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HIGH COURT OF JAMMU & KASHMIRAND LADAKH
AT SRINAGAR

LPA No. 27/2022

Reserved on: 27.11.2025
Pronounced on: 18.12.2025
Uploaded on: 18.12.2025
Whether the operative part or
Full judgment is pronounced: Full

1. UT of J&K through Commissioner/Secretary to
Home Department, Government of J&K
2. Sr. Superintendent of Police Kulgam
3. Mr. Aijaz Ahmad Zargar Additional SP Kulgam.

Through: Mr. Mohsin Qadri Sr. AAG with
Ms. Maha Majed & Ms. Nowbahar Khan, Advocates.

VS

Bashir Ahmad Mir son of Wali Mohd Mir resident of Dursoo Pulwama

Through: Mr. Hamza Prince Advocate with
Ms Urba Naseer, Advocate.

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

JUDGMENT

Sanjeev Kumar, J

1 This intra-Court appeal by the UT of Jammu and Kashmir and two others is directed against judgment dated 22.10.2019 passed by a learned Single Judge of this Court ("Writ Court") in SWP No. 1775/2016 titled Bashir Ahmed Mir v. State and others, whereby the Writ Court has allowed the petition of the respondent herein and quashed order No. 293/2016 dated 13.10.2016 passed by the Superintendent of Police, Kulgam, terminating the services of the respondent.

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2. Before we proceed to appreciate the grounds urged by learned counsel for the appellants, it would be appropriate to narrate few essential facts leading to the filing of this appeal.

3. The respondent was appointed as a Constable in the appellant-Department in the year 1992. In May 2016, he was posted as one of the In-charge Constabulary Guard personnel at the minority pickets at Adjin, Kulgam. On the intervening night of 7th and 8th May 2016, militants attacked the picket, overpowered the police personnel, and forcibly snatched their service weapons without facing any resistance from the guard personnel, including the respondent. With regard to the said incident, FIR No. 51/2016 was registered at Police Station D.H Pora, Kulgam under Sections 452/392 RPC, 7/25 Arms Act, 03 PEPO and 30 Police Act. The respondent was immediately placed under suspension vide order dated 10.05.2016.A charge sheet (Fard-e-Ilzam) was served upon the respondent by the Additional SP, Kulgam vide his No. Aspk/enq/16/1594 dated 27.09.2016. The respondent submitted his reply to the chargesheet, giving his version of the incident and explaining the role played by him. It is alleged that without conducting any further inquiry, without recording any witnesses and without affording any opportunity of cross-examination, the Superintendent of Police, Kulgam issued a show-cause notice proposing imposition of penalty vide his communication No. Estt./SC/2016/18633 dated 11.10.2016. This show-cause notice of proposed penalty was also responded to by the respondent. He denied having exhibited any kind of carelessness or cowardice while performing his duties. He reiterated his stand which he had taken in reply to the chargesheet/fard-e-ilzam. He also pleaded that he was a poor person and the job was his only source of

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income. He further pleaded for taking a humanitarian view in the matter considering his long service of 24 years rendered in the Department.

4 The reply submitted by the respondent was considered by the SP Kulgam, who vide his order dated 13.10.2016 (supra), dismissed the respondent from service. It is in these background facts, and claiming that he was innocent and had been dismissed without following due process of law, the respondent filed SWP No. 1775/2016.

5 The inquiry conducted by the appellants and the penalty of dismissal from service inflicted upon the respondent by the SP Kulgam was called in question primarily on the ground that the same were in violation of Rule 359 of the J&K Police Rules, 1960 ("Police Rules"), in that the detailed procedure prescribed for conducting Departmental enquiry had not been followed.

6 The writ petition was resisted by the appellants by filing a counter affidavit of the then SP Kulgam. In the counter affidavit, it was the stand of the appellants that by not retaliating or firing a single round and surrendering their weapons to the militants, the respondent and others who were posted at the minority guard post had exhibited negligence, carelessness, and cowardice, unbecoming of police personnel on duty. It was also pleaded that in respect of the incident, an FIR was registered in the concerned Police Station. It was further claimed in the counter affidavit that during the preliminary investigation, sufficient evidence came to be unearthed to the extent that neither the respondent nor any of the guard personnel had fired even a single round and had merely surrendered their service weapons before the militants without any resistance. With regard to Rule 359 of the Police Rules, it was

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asserted by the appellants that the inquiry was conducted strictly in terms of Rule 359 of the Police Rules and during the inquiry, the respondent was given full opportunity to prove his innocence. However, he failed to prove his innocence. The Inquiry Officer, after taking into consideration all facts, concluded that weapons were looted by the militants due to negligence and cowardice exhibited by the guard personnel, including the respondent. He, therefore, made recommendations for dismissal of the respondent. It is submitted that not only was a proper chargesheet served upon the respondent, but he was also given a show-cause notice of the proposed penalty, and it was only after providing him adequate opportunity of hearing, the order of dismissal from service was passed.

