
(2012) 01 DEL CK 0114
In the Delhi High Court
Case No : WP (C) No. 11925 of 2009

Kishan Pal Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 30-01-2012

Acts Referred:

Citation : (2012) 01 DEL CK 0114

Hon'ble Judges : J.R. Midha, J;Anil Kumar, J

Bench : Division Bench

Advocate : Ashwani Bhardwaj and Mr. Jintender Choudhary, for the Appellant;
Kapil Wadhwa, Central Govt. Pleader for Mr. Sachin Datta, Central Govt. Standing
Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner has sought the quashing of charge sheet dated 11th March, 2006, the inquiry report dated 9th September, 2006, the order dated 6/7th December, 2006 and the orders dated 29th May, 2007 and 5th November, 2007 passed by the respondents removing the petitioner from the service and has also sought directions to the respondents to reinstate the petitioner back in service with all the consequential benefits of pay, arrears of pay-salary and seniority etc. and to treat the suspension period as well as the period from 9th September, 2006 when the petitioner was removed from service till the date of reinstatement as period spent on duty for all intents and purposes.

2. The relevant facts to comprehend the controversies are that the petitioner had joined as Constable in the Central Industrial Security Force (CISF) on 27th August, 2001. A charge sheet dated 11th March, 2006 was issued against the petitioner imputing that while he was deployed at the CISF Unit, CSI Airport, Mumbai for "Stamping Duty" at the X-ray Baggage Inspection System (X-BIS) No. 1 in the Security Hold Area (SHA) 16-19 of Terminal -2C, during the course of night shift duty from 2000 hours on 23rd February, 2006 to 0800 hours on 24th February, 2006 he concealed one mobile phone (make Nokia) belonging to

a lady passenger namely, Mrs. Dela Court bound to fly by Flight No. AF-135 at about 0115 hours on 24th February, 2006 while conducting pre-embarkation security check of her hand bag through the X-BIS No. 1. The act of the petitioner was said to have amounted to gross misconduct, doubtful integrity and dereliction of duty.

3. The statement of the imputation stipulated that the petitioner admitted that he had lifted the mobile phone in question and concealed it in the "rest room" with a request to pardon him for the said mistake. The statement of imputation of misconduct or misbehaviour in support of the article of charge framed against the petitioner is as under:-

"That No.013610533 Constable Kishan Pal Singh of International Sector of CISF Unit, Airport, Mumbai, was deployed for "Stamping Duty" at the X-ray Baggage Inspection System (X-BIS) No.01 in the Security Hold Area (SHA) 16-19 of Terminal -2C on night shift duty from 2000 hours on 23rd February, 2006 to 0800 hours on 24th February, 2006, one foreign lady passenger, namely, Mrs.Dela Court, who was bound to fly by Air France Flight No.AF-135, approached Inspector/Exe T.G. Chandrasenan, SHA In charge, and reported that she lost her mobile phone from her hand bag, after screening the bag through X-BIS (pointing out X-BIS No.1). The lady passenger kept on emphasizing that the mobile phone was in her hand bag, when put for screening in the X-BIS. Subsequently, all efforts were made by the Inspector to locate the mobile phone by searching the SHA and adjoining areas, and also the route followed by her from the Check-in Counter to the SHA. Matter was also enquired from the Airport Manager's officer. However, the entire efforts to locate the mobile phone went in vain Inspector/Exe T.G. Chandrasenan, then called Constable Kishan Pal Singh, who was on stamping duty at X-BIS No.1, when the bag of the passenger was screened, and asked him as to whether he had got the mobile phone or not. Constable Kishan Pal Singh replied negative. In the mean time, Inspector/Exe R.S. Molfa, Coy. Commander, "B" Group, Terminal-2C, who was also available in the SHA, noticed that Constable Kishan Pal Singh was absent from his duty point at X-BIS No.1 for a while, and afterwards, also found him coming out of the Rest Room situated adjacent to the SHA. This was also witnessed by SI/Exe Nagendra Singh, SI/Exe M. Gopinathan and Constable Mohd.Ilyas. The activities of Constable Kishan Pal Singh induced reasonable suspicion in the mind of Inspector/Exe R.S. Molfa and hence, he along with SI/Exe M. Gopinathan conducted a thorough checking in the Rest Room. During the course of checking, the mobile phone in question (Make Nokia) was found placed under a suitcase, in dismantled condition. They took it, reassembled and produced before the passenger, who positively identified the same. The Mobile No.(0033621663503) also tallied. Hence, the mobile phone was handed over to Mrs.Dela Court on proper receipt in the "passenger appraisal register". Subsequently, when Constable Kishan Pal Singh was called and asked by Inspector/Exe T.G. Chandrasenan in presence of Inspector/Exe R.S. Molfa, he admitted that he had lifted the mobile phone in question and concealed it in the "Rest Room" with a

