State of Rajasthan Vs. Danmal

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Court : Rajasthan

Decided On : Oct-26-1977

Reported in : 1977WLN645

Judge : S.N. Modi and; R.L. Gupta, JJ.

Appeal No. : D.B. Civil Special Appeal No. 36/1970

Appellant : State of Rajasthan

Respondent : Danmal

Disposition : Appeal allowed

Judgement :

S.N. Modi, J.

1. This is a special appeal under section. 18 of the Rajasthan High Court Ordinance filed on behalf of the State, of Rajasthan against the judgment of the learned Single Judge of this Court dated October 13, 1969 in S.B. Civil Writ petition No. 535 of, 1966 quashing the order dated September 7, 1960 passed by the Deputy Inspector General of Police, Jodhpur Range, Jodhpur dismissing the respondent from service.

2. The respondent Danmal, a Head Constable of police, was working as Account Clerk in police lines at Pali. On complaints of bribery and misappropriation, the

Superintendent of Police on February 9, 1953 went to the police lines for physical checking of the cash balance in the hand of the respondent Danmal According to the department, the respondent in 1st instance showed his willingness to unlock the cash box for checking, but soon-after changed his mind and avoided the checking of the cash on ground that he left the key of the cash box at his residence. The Superintendent of Police allowed the respondent to bring the key of the cash box from his residence. When the respondent did not return for pretty long time the Superintendent of Police sealed the cash box and went away from the police lines. On February 7, 1953 Shri N.N. Dewan, I.P.S., Additional Superintendent of Police was deputed for Physical verification of the cash but respondent not only refused to allow Shri Dewan to make Physical verification of the as but also misbehaved with him and other Police Officers who had accompanied him Shri N.N. Dewan, there upon, took the respondent to the bungalow of the Superintendent of Police where also the respondent acted in indisciplined, mannerless and insolent manner. He did not accede to the request of the Superintendent of Police for Physical verification of the cash with the result that the Superintendent of Police had to approach the Sub Divisional Magistrate, Pali. At the pursuation of the Sub Divisional Magistrate, Pali the respondent allowed checking of the cash. It appears that at the time of the physical checking the respondent gave in writing to the Sub Divisional Magistrate to permit him to mix such amount of cash which according to him was left in the pocket when he went home on February 7, 1953 to bring the key of the cash box. The Sub Divisional Magistrate did not permit the cash from the petitioner's pocket to be mixed with the cash lying in the cash box. but he counted separately the cash lying in the cash box and that offered by the respondent from his pocket. It if alleged by the Department that the respondent absented himself from the police lines from February 7, 1953 to February 19, 1953.

3. A case was registered against the respondent under Section 409 I.P.C. & the police arrested him on February 19, 1953. After usual investigation the respondent was challenged in the court of the Sub Divisional Magistrate Sojat for the offence under Section 409 I.P.C. This criminal case ended in the discharge of the respondent. The department then initiated a departmental enquiry against the respondent. As the result of the departmental inquiry the respondent was ordered

to be dismissed from, service by the Deputy Inspector General of Police vide order dated March 11,1955. The said order Was affirmed in appeal, but this Court in its writ jurisdiction quashed the proceedings of the. departmental enquiry and set aside the order of dismissal vide judgment dated August 19, 1959. The department again proposed to hold a fresh enquiry & served the following charge sheet to the respondent:

1. That you, H.C. Danmal (now under suspension) while you were working as Accounts Clerk in the Reserve Police Lines, Pali, on 62. 1953, the police personnel had complained against you to then S.P. that inspite of hiving drawn their pay, you were not inclined to disburse till they were prepared to pay you The S.P. called you and enquired of this, but you could not satisfy him. There upon, the then S.P. with others went to the Police Lines for physical checking of the cash, but you feigned that YOU had not key with you. You were allowed to bring key but you did not turn up for about 3 hours and as such cash could not be got checked that day.

