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**(2011) 04 SHI CK 0168**  
**In the High Court Of Himachal Pradesh**  
**Case No : CWP (T) No. 12184 of 2008**

Rajeev Kumar

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

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**Date of Decision :** 21-04-2011

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Evidence Act, 1872 — Section 58

**Citation :** (2011) 04 SHI CK 0168

**Hon'ble Judges :** Rajiv Sharma, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

Rajiv Sharma, J.—Petitioner was appointed as Constable on 30th January, 1990. He was found absent on 6th March, 2002 while posted as sentry Magazine Guard, Police Lines, Solan. Regular inquiry was ordered to be instituted against him vide order dated 8th March, 2002. The summary of allegations was served upon him on 6th April, 2002, to which he has not filed any reply. Thereafter P.Ws. 1, 2, 3, 4 and 5 were examined by the Inquiry Officer on 8th May, 2002. Regular charge-sheet was served upon him on 11th July, 2002. He has admitted before the Inquiry Officer that he has received the copy of the charge-sheet and he has admitted all the charges levelled against him. He has refused to tender written reply. The inquiry was completed by the Inquiry Officer. The inquiry report is at page 45 of the record produced by the State during the course of hearing. The Inquiry Officer has concluded that the charges levelled against the Petitioner were duly proved and moreover, he has admitted the charges levelled against him on 11th July, 2002. Thereafter show cause notice was issued to him on 31st Jul, 2002 why he should not be removed from service. He was granted 7 days" time to file reply. Petitioner prayed for enlargement of time. Same was enlarged and the Petitioner was permitted to file the reply upto 21st August, 2002. He filed the reply. Same is at page 53 of the records produced by the State. The disciplinary authority imposed the penalty of removal from service

upon the Petitioner on 24th August, 2002. He preferred an appeal before the Deputy Inspector General of Police, Southern Range, which was rejected by him on 13th March, 2003. The revision preferred by the Petitioner against the appellate order dated 13th March, 2003 was also dismissed by the Director General of Police, Himachal Pradesh.

2. Mr. P.C. Sharma, learned Counsel for the Petitioner has strenuously argued that there is violation of the principles of natural justice while holding the departmental inquiry against his client. He then contended that the penalty of removal imposed upon his client is disproportionate to the alleged misconduct.

3. Mr. Anshul Bansal, learned Additional Advocate General has vehemently argued that the inquiry has been instituted in accordance with law. He then contended that the Petitioner has also admitted the charges levelled against him and he has not filed any reply pursuant to the charge sheet dated 11th July, 2002.

4. I have heard learned Counsel for the parties and gone through the pleadings and records carefully.

5. The Petitioner was posted on a very sensitive duty of guarding the magazine in Police Lines, Solan. He was found absent between 6 p.m. to 9 p.m. It is in these circumstances that regular inquiry was instituted against the Petitioner vide order dated 8th March, 2002. He has not filed any reply to the summary of allegations, dated 6th April, 2002. Regular charge-sheet was served upon him after recording the statements of P.Ws. 1 to 5 on 8th May, 2002. Petitioner was specifically called upon, as noticed above, by the disciplinary authority whether he has received the copy of charge-sheet or not. He replied that he has received the copy of charge-sheet. The contents of charge-sheet were also read over and explained to him. He has admitted the charges levelled against him and has refused to file any written reply to the charge-sheet. Thereafter the inquiry Officer has given a finding that the charges levelled against him were proved. The Inquiry Officer has also taken into consideration the admission of charges levelled against him on 11th July, 2002. He was given time to file the reply. He filed the reply on 21st August, 2002.

6. The disciplinary authority in the show cause notice dated 31st July, 2002 has taken into consideration the past conduct of the Petitioner. The Petitioner was put to notice of the past conduct as per notice dated 31st July, 2002. He was earlier removed from service. He has been put under suspension 5 times. 5 times disciplinary proceedings were initiated against him. His service was forfeited and increments stopped. He has also remained unauthorisedly absent for 134 days, 6 hours and 25 minutes. He belongs to disciplined force. The disciplinary authority granted him 7 days' time to file the reply. He has filed the reply on 21st August, 2002. The disciplinary authority after taking into consideration the finding of the Inquiry Officer and after perusing the past conduct of the Petitioner has imposed the penalty of removal upon him on 24th August, 2002.