request to pardon him for the said mistake. Thereafter, when Constable Kishan Pal Singh was called by Shri D.S. Shukla, Asstt. Commandant, in presence of Inspector/Exe T.G. Chandrasenan, he again admitted his mistake and begged pardon. This act on the part of No. 013610533 Constable Kishan Pal Singh amounts to an act of gross misconduct, doubtful integrity and dereliction of duty, he being a member of an Armed Force of the Union." Hence, the charge."

4. The petitioner acknowledged the memorandum on 15th March, 2006 and submitted his written representation in defense on 22nd March, 2006 and 31st March, 2006 and pleaded that he was not guilty of charge. Consequently, a departmental inquiry as contemplated under the provisions of Rule 36 of CISF Rules, 2001 read with Clause 2(12) of the CISF (Amendment) Rules, 2003 was conducted and Sh.Sharad Kumar, Dy.Commandant was appointed as the Inquiry Officer to enquire into the charge leveled against the petitioner while Sh. J.P. Goswami, Inspector/Exe. was appointed as the Presenting Officer.

5. The Inquiry Officer after conducting the inquiry submitted his report with the findings on 23rd August, 2006 holding that the article of charge framed against the petitioner was proved. During the inquiry, an Assistant Commandant, Sh. D.S. Shukla as PW1, Inspector/Exe. R.S. Molfa as PW-2, Inspector/Exe. Sh. T.G. Chandrasenan as PW-3, SI/Exe M. Gopinathan as PW-4, SI/Exe. Nagender Singh as PW-5 and Constable Md.Ilyas as PW-6. SI/Exe. Sanjay Kumar as CW1 and SI/Exe. Shivender Kumar as CW2 were examined as Court witnesses. All the witnesses who appeared before the Inquiry Officer were cross-examined on behalf of the petitioner. The documents pertaining to the copy of the X-BIS rotation register for "B" Coy Terminal 2C for the night shift dated 23rd February, 2006, the extract of G.D. No. 487 dated 24th February, 2006 made at 0220 hours at Terminal 2C by Inspector/Exe T.G. Chandrasenan and the Xerox copy of passenger appraisal register (Visitor book) dated 24th February, 2006 reflecting that Mrs.Dela Court had received her mobile phone were proved during the inquiry.

6. A copy of the inquiry report along with the English translation was served on the petitioner on 23rd August, 2006 and he was given an opportunity to file a reply against the same. The petitioner submitted his representation on 1st September, 2006.

7. The Disciplinary Authority after considering the inquiry report, the evidence on record and the representation dated 1st September, 2006 of the petitioner agreed with the findings of the Inquiry Officer and held that the petitioner was guilty of the charge made against him and awarded him the penalty of "removal from service which shall not be a disqualification for future employment under the Government" by order dated 9th September, 2006.

8. The petitioner filed an appeal to the Appellate Authority, DIG/West Airport Headquarters, Mumbai on 1st October, 2006. The Appellate Authority by order dated 6/7th December, 2006 held that the punishment awarded to the petitioner

commensurate with the nature of offence committed by him, however, considering his young age and the facts and circumstances of the case, he took a lenient view and decided to give the appellant a chance to improve his performance by modifying the punishment of removal from service to that of reduction of pay by three stages for a period of two years with further direction that during the period of reduction he will not earn increments of pay and that on expiry of this period the reduction will have the effect of postponing his future increments of pay. The Appellate Authority had also directed the petitioner to report to ASG Ahmedabad and the petitioner consequently, reported at CISF Unit, ASG Ahmedabad on 20th December, 2006 on reinstatement in service.

