

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10336 of 2018

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Surendra Bhakta, S/o Late Indradeo Bhakta, Ex- Pharmacist/ C.I.S.F. Bi,
851010087, resident of Village- Kuttubpur, P.S.- Bidupur, District- Vaishali.

... .. Petitioner/s

Versus

1. The Union of India, New Delhi through Union Home Secretary, Govt. of India, North Block, New Delhi.
2. Union Public Service Commission, Dholpur House, Sahjahan Road, New Delhi through the Secretary, Ministry of Home Affairs, North Block, New Delhi.
3. The Directorate General, C.I.S.F., 13 CGO Complex, Lodhi Road, New Delhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Hemant Kumar Karan, Advocate.
For the Respondent/s : Mr. Rakesh Kumar Sinha, C.G.C.

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE PURNENDU SINGH)

Date : 01-12-2022

Heard Mr. Hemant Kumar Karn, learned counsel for the petitioner and Mr. Rakesh Kumar Sinha, learned counsel for the Union of India.

2. In the instant writ petition, petitioner has assailed the order dated 15.11.2017 passed by the learned Central Administrative Tribunal, Patna Bench, Patna in O.A. No. 050/00613/2014 under Section 19 of the Administrative



Tribunal Act, 1985 whereby and whereunder petitioner has challenged the order dated 23.04.2014 whereby the petitioner was awarded punishment of 'withholding of 25% of the monthly pension otherwise admissible to the petitioner for a period of five years' in a disciplinary proceeding held pursuant to the Charge Memorandum No. 5240 dated 04.12.2012 and further Order No. 11014/42/L&R/2013/1108 dated 23.04.2014 passed under the signature of Dy. Inspector General/Pers., Directorate General, Central Industrial Security Force, New Delhi as contained in Annexure – P/6 imposing punishment upon the petitioner of 'withholding of 25% of the monthly pension otherwise admissible to the petitioner for a period of five years'.

3. The petitioner was appointed on 15.04.1985. He had reported in CISF 8th RB Jaipur from CISF 2nd RB Ranchi, and was taken on strength on 30.11.2009. The petitioner retired on attaining age of superannuation w.e.f. 28.02.2013 while he was posted at CISF 8th RB Jaipur.

4. The examination was conducted for recruitment of SI/Exe and ASI/Exe at CISF 8th RB Jaipur from 21.08.2012 to 12.09.2012. Medical Examination was conducted for selected candidates from 22.08.2012 to 13.09.2012. For the recruitment



of SI/Exe and ASI/Exe at CISF 8th RB Jaipur, quotations for conducting medical examination of the candidates were invited from outside diagnostic centers for minimizing the expenditure. On 14.09.2012, a complaint letter addressed to the SP, CBI, Jaipur was made by one of the candidates, Shubhakaran Singh alleging therein that bribe of Rs. 10,000/- was demanded from him. On the basis of said allegation, the matter was investigated by the Central Bureau of Investigation. On 14.09.2012, CBI conducted raid of the premises of Dr. B. L. Roy and seized Rs.1,00,500/-. In course of further investigation and on the basis of statement of the accused persons arrested by the CBI, name of the petitioner was disclosed that he was also involved in such malpractice which was ongoing in the medical examination test. Statement of the petitioner was recorded on 16.09.2012 wherein he accepted that he had introduced Dr. B. L. Roy with Shri Shashikant Bharadwaj in Jalmahal on 07.09.2012. Thereafter, Charge Memorandum No. 5240 dated 04.12.2012 under Rule 14 of the CSS (CCA) Rules, 1965 was served to the petitioner while he was posted on the post of Pharmacist at Jaipur and he was directed to submit his representation within a period of ten days from receiving of the memorandum.