2. That on 7-2-53 when Shri. N.N. Dewan IPS, asked you for getting the cash checked, you flatly refused So you were taken to SP's residence, but there also you refused. Ultimately, the SDM had to be called in & after great hesitation, you opened it. Thus, you had knowingly well flouted the authority of the S.P. & the S.P. & others and behaved with Shri. Dewan in a most unbecoming and in-disciplined manner unworthy of a Police Officer, in the Police Lines and used slang language at the residence of the S.P. Pali and before the then SDM which amounts to insubordination.

3. You absented from the Police Lines on 7-2-53 till 19-2-53 when you were arrested Under Section 409 I.P.C. because of which suspension order could not be served on you and of this act yours fails Under Section 29 of the Police Act.

4. You are, therefore, charged for the above illegal acts, acts of omissions and commissions, insubordination, corrupt practices and unauthorised absence.

4. Along with the charge sheet, statement of allegations was also served upon the respondent. Mr. Tandon I.P.S. was appointed as the Enquiry Officer who conducts

the enquiry. He submitted his report sometime in the month of June, 1960. His report is Ex. 31. In his report Ex 31 Mr. Tandon bifurcated charge No. 1 into the following two parts:

Charge No. 1.

(a) that H.C. Danmal while he was working as Accounts Clerk in Police Lines, Pali on 6-3-53, some personnel had complained to the then S.P. that inspite of having drawn their pay he was not inclined to disburse till they were prepared to pay him.

(b) Then the S.P. went to the Police Lines for physical checking of the cash, the H.C. feigned he had no key with him. He was allowed to bring the key but he did not turn up for about 2 hours and as such cash could not he checked up.

The Enquiry Officer vide his report Ex. 31 held the respondent guilty on all counts except a part of charge No. 1(a) relating to acceptance of illegal gratification by the respondent. The report of the Enquiry Officer was accepted by the Disciplinary Authority. The respondent was ultimately dismissed from service by the Deputy Inspector General of Police by his order Ex 33 dated September 7, 1960. The respondent appealed against this order of dismissal but without any success. He then filed a writ petition to this court under Article 226 of the Constitution of India and prayed that the order of dismissal be quashed. The writ petition was opposed by the appellant i.e. the State of Rajasthan.

5. Before the learned Single Judge the respondent challenged the impugned order of dismissal inter alia on the following grounds:

(1) That the Inquiry Officer was throughout the inquiry taking the aid of the Public Prosecutor, but the petitioner was not permitted to engage a legal practitioner 10 help him in the conduct of the inquiry under the Rajasthan Civil Service (Classification, Control & Appeal) Rules, when the petitioner, as of right, could claim under Clause (5)(of Rule 16 the assistance of a legal adviser, if the Inquiry Officer took the assistance of the Public Prosecutor for conducting the inquiry.

(2) That the petitioner was not permitted by the Inquiry Officer to summon the defence witnesses and send for the documents which were necessary to prove his

innocence.

(3) That the charges were vague and the vagueness thereof vitiated

the inquiry.

(4) That the whole matter was decided on hearsay evidence and the material witnesses were kept away from the inquiry.

6. The learned Single Judge after thorough probe into the matter arrived at the following conclusions:

(1) That it was wrong that the Enquiry Officer took the side of the Public Prosecutor during the course of enquiry.

(2) That the Enquiry Officer did not act erroneously in rejecting the prayer of the petitioner for engaging the legal practitioner during the course of the enquiry.

(3) That the charges levelled against the respondent were not vague and on that ground it cannot be said that there was no proper enquiry.

(4) That the Enquiry Officer committed serious error in denying opportunity to the respondent to produce his evidence in defence.

7. On the basis of the last finding, the learned Single Judge allowed the petition, quashed the order of dismissal dated September 7 1960 and ordered re-instatement of the respondent Dissatisfied with the said order this special appeal has been preferred on behalf of the State of Rajasthan

8. We have heard Mr. A.K. Mathur the learned Govt. Advocate on behalf of the appellant and Mr. Mridul learned Advocate for the respondent We have also gone through the record of the case with due care.