9. A suo moto show cause notice was issued, thereafter, by the IG/APS, CISF Headquarters, New Delhi proposing the enhancement of penalty given by the Appellate Authority, (DIG/West Airport headquarters, Mumbai) to that of removal from service in the larger interest of justice, fair play and discipline of the force by letter dated 6th March, 2007. The petitioner filed a reply which was considered by the Revisional Authority. The Revisional Authority, however, considering the magnitude of the misconduct held that the misconduct on the part of the petitioner could not be treated lightly in the uniform force and further held that the penalty imposed by the Appellate Authority did not commensurate with the proven misconduct of the petitioner. Therefore, the Revisional Authority enhanced the penalty of reduction of pay by three stages for a period of two years to that of removal from service by order dated 29th May, 2007. Aggrieved by the enhancement of the penalty to that of removal from service, the petitioner filed an appeal to the Director General/CISF Headquarter, New Delhi on 20th August, 2007. The Director General held that the departmental inquiry was conducted as per the procedure laid down and that the petitioner had been afforded all the reasonable opportunity due to him. The Director General held that by his misconduct, the petitioner had rendered himself unworthy of retention in the disciplined force and that he found no good and sufficient reason to interfere with the order passed by the Revisional Authority enhancing the punishment to that of removal from service and dismissing the appeal of the petitioner by order dated 5th November, 2011.

10. Aggrieved by the order dated 29th May, 2007 passed by the respondent no. 3, removing the petitioner from the service, the petitioner has filed the above noted writ petition contending inter-alia that the case of the respondents is entirely based on the alleged confession/admission of the petitioner that he had lifted the mobile phone in question and concealed the same in the rest room though the petitioner had never made any confession/admission as imputed by the respondents, as he had never committed the alleged offence and that he had been framed by some of the superior officers including Inspector T.G. Chandrasenan. Thus, according to the petitioner he was a victim of the abuse of the official powers by the superior officers. The petitioner emphasized that there had been no punishment or any other imputation against him in his four years of service and that for the alleged misconduct there was no evidence at all to

inculcate the petitioner. According to the petitioner, he has been punished on the basis of the surmises and conjectures and there is no evidence that he had lifted the mobile from the X-BIS and had hidden it in the rest room, as has been alleged by the respondents.

11. In the writ petition, the petitioner also detailed the contradictions in the statement of the department witnesses regarding theft/loss of the mobile phone, regarding time of report of the theft, regarding search of rest room to contend that on the basis of the evidence produced before the Inquiry Officer, the misconduct against the petitioner had not been made out. To emphasize his innocence, he contended that Constable Md.Ilyas was sent to search the mobile phone in the rest room and that he had spent 10 minutes in searching the mobile phone but he could not find the same and thereafter, Inspector R.S. Molfa (PW2) went to the rest room along with SI Gopi Nath and within less than 5 minutes, they came out from the rest room along with the mobile phone, as they were aware about the place where the mobile was kept which reflects unequivocally that he has been implicated in the present matter. The petitioner also relied on the fact that there was no complaint made by name against him, nor was recovery effected from him.

12. Regarding the motive to falsely implicate him, the petitioner asserted that the Inquiry Officer failed to appreciate the statement of Sh. Shivender Kumar (CW2) who had admitted in the cross-examination that the petitioner had made a request to the Inspector R.S. Molfa to relieve him from duty, but he was not relieved and that it is because of this that the said Inspector and the other officers got annoyed with the petitioner. According to the petitioner, this plea that the officers got annoyed with him because he had sought to be relieved and the fact that he has been falsely implicated had not been considered by the Inquiry officer which shows that the inquiry report is based on mere assumptions and presumptions.

