
(2007) 08 AHC CK 0071
In the Allahabad High Court

Ramesh Pal Singh, Constable/Driver No. 913258289, 104
Battalion R.A.F./C.R.P.F.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-08-2007

Acts Referred:

Hindu Marriage Act, 1955 — Section 13B

Citation : (2008) 5 AWC 4669 : (2008) 1 UPLBEC 47

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.K. Shukla, J.—Petitioner has approached this Court, questioning the validity of decision taken by respondent authorities dispensing with the services of petitioner and subsequent orders of affirmance passed by appellate authority as well as Revising authority, dated 14.08.2000, 29.07.2005, 22.05.2006 and 10.10.2006, respectively.

2. Brief facts, giving rise to instant writ petition, are that petitioner had been performing and discharging duties as constable driver with Rapid Action Force, a branch of Central Reserve Police Force since 23.12.1991, and petitioner was posted at Aligarh. Earlier, petitioner, before being enrolled as member of the force, was married to one Smt. Vidya Rani. Petitioner has contended that out of said wedlock, there were no issues, as such with mutual consent of Smt. Vidya Rani, it was resolved to live separately, and in this regard joint affidavit was sworn on 22.03.1999. Petitioner claims that he had taken consent of his first wife to marry again, and in this regard, petitioner further claims to have moved application on 09.08.1999 to his superior Officer for according him permission to enter into marriage. Petitioner, thereafter contracted marriage on 11.05.1999 with one Hirdayesh Kumari, who was no one else than a lady constable in the Rapid Action Force, a part of Central Reserve Police Force. On 21.09.1999, petitioner filed an application for divorce by mutual consent u/s 13-B of Hindu

Marriage Act, 1955. Respondent authorities decided to hold enquiry against petitioner under Rule 27 of the C.R.P.F. Rules, and articles of charge was communicated to petitioner on 31.10.1999. Charge levelled against petitioner was to the effect that petitioner had married Hirdayesh Kumari, although his first wife, Smt. Vidya Rani was still alive. In the said enquiry proceeding brother of Smt. Vidya Rani appeared as P.W. 3 and made categorical statement that even out of the wedlock of his sister with the petitioner, a daughter Km. Neelam was born and Smt. Vidya Rani was staying with her in-laws. Inquiry Officer concluded inquiry and found petitioner guilty of the charges, which had been levelled against him.

3. Thereafter by order dated 14.08.2000, petitioner was dismissed from service, holding that petitioner had contracted second marriage in the lifetime of his first wife. Against the said order of dismissal, petitioner preferred appeal, which was rejected by the appellate authority vide its order dated 04.2001. Revision filed against the said order also met the same fate. Feeling aggrieved, petitioner filed Civil Misc. Writ petition No. 12534 of 2004 before this Court. This Court vide its judgment dated 04.03.2005 quashed the orders of the Revising Authority as well as Appellate Authority and remanded the matter to the Appellate Authority. Categorical finding of fact has been recorded by this Court in its judgment that it is true that in contracting second marriage on 11.05.1999, petitioner violated Rule 15 of 1955 Rules since by merely swearing a joint affidavit, dissolution of marriage of petitioner with his first wife could not be accepted. This Court, however, proceeded to mention that mutual consent read with affidavit of the parties that they had decided to live separately was relevant fact while considering the quantum of punishment to be awarded on the petitioner. In this background, in respect of awarding quantum of punishment, matter was remanded back. This Court mentioned that matter required reconsideration in Appeal after taking into consideration the facts of the case and the application filed with mutual consent before issuance of charge sheet and order of civil court granting divorce by mutual consent. Thereafter appeal preferred on behalf of petitioner has been reconsidered, and the Appellate Authority has rejected the appeal by mentioning that punishment has been awarded as per Rules, inasmuch as, no government servant can enter into or contract second marriage while his spouse is alive or without obtaining decree of divorce from competent court of law. Appeal has been dismissed on 22.05.2006. Thereafter, Revision preferred against the same has also been dismissed on 10.10.2006. At this juncture present writ petition has been filed.

