

(2010) 07 AHC CK 0031
In the Allahabad High Court
Case No : C.M.W.P. No. 6584 of 2005

Arjun Singh and Another	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 29-07-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 309
Railway Protection Force Rules, 1987 — Rule 153

Citation : (2010) 6 AWC 5474

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Anil Kumar, J.—Heard Sri Yogesh Agarwal, learned Counsel for the Petitioners and Sri Govind Saran, learned Counsel for the Respondents.

2. Brief facts of the case are that the Petitioners Sri Arjun Singh and Sri Umesh Prasad were the Constables in the Railway Protection Force and at the relevant time posted in Company No. 46 of the Railway Protection Force (hereinafter referred to R.P.F.) at Allahabad.

3. On 8.3.1990. one Sri Siddha Nath Prasad posted as Constable in Company No. 46, after performing his duties was returning to Railway Quarter situated in Railway Colony Lalitnagar, Allahabad. Petitioners assaulted Sri Siddha Nath Prasad but he was released, as a result of assault, he suffered severe injuries and was admitted to railway hospital.

4. Further, in the discharge-slip issued by Divisional Medical Officer, Railway Hospital, Allahabad. Due to assault, Sri Siddha Nath Prasad suffered injuries on his face and eyes. In the matter in question Sub-Inspector R.P.F. in Company No. 46 on 9.3.1990 submitted a report to the competent authority. The Petitioner was suspended vide order passed by Assistant Security Commissioner of R.P.F. On 6.4.1990 (Annexure-9) a charge-sheet was issued under Rule 153 of Railway

Protection Force Rules, 1957 to the Petitioner by Assistant Security Commissioner Inter alia stating therein that the Petitioners had abused and assaulted to Siddha Nath Prasad near Betel gumti as a result of which he sustained severe injuries.

5. As per the version of the Petitioners, they made application dated 9.11.1990 to the Inquiry Officer thereby requesting to give report dated 9.3.1990 and 20.3.1990 alongwith statement given by Siddha Nath Prasad etc. and other documents. However, the said documents were not given to the Petitioners, as a result of which they were not able to submit their reply to the charge-sheet. Further, in the matter in question Inquiry Officer. started proceedings and one Sri S. N. Singh, Inspector was examined and Petitioners were given due opportunity for cross-examination. Further, on the basis of the material, the Inquiry Officer conducted enquiry proceedings and submitted enquiry report on 22.6.1991. On 30.6.1991, the enquiry report was given to the Petitioners and 15 days time was provided to them to submit their defence to the disciplinary authority. In response to the same, the Petitioners submitted their case by means of representation dated 26.7.1991. On 26.8.1991, Divisional Security Commissioner/ Competent Authority of Railway Protection Force, Allahabad passed the order by which they were removed from services.

6. As per the record, the said removal orders and the enquiry report were challenged by the Petitioners before this Court by means of Arjun Singh and Ors. v. Union of India and Ors. Writ Petition No. 31223 of 1991 During the pendency of the writ petition, Petitioner No. 2 (Umesh Chandra) filed an statutory appeal on 15.6.1992, dismissed by order dated 23.10.1992, passed by Deputy Chief Security Commissioner.

7. Further, the Writ Petition No. 31223 of 1991 filed by the Petitioners was disposed of vide order dated 6.7.2004 with the direction that in case the Petitioners filed a revision before next higher authority within a period of one month from today, the same may be considered and decided in accordance with law.

8. In view of the above said facts, Petitioner No. 1 as well as Petitioner No. 2 filed revision petition before the revisional authority, the revision filed by the Petitioner No. 1 (Arjun Singh) was treated as an appeal. By means of order dated 7.1.2005 (Annexure-4) and order dated 4.1.2005 (Annexure-3), the same were dismissed, hence the present writ petition filed by the Petitioners thereby challenging the order of removal dated 26.8.1991 and order dated 23.10.1992, passed by the appellate authority thereby dismissing the appeal of the Petitioner No. 2 and the order dated 4.1.2005 and 7.1.2005, passed by the Additional Authority/Deputy Chief Security Commissioner, Railway Police Force.