7 The writ Court, having considered the rival contentions and the material on record, came to the conclusion that the detailed procedure laid down in Rule 359 of the Police Rules for conduct of departmental inquiry was observed by the appellants in breach and that the respondent was deprived of reasonable opportunity to defend himself. The writ Court also went through the record to find out whether there was a substantial compliance of Rule 359 of the Police Rules or not, and came to the conclusion that other than serving upon the respondent a chargesheet and a show-cause notice of proposed penalty, no other steps required in conducting the inquiry had been taken or followed. Relying upon a couple of judgments rendered by this Court with regard to interpretation of Rule 359 of the Police Rules, the writ Court allowed the writ petition and set aside the impugned order therein in terms of the judgment impugned in this appeal.

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8 The impugned judgment is assailed by the appellants primarily on the ground that the writ Court has failed to appreciate that adequate opportunity of hearing was provided by the Inquiry Officer to the respondent and that a proper show-cause notice of proposed penalty was also served before a decision was taken by the competent authority to dismiss the respondent from service. To substantiate the arguments, learned Sr. AAG appearing for the appellants also produced the record of inquiry.

9 Having heard learned counsel for the parties and perused the record, it is necessary to first set out Rule 359 of the Police Rules herein below:

> **"359 Procedure in Departmental Enquiries-**
> (1) The following procedure shall be followed in departmental enquiries:-
> (a) The enquiry shall, whenever, possible be conducted by a gazette officer empowered to inflict a major punishment upon the accused officer. Any other gazetted officer or an Inspector specially empowered by the Minister I/C Police Department, to hold departmental enquiries (vide order No. 636-C, dated 27.6..1945) may be deputed to hold an inquiry or may institute an enquiry on his own initiative against an accused police officer who is directly subordinate to him, except that in the case of a complaint against a constable the inquiry may be conducted by an Inspector. The final order, however, may by passed only be an officer empowered to inflict a major punishment upon the accused police officer;
>
> (2) The officer conducting the inquiry shall summon the accused police officer before him and shall record and read out to him a statement summarising the alleged misconduct in such a way as to give full notice of the circumstances in regard to which evidence is to be recorded;
>
> (3) If the accused police officer at this stage admits the misconduct alleged against him the officer conducting the enquiry may proceed forthwith to record a final order if it is within his power to do so or a finding to be forwarded to an officer empowered to decide the case.
>
> Whenever a serious default is reported and the preliminary enquiry is necessary before a definite chargecan be framed, this is usually

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best done on the spot and might be carried out by the Sub-Inspector of the particular Police Station in the case o fhead constables and constables serving under him or by the Inspector of the circle in the case of Sub-Inspectors within his charge. At the same time it must be left to Superintendent of Police to select the most suitable officers for the purpose or to do it themselves when such a course appears desirable.

When the preliminary enquiry indicates a criminal offence, application for permission to prosecute should at once be made to the authority competent to dismiss the officer and permission should be promptly granted if that authority agrees that there is prima-facie case for prosecution.

(4) If the accused police officer does not admit that misconduct the officer conducting the enquiry shall proceed to record such evidence oral and documentary in proof of the accusations as is available and necessary to support the charge. Whenever possible witnesses shall be examined direct and in the presence of the accused who shall be given opportunity to cross-examine them. The officer conducting the enquiry is empowered however to bring on to the record the statement of any witness whose presence cannot in the opinion of such officer be produced without undue delay and expense or inconvenience if he consider such statement necessary and provide that it has been recorded and attested by a police officer not below the rank of Inspector or by a Magistrate and is signed by the person making it. The accused shall be bound to answer questions which the enquiring officer may see fit to put to him, with a view to elucidating the facts referred to in statements or documents brought on the record as herein provided.

