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**(2004) 03 GAU CK 0049**  
**In the Gauhati High Court**  
**Case No : WP (C) No. 5470 of 2001**

Bodhraj Jamawal

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

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**Date of Decision :** 26-03-2004

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2004) 3 GLR 515

**Hon'ble Judges :** Ranjan Gogoi, J

**Bench :** Single Bench

**Advocate :** G.C. Phukan and R. Barpujari, for the Appellant; G.P. Bhowmick, for the Respondent

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## Judgement

Ranjan Gogoi, J.—Heard Mr. G C Phukan, learned Counsel for the petitioner and Mr. C Bhowmick, learned Additional CGSC, who has appeared for the respondents.

2. At the relevant point of time, the petitioner who was working as a Head Constable in the Central Industrial Security Force (CISF), was deployed at HMS Balijan as Guard Commander. On 7/4/99, a charge memo containing two articles of charges was furnished to the writ petitioner and he was asked to submit his reply to the said charges. The articles of charges may be extracted herein below.

"Article of Charge - I

An act of gross indiscipline, negligence and dereliction of duty on the part of No. 911070035 HC/GD BODH RAJ JAMWAL of CISF Unit OIL, Duliajan in that while he was deployed for "A" Shift duty on 20/3/99 at HMS Balijan as Guard Commander he in active connivance with Shri Mahindra Singh, Technician Grade-II OIL (India) Ltd. Tried to smuggle out 5 numbers of Cement bags in OIL (India) Ltd. Gypsy No. 1310 at about 1210 hrs on that day, carried by Shri Mahindra Singh, Sl. No. 917939, Technician Grade-II of OIL (India) Ltd. Without valid challan.

This act amounts to gross Indiscipline, negligence and dereliction of duty. Hence the charge.

## Article of Charge - II

An act of gross indiscipline, dereliction of duty and breach of trust on the part of No. 911070035 HC/GD BODH RAJ JAMWAL of CISF Unit OIL Duliajan in that on 24/3/99 while he was deployed for "B" Shift duty at HMS Location front side Morcha he allowed a truck loaded with Cement bags to go outside the location without any valid authority by giving false information to Constable S. Hembram who had carried out checking of the above mentioned vehicle stating that he has got the challan and he had already entered the required information into the "IN & OUT MATERIAL REGISTER" with mala fide intention. The above mentioned was later recovered from nearby HMS drilling location on 29/3/99.

This act amounts to serious misconduct, dereliction of duty and breach of trust. Hence the charge."

3. The writ petitioner submitted his reply denying the allegations levelled against him. The authority not being satisfied, appointed an enquiry officer to go into charges levelled against the writ petitioner. The enquiry officer held an elaborate proceeding in the course of which as many as 14 witnesses were examined and a large number of documents were also exhibited. No witness was examined on behalf of the charge sheeted officer, i.e., the writ petitioner.

Thereafter, the enquiry officer submitted a report on 3/8/99, holding both the charges levelled against the writ petitioner to be proved. In the enquiry report, an elaborate and exhaustive reference has been made to the evidence and materials collected in the course of the enquiry, on consideration of which the enquiry officer appears to have come to the conclusion as noticed above. The report of enquiry was forwarded to the disciplinary authority and a copy of the same was also furnished to the writ petitioner. Thereafter, the disciplinary authority, after elaborately considering the report of enquiry submitted, by order dated 30/9/99, thought it proper to impose the punishment of "removal from service" on the writ petitioner. Though the writ petitioner filed a departmental appeal against the aforesaid order dated 30/9/99, he did not wait for the appeal to be disposed of and instead has invoked the writ jurisdiction of this Court under Article 226 by means of the present writ application.

4. The arguments advanced by Mr. Phukan, learned Counsel for the petitioner, in support of the challenge made, is short and precise. Referring to the evidence on record, Mr. Phukan has contended that the said materials do not conclusively establish the guilt of the writ petitioner. The writ petitioner has been penalized on suspicion and surmises and conjectures and therefore, the impugned findings and conclusions would partake the character of perverse conclusions warranting interference even in exercise of the limited jurisdiction of this Court under Article 226. Mr. Phukan, learned Counsel for the petitioner, has also sought to make out a case of disproportionate punishment by contending that having regard to the charges levelled, the punishment of removal is harsh, excessive and disproportionate.