9. Sri Yogesh Agarwal, learned Counsel/for the Petitioner assails the impugned orders which are under challenge in the present writ petition on the grounds which are stated herein below:

1. Neither reasonable opportunity has been given to the Petitioner nor the copy of the documents were given as demanded by them, as such the entire enquiry proceedings as well as the punishment order and appellate orders are arbitrary in nature. No independent witness whosoever was examined during the course of enquiry proceedings and even then the Petitioners have been held to be guilty of charge that they have beaten one Sri Siddha Nath Prasad.

2. Vital and necessary evidence was not produced, i.e., neither the medical certificate or the injury report nor the evidence/statements of the alleged witness namely the son of the alleged injured Siddha Nath Prasad which vitiated the inquiry.

3. Inquiry report or Impugned order does not indicate any reason for rejecting the Petitioners' defence rather the impugned order is non-speaking and unreasoned, accordingly the orders which are under challenge are violative of principles of natural justice and liable to be set aside.

4. Impugned punishment is in violation of the Rules namely 153.2.1 as no opinion was made by the Disciplinary Authority namely Security Commissioner/ Commanding Officer or Senior Security Commissioner as required.

5. Disciplinary Authority neither itself conducted inquiry nor appointed the Inquiry Officer, as such the entire inquiry proceedings are vitiated and are non-est in the eye of law.

6. Impugned orders namely order dated 4.1.2005 and 7.1.2005 have been passed without any application of mind. They are verbatim reproduction of each other with no difference except the names of the parties showing that the revisions had been decided mechanically without application of mind.

In support of above said contention, learned Counsel for the Petitioner relied on the following judgments:

1. Hardwari Lal v. State of U. P. and Ors. 1999 (9) Supreme 34: 2000 (1) AWC 96 (SC),

2. Senior Divisional Manager, L.I.C. of India and Anr. v. Aneep Mehta 2006 (4) ADJ 143. (para 60 non-consideration of vital aspects).

3. Rajiv Arora Vs. Union of India (UOI) and Others,

Accordingly, it is submitted by the learned Counsel for the Petitioners that the impugned orders deserve to be quashed and writ petition be allowed.

10. Sri Govind Saran, learned Counsel for the Respondents on the other hand had supported the orders which are under challenge on the ground that the Petitioners had beaten Sri Siddha Nath Prasad on 8.3.1990. as a result of which he sustained injuries and was admitted to Railway hospital and thereafter a charge-sheet has been given on 4.6.1990 to which the Petitioners on some other pretext had not submitted reply. Thereafter, on the basis of the material on

record, the Inquiry Officer conducted the enquiry and submitted the report and same was supplied to the Petitioners who submitted their reply/objection to the disciplinary authority. By order dated 26.8.1991, the Additional Security Commissioner/Competent Authority had removed them from services, thereafter the appeal filed by the Petitioner No. 2 was dismissed by the appellate authority on 23.10.1992 and subsequently, the revision filed by the Petitioners were also dismissed by orders dated 4.1.2005 and 7.1.2005.

11. It was further argued by the learned Counsel for the Respondents that in the matter in question enquiry was conducted in accordance with law and the Inquiry Officer has observed the principles of natural justice and submitted his report, as such there is neither any illegality nor infirmity in the impugned orders which are under challenge by the Petitioner, hence the present writ petition filed by the Petitioner is liable to be dismissed.