5. The Charge Memorandum No. 5240 dated



04.12.2012 consisted of two charges as under:

आरोप – 01: केओसुब 8वी आरक्षित वाहिनी जयपुर में दिनांक 21.08.12 से 12.09.12 तक केन्द्रीय सशस्त्र पुलिस बल के लिए उनि/ कार्य और केओसुब के लिये सउनि/कार्य पद के लिए की गयी भर्ती में चयनित सदस्यों की दिनांक 22.08.12 से 13.09.12 तक चिकित्सा परीक्षण कराया गया। संख्या 851010087 फार्मासिस्ट सुरेन्द्र भक्ता ने एक अनुशासित बल में होते हुए भी चिकित्सा शाखाओं से लिए गये कोटेशन विवरण का उद्भेदन कर श्री डाइग्नोसिस्ट सेन्टर आमेर को लाभ पहुँचाने के इरादे से बताया जिससे उसका कोटेशन मात्र एक रुपया कम दिया गया एवं भर्ती में चयनित सदस्यों को चिकित्सा परीक्षण में पास करावाने के लिए गलत इरादे से भारद्वाज मेडिकल्स के संचालक शाशिकान्त भारद्वाज का डा0 बी0 एल0 राय से सम्पर्क कराया और उसके पश्चात सीबीआई ने डा0 बी0 एल0 राय को 8वी आरक्षित वाहिनी केओसुब जयपुर परिसर से गिरफ्तार किया जिससे बल की छवि धुमिल हुई और आम जनता में बल के प्रति गलत सन्देश पहुँचा। अतः एक अनुशासित बल में होने के नाते संख्या 851010087 फार्मासिस्ट सुरेन्द्र भक्ता का उक्त कृत्य उसके कर्तव्य के प्रति घोर लापरवाही और गैर जिम्मेदाराना दर्शाता है। अतः आरोप है।

आरोप – 02: केओसुब 8वी आरक्षित वाहिनी जयपुर के संख्या 851010087 फार्मासिस्ट सुरेन्द्र भक्ता को उसके सेवा दस्तावेज के अनुसार पूर्व में भी 02 छोटी सजाओं से दण्डित किया गया है जिनमें से एक सजा वरिष्ठ अधिकारियों को गलत सूचना देकर गुमराह करने से संबंधित है। फिर भी वह अपने कार्यकलाप में सुधार लाने में विफल रहा। एक अनुशासित बल में होने के नाते संख्या 851010087 फार्मासिस्ट सुरेन्द्र भक्ता का उसके कार्यकलाप में सुधार नहीं लाना उसके कर्तव्य के प्रति लापरवाही एवं घोर अनुशासनहीनता एवं वरिष्ठ अधिकारियों द्वारा दिये गये वैध आदेशों की अवहेलना का द्योतक है। अतः आरोप है।

A statement of Imputations of misconduct or misbehavior in support of the Articles of Charge, a list of documents by which and a list of witnesses by whom the Articles of charge framed against the CO were proposed to be sustained were also enclosed with the Memorandum dated 04.12.2012 as Annexure II, III and IV respectively. In response to the Charge sheet dated 04.12.2012, the CO vide his letter



dated 05.12.2012 denied the charges. Thereafter, the case was referred for oral inquiry and an I.O. and a P.O. were appointed vide orders dated 26.12.2012. the I.O. concluded his report dated 13.02.2013 by holding charges in Article-1 and 2 as proved. The DA agreed with the findings of the IO and forwarded a copy of the IO's report to the CO vide Letter dated 14.02.2013 for submission of his representation, if any. The CO submitted his representation vide letter dated 28.02.2013. the CO retired from government service on superannuation on 28.02.2013 and therefore, the proceedings are deemed to have continued under Rule 9 of CCS (Pension) Rules, 1972. After considering the charge sheet, IO's report, representation of the CO thereon and all other relevant aspects of the case, the DA tentatively decided to impose a penalty of suitable cut in the pensionary benefits on the CO and sent the case records to the Commission for their advice.

6. On 28.02.2013, the petitioner submitted his representation against the inquiry report. The inquiring officer found two article of charges proved against the petitioner. The petitioner had attained the age of superannuation on 28.02.2013 itself and the same was communicated vide Commandant CISF 8th Res Bn Jaipur SO Part-I No. 23/2013 dated 01.03.2013. Thereafter, UPSC was consulted. The UPSC communicated its advice on 23.10.2013 to impose penalty of 'withholding of 25% of the monthly pension for five years. The Dy. Inspector General (Pers.), Directorate General, Central Industrial Security Force, New Delhi vide Letter dated 24.12.2013 directed the petitioner to make representation, if any, to the Disciplinary Authority within 15 days. On 13.01.2014, the petitioner



submitted his representation against the inquiry report and the advice of the UPSC.