9. It is abundantly clear from the impugned judgment that the sole ground which persuaded the learned Single Judge to quash the order of dismissal was the denial of opportunity to the respondent to produce certain evidence. In this connection the relevant discussion in the judgment of the learned Single Judge

finds place at page 204 of the paper book which runs as. follows:

The main ground on which a considerable stress has been laid by Mr. Mridul to challenge the order of dismissal is that the petitioner was not afforded an adequate opportunity to produce his defence. In this connection, reference has been made to an application submitted by the petitioner before the Inquiry Officer on 11 3 1960 in which the petitioner demanded certain documents to be summoned in his defence. Another application (Ex. 18) dated 21.5 60 was submitted by the petitioner wherein the petitioner had mentioned the names of certain persons whom he wanted to examine as his witnesses. From a perusal of his document (Ex. 18), it is clear that the petitioner was very keen to examine certain witnesses named therein and the reasons why a particular witness was necessary to be examined by him were given against each name. The Inquiry Officer allowed only five witnesses, namely, Kama Ram, Deo Ratan, Smt. Ugam Kaur. Girdhari Lal and Gabru Ali but for the rest the request of the petitioner was rejected on a very superficial ground mentioned by the Inquiry Officer that they were irrelevant. Looking to the charge contained in Ex 4, I find that one of the charges levelled against the petitioner was that he absented himself from duty without taking leave. In order to rebut this charge, the petitioner, wanted to examine Moolchand, Mewaram and Sohan Singh and had also summered the cash book of the Police Lines, Pali of 7.2.1953 to 8 2.1953 which is alleged to have been written by him when he was on duty. The learned Inquiry Officer while rejecting the application of the petitioner for summoning these witnesses & the relevant documents viz., cash book of the Police Lines, Pali & also the cash book of the office of the Superintendent of Police, Pali which was also alleged to have been written by the petitioner gave only this reason that they were irrelevant. Why and how these documents which are obviously quite relevant to the issue under inquiry were declared irrelevant by the Inquiry Officer, no reasons were advanced by the Inquiry Officer. The petitioner had also filed an application to summon certain other documents contained in Ex. 14 to establish certain facts which, if not rebutted, would have been read against him at the inquiry. The learned Inquiry Officer without assigning any reason as to why he considered those documents also to be irrelevant for the inquiry rejected the petitioner's request and thus, deprived him of a very valuable right to rebut the charges for which the inquiry was going on In

such matters which are likely to bring in its wake serious consequences for a person it is necessary for the ends of justice that a proper opportunity is given to him to prove his innocence. If that is not done or if the petitioner is stopped from producing evidence which may have bearing on the questions in issue before the Inquiry Officer, then the Inquiry cannot be said to be a fair inquiry and it stands vitiated for denying proper opportunity to the delinquent officer to prove his innocence. These inquiries are of a quasi-criminal nature which entail penalties of dismissal and removal and therefore it is necessary that the Inquiry Officer should exercise his discretion while allowing or disallowing the evidence to be produced by the parties with due care and attention. The applications (Exhibits 14 & 18) filed by the petitioner before the Inquiry Officer speak for themselves and before the prayer of the petitioner could be rejected, it was the duty of the Inquiry Officer to have given reasons for not permitting the witnesses which the petitioner wanted to examine and for not summoning the documents which would have thrown adequate light on the subject matter of the inquiry. In order to call a particular witness or a document irrelevant, it is necessary for the Inquiry Officer to apply his mind seriously and it is only after weighing the pros and cons of the arguments advanced by both the parties that he should record his judgment for disallowing the delinquent Officer to produce his witnesses. In my opinion, a serious error has crept in the inquiry that the petitioner was denied an opportunity to produce his witnesses before the Inquiry Officer and on that basis I can say that the order of dismissal passed against the delinquent officer on the strength of the report of the Inquiry Officer cannot be sustained.