4. On behalf of respondents, counter affidavit has been filed, and therein it has been contended that marriage has been contracted by petitioner with lady constable Hirdayesh Kumari and both started living as wife and husband even without obtaining divorce from his first wife or prior permission from the [competent authority. It has also been stated that Smt. Vidya Rani is illiterate and innocent lady and has been misguided by petitioner. It has also been stated that out of the said wedlock of petitioner with Smt. Vidya Rani, a female child

Km. Neelam was born; she is alive and living with her mother. Photograph of the same effect was even produced before Inquiry officer, and this fact has also been recorded by the Inquiry Officer in his report. In this background, it has been contended that claim of petitioner is totally based on falsehood, and in this background, as provisions of Rule 15 read with Rule 21 (2) (c) of C.C.S. (Conduct) Rules, 1964 have been violated. Further in respect of factum of marriage in between petitioner and Smt. Hirdayesh Kumari reference has been given of various documentary evidence, which clinchingly establish marriage and in this background, it has been contended that no interference is required.

5. Rejoinder affidavit has been filed and therein the statement of fact "mentioned in the counter affidavit has been disputed and that of writ petition has been reiterated.

After pleadings have been exchanged, present writ petition has been taken up for final hearing and disposal with the consent of the parties.

6. Sri Jitendra Singh, learned Counsel for petitioner, contended with vehemence that in the present case punishment of dismissal from service is totally unjustifiable and the same is not at all commensurate to the charge levelled, and coupled with this Section 11 (1) of the Central reserve Police force Act, 1949 is confined to only minor charges. Thus, the incumbent found guilty could have been awarded punishments which are mentioned therein and the order of dismissal is not provided therein as such same is unjustifiable, as such writ petition deserves to be allowed.

7. Sri S.K. Mishra, Advocate, appearing for the respondents, on the other handed, contended that in the present case, this Court had earlier remanded the matter back to the appellate authority with direction to go into the question of quantum of punishment only, and once this is a proven case of misconduct, then punishment which has been awarded is totally justifiable action and punishment has been accorded as per rules and no interference is warranted.

8. In order of consider the first argument which has been advanced by petitioner that enquiry u/s 11 (1) Central Reserve Police Force Act, 1949 (in short the "Act") is confined to only minor charges and in this background only punishments which have been mentioned therein can be awarded and the order of dismissal is beyond jurisdiction, is being looked into. For ready reference the provisions of Section 11 of the said Act and Rule 27 of the Central Reserve Police Rules, 1955 (in short the "Rules") are being quoted below:

C.R.P.F. Act, 1949

Section 11 - Minor Punishment:

1) The Commandant or any other authority or officer as may be prescribed, may, subject to any rules made under this Act, award in lieu of, or in addition to, suspension or dismissal any one or more of the following punishments to any member of the Force whom he considers to be guilty of disobedience, neglect of

duty, remissness in the discharge of any duty or of other misconduct in his capacity as a member of the Force, that is to say:

- a) reduced in rank;
- b) fine of any amount not exceeding one month's pay and allowances;
- c) confinement to quarter, lines or camp for a term not exceeding one month;
- d) confinement in the quarter-guard for not more than twenty eight days, with or without punishment drill or extra guard, fatigue or other duty, and
- e) removal from any office of distinction or special emolument in the Force.

C.R.P.F. Rules. 1955

27 : Procedure for the Award of Punishment - (a) The punishment shown as items 1 to 11 in column 2 of the table below may be inflicted on non-gazetted officers and men of the various ranks shown in each of the headings of columns 3 to 6, by the authorities named below such headings under the conditions mentioned in column 7.