13. The petitioner contended that the Inquiry Officer did not analyze the statement of all the witnesses and also ignored the relevant statement of Constable Md.Ilyas, PW-6. The petitioner emphasized on a number of contradictions in respect of time of incident stated by the witnesses. The petitioner has also challenged his removal on the ground that the case of the petitioner is not such where suo moto power of review under Rule 54 of CISF Rules, 2001 could have been invoked by the Reviewing Authority. According to him, Rule 54 of the CISF Rules, 2001 is meant to be invoked in serious offences and not in offences of trivial nature as in the case of the petitioner. The petitioner, in the circumstances, has contended that it is a case of no evidence as there are no eye witnesses and no recovery was made from him. It is further urged that the punishment of removal from the service is also disproportionate to the misconduct imputed against him and that it is only on account of the bias and mala fides on the part of the superior officers, who got annoyed with him, as he had protested against the duty hours.

14. The learned counsel for the petitioner has relied on Dhujender Pal Singh Vs. Govt. of NCT of Delhi and Others, to contend that the misconduct on the part of the petitioner was not proved and therefore, the respondents were not correct in finding that the charge of corruption was proved only because there had been recovery. Reliance has also been placed on Civil Appeal No. 4213/2011, Commissioner of Police, Delhi & Others v. Jai Bhagwan, decided on 10th May, 2011.

15. The writ petition is contested by the respondents contending, inter-alia that the charge was framed against the petitioner as per the laid down procedure of the CISF. A departmental inquiry was also conducted under the given guidelines and reasonable opportunity was given to the petitioner to defend himself by the Inquiry Officer. Therefore, it is contended that the principles of natural justice were complied with. According to the respondents, the petitioner was initially deployed at Entry Gate No. 16-19 for boarding pass checking and that all the personnel including the sub officers deployed at pre-embarkation checking duties are rotated to minimize stress and maximize output. The petitioner was not deployed at a single post during his entire shift duty. Relying on the duty rotation register dated 23rd February, 2006, it was contended that the petitioner was detailed for stamping and feeding duty at X-BIS and that he also performed entry gate duty at Gate No. 16-19 as well as stamping and feeding duty as per rotation. The petitioner was on Arms duty from 0200 hours till the completion of his shift duty. The allegation that the petitioner was forced to perform duty beyond 2000 hours was not admitted and the allegation that his request to relieve him from duty had annoyed the Inspector/Exe T.G. Chandrasenan was not admitted and it was contended that the allegation is just an after-thought. It is submitted that no such matter was ever brought out during the course of the inquiry.

16. Regarding the allegation that the petitioner had not made any confession regarding stealing the concerned mobile phone, the respondents have contended that the lady passenger complained to the Inspector/Exe T.G. Chandrasenan, SHA In-charge that she had lost her mobile phone from her hand bag, after screening the bag through the X-BIS No. 1 at about 0100 hours. The lady passenger had emphasized that the mobile phone was in her hand bag when her bag was put for screening in the X-BIS. Subsequently efforts were made by Inspector/Exe T.G. Chandrasenan to locate the mobile phone by searching the SHA and adjoining areas and also the route followed by the lady passenger and checking counter to the SHA. Inspector/Exe had also specially asked the petitioner who was on stamping duty as to whether he had got the mobile phone or not. The petitioner had replied in the negative. Inspector/Exe. R.S. Molfa, Coy.Commander, B Group, Terminal 2 "C" who was also available in the SHA at the time. But he had noticed that the petitioner was absent from his duty point at X-BIS No. 1 for a while and that afterwards he was seen coming out of the rest room situated adjacent to the SHA. This was also witnessed by SI/Exe Nagendra Singh, SI/Exe. M. Gopinathan and Constable Md.Ilyas. This had raised

reasonable suspicion leading to the checking of the rest room and consequently the phone was found under a suit case in the rest room in a dismantled condition. The mobile phone was re-assembled and produced before the lady passenger who identified the same as the mobile phone belonging to her. The mobile No.0033621663503 also tallied and therefore phone was handed over to the lady passenger on proper receipt.

