decide to impose appropriate punishment by itself, on offering cogent reasons therefore."*

(emphasis supplied)

30. In the decision of ***State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaiya***[17], it was held as follows:

"*7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic inquiry, nor interfere on the ground that another view is possible on the material on record. If the inquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse.* ***The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations.*** *(Vide B.C. Chaturvedi v. Union of India [(1995) 6 SCC 749: 1996 SCC (L&S) 80: (1996) 32 ATC 44], Union of India v. G. Ganayutham [(1997) 7 SCC 463: 1997 SCC (L&S) 1806], Bank of India v. Degala Suryanarayana [(1999) 5 SCC 762: 1999 SCC (L&S) 1036] and High Court of Judicature at Bombay v. Shashikant S. Patil."*

(emphasis supplied)

[17] **(2011) 4 SCC 584**

31. In ***Union of India v P Gunasekaran***[18], the Apex Court crystallized the principles governing the scope of interference by a High Court while exercising its writ jurisdiction under Article 226 of the Constitution of India with respect to departmental enquiries. The relevant paragraph is as follows:

> *"12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:*
>
> *(a) the enquiry is held by a competent authority;*
> *(b) the enquiry is held according to the procedure prescribed in that behalf;*
> *(c) there is violation of the principles of natural justice in conducting the proceedings;*
> ***(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;***
> *(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
> ***(f) 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;*

[18] **(2015) 2 SCC 610**

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."

(emphasis added)

32. Reverting to the facts of the present case, the petitioner served in the CISF for almost 34 years. However, we note that the petitioner has been subjected to various penalties on several occasions. A consolidated record of all the prior punishments suffered by the petitioner and the offences have been reproduced hereinbelow:

S. No.	Unit	Offence	Punishment	Final Order No. and Date
01.	RSP Rourkela	Indiscipline and violation of order	"Censure"	F.O. No. (182) dt. 09.03.1992
02.	RSP Rourkela	Indiscipline and Negligence of duty	"Censure"	F.O. No. (381) dt. 23.06.1992
03.	RSP Rourkela	Found sleeping by keeping the arms aside at the duty post	"Postponement of his next one increment for a period of one year without cumulative effect"	F.O. No. (106) dt. 23.03.1993
04.	ChPT Chennai	Misconduct and dereliction of duty	"02 days pay fine"	F.O. No. (133) dt. 27.04.2000
05.	ChPT Chennai	Absent from duty post, misconduct and dereliction of duty	"03 days pay fine"	F.O. No. (456) dt. 08.12.2000
06.	STPP Simhadri	Absent from duty, severe indiscipline, dereliction towards duty, violation of lawful orders	"Withholding of increment for a period of two years without cumulative effect"	F.O. No. (209) dt. 22.01.2002
07.	RSTPS Ramagundam	Found sleeping, removing his uniform and cap after leaving his duty post, negligence, carelessness and dereliction of duty	"Censure"	F.O. No. (76) dt. 14.07.2006

08.	RSTPS Ramagundam	Disobey of order and indiscipline activities	"07 days pay fine"	F.O. No. (1426) dt. 17.05.2007
09.	SDSC Shar Shriharikota	Violation of office order, indiscipline and dereliction of duty	"05 days pay fine"	F.O. No. (64) dt. 14.01.2009
10.	SDSC Shar Shriharikota	Indiscipline and negligence of duty	"07 days pay fine"	F.O. No. (389) dt. 28.02.2009
11.	KIOCL Kudramukh	Gross misconduct and use of unparliamentary words against superior and indiscipline	"05 days pay fine"	F.O. No. (325) dt. 13.02.2014
12.	KIOCL Kudramukh	Disobey of order, gross misconduct and indiscipline, careless and negligent attitude towards duty	"03 days pay fine"	F.O. No. (605) dt. 27.03.2014
13.	SSTPP Solapur	Argument with Insp/Exe Neeraj Singh in roll call on 29.11.2019	"Withholding of one increment for a period of one year without cumulative effect"	F.O. No. (228) dt. 23.01.2020
14.	SSTPP Solapur	Use of official communication channel for personal matters and refusal from orderly room	"07 days pay fine"	F.O. No. (562) dt. 20.02.2020

33. The three charges levelled against the petitioner *vide* the impugned memorandum of charge dated 14.04.2020 pertain to assaulting superior officers, possession of a mobile phone along with some personal documents while on duty and 14 other prior penalties pertaining to misdemeanour. The petitioner denied these charges and consequently, departmental enquiry was initiated to look into the veracity of the same. The fact that the petitioner chose not to cross-examine the witnesses is not fatal to his case, since a court exercising powers under Article 226 of the Constitution of India cannot overlook or become oblivious to other factors that may hinder the interests of justice.