Learned Counsel for the Respondents in support of his contention relied on the following judgments:

1. Senior Divisional Manager L.I.C. of India v. Aneep Mehta 2006 (4) ADJ 143 (All) (DB).
2. S.N. Mukherjee Vs. Union of India,
3. N. Rajarathinam v. State of T. N. and Anr. 1997 SCC 90.
4. State of Karnataka and Others Vs. H. Nagaraj,

12. I have heard learned Counsel for the Petitioner and perused the record.

13. So far as the factual matrix of the present case are concerned, on 8.3.1990, one Sri Siddha Nath Prasad posted as Constable in Company No. 46, after performing his duties was returning to his Railway Quarter situated in railway Colony Lalitnagar, Allahabad was assaulted by the Petitioners, as a result of which he received grievous injuries and admitted to Railway hospital, Allahabad. In the discharge-slip issued by the hospital concerned, it was mentioned that he suffered injuries on his face and eye. Keeping in view that the said act was done by the Petitioners, a charge-sheet dated 6.4.1990 issued under Rule 153 of Railway Protection Force Rules, 1957 and enquiry was initiated in the matter.

14. Further, disciplinary proceedings initiated against the Petitioners was conducted by the Inquiry Officer in accordance with law and ample opportunity was given to them during the course of enquiry proceedings. Further, from the material on record, it is clearly established that the demand was made by the Petitioner in respect to the copies of the documents and to inspect the same. In response to the said demand by letters dated 15.6.1990 and 20.7.1990, they were directed to inspect the documents which they want but they themselves did not turn up to inspect the said documents. So far as the documents which are demanded by them, the copy of the said documents were given to them and this regard the Inquiry Officer had given a categorical finding of fact in the enquiry

report.

15. Moreover, the Inquiry Officer has also given categorical finding of fact that Petitioner (Arjun Singh) on one or other pretext wants to linger on the inquiry proceedings and does not want to co-operate with the enquiry proceedings. On 23.1.1991 and 25.1.1991, respectively, Inspector Sri S. N. Singh and Sri Siddha Nath Prasad were produced as witnesses and their statements were recorded and proved that the incident in question has taken place and the Petitioners had beaten Sri Siddha Nath Prasad and abused him and used unparliamentary language, further, Sri Siddha Nath Prasad and Sri S. N. Singh were cross-examined on behalf of the Petitioners. On the basis of the said material on record, the Inquiry Officer conducted the enquiry in accordance with law and submitted enquiry report on 22.6.1991, the same was given to the Petitioners by the disciplinary authority and the Petitioners were required to submit their response. Accordingly, Petitioner No. 1 submitted his defence on 26.7.1991 (Annexure-1), thereafter the order of removal from services dated 26.8.1991 was passed and which was confirmed by orders dated 17.1.2005 and 4.1.2005 (Annexures-4 and 3 respectively) passed by the disciplinary authority/appellate authority against them.

16. In view of the above said fact, the question which is to be examined in the present case is whether the reasonable opportunity had been given to the Petitioners before passing the order of removal from services and what is the effect of not giving the documents as alleged by them.

17. The Constitution Bench in *Khem Chand Vs. The Union of India (UOI)and Others*, has held that the reasonable opportunity means and includes--

(a) an opportunity to deny his guilt and establish his innocence.....

(b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witness in support of his defence; and finally

(c) an opportunity to make his representation as to why the purported punishment should not be inflicted on him....

18. In the case of *Transmission Corporation of A. P. Ltd. v. Shri Rama Krishna Rice Mill* 2006 SCC 467, Hon"ble Supreme Court while considering the meaning of reasonable opportunity had interpreted the said word in *Advance Law Lexicon* by P. Ramanatha Aiyar, 93rd ED., Vol. 4, pp. 3959 and 3968 and has held as under:

(i) [What is] fair, proper, or moderate under the circumstances....

(ii) The expression "reasonable" is not susceptible of a clear and precise definition. A thing which is reasonable in one case may not be reasonable in another. Reasonable does not mean the best, it means most suitable in a given set of circumstances.

(iii) There is no point on which a greater amount of decision is to be found in courts of law and equity than as to what is reasonable. It is impossible a priori to state what is reasonable as such in all cases. You must have the particular facts of each case established before you can ascertain what is meant by reasonable under the circumstances. Lord Romilly, *M. R. Labouchere v. Dawson* (1872) LR 13 : 25 LT 894.