10. It may be stated at the out set that the application Ex. 14 dated 11-3-1960 has nothing to do with the production of the defence evidence, oral or documentary. The respondent in Ex. 14 merely requested the Inquiry Officer to permit to inspect and take extract from the documents. It has no bearding on the production of the defence evidence. No grievance has been made before us on behalf of the respondent that the request of the respondent contained in Ex. 14 was turned down or not complied with by the Inquiry Officer or that on that account any prejudice was caused to the respondent. In the circumstances Ex. 14 has no relevancy on the question of denial of opportunity to the respondent to produce in defence.

11. The only relevant application in this connection is Ex. 18 which contains list of witnesses to be examined and list of documents to be tendered in evidence by the respondent in his defence. A perusal of the application Ex. 18 shows that the respondent therein mentioned against each witness or document the reason why he wanted to produce that witness or document. The Inquiry Officer vide his order Ex. 19 disallowed examination of some of the witnesses and production of some of the documents mentioned therein on the ground that they were irrelevant. We have carefully gone through the application Ex. 18 and the order Ex 19 passed thereon We are satisfied that the witnesses as well as the documents whose examination or production was disallowed by the Enquiry Officer were either wholly irrelevant to the enquiry or were concerned to disprove charge No 3 mentioned in charge sheet Ex. 4 viz absence of the respondent from the Police Lines, Pali from 7.2.1953 to 19. 2 1953. Mr. Mridul was not able to point out from the order Ex. 19 that any such witness or any such document was disallowed by the Inquiry Officer which had any relevancy in regard to charge of other than No 3. In the circumstances, the utmost that can be said is that the order Ex. 19 prejudiced the respondent to prove his innocence in respect of charge No 3 Even if this charge No. 3 is ignored from consideration there still remains two other charges for which the respondent was found guilty by the Inquiry Officer as well as the Disciplinary Authority. It appears that this aspect of the case was not placed before the learned Single Judge.

12. In the present case the Disciplinary Authority ordered dismissal of the respondent on the basis of the report of the Inquiry Officer who held that part of charge No. 1(a), charge No. 1 (b), charge No 2 and charge No. 3 were proved against the respondent. As already stated above the findings of the Inquiry Officer relating to charge No 3 cannot be sustained as no adequate opportunity was offered to the respondent to prove his innocence in respect of that charge.

13. It has been urged by Mr. Mridul on behalf of the respondent that the finding of the Inquiry Officer on other charge aha, cannot be sustained as there existed no evidence to support them. It is common ground that in proceedings under Article 226 of the Constitution, the High Court cannot sit in appeal over the findings recorded by a competent Inquiry Officer in a departmental enquiry & therefore,

cannot be appreciate the evidence. At the same time it is also common ground that if it is shown that the impugned findings recorded by the Inquiry Officer are not supported by any evidence, the High Court in exercise of its writ jurisdiction would be justified in setting aside the said findings. The question, therefore, which falls for our decision is whether the findings of the Inquiry Officer on charges Nos. 1 and 2 are not sustainable as they were based on no evidence.

14. Before dealing with this point it will be necessary to set out the findings recorded against respondent by the Inquiry Officer. As regards charge No. 1(a) the I.O. found that there was no proof that the respondent had demanded illegal gratification before disbursing the pay. Having arrived at the above conclusion the Inquiry Officer still found the respondent guilty of charge No. 1(a) saying that the respondent did not discharge his duties properly. In arriving at the above finding the Inquiry Officer relied upon the statements' F.C. Daulat Puri P.W. 2 and P.W. 6 Hansraj. The relevant observations of the Inquiry Officer in respect of part (a) of charge No. 1 runs as under:

Part (a) of charge No. 1 was the reason for the initiation of this enquiry. In this connect ion only one witness P.W. 2 F.C. Daulat Puri could be examined. This PW has deposed that he had appeared before the then S.P. Shri. Guman Singhji as he wan not receiving his salary in time. He had appeared before the S.P. along with other Constables Because of non-availability of these constables they could not be examined. But from the evidence of this witness is it clear that the salary was not being disbursed in time. As for, as payment of H C. Dan Mal before disbursing the pay is concerned this charge remains unproved because none other witness could come forward to support it. Certainly P W. 6 Shri Hans Raj Accountant has corroborated this witness to the extent that constables complained to the S.P. that the delinquent officer was delaying the payment of salaries to the constables. This is sufficient to establish that the delinquent officer did not discharge his duties properly.

