2025:JHHC:12646

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(S) No.4236 of 2015

Jayanti Devi Urmaliya, W/o Late Santosh Urmaliya, R/O- 16, Gram Shivrajpur, P.O – Shivrajpur, Tahsil – Nagod, Shivrajpur, District – Stana, Madhya Pradesh, 485447

… Petitioner(s).

Versus

1.Union Of India through secretary, Ministry of Home Affairs, New Delhi.

2.The Inspector General, Central Industrial Security Force, (Ministry of Home Affairs), Bharat Coking Coal Limited, P.O & P.S- Koyla Nagar, Dhanbad.

3.The Deputy Inspector General, Central Industrial Security Force, Bharat Coking Coal Limited, P.O & P.S- Koyla Nagar, Dhanbad.

4.The Commandant / Jelgora, Central Industrial Security Force, Bharat Coking Coal Limited, P.O & P.S- Koyla Nagar, Dhanbad.

5.The Assistant Commandant, Central Industrial Security Force Unit, Bharat Coking Coal Limited, P.O & P.S- Koyla Nagar, Dhanbad.

…… **Respondent(s)**

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PRESENT : SRI ANANDA SEN, J.

For the Petitioner(s) : Ms. Ritu Kumar, Advocate
For the Resp.-UOI : Mr. Anil Kumar, ASGI
Mr. Shiv Kumar Sharma, C.G.C.

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O R D E R

Reserved on: 05.02.2025 **Pronounced On: 28/04/2025**

By way of filing this writ petition, the petitioner has prayed for the following relief-

"(a) For the issuance of an appropriate writ/writs, order/orders, direction/directions or a writ in the nature of certiorari to quash the Order no. 38 dated 10.03.1999 Passed by the Commandant, C.I.S.F unit, B.C.C.L Dhanbad (Respondent No. 4) whereby and whereunder the husband of petitioner has been removed from service.

(b) Petitioners further prays for the issuance of an appropriate writ/writs, order/orders, direction/directions for quashing of order 2608 dated 11.05.2000 passed by Deputy Inspector General, Central Industrial Security Force, Bharat Coking Coal Limited (Respondent No. 3) whereby and whereunder upheld the order passed by the respondent no. 4 and removed the husband of petitioner.

(c) Petitioners further prays for the issuance of an appropriate writ/writs, order /orders, direction /directions in the nature of mandamus commanding the respondent to issue family pension and other death cum retrial benefits to the petitioner.

(d) Petitioners further prays to pass such other order or orders as your Lordships may deem fit and proper in the facts and circumstances of the case."

2. The petitioner's husband was posted at the C.I.S.F. Unit, B.C.C.L. Dhanbad, and was jailed on June 16, 1997, leading to his suspension from duty. He was served with a charge memo on October 13, 1997, with four charges against him. A departmental inquiry was initiated, but the inquiry officer was changed. Finally, the inquiry report was submitted in January 1999, and the petitioner's husband gave a detailed reply on 17th February 1999. He claimed that his request to examine key witnesses was denied. On March 10, 1999, he was terminated from his service. He appealed to the Deputy Inspector General, but the appeal was rejected in 11th May 2000. The petitioner's husband was acquitted in the criminal case on November 4, 1998, as the prosecution failed to prove the charges. After this, he submitted a representation to the respondent, stating about the acquittal. He later on filed Writ Petition no. 5297 of 2009, but the Madhya Pradesh High Court dismissed it on September 10, 2014, on the ground of maintainability, leading to this petition.

3. Learned counsel appearing on behalf of the petitioner submitted that action of the respondents is grossly illegal and arbitrary and vitiated by *mala fide*. She submitted that departmental inquiry was commenced by the respondent authority in a very unfair manner as the enquiry officer was changed in the middle of the inquiry process. She submitted that no reason was asserted by the respondent on what was the need to change the previous inquiry officer. She submitted that the respondent miserably failed to prove the charges levelled against the husband of petitioner. Further the learned Judicial Magistrate 1st Class, Dhanbad has also acquitted the husband of the petitioner in the criminal case. She further submitted that respondent authority has failed to consider the reply of the husband of petitioner and his request for giving chance to produce defense witnesses was not considered by the enquiry officer. She claims that she is entitled to get family pension and other consequential benefits on account of death of her husband.

4. The learned counsel for the respondents submitted that the petitioner's husband has committed an act of gross misconduct when he was detailed for 'C' shift duty at Auto Garage Kustore, but he failed to turn up for duty without

giving any information to the competent authority. Thus act of the petitioner's husband is highly prejudicial to the order and discipline of an Armed Force of the Union. He further submitted that the petitioner's husband was absent without leave/permission which is a gross misconduct. He further submits that due to some administrative reasons, the earlier enquiry officer was changed and in his place another enquiry officer was appointed for holding further inquiry from the stage left by his predecessor. The enquiry officer conducted the enquiry as per procedure and under the relevant rules, giving ample opportunity of hearing to the petitioner's husband to defend his case. He also submitted that on the intervening night of June 16, 1997, the petitioner's husband was found hiding in the bushes behind the Zonal Transport Workshop under suspicious circumstances. Stolen pistons were found scattered nearby, along with a bag containing other stolen items. Subsequently, F.I.R. was lodged against him. He lastly submits that the enquiry officer has correctly found him guilty and the punishment imposed by the disciplinary authority commensurate with the proved misconduct and thus, he prayed that the instant writ petitioner needs to be dismissed.