5. Controverting the submissions advanced on behalf of the writ petitioner, Mr. Bhowmick, learned additional CGSC, has argued that the materials on record singularly point to the culpability of the writ petitioner. Learned Additional CGSC has placed before the Court the oral evidence tendered by the two of the main witnesses, i.e. Constable S. Hembram and constable UC Das, in regard to the two charges levelled. The writ petitioner is a member of the disciplined force Who was entrusted with the duty to guard public property. If the writ petitioner is a member of a disciplined force who was entrusted with the duty to guard public property from lawful custody, certainly, he would not be fit for retention in service. On the aforesaid basis learned Additional CGSC has argued that the punishment imposed on the writ petitioner is just, fair and adequate.

6. The rival submissions advanced on behalf of the parties have been duly considered. While exercising powers under Article 226 of the Constitution, in matters relating to imposition of punishment after a full-fledged enquiry held, the powers of the writ Court are severely restricted on account of self-imposed limitations. The writ Court is not to function as a Court of appeal against conclusions reached either by the enquiry officer or by disciplinary authority. The writ Court will not appreciate or decide on the sufficiency of the materials. Even if the conclusions reached are disagreed with by the writ Court, as long as the said conclusions are possible conclusions reached on a consideration of the materials on record, the views of the disciplinary authority will not be substituted by the views of the Court, These are the broad limits of power that the writ Court had thought it proper to impose upon itself while exercising its jurisdiction in matters relating to disciplinary proceedings and imposition of punishment.

7. Applying the above parameters to the facts of the instant case, what this Court finds is that the statements of the two of the main witnesses examined in support of the charges levelled disclose that there is some material which point an accusing finger to the writ petitioner. The evidence of constable UC Das, is to the effect that after he had stopped the Gypsy vehicle carrying five bags of cement, he was informed by the delinquent/writ petitioner that he should allow the vehicle to leave as an entry in the the out going register was made by the writ petitioner. According to constable UC Das, he asked the writ petitioner to show the necessary paper to him, which not being shown, he inspected the out going register and found an incomplete entry in the said register in respect of the five bags of cement. Accordingly, he stopped the materials from going out and informed his superior who asked him to carry out his duties in the manner required. According to this witness at that point of time the person who tried to remove the cement, agreed to offload the the cement, which was so done. In so far as the other charge is concerned, constable S. Hembram who was examined in support of the said charge had stated that at around 14.30 hours on 24/3/99, he stopped a truck loaded with cement from going out of the camp. At that point of time, according to this witness, the delinquent/writ petitioner stated that the necessary challans for 25 bags of cement was received and entry has been made in the register to the above effect. In good faith he allowed the vehicle to go out.

On 28/3/99, on an enquiry, he was asked whether on the relevant date i.e. 24/3/99, he had allowed a truck carrying cement to go out of the camp which question was answered by him in the affirmative. He further said that he had so allowed the truck loaded with cement to go out of the camp as he was told by the writ petitioner that the necessary challan for the same had been issued. However, outgoing to this witness, when he inspected the outgoing register, he did not find any entry for the 25 bags of cement.

8. The evidence of constable UC Das and Constable S Hembram, noticed above, amply demonstrate certain overt conduct and action on the part of the delinquent/writ petitioner which are not consistent with the conduct of an innocent man, who is in no way involved with the illegal removal of cement from the camp. The evidence of the two witness make it clear that on both occasions the writ petitioner had tried to facilitate the removal of cement from the camp which subsequently turned out to be unauthorized. If the writ petitioner was not involved with the commission of the alleged acts and had no role to play in illegal removal of cement, surely, he would not have asked the two constables to allow the cement to go out from the camp in the circumstances noticed. Therefore, on consideration of the evidence brought on record it cannot be said that there is no material whatsoever connect the writ petitioner with the charges levelled against him. The standard of proof that would be required in a departmental proceeding would certainly not be proof beyond reasonable doubt. A much lower or lesser degree of proof would be adequate to sustain a conclusion that the charges enquired into in the departmental proceeding have been proved.

9. For the aforesaid reasons, this Court is inclined to hold that the conclusions of the enquiry Officer as well as the disciplinary authority and the order imposition of punishment of "removal from service" dated 30/9/99 would not call for any interference of this Court; The petitioner being a member of a disciplined force entrusted with the duty of guarding public property being guilty of commission of acts facilitating the illegal removal of such public property, deserves no leniency. I am therefore, of the considered view that punishment of removal from service is justified in the facts and circumstance of the present case. For all the aforesaid reasons this writ petition has to fail. It is accordingly dismissed but there shall be no order as to cost.