15. A reading of part (a) of charge No. 1 (set out at the beginning of the judgment) would reveal that there was no specific charge against the respondent that he failed to discharge his duties properly. In this view of the matter the finding of the

Inquiry Officer holding respondent guilty of not discharging his duties properly, appears to be beyond the scope of part 1(a) of the charge No. 1. This finding therefore. cannot be sustained being wholly unwarranted That apart none of the two witnesses namely PW 2 and PW 6 relied upon by the Inquiry Officer deposed that the respondent was guilty of not discharging his duties properly. The statement of PW 2 is that when he did not get his salary in time he enquired from Shri Danmal why salary was not disbursed to him. Danmal in reply told him than that salary bill had not yet been passed. It is not borne out from the statement of PW 2 that the reply given by Shri Danmal was false or untrue. There is also nothing to show that the witness himself considered the reply to the false on untrue. In absence of such evidence no inference can possibly be drawn from the statement of PW 2 Daulat Puri that Shri Danmal did not discharge his duties properly. The next witness whose evidence has been relied upon by the Enquiry Officer is PW 6 Hans Raj. His statement is that certain employees of the police department approached the Superintendent of Police in his presence and complained that they had not received salaries for past two or three months. From his statement it does not follow that the complaint made before the Superintendent of Polite was true or that the persons who complained did not get salary on account: of failure on the part of Danmal to discharge his duties properly. The finding of the Enquiry Officer holding the respondent guilty of part (a) of charge No. 1 is thus based on no evidence and therefore this finding cannot be sustained.

16. We now take up part (b) of charge No. 1 set out above. The charge against the respondent was that on 6 2-58 he avoided physical checking of the cash on the pretext that the key of the cash box was not with him and when he was permitted to bring the key he did not turn up for two hours with the result that the S.P. who had come to the Police Lines for the purpose of physical checking of the cash had to go away without checking the cash. In order to prove the above charge it was necessary for the department to prove firstly that the respondent wanted to avoid physical checking of the cash and with that view he falsely pretended that he possessed no key with him and secondly that he failed to turn up with the key for more then two hours. The Enquiry Officer held this charge proved on the statements of PW. 5 Shafi Mohammed and PW 6. Hansraj We have carefully read the statements of both these. witnesses. None of them has deposed anything to

show that the respondent by his words or action gave any. impression to show that he wanted to avoid physical checking of the cash by the Superintendent of Police on 6-2-1953. There is also nothing to suggest that the respondent falsely represented that he did not possess the key of the cash box with him. Again none of the two witnesses has said that the respondent did not turn up for two hours or within the time allowed by the S.P. On the contrary the statement of PW 5 Shafi Mohammed shows that the respondent had brought the key of the cash box in presence of the S.P. but the latter did not conduct physical verification of the cash is by that time it had become dark. In our opinion there is no evidence to support the finding of the Enquiry Officer in respect of part (b) of charge No. i. In other words it cannot be said that the respondent flouted the orders of the S.P. or that he deliberately avoided to get the cash checked on February 6, 1953. In our opinion there is absolutely no evidence to prove charge No. 1.

