

(2026) 03 OHC CK 1074
In the Orissa High Court
Case No : Writ Appeal No. 589 Of 2025

State Of Odisha & Others

APPELLANT

Vs

Bansidhar Bariki

RESPONDENT

Date of Decision : 20-03-2026

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 29
Code Of Criminal Procedure, 1973 — Section 235(1)

Citation : (2026) 03 OHC CK 1074

Hon'ble Judges : Manash Ranjan Pathak, J;Sibo Sankar Mishra, J

Bench : Division Bench

Advocate : Debaraj Mohanty, Srinivas Mohanty

Final Decision : Dismissed

Judgement

Sibo Sankar Mishra, J

1. The present Writ Appeal arises from the judgment dated 20.11.2024 passed by the learned Single Judge in W.P.(C) No.2265 of 2023, whereby the learned Single Judge was pleased to set aside the order of dismissal dated 05.07.2022 passed by the Superintendent of Police, Kandhamal and the appellate order dated 13.12.2022 passed by the Inspector General of Police, Southern Range, Berhampur, and further directed reinstatement of the writ petitioner with all consequential service and financial benefits.

2. Heard Mr. Debaraj Mohanty, learned Additional Government Advocate, appearing for the appellants-State and Mr. Srinivas Mohanty, learned counsel on behalf of the respondent/writ petitioner.

3. The facts of this case, in brief, are that the respondent was serving as a Constable in the Odisha Police establishment. On the basis of an allegation arising out of Kandhamal Sadar P.S. Case No.68 dated 29.05.2015, registered under Section 20(b)(ii)(C) read with Section 29 of the NDPS Act, he came under

the scanner and was exposed to both criminal prosecution and departmental proceedings.

4. The criminal case started with the alleged illegal transportation of ganja in a TATA Magic vehicle, wherein it was alleged that certain accused persons were involved in the transportation of contraband articles and during the course of investigation, the name of the respondent surfaced, allegedly on the statement of a co-accused. Simultaneously, departmental proceedings were initiated against him on the allegation of misconduct arising out of alleged involvement in narcotic trafficking, which was treated as grave misconduct under the Odisha Government Servants' Conduct Rules, 1959.

5. The respondent, apprehending prejudice on account of parallel proceedings, approached the Odisha Administrative Tribunal seeking stay of the departmental proceedings till the conclusion of the criminal trial. The Tribunal, vide order dated 29.12.2016, while permitting continuation of the departmental inquiry, restrained the authorities from passing final orders till the conclusion of the criminal case.

6. The criminal prosecution concluded in trial before the Court of learned Additional Sessions Judge-cum-Special Judge, Phulbani in G.R. Case No.59 of 2015. The prosecution examined multiple witnesses to establish conspiracy and abetment under Section 29 of the NDPS Act.

The defence of the present respondent primarily rested on denial of involvement and plea of alibi, supported by documentary evidence and testimony indicating that during the relevant period he was undergoing official training. The defence also highlighted the absence of recovery from conscious possession, the absence of identification evidence, and the absence of corroborative material linking him to the seized contraband.

Upon appreciation of oral and documentary evidence, the Court recorded findings that though seizure of contraband ganja from the vehicle stood established, there was no material establishing nexus of the accused persons with the seized contraband. The court further found that the respondent had successfully established the plea of alibi by producing training records and supporting testimony. Consequently, by judgment dated 26.11.2018, the respondent and co-accused were acquitted under Section 235(1) Cr.P.C., recording that the prosecution had failed to prove the charges. The relevant portion of the aforesaid judgment is extracted herein below:-

"10. Examined the evidence on record, it is clear that, all occupants, for the vehicle, fled away and so, the articles was never seized, from the exclusive conscious possession of the any of the accused and further, non has stated, any link of the accused person, with the said commission of the offence i.e., abetment and conspiracy. So far as, the Bansidhara Barik is concerned, he has duly established, the plea of alibi that, during the relevant date and time, he was under the training at Phulbani and has witness also. The prosecution also supports the case and according, to the prosecution case, this accused came

during the time of seizure, to support the detecting staff to identify the actual culprit, and further, intimate, according to him the intimation, to the Superintendent of Police. So far as, the accused Jitendra is concerned, P.W-15 has stated that on verification, of the CDR, he could link the accused, with this case but surprisingly, he has stated, although, he has examined seven persons, non has stated, regarding the involvement of the accused Jitendra Pradhan, in this case. In the TI Parade, he has never identified and the CDR and not established, the subject matter of the, talk between the two persons and hence, I do not find, any relevant of the present accused Jitendra Pradhan, in this case and so, without, further discussion, the irresistible conclusion is that, although, the seizure of the ganja item, is a fact, but the accused persons are not liable for that a n d accordingly, they are found not guilty for the offence, charged in this case.

