



2025:CGHC:11939-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WA No. 172 of 2025

Ramsagar Sinha S/o Late Shiv Lal Sinha Aged About 65 Years Retired Constable (G.D.) (Batch No. 821) O/o The Commandant, 2nd Battalion, Chhattisgarh Armed Force, Sankri, Bilaspur, District- Bilaspur (C.G.)

... Appellant

versus

1 - State of Chhattisgarh Through The Secretary, Department of Home And Police Mantralay, Mahanadi Bhawan, Naya Raipur, District Raipur, Chhattisgarh

2 - Director General of Police State Of Chhattisgarh, P.H.Q. Naya Raipur Chhattisgarh, District Raipur, Chhattisgarh

3 - Deputy Inspector General of Police Chhattisgarh Armed Force, North Area, Surguja, District Surguja (Ambikapur), (C.G.)

4 - The Commandant 2nd Battalion, Chhattisgarh Armed Force, Sankri, Bilaspur, District- Bilaspur (C.G.)

... Respondent(s)

For Appellant : Mr. Rajesh Kumar Kesharwani, Advocate

For Respondents / State : Mr. Sangharsh Pandey, Govt. Advocate

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Ravindra Kumar Agrawal, Judge

Judgment on Board

Per Ramesh Sinha, Chief Justice

11.03.2025

1. Heard Mr. Rajesh Kumar Kesharwani, learned counsel for the appellant. Also heard Mr. Sangharsh Pandey, learned Government Advocate, appearing for the State /respondents.

2. The appellant has filed this intra-Court appeal against the order dated 31.01.2025 passed by the learned Single Judge in Writ Petition (S) No. 4594 of 2018 (***Ramsagar Sinha Vs. State of Chhattisgarh & Others***) by which the learned Single Judge has dismissed the writ petition filed by the writ petitioner / appellant.
3. Brief facts necessary for disposal of the appeal are that the petitioner was posted at O/o Commandant, 2 nd Battalion, Sakri, Bilaspur on the post of Constable. The article of charges was issued by the disciplinary authority on 31.08.2017 making allegations against the petitioner to the effect that on 24.07.2017, the petitioner refused to perform his duties and he flouted the orders issued by the superior authorities which reflects indiscipline and arbitrariness in his behavior. It was also submitted that the act of the petitioner was contrary to Sub-Rule (2)(4)(5) of the Police Regulation No. 64 and Sections 16 (छ)-1 and 17(ड.)(च) of the Chhattisgarh Armed Forces Act, 1968 (for short, 'the Act of 1968'). The petitioner was provided with the relevant documents and a list of witnesses along with the article of charges. The petitioner filed a reply to the article of charges. Thereafter, the disciplinary authority appointed the Inquiry Officer and Presenting Officer and a full-fledged departmental inquiry was conducted by the Inquiry Officer and thereafter, punishment of compulsory retirement was inflicted by the disciplinary authority vide order dated 31.01.2018. The petitioner preferred a departmental appeal and the same was dismissed vide order dated 09.06.2018. Being aggrieved by the

same, the petitioner has preferred a writ petition before this Court which was registered as WPS No. 4594 of 2018 and the same was dismissed by the learned Single Judge vide impugned order dated 31.01.2025. Challenging the said order passed by the learned Single Judge, the instant appeal has been preferred by the appellant.

4. Mr. Rajesh Kumar Kesharwani, learned counsel for the appellant submitted that the learned Single Judge has failed to appreciate the fact that while the appellant was posted at Samari Camp, Ambikapur, he was alleged to commit misconduct and initiated a disciplinary proceeding. After completion of proceeding, the appellant was imposed a minor punishment, later on, the Revisional Authority suo moto taking the matter in revision, issued a show cause notice against which, the appellant submitted his detailed representation, but the respondents had enhanced the punishment and dismissed the appellant from service. The appellant submitted appeal, but the same has been rejected against which the appellant submitted a writ petition being WPS No. 2729 of 2002, which was allowed vide order dated 31.01.2013 and the appellant was ordered to be reinstated. But, when the respondents had not complied the order passed by this Court, the appellant preferred a contempt petition and upon notices in contempt petition, the respondents have passed the orders dated 08.07.2013 and 12.07.2023, whereby the appellant has been reinstated. Thereafter the appellant had been posted/deputed in

naxalite area without considering his age and physical condition. The appellant has made request for assigning the duty in soft area as so many similarly placed persons are working in the soft area but the same has not been considered by the authorities and meanwhile, the authority has served a charge-sheet to the appellant alleging that he has disobeyed the order of his superior authority and refused to perform very important camp security duty on 24.07.2017. The appellant denied the charges levelled against him, therefore, the enquiry officer and presenting officer were appointed on 09.10.2017. The enquiry officer without properly appreciating the documents relied by the appellant, prepared the enquiry report and submitted the same to the disciplinary authority. Thereafter, the appellant was issued a show cause notice, dt. 26/12/2017 along with copy of the enquiry report. The appellant submitted his representation against the show cause notice and described the reasons but the same has not been considered in positive manner and the disciplinary authority has imposed major penalty of forcefully compulsory retirement from service against which the petitioner preferred an appeal to the appellate authority. The appellate authority without appreciating the grounds of memo of appeal and without assigning the appropriate reasons rejected the instant appeal in arbitrary and contrary to the principle of the natural justice.