	Sl.	Punishment	Sub- Constable	Sub- Inspector	Others except enrolled followers	except enrolled followers
	Remarks	No.	Inspector	Constable	&	
	followers	followers				
			1	2	3	4
			5	6	7	
	1. Dismissal or DIGP	DIGP	Commdt.	Commdt.	To be removal from the; inflicted force, after forma	departmental enquiry
	2. Reduction to a DIGP	DIGP	Commdt.	Commdt.	To be lower time-scale of inflicted pay, grade, post or after formal	service departmental enquiry
	3. Reduction to a DIGP	DIGP	Commdt.	Commdt.	To be lower stage in the inflicted time-scale of pay after formal for a specified	departmental period enquiry
	4. Compulsory DIGP	DIGP	Commdt.	Commdt.	To be retirement inflicted after formal	departmental enquiry
	5. Fine to pay amount DIGP	DIGP	Commdt.	Commdt.	To be not exceeding one inflicted month's pay and after formal	allowances departmental enquiry
	6. Confinement in the DIGP	DIGP	Commdt.	Commdt.	To be Quarter Guard. inflicted exceeding seven after formal days but not more	departmental than twenty eight enquiry days with or without punishment drill or extra guard fatigue or other duty
	7. Stoppage of DIGP					

DIGP Commdt. Commdt To be increment inflicted after formal departmental enquiry _____

_____ 8. Removal from any DIGP DIGP Commdt. Commdt. May be office of distinction inflicted of special after formal emolument in the departmental Force enquiry _____

9. Censure Comdt. Comdt. Asst. Asst. May be Comdt. Or Comdt. inflicted Coy Or; Coy after formal Comdr. Comdr. departmental enquiry _____

_____ 10. Confinement to Comdt. May be Quarter Guard for inflicted not more than after formal seven days with or departmental without enquiry punishment or extra guard fatigue or other duty _____

_ 11. Confinement to Comdt. May be Quarters lines, inflicted camp, punishment after formal drill, fatigue duties departmental etc. for a term not enquiry exceeding one month _____

9. Much reliance has been placed by the petitioner on Division Bench of his Court in case of Giriraj Sharma v. Union of India reported in 1989 (1) UPLBEC 351, wherein this Court has taken the view that in case inquiry initiated is confined to only minor charges, then officer cannot be awarded punishment which are not mentioned therein. It has been mentioned therein that punishments do not include a punishment by way of dismissal. Said judgment of Division Bench of this Court does not lay down a good law inasmuch as, the language of Section 11 (1) is clear and explicit as it mentions that Commandant or any other authority or officer as may be prescribed, may, subject to any rules made under this Act, award in lieu of, or in addition to, suspension or dismissal any one or more of the following punishments to any member of the Force. Thus, the exercise of authority u/s 11 (1) of the Act is subject to any rules made under the Act and in lieu of, or in addition to, suspension or dismissal any one or more punishments provided for can be awarded. This aspect of the matter has not been considered in the said of this Court.

10. This aspect of the matter has been noted down by Apex Court in the case of Union of India (UOI) and Others Vs. Ghulam Mohd. Bhat, , by taking the view that the use of words, "in lieu of" or "in addition to" suspension or dismissal, appearing in Sub-section (1) of Section 11 before Clauses (a) to (e) shows that authorities mentioned therein are empowered to award punishment of dismissal or suspension to the member of the force, who is found guilty, and in addition to, or in lieu thereof, the punishment mentioned in Clause (a) to (e) may also be awarded, relevant paragraphs of which are being quoted below:

Challenge in this appeal is by the Union of India and its functionaries to the judgment rendered by a learned Single Judge of the Jammu and Kashmir High Court holding that the order of removal from service passed by the departmental

authorities in terms of Section 11(1) Central Reserve Police Force Act, 1949 (in short the "Act") read with Rule 27 of the Central Reserve Police Rules, 1955 (in short the "Rules") is without jurisdiction.

2. The background facts need to be noted in brief:

The respondent as a Constable in Central Reserve Police Force (in short "CRPF") joined the duty at Srinagar after being detailed for duty from Assam along with a group of fresh trainees. He applied for leave on 18th January, 1992 which was sanctioned. He reported for duty long after the sanctioned leave period was over on 8th December, 1992. Departmental proceedings were initiated for misconduct on account of overstay beyond sanctioned leave for 315 days without prior permission or sanction from the competent authority. On 21-6-1993 on the basis of the report of the inquiry officer, the competent authority passed order of removal from service. The same was challenged by the respondent by filing a writ petition in the Jammu and Kashmir High Court. By impugned order dated 5-8-1997 a learned Single Judge held that since the respondent was proceeded against in terms of Section 10(m) of the Act read with Rule 27 of the Rules, the order of removal is without jurisdiction. It was observed that Section 10(m) only provided for minor punishment and did not provide for the punishment of removal from service. Accordingly the order of removal was quashed but, however, liberty was given to proceed in accordance with the provisions of the Act and the Rules.