11. Accordingly, the accused persons are found not guilty for the commission offence U/s- 29 of NDPS Act and they are acquitted there under U/s- 235(1) Cr.P.C. They be set at liberty forthwith and discharged from their bail bond.

Enter it as "insufficient evidence".

7. Notwithstanding acquittal in the criminal case, the disciplinary authority proceeded with the departmental inquiry and ultimately passed order dated 05.07.2022 dismissing the respondent from service. The disciplinary authority concluded that the respondent had committed grave misconduct unbecoming of police personnel.

8. The respondent preferred departmental appeal in the nature of representation before the Inspector General of Police, Southern Range, Berhampur. The appellate authority, by order dated 13.12.2022, affirmed the dismissal order without granting relief.

9. Aggrieved by the order of dismissal passed by the disciplinary authority and its confirmation by the appellate authority, the respondent approached this Court by filing W.P.(C) No.2265 of 2023, invoking the extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India. The primary contention raised before the learned Single Judge was that the criminal prosecution as well as the departmental proceeding were founded on identical allegations arising out of the same factual matrix and were supported by substantially the same set of evidence. It was urged that the criminal court, after conducting a full-fledged trial and appreciating both oral and documentary evidence, had acquitted the respondent by recording a categorical finding that the prosecution had failed to establish his involvement in the alleged offence. It was further contended that the disciplinary authority, while passing the order of punishment, had failed to undertake any independent assessment of evidence and had proceeded merely on assumptions and conjectures, thereby rendering the findings perverse and unsustainable in law. The respondent also asserted that the departmental proceedings suffered from violation of the principles of

natural justice and fair play in action.

10. The learned Single Judge, upon examining the rival submissions advanced by the parties and upon careful consideration of the materials available on record, placed reliance upon the principles laid down in several judgments. Upon such consideration, the learned Single Judge came to hold that in the facts and circumstances of the present case, the acquittal recorded by the criminal court was not merely technical in nature but was based on failure of the prosecution to establish the involvement of the respondent in the alleged offence. The learned Single Judge further held that the disciplinary authorities had failed to demonstrate the existence of any independent material or evidence which could justify the imposition of punishment despite the acquittal recorded in the criminal trial. Accordingly, the learned Single Judge set aside the order of dismissal as well as the appellate order affirming the same and directed reinstatement of the respondent with all consequential service and financial benefits. The relevant portion of the aforesaid judgment is extracted herein below:-

"9.10. Regard being had to the conspectus of decisions as referred to in foregoing paragraphs vis-a-vis diligent consideration of factual matrix of the case at hand, this Court is of the considered view that decision making process of the Disciplinary Authority as also the Appellate Authority erroneous and untenable. The Order vide Memo dated 13.12.2022 issued by the Inspector General of Police, SR, Berhampur and the Order of dismissal vide Memo dated 05.07.2022 are, thus, vulnerable and warrant intervention.

9.11. Accordingly, for the reasons stated hitherto and for the discussions made supra the Order of the Disciplinary Authority, namely. Superintendent of Police, Kandhamal vide Annexure-7 and the Order of the Inspector General of Police confirming said order of the Disciplinary Authority vide Annexure-9 stand set aside.

9.12. Ex consequenti, the writ petition is allowed, and the petitioner, being dismissed in absence of his fault, is entitled to be reinstated with all consequential service and financial benefits. Needless to indicate that the authorities shall do the needful by extending such benefits as expeditiously as possible preferably within a period of one month from the date of receipt of certified copy of this Judgment to be furnished by the petitioner to the authorities.