(5) When the evidence in support of the allegations has been recorded, the enquiring officer shall:-

(a) If he considers that such allegations are not substantiated either discharge the accused himself if he is empowered to punish him, or recommend his discharge to the Superintendent or other officer who may be so empowered, or

(b) Proceed to frame a formal charge or charges in writing, explain them to the accused officer and call upon him to answer them.

(6) The accused officer shall be required to state the defence witnesses whom he wishes to call and may be given time in no case exceeding 48 hours to prepare a list of such witnesses together with a summary of the facts as to which they will testify. The enquiring officer shall be empowered to refuse to hear any witnesses whose evidence he considers will be irrelevant or

unnecessary in regard to the specified charge framed in which case he shall record the reason for his refusal. He shall record the statements of those defence witnesses whom he decides to admit in the presence of the accused, who shall be allowed to address questions to them the answer to which shall be recorded, provided that the enquiring office may cause to be recorded by any other officer not below the rank of Inspector the statement of any such witness whose presence cannot be secured without undue delay or inconvenience and may bring such statement on to the record. The accused may file documentary evidence and may for this purpose be allowed access to such files and papers except such as form part of the record of the confidential office of the Superintendent of Police as the enquiring officer deems fit. The supply of copies of documents to the accused shall be subject to the ordinary rules regarding copying fees.

(7) At the conclusion of the defence evidence or if the enquiring officer so directs at any earlier State, following the framing of a charge the accused shall be required to state his own answer to the charge. He may be permitted to file a written statement and may be given time not exceeding one week for its preparation but shall be bound to made an oral statement in answer to all questions which the enquiring officer may see fit to put to him arising out of the charge, the recorded evidence or his own writ ten statement.

(8) The enquiring officer shall then proceed to pass orders of acquittal or punishment if empowered to do so or to forward the case with his finding and recommendations to an officer having the necessary powers.

(9) Nothing in the foregoing rules shall debar a Superintendent of Police from making or causing to be made a preliminary investigation into the conduct of a suspected officer. Such an inquiry is not infrequently necessary to ascertain the nature and degree of misconduct which is to be formally enquired into. The suspected police officer may or may not be present at such preliminary enquiry as ordered by the Superintendent of Police or other gazetted officer initiating the investigation but shall not cross-examine witnesses. The file of such a preliminary investigation shall form not part of the formal departmental record but may be used for the purposes of sub-rule 4 above.

(10) This rule shall also not apply where it is proposed to terminate the employment of a probationer whether during or at the end of the period of probation.

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(11) (I) As laid down in Section 126 of the Constitution of Jammu and Kashmir, no officer shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No police officer shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause orally and also in writing against the action proposed to be taken in regard to him, provided that this clause shall not apply:-

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which led to his conviction on a criminal charge;
(b) where an authority empowered to dismiss or remove an officer or to reduce him in rank is satisfied that for some reason to be recorded by that authority in writing it is not reasonably practicable to give to that person an opportunity of showing cause; or
(c) where the Sadar-i-Riyasat is satisfied that in the interest of the security of the State it is not expedient to give to that officer such an opportunity".

(3) If any question arises whether it is reasonably practicable to give to any officer an opportunity of showing cause under clause (2) above, the decision in thereon of the authority empowered to dismiss or remove such officer or to reduce him in rank, as the case may be, shall be final.

10 From a reading of Rule 359, it is evident that an inquiry into the misconduct of a police personnel is, as far as possible, required to be conducted by a Gazetted Officer empowered to inflict a major punishment upon the accused person. It could also be conducted by any other Gazetted Officer or an Inspector specially empowered by the Minister In-charge Police Department to hold departmental inquiries. The inquiry commences with recording of and reading out to the delinquent a statement summarising the alleged misconduct. It should be done in such a way as to give notice of the circumstances to the delinquent as to the nature of evidence to be recorded during inquiry. If the delinquent police officer admits the misconduct alleged against him, the Inquiry Officer may proceed forthwith to record a final order if it is within his power to do so or forward his findings to an officer empowered to decide the

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case. However, if the police officer does not admit the misconduct, the Inquiry Officer shall proceed to record such evidence, oral and documentary, in proof of the accusations as is available and necessary to support the charge. Whenever possible, all witnesses shall be examined in the presence of the delinquent police officer, who shall be given an opportunity to cross-examine them. However, in respect of witnesses whose presence cannot, in the opinion of the Inquiry Officer, be secured without undue delay and expense or inconvenience, the statement of such witnesses recorded and attested by a Magistrate and signed by the person making it shall also be admissible in the departmental inquiry. The Inquiry Officer is also entitled to put questions to the delinquent officer, who shall be bound to answer such questions as may be required to elucidate the facts referred to in statements and documents brought on record.