7. In the present case, the Disciplinary Authority having followed the procedure regarding issue of show cause notice and compliance with the principles of natural justice after giving ample opportunity to the petitioner, concluded that the charges levelled in Article '1' stand fully proved. The charge levelled in Article '2' also came to be proved on the basis of evidence adduced by Shri Binod Kumar Patel, In-charge, Documents Section, who accepted the charge of imposition of two minor penalties on the Petitioner, including one on account of misleading of senior officers as proved. In terms of Rule 14(3)(i) of CCS (CCA) Rules, 1965, the Inquiring Officer came to the conclusion that charge of imposition of two minor penalties on the petitioner on account of misleading senior officers is proved. The Disciplinary Authority further framed charge of imposition of two previous penalties on the petitioner and held that the petitioner's past service is not unblemished.

8. Against the punishment order dated 23.04.2014, the petitioner submitted Mercy Petition before the President of India. The same was rejected and communicated to the petitioner vide Letter dated 04.06.2014.



9. Learned counsel appearing on behalf of the petitioner submitted that the charges framed against the petitioner was not in conformity with Rule 14(3)(i) of the CCS (CCA) Rules, 1965 inasmuch as the charges drawn against the petitioner are vague without there being any specific finding on each allegation made against the petitioner. Learned counsel submitted that there may be negligence and lapses in performing duty but the same would not constitute misconduct unless consequences are directly attributable to negligence. In absence of any motive as well as *mens rea*, the charges levelled against the petitioner loose its force. It is further submitted that petitioner has not caused any pecuniary loss and as such the allegation against the petitioner is not sustainable. The entire disciplinary proceeding initiated against the petitioner is erroneous and the penalty of 'withholding of 25% of the monthly pension of the petitioner for five years' is not sustainable. On these grounds, he submits that the order passed by learned Central Administrative Tribunal, Patna Bench, Patna is not sustainable in the eye of law. The judgment relied by the learned CAT in the case of **Management of State Bank of India Vs. Smita Sharad Deshmukh and Anr.**, reported in **(2017) 1 SCC (L&S) 780** is not applicable to the facts of the



present case.

10. Per contra, the learned counsel appearing on behalf of the respondent submitted that the petitioner disclosed the details / rates of quotation received from other medical centres to Shri Sanjany Chotwani, owner of Shri Diagnostic Centre, Amer with intention to benefit him. He also played an active role in arranging meeting between Dr. B. L. Roy, member of Medical Board with an outsider Shri Shashikant Bharadwaj at a location outside the Batalian Complex with malafide intention. The disciplinary proceeding was conducted in accordance with the provisions of CCS (CCA) Rules, 1965. After careful consideration of records of the case, examination of statement of witnesses, finding of the inquiry officer, final representation submitted by the petitioner and advice tendered by the UPSC, the petitioner was awarded penalty of 'withholding of 25% monthly pension otherwise admissible to the petitioner for a period of five years' vide Order No. 1108 dated 23.04.2014. The learned Central Administrative Tribunal while deciding O.A. No. 613 of 2014 has considered the above facts and held that the departmental inquiry was duly conducted, the charges levelled against the petitioner were amply proved and the petitioner was rightly awarded with the aforesaid penalty vide order dated



23.04.2014 and dismissed the O.A. vide judgement and order dated 15.11.2017. The petitioner has not been able to bring on record that the order of the Tribunal is perverse and requires any interference.

11. Heard the parties.

12. It is well-settled principle that the High Court will not re-appreciate the evidence but will only see whether there is evidence in support of the impugned conclusion. The court has to take the evidence as it stands and its only limited jurisdiction is to examine, whether on the evidence, the conclusion could have been arrived at.

13. The point that arises for our consideration is whether in the given facts of the case, the learned Tribunal ought to have interfered with the punishment imposed on the petitioner by the Disciplinary Authority and by not doing so it has committed error of law. The above proposition of law has been reiterated many a times by the Apex Court and in this regard it would be appropriate to refer law laid in the case of **B. C. Chaturvedi v. Union of India and Others** reported in **1995 SCC (6) 749** in Paragraph Nos. 12, 13 and 18 of the said judgment which are reproduced as under:

“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 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 re-appreciate 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.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented. The appellate authority has co- extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In *Union of India v. H.C. Goel* [(1964) 4 SCR 781], this Court held at page 728 that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the



record or based on no evidence at all, a writ of certiorari could be issued.