34. As far as the first charge relating to the alleged assault by the petitioner on his superior officers is concerned, a two-minute and seventeen-second video recorded by HC/GD R. Kamte (PW-4) on his mobile phone was placed on record during the proceedings below and relied upon in the impugned dismissal order. Upon perusal of the aforesaid order, we observe that the video apparently does not capture the entire incident, but only the part whereby the petitioner attempts to snatch his phone from the vigilance committee officers. The alleged act of violence attributed to the petitioner is said to be proved by the corroborating statements of these officers of the vigilance committee (Respondent Nos. 6, 7 and PW-4 i.e., HC/GD R. Kamte) who conducted the search. The impugned order records that it can be seen in the said video that Respondent No.7 i.e., Insp/Exe Kinikar bends down while frisking the petitioner and states, "Sir, this is mobile". It can also be seen that the petitioner bends down as well and tries to snatch something from him but fails. Further, the order records that the petitioner can then be seen pulling the said officer by the collar, but the officer then pins him against the wall, and the petitioner can be seen kicking the said officer.

35. The impugned order duly acknowledges that the said video does not record the entire the event. However, reliance is still placed on this selective recording of the incident and corroborating statements of interested witnesses. It is reasoned in the impugned order that since the incident took place in a restricted watchtower, the lack of independent witnesses was not fatal to the case of the respondents herein. Further, it was opined that there was no evidence to prove the allegations of the petitioner that the officers had initiated the scuffle, instead, there was

an admission by the petitioner that he had brought the bag and some personal items to warrant the dismissal. It is pertinent to mention that the timing of the incident is doubtful; while the respondents stated that the event took place around 1:15 pm, the petitioner claimed that had it occurred around 12:15 pm. This inconsistency was acknowledged in the impugned order, holding that the time contended by the respondents was not possible because the petitioner had already reached the hospital at 1:00 pm. Despite the aforementioned, the impugned order goes on to record that such inconsistency "does not reduce the seriousness of the incident". Hence, in the present case, neither the video itself is free from doubt nor the statements of the interested witnesses.

36. In our considered view, it cannot be ruled out that during the personal search, wherein a mobile phone and some personal documents, were allegedly recovered, a scuffle may have probably occurred. However, the two-minute selective recording of the video cannot sufficiently depict or explain the entire sequence of events and cannot alone conclusively prove the contentions of the respondents or rule out the possibility of the story advanced by the petitioner. A video recording must be supported by cogent corroborative evidence. Further, the petitioner had suffered a nasal fracture and a scalp haematoma due to the scuffle. It is stated that one Constable Jadav Shivaji Rama (CW-3) was sent along with the petitioner to the hospital for his treatment who informed the attending doctor (Dr. Laxmikant Dasari; CW-1) that the petitioner had fallen from a height. However, it is acknowledged in the impugned order that the said Constable was not present at the tower at the time of the incident and accordingly, had no direct knowledge of the cause of injury. Therefore, it is anybody's guess as to why the initial

statement of the petitioner recorded by the department relating to the cause of injury is false. The respondents contend that the nasal injury occurred while the petitioner was attempting to snatch the lathi from them, which is disputed by the petitioner. There is nothing on record to support this contention since the chain of events leading to the nasal injury are not recorded in the video and only found in the testimonies of the interested witnesses. Furthermore, no reasonable or justifiable explanation has been tendered by the respondents regarding the scalp injury suffered by the petitioner, which poses serious doubts in the respondents' contentions put forth. Although, the concept of proof beyond reasonable doubt may not be applicable to departmental proceedings, but even on the touchstone of preponderance of probability, the evidence collected fails.

37. The second charge, pertaining to the possession of a mobile phone and some personal documents in a bag while on duty is squarely covered by the Standing Order dated 29.07.2017. This Court finds that, no doubt the said Standing Order prohibits the carrying of a mobile phone and bag while on duty; however, it is admitted by both parties that, if there is a reason warranting the same, a person may carry their phone, provided they seek prior approval from a senior officer. Therefore, the prohibition is not absolute, but is subject to approval by a senior officer, which may be termed as a procedural lapse. The petitioner herein contends that he brought the mobile phone since his daughter was pregnant and had gone for a medical check-up during COVID-19 lockdown and that he had sought permission for the same from his shift in-charge. However, the said in-charge, in his statement, has denied the same, and no other material has been brought on record

by the petitioner to prove such prior approval. Further, the place of recovery of the mobile phone is disputed. While the petitioner states that it fell through a hole in his pocket i.e., he was not hiding the same, the respondents allege that it was hidden in a shoe. The possession of a mobile phone while on duty constitutes violation of the Standing Order, however, an exception is also carved out. Therefore, it can be safely assumed that such possession, which is allowed in certain situations, cannot *reasonably* lead to the outright dismissal from service, especially in cases where the possibility of witnesses being interested and/or turning hostile cannot be ruled out and at best can be termed as a procedural lapse.