11 The next steps as per Rule 359 are that the Inquiry Officer, upon recording of evidence in support of allegations, shall act in the following manner:

> "(i) If he considers that the allegations are not substantiated, he may either let off the accused himself if he is empowered to punish him or recommend his discharge from the allegations to the Superintendent or other competent officer;
>
> (ii) If the Inquiry Officer is of the view that the allegations are prima facie substantiated, he shall proceed to frame a formal charge or charges in writing, explain them to the delinquent officer, and call upon him to answer them".

12 After the formal charge is framed, the delinquent officer would be called upon to enter his defence and produce the witnesses he wishes to examine. He will be given a maximum of 48 hours to prepare a list of such witnesses together with a summary of the facts to which such witnesses would

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testify. In addition to the witnesses whom the delinquent police officer may seek to examine, the statement of the delinquent officer in respect of the charge shall also be recorded. The delinquent officer shall also be entitled to file a written statement for which he may be given time not exceeding one week. It is after concluding the inquiry, the Inquiry Officer shall proceed to pass orders of acquittal or punishment, as the case may be. However, where the police officer is sought to be dismissed, removed or reduced in rank, he shall also be served with a show-cause notice of proposed penalty. This is, however, subject to three exceptions:

> (i) where a person is dismissed or removed or reduced in rank on the ground of conduct which led to his conviction on a criminal charge;
> (ii) where an authority empowered to dismiss or remove an officer or to reduce him in rank is satisfied that for some reasons to be recorded in writing it is not reasonably practicable to give such opportunity;
> (iii) where the Governor/LG (earlier Sadar-i-Riyasat) is satisfied that it is not expedient to give to the officer such an opportunity.

These are broadly the steps which are required to be followed during an inquiry to be conducted in terms of Rule 359 of the Police Rules.

13 From a perusal of the stand taken by the appellants in their counter affidavit as also in this appeal and having gone through the record produced by the Sr. AAG, it is seen that the appellants herein have conducted the inquiry against the respondent by scrupulously following Rule 359 of the Police Rules and, therefore, the writ Court is not correct in arriving at the conclusion that the inquiry conducted by the appellants against the respondent is incomplete and in breach of Rule 359 and the principles of natural justice.

14. In the instant case, as is apparent from the record, the SSP, Kulgam, vide his order dated 10.05.2016, placed the respondent, a SGCT,

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under suspension and directed initiation of departmental inquiry against him and one retired Constable, Syed Firdous. The Additional SP, Kulgam, was appointed as an Inquiry Officer. The Inquiry Officer summoned the respondent to his office and served upon him the summary of allegations. He also read over the summary of allegations to the respondent. Since the respondent denied the allegations and pleaded not guilty, the Inquiry Officer recorded the statements of witnesses and collected other material. The respondent was given full opportunity to cross-examine the witnesses, but he chose not to raise any query or ask any question in cross-examination of the witnesses. On conclusion of the evidence led by the Department, aa formal charge-sheet was framed and served upon the respondent vide office order No. ASPK/Enq./1/194 dated 20.09.2016. The respondent submitted a detailed reply to the charge-sheet and denied the allegations of negligence, carelessness or poor response to the incident of weapon snatching. In response to the charge-sheet, the respondent also explained the circumstances which had led to forcible snatching of weapons. The respondent did not deny the fact that the militants took away the weapons from him and the other guards without any retaliation from him, but justified the same on the ground that the guard posted was under-strength and incapable of taking on the militants. He also submitted that he along with other guards were overpowered by the militants and not only the weapons but even their mobile phones too were snatched by them. The respondent was though given an opportunity but chose not to produce any evidence in his defence. The Inquiry Officer, thus, concluded the inquiry and submitted his findings along with recommendations to the SSP, Kulgam, vide its communication No. ASP/Enq./16/1693 dated 07.10.2016. The SSP, Kulgam, having found the allegations of involvement of the respondent in the act of cowardice prima

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facie established against the respondent, accepted the inquiry report and put the respondent on show-cause notice of proposed penalty of dismissal recommended by the Inquiry Officer. The show-cause notice of proposed penalty, as envisaged under Rule 359, was replied to by the respondent. He reiterated his stand which he had taken in his reply submitted to the charge-sheet. He once again denied the allegations of carelessness or cowardice and justified their failure to retaliate to the incident of weapon snatching by the militants. He also pleaded that he had rendered 24 years of service to the Department and in case he was terminated from service, he along with his family members would suffer. The reply to the proposed show-cause notice was considered by the SSP, Kulgam, who vide his order No. 293/2016 dated 13.10.2016 dismissed the respondent from the services of the police.

