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UNION OF INDIA AND ORS.

v.

MANAB KUMAR GUHA
(Civil Appeal No. 2175 of 2011)

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FEBRUARY 28, 2011

[HARJIT SINGH BEDI AND CHANDRAMAULI KR.
PRASAD, JJ.]

Service Law – Disciplinary proceedings – Findings recorded by Enquiry officer – Interference by High Court in exercise of its power of judicial review – Scope – Complaint against appellant-railway constable that he alongwith another constable jointly dragged and assaulted a passenger and snatched money from his possession – Enquiry officer held the appellant guilty – Disciplinary authority ordered removal of appellant – Appellate Authority, however, substituted the punishment of removal to that of compulsory retirement – High Court quashed the order of compulsory retirement on ground that the complainant-passenger was not examined – Justification – Held: Not justified – The enquiry officer took all pains to call the complainant from his native place but he did not appear during the enquiry – Nevertheless, the written complaint supported the charges levelled against the respondent – Further, respondent, in his defence, had accepted the detention of the complainant and his release, though he denied the allegation of money snatching – The High Court, while exercising the power of judicial review from the order of the disciplinary authority does not act as a Court of appeal and appraise evidence – It interferes with the finding of enquiry officer only when the finding is found to be perverse – On facts, the finding recorded by the enquiry officer was based on materials on record and on proper appreciation of evidence, which cannot be said to be perverse, calling for

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interference by the High Court in exercise of its power of judicial review. A

The respondent, a Constable in the Railway Protection Force, was served with a memo of charge containing the allegation that while on duty at the Railway Station he alongwith another Constable jointly caught hold of a passenger at the Railway platform, dragged and assaulted him and snatched money and the key of a tractor from his possession. The enquiry officer held the respondent guilty and the disciplinary authority agreeing with the same inflicted upon him the punishment of removal from service. The Appellate Authority, however, set aside the order of removal on various grounds including the ground of non-examination of the complainant-passenger and directed for de novo enquiry. De novo enquiry was held, however, the complainant did not appear. Nonetheless the respondent was again held guilty and removed from service in terms of the order of the disciplinary authority. The Appellate Authority, however, substituted the punishment of removal from service to that of compulsory retirement. The order was affirmed by a Single Judge of the High Court. The Division Bench of the High Court, however, set aside the order of the Single Judge and quashed the order of compulsory retirement on the ground that the complainant was not examined. B C D E F

Allowing the appeal, the Court

HELD:1. The Appellate Authority while setting aside the order of removal and directing for de-novo enquiry earlier had found the same bad in law on account of various grounds including the ground of non-examination of the complainant. Thereafter in the de novo enquiry, the enquiry officer had taken pains to call the complainant from his native place but he did not appear. G H

- A during the enquiry. It is not the case of the respondent that the disciplinary authority purposely withheld the complainant from appearing in the departmental enquiry. A copy of the written complaint was produced during the course of enquiry which supports the charge levelled
- B against the respondent. Further the respondent in his defence had accepted the detention of the complainant and his release. However, he denied the allegation of snatching of money from him but from his own defence, it is evident that he had accepted the incident except that
- C he had not snatched the money. On the basis of the materials on record, the enquiry officer held the respondent guilty with which the disciplinary authority as also the appellate authority agreed. It is well settled that High Court while exercising the power of judicial review
- D from the order of the disciplinary authority does not act as a Court of appeal and appraise evidence. It interferes with the finding of enquiry officer only when the finding is found to be perverse. The Division Bench of the High Court erred in setting aside the order of Single Judge and quashing the order of compulsory retirement. The finding
- E recorded by the enquiry officer was based on the materials on record and on proper appreciation of evidence which cannot be said to be perverse, calling for interference by the High Court in exercise of its power of judicial review. [Para 11] [278-D-H; 279-A-B]
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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2175 of 2011.

- G From the Judgment & Order dated 06.03.2007 of the High Court at Calcutta in FMA No. 74 of 2004.

Naresh Kaushik, Sadhna Sandhu, A.K. Sharma, B. Krishna Prasad for the Appellants.

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Asha Jain Madan, Mukesh Jain Madam for the Respondent. A

The Judgment of the Court was delivered by

CHANDRAMAULI KR. PRASAD, J. 1. In this Special Leave Petition, the Union of India and its functionaries assail the judgment and order dated 6th of March, 2007 passed by the Division Bench of the Calcutta High Court whereby while allowing the appeal preferred by the writ petitioner-respondent it had set aside the order of the learned Single Judge and quashed the order of his compulsory retirement. B C

2. Leave granted.

3. Short facts giving rise to the present appeal are that the writ petitioner-respondent (hereinafter referred to as 'writ petitioner') was a constable in the Railway Protection Force and on 5th June, 1995 deployed for duty at Asansol Railway Station. One Harish Chandra Ram made a complaint that the writ petitioner alongwith another constable dragged him to the yard, assaulted him and robbed Rs.400/- and key of a tractor from his possession. He was put under suspension and on 28.6.1995 served with the memo of charge containing the following allegation: D E

"On 5.6.95 while he was deployed for duty at Down Marshalling Post/Asansol alongwith Const. Nil Rameshwar from 16/00 Hrs. to 24/00 Hrs. they jointly caught hold of a passenger namely Harish Chandra Ram who had gone at the west end of Platform No. ¾ of Asansol Rly. Station at about 19/00 Hrs. to ease himself, dragged him to the yard, assaulted him and robbed Rs.400/- and the key of a tractor from his possession. On search 2 Nos. of 100 rupee notes and key of a tractor were recovered from Const. Rameshwar." F G

