

+ W.P.(C)No.12752/2009

Date of Decision : 27th September, 2010

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RAMESH KUMAR JATAV Petitioner
Through : Mr. Zangpo Sherpa, Adv.

versus

UNION OF INDIA AND ORS Respondents
Through : Mr. Khalid Arshad, Adv. for
Mr. Neeraj Chaudhary, Adv.

CORAM :-**HON'BLE MS. JUSTICE GITA MITTAL****HON'BLE MR. JUSTICE J.R. MIDHA**

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| 1. | Whether Reporters of Local papers may be allowed to see the Judgment? | NO |
| 2. | To be referred to the Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

GITA MITTAL, J. (Oral)

1. Disciplinary proceedings were conducted against the petitioner on the following charges:

"Articles of Charge No.1

No.8301323 Const. Name R.K. Jatav (u/s) while functioning as Const. in CISF unit, BCCL Jharia, Area No. VII indulged himself in the act of gross indiscipline, dereliction of duty and violated the standing order of the Area Commander in that the said Constable left the Unit lines at about 1830 hrs, on 8.5.89 without any prior information/permission of the superior authority. Thereby he charged with under section 18 of CISF Act, 1968 read with rule 34 of CISF Rules, 1969.

Article of Charge No.II

No.8301323 Constable R.K. Jatav while functioning as Constable in CISF Unit, BCCL Jharia, Area No. VIII

indulged himself in gross misconduct and indiscipline in that the said Constable went to out of bound area (illicit liquor shop) consumed illicit liquor and created nuisance in the Unit line. He also assaulted No.8301231 Const. Vedbir Singh who was on duty and misbehaved with ASI (exe) G. Bariha and abused the other CISF personnel in the filthy language. Thereby, he charged under section 18 of the CISF Act, 1968 read with rule 34 of Rules, 1969.

Article No.III

No.8301323 Const. Name R.K. Jatav while functioning as constable in CISF Unit, BCCL Jharia, Area No. VIII indulged himself in gross misconduct and indiscipline on 8.5.89 in that he misbehaved with Sh. S.K. Mshra, inspect/Exe, Area-in-charge of Area No.VIII in presence of the witnesses and he refused a lawful order to go with him to the Medical Officer for his medical examination but he escaped from the place. As such he could not be medically examined by the Medical Officer about his drunken stage. Thereby, he charged under Section 18 of CISF act 1968 read with rule 34 of CISF rules, 1969.”

2. In the disciplinary proceedings which was conducted, eight witnesses were examined which culminated into the inquiry report finding the petitioner guilty of the 2nd and 3rd charge. The disciplinary authority considered the entire evidence which was placed on record in the inquiry as well as the report of the enquiry officer and by an order dated 28th August, 1989 imposed the punishment of removal from service upon the petitioner with immediate effect. This finding and punishment which was imposed on the petitioner was sustained by the appellate authority which rejected the petitioner’s plea by order passed on 22nd January, 1990.

3. The petitioner’s revision was also rejected by an order passed on 13th July, 1990.

4. It appears that aggrieved by these orders, the petitioner had filed a writ petition bearing WP(C)No.1734/1991. This writ petition was taken up for consideration and disposed of by a order passed on 3rd July, 2008. So far as the challenge to the merits of the proceedings and the order which was passed against him on the ground of want of evidence; procedural irregularities and non-compliance of principal of natural justice was concerned, the court had found that the petitioner would not able to successfully establish the plea and the same were not pressed any further. The petitioner's objection about competency of the authority which passed the order of removal from service was also not pressed for the reason that the commanding officer was found to be Delhi authority. We find that only point canvassed on behalf of the petitioner related to the proportionality of the punishment which had been imposed on the petitioner. The court found substance in this plea. In the order dated 3rd July, 2008, the following directions were issued:-

“On perusal of the order in appeal and the revision order, we find force in the contention of the learned counsel for the petitioner that there is absence of reasons. This absence of reasons is also relevant as the punishment is shockingly disproportionate to the charge. On consideration of the matter, we also find that it is rather harsh to have imposed the extreme punishment of removal from service of the petitioner for a one time incident of consumption of liquor on a weekly off day.

In view of the aforesaid, we consider it appropriate to set aside the order in appeal dated 22.01.1990 and the order of revision petition dated 13.07.1990 and direct the appellate

authority to examine the question of proportionality of sentence afresh and pass speaking order within the maximum period of three months from the receipt of the order. In case the petitioner is aggrieved by the fresh appellate order, the remedy of revision would be available.

The petition is allowed to that extent leaving the parties to bear their own costs."

5. From the above, it is apparent that the matter was recommended for consideration to the appellate authority. On reconsideration of the matter, the appellate authority has passed an order dated 4th September, 2008. Detailed reasons have been recorded for maintaining the punishment of removal from service. The same reads as follows:

"The petitioner had committed a grave misconduct by consuming liquor, assaulting and beating his colleague, misbehaving with Inspector and disobeying the order of his Area commander and camp commander, creating nuisance in barrack and panic among the CISF personnel such type of misconduct is not expected from a disciplined member of the force. The petitioner has persistently indulged in grave misconduct and committed offence one after another. Now, therefore, in compliance with judgment order dated 03.07.08 of the Hon'ble High Court of Delhi, the undersigned has re-examined the entire records of the case including the evidences adduced during the course of enquiry. After careful consideration of the facts and evidences available in the case file, I find that the articles of charge No.2 and 3 levelled against the petitioner have been conclusively proved. I find no procedural infirmity in the departmental proceedings. The petitioner being a disciplined member of the force is expected to maintain high standard of discipline and devotion to his duties. His misdemeanor calls for deterrent punishment to instill discipline in the force otherwise the discipline of force will have a chain reaction and administration will suffer a lot. He had acted in a

manner which is highly unbecoming of a member and a disciplined Force. Being a member of the Armed Force of the Union, assaulting his colleagues, refusing to obey the orders, misbehaving with seniors and creating nuisance in CISF campus under influence of liquor are serious misconducts. His conduct rendered him unfit for retention in this force where discipline is of paramount importance. In fact, it would have been a deserving case for imposition of extreme penalty of "Dismissal from service" which would have been a disqualification for job in other Govt. organization if all the three charges were found proved, but since article of charge No.1 which speaks for his absence from unit lines, was not found proved, therefore, he was awarded a lesser punishment of "Removal from service" which is not a disqualification for appointment in other Govt. organizations. Thus, the punishment awarded by the disciplinary authority is commensurate with the gravity of misconduct and after applying the mind judiciously, I do not find cogent reasons to interfere with the order of punishment passed by the Disciplinary Authority, hence, the appeal petition of the petitioner is Rejected being devoid of merit.

6. This order of the appellate authority was assailed by the petitioner before the revisional authority which was also rejected by a detailed order dated 16th February, 2009 recording additional reasons to support the punishment. The relevant extract of this order of the revisional authority reads as follows:-

"7. In the light of Judgment order dated 03.07.2008, this office has re-examined the case of petitioner with due application of mind. On re-examination, it is seen that the Ex-Const. R.K. Jatav consumed liquor on his own volition and nobody had forced him to do so. Later on, not only he did assault Const. Vedbir Singh who was on duty but also misbehaved with ASI/Exe/G.R. Bariha and abused other CISF personnel in filthy language. It is seen that such behavior of Ex-Const. R.K. Jatav does not fit into the responsibility

given to him as a member of disciplined force. Any lenient approach will be detrimental to administration and discipline of Force and every such delinquency if left unattended would set up a bad example. As admitted by him, under the influence of liquor, his misconduct was an one time incident under influence of liquor, had he confined his behavior to himself, he could have been pardoned, but not only did he scuffle with his fellow colleagues but also misbehaved with senior officers and escaped from the medical checkup.

8. Presence of such person in Force like CISF would undermine the very purpose of discipline and administration when such person will keep fighting and misbehaving with fellow colleagues. His misconduct calls for deterrent punishment for the sake of administration and as well as to instill discipline in other Force personnel and any lenient approach to such incidents will adversely affect discipline, moral and conduct of the Force. Considering all aspects, I agree with the order passed by the Appellate Authority. There appears no reasonable ground to interfere into the orders passed by the Appellate Authority. Hence, order passed by the Appellate Authority is hereby confirmed and revision rejected being devoid of merits.

7. The petitioner thereafter appears to have submitted a representation to the Director of the Central Industrial Security Force which was rejected by an order passed on 20th May, 2009 holding that there was no statutory provision which permitted a second appeal or review or a mercy petition. Therefore, this representation was rejected on the ground of lack of statutory authority for the same. The petitioner has filed the present writ petition assailing the appellate order dated 4th September, 2008, revisional order dated 16th February, 2009 as well as the order dated 20th May, 2009 passed by the Additional Director, CISF at Delhi.

8. The petitioner challenges the above orders primarily on the ground that this court in the order dated 3rd July, 2008 had returned a finding that the punishment of “removal from service” was grossly disproportionate to the gravity of the charges which has been levelled against the petitioner.

Mr. Zangpo Sherpa, learned counsel for the petitioner has vehemently submitted that in the light of this finding, respondent could not have reiterated the punishment of removal from service under any circumstance.

9. Mr. Khalid Arshad, learned counsel appearing for the respondents has contended the action of the respondents as well as proportionality of the punishment which was imposed cannot be assailed on any legally tenable ground. It is contended that the petitioner was a member of the disciplinary force. The nature of duties which the CISF is to discharge permits no indiscipline or misconduct. It is urged that having regard to the onerous responsibility which CISF personnel have to discharge, it is not open for the petitioner to take a plea to the fact that he was a first time de-faulter.

10. We find that the order dated 22nd January, 1990 recorded by the appellate authority and the order dated 13th July, 1990 by the revisional authority were bereft of any reasons for the punishment which was imposed. This has been clearly noted in the 3rd July, 2008 passed by this Court while deciding W.P.(C) No.1734/1991. This was the reason which persuaded the court to directed fresh consideration on

the issue of proportionality of punishment which stood imposed by the said orders on the petitioner.

11. In the pronouncement of the Apex Court **(2001) 2 SCC 386, Om Kumar vs. Union of India**, the Apex Court has clearly laid down the parameters for judicial review of the punishment which has been imposed after conclusion of disciplinary proceedings of challenge on grounds of proportionality of the same. Placing reliance on earlier pronouncement, the Court had laid down the applicable principles thus:

“71. Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as “arbitrary” under Article 14, the court is confined to Wednesbury principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing court because no issue of fundamental freedom nor of discrimination under Article 14 applies in such a context. The court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts, and such extreme or rare cases can the court substitute its own view as to the quantum or punishment.”

In view of the principles laid down by the Supreme Court, challenge to the punishment which has been imposed on a person pursuant to the disciplinary action can be laid only on restricted grounds confined to Wednesbury Principles. This court is legally permitted to examine such a challenge

only as a secondary review.

12. We find that the matter stands reconsidered in terms of our order dated 3rd July, 2008. The order dated 4th September, 2008 by the appellate authority as well as the order passed on 16th February, 2009 by the revisional authority on reconsideration which has been extracted above, clearly gives detailed consideration for the punishment which has been imposed. We find that the authorities have also clearly given the reasons for awarding upon the petitioner, lesser punishment of removal from service instead of imposing the extreme penalty of dismissal, which could debar the petitioner from getting any other job in Govt. organization. There is substance in the submissions made by learned counsel for the respondents.

13. Perusal of the inquiry report as well as the order of petitioner's disciplinary authority dated 28th August, 1989 as well as the impugned orders dated 4th September, 2008 and 16th February, 2009 show that the petitioner had not only imbibed alcohol along with two of his colleagues namely Constable Riyaz Ahmed and Constable R.K. Dwivedi, but had assaulted another colleague namely Constable Ved Bir Singh. This person had testified in the witness box in the enquiry. When called upon by the petitioner's superior officer Inspector/Executive S.K. Mishra (PW-6) to sit in the Jeep for medical checkup, the petitioner refused to do so and also misbehaved with him. The petitioner deliberately avoided the

medical examination and escaped from the spot on the pretext of having to answer the call of nature. As a result, the petitioner was able to avoid the medical examination. So far as his mental and physical state is concerned, the same is evident from the fact that at about 03:30 hrs of the next morning the petitioner had to be rescued from the roof of the toilet. The record discloses that the petitioner has further disobeyed the order of Area Commander and Camp Commander. The impugned order notes that the petitioner was not only guilty of his misconduct but had also created nuisance in the barrack as well as panic amongst the CISF personnel.

Taking a considered view on the totality of the circumstances, certainly the petitioner's conduct was such as could not be expected by a serving personnel.

14. Our attention is drawn to a pronouncement of the Supreme Court reported as **AIR 1992 