

**(2012) 06 AHC CK 0019**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 68784 of 2006

Radhey Shyam Saxena

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

**Date of Decision :** 01-06-2012

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

Motor Vehicles Act, 1988 — Section 117

Penal Code, 1860 (IPC) — Section 304A, 337

**Citation :** (2012) 7 ADJ 18

**Hon'ble Judges :** S.P. Mehrotra, J; Pankaj Mithal, J

**Bench :** Division Bench

**Advocate :** V.D. Shukla and Ashok Khare, for the Appellant;

**Final Decision :** Dismissed

## Judgement

1. By the Court.-Rejoinder-affidavit has been filed today on behalf of the petitioner. The pleadings are, thus, complete in the present Writ Petition. With the consent of the Learned Counsel for the parties, the Writ Petition is being disposed of at this stage. 2. The present Writ Petition has been filed by the petitioner under Article 226 of the Constitution of India making the following prayers:

(i) issue a writ, order or direction in the nature of certiorari quashing the order dated 10.10.2006 passed by the State Public Services Tribunal, Lucknow (Annexure-13 to the writ petition).

(ii) issue a writ, order or direction in the nature of certiorari quashing the order dated 17.8.1995 passed by the Superintendent of Police, Badaun; the order dated 29.4.1997 passed by the Dy. Inspector General of Police, Bareilly Range, Bareilly and order dated 25.9.1998 passed by the Inspector General of Police, Bareilly Zone, Bareilly (Annexures 6, 8 and 10 to the writ petition).

(iii) issue a writ, order or direction of a suitable nature commanding the

respondents to reinstate the petitioner in service with all consequential benefit, continuity of service, seniority, arrears of salary and promotion etc. within a period to be specified by this Hon''ble Court.

(iv) issue a writ, order or direction in the nature of which this Hon''ble Court may deem fit and proper under the circumstances of the case.

(v) award cost to the humble petitioner throughout of the present writ petition.

2. It appears that the petitioner was working on the post of Constable in Civil Police. At the relevant time, he was posted at Police Station Civil Lines, District - Badaun. A charge-sheet dated 2.5.1994 was served on the petitioner, inter alia, alleging that in the morning of 5.9.1993 while posted on the post of Constable in Police Station, Civil Lines, District-Badaun, the petitioner, in uniform, was found lying in a drain in intoxicated state near the first gate of S.K. Inter College, Badaun; and that Sub-Inspector A.L. Dohare, Constable Raj Kishore and Constable Sarvesh Singh alongwith the Driver of the Government Jeep, Jagmohan, were on duty in the area for maintenance of law and order, and they found the petitioner in his uniform lying in the drain, and they took-out the petitioner from the drain, took him to the Police Station, Civil Lines for completing formalities and then got the petitioner examined by Doctor in the District Hospital, Badaun, whereby it was confirmed that the petitioner had consumed alchohal; and that the petitioner was guilty of gross negligence, indiscipline and failure in the discharge of his duties.

3. Copy of the said charge-sheet dated 2.5.1994 has been filed as Annexure-1 to the Writ Petition.

4. The petitioner submitted his reply dated 11.5.1994, copy whereof has been filed as Annexure-2 to the Writ Petition.

5. Thereafter, enquiry was conducted against the petitioner, and the Inquiry Officer (Circle Officer, Sahaswan, Badaun) submitted his Enquiry Report dated 22.3.1995, copy whereof has been filed as Annexure-3 to the Writ Petition.

6. The Inquiry Officer found that the charges levelled against the petitioner were fully established. Having regard to the gravity of the charges, the Inquiry Officer recommended that the petitioner be dismissed from service.

7. After the submission of the Enquiry Report, the Superintendent of Police, Badaun issued a Show-Cause Notice dated 17.6.1995 to the petitioner, inter alia, requiring the petitioner to show-cause as to why punishment of dismissal from service be not awarded to the petitioner. Copy of the Enquiry Report was enclosed with the Show-Cause Notice. Copy of the said Show-Cause Notice dated 17.6.1995 has been filed as Annexure-4 to the Writ Petition.