19. Accordingly, reasonable opportunity means:

(a) an opportunity to deny guilt and establish innocence; which as Government servant can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;

(b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence what he can effectively do if he was supplied the copies of the documents relied upon and the depositions of witnesses; and finally,

(c) an opportunity to make his representation as to why no punishment should be inflicted on him which he can only do if the competent authority, after the enquiry is over tentatively proposes to inflict one of the scheduled punishments and communicates his tentative decision alongwith a copy of the inquiry report to the Government servant.

20. In the present case, Petitioners were admittedly given ample opportunity to prove that they were not guilty of the charges but they willfully and intentionally had not availed the same, as such they cannot turn around now and say that they were not afforded opportunity to defend themselves.

21. In the case of *State of Tamil Nadu Vs. Thiru K.V. Perumal and others*, Hon"ble Supreme Court has held as under:

The Tribunal seems to be under the impression that the enquiry officer/disciplinary authority is bound to supply each and every document that may asked for by delinquent officer/employee. It is wrong there. Their duty is only to supply relevant documents and not each and every document asked for by the delinquent officer/ employee. In this case Respondent has asked for certain documents. The Registrar, to whom the request was made, called upon him to specify the relevance of each and every document asked for by him. The Respondent did not do so. It was the duty of the Respondent to point out how each and every documents was relevant to the charges or to the enquiry being held against him and whether and how their non-supply has prejudiced his case. Equally, it is the duty of the Tribunal to record the finding whether any relevant documents were supplied and whether such non-supply has prejudiced the Defendant's case.

22. In the instant case, the. Petitioners had made a bald and vague statement that the relevant documents were not supplied to them and further they had not stated that in what manner they are being prejudiced for non-supply of the said

documents and the copies of all the relevant documents and statements of witnesses including the enquiry report were supplied to the Petitioners and on the basis of the said fact it is totally incorrect on the part of the Petitioners to say that the relevant documents were not supplied to them by the Respondents, accordingly, the submission made by the learned Counsel for the Petitioners in this regard is misconceived and the same is rejected having no force.

23. Next submission made by the learned Counsel for the Petitioners that the charge-sheet has not been given by the competent authority on the basis of documents on record and submission made by learned Counsel for the Respondents, the said argument has no force because Additional Chief Security Commissioner, Railway Protection Force was the appointing authority of the Petitioners, they were appointed by the said authority, so the submission made by the learned Counsel for the Petitioners in this regard is wholly misconceived and incorrect, the same is rejected having no force.

24. So far as the submission made by the learned Counsel for the Petitioners that no reasons whatsoever has been given by the punishing authority in the impugned order has also got no force because on perusal of the impugned orders of removal from services, it is clear that the punishing authority after taking the documents as well as evidence on record, enquiry report and the reply submitted by the Petitioners had given a categorical finding of fact they had assaulted Sri Siddha Nath Prasad as a result of which he sustained grievous injuries on face and eyes and was admitted in the concerned railway hospital. Railway hospital in it's report has categorically stated that Sri Siddha Nath Prasad received injuries on the face and eyes and was admitted in the said hospital from 9.3.1990 to 20.3.1990.

25. Further, in paragraph 3 of the removal order it was stated by the punishing authority that at the time of the incident, Petitioners were under the influence of liquor as a result of which they had beaten Sri Siddha Nath Prasad who sustained grievous injuries. Moreover, from the perusal of the impugned order passed by the punishing authority, it is crystal clear that the said authority after going through the document on record had come to the conclusion that Sri Siddha Nath Prasad had received injuries due to the act of the Petitioners and they are responsible for the said injury.

26. Keeping in view the said fact, the punishing authority had passed the impugned order taking into consideration that in the Railway Protection Force in which discipline is of paramount consideration and it is to be maintained by the person who is working therein and as such the act in question on the part of the Petitioners falls under the category of indiscipline so there is no justification or reason to retain them in services, accordingly, the orders of removal have been passed against the Petitioners.