17. We now deal with charge No. 2 viz., that the respondent, on 7-2-1953 behaved with his Officers in a most unbecoming and in-disciplined manner unworthy of a police officer. In proof of this charge the Enquiry Officer has relied upon the statements of PW 6 Hansraj PW 4 Shyarn Sunder Lai and PW 5 Shafi Mohammed We have gone through the statement of the said witnesses and we are of the opinion that from the testimony of the said witnesses it is clearly borne out that the respondent on 7-2-1953 challenged the authority of Shri Dewan to check the cash. He also refused to allow Shri Dewan to check the cash Not only this he also behaved with Shri Dewan in an unbecoming and indiscipline manner at the Police Lines and also at the residence of the Superintendent of Police The charge No. 2 set out above in our opinion was rightly held established against the respondent by the Enquiry Officer.

18. Mr. Mridul, the learned Counsel for the respondent, has next urged that since the charges levelled against the respondent were vague, the entire proceedings taken against the respondent deserves to be quashed. We find no substance in the above contention. On the question of vagueness of the charges we do not consider it necessary to deal with charges Nos. 1 and 3 as they have been rejected by us as not proved. So far as charge No. 2 is concerned we find no vagueness in it. The charge sheet Ex. 4 was served on the respondent along with

the statement of allegations Ex. 5. If both, these documents are read together we find no vagueness in charge No 2. A bare reading of Ex. 4 and Ex 5 would reveal that on Feb. 7, 1953 Shri Dewan Additional S.P. Shri Hans Raj Accountant and Shri Mohammed Shafi were detailed for checking cash balance in the presence of the respondent. The respondent refused to have the cash checked by the said. Checking Party. He behaved most insolently with Shri Dewan The Ex 4 & Ex. 5 further show that the respondent was then taken to the residence of the S.P. and there too he behaved in a most indisciplined manner and also used abusive language with the result that the Sub Divisional Magistrate had to be approached for the purpose of verification of the cash. In the face of the above details contained in Ex. 4 and Ex. 5 we feel it difficult to say that charge No. 2 was. in any, way vague.

19. Mr. Mridul has urged that the words 'unmannerly', 'in-disciplined', 'mannerless' 'insolent' and 'abusive language' used in the charge and the statement of allegations are highly vague. According to Mr. Mridul the actual words uttered by the respondent ought to have been included in the charge sheet Ex 4 and the statement of allegations Ex. 5. In this connection Mr. Mridul has invited our attention to the devisers in Surat Chandra, Chakarvarty v. State of West Bengal : (1971)ILLJ293SC , Management of the Northern Railway Co-operative Credit Society Ltd. Jodhpur v. Industrial Tribunal, Rajasthan Jaipur : (1967)IILLJ46SC , Raman and v. Divisional Mechanical Engineer and Avinash Chandra Saajar v. Divisional Superintendent, Central Railway, Jhansi and Ors. 1961 IF & LR (3) 25.

20. The above authorities in our opinion are distinguishable on facts. In the present case the witness Hansraj has repeated precise words uttered by the respondent in presence of the checking party at the Police Lines as also the words uttered by the respondent at the residence of the S.P. In the circumstances it cannot be said that the actual words uttered by the respondent at the Police Lines as well as the residence of the S.P. on February 7, 1953 were not made known to the respondent. That apart the charge No. 2 also related to the refusal on the part of the respondent to allow the competent officers to have the cash checked. The charge sheet Ex. 5 as well as the statement of allegations Ex. 5 clearly go to reveal that the respondent had flatly refused to get the cash checked by Shri

Dewan as also by the S.P. with the result that ultimately the Sub Divisional Magistrate had to be approached. The learned Single Judge has discussed the question of vagueness of the charges and we entirely agree with his finding that atleast charge No. 2 was not vague.