8. The petitioner submitted his reply dated 26.6.1995, copy whereof has been filed as Annexure-5 to the Writ Petition.

9. After the receipt of the reply of the petitioner to the Show-Cause Notice, the

Superintendent of Police, Badaun in exercise of his power under Rule 7 of the U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 (in short "1991 Rules") passed an order dated 17.8.1995 awarding punishment of dismissal from service to the petitioner, as contemplated in sub-clause (i) of clause (a) of sub-rule (1) of Rule 4 of the 1991 Rules.

10. Copy of the said order dated 17.8.1995 has been filed as Annexure-6 to the Writ Petition.

11. The petitioner, thereupon, filed an Appeal dated 8.9.1995 before the Deputy Inspector General of Police, Bareilly Range, Bareilly. The said Appeal was evidently under Rule 20 of the 1991 Rules. Copy of the said Appeal has been filed as Annexure-7 to the Writ Petition.

12. The Deputy Inspector General of Police, Bareilly Range, Bareilly (Appellate Authority) by the order dated 29.4.1997 dismissed the said Appeal filed by the petitioner. Copy of the said order dated 29.4.1997 has been filed as Annexure-8 to the Writ Petition.

13. The petitioner thereupon filed a Revision dated 6.9.1997 before the Inspector General of Police, Bareilly Zone, Bareilly under Rule 23 of the 1991 Rules. Copy of the said Revision has been filed as Annexure-9 to the Writ Petition.

14. The Inspector General of Police, Bareilly Zone, Bareilly (Revisional Authority) by the order dated 25.9.1998 dismissed the said Revision filed by the petitioner. Copy of the said order dated 25.9.1998 has been filed as Annexure-10 to the Writ Petition.

15. Thereafter, the petitioner filed a Claim Petition being Claim Petition No. 963 of 1999 before the Uttar Pradesh State Public Services Tribunal, Lucknow. Copy of the Claim Petition has been filed as Annexure-11 to the Writ Petition.

16. Written Statement was filed on behalf of the respondents in reply to the said Claim Petition. Copy of the Written Statement has been filed as Annexure-12 to the Writ Petition.

17. The Uttar Pradesh State Public Services Tribunal, Lucknow (in short the Tribunal") by its judgment and order dated 10.10.2006 dismissed the said Claim Petition filed on behalf of the petitioner. Copy of the said judgment and order dated 10.10.2006 has been filed as Annexure-13 to the Writ Petition.

18. The petitioner has, thereafter, filed the present Writ Petition seeking the reliefs, as mentioned above.

19. Counter-affidavit has been filed on behalf of the respondents in the present Writ Petition. The petitioner has filed rejoinder-affidavit.

20. We have heard Shri Ashok Khare, learned Senior Counsel assisted by Shri V.D. Shukla, Learned Counsel for the petitioner and Smt. Archana Srivastava, learned Standing Counsel appearing for the respondents, and perused the record.

21. Shri Ashok Khare, learned Senior Counsel appearing for the petitioner has made the following submissions:

1. It is necessary that the Enquiry Report submitted against the delinquent employee should be a reasoned Report. The Enquiry Report dated 22.3.1995, submitted in the present case, was not a reasoned Report, and as such, the order of dismissal of the petitioner from service was vitiated.

2. The Inquiry Officer did not consider the defence taken by the petitioner regarding his developing pain in stomach, and consuming medicine having smell of alchohal on account of the pain, and thereafter, developing giddiness in his head, and consequently becoming unconscious.

3. Objections raised by the petitioner in regard to the Report of the Doctor were not considered by the Inquiry Officer even though the reply submitted by the petitioner to the charge-sheet was referred to in the Enquiry Report.

4. Copy of the preliminary Enquiry Report and copies of the Statements of witnesses examined in the preliminary enquiry were not supplied to the petitioner, and this has vitiated the entire proceedings against the petitioner.