17. The respondents contended that later on when the petitioner was called and was inquired by the Inspector/Exe T.G. Chandrasenan in the presence of Inspector/Exe R.S. Molfa, he had admitted that he had lifted the mobile phone in question and had concealed it in the "rest room" and also sought that he be pardoned for the said mistake. The respondents also disclosed that the reply of the petitioner dated 10th August, 2006 is the reply to the brief note of the presenting officer and not the reply to the memorandum of charge. 18. The respondents have contended that the petitioner was involved in a serious misconduct and that his misconduct is an act of indiscipline of such magnitude which could not be treated lightly in the disciplined forces. Showing leniency to undisciplined personnel in Para Military Forces like the CISF would set a bad example for others to follow, and therefore, the decision to remove the petitioner from the service had been taken, so that it be a deterrent to the other.

19. The respondents also disclosed that during the course of the departmental inquiry the statement of all the prosecution witnesses and the Court witnesses with regard to the articles of charge were recorded separately in the presence of the petitioner and that the petitioner had also availed the opportunity to cross-examine the witnesses. The petitioner however did not produce any defence witness during the course of the departmental inquiry. In the circumstances, there was no "procedural impropriety", nor denial of natural justice to the petitioner at any stage of the inquiry proceedings. The respondents stated that it was not necessary to further prove the misconduct of the petitioner which was well substantiated by his admission, the testimony of the eye witnesses and also the fact that the mobile phone in question had been recovered during his presence and that the same had gone missing during his absence at the relevant time. There is, therefore, sufficient circumstantial evidence available on record to prove the misconduct of the petitioner. Regarding the CCTV proceedings, it was contended that it was neither a part of the prosecution documents, nor was it required to substantiate the misconduct against the petitioner. It was also urged that the statements of the Inspector/Exe. R.S. Molfa and SI/Exe. Nagendra Singh unequivocally established that the petitioner was absent from his duty point during the relevant time the mobile phone went missing. As regards the contention of the petitioner that no FIR had been lodged, it is contended that there was no need to lodge an FIR in each and every case where the departmental action is being taken against a personnel.

20. Learned counsel for the respondents had also contended that the findings of the Inquiry Officer are based on the principle of preponderance of probability on

considering the entire evidence led before the Inquiry Officer and the documents produced and proved on record. It is contended that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India would not sit in appeal and assume the role of the Appellate Authority. Learned counsel has further contended that there is no perversity i.e. the findings have not been arrived at without any evidence nor are findings such that no person acting reasonably or with objectivity would arrive at such a finding, nor has there been any non application of mind.

21. This Court has heard the learned counsel for the parties in detail and has also perused the statement of the witnesses, D.S. Shukla PW1; R.S. Molfa PW2; T.G. Chandrasenan PW3; M. Gopinathan PW4; SI/Exe Nagender Singh PW5; Constable Md.Ilyas PW6 and SI/Exe Sanjay Kumar CW1 & Shivender Kumar CW2 as well as the statement of the petitioner. For the Judicial Review of the order of removal, what is to be seen is whether there is any "illegality"; "Irrationality" and "procedural impropriety". The evidence led before the inquiry officer is not to be re-appreciated as an appellate authority. The learned counsel for the petitioner, however, contended that in order to ascertain whether there is no evidence against the petitioner, the evidence be perused. Therefore, the evidence has been perused in order to ascertain whether or not there has been any evidence against the petitioner or not.

22. Perusal of the statements reveals that there is ample evidence regarding the petitioner going out for some time and coming out from the rest room situated adjacent to the X-BIS machine. In fact Sh. D.S. Shukla, PW-1 categorically stated that when the petitioner was asked separately, he had confessed his guilt before Inspector R.S. Molfa PW-2 and T.G. Chandrasenan PW-3. No allegations of mala fides or bias have been made out against Sh. D.S. Shukla PW-1. During the cross-examination when the said witness was asked as to what did he do when the petitioner was produced before him, the witness was categorical in stating that the petitioner had admitted his mistake and begged for pardon, however, when he was asked to admit his mistake in writing in presence of Inspector T.G. Chandrasenan, he did not give the same. No suggestion was given to the said witness D.S. Shukla PW-1 in the cross-examination that the petitioner had not admitted his mistake. Perusal of the statement of R.S. Molfa PW-2 and T.G. Chandrasenan PW-3 also reveals that the plea of the petitioner's counsel that there is no evidence against the petitioner is not correct. Insufficiency of evidence cannot be equated with absence of any evidence.

