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**(2011) 12 AHC CK 0364**  
**In the Allahabad High Court**  
**Case No : Writ A No. 3350 of 2009**

Hareshwar Dube

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision :** 13-12-2011

**Acts Referred:**

Uttar Pradesh Police Officers of Subordinate Rank (Discipline and Appeal) Rules, 1999  
— Rule 4

**Citation :** (2011) 12 AHC CK 0364

**Hon'ble Judges :** V.K. Shukla, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

Hon"ble V.K. Shukla, J.—Petitioner has rushed to this Court questioning the validity of order dated 15.06.2008 passed by Senior Superintendent of Police, Varanasi, reverting the petitioner, the order dated 30.08.2008 passed by Deputy Inspector general of Police, Varanasi Range, Varanasi and the order dated 29.11.2008 passed by Inspector General of Police, Varanasi Zone, Varanasi, affirming the order of punishment in appeal and revision respectively.

2. The petitioner had been recruited as constable in civil police on 01.10.1985, and since then he had been in continuous service and remained posted in various districts. While he was posted at Police Station Rohania, District Varanasi, the petitioner was attached to discharge duties at Vishwanath Temple from 27.04.2004 to 04.10.2004. With regard to allegation that the petitioner was absent from duty on 25.09.2004, a report was submitted by Sri Rama Shankar Dwivedi, Dy. Superintendent of Police, Gyanvapi Security to the Additional Superintendent of Police, Gyanvapi Security, Varanasi. Said report was forwarded to Senior Superintendent of Police, Varanasi vide letter dated 25.09.2004, and therein preliminary inquiry was directed to be conducted by Sri Lal Bharat Kumar, Dy. Superintendent of Police, Gyanvapi Security, who submitted report on 10.11.2004, recommending departmental proceedings against the petitioner.

Based on the said preliminary enquiry report, charge sheet was issued to the petitioner on 13.06.2005. Petitioner submitted his reply on 02.07.2005 specifically denying the allegations. Thereafter Circle Officer, Cantoment, Varanasi was appointed Inquiry Officer. During the course of enquiry he recorded statements of Ram Lalit Yadav, Arun Kumar Srivastava, Chhote Lal Gupta, Pratap chan Singh, Rama Shankar Updhyaya, Jai Prakash Yadav, Suresh Singh, Ravi Kumar Sharma, Bal Govind Krishna Tripathi, Basudev Yadav, Bharat Kumar Pal and Rama Shankar Dwivedi as prosecution witnesses against the petitioner. On 31.03.2008 the Inquiry Officer submitted 2 his report indicting the petitioner, and copy of the said report was supplied to the petitioner along with a show cause notice to show case as to why the petitioner be not reverted to the minimum of his pay scale for a period of three years under Rule 4 of the U.P. Police Officers of Subordinate Rank (Discipline and Appeal) Rules, 1999. The aforesaid show cause notice was objected to by the petitioner by filing reply on 03.06.2008. Thereafter, the Senior Superintendent of Police proceeded to inflict the penalty of reversion to the minimum of his pay scale for a period of three years. Aggrieved, petitioner filed appeal, which was dismissed vide order dated 30.08.2008. Revision filed by the petitioner against the said appellate order has also been dismissed vide order dated 29.11.2008. At this juncture, petitioner has approached this Court.

3. Pleadings inter se parties have been exchanged, and thereafter present writ petition has been taken up for final hearing and disposal with the consent of the parties.

4. Learned counsel for the petitioner contended with vehemence that in the present case while taking disciplinary proceedings, principle of natural justice has been flouted with impunity, as recording of the statements of two witnesses, has been done behind his back with no right to cross examine and further the Inquiry Officer has also taken into account the past conduct of the petitioner, without providing any opportunity, and the punishment which has been so awarded, is not at all commensurate to the charges so levelled against the petitioner, as such writ petition deserves to be allowed.

5. Countering the said submissions, learned standing counsel, on the other hand has contended that full opportunity had been provided to the petitioner to cross examine the witnesses. The witnesses have disclosed misconduct on the part of the petitioner, and once misconduct is established and substantiated, as such no interference should be made with the order impugned.