22. In support of his above submissions, Shri Ashok Khare, learned Senior Counsel appearing for the petitioner has placed reliance on the following decisions:

1. Bachubhai Hassanalli Karyani Vs. State of Maharashtra, .

2. Anil Kumar Vs. Presiding Officer and Others, .

3. Sher Bahadur Vs. Union of India (UOI) and Others, .

4. M.V. Bijlani Vs. Union of India (UOI) and Others, .

5. Union of India and others v. Cyan Chand Chattar, (2009) 12 SCC 78.

23. In reply, Smt. Archana Srivastava, learned Standing Counsel appearing for the respondents has made the following submissions:

1. The Tribunal in its judgment and order dated 10.10.2006 has considered in detail the submissions made on behalf of the petitioner, and has rejected the same giving valid and cogent reasons. No illegality has been committed by the Tribunal, and, therefore, no interference is called for in the present Writ Petition.

2. The enquiry against the petitioner was held in accordance with the relevant Rules and the principles of natural justice, and the petitioner was given full opportunity in the enquiry proceedings. The petitioner failed to establish his defence that he developed pain in the stomach and consumed medicine, which was having smell of alchohal. On the contrary, the evidence on record established that during the course of duty, the petitioner consumed alchohal, and was found in intoxicated state at a public place (Nala). Reference in this regard has been made to the reasoning and conclusions mentioned in the impugned

judgment and order of the Tribunal.

3. No relief has been sought in the Writ Petition in respect of the Enquiry Report.

4. Punishment awarded to the petitioner was not disproportionate-keeping in view the gross indiscipline committed by the petitioner. Reference in this regard is made to the reasoning and conclusions mentioned in the impugned judgment and order of the Tribunal.

24. Smt. Archana Srivastava, learned Standing Counsel appearing for the respondents has placed reliance on the following decisions:

1. State of Andhra Pradesh Vs. P.V. Hanumantha Rao (D) thr. Lrs. and Another, .

2. State of Punjab and others v. Balbir Singh, AIR 2004 SC 4655.

3. Deputy Inspector General of Police and Another Vs. K. Ravinder Rao, .

25. We have considered the submissions made by the Learned Counsel for the parties.

26. Before dealing with the submissions made by the Learned Counsel for the parties, it is necessary to consider the scope of judicial review under Article 226 of the Constitution of India in the matters pertaining to disciplinary proceedings.

27. In State of Andhra Pradesh Vs. Sree Rama Rao, , their Lordships of the Supreme Court have laid down that in a proceeding under Article 226 of the Constitution of India, the High Court is concerned only with the questions as to whether the enquiry has been held by an authority competent in that behalf, and according to the prescribed procedure, and whether the principles of natural justice have been followed. The High Court does not act as a Court of Appeal over the decision of the Authorities holding a departmental enquiry against a public servant. Where there is some evidence, which the Authority entrusted with the duty to hold the enquiry has accepted, and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a Petition for a Writ under Article 226 of the Constitution of India to review the evidence and to arrive at an independent finding on the evidence. The Departmental Authorities are, if the enquiry is otherwise properly held, the sole Judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a Writ under Article 226 of the Constitution of India.

28. In Bhagat Ram Vs. State of Himachal Pradesh and Others, , their Lordships of the Supreme Court have laid down that in a Petition under Article 226 of the Constitution of India, the High Court does not function as a Court of Appeal over the findings of disciplinary authority. But where the finding is based on no evidence whatever and is utterly perverse, the Court can always interfere with the same.

38. In Anil Kumar case (supra) (paragraphs 5 and 6), relied upon by Shri Ashok Khare, learned Senior Counsel appearing for the petitioner, their Lordships of the Supreme Court have opined that a disciplinary enquiry has to be a quasi-judicial enquiry held according to the principles of natural justice and the Enquiry Officer has a duty to act judicially. An enquiry report in a quasi-judicial enquiry must show the reasons for the conclusion. It cannot be an ipse dixit of the Enquiry Officer. It has to be a speaking order in the sense that the conclusion is supported by reasons. Where a disciplinary enquiry affects the livelihood and is likely to cast a stigma and it has to be held in accordance with the principles of natural justice, the minimum expectation is that the report must be a reasoned one. The Court then may not enter into the adequacy or sufficiency of evidence. However, where there is total non-application of mind by the Inquiry Officer, it is not an Enquiry Report at all and the termination based on such proceeding would be unsustainable.