4. The enquiry officer held him guilty of the charge and the H

A disciplinary authority agreeing with the same inflicted the punishment of removal from service. The writ petitioner preferred appeal and the Appellate Authority allowed the appeal, set aside the order of removal and directed for de novo enquiry and while doing so, observed as follows :

B “2. However, I find that there were some gross irregularities
C in the course of the proceeding enquiry. First, from the very
beginning of the proceeding the delinquent should have
been given the option to engage a “friend” for defending
his case and thereafter in presence of his “friend” the
D enquiry should be started. Secondly, the complainant was
not examined during the course of proceeding enquiry.
Thirdly, the complainant’s story of disposal/delivery of a
tractor at Burdwan and boarding a train from Asansol after
that required further examination by E.O. and cross
examination by the delinquent.”

5. Thereafter a de novo enquiry was held in which the writ
petitioner was allowed to engage a friend. However, Harish
Chandra Ram, the victim was not examined. Nonetheless the
E enquiry officer held the writ petitioner guilty of the charge. A
copy of the enquiry-report was made available to the writ
petitioner and he submitted his reply. The disciplinary authority
considered the report of enquiry officer and reply of the writ
petitioner and passed the order of removal from service. As
F regards the plea of the writ petitioner regarding non-
examination of Harish Chandra Ram, the disciplinary authority
observed as follows:

G “.....In the 3rd para, he has alleged that the
complainant Sri Harish Chandra Ram could not be
presented in the enquiry and hence the complaint is false.
But this defence of Shri Guha cannot be accepted because
the fact of the matter is that Harish Chandra Ram was
illegally detained and released by const./Guha alongwith
C/Rameshwar and C/Guha has clearly accepted in his

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statement about incident except of course that he has not
snatched money. So, one cannot deny the complaint as
false just because in the later date the complainant could
not come before. It is evident from the case file that the
E.O. has taken all pains to call Shri Harish Chandra Ram
from his native place many times but it appears that under
fear in mind complainant could not dare to attend
departmental enquiry which was conducted at RPF Post.
However, written complaint which is duly supported by
seizure list cannot be denied as such.”

6. Writ Petitioner preferred appeal and the Appellate
Authority partly allowed the appeal and substituted the
punishment of removal from service to that of compulsory
retirement.

7. Writ petitioner assailed the aforesaid order before the
Calcutta High Court which dismissed the writ petition by order
dated 10th of April, 2002. On appeal by the writ petitioner, the
Division Bench of the Calcutta High Court set aside the order
of the learned Single Judge and quashed the order of
compulsory retirement and that is how the appellants are before
us.

8. Mr. Naresh Kaushik, learned Counsel appearing on
behalf of the appellants submits that every effort was made to
examine the victim Harish Chandra Ram and only on the ground
that he was not examined, the order of compulsory retirement
ought not to have been set aside. He points out that the xerox
copy of the complaint filed by the victim was placed on record
and the enquiry officer on appraisal of the materials had
recorded the finding of guilt which ought not to have been
interfered by the High Court in appeal. He points out that the
High Court while exercising the power of judicial review do not
act as a Court of appeal, appreciate evidence and records
findings.

A 9. Ms. Asha Jain Madan, learned Counsel, however,
appearing on behalf of the respondent points out that the
Appellate Authority while setting aside the order of removal
earlier had found it bad on account of non-examination of the
victim Harish Chandra Ram and the story put by him that after
B disposal of the tractor, he came to board a train at Asansole
required further cross-examination. She submits that in the de
novo enquiry, Harish Chandra Ram did not appear and as such
the order of removal suffers from the same vice.

C 10. We have bestowed our consideration to the rival
submissions and we find substance in the submission of Mr.
Kaushik.

D 11. True it is that the Appellate Authority while setting aside
the order of removal and directing for de-novo enquiry earlier
had found the same bad in law on account of various grounds
including the ground of non-examination of the victim Harish
Chandra Ram. Thereafter in the de novo enquiry, the enquiry
officer had taken pains to call Harish Chandra Ram from his
native place but he did not appear during the enquiry. It is not
E the case of the writ petitioner that the disciplinary authority
purposely withheld Harish Chandra Ram from appearing in the
departmental enquiry. Harish Chandra Ram had given a written
complaint, a copy of which was produced during the course of
enquiry which supports the charge levelled against the writ
F petitioner. Further writ petitioner in his defence had accepted
the detention of Harish Chandra Ram and his release. However,
he has denied the allegation of snatching of money from him
but from his own defence, it is evident that he had accepted
the incident except of course that he had not snatched the
G money. On the basis of the materials on record, the enquiry
officer held the writ petitioner guilty with which the disciplinary
authority as also the appellate authority agreed. It is well settled
that High Court while exercising the power of judicial review
from the order of the disciplinary authority do not act as a Court
H of appeal and appraise evidence. It interferes with the finding

of enquiry officer only when the finding is found to be perverse. We are of the opinion that the Division Bench of the High Court erred in setting aside the order of learned Single Judge and quashing the order of compulsory retirement. The finding recorded by the enquiry officer is based on the materials on record and on proper appreciation of evidence which cannot be said to be perverse calling for interference by the High Court in exercise of its power of judicial review.

12. In the result, the appeal is allowed, impugned order is set aside but without any order as to costs.

B.B.B.

Appeal allowed.