

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble **Justice Madhuresh Prasad**
And

The Hon'ble **Justice Prasenjit Biswas**

F.M.A. 588 of 2024
With
CAN 2 of 2024

Union of India & Ors.
Vs.
Jitendra Kumar Yadav

Mr. Kalyan Kr. Chakraborty,
Ms. Anamika Pandey,
Ms. Rishika Pandey

...for the Union of India

Ms. Shraboni Sarkar,
Ms. Umme Habiba Khatun

...for the Writ Petitioner/Respondent

CAV on : **22.07.2026**

Judgment on : **03.08.2026**

Prasenjit Biswas, J:-

1. The present appeal arises out of an Judgement passed by the Hon'ble Single Judge on 26.02.2024, setting aside the punishment of dismissal awarded to the petitioner and the order passed by the appellate authority affirming such punishment.
2. The brief factual background leading to filing of the writ petition starts from a complaint made by the writ petitioner's wife on 14.10.2020 and 10.11.2020, alleging that the petitioner during subsistence of his marriage with the complainant solemnized a second marriage and thereby committed a misconduct under the rules governing the terms and conditions of service of the writ petitioner.
3. A preliminary enquiry was conducted. A detailed report was submitted after due opportunity to the petitioner, who chose not to respond at that stage. Thereafter, a charge-memo was issued on 30th April, 2021, under Rule 153 of the RPF Rules, 1987. The enquiry was conducted wherein the writ petitioner participated and the enquiry officer after conclusion of the proceedings submitted an enquiry report dated 28.01.2022. Thereafter the disciplinary authority gave an opportunity to the petitioner to represent against findings of the enquiry officer. The disciplinary authority, however, accepted the

enquiry report holding the charge proved. The entire exercise resulted in an order of punishment being inflicted upon the petitioner dismissing him from service. The order of disciplinary authority was carried up in appeal unsuccessfully by the writ petitioner.

4. Under the circumstance, the writ petitioner approached the Writ Court by filing a writ petition. After a threadbare examination of the allegations, the Writ Court found the order of punishment and order of the appellate authority unsustainable. The same was quashed.
5. The employer-railways has put to challenge the order of the Hon'ble Single Judge in the present intra-court appeal.
6. It is submitted by the learned advocate for the Union of India that the Judgement of the learned Single Judge is not sustainable. According to him, the learned Single Judge failed to consider that there was sufficient material before the enquiry officer in support of the allegation. The complainant, wife of the writ petitioner, appeared before the enquiry officer and sustained the allegations. According to her statement the marriage was solemnized at 'Mounibaba Math'. The enquiry officer also examined the priest of the Mounibaba Math. He considered a xerox copy of the register, wherein the marriages solemnized in the Math were entered in a routine way. At

serial 61 of the register, the enquiry officer found entry regarding marriage of the writ petitioner with one Archana Yadav. The complainant also produced a photograph depicting the marriage ceremony. The enquiry officer has heavily relied upon the findings returned by the P.W.-I in the preliminary enquiry at the pre-charge-memo stage. Since, the petitioner did not respond to the show-cause in respect of the findings at the pre-charge-memo stage, the enquiry officer rightly relied upon the findings of P.W.-I in the preliminary enquiry. In view of such material on record before the enquiry officer, the finding of the enquiry officer cannot be said to be without any basis, perverse or for any other reason unsustainable by the Writ Court exercising judicial review under Article 226 of the Constitution of India.

7. Per contra the learned advocate for the respondent/writ petitioner submits that the scope of judicial review by now is well settled. The Court is to confine itself to the decision making process and the examination of the findings is limited to a scrutiny to ascertain whether there is some cogent material in support of the findings. In a case where the findings of the enquiry officer are not supported by any evidence, and are found to be perverse, the Writ Court would be justified in interfering with such findings, as was done in

the present case. The fact that a proceeding is to be conducted on a standard of preponderance of probability does not mean that a charge can be held proved merely on surmises and conjectures or without any basis. Merely because the wife had appeared in the enquiry and supported the allegations would not justify the findings of the enquiry officer.