30. In State of A.P. case (supra) (paragraph 33), relied upon by Smt. Archana Srivastava, learned Standing Counsel appearing for the respondents, their Lordships of the Supreme Court have held that neither in exercise of power of Writ under Article 226 of the Constitution of India, nor in supervisory jurisdiction under Article 227 of the Constitution of India, the High Court will convert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence. However, the High Court has power to interfere in its Writ jurisdiction where important evidence has been overlooked and the legal provisions involved are misinterpreted or misapplied.

31. In Sher Bahadur case (supra) (paragraph 7), relied upon by Shri Ashok Khare, learned Senior Counsel appearing for the petitioner, their Lordships of the Supreme Court have opined that the expression "sufficiency of evidence" postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence, however voluminous it may be, which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer, is no evidence in law. The mere fact that the enquiry officer has noted in his report, "in view of oral, documentary and circumstantial evidence as adduced in the enquiry", would not in principle satisfy the rule of sufficiency of evidence.

32. In M.V. Bijlani case (supra)(paragraph 25), relied upon by Shri Ashok Khare, learned Senior Counsel appearing for the petitioner, their Lordships of the Supreme Court have laid down that the jurisdiction of the Court in judicial review is limited. The 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 analysing 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.

33. In *Union of India and others v. Gyan Chand Chattar* case (supra) (paragraph 35), relied upon by Shri Ashok Khare, learned Senior Counsel appearing for the petitioner, their Lordships of the Supreme Court have held that an enquiry is to be conducted against any person giving strict adherence to the statutory provisions and principles of natural justice. The charges should be specific, definite and giving details of the incident which formed the basis of charges. No enquiry can be sustained on vague charges. Enquiry has to be conducted fairly, objectively and not subjectively. Finding should not be perverse or unreasonable, nor the same should be based on conjectures and surmises. There is a distinction in proof and suspicion. Every act or omission on the part of the delinquent cannot be a misconduct. The authority must record reasons for arriving at the finding of fact in the context of the statute defining the misconduct.

34. In *Madan Gopal v. State of U.P. and others*, 2010 (4) ESC 2470 (All) (DB), (paragraph 13), a Division Bench of this Court held as under:

13. It is well-settled that in a proceeding under Article 226 of the Constitution of India, the High Court is concerned only with the questions whether the enquiry was held by an authority competent in that behalf and according to the prescribed procedure and whether the principles of natural justice have not been violated. The High Court does not act as a Court of appeal over the decision of the authorities holding a departmental enquiry. Reference in this regard may be made to the following decisions:

1. *State of Andhra Pradesh Vs. Sree Rama Rao*, .
2. *Bhagat Ram Vs. State of Himachal Pradesh and Others*, .

35. Following principles, amongst others, may be deduced from the above decisions:

1. The enquiry has to be held by an authority competent in that behalf.
2. The disciplinary enquiry has to be a quasi-judicial enquiry. The enquiry must be held according to the prescribed procedure and the principles of natural justice. The Inquiry Officer has a duty to act judicially.
3. The enquiry report in a disciplinary enquiry must show the reasons for the conclusion. It has to be a speaking order in the sense that the conclusion is supported by reasons.
4. The High Court in exercise of its power of judicial review under Article 226 of the Constitution of India does not act as a Court of Appeal over the decision of the authorities holding the departmental enquiry. Where there is some evidence,

which the authority entrusted with the duty to hold the enquiry, has accepted, and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a Petition for a Writ under Article 226 of the Constitution of India to review the evidence and to arrive at an independent finding on the evidence. The departmental authorities are, if the enquiry is otherwise properly held, the sole Judges of facts, and if there is some legal evidence on which their findings can be based, the adequacy or sufficiency or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for Writ under Article 226 of the Constitution of India. The High Court will not convert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence.

5. The High Court in exercise of its Writ Jurisdiction under Article 226 of the Constitution of India may, however, interfere in the cases such as the following:

(A) Where the enquiry has been held by an authority who is not competent in that behalf.