15. Viewed thus, it cannot be said that the departmental inquiry conducted by the appellants against the respondent is, in any manner, in breach of Rule 359 of the Police Rules. As a matter of fact, each and every step envisaged in Rule 359, right from serving of summary of allegations to the framing of charge and issuance of show-cause notice of proposed penalty, has been scrupulously followed. As is apparent from the stand taken by the respondent while replying to the charge-sheet as well as the show-cause notice of proposed penalty, the respondent has not denied that the weapons were snatched from him and his colleagues on guard duty by the militants and that not even a single round was fired by them in retaliation. The only explanation which the respondent has rendered with regard to his inability to retaliate is that the guards posted at Minority Guard Adjin, Kulgam, were under-strength and incapable of retaliating the attack by the militants. He has also pointed

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fingers about the location of the guard which was allegedly camped in a kaccha room having no fencing or boundary wall around it.

16 The challenge of the respondent before the writ Court was primarily three-fold: one, that the Additional SP was not competent to act as an Inquiry Officer; second, that the procedure for inquiries laid down in Rule 359 was not followed scrupulously and that there was violation of the principles of natural justice; and third, that while considering the punishment, the disciplinary authority did not take into consideration the provisions of Rules 336 and 337 of the Police Rules. All the three arguments have found favour with the writ Court.

16. As discussed hereinabove, we are of the considered opinion that the writ Court was not correct in arriving at its conclusions and holding the order of dismissal of the respondent bad in the eye of law. As is explained hereinabove by reference to the record, the procedure laid down in Rule 359 was followed in its entirety and the respondent was given ample opportunity to defend himself. He pleaded not guilty to the allegations. The evidence was recorded by the prosecution, in which the respondent was given ample opportunity to cross-examine. Upon collection of the evidence, the Inquiry Officer framed the formal charges and put the respondent on notice to reply to the charges. The respondent submitted his detailed reply to the charge-sheet but chose not to lead any evidence though he was given such opportunity. The inquiry was concluded and the report was submitted by the Inquiry Officer to the Disciplinary Authority. The Disciplinary Authority issued show-cause notice of proposed penalty and called upon the respondent to submit his reply. The respondent acknowledged the notice and submitted his reply which we

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have discussed at length hereinabove. It was only upon consideration of the reply submitted by the respondent to the show-cause notice of proposed penalty that the order of dismissal was passed against the respondent.

17. So far as the competence of the Inquiry Officer, who at the relevant point of time was holding the post of Additional SP, to conduct the inquiry is concerned, it is necessary to turn our attention to Rule 359. From a reading of Rule 359(1)(a), it clearly transpires that ordinarily an inquiry against the delinquent police officer is required to be conducted by a Gazetted Officer empowered to inflict a major punishment. Such inquiry can also be conducted by any other Gazetted Officer or an Inspector specially empowered by the Minister In-charge, Police Department, to hold departmental inquiries. So far as a Constable is concerned, the inquiry may be conducted even by an Inspector. In the instant case, the respondent against whom the inquiry was conducted was a Selection Grade Constable. The Selection Grade Constable is nothing but a Constable given the selection grade after serving for some specified years. That apart, the inquiry in this case has been conducted by the Additional SP. It is not disputed before us that the competent authority to inflict a major penalty of dismissal in case of a Constable is the Superintendent of Police. There should be no dispute that ASP is also a Superintendent of Police and, therefore, competent to inflict the punishment of dismissal upon a Constable.

18. Viewed thus, it cannot be said that the inquiry conducted by the ASP, Kulgam, was, in any manner, without jurisdiction. At this juncture, we deem it appropriate to turn our attention to Section 4 of the Police Act, 1983, wherein certain words and expressions, including the words “Superintendent

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and Superintendent of Police", have been assigned definite meanings. The relevant extract of Section 4 is set out below:

> "……..
>
> The words "Superintendent" and "Superintendent of police" shall include any Assistant Superintendent or other person appointed by general or special order of the Government to perform all or any of the duties of a Superintendent of Police under this Act in any district or part of a district
>
> ……."