5. Mr. Kesharwani vehemently argued that the learned Single Judge has also failed to appreciate that the punishment of compulsory

retirement inflicted upon the appellant is highly disproportionate to the charges alleged. He further argued that the appellant was posted in a hard-core naxal area whereas at the relevant point of time he was aged about 56 years and he was not keeping well, therefore, he could not resume his duties on 24.07.2017 and thus, the same would not fall under the category of Section 17(ड.) (च) of the Act of 1968 and the enquiry committee has grossly failed to conduct medical examination to corroborate with the appellant's claims of physical difficulties. He submitted that the learned Single Judge has also failed to appreciate that according to police regulations, since the appellant was serving on the lowest post of Constable, the appropriate punishment for the alleged misconduct would have been a warning as provided under Regulation 226 (iii) and (iv) of the Police Regulations yet the appellant was punished with the punishment of compulsory retirement which is highly excessive and disproportionate. In support thereof, he placed reliance on the judgment rendered by the Hon'ble Supreme Court in the matter of ***S.R. Tewari Vs. Union of India and Another***, reported in ***(2013) 6 SCC 602*** and the judgment passed by the Division Bench of High Court of Madhya Pradesh in the matter of ***Ganesh Kumar Sharma Vs. State of M.P. & Others***, reported in ***2013(2) M.P.H.T. 287 (DB)***.

6. On the other hand, Mr. Sangharsh Pandey, learned Government Advocate, appearing for the State/respondent No.1 opposed the submissions made by the learned counsel for the appellant and

submitted that the appellant was afforded the sufficient opportunity in the departmental inquiry; relevant documents were provided; the witnesses were examined and cross-examined and thereafter, the Inquiry Officer submitted its report before the disciplinary authority and the final order of compulsory retirement was passed on 31.01.2018. He contends that the appellant deliberately flouted the orders of the superior authorities whereas being a member of the armed forces, high discipline was expected from the appellant. He argues that the punishment inflicted upon the appellant is proportionate to the misconduct; therefore, the learned Single Judge after considering all the aspects of the matter has rightly dismissed the writ petition filed by the writ petitioner/ appellant, in which no interference is called for.

7. We have heard learned counsel for the parties and perused the impugned order and other documents appended with writ appeal.
8. A perusal of the charge-sheet (Annexure -P/4) shows that the charge against the appellant was :

“1. दिनांक 24.7.17 को अतिमहत्वपूर्ण कैम्प सुरक्षा डियूटी करने से इन्कार करना तथा वरिष्ठ अधिकारी द्वारा दिये गये आदेश की अवहेलना कर स्वेच्छाचारी आचरण, कर्तव्य विमुखता एवं अनुशासनहीनता का प्रदर्शन कर पुलिस रेगुलेशन के नियम 64 सेवा की समान्य शर्तों के उप नियम (2)(4)(5) तथा छसबल अधिनियम 1968 की धारा 16(छ)—एक, एवं धारा—17(ड.)(च) का उल्लंघन करना”

9. From perusal of the aforesaid charge, it transpires that the appellant has disobeyed the order of his superior authority and

refused to perform very important camp security duty on 24.07.2017. But from perusal of the entire charge-sheet, it is evident that the appellant has refused to perform the said duty citing his physically ill-health and incapacity. There is no allegation that he treated his superior officer with hostility, ridicules him or addresses him in derogatory terms either verbally or in writing as envisaged under Section 17(च) the Act of 1968.

10. From perusal of the materials available on record it transpires that while the appellant was posted at Samari Camp, Ambikapur, he was alleged to commit misconduct and initiated a disciplinary proceeding. After completion of proceeding, the appellant was imposed a minor punishment, later on, the Revisional Authority suo moto taking the matter in revision, issued a show cause notice against which, the appellant submitted his detailed representation, but the respondents had enhanced the punishment and dismissed the appellant from service. The appellant submitted appeal, but the same has been rejected against which the appellant submitted a writ petition being WPS No. 2729 of 2002, which was allowed vide order dated 31.01.2013 and the appellant was ordered to be reinstated. But, when the respondents had not complied the order passed by this Court, the appellant preferred a contempt petition and upon notices in contempt petition, the respondents have passed the orders dated 08.07.2013 and 12.07.2023, whereby the appellant has been reinstated. Thereafter the appellant had been posted/deputed in naxalite area without considering his age and