(B) Where the enquiry has been held without following the procedure as prescribed in the relevant Statute, or Rules, Regulations, etc.

(C) Where the enquiry has been held without following the principles of natural justice.

(D) Where the legal provisions involved are mis-interpreted or mis-applied by the Inquiry Officer.

(E) Where the finding recorded by the Inquiry Officer is based on no evidence whatsoever or shows total non-application of mind by the Inquiry Officer or is perverse.

(F) Where the Inquiry Officer has not given reasons for his finding/ conclusion.

36. Keeping in view the scope of judicial review under Article 226 of the Constitution of India in the matters pertaining to the disciplinary proceedings, we are now proceeding to consider the submissions made by the Learned Counsel for the parties.

37. Let us consider the first submission made by Shri Ashok Khare, learned Senior Counsel appearing for the petitioner that the Enquiry Report was not a reasoned report.

38. A perusal of the Enquiry Report shows that the Inquiry Officer in his Report has referred to in detail the charges levelled against the petitioner in the charge-sheet dated 2.5.1994, and the reply submitted by the petitioner to the said charge-sheet. The Inquiry Officer has further referred to the evidence led on behalf of the respondents during the enquiry proceedings. Reference has been made to the statements of 11 witnesses examined on behalf of the respondents. The Inquiry Officer has, thereafter, referred to the statement dated 24.2.1995

submitted by the petitioner in his defence wherein he stated that while going for duty on 5.9.1993, he suddenly developed severe pain in his stomach, and for this reason, he took medicine from a Medical Store, and after mixing the same in water, he drank the same, and after drinking the same, the petitioner developed giddiness in his head and fell down, and he had no knowledge as to what happened thereafter. The Inquiry Officer has, thereafter, examined the evidence and documents on record, and has reached the conclusion that the charges against the petitioner were fully established.

39. In our view, the Inquiry Report submitted in the present case, is a well-reasoned Report. No illegality or perversity has been shown in the findings recorded by the Inquiry Officer. Therefore, the first submission made by Shri Ashok Khare, learned Senior Counsel appearing for the petitioner, cannot be accepted.

40. Coming to the second submission made by Shri Ashok Khare, learned Senior Counsel appearing for the petitioner that the defence taken by the petitioner regarding his developing pain in stomach, and consuming medicine having smell of alcohol on account of the pain, and thereafter, feeling giddiness in his head, and consequently becoming unconscious, was not considered by the Inquiry Officer, we find that the Inquiry Officer has referred to the reply dated 11.5.1994 submitted by the petitioner in respect of the charge-sheet as well as the statement dated 24.2.1995 submitted by the petitioner before the Inquiry Officer, and after considering the entire evidence and documents on record, has evidently not accepted the defence taken by the petitioner, and has accepted the version of the respondents. No illegality or perversity has been shown in the findings recorded by the Inquiry Officer in this regard. Therefore, the second submission made by Shri Ashok Khare, learned Senior Counsel appearing for the petitioner regarding non-consideration of the defence of the petitioner, cannot be accepted.

41. As regards the third submission made by Shri Khare regarding non-consideration of the objections raised by the petitioner to the Report submitted by the Doctor, it is noteworthy that in his reply dated 11.5.1994 in respect of the charge-sheet, the only objection taken by the petitioner to the Report of the Doctor was that the Doctor submitted his Report on the basis of mere clinical examination and did not get the blood and urine of the petitioner examined. It is pertinent to note that the petitioner in the said reply has raised a defence that he consumed medicine containing alcohol in large quantity on account of severe pain. As was established from the evidence of various witnesses that the petitioner in his uniform was lying in a drain in intoxicated state, and he was taken to the District Hospital, Badaun where the Doctor examined the petitioner and confirmed that the petitioner had consumed alcohol. The Doctor was examined as a witness (P.W. 9) during the enquiry proceedings, and proved the Report submitted by him. The Doctor reiterated his opinion that the petitioner had consumed alcohol.