3. Learned Additional Solicitor General appearing for the appellants submitted that the view taken by the High Court is clearly indefensible. It was submitted that Section 11 did not provide for only minor punishment, It provided that the enumerated punishments were in lieu of or in addition to order of suspension or dismissal as the case may be. Rule 27 clearly permitted the order of removal from service and no interference by the High Court was called for. There is no appearance on behalf of the respondent in spite of service.

4. The scope and ambit of Section 11 and Rule 27 has been called for determination in this appeal.

5. A bare perusal of Section 11 shows that it deals with minor punishment as compared to the major punishments prescribed in the preceding section. It lays down that the Commandant or any other authority or officer, as may be prescribed, may, subject to any rules made under the Act, award any one or more of the punishments to any member of the force who is found guilty of disobedience, neglect of duty, or remissness in the discharge of his duty or of other misconduct in his capacity as a member of the force. According to the High Court the only punishments which can be awarded under this Section are reduction in rank, fine, confinement to quarters and removal from any office of distinction or special emolument in the force. In our opinion, the interpretation is not correct, because the section says that these punishments may be awarded in lieu of, or in addition to, suspension or dismissal.

6. The use of words "in lieu of, or in addition to, suspension or dismissal", appearing in Sub-section (1) of Section 11 before Clauses (a) to (e) shows that the authorities mentioned therein are empowered to award punishment of dismissal or suspension to the member of force who is found guilty and in addition to, or in lieu thereof, the punishment mentioned in Clause (a) to (e) may also be awarded.

7. It may be noted that Section 9 of the Act mentions serious or heinous offences and also prescribes penalty which may be awarded for them. Section 10 deals with less heinous offences and Clause (m) thereof shows that absence of a member of the force without leave or without sufficient cause or overstay without sufficient cause, is also mentioned as less heinous offence and for that also a sentence of imprisonment is provided. It is, therefore, clear that Section 11 deals with only those minor punishments which may be awarded in a departmental inquiry and a plain reading thereof makes it quite clear that a punishment of dismissal can certainly be awarded thereunder even if the delinquent is not prosecuted for an offence u/s 9 or Section 10.

8. It is fairly well settled position in law that removal is a form of dismissal. This Court in *Dr. Dattatraya Mahadev Nadkarni (since deceased by his L. Rs.) Vs. Municipal Corporation of Greater Bombay*, explained that removal and dismissal from service stand on the same footing and both bring about termination of service though every termination of service does not amount to removal or dismissal. The only difference between the two is that in the case of dismissal the employee is disqualified from future employment while in the case of removal he is not debarred from getting future employment. Therefore, dismissal has more serious consequences in comparison to removal. In any event, Section 11(1) refers to Rules made under the Act under which action can be taken. Rule 27 is part of Rules made under the Act. Rule 27 clearly permits removal by the competent authority. In the instant case the Commandant who had passed the order of removal was the competent authority to pass the order.

11. Not only this, recently in a reference, which was made before Division Bench of this Court in writ petition No. 16436 of 2006, *Bhupendra Singh v. State of U.P. and Ors.* decided on 13.07.2007, while considering the provisions of Section 7 of the Police Act, 1861 vis-a-vis the provisions of Rule 4 (1) (b) (i) of the U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991, Division Bench has considered in extenso the purport of meaning of the word "subject to". Before Division Bench, argument was that punishment has been provided for u/s 7 of the Police Act, 1861 and thus by way of Rules, punishment cannot be provided for, and in this background, issue has been answered by considering the word "subject to" occurring in different Articles of the Constitution as well as in context of other provisions, and it has been ruled that Section 7 of the Police Act shall yield to Rules framed thereunder, which provides for the same subject. Relevant extract from the aforesaid judgment is being quoted as follows:

While discussing the scheme of the statutory provisions, we have already come

to the conclusion that Section 7 of the Act which provides for imposition of punishment, out of which some are major punishment and some are minor punishment, has been made subject to the provision of Article 311 of the Constitution of India and the rules framed by the State Government. Prior to framing of the Rules, major and minor punishments were dealt with by Regulation 478 of the Regulations framed by the State Government. Regulation 478 has been held to be valid, specially Clause (be) which provides for awarding misconduct entry in the character roll. In the case of Chaman Singh (supra) the Division Bench of this Court has, after quoting the observations of the Apex Court in the case of Babu Ram Upadhaya (supra), held that the Police Regulations embodied in Chapter XXXII in which Regulations 478 and 478-A forms part, has been framed u/s 7 read with Section 46 of the Act. It may be mentioned here that the aforesaid punishment is not mentioned in Section 7 of the Act.

The words "subject to" occurs in different articles of the Constitution of India. In Clause (2) of Article 229 of the Constitution of India, the Chief Justice of the Court has been authorised, to prescribe by rules, the conditions of service of the officers and servants of a High Court. However, it is subject to the provisions of any law made by the legislature of the State.

Applying the principles laid down in the aforesaid cases to the facts of the present case, we are of the considered opinion that as Section 7 has been made subject to the rules framed by the State Government, Rule 4(1)(b)(M of the Rules which provides for awarding censure entry for the misconduct, is a valid piece of legislation and would not be beyond the scope of Section 7 of the Act. It may be mentioned here that the punishment which have been provided in Section 4 of the Rules is to be treated as supplanting the punishment as provided u/s 7 of the Act.

12. Thus, from the decision quoted above and the principle settled, it is clear that in proceeding initiated u/s 11 (1) of 1949 Act then read with Rule 27 of 1955 Rules, punishment of dismissal could be inflicted after formal departmental enquiry, as Rule 27 is to be treated as supplanting the punishment as provided u/s 11 (1) of the 1949 Act, as such argument advanced that Section 11 (1) of 1949 Act talks only of minor penalties and only the penalties mentioned therein could have been imposed, is unsustainable and in ignorance of the provisions as contained under the Rules. Thus first argument falls to the ground.

13. The next-argument, which has been advanced is that the punishment, which has been awarded is not at all commensurate to the charges levelled; and in the backdrop and special feature of the case, that there was affidavit of the parties of separation and there was divorce by mutual consent, as such lesser punishment ought to have been imposed, on this ground, order in question is liable to be quashed. Before proceeding to consider this question, the scope and authority of judicial review in all these matters in respect of disciplinary proceeding and inflicting punishment is being looked into. In judicial review, it is settled law that

the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the view of the Court or Tribunal. When the conclusion reached by the authority is based on evidence, Tribunal/Court is devoid of power to reappraise the evidence and come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence. Imposition of punishment is within the discretion and judgment of Disciplinary authority and Court/Tribunal shall not interfere with the same, unless the same shocks the conscience of Court Tribunal.

14. Hon''ble Apex Court in *Rae Bareilly Kshetriya Gramin Bank Vs. Bhola Nath Singh and others*, held as follows:

Under these circumstances, the question arises whether the High Court would be correct in law to appreciate the evidence and the manner in which the evidence was examined and to record a finding in that behalf. Judicial review is not akin to adjudication of the case on merits as an appellate authority. The High Court, in the proceedings under Article 226 does not act as an appellate authority but exercises within the limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. In this case, no such errors were pointed out nor any finding in that behalf was recorded by the High Court. On the other hand, the High Court examined the evidence as if it is a court of first appeal and reversed the finding of fact recorded by the enquiry officer and accepted by disciplinary authority. Under these circumstances, the question of examining the evidence, as was done by the High Court, as a first appellate court, is wholly illegal and cannot be sustained.

15. Hon''ble Apex Court in *In R.S. Saini Vs. State of Punjab and Others*, the Supreme Court took the following view:

Before advert to the first contention of the appellant regarding want of material to establish the charge, and of non-application of mind, we will have to bear in mind the rule that the court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings.