23. The learned counsel for the petitioner also referred to various inconsistencies in the statements of various witnesses and asserted that the inconsistencies are contradiction and on account of these contradictions, the testimonies cannot be relied on and thus there is no evidence against the petitioner. In Dhujender Pal Singh (supra), relied on by the petitioner, the allegation against the charged officer was that while discharging his duties as a Constable, he had demanded illegal gratification from the complainant. A raid was conducted in the instant

case and the amount of Rs. 500/- was recovered from the said Constable. However, during the departmental proceedings the allegation of demand could not be established. In these circumstances, it was held that mere recovery was not sufficient to prove the misconduct against the charged officer. Consequently, it was held that the charge of corruption was not established and therefore the punishment awarded to such a charged officer was set aside. In *Jay Bhagwan (supra)*, the allegation against the delinquent was that he extorted Rs. 100/- as illegal gratification during the course of the security check of a passenger. It was also alleged that the complainant had identified the charged officer who had later on returned the sum of Rs. 100/- to the complainant in the presence of another Inspector. In these circumstances, on account of the non examination of the complainant himself, the statement of the other the witnesses about the alleged demand made by the delinquent officer, was not relied on against the charged officer and ultimately the fact that one of the witness had deposed that Rs. 100/- note was returned in his presence was not accepted. In the facts and circumstances of the instant case, it was also held that it was quite impracticable to assume that in the presence of so many passengers the charged officer would have extorted money, and therefore, it was held to be a case of no evidence and the charged officer was absolved of the charge against him. Apparently, the cases relied on by the petitioner are distinguishable and on the basis of the ratio of the above noted case, it cannot be held that in the case of the petitioner there isn't sufficient evidence to inculcate him. While appreciating a precedent, it must be remembered that the ratio of any decision must be understood in the background of the facts of that case. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. It must be remembered that a decision is only an authority for what it actually decides. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. The ratio of one case cannot be mechanically applied to another case without having regard to the fact situation and circumstances in two cases. The Supreme Court in *Bharat Petroleum Corporation Ltd and Anr. v. N.R. Vairamani and Anr.*, AIR 2004 SC 778 had held that a decision cannot be relied on without considering the factual situation. In the said judgment the Supreme Court had observed as under:-

Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

24. Various discrepancies in the statement of the various witnesses referred to and relied on by the petitioner are minor in nature and are trivial and do not affect the case of the respondents. It will not be inferable in the facts and circumstances that the findings of the Inquiry Officer are perverse or that the evidence in its entirety has to be rejected. In *State of Rajasthan Vs. Om Prakash*, ; *State of U.P. Vs. M.K. Anthony*, ; *Oswal Woolen Mills Ltd. Vs. Punjab State Electricity Board and Another*, ; *Sohrab and Another Vs. The State of Madhya Pradesh*, and *State of U.P. Vs. Santosh Kumar*, , it was held by the Apex Court that minor discrepancies on trivial matter do not affect the case of the prosecution and that it may not be proper for the court to reject the evidence in its entirety.