27. It is settled law that the reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable

face of the sphinx", it can be its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the later before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural Justice is spelling out reasons for the order made. In other words, speaking out. The inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance.

28. Further, if the said principles is applied in the present case and the order of removal from services are tested on the said scale, the submission made by the learned Counsel for the Petitioner will definitely fail in the test. As in the present case, the orders of removal passed by the punishing authority are reasoned one indicating the reasons on the basis of which the same have been passed, accordingly the submission which has been made by the learned Counsel for the Petitioners in this regard is wholly misconceived and rejected.

29. Further, this Court while exercising power of judicial review under Article 226 of the Constitution of India does not exercise appellate powers. It is not intended to take away from administrative authorities the powers and discretion properly vested in them by law and to substitute Courts as the bodies making the decisions. Judicial review is a protection and not a weapon.

30. In the case of Council of Civil Service Unions (C.C.S.U.) v. Minister for the Civil Service (1984) 3 All ER 935, Lord Diplock has observed the scope of judicial review in the following words:

Judicial Review as I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call "illegality" the second "irrationality" and the third "procedural impropriety.

31. Moreover, judicial review has certain inherent limitation. It is suited more for adjudication of disputes than for performing administrative functions. It is for the executive to administer the law and the function of the judiciary is to ensure that the Government carries out its duty in accordance with the provisions of the rules and statute.

32. In the case of Chief Constable of the North Wales Police v. Evans (1982) 3 All ER 141, it was observed by Lord Hailsham as under:

Purpose of judicial review is to ensure that individual receives fair treatment and not to ensure that the authority, after according fair treatment reaches on a matter which it is authorized by law to decide with its conclusion which is corrected in the eyes of the Court.

In the same case, Lord Brightman observed that:

Judicial review as the words imply is not an appeal from a decision but a review of the manner in which a decision was made," and held, that "it would be an error to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself.

33. The aforesaid observations made by the Lord Hailsham and Lord Brightman were quoted with approval by their Lordships of Supreme Court in State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others, and while upholding that the judicial review is directed not against the decision, but is confined to the examination of the decision making process, it was held by the Supreme Court as under:

When the issue raised in judicial review is whether a decision is vitiated by taking into account irrelevant, or neglecting to take into account, relevant factors or is so manifestly unreasonable that no reasonable authority entrusted with the power in question could reasonably have made such a decision, the judicial review of the decision making process includes examination, as a matter of law, of the relevance of the factors.

34. In the case of Tata Cellular Vs. Union of India, the Supreme Court stated that:

Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made but the decision making process itself," and enumerated some broad grounds upon which an administrative action is subject to control by judicial review and classified them under the heading of "illegality", "irrationality" and "procedural impropriety." In their supervisory jurisdiction as distinguished from the appellate one, the Courts do not themselves embark upon rehearing of the matter but nevertheless Courts will, if called upon, act in a supervisory capacity and see that the decision making body acts fairly. If the decision making body is influenced by considerations which ought not to influence or fails to take into account the matters which ought to have been taken into account the Courts will interfere. If the decision making body comes to its decision on no evidence or comes to a finding so unreasonable that a reasonable man could not have come to it then again the Courts will interfere.

Further, if the decision making body goes outside its power or misconstrues the extent of its power, then too the Courts can interfere, and if the decision making body acts in a bad faith or with ulterior object which it is not authorized by law, its decision will be set aside in supervisory jurisdiction. A decision of a public authority will be liable to be quashed or otherwise dealt with by appropriate order in judicial review proceedings, where the Courts concludes that the decision is such that no authority properly directing itself on the relevant law and fact acting reasonably could have reached it.