19 In the face of aforesaid definition of Superintendent of Police, to say that the Additional SP was not competent to hold an inquiry against the respondent, a Selection Grade Constable, is wholly erroneous and not supported by the Police Act and the rules framed thereunder. In terms of Rule 335 of the Police Rules, the punishment of dismissal upon a Constable/Junior Scale Head Constable can be inflicted by a Superintendent of Police. The writ Court has not considered these provisions of the Police Act and the Rules framed thereunder and has erroneously come to the conclusion that the Additional SP lacked jurisdiction to conduct the inquiry against the respondent.

20 The findings of fact recorded by the Tribunal that while awarding punishment of dismissal upon the respondent, the Disciplinary Authority did not take note of the provisions of Rules 336 and 337 of the Police Rules are equally fallacious and, therefore, cannot be accepted. The failure of the Police Guards on duty to retaliate an attack by the militants and surrendering their weapons without firing a single round is a serious act of cowardice bringing moral disgrace to the police force as a whole. Such acts of the police guard who is posted for the safety of the people cannot be brushed aside lightly. Rule 337 itself provides that dismissal would be justified for acts of misconduct,

e.g., fraud, dishonesty, corruption and all offences involving moral disgrace. Viewed thus, it cannot even be remotely suggested that the punishment of dismissal awarded to the respondent is shockingly disproportionate to the misconduct proved.

21 Even otherwise, the scope of interference with disciplinary proceedings/departmental inquiries under Article 226 of the Constitution of India is well delineated by the Supreme Court in various judgments. In **State of Andhra Pradesh and others v. Sree Rama Rao, AIR 1963 SC 1723,** a three-Judge Bench, in paragraph 7 of the judgment, held thus:

> "7. ..... The High Court is not constituted in a proceeding under Article 226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence."

20 Another three-Judge Bench in the case of **SBI v. Ram Lal Bhaskar, (2011) 10 SCC 249**, while reiterating the aforesaid view, has held thus:

> "In a proceeding under Article 226 of the Constitution, the High Court does not sit as an appellate authority over the findings of the disciplinary authority and so long as the findings of the disciplinary authority are supported by some evidence the High Court does not re-appreciate the evidence and come to a different and independent finding on the evidence"

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21 Recently the Supreme Court in the case of **SBI vs. Ajai Kumar Srivastava, (2021) 2 SCC 612,** held thus

> "It is thus settled that the power of judicial review, of the Constitutional Courts, is an evaluation of the decision-making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The Court/Tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority if based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached or where the conclusions upon consideration of the evidence reached by the disciplinary authority is perverse or suffers from patent error on the face of record or based on no evidence at all, a writ of certiorari could be issued. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact".

22 From the above decisions and many more, it is trite law that the power of judicial review is not directed against the decision itself, but is confined to the decision-making process. The Court does not sit in judgment over the merits of the decision. The adequacy or sufficiency of the evidence led in the inquiry cannot be made the subject matter of judicial review under Article 226 of the Constitution of India. The scrutiny of the Court in exercise of its power of judicial review must be restricted to examining whether the authority which conducted the inquiry or the authority which inflicted the punishment upon conclusion of such inquiry was the competent authority to do so, and whether the rules of natural justice were violated. While examining such issues, the Court would also determine whether any infraction of the procedural rules governing departmental inquiries has caused prejudice to the delinquent or deprived him of a reasonable opportunity to defend himself. Keeping in view these broader principles of law delineating the power of the

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constitutional Court to interfere with disciplinary proceedings, we have examined the rival contentions in the light of the original record of inquiry produced by the appellants. Upon such examination, we find that the inquiry was conducted by a competent authority strictly in accordance with the procedure prescribed under the Police Rules; that the respondent was afforded full and effective opportunity of hearing at every stage of the inquiry; that the principles of natural justice were scrupulously followed; and that no procedural irregularity, much less any illegality, has been demonstrated which could be said to have caused prejudice to the respondent. We also find that the punishment imposed upon the respondent cannot be said to be shockingly disproportionate to the gravity of the misconduct proved against the respondent.

23. For the foregoing reasons, we find merit in this appeal and the same is accordingly allowed. The judgment passed by the writ Court is set aside, and the order of dismissal passed against the respondent by the Disciplinary Authority is restored.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

Srinagar.
18.12.2025
Sanjeev

Whether the order is speaking : Yes
Whether the order is reportable: Yes