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.”

14. Principle in **B. C. Chaturvedi (Supra)** has been reiterated by the Hon'ble Supreme Court in the case of **Union of India and Others Vs. Subrata Nath** reported in **2022 LiveLaw (SC) 998** may be referred which reads as follows:

“15. It is well settled that courts ought to refrain from interfering with findings of facts recorded in a departmental enquiry 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 regulation have not been adhered to or there are malafides attributable to the disciplinary authority then the courts can certainly interfere.”

15. Undisputed facts of the case are that recruitment for the post of SI/Exe was held at CISF 8th RB Jaipur between 22.08.2012 to 23.09.2012 and medical



examination test of selected candidates was conducted from 22.08.2012 to 13.09.2012, by calling quotation from outside Diagnostic Centres so as to minimize expenditure. The petitioner disclosed the details / rates of quotation received from other medical centres to Shri Sanjay Chotwani, owner of the Shri Diagnostic Centre, who used this information and quoted Rs.1/- less than the rate quoted by the Government SMS Hospital as a result of which his quotation was passed. He also played an active role in arranging meeting between Dr. B. L. Roy, member of the medical board with an outsider Shri Shashikant Bhardwaj at a location outside the Batalian Complex. In course of inquiry, the evidence of Shri Sanjay Chotwani who had quoted Rs.1/- less than the rate quoted by the Government SMS hospital was recorded who accepted that the petitioner has divulged the rate of Government SMS Hospital to him. Statement of Dr. B. L. Roy and Shri Shashikant Bhardwaj was also recorded and they have also supported the fact that the petitioner had arranged a meeting between them at a location outside the Batalian Complex to favour Shri Diagnostic Centre in the process of tender. The CBI had conducted the raid and arrested Dr. B. L. Roy and recovered Rs.1,00,500/-.

16. This Court in course of hearing of the case on



14.11.2022 had passed following order:-

“Learned counsel for the respondents is hereby directed to secure the records. He is also hereby directed to get instruction as to whether was there any material information linking the petitioner with Shri Diagnostic so as to uphold the alleged charge and consequential orders.

Relist this matter on 28.11.2022.”

17. The records of the case was produced today in the Court and on perusal of the statement of Sanjay Chotwani, owner of Shri Diagnostic Centre, Amer, shows that he had quoted Rs.1/- less than the government rate on the information provided by the petitioner. The statement of Sanjay Chotwani recorded on 17.01.2013 has been taken note of by the Disciplinary Authority. In course of inquiry, statement of Shashikant Bhardwaj was also recorded on 21.01.2013 in the presence of the Disciplinary Authority who had also not denied that he is not known to Dr. B. L. Roy but has denied the fact that he has not collected any money from Dr. B. L. Roy rather he has been trapped by one candidate with the help of CBI. The petitioner has facilitated the meeting between Dr. B. L. Roy and Shri Shashikant Bhardwaj. The statement of Dr. B. L. Roy recorded on 31.01.2003 also shows that the petitioner Surendra Bhakta had introduced him with Shashikant Bhardwaj but he denied that whatever money was recovered from his room was his own money. The contention of the petitioner that the



petitioner was not provided with ample opportunity and the inquiry was not conducted in accordance with law is not sustainable as it would appear from the above facts. The Disciplinary Authority after receiving advice of the UPSC and considering the reply of the petitioner awarded punishment of 'withholding of 25% of monthly pension otherwise admissible to the petitioner for a period of five years' and the same requires no interference.

18. In the facts of the case, we do not find any perversity or in any manner miscarriage of justice. We have noted above that finding of the disciplinary authority had met with the provisions of statutory Rules and it cannot be held that departmental inquiry was vitiated on account of violation of Rules of natural justice or the inquiry has been conducted in gross violation of statutory Rules. We find ourselves in complete agreement with the finding and conclusion arrived by the disciplinary authority. In our opinion, the penalty of 'withholding of 25% of the monthly pension otherwise admissible to the petitioner for a period of five years' imposed upon the petitioner requires no interference of this Court.

19. As a result, the writ petition preferred by the petitioner arising out of O.A. No. 050/00613/2014 is dismissed,



while leaving the parties to bear their own expenses.

(P. B. Bajanthri, J)

(Purnendu Singh, J)

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AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	13.12.2022
Transmission Date	N.A.