38. As to the third charge, we are of the view that relying upon previous penalties to substantiate the present penalty is not in good faith and is unsustainable. On one hand, the object of disciplinary proceedings is to ascertain whether the delinquent officer is suitable to be retained in service. On the other hand, the object of the criminal prosecution is to find out whether ingredients of an offence, as defined in the penal statute, have been made out or not. This Court is mindful that Article 20(3) of the Constitution of India does not apply to a departmental enquiry because the officer is not being tried for any criminal offence[19]. However, it is pertinent to note that the respondents themselves had previously declared the petitioner *"Fit to continue in service beyond 30 years of service"* after an internal screening committee meeting, duly reviewed by Deputy Inspector General, CISF, RTC Bhilai, as reflected in the order dated 19.02.2018. This, thereby,

[19] ***Bhagwan Singh vs. Deputy Commissioner Sitapur, AIR 1962 All 232: 1962 (1) CrLJ 554***

extended his date of superannuation notwithstanding 12 out of the 14 offences mentioned above (the penalties at S. No. 13 and 14 in the abovementioned Table occurred post the said order). In view thereof, we are of the considered view that this positive act, irrespective of the blemished past record of the petitioner, amounts to acquiescence and the benefit of doubt ought to have been given to the petitioner herein.

39. It is pertinent to note that the petitioner was placed under suspension from the day of the inspection itself *vide* order dated 02.04.2020 issued by Assistant Commandant, CISF (Malkeet Singh) as the sole signatory, who was himself part of the vigilance committee that conducted the aforesaid inspection. This is in teeth with procedural propriety and principles of natural justice and hence, cannot be allowed to stand.

40. In the aforesaid peculiar facts and circumstances, pertaining to the charges framed and the subsequent dismissal of the petitioner based on the said charges, a question arises at this stage as to whether the decision of dismissal was one that a reasonable authority would also reach or that whether the conclusion arrived are incompatible with the evidence on record. This Court finds that both the questions have to be answered in the negative for the reasons recorded hereinafter.

41. The Hon'ble Apex Court in the judgment of ***Ram Kishan*** (supra) laid down the guidelines to assess the validity of a punishment in relation to the surrounding circumstances. Though this decision pertains to different misconduct charges, the principles and guidelines stipulated

therein are of universal application and holds the field, irrespective of the factual distinctions. We reproduce the relevant part below:

> *"11. It is next to be seen whether imposition of the punishment of dismissal from service is proportionate to the gravity of the imputation. When abusive language is used by anybody against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of abusive language. No strait-jacket formula could be evolved in adjudging whether the abusive language in the given circumstances would warrant dismissal from service. Each case has to be considered on its own facts. What was the nature of the abusive language used by the Petitioner was not stated.*
>
> *12. On the facts and circumstances of the case, we are of the considered view that the imposition of punishment of dismissal from service is harsh and disproportionate to the gravity of charge imputed to the delinquent constable. Accordingly, we set aside the dismissal order. We hold that imposition of stoppage of two increments with cumulative effect would be an appropriate punishment. So, we direct the disciplinary authority to impose that punishment. However, since the Petitioner himself is responsible for the initiation of the proceedings, we find that he is not entitled to back wages; but, all other consequential benefits would be available to him."*

42. In the present case, the reliance placed on a brief selective video recording of the alleged incident, which does not disclose the entire incident or the chain of events leading to the relevant incident, along with the statements of interested witnesses as corroborating evidence, is misplaced. Such evidence does not constitute conclusive proof of the incident and therefore cannot be relied upon to justify the dismissal of the petitioner. The evidence substantiating the charges must be subject to a high threshold since the consequence of dismissal from service is the epitome of punishment in any departmental proceedings. Furthermore, possession of a mobile phone while on duty, admittedly permitted in certain circumstances, is also not sufficiently grave enough to attract the punishment of outright dismissal from service. If there