10. In view of the aforesaid observation and direction, the writ petition stands disposed of."

11. Mr. Mohanty, learned Additional Government Advocate appearing for the appellants-State submitted that the impugned judgment passed by the learned Single Judge is contrary to the settled principles governing the relationship between criminal proceedings and departmental proceedings. It is contended that it is a well-established proposition of service jurisprudence that acquittal in a criminal case does not ipso facto debar or nullify disciplinary proceedings, even if

both arise out of the same set of facts. He submitted that the object, scope, and standard of proof in criminal law and departmental proceedings operate in distinct fields. While criminal prosecution requires proof beyond reasonable doubt and is aimed at punishing an offence against society, departmental proceedings are governed by the doctrine of preponderance of probabilities and are intended to maintain discipline, integrity, and efficiency in public service. He argued that misconduct under service rules is an independent facet and is not automatically extinguished by an acquittal in a criminal trial. In support of such proposition, he placed reliance on the judgments of the Hon^{ble} Supreme Court in *Nelson Motis vs. Union of India*, reported in (1992) 4 SCC 711; *Depot Manager, A.P.S.R.T.C vs. Mohd. Yusuf Miya*, reported in (1997) 2 SCC 699; and *Ajit Kumar Nag vs. General Manager (PJ), Indian Oil Corporation Ltd.*, reported in (2005) 7 SCC 764.

12. Mr. Mohanty, further submitted that the Hon^{ble} Apex Court in *Deputy Inspector General of Police vs. S. Samuthiram*, reported in (2013) 1 SCC 598, has categorically held that mere acquittal in a criminal case does not entitle an employee to reinstatement unless the service rules specifically provide for such consequence. It is contended that even an honorable acquittal does not automatically confer a right to reinstatement, particularly in the case of members of disciplined forces, where the standard of conduct expected is much higher. He argued that in the present case, the respondent was proceeded against for misconduct under the relevant Government Servant Conduct Rules and the disciplinary authority was fully competent to independently evaluate the conduct of the respondent based on materials available in the departmental inquiry. Therefore, the order of punishment imposed in the departmental proceeding was legal, justified, and in consonance with settled law.

13. It is further submitted by Mr. Mohanty that the learned Single Judge has exceeded the permissible limits of judicial review under Articles 226 and 227 of the Constitution of India by virtually re- appreciating the evidence and substituting his own findings in place of those of the disciplinary authority. It is contended that the Hon^{ble} Supreme Court in *State of Andhra Pradesh vs. S. Sree Rama Rao*, reported in AIR 1963 SCC Online SC 6, and subsequent decisions including *Union of India vs. H.C. Goel*, reported in 1963 SCC Online SC 16, and *State of Madras vs. G. Sundaram*, reported in 1964 SCC Online SC 86, has consistently held that the High Court, while exercising writ jurisdiction, cannot sit in appeal over findings of fact recorded in disciplinary proceedings. Interference is warranted only in cases where findings are based on no evidence, are perverse, or where there is violation of principles of natural justice. According to the appellants, none of these contingencies exists in the present case.

14. Mr. Mohanty, also relied upon the recent decision of the Hon^{ble} Supreme Court in *United Bank of India vs. Biswanath Bhattacharjee*, reported in (2022) 13 SCC 329, to submit that, though limited scrutiny is permissible to examine whether findings suffer from perversity or are based on irrelevant material, the High Court cannot undertake a detailed appellate review of evidence. It is argued

that the disciplinary authority in the present case has recorded findings based on materials available during inquiry and the same cannot be said to be based on no evidence or extraneous considerations. He therefore contended that the learned Single Judge has erred in law in interfering with the well-reasoned disciplinary order.

15. Mr. Srinivas Mohanty, learned counsel appearing for the respondent, on the other hand, has justified the detailed impugned Judgment passed by the learned Single Judge. He has submitted that the entire genesis of the present case revolves around the FIR being registered against the present respondent on the basis of which the departmental proceeding was initiated. Once judicially it is determined that the registration of the FIR and subsequent investigation is a culmination of a false narrative and accordingly the respondent has been honorably acquitted, the entire genesis of the case collapsed, hence the foundation itself has shaken from its root. Therefore, the departmental inquiry and its findings are based on no evidence at all.

16. In essence, Mr. Mohanty, learned counsel for the respondent, submitted that the findings of the disciplinary authority in any case cannot withstand the judicial scrutiny on the fact in issue before the court. The dismissal order vide memo dated 05.07.2022 and the appellate order vide memo dated 13.12.2022 cannot stand the scrutiny of law, once judicially it is determined that the respondent was not involved in the criminal case, which was made the basis of the departmental inquiry. He has also cited many judgments to substantiate his submission.