8. From perusal of her statement before the enquiry officer, it is obvious that she neither supported the photograph submitted by her, nor copy of the register submitted by the priest of the Math could by any stretch of imagination be said to be supporting a factum of solemnization of marriage by the writ petitioner with the said Archana Yadav. The register does not bear any signature of the parties or any person from the Math. The copy of the register, therefore, cannot be considered to be any material in support of the allegation.
9. Insofar as the reliance placed by the enquiry officer on findings recorded by P.W.-I in the preliminary enquiry, it is submitted that the same could not be considered in the proceeding. The limited purpose of the preliminary enquiry was to consider whether there was an occasion to issue a charge-memo. After issuance of the charge-memo the charges were required to be proved on the standard of preponderance of probability, on

some material, which obviously was not done in the present case.

10. The Hon'ble Single Judge, therefore, rightly interfered with the order of punishment and the order passed by the appellate authority. The disciplinary authority has passed the order of punishment without application of mind to the representation filed by the writ petitioner in response to the enquiry report.
11. The affirmation of the order of punishment by the appellate authority is also mechanical, suffers from the vice of non-application of mind rendering the remedy of appeal to be an exercise in futility. Therefore, the Hon'ble Single Judge rightly interfered with the findings.
12. We have considered the rival submissions advanced by the parties and have gone through all the material on record.
13. At the outset, it requires to be noticed that the scope of judicial review in matters arising out of departmental proceedings is no longer res-integra. Although the High Court, while exercising jurisdiction under Article 226 of the Constitution of India, does not act as an appellate authority over the findings recorded by the disciplinary authority, it is equally well settled that the Court is not denuded of its power to interfere where the findings are based on no evidence, are perverse, suffer from non-consideration of relevant materials

or consideration of inadmissible materials, or where the decision-making process is vitiated by arbitrariness or non-application of mind. The expression "some evidence" has consistently been interpreted to mean legally acceptable material having a rational nexus with the charge. Mere suspicion, conjecture or surmise, however strong, cannot substitute proof even in a domestic enquiry where the standard of proof is one of preponderance of probabilities.

14. In ***Union of India v. P. Gunasekaran*** reported in **(2015) 2 SCC 610**, the Hon'ble Supreme Court authoritatively delineated the scope of judicial review in disciplinary matters, which is binding on this Court. The High Court, while exercising jurisdiction under Articles 226 and 227 of the Constitution, cannot act as an appellate authority by reappreciating the evidence adduced before the Enquiry Officer. The Court is confined to examining the legality and procedural fairness of the decision-making process. At the same time, the judgment recognises limited exceptions where interference is permissible. In particular where: the authorities have been influenced by irrelevant or extraneous considerations, the conclusion is so arbitrary or capricious that no reasonable person could have arrived at such a finding;

inadmissible evidence has been relied upon and has materially affected the finding; or the finding is based on no evidence.

15. Thus, the law does not impose an absolute bar against judicial examination of the evidentiary record. What is prohibited is a fresh assessment of the sufficiency or adequacy of evidence as if in appeal. What is permitted is a limited scrutiny to determine whether the finding suffers from perversity, arbitrariness, reliance on inadmissible material, exclusion of material evidence, or absence of any legal evidence supporting the conclusion.
16. Accordingly, where it is demonstrated that the disciplinary authority ignored admissible and material evidence, relied upon inadmissible material, or reached a conclusion that is irrational and unsupported by any evidence, the High Court would be justified in exercising its power of judicial review within the parameters expressly recognised in paragraph 12 of the judgment in the case of P. Gunasekaran (*supra*).
17. In the present case, the charge leveled against the writ petitioner was one of considerable seriousness, namely, that during the subsistence of his valid marriage he had solemnized a second marriage, thereby committing misconduct under the Railway Protection Force Rules. Such an allegation undoubtedly carries grave civil consequences, including the

extreme penalty of dismissal from service. Therefore, notwithstanding that strict rules of the Indian Evidence Act may not be applicable to disciplinary proceedings, the disciplinary authority was nevertheless under a legal obligation to establish the charge on the basis of cogent, reliable and credible materials capable of leading a reasonable person to conclude that the misconduct stood proved on the touchstone of preponderance of probabilities.