25. The Court also has no jurisdiction to go into the correctness of the truth of the charges. It cannot take over the functions of the disciplinary authority. It cannot sit in appeal on the findings of the disciplinary authority and assume the role of the appellate authority. It cannot interfere with the findings of the fact arrived at in the disciplinary proceedings except in the case of mala-fides or perversity i.e where there is no evidence to support a finding or where the finding is such that no one acting reasonably or with objectivity could have arrived at or where a reasonable opportunity has not been given to the delinquent to defend himself or it is a case where there has been non application of mind on the part of the inquiry authority or if the charges are vague or if the punishment imposed is shocking to the conscience of the Court. Reliance for this can be placed on *State of U.P. and Others Vs. Raj Kishore Yadav and Another*, ; *V. Ramana Vs. A.P.S.R.T.C. and Others*, ; *R.S. Saini Vs. State of Punjab and Others*, ; *Kuldeep Singh v. The Commissioner of Police*, JT 1998 (8) SC 603 ; *B.C. Chaturvedi Vs. Union of India and others*, ; *Transport Commissioner, Madras-5 Vs. A. Radha Krishna Moorthy*, ; *Government of Tamil Nadu and another Vs. A. Rajapandian*, ; *Union of India (UOI) and Others Vs. Upendra Singh*, and *State of Orissa & Anr. v. Murlidhar Jena*, AIR 1963 SC 404.

26. It also cannot be disputed that the grounds on which administrative action is subject to judicial review are, "illegality"; "irrationality" and "procedural impropriety". The Court will not interfere in such matters unless the decision is tainted by any vulnerability like illegality, irrationality and procedural impropriety. Whether action falls within any of the categories is to be established and mere assertion in that regard may not be sufficient. To be "irrational" it has to be held that on material, it is a decision "so outrageous" as to be in total defiance of logic or moral standards. If the power is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power shall be vitiated. Exercise of power will be set aside if there is manifest error in the exercise of such power or the exercise of power is manifestly arbitrary. To arrive at a decision on "reasonableness" the court has to find out if the respondents have left out a relevant factor or taken into account irrelevant factors. It was held in *M.V. Bijlani Vs. Union of India (UOI) and Others*, , that the Judicial review is of decision making process and not with re-appreciation of evidence. The Supreme

Court in para 25 at page 96 had held as under:

25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analyzing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.

Similarly in B.C. Chaturvedi Vs. Union of India and others, , Supreme Court at page 759 has held as under:-

12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappraise the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

27. In the circumstances, learned counsel for the petitioner has not made out any grounds to demonstrate that the inferences of the Inquiry Officer are so outrageous so as to be in total defiance of logic or reasoning. The inferences of

the Inquiry Officer are also not patently erroneous, nor do they suffer from any manifest error and in any case this Court is not to sit in appeal over and re-appreciate the evidence, already considered by the Inquiry Officer. Consequently, the plea of the learned counsel for the petitioner that there is no evidence against the petitioner is to be repelled. The petitioner has also failed to make out any mala fides or bias against the Inquiry officer. To none of the witnesses examined before the Inquiry Officer, it was suggested that the petitioner had been falsely implicated in the present matter because he had protested against the change in his duty or on account of continuing him in duty. In the circumstances, the contentions of the respondents that the said plea of the petitioner is an after thought on the part of the petitioner, has to be accepted and the plea that the disciplinary action against the petitioner is on account of mala fides and bias is not established.

28. The power of the respondents to act under Rule 54 cannot be challenged and denied. The respondents have categorically contended that the misconduct of the petitioner of removing the mobile phone of a lady passenger cannot be treated lightly in a disciplined force. The plea that showing leniency in respect of such indiscipline in the Para Military Forces like the CISF would set a bad example for others to follow has also to be accepted. Therefore, the decision that for such an act of indiscipline, the act of the petitioner's has to be dealt with severely so that it acts as a deterrent to the others, cannot be faulted. Even the Appellate Authority while modifying the punishment of removal from service awarded by the Disciplinary Authority had held that the punishment awarded to the petitioner did commensurate with the nature of the offence committed by him, however, he had modified the punishment to reduction of pay by three stages only on account of considering the young age of the petitioner. In the circumstances, the enhancement of the punishment by the Revisional authority by exercising the power of enhancement which vests with him, he has not committed any such illegality or irregularity which is to be interfered with by this Court. In the circumstances, it cannot be held that the punishment awarded to the petitioner is disproportionate to the misconduct proved against him.

29. For the foregoing reasons, and in the facts and circumstances, there are no grounds to interfere with the orders of the respondents, nor is the petitioner entitled for any of the reliefs claimed by him. The writ petition is without any merit, and therefore, it is dismissed. The parties are however, left to bear their own costs.