21. Mr. Mridul has next contended that although the Enquiry Officer was throughout the enquiry taking the aid of the P.P. the respondent was not permitted to engage a legal practitioner to help him in the conduct of the enquiry. He has also contended that looking to the gravity of the charges and the type of the witnesses to be examined at the enquiry it was necessary for the proper conduct of the enquiry that the respondent ought to have been allowed a legal practitioner to assist him in the enquiry. Mr. Mridul also brought to our notice the various applications moved by the respondent for permitting him to engage a legal practitioner, but all of them were rejected by the Enquiry Officer without giving am reason Rule 16(5) of the Rajasthan Civil Services (Classification Control and Appeal) Rules, 1958 provides that the Disciplinary Authority may nominate any person to present the case in support of the charges (hereinafter referred as the Enquiring Authority). It further provides that the Government servant may present his case with the assistance of any other Government servant approved by the Disciplinary Authority but may not engage a legal practitioner for the purpose unless the person nominated by the Disciplinary Authority is a legal practitioner or unless the Disciplinary Authority having regard to the circumstances of the case so permits. The explanation added to this clause further says that for the purpose of this rule, a P.P., a Prosecuting Inspector or a Prosecuting Sub-Inspector shall be deemed to be a legal practitioner. In the present case it is not the case of the respondent that the department was represented by any Public Prosecutor, Prosecuting Inspector or a Prosecuting Sub Inspector. The allegation of the respondent is that the Enquiry Officer used to consult the Prosecuting Inspector during the course of the enquiry. The above allegation was strongly refuted by the Enquiry Officer immediately such an allegation was made by the respondent. It may also be mentioned here that except the bald assertion of the respondent that the Enquiry Officer consulted the Prosecuting Inspector there is nothing on the record to suggest that the Enquiry Officer in any manner took any help in the enquiry from the Prosecuting Inspector. The respondent in the circumstances was

not entitled as a matter of right to the assistance of a legal practitioner. As regards the nature of the charges levelled against the respondent and the witnesses who appeared in support of the charges we do not consider that the Enquiry Officer erroneously exercised his discretion in refusing to permit the respondent to engage any legal practitioner to conduct the enquiry. The learned Single Judge has rightly rejected this contention put forward before him on behalf of the respondent.

22. It may be recalled that the punishment of dismissal was imposed upon the respondent on the basis that all the charges had been proved against him. Now we have come to the conclusion that only the second charge has been proved. The question therefore arises whether the punishment of dismissal can be sustained even though two out of three charges have not been proved. In this connection we would like to mention that normally the question of punishment is linked with the gravity of the charge, and the penalty that is inflicted is proportionate to the guilt. In the present case, charge No. 2 levelled against the respondent was a serious charge, for, it involved gross insubordination, not on the part of an ordinary public servant but on the part of a police employee. If the penalty of dismissal had been imposed on the respondent solely on the basis of charge No. 2, it could not have been deemed to be unlawful or inproportionate to the guilt. It has been argued before us on behalf of the respondent that we cannot assume that the Disciplinary Authority would have inflicted the punishment of dismissal solely on the basis of charge No. 2 We find no substance in the above contention in view of the decision of the Supreme Court in State of Orissa & others as. Bidya Bhushan Mohapatra : (1963)ILLJ239SC wherein it was held that if the order in an enquiry under Article 311 can be supported on any finding as to substantial misdemeanour for which the punishment imposed can lawfully be imposed, it is not for the court to consider whether that ground alone would have weighed with the authority in imposing the punishment in question. The same view has been taken by the Supreme Court in Railway Board, New Delhi and Anr. v. Niranjan Singh : (1969)IILLJ743SC and Union of India v. Sardar Bahadur 1972 SLR 355. It is therefore, well settled that the court is rot concerned to decide whether the punishment imposed, provided it is justified by, the rules is appropriate having regard to the misdemeanour established, Looking to the

seriousness of charge No. 2 we are unable to hold that the punishment of dismissal was not sustainable on proof of charge No. 2 alone. We accordingly reverse the judgment under appeal and hold that the order of dismissal of the respondent dated September 7, 1960 passed by the Dy. Inspector General of Police was not liable to be quashed.

23. In the result we allow the appeal and dismiss the writ petition filed by the respondent; but in the circumstances of the case we leave the parties to bear their own costs throughout.