physical condition. The appellant has made request for assigning the duty in soft area as so many similarly placed persons are working in the soft area but the same has not been considered by the authorities and meanwhile, the authority has served a charge-sheet to the appellant alleging that he has disobeyed the order of his superior authority and refused to perform very important camp security duty on 24.07.2017. The appellant denied the charges levelled against him, therefore, the enquiry officer and presenting officer were appointed on 09.10.2017. The enquiry officer without properly appreciating the documents relied by the appellant, prepared the enquiry report and submitted the same to the disciplinary authority. Thereafter, the appellant was issued a show cause notice, dt. 26/12/2017 along with copy of the enquiry report. The appellant submitted his representation against the show cause notice and described the reasons but the same has not been considered in positive manner and the disciplinary authority has imposed major penalty of forcefully compulsory retirement from service against which the petitioner preferred an appeal to the appellate authority. The appellate authority without appreciating the grounds of memo of appeal and without assigning the appropriate reasons rejected the instant appeal in arbitrary and contrary to the principle of the natural justice.

11. Thus, we find some substance in the submission of learned counsel for the appellant that since the appellant was serving on the lowest post of Constable, therefore, before passing the order

of extreme punishment of dismissal from service, provisions of Regulation 226 of the Police Regulations, particularly, clauses (iii) and (iv) should have been taken into consideration. For ready reference, Regulation 226 is quoted hereunder, which reads thus:-

226. Punishments—Offences for which given - The following rules should be observed in determining what penalty should be awarded for any particular offence:-

(i) (a) dismissal is the last resource and should, ordinarily, not be inflicted until all other means of corrections have failed.

(b) If dismissal is considered too severe a punishment for a Sub-Inspector he should be removed from the service (this does not amount to dismissal)

(ii) Reduction in rank is suitable punishment for incompetence, or cases of serious dereliction of duty in which dismissal or removal is considered to be too severe a punishment. As a general rule, Sub-Inspectors who are directly recruited should not be punished by reduction to Assistant Sub-Inspector. The reduction to Assistant Sub-Inspector or Sub-Inspectors who were appointed by promotion from the rank of Head Constables or Assistant Sub-Inspector is permitted.

(iii) Withholding of increment either temporary or permanent (or grade reduction in the case of head constable) is a suitable punishment fall all cases of serious dereliction of duty. It may also be inflicted for culpable ignorance of police procedure, laziness or apathy in conducting the work of the police station,

and the like. Fair warning should be given in every instance and opportunity for amendment afforded before the punishment is awarded.

In the case of a constable, the period of deprivation shall not exceed a year, nor is it advisable that a constable should be deprived of more than one increment at a time. If after a departmental enquiry for a subsequent offence it is found advisable to inflict this punishment on a constable already under reduction, the proper order to pass is one extending the reduction by a period not exceeding one year.

(iv) An increment which has fallen due may be withheld for a definite period for inefficiency or unsatisfactory service. In the case of a constable it shall not be withheld for more than one year in the first instance. If a subsequent offence justifies extension of this period a departmental enquiry is necessary.

(v) Fine is an appropriate punishment for repeated carelessness and disobedience of orders, unpunctuality and the like. Fines should be moderates in amount; the loss of half a month's pay is the utmost that should ever be inflicted, save in very exceptional circumstances. The finding of constable is prohibited.

(vi) In the case of head constable and constables minor offences against discipline should be dealt with, firstly, by warning and if this proves ineffectual by the infliction of the minor punishment specified in regulation 216 and 217 (b) or by detailing the offender to a course of more irksome and unpopular duties.

(vii) The transfer of a police officer to an unhealthy or unpopular post as a punishment is strictly forbidden.

12. If the aforesaid provision is kept in juxta-position to Rule 64 of C.G. Police Regulations for which appellant was charged, it would reveal that despite there is provision in Regulation 64, which pertains to maintain discipline; to observe sub-ordination and to obey lawful orders promptly, even then clauses (iii) and (iv) have been framed in Regulation 226, which are applicable to Constables and which pertains to the penalty to be awarded to a Constable. Indeed, by keeping in mind Rule 64 of the said Regulations, the charges were framed in regard to disobeying lawful orders of the superiors and, therefore, before passing the extreme order of punishment of removal from service, according to us, clauses (iii) and (iv) of Regulation 226 ought to have been seen by the disciplinary as well as by the Appellate Authority.
13. For the foregoing reasons, the instant appeal is **allowed** and the impugned order dated 31.01.2025 passed by the learned Single Judge in WP(S) No. 4594 of 2018 is hereby set aside. Consequently, the writ petition filed by the appellant / writ petition stands allowed. The order passed by the departmental appellate authority dated 09.06.2018 (Anenxure P/2) whereby the order passed by the disciplinary authority dated 31.01.2018 (Annexure P/1) has been affirmed and the punishment of compulsory retirement has been inflicted on the appellant are hereby quashed and set aside.

14. It is stated at the Bar that the appellant has already completed his age of superannuation on 31.07.2022, thus, the appellant will be entitled for notional benefits for the purpose of pension, strictly in accordance with law.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

Chandra