A narration of the charges and the reasons of the inquiring authority for

accepting the charges, as seen from the records, shows that the inquiring authority has based its conclusions on materials available on record after considering the defence put forth by the appellant and these decisions, in our opinion, have been taken in a reasonable manner and objectively. The conclusion arrived at by the inquiring authority cannot be termed as either being perverse or not based on any material nor is it a case where there has been any non-application of mind on the part of the inquiring authority. Likewise, the High Court has looked into the material based on which the enquiry officer has come to the conclusion, within the limited scope available to it under Article 226 of the Constitution and we do not find any fault with the findings of the High Court in this regard.

16. Hon''ble Apex Court In the case of Lalit Popli Vs. Canara Bank and Others, the held as follows:

While exercising jurisdiction under Article 226 of the Constitution the High Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority.

17. Hon''ble Apex Court, in the case of B.C. Chaturvedi Vs. Union of India and others, , has taken the view that disciplinary authority and on appeal the appellate authority, being fact finding authorities have exclusive power to consider evidence and maintain discipline, and to impose punishment accordingly. Relevant paragraph 18 is being extracted below:

18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court / Tribunal, it would appropriately mould the relief, either directing the disciplinary / appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

18. Hon''ble Apex Court, in the case of Union of India and another Vs. G. Ganayutham (Dead) by LRs., took the view that judicial review is permissible, only when Court/Tribunal opines in its secondary role, that Administrator, on material before him was irrational according to Wednesbury or CCSU norms, the punishment cannot be quashed, and matter has to be remitted back. Relevant paragraphs 31 and 32 are being quoted below:

31. In such a situation, unless the Court/Tribunal opines in its secondary role,

that the administrator was, on the material before him, irrational according to Wednesbury or CCSU norms, the punishment cannot be quashed. Even then, the matter has to be remitted back to the appropriate authority for reconsideration. It is only in very rare cases as pointed out in B. C. Chaturvedi's case AIR 1995 SCW 4374 that the Court might, - to shorten litigation - think of substituting its own view as to the Quantum of punishment in the place of the punishment awarded by the competent authority. (In B. C. Chaturvedi and other cases referred to therein it has however been made clear that the power of this Court under Article 136 is different). For the reasons given above, the case cited for the respondent, namely, State of Maharashtra Vs. M.H. Mazumdar, cannot be of any help.

32. For the aforesaid reasons, we set aside the order of the Tribunal which has interfered with the quantum of punishment and which has also substituted its own view of the punishment. The punishment awarded by the departmental authorities is restored. In the circumstances, there will be no order as to costs.

19. Hon"ble Apex Court, in the case of State of Rajasthan v. Mohammad Ayub Naz AIR 20061 SC 856, has re-examined and reiterated the same view, as already taken above. Paragraphs 7 to 13 are being extracted below:

7. Mr. Surya Kant, learned Counsel appearing for the respondent, submitted that the respondent was deprived to attend the enquiry proceedings without any fault on his part and that he was not allowed to sign the attendance register and not allowed to work. Supporting the finding of the learned Single Judge, learned Counsel submitted that the learned Single Judge, after according the finding in favour of the respondent, was right in passing the impugned order on the basis of which the respondent was entitled to reinstatement with all back-wages. But the total relief was not granted and that the learned Single Judge has granted the lesser relief to the respondent. Even from the judgment and enquiry report, it is borne out that the respondent was absent on medical grounds and this situation cannot be treated as wilful absence from duty and that the High Court has not given a lesser punishment but in fact only a lesser relief and that the High Court after holding on merit that removal order cannot be sustained instead of reinstatement with full back-wages lesser relief of compulsory retirement has been granted and, therefore, the order passed by the learned Single Judge and as affirmed by the Division Bench does not call for any interference. It was further submitted that considering the 18 years period of service a lesser punishment has been imposed which does not call for any interference. Thus the present civil appeal raises the following questions of law:

a) Whether the High Court can interfere with the decision of imposing punishment once the High Court finds that finding of the delinquent being absent for a period of 3 years as correct;

b) Whether the High Court is right in converting the punishment of removal into compulsory retirement with consequential retrial benefits after endorsing that the

respondent did remain absent for about 3 years and that there was no satisfactory explanation to justify absence of 3 years.