42. No cross-examination of the said witness (P.W. -9) was made by the petitioner, as is evident from a perusal of the Enquiry Report. Thus, except for raising objection in his reply dated 11.5.1994 regarding non-examination of the blood and urine of the petitioner, he made no effort during the enquiry proceedings either by cross-examining the Doctor, who was examined as P.W. -9 or by leading any evidence on his behalf to show that in such circumstances, the Report of the Doctor could not be relied upon. Even otherwise, the opinion of the Doctor regarding consuming of alcohol by the petitioner is corroborated by the evidence of other witnesses examined during the enquiry proceedings as also by the fact that the petitioner in his uniform was found lying in intoxicated state in a drain.

43. In the circumstances, the third submission made by Shri Ashok Khare, learned Senior Counsel appearing for the petitioner cannot be accepted.

44. Before proceeding to consider the fourth submission made by Shri Ashok Khare, learned Senior Counsel appearing for the petitioner, it is pertinent to refer to a decision relied upon by Shri Ashok Khare in support of his third submission.

45. In *Bachubhai Hassanalli Karyani* case (supra), relied upon by Shri Ashok Khare, the appellant was convicted by the Presidency Magistrate, Bombay and awarded sentences u/s 304A, IPC, Section 337, IPC and Section 117 of the Motor Vehicles Act. The High Court, on appeal, upheld the conviction and sentences of imprisonment and fine passed by the Presidency Magistrate. The High Court found that the appellant was drunk on that night and he was driving the Car rashly and negligently at an excessively high speed. The Supreme Court analyzed the evidence of the Doctor and also noted that no urine test of the appellant was carried-out and although the blood of the appellant was sent for chemical analysis, no Report of the analysis was produced by the prosecution. In view of this, the Supreme Court concluded that "it cannot be definitely held that the appellant was drunk at the time the accident occurred". In view of this conclusion, the Supreme Court modified the sentence awarded to the appellant by reducing the sentence of rigorous imprisonment to the imprisonment already undergone, while maintaining the sentence of fine.

46. It will be noticed that the above decision relied upon by Shri Ashok Khare, learned Senior Counsel was in respect of a criminal prosecution for rash and negligent driving in a drunken state. The standard of proof in a criminal trial is that the charges must be proved beyond all reasonable doubt. Such standard of proof is not required in disciplinary proceedings, which are quasi-judicial in nature. In disciplinary proceedings the authority is required to consider preponderance of probability to prove the charges on the basis of materials on record. Reference in this regard may be made to *State of A.P. case* (supra) and *M.V. Bijlani case* (supra).

47. In view of this, the decision, relied upon by Shri Ashok Khare, is not applicable to the present case.

48. It is also noteworthy that the petitioner in his reply raised a defence that he consumed medicine containing alcohol in large quantity on account of severe pain. Therefore, pathological examination of the blood and urine of the petitioner would have only confirmed the presence of alcohol in the body of the petitioner, which as per his own version, was consumed by him though in the form of medicine. Hence, no prejudice is caused to the petitioner on account of non-examination of his blood and urine.

49. As regards the fourth submission made by Shri Ashok Khare, learned Senior Counsel appearing for the petitioner regarding non-supply of the statements of witnesses in the preliminary enquiry, it is relevant to note that the preliminary enquiry is only a fact-finding enquiry in order to decide as to whether there is sufficient ground for holding regular enquiry against the delinquent employee. Once the regular enquiry is held against the delinquent employee, the preliminary enquiry report and the statements of witnesses recorded in the preliminary enquiry lose significance. It is further noteworthy that in his reply dated 11.5.1994, the petitioner did not ask for copy of the preliminary enquiry report and copies of the statements of witnesses examined in the preliminary enquiry. It is also noteworthy that in the Enquiry Report, the Inquiry Officer has noted as under:

50. It is, thus, evident that photo-stat copies of all the documents demanded by the petitioner were supplied to him on 3.5.1994. Further, as is evident from a perusal of the Enquiry Report, the preliminary enquiry report dated 30.3.1994 was placed on record during the enquiry proceedings, and the same was proved by Balbir Singh, Deputy Superintendent of Police, who was examined as P.W. -6, and the said preliminary enquiry report was marked as Exhibit-Ka4. The preliminary enquiry report was, thus, available on the record, and it was open to the petitioner to inspect the same, and confront the witnesses examined on behalf of the respondents during the enquiry proceedings with the said preliminary enquiry report, if the petitioner so desired.