35. Thus, the decision by the appropriate authority to grant or not to grant a particular relief to a person is not open to judicial review by the High Court under Article 226 of the Constitution of India but the power of judicial review is

circumscribed to scrutiny of the decision making process only and is to be exercised in the light of the principles laid down above and applying the said principles to the facts of the present case, I do not find any irregularity, infirmity in the impugned order.

36. Last submission made by the learned Counsel for the Petitioners that the impugned orders under challenge are arbitrary in nature as the punishments which are awarded to the Petitioners do not commensurate with the gravity of charges, as such the same is in the violation of principles of natural justice. This argument is not tenable as it is the sole prerogative and domain of the punishing authority to impose the punishment on an employee taking into consideration the material documents and evidence on record and misconduct committed by him.

37. In the case of B.C. Chaturvedi Vs. Union of India and others, Hon''ble Supreme Court has held as under:

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.

38. In the case of V. Rqjarathinam v. State of Tamilnadu and Anr. 1997 SCC 90, the Court has held as under:

that if all the relevant facts and circumstances and the evidence on record are taken into consideration and it is found that the evidence established misconduct against a public servant, the disciplinary authority is perfectly empowered to take appropriate decision as to the nature of the findings on the proof of guilt. Once there is a finding as regards the proof of misconduct, what should be the nature of the punishment to be imposed is for the disciplinary authority to consider.

39. In the case of State of Karnataka and Others Vs. H. Nagaraj, Hon''ble Apex Court after relying earlier judgment in the case of Collector of Central Excise, Madras Vs. Standard Motor Products and Others, , held as under:

That it is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of Legislature or Rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a

matter exclusively within the jurisdiction of the competent authority.

40. In the case of Union of India (UOI) and Another Vs. S.S. Ahluwalia, the Hon''ble Apex Court had held as under:

8... The scope of judicial review in the matter of imposition of penalty as a result of disciplinary proceedings is very limited. The Court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved.

41. In the case of State of Meghalaya and Others Vs. Mecken Singh N. Marak, the Hon''ble Supreme Court had held as under:

The legal position is fairly well-settled that while exercising the power of judicial review, the High Court or a Tribunal cannot interfere with the discretion exercised by the disciplinary authority, and/or on appeal the appellate authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the Court/Tribunal. The exercise of discretion in imposition of punishment by the disciplinary authority or appellate authority is dependent on host of factors such as gratuity misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquents holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works. Ordinarily the Court or a Tribunal would not substitute its opinion on reappraisal of facts.

Secondly, the Tribunal failed to notice that the Respondent was holding an important position as Land Reforms Officer during the relevant period having been conferred with various powers and duties under the Regulations. As a Land Reforms Officer, the Respondent possessed the official authority for grant of occupancy rights under the Regulations. The co-delinquents were only his subordinates and they carried out his instructions. In the facts and circumstances, therefore, the Respondent and the two co-delinquents cannot be said to have been similarly placed.

42. Recently, in the case of The Administrator, Union Territory of Dadra and Nagar Haveli Vs. Gulabhia M. Lad, the Hon''ble Supreme Court has held as under:

Para 14. The legal position is fairly well-settled that while exercising the power of judicial review, the High Court or a Tribunal cannot interfere with the discretion exercised by the disciplinary authority, and/or on appeal the appellate authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the Court/Tribunal. The exercise of discretion in imposition of punishment by the disciplinary or appellate authority Is dependent of host of factor such as gravity of misconduct, past conduct, the nature of duties assigned to delinquent, responsibility of position that the delinquent holds, previous penalty, if any, and the discipline required to maintain in the department or establishment he works.

Ordinarily the Court or Tribunal would not substitute its opinion on reappraisal of facts.

43. For the foregoing reasons and keeping in view the facts that the Petitioners belong to discipline force, I have no hesitation in holding that on the facts found and conclusions recorded in the enquiry report, the punishment of removal cannot be said to be not commensurate with the misconduct proved against the Petitioners.

44. No other point was argued or pressed before me.

45. Accordingly the present writ petition lacks merit and dismissed.

46. No order as to costs.