18. The principal reliance of the appellants is upon the evidence of the complainant-wife, the alleged register maintained at 'Mounibaba Math' and a photograph purportedly depicting the marriage ceremony. Upon a close scrutiny of these materials, we find ourselves in agreement with the conclusions recorded by the learned Single Judge that none of them, either individually or collectively, constitutes evidence regarding the solemnization of a second marriage.
19. Merely because the complainant-wife reiterated her allegation before the enquiry officer cannot, by itself, establish the factum of a valid second marriage. The allegation of bigamy necessarily involves proof of a solemnized marriage in accordance with the applicable personal law or customary rites. The complainant's statement, ipso facto bereft of any supporting particulars establishing solemnizing of a valid

marriage constitutes inadmissible and unreliable evidence to support a finding as to a valid marriage by any standard of proof. A disciplinary authority is undoubtedly entitled to assess probabilities; however, such assessment must rest upon objective materials and not merely upon the assertion of the complainant unsupported by any evidence/ cogent evidence..

20. Equally unconvincing is the reliance placed upon Xerox copy of the alleged register produced by the priest of the Math. As rightly noticed by the learned Single Judge, the register is merely a Xerox copy. Significantly, it bears neither the signatures of the alleged bridegroom and bride nor of any witnesses or authorised functionaries certifying the performance of the marriage. No material has been brought on record to establish the authenticity, regular maintenance or evidentiary value of such register. The document, therefore, lacks the basic indicia of reliability. The mere existence of an entry containing the names of the writ petitioner and one Archana Yadav, without any authentication whatsoever, cannot ipso facto establish the solemnization of marriage. In the absence of any foundational evidence regarding the preparation, maintenance and genuineness of the register, the enquiry officer could not have treated entry of the petitioner's

name along with Archana Yadav, without any signatures as a material proving the charge, by any standard of proof.

21. The photograph allegedly depicting the marriage ceremony equally falls short of the standard required even in a domestic enquiry. It is on record that the complainant did not even recognize Archana Yadav. A photograph, by itself, merely depicts the presence of individuals at a particular place or occasion. Unless duly identified and proved by competent evidence demonstrating what exactly it portrays, when it was taken and in what circumstances, it cannot establish the legal fact of solemnization of marriage. Thus, the photograph *per se* did not support the fact of marriage with Archana Yadav. No photographer was examined, nor was any independent witness produced to identify the photograph or the persons appearing therein. Consequently, the conclusion of the enquiry officer founded thereupon is unsustainable as being arbitrary and capricious that no reasonable person could have reached. The photograph, in our opinion, without any identification by the complainant was incapable of substantiating the serious allegation of solemnization of a second marriage.
22. The contention advanced on behalf of the appellants that the enquiry officer was justified in relying upon the findings recorded during the preliminary enquiry also does not

commend acceptance. A preliminary enquiry serves a limited administrative purpose, namely, to ascertain whether there exists sufficient ground for initiating disciplinary proceedings. Its object is not to determine the guilt of the delinquent employee. Once a regular charge-memo is issued and a departmental enquiry commences, the entire matter has to be adjudicated independently on the basis of evidence adduced during such enquiry. Findings recorded in the preliminary enquiry cannot assume the character of substantive evidence unless the materials forming the basis thereof are duly proved during the regular enquiry in the presence of the delinquent employee with full opportunity to contest and rebut the same.