were an absolute prohibition, the applicability would have been different. However, in the present case, the possession of mobile phone was permitted subject to approval of a senior officer and as such the breach thereof can be termed as procedural (curable) and not fatal. In our considered view, the said charges are not conclusively proved so as to warrant dismissal of the petitioner, especially since dismissal is the gravest punishment in departmental proceedings, that adversely impacts one's livelihood and future prospects. Further, the said punishment becomes more draconian, in a case of this kind, wherein, since the petitioner has already superannuated, his dismissal would entail forfeiture of pension and other retirement benefits. It is rather preposterous to withhold the pension of the petitioner as a consequence of his dismissal from service, particularly when it is on record that the petitioner has served for almost 34 years. Further, it is of particular significance that despite certain past charges/allegations, the petitioner was still found fit for further service and hence retained by the respondents *vide* order dated 19.02.2018. Time and again, the Hon'ble Supreme Court has held that pensionary or retirement benefits are not dole or charity given to the employees but constitute money that they have actually earned during their tenure of employment. According to this Court, the forfeiture of pension and other retirement benefits of the petitioner at this stage, wherein he has already superannuated, would be a travesty of justice, which may also lead to financial hardship. Further, the aspect of proportionality must be accounted for herein, since the punishment adversely affects the petitioner's livelihood under Article 21 of the Constitution of India and hence, depravation thereof may not be warranted in the present peculiar facts and circumstances. Therefore, the reliance placed on ***Santosh Kumar Pandey*** (supra), ***Ram Singh Ex-***

Constable (supra), ***J. Ahmed*** (supra) and ***Ex-Constable Satpal Singh*** (supra) by the respondents is of no avail since, while this Court must adopt a confined approach while interfering in punishments imposed by disciplinary authorities, writ courts cannot disregard or refrain from acting upon instances wherein perversity, disproportionality, or arbitrariness is blatant. A writ court must come to the aid of an adversely affected party to meet the interests of justice.

43. The respondents placed reliance on the decision in ***Director General, RPF & Ors.*** (supra). We deem it fit to reproduce the relevant excerpt below:

> *"6. As is evident from the order of the learned Single Judge, there has been no consideration of the facts and circumstances of the case including as to the nature of charges held proved against the respondent to say that penalty of removal from service imposed on the respondent was extreme. Merely because it was felt that the punishment imposed was extreme was not enough to disturb or modify the punishment imposed on a delinquent officer. The learned Single Judge has not recorded reasons to say as to how the punishment imposed on the respondent was shockingly or grossly disproportionate to the gravity of charges held proved against the respondent. It is not that in every case of imposing a punishment of removal or dismissal from service a High Court can modify such punishment merely by saying that it is shockingly disproportionate.* ***Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of charges proved against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected of and discipline required to be maintained, and the department/establishment in which the delinquent person concerned works****."*
>
> (emphasis supplied)

44. Upon examination of the parameters laid in the abovementioned decision along with the decisions in ***Subrata Nath*** (supra), ***State Bank***

of Bikaner and Jaipur (supra) and ***P Gunasekaran*** (supra), we are of the view that the concerned authority did not consider all relevant facts surrounding the charges framed. The Court further opines that dismissal based on the three charges framed on 14.04.2020 after almost 34 years of service, especially after deeming the petitioner fit for service after 30 years, is not warranted and is rather disproportionate to the degree of the charges levied, considering the circumstances surrounding the incident are not conclusively proven. Based on the limited evidence available including the selective video-recording of the incident and corroborating statements and the lack of explanation for certain injuries, the charges cannot be said to be free of doubt. In light of the post held by the petitioner, the years of service rendered, the nature of alleged misconduct, the quality of evidence brought on record to prove that misconduct, inconsistency regarding timing of the incident, the lack of explanation for the injuries and the acquiescence of the respondents towards the past record of the petitioner, when considered cumulatively and objectively, this Court finds it difficult to reconcile the penalty of outright dismissal, which appears grossly disproportionate to the charges imposed.

45. The yardstick for measuring the misconduct by uniformed personnel is undoubtedly distinct from that of civilian employees. However, that does not mean to say that arbitrariness or gross disproportionality can be allowed to thrive in these services because the same is antithetical to justice, which is rather universal in its application. Justice is equally owed to every citizen irrespective of their vocation or nature of service rendered, whether civil or defence.

46. In the light of the aforesaid reasons, in our considered view, we deem it fit to quash and set aside the memorandum of charge dated 14.04.2020, the impugned order dated 21.09.2020 by the virtue of which the petitioner stood dismissed and consequently, the impugned appellate order dated 25.01.2021 and order dated 10.01.2022 in revision petition.

47. Since the petitioner has already superannuated, the prayer regarding reinstatement in service becomes infructuous. Therefore, the pensionary benefits shall be calculated based on his reinstatement in service from the date of the impugned dismissal order. The petitioner was granted sustenance allowance on suspension; hence, he would not be entitled to arrears of pay, however, the pensionary and other retiral benefits are to be calculated as per the date of superannuation of the petitioner, with all other consequential benefits as permissible under law, within a period of 8 (eight) weeks from today.

48. The present petition is allowed in the abovementioned terms. Pending application(s), if any, stand disposed of.

OM PRAKASH SHUKLA, J.

C. HARI SHANKAR, J.

DECEMBER 17, 2025*/rjd/gunn*