7. Mr. P.C. Sharma, learned Counsel representing the Petitioner has vehemently argued that the report of the Inquiry Officer is perverse. According to him, the Inquiry Officer has also violated the principles of natural justice by not giving his client appropriate opportunity to defend himself. Suffice to say that the Petitioner has not filed any reply to the summary of allegations as well as to the regular charge-sheet dated 11th July, 2002. He has admitted the charges levelled against him. Still, Mr. P.C. Sharma, learned Counsel for the Petitioner submitted that the detailed inquiry was required to be held. The question raised by Mr. P.C. Sharma is no more res-integra in view of the law laid down by their Lordships of Hon"ble Supreme Court in Chairman and MD V.S.P. and Others Vs. Goparaju Sri Prabhakara Hari Babu, wherein their Lordships have held that when the charges are admitted, detailed inquiry need not be held. Their Lordships of the Hon"ble Supreme Court have further held that in terms of Section 58 of the Evidence Act, charges having been admitted were not required to be proved. Their Lordships of the Apex Court have further held that the jurisdiction of the High Court to interfere with the disciplinary matters is limited. Their Lordships have held as under (paras 16, 18, 19, 20 to 22):

Indisputably, the Respondent was a habitual absentee. He in his explanation, in answer to the charge-sheet pleaded guilty admitting the charges. In terms of Section 58 of the Evidence Act, charges having been admitted were not required to be proved. It was on the premise that the enquiry proceeding was closed. Before the enquiry officer, he did not submit the explanation of his mother being ill. He, despite opportunities granted to report to duty, did not do it. He failed to explain even his prior conduct.

It was observed that judicial admissions can be made the foundation of the rights of the parties.

A subsequent explanation before another authority, which had not been pleaded in the departmental proceedings, cannot by itself be a ground to hold that the principles of natural justice had not been complied with in the disciplinary proceedings.

The jurisdiction of the High Court in this regard is rather limited. Its power to interfere with disciplinary matters is circumscribed by well-known factors. It cannot set aside a well-reasoned order only on sympathy or sentiments. (See Maruti Udyog Ltd. v. Ram Lal, State of Bihar v. Amrendra Kumar Mishra, SBI v. Mahatma Mishra, State of Karnataka v. Amweerbi, State of M.P. v. Sanjay Kumar Pathak and Uttar Haryana Bijli Vitran Nigam Ltd. v. Surji Devi.)

Once it is found that all the procedural requirements have been complied with, the courts would not ordinarily interfere with the quantum of punishment imposed upon a delinquent employee. The superior courts only in some cases may invoke the doctrine of proportionality. If the decision of an employer is found to be within the legal parameters, the jurisdiction would ordinarily not be invoked when the misconduct stands proved. (See Sangfroid Remedies Ltd. v.

Union of India.)

The High Court in exercise of its jurisdiction under Article 226 of the Constitution of India also cannot, on the basis of sympathy or sentiment, overturn a legal order.

8. Mr. P.C. Sharma, learned Counsel for the Petitioner has also submitted that the previous conduct of the Petitioner could not be looked into by the disciplinary authority. It is settled law that in case the disciplinary authority intends to consider the past conduct of the delinquent, he is entitled to the notice thereof. In the present case, the Petitioner has been given opportunity to give his explanation to the previous conduct mentioned in show cause notice dated 31st July, 2002. He has not given any explanation to the previous conduct while filing his reply on 21st August, 2002.

9. Their Lordships of Hon''ble Supreme Court in Union of India (UOI) and Others Vs. Bishamber Das Dogra, have held that in case of misconduct of grave nature or indiscipline, even in the absence of statutory rules, authority may take into consideration past conduct/service record. Their Lordships of the Hon''ble Supreme Court have further held that the Court/Tribunal must keep in mind that such indiscipline is intolerable so far as the disciplined force is concerned. Their Lordships have held as under (paras 22 and 23):

This Court in *State of Assam v. Bimal Kumar Pandit* considered the issue as to whether while imposing the punishment it is permissible to take into consideration the past conduct of an employee if it is not so mentioned in the second show-cause notice.

The Court in *Bimal Kumar Pandit* case observed that while issuing second show-cause notice, the disciplinary authority naturally has to come to a tentative or provisional conclusion about the guilt of the charged employee as well as about the punishment which would meet the requirement of justice in his case, and it is only after reaching conclusions in both these matters provisionally that the disciplinary authority issues the second notice. The delinquent employee is entitled to show cause not only against the action proposed to be taken against him but also against the validity or correctness of the findings recorded by the enquiry officer and provisionally accepted by the disciplinary authority. Thus, it enables the delinquent to cover the whole ground and to plead that no case had been made out against him for taking any disciplinary action and then to urge that if he fails in substantiating his innocence, the action proposed to be taken against him is either unduly severe or not called for.