17. Since the entire case now rests upon the judicial findings recorded by the learned Addl. Sessions Judge-cum-Special Judge, Phulbani, in its judgment dated 26.11.2018 in G.R. Case No. 59 of 2015, we felt it appropriate to analyze its findings vis-à-vis the findings of the inquiry officer. The inquiry officer has relied upon the statement of ASI-A.K. Behera, ASI-J.K. Digal, S.I.-B.P. Rout, Havildar-K.C. Nayak, Havildar-P. Malik and Havildar- T.R. Naik. The same officers who have been examined by the inquiry officer were also examined by the prosecution in the trial conducted against the respondent as P.Ws.2, 3, 4, 10, 13 and 14 respectively. The evidence given by these witnesses before the trial Court and the statement made by the same set of witnesses before the inquiry officer are of no variation. These witnesses have stated that the respondent was present at the spot during the detection of Ganja in P.S. Case No. 68 of 2015. The respondent had disclosed his identity in that case at the spot and he had intended with a vested interest to interfere in the investigation to misguide the investigation process. The witnesses have also allegedly proved the involvement of the respondent in the criminal case. Within the close proximity of time, these witnesses being the official witnesses, have also deposed before the trial court almost in the similar line. It is in unison, all the witnesses have stated that on 29.05.2015 at 9.00 A.M., when they reached at Dadaki Chhaka and found that one white colour TATA Magic vehicle was coming from Dadaki side towards Phulbani and on seeing the police, they fled away, leaving the vehicle. They could

not apprehend them. They found three plastic bags containing ganja between the seats of the vehicle. Hence, they informed the same to the Officer-in-charge. The Officer-in-charge came with a weighing machine along with a weighman and Executive Magistrate. At that time, the present respondent alleged to have come to the spot and disclosed that he is a constable of Daringibadi P.S. and had seen one Rajkumar Behera @ Choudhury was transporting ganja in the vehicle. He also informed that the Superintendent of Police has been informed about the fact. About one hour after the Executive Magistrate came to the spot and in the presence of the magistrate, the bags were opened and contents were found to be ganja and on weighing the same, it was found to be 30 kg. 750 gms. of ganja. In the subsequent investigation, it was allegedly found that the present respondent was trying to mislead the investigating agency so as to escape his liability. It was further alleged that he himself was involved in the commission of crime.

18. P.Ws.8, 9 and 10, however, have not stated anything regarding the involvement of the present respondent in the trial court. The present respondent took a plea of alibi before the trial Court through his evidence D.W.1, one Santosh Kumar Mishra. The said witness deposed that the respondent was undergoing training from 25.05.2015 to 30.05.2015. He has placed on record the documentary evidence to that effect as Ext.21. The learned trial Court by analyzing the evidence came to the following conclusion:-

"7.In the evidence as per the D.W.1, during the relevant period, he was entrusted to impart training to the police staffs of the entire District and on 25.05.2015 to 30.05.2015, one Bansidhara Barik constable of police attached to Daringbadi P.S. vide C/385 is one among the trainee. The duration of the training was 9.30 a.m. to 5.30 P.M. The trainees were reporting before him 30 minutes before the starting of the training for the day. The said accused Bansidhara Barik was all along present on 25.5.2015 to 30.5.2015. Ext.A is the command certificate and Ext.A1 and A2 are his signature.

In cross examination, by the defence, he was attached to the duty from 21.11.2011. The attendance sheet has been prepared by his office, the trainer has to signed. There is no mentioned in the attendance sheet, during the duration of the timing of arrival and departure of the training, the launch break for the training from 2 P.M. to 3 P.M.

8.	xxx	xxx
	xxx	
9.	xxx	xxx
	xxx	

10. Examined the evidence on record, it is clear that all occupants, for the vehicle, fled away and so, the articles was never seized, from the exclusive conscious possession of the any of the accused and further, none has stated, any link of the accused person, with the said commission of the offence i.e., abetment and conspiracy. So far as, the Bansidhara Barik is concerned, he has

duly established, the plea of alibi that, during the relevant date and time, he was under the training at Phulbani and has witness also. The prosecution also supports the case and according to the prosecution case, the accused came during the time of seizure to support the detecting staff to identify the actual culprit, and further, intimate, according to him the intimation, to the Superintendent of Police. So far as, the accused Jitendra is concerned, P.W.15 has stated that on verification, of the CDR, he could link the accused, with this case but surprisingly, he has stated, although, he has examined seven persons, none has stated, regarding the involvement of the accused Jitendra Pradhan, in this case. In the T.I. Parade, he has never identified and the CDR and not established, the subject matter of the talk between the two persons and hence, I do not find, any relevant of the present accused Jitendra Pradhan, in this case and so, without, further discussion, the irresistible conclusion is that, although, the seizure of the ganja item, is a fact, but the accused persons are not liable for that and accordingly, they are found not guilty for the offence, charged in this case."