23. The enquiry officer appears to have treated the conclusions reached during the preliminary enquiry almost as substantive proof of the charge. Such an approach fundamentally undermines the fairness of the disciplinary process. The writ petitioner cannot be held guilty merely because he did not furnish any reply to the preliminary show-cause notice at the pre charge memo stage. His silence at the preliminary stage did not relieve the employer of its obligation to establish the charge during the regular enquiry through legally acceptable materials. The burden of proving the misconduct always

remained upon the disciplinary authority and could not be shifted upon the delinquent employee.

24. We also find considerable substance in the submission advanced on behalf of the respondent that the disciplinary authority failed to meaningfully consider the representation submitted by the writ petitioner against the enquiry report. The order of punishment does not reflect any independent evaluation of the objections raised by the writ petitioner. It merely reproduces the conclusions of the enquiry officer and mechanically affirms the same without assigning any reasons as to why the defence put forward by the delinquent employee was found unacceptable. The statutory obligation to objectively consider the representation against the enquiry report is not an empty formality but constitutes an integral component of the principles of natural justice. An order which mechanically endorses the enquiry report without independent application of mind cannot be sustained in law.
25. The statutory remedy of appeal constitutes an important safeguard against arbitrary, erroneous or unjust disciplinary action. The appellate authority is, therefore, expected to apply its independent mind to the factual and legal issues raised in the memorandum of appeal and assign cogent reasons indicating due consideration thereof. An appellate order should

reflect conscious application of mind to the evidence on record, the contentions advanced by the delinquent employee, the findings recorded in the enquiry, and the reasoning adopted by the disciplinary authority. It is only upon such independent scrutiny that the appellate authority can either affirm, modify or set aside the order under challenge.

26. The appellate order merely reproduces the conclusions already reached by the disciplinary authority and mechanically affirms the punishment without disclosing any independent reasoning. Such an approach is wholly inconsistent with the object and purpose of the statutory appellate mechanism. An appellate authority cannot discharge its statutory obligation by merely endorsing the conclusions of the disciplinary authority in a perfunctory manner. It is expected to independently examine whether the findings are borne out by the materials on record, whether the procedure adopted during the enquiry was fair and in consonance with the principles of natural justice, and whether the punishment imposed is commensurate with the misconduct alleged to have been established.
27. The submission of the appellants that the High Court exceeded the permissible limits of judicial review is equally devoid of merit. The learned Single Judge has not re-appreciated the evidence as if exercising appellate jurisdiction. Rather, the

learned Judge examined whether there existed any legally sustainable material whatsoever, capable of supporting the findings recorded by the enquiry officer. Upon finding that the conclusions were founded upon unproved documents, unsupported assumptions and reliance upon a preliminary enquiry in place of evidence, the learned Single Judge rightly concluded that the findings suffered from perversity and were unsupported by any cogent evidence. Such scrutiny squarely falls within the well-recognised parameters of judicial review.

28. It is important to bear in mind that the doctrine of preponderance of probabilities cannot be invoked to legitimise findings based upon speculative or inherently unreliable materials. Even under this comparatively relaxed standard, there must exist objective facts from which the existence of the alleged misconduct appears more probable than not. Where the foundational facts themselves remain unproved, no inference of probability can legitimately arise. Suspicion, however grave, cannot be permitted to take the place of proof merely because the proceeding is departmental in nature.
29. Having considered the entirety of the materials on record, we find that the learned Single Judge correctly appreciated the legal principles governing disciplinary proceedings and arrived at a conclusion fully supported by the record. We do not find

any jurisdictional error, perversity or manifest illegality in the judgment of the writ Court, under appeal warranting interference by this Court in exercise of appellate jurisdiction.

30. We find no reason to interfere with the judgment and order dated 26.02.2024 passed by the learned Single Judge setting aside the order of dismissal as well as the order of the appellate authority.
31. Accordingly, the appeal fails and is **dismissed**.
32. There shall, however, be no order as to costs.
33. Connected application, if any, also stands dismissed.
34. The writ petitioner shall be reinstated in service and given notional service benefits, for the period of his absence within four weeks.
35. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

I agree.

(Madhuresh Prasad, J

(Prasenjit Biswas, J.)