10. Their Lordships of Hon''ble Supreme Court in *Mohd. Yunus Khan Vs. State of U.P. and Others*, have held that if the disciplinary authority wants to consider past conduct, delinquent is entitled to notice thereof. Their Lordships have further held that in case of grave misconduct, even in absence of statutory rules, authority may take into consideration undisputable past conduct/service record of delinquent for adding weight to decision of imposing punishment if facts of the

case so require. Their Lordships of the Hon"ble Supreme Court have held as under (paras 34, 35 and 37):

The courts below and the statutory authorities failed to appreciate that if the disciplinary authority wants to consider the past conduct of the employee in imposing a punishment, the delinquent is entitled to notice thereof and generally the charge-sheet should contain such an article or at least he should be informed of the same at the stage of the show cause notice, before imposing the punishment.

This Court in Union of India (UOI) and Others Vs. Bishamber Das Dogra, considered the earlier judgments of this Court in State of Assam and Another Vs. Bimal Kumar Pandit, ; India Marine Service Private Ltd. Vs. Their Workmen, ; State of Mysore Vs. K. Manche Gowda, ; Colour-Chem Limited Vs. A.L. Alaspurkar and Others, ; Director General R.P.F. and Others Vs. Ch. Sai Babu, , Bharat Forge Co. Ltd. Vs. Uttam Manohar Nakate, ; and The Govt. of A.P. and Others Vs. Mohd. Taher Ali, and came to the conclusion that it is desirable that the delinquent employee be informed by the disciplinary authority that his past conduct could be taken into consideration while imposing the punishment. However, in case of misconduct of a grave nature, even in the absence of statutory rules, the Authority may take into consideration the indisputable past conduct/service record of the delinquent for "adding the weight to the decision of imposing the punishment if the fact of the case so required."

In view of the above, we reach the following inescapable conclusions:

I. Absence of Appellant from duty as Guard Commander for 25 minutes was bona fide and permissible under the statutory rules.

II. Imposition of punishment of punishment drill for 10 days for the said absence was unwarranted.

III. Protest by the Appellant against the imposition of the said punishment could not warrant enhancement of punishment of the Appellant for confinement in cell for ten days.

IV. Disobedience of the enhanced punishment could not, in this case, warrant initiation of disciplinary proceedings by the Commandant concerned against the Appellant.

V. The Commandant could not himself become the Judge of his own cause.

VI. The Commandant could not appoint his own subordinate as the enquiry officer.

VII. The Commandant could have referred the matter to his superior officer for appropriate action in terms of the 1991 Rules.

VIII. Once the Commandant concerned appeared as a witness himself in the enquiry, he could not pass the order of punishment.

IX. The authority who initiated the disciplinary proceedings against the Appellant became a witness before the inquiry officer appointed by him, who is subordinate to him in his office and also accepted the enquiry report and passed the order of punishment. Thus, the order of punishment stood vitiated.

X. The appellate authority could not consider the past conduct of the Appellant to justify the order of punishment passed by the disciplinary authority without bringing it to the notice of the Appellant.

XI. As the punishment order had been passed in violation of the statutory rules and the principles of natural justice as well, it is rendered null and void. Thus, it remained inexecutable.

XII. Past conduct of an employee should not generally be taken into account to substantiate the quantum of punishment without bringing it to the notice of the delinquent employee.

XIII. The error of violating the principles of natural justice by the disciplinary authority has been of such a grave nature that under no circumstance can the past conduct of the Appellant, even if not satisfactory, be taken into consideration.

11. In the instant case, the Petitioner belongs to a disciplined force and has remained absent from sentry duty on 6th March, 2002. He has been put under suspension 5 times and was earlier also removed from service. As per his past conduct, as already noticed above, he is habitual absentee. The charges levelled against him have been duly proved. The penalty of removal is neither harsh nor disproportionate to the alleged misconduct. The order passed by the disciplinary authority is detailed. The appellate and revising authorities have also passed detailed/reasoned orders. These are not required to be interfered with.

12. Accordingly, in view of the observations and discussion made hereinabove, there is no merit in this petition and the same is dismissed, so also the pending application(s), if any. No costs.