6. After respective arguments have been advanced, the first issue raised by the petitioner, as to whether enquiry is vitiated, is being adverted to. Report of the Inquiry Officer is on record. Said report clearly reflects that to the chargesheet, petitioner submitted his reply and thereafter, it is further reflected that two witnesses Ram Lalit Yadav and Arun Kumar Srivastava had been examined. These witnesses could not be cross examined on account of the fact that the petitioner was not present. Thereafter, statement of Chhote Lal 3 Gupta was recorded and he was cross examined by the petitioner. He made specific

statement of the fact in the enquiry proceedings so undertaken that unparliamentary language was used by the petitioner and thereafter, the statement of Pratap Chand Singh has been recorded and he has also been cross examined. Statement of Rama Shankar Upadhyaya has also been recorded. He has clearly stated that the petitioner had entered into altercation with the Circle Officer, on account of proceedings undertaken by Chhote Lal Gupta. Jai Prakash Yadav had also been got examined, and he has also substantiated the factum of altercation while talking with the Circle Officer in temperate manner. Statements of Suresh Singh, Associate of C.O. was also recorded. Statements of Ravi Kumar Sharma, Basudev Yadav, Bal Govind Krishna Tripathi, Bharat Kumar Pal were also recorded. All these witnesses were cross examined by the petitioner, and thereafter the Inquiry Officer on the basis of statements of the witnesses, especially the statement of Chhote Lal Gupta and Rama Shankar Dwivedi, who were victim of the misconduct committed by the petitioner, and who have substantiated the factum of misconduct, has submitted report. The Inquiry Officer, in the present case has considered the statement of Chhote Lal Gupta and Rama Shankar Dwivedi, and has found that the misconduct has been substantiated, and then has proceeded to forward the report. Once such is the factual situation that full opportunity had been afforded to the petitioner to have his say before the Inquiry Officer, and the Inquiry Officer has found the misconduct committed by the petitioner substantiated based on statement of victim of misconduct, then to say that inquiry is vitiated on any count cannot be accepted. Statement of Ram Lalit Yadav and Arun Kumar Srivastava has been recorded in the absence of petitioner. Petitioner has not at all stated that he was unaware of the date fixed in the inquiry. Petitioner thereafter participated in the inquiry and never requested for giving reasons for his non-appearance on the date fixed, and for cross examining them. In view of this to suggest that enquiry is vitiated, cannot be accepted, and the petitioner has to blame himself. Moreover, in the present case, their statement is not of much significance, as misconduct has been substantiated by the victim of misconduct, namely, Chhote Lal Gupta and Rama Shankar Dwivedi, who have been cross examined, but their testimony has not been impeached. The inquiry is free and fair; and the Inquiry Officer has given reasons for coming to the conclusion that 4 the petitioner is guilty. The Disciplinary Authority, Appellate Authority as well as Revising Authority have committed no error in endorsing the view taken by the Inquiry Officer that the misconduct committed by the petitioner was clearly substantiated by evidence on record in the shape of statements of Chhote Lal Gupta and Rama Shankar Dwivedi.

7. Petitioner has contended that in the present case Inquiry Officer has taken into account the past conduct of the petitioner and without providing opportunity of hearing on the said score. Petitioner has placed reliance on a judgment of the Apex Court in the case of Indu Bhushan Dwivedi Vs. State of Jharkhand and Another, . Said judgment will not come to rescue of the petitioner, for the simple reason that in the present case, it is reflected from the report of the Inquiry

Officer that the past conduct of the petitioner has been taken note of, but as far as final conclusion drawn by Disciplinary Authority is concerned, the past conduct of the petitioner has not been made foundation and basis, and to the contrary based on the misconduct committed by the petitioner, which has been substantiated in the inquiry, show cause notice had been issued to the petitioner and thereafter based on the same action has been taken. The Disciplinary Authority has not taken into account any material, which was not subject matter of enquiry, as such the case law relied upon by the petitioner will not help him.

8. At last, it has been contended from the side of the petitioner that the punishment awarded to him is excessive and not commensurate to the charges of his misconduct qua his senior officers. Once said charge has been brought home, and petitioner is member of disciplined force, then it cannot be said that the same has shocked the conscious of the Court on any count, as such this Court in exercise of its authority of judicial review cannot sit as appellate forum and review the punishment so awarded, in view of the judgment of Apex Court in the cases of B.C. Chaturvedi Vs. Union of India and others, , Union of India and another Vs. G. Ganayutham (Dead) by LRs., and V. Ramana Vs. A.P.S.R.T.C. and Others, .

9. Consequently, writ petition is dismissed.