8. We have carefully gone through the pleadings, annexures filed along with this appeal and the judgments passed by the High Court.

9. Absenteeism from office for prolong period of time without prior permission by the Government servants has become a principal cause of indiscipline which have greatly affected various Government Services. In order to mitigate the rampant absenteeism and wilful absence from service without intimation to the Government, the Government of Rajasthan inserted Rule 86(3) in the Rajasthan Service Rules which contemplated that if a Government servant remains wilfully absent for a period exceeding one month and if the charge of wilful absence from duty is proved against him, he may be removed from service. In the instant case, opportunity was given to the respondent to contest the disciplinary proceedings. He also attended the enquiry. After going through the records, the learned Single Judge held that the admitted fact of absence was borne out from the record and that the respondent himself has admitted that he was absent for about 3 years. After holding so, the learned Single Judge committed a grave error that the respondent can be deemed to have retired after seeking of service of 20 years with all retiral benefits which may be available to him. In our opinion, the impugned order of removal from service is the only proper punishment to be awarded to the respondent herein who was wilfully absent for 3 year? without intimation to the Government, The facts and circumstances and the admission made by the respondent would clearly go to show that Rule 86(3) of the Rajasthan Service Rules is proved against him and, therefore, he may be removed from service.

10. This Court in *Om Kumar and Ors. v. Union of India* (2001) 2 SCC 386 while considering the quantum of punishment/proportionality has observed that in determining the quantum, role of administrative authority is primary and that of court is secondary, confined to see if discretion exercised by the administrative authority caused excessive infringement of rights. In the instant case, the authorities have not omitted any relevant materials nor any irrelevant fact taken into account nor any illegality committed by the authority nor the punishment awarded was shockingly disproportionate. The punishment was awarded in the instant case, after considering all the relevant materials and, therefore, in our view, the interference by the High Court on reduction of punishment of removal is not called for.

11. It was argued by learned Counsel for the respondent that this Court while reviewing punishment and if it is satisfied that *Wednesbury* principles are violated, it has normally to remit the matter to the administrative authorities for a fresh decision as to the quantum of punishment. We are unable to countenance the said submission. In the instant case, the disciplinary proceedings were initiated against the respondent in the year 1981 and that the Division Bench disposed of the LPA only in December, 2001. Therefore, there has been a long

delay in the time taken by the disciplinary proceedings and in the time taken in the course and, therefore, in such rare cases, this Court can substitute its own view as to the quantum of punishment.

12. In this context, we can usefully refer to the case of B.C. Chaturvedi Vs. Union of India and others, (3 Judges) wherein this Court held thus:

Ramaswamy, J for himself and B.P. Jeevan Reddy, J.- Disciplinary authority and on appeals, appellate authority are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal; it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

13. Therefore, we do not propose to issue a direction to the disciplinary/appellate authority to reconsider the penalty imposed. As pointed out by this Court in the above judgment and in order to appropriately mould the relief and to shorten the litigation, we ourselves impose the punishment of removal from service which was imposed by the disciplinary authority in the instant case which, in our view, is the appropriate punishment.

20. The meaning and scope of misconduct was examined by the Supreme Court in M.M. Malhotra Vs. Union of India (UOI) and Others, . The charges levelled in the show-cause notice issued to the appellant were in respect of having illicit relations with Miss Anna Suja John; ill-treatment meted out and criminal force used by the appellant on his wife and having contracted "plural marriage" with Miss Anna Suja John. The Inquiry Officer on a consideration of the materials observed that there was irrefutable evidence of plural marriage and disgraceful conduct of not only sleeping with Miss Anna Suja John but also using criminal force against his wife. This brought about an order of compulsory retirement which was challenged in the High Court. The High Court dismissed the writ petition and held that the conduct of the appellant was unbecoming of a member of the disciplined force and held that he was guilty of an act which was prejudicial to the good order and discipline. The Supreme Court observed that the subsequent marriage with Miss Anna Suja John was not a case of plural marriage but then it also examined the other contention regarding cruelty and torture having been meted out to his wife since the High Court had highlighted how such acts were prejudicial to good order and discipline. In this context, the Supreme Court observed as follows:

The range of activities which may amount to acts which are inconsistent with the interest of public service and not befitting the status, position and dignity of a

public servant are so varied that it would be impossible for the employer to exhaustively enumerate such acts and treat the categories of misconduct as closed. It has, therefore, to be noted that the word "misconduct" is not capable of precise definition. But at the same time though incapable of precise definition, the word "misconduct" on reflection receives its connotation from the context, the delinquency in performance and its effect on the discipline and the nature of the duty. The act complained of must bear a forbidden quality or character and its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the statute and the public purpose it seeks to serve.

21. The Supreme Court, therefore, held that though the charge of plural marriage could not be established, yet taking into account the other allegations, it was an act prejudicial to good order and discipline.

22. In the present case on parameters set down in the aforesaid judgments, claim of petitioner is being adverted to. Qua misconduct, being committed by petitioner, there is no dispute, as on admitted position, without there being decree of divorce, without there being permission from the Central Government, during the life time of his first wife Smt. Vidya Rani, he contracted marriage with Hirdayesh Kumar, another constable in Rapid Action Force, a part of Central Reserve Police Force. It is true that on earlier occasion, this Court while remanding the case back, had made a categorical mention that while considering quantum of punishment the circumstances of the case culminating into decree of divorce by mutual consent dated 19.10.2000 and the application which was filed by the parties on 21.09.1999 be kept into mind. The Appellate Authority has considered this aspect of the matter and has taken note of the fact that decree of divorce was issued by civil court on 19.10.2000, whereas, petitioner had already entered into second marriage with Smt. Hirdayesh Kumari on 11.05.1999, which is in violation of Rule 15 of 1955 Rules and Rule 21 of CCS (Conduct) Rules, 1964. Authority concerned has categorically mentioned that petitioner had contracted second marriage while his first wife was alive and the punishment has been awarded keeping in mind the offence committed by him. Interference with the quantum of punishment is extremely limited. It is only when punishment imposed is so disproportionate to the act or omission constituting misconduct, or it shocks the conscience of the Court, only then court may interfere and not otherwise. In the present case misconduct of petitioner has been found to be proved and under Rule 15, there is specific prohibition, for contracting marriage, by member of Force, with wife living. This Court in judgment dated 18.05.2006, in Civil Misc. Writ Petition No. 27190 of 1997, Veerpal Singh v. Senior Superintendent of Police, Agra took the view that in any country where bigamy is offence, a government servant guilty of committing offence cannot be asked to continue in service, after award of lesser sentence.

23. In the present case, the punishment which has been imposed is not such, which shocks the conscience of the Court, as this fact cannot be ignored that

Smt. Vidya Rani is an illiterate lady and her brother, who was produced before Inquiry Officer as a witness on 01.05.2000, made categorical statement that Smt. Vidya Rani had been living with her in-laws in the village and out of the said wedlock a female child, namely Km. Neelam was born. The brother of Smt. Vidya Rani, Indrajeet had been cross examined at length but at no point of time his testimony was impeached in any manner, whatsoever. After the order of punishment has been passed, then the affidavit dated 17.08.2000 sought to have been filed on behalf of Indra Jeet Singh, disowning his statement before the Inquiry officer by mentioning that pressure was exerted upon him. This clearly demonstrates and establishes that all sorts of endeavour was made by petitioner to save his service by any means. Even before this Court in paragraph 13 of the counter affidavit, categorical stand has been mentioned that out of the said wedlock, female issue has taken birth and is still alive. It has also been mentioned that there was photograph of child with her mother. Said categorical statement of fact in paragraph 13 of the counter affidavit has been dealt with in paragraph 13 of the rejoinder affidavit, and therein, it has been mentioned that the contents of paragraph under reply are incorrect, hence denied, and then petitioner proceeds to mention that he has no issue from Smt. Vidya Rani and the alleged girl was of his younger brother, which was adopted by the petitioner.

24. All these facts clearly demonstrate self contradictory stand set up and taken by petitioner. In this background and keeping in view the object of Rule 15, which has a social goal i. e. to save the matrimonial home, no interference is being made with the punishment awarded.

25. Consequently, writ petition fails and is dismissed.