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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision: 30th November, 2009

+ **W.P.(C) 670/2009**

BIHARI SINGH Petitioner
Through: Mr.Jagdish Singh Rajput, Advocate

versus

CISF & ORS. Respondents
Through: Ms.Vandana Gazla, Adv. for
Mr.A.K.Bhardwaj, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

PRADEEP NANDRAJOG, J. (Oral)

1. The appellant was served with a charge memo alleging as under:-

“ARTICLE I OF THE CHARGE

Report has been received that Constable Bihari Singh F.No.854506673 CISF unit THDC Tehri was sent for bringing the weapon and explosive items at CISF base workshop Wadwaha on dated 15/6/2006. Member was allotted Riphah insace butt no.07 registration No.031301362 along with hundred

rounds of bullet. The member had been absconding from 8 p.m. on dated 23/6/2006 uptill 9 on 25/6/2006 from the base workshop of Badwana. Force No. 854506673 i.e. Constable Bihari Singh being a member of disciplined force cannot abscond and leave the Base Workshop Badwana without any prior information to the superior officer if done so is a case of gross negligence therefore this charge.

ARTICLE II OF CHARGE

Constable Bihari Singh Force No.854506673 has been punished 8 times during his course of service. Despite opportunities to correct his habits by the disciplinary authorities, he did not rectify himself. It shows that the force member has become habitual of violating discipline. This is charge."

2. Needless to state the issue at hand pertains to a factual dispute relating to Article I of the charge for the reason Article II of the charge pertains to punishments awarded 8 times in the past, in respect whereof, no inquiry had to be conducted.

3. We clarify, the gravement of the allegation pertaining to Article II of the charge was that the petitioner was a habitual defaulter and had been inflicted punishments 8 times in the past.

4. Article II of the charge was not denied. Article I of the charge was denied.

5. The petitioner denied that he was an absconder. He took a defence that being unwell he went to a Government hospital and by the time he returned the Unit had left. He

claims to have taken a train and caught on with the Unit at Mathura.

6. The defence has been negated. It has been held that the hometown of the petitioner was near Mathura and it was apparent that he had absconded; to be at his hometown. The result is that at the inquiry held, the petitioner was indicted.

7. Taking note of the finding of guilt and the fact that in the past there were 8 acts of indiscipline committed by the petitioner relating to theft, fighting with his colleagues and sleeping at the work force, penalty of compulsory retirement was inflicted vide order dated 6.2.2007.

8. Appeal filed has been dismissed vide order dated 11.5.2007. Revision petition filed has been dismissed vide order dated 31.1.2008.

9. On 3.2.2009 limited show cause notice was issued; limited to the points of proportionality of the punishment awarded.

10. Thus, at the hearing of the writ petition today we have not permitted learned counsel for the petitioner to urge on the merits of the finding returned against the petitioner qua his guilt.

11. Noting that the instant misdemeanour was the 9th

and related to the petitioner absconding from his unit, in that, he went to his hometown without obtaining any proper leave; noting further that some of the past misdemeanours relates to act of theft and sleeping on duty, we are of the opinion that the penalty of compulsory retirement is not disproportionate.

12. Needless to state the petitioner is a Member of the Central Industrial Security Force which has to guard various installations. Surely, a guard who sleeps at the place of duty attracts a heavy penalty vis-à-vis a person who goes into slumber while on duty.

13. The petition is dismissed.

PRADEEP NANDRAJOG, J.

SURESH KAIT, J.

NOVEMBER 30, 2009
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