51. It will, thus, be seen that no prejudice has been caused to the petitioner by non-supply of the copy of the preliminary enquiry report, and copies of the statements of witnesses examined during the preliminary enquiry.

52. As regards the question of proportionality of the punishment, as noted above, the learned Standing Counsel appearing for the respondents has submitted that the punishment awarded to the petitioner was not disproportionate keeping in view the gross indiscipline committed by the petitioner.

53. In *Hukum Chand v. State Service Tribunal, U.P., Lucknow and others*, 2008 (4) ADJ 452 (DB); 2008 (3) ESC 1693 (DB), a Division Bench of this Court summarized the legal position as regards the question of proportionality of the punishment as under:

It has been laid by the Supreme Court in various decisions that the punishment

imposed by the Disciplinary Authority or the Appellate Authority should not be subjected to judicial review unless the same is shocking to the conscience of the Court/ Tribunal. Reference in this regard may be made to the following decisions:

1. Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar, .

2. V. Ramana Vs. A.P.S.R.T.C. and Others, .

3. The General Secretary, South Indian Cashew Factories Workers' Union Vs. The Managing Director, Kerala State Cashew Development Corporation Ltd. and Others, .

4. Union of India (UOI) and Others Vs. Dwarka Prasad Tiwari, .

54. In Madan Gopal v. State of U.P. and others, 2010 (4) ESC 2470 (All) (DB), a Division Bench of this Court reiterated the above propositions, as laid down in Hukum Chand case (supra).

55. Keeping in view the above legal position, let us consider the facts of the present case.

56. In the present case, the charge levelled against the petitioner that he (in uniform) was lying in intoxicated state in a drain, was established.

57. Having regard to the nature and seriousness of the charge against the petitioner, who was a Police Constable, we are of the opinion that the punishment imposed on the petitioner cannot be said to be disproportionate. The punishment cannot, in our view, be said to be such as is shocking to the conscience of the Court. Therefore, no interference is called for with the punishment imposed on the petitioner.

58. Before parting with the case, we may refer to the two decisions relied upon by the learned Standing Counsel appearing for the respondents pertaining to the cases of disciplinary action against Police Constable.

59. In State of Punjab and others v. Balbir Singh, AIR 2004 SC 4655 (supra), the order of discharge simpliciter was passed against a Police Constable, who misbehaved with a lady Constable. The Supreme Court held that the order of discharge simpliciter was not punitive. The basis of the discharge of the Police Constable was not founded on the misconduct but the misbehaviour with a lady Constable and consumption of liquor in office were considered to determine the suitability of the Police Constable for the job in the light of the standards of discipline expected from Police Personnel. The order of discharge being not punitive in nature, could not be held to be illegal on the ground that it was passed without conducting any disciplinary enquiry.

60. The decision, though not applicable in the present case where the order of dismissal was passed after departmental proceedings, shows the standards of discipline expected from Police Personnel.

61. In Deputy Inspector General of Police and Another Vs. K. Ravinder Rao, , their Lordships of the Supreme Court laid down as under (paragraphs 5 and 6 of the said AIR):

5. We have heard Learned Counsel for the parties and perused the records. We have gone through the order passed by the Tribunal as well as the Inquiring Officer. We regret that the view taken by the High Court does not appear to be well founded. It is unfortunate that a Police Constable who is supposed to safeguard the public makes such a unreasonable demand on going to someone's house for satisfying his sensual lust. It is disgrace in uniform. The Tribunal has examined the matter in detail and after considering the matter affirmed the order of removal of the respondent. The Tribunal has also found that the findings given by the Inquiring Officer are sound and proper. The Tribunal examined the evidence and found that the testimony of P.W. 2 has been corroborated by the evidence of P.W. 3, Smt. Kamasani Laxmi and P.W. 1, Circle Inspector of Police, who submitted a report finding the allegation true. P.Ws. 7 and 9, both Constables supported the version of P.W. 2. The Circle Inspector investigated the matter further and confirmed the incident that the respondent misbehaved with Smt. Kamasani Susheela and he was in a drunken condition so much so that when the respondent went to the Doctor for some medical treatment at the relevant time the Doctor declined to administer injection as the respondent was drunk. Therefore, all the evidence has been again examined by the Tribunal in objective manner and rightly affirmed the report of the Inquiring Officer.