5. From the material available on record I find that the departmental charges against the petitioner's husband are four folds they are:-

(i) Firstly, that the he failed to turn up on duty,

(ii) Secondly that he allegedly pilfered 11 pistons from the Zonal Transport Workshop on the night of June 15-16, 1997,

(iii) Thirdly that he remained absent without leave for 36 days and

(iv) The last charge being that inspite of the earlier misconducts he has not shown any improvement in his behaviour which shows that he is a habitual offender.

6. Acquittal in a criminal case ipso facto has no effect on departmental enquiry as the standard of proof required in criminal trial and departmental proceedings are different. In the criminal trial the charges has to be proved beyond the shadow of reasonable doubt whereas in departmental proceedings charges can be proved on the basis of preponderance of probability.

7. In cases where one of the charges are same in departmental enquiry and criminal trial courts can consider the outcome of criminal trial in certain

circumstances. Admittedly, the petitioner's husband in this case has been acquitted by the learned trial court on 04.11.1998 of charges under Sections 379 and 411 IPC. The Hon'ble Supreme court in the case of ***Ram Lal v. State of Rajasthan,*** reported in ***(2024) 1 SCC 175*** has observed that if the departmental charge and the criminal charge are same, constitutional courts while exercising the power of judicial review can grant redress in certain circumstances. The relevant paragraph needs to be reproduced here:-

> ***"12.*** *However, if the charges in the departmental enquiry and the criminal court are identical or similar, and if the evidence, witnesses and circumstances are one and the same, then the matter acquires a different dimension. If the Court in judicial review concludes that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge, the Court in judicial review can grant redress in certain circumstances. The Court will be entitled to exercise its discretion and grant relief, if it concludes that allowing the findings in the disciplinary proceedings to stand will be unjust, unfair and oppressive. Each case will turn on its own facts. (See G.M. Tank v. State of Gujarat [G.M. Tank v. State of Gujarat, (2006) 5 SCC 446 : 2006 SCC (L&S) 1121] , State Bank of Hyderabad v. P. Kata Rao [State Bank of Hyderabad v. P. Kata Rao, (2008) 15 SCC 657 : (2009) 2 SCC (L&S) 489] and S. Samuthiram [State of T.N. v. S. Samuthiram, (2013) 1 SCC 598 : (2013) 1 SCC (Cri) 566 : (2013) 1 SCC (L&S) 229] ."*

Further the Hon'ble Supreme Court recently in the case of ***Maharana Pratap Singh Vs. The State of Bihar and Others***, reported in ***2025 INSC 554*** has reiterated the aforesaid proposition. The relevant paragraph of the judgement is as follows:-

> *47. While an acquittal in a criminal case does not automatically entitle the accused to have an order of setting aside of his dismissal from public service following disciplinary proceedings, it is well-established that when the charges, evidence, witnesses, and circumstances in both the departmental inquiry and the criminal proceedings are identical or substantially similar, the situation assumes a different context. In such cases, upholding the findings in the disciplinary proceedings would be unjust, unfair, and oppressive. This is a position settled by the decision in G. M. Tank (supra), since reinforced by a decision of recent origin in Ram Lal v. State of Rajasthan.*

8. From the articles of charge, it is clear that second charge is of the gravest in nature. The same has not been proved in the criminal case and therefore the charge is liable to be dropped, in view of the aforesaid judgments. If that charge is dropped, dismissal on the ground of other charges will be strikingly disproportionate.

9. The Hon'ble Supreme Court in the case of ***Union of India and Others v. Subrata Nath*** *reported in* ***2022 SCC OnLine SC 1617***, has observed that courts can interfere with the punishment imposed by the disciplinary authority in case the punishment imposed is shockingly disproportionate. In paragraph 21 of the it was held that:-

> *"**21.** 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 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 Union of India v. P. Gunasekaran, (2015) 2 SCC 610 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 therefor."*
> *In this case as the delinquent employee has already expired so it cannot be remanded back to the disciplinary authority. But this court is well empowered to modify the punishment awarded in the disciplinary proceedings.*

10. The Hon'ble Supreme Court in the case of ***State of Gujarat v. Anand Acharya reported in*** **(2007) 9 SCC 310** has held that courts in rare cases can modify the punishment awarded in disciplinary proceedings. In paragraph 15 of the said judgement, it was held as:-

> ***15.*** *The well-settled proposition of law that a court sitting in judicial review against the quantum of punishment imposed in the disciplinary proceedings will not normally substitute its own conclusion on penalty is not in dispute. However, if the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court, then the court would appropriately mould the relief either by directing the disciplinary/appropriate authority to reconsider the penalty imposed or to shorten the litigation it may make an exception in rare cases and impose appropriate punishment with cogent reasons in support thereof (see Bhagat Ram v. State of H.P. [(1983) 2 SCC 442 : 1983 SCC (L&S) 342] , Ranjit Thakur v. Union of India [(1987) 4 SCC 611 : 1988 SCC (L&S) 1] and U.P. SRTC v. Mahesh Kumar Mishra [(2000) 3 SCC 450 : 2000 SCC (L&S) 356]).*

11. This is a rare case as the husband of the petitioner is dead and it will not be proper to relegate the widow to the disciplinary proceeding. Accordingly, the punishment of dismissal is converted to compulsory retirement.

12. The Order No.38 passed by the respondent No. 04 dated 10.03.1999 and the appellate order No.2608 dated 11.05.2000, accordingly, stands modified. This writ petition is **partly allowed** with the modification in punishment to the extent as stated above. Pending interlocutory applications, if any, stands disposed of.

(Ananda Sen, J.)

High Court of Jharkhand, Ranchi
Dated 28/04/2025
AFR/ R.S./Cp 03