19. Reading of the findings recorded by the learned trial court in the criminal case makes it abundantly clear that the respondent was not even present at the spot, which was the basis on which he was being proceeded departmentally. The charge on the basis of which the departmental proceeding was set in motion against the respondent needs to be reproduced for the convenience of ready reference:-

"C/385 Bansidhara Bariki of Kandhamal (Under Suspension) is charged with gross misconduct and criminal misconduct in that.

While he was posted at Daringbadi PS, commanded to D.P.O. Kandhamal for CCTNS training vide C.C. No.1940758 dated 24.05.2015. On 29.05.2015, S.I. B.P. Rout of Sadar P.S., Phulbani along with ASI/Jugal Kishor Digal, ASI/Anil Ku. Behera, Hav. Kesaba Ch. Nayak and WC/378 P. Mallick conducted N.D.P.S. raid in Sadar P.S. area. At Dadaki Chhaka three suspects who were transporting Ganja illegally were seen the police party, running away towards Dadaki line leaving the Ganja loaded vehicle. At that time charged constable reached at that spot identify himself as Bansidhar Barik and he is working as constable in Daringbadi PS, S.I. B.P. Rout detected nearly about 30 Kg of ganja and seized the same with observing all the formalities of N.D.P.S. Act and reported to OIC, Sadar P.S. Phulbani for taking legal action. Basing the report, OIC Sadar PS Phulbani registered a N.D.P.S. Case vide Sadar P.S. Case No. 68 dated 29.05.2015 under Section 20(b)(ii)(C)/29 NDPS Act and took up investigation.

In enquiry it revealed that at 4.30 AM on 29.05.2015 two person came to Dadaki Chhaka and detained a TATA MAGIC vehicle bearing Regd. No.OR02BZ9906 (loaded with Ganja) which was coming from Jampuri side and discussed with the persons inside the vehicle. After 15 minute suddenly hot words exchanged among them and charged constable dialed someone in his mobile and shifted 2 pkts. of ganja from (vehicle) spot. During course investigation, Guddu @

Rabindra Pradhan (Accd. of Sadar P.S. Case No.68 dated 29.05.2015) utter the name of Bansidhara Barik regarding involvement in Sadar PS Case No.68/15 dated 29.05.2015 under Section 20(b)(ii)(C)/29 NDPS Act and also stated that along with charged constable and others were smuggling Ganja since long and their operation area was Gochhapada, Phiringia and Phulbani. As the evidence against C/385 Bansidhara Barik well made out during investigation, so he is arrested and forwarded to the judicial custody and placed under suspension with effect from 31.05.2015 P.M. Being a member of disciplined police force, should be kept away him from any outrageous activities, rather got involvement in criminal case which is violated Govt. Servant Conduct Rule.

He is therefore directed to show cause by 20.7.2015 as to why he shall not be suitably dealt with in the event of the charges being held to be proved against him.

Any representation that he wishes to make in this regard will be duly considered by the authority competent to pass final orders before passing such order.”

20. To substantiate the aforementioned charge, the inquiry officer, as has been stated above has examined the same set of witnesses, whose version has been clearly discarded by a judicial finding by the Court of Addl. Sessions Judge. The important aspect of this matter is the plea of alibi taken by the respondent, which has been established by him by cogent evidence and believed by the trial court. If the plea of alibi is believed by the trial Court in the judgment dated 26.11.2018, which has attained the finality, the entire genesis of the case is washed away on facts. Therefore, it could be safely inferred that departmental proceedings and their conclusion are based on “noevidence”. The learned Single Judge has rightly relied upon numerous judgments to un-justify the departmental action taken against the respondent. It is no gain saying that the judgment relied upon by the learned Single Judge is apt in the fact scenario of the present case. The eventual conclusion drawn by the learned Single Judge, setting aside the departmental action against the respondent cannot be faulted with on law as well as facts. Therefore, this is clearly not a case for interference by this Court.

21. Accordingly, the Writ Appeal being devoid of merit stands dismissed.