6. It is strange that the High Court sitting under Article 226 of the Constitution of India re-appreciated the evidence and came to a different conclusion which is not within the scope of the High Court. The finding given by the Inquiring Officer has been affirmed in appeal and the same having been examined by the Tribunal in threadbare there was no justification for the High Court to come to its own conclusion when there was concurrent finding given by the Inquiring Officer and the Tribunal. But the High Court appreciated the whole evidence which was unwarranted. The respondent was drunk as is apparent from the testimony of the Doctor to whom the appellant had approached for some treatment and wanted to administer injection but having seen him in a drunken state the Doctor declined. This is sufficient to prove that the appellant was drunk. Secondly, when the testimony of Smt. Kamasani Laxmi, supported by two beat Constables as well as by the Circle Inspector that the respondent went to the house of Smt. Kamasani Susheela and approached her for providing some girls to satisfy his sensual lust, the High Court went wrong in recording its finding. Time and again this Court has emphasized that" under Article 226 of the Constitution of India, appreciation of evidence should not be done in matters of this nature unless the finding appears to be perverse. In the present case the finding having been examined in detail by the Tribunal and the Tribunal also having found no perversity in the finding of the Inquiring Officer, we fail to appreciate the approach of the High Court. Hence, we allow this appeal and set aside the order of the High Court and confirm the order of the Tribunal. There would be no order as to costs.

62. In the above decision, the charge against the respondent -Police Constable was in regard to misbehaving with lady by going to her house in drunken state for satisfying his sensual lust. The Inquiring Officer found the respondent guilty. Thereafter, explanation of the respondent was called for as to why he should not be removed from service. Subsequently, he was removed from service. Thereafter, the respondent filed an Appeal before the Appellate Authority, which was rejected. The respondent filed the Original Application before the Administrative Tribunal. The Administrative Tribunal affirmed the order of removal from service. The respondent filed Writ Petition before the High Court. The High Court re-appreciated the evidence on record, and set-aside the order of the Tribunal as well as the order of the Inquiring Officer, and directed for reinstatement of the respondent and for payment of 50% of backwages.

63. The Supreme Court in Appeal set-aside the order of the High Court and confirmed the order of the Tribunal. The Supreme Court emphasised that the findings given by the Inquiring Officer had been confirmed in Appeal by the Appellate Authority. The Tribunal examined the matter in detail, and found that the findings given by the Inquiring Officer were sound and proper. In the circumstances, the Supreme Court held that there was no occasion for the High Court sitting under Article 226 of the Constitution of India to re-appreciate the evidence and come to a different conclusion. The Supreme Court emphasised that "under Article 226 of the Constitution of India, appreciation of evidence should not be done in matters of this nature unless the finding appears to be perverse".

64. In the present case also, the findings recorded by the Inquiry Officer stood confirmed in the Appeal and the Revision filed by the petitioner. The Tribunal examined in detail the material on record and found the findings recorded by the Inquiry Officer as proper. In this view of the matter, it is not open to this Court to re-appreciate the evidence, and come to a different conclusion, as held by the Supreme Court in the above decision.

65. In the above decision, the Supreme Court emphasised that "It is unfortunate that a Police Constable who is supposed to safeguard the public makes such a unreasonable demand on going to someone's house for satisfying his sensual lust. It is disgrace in uniform."

66. Similar is the situation in the present case where the petitioner in his uniform was found lying in a drain in intoxicated state.

67. In view of the above, we are of the opinion that the Writ Petition lacks merits, and the same is liable to be dismissed.

68. The Writ Petition is accordingly dismissed. However, on the facts and in the circumstances of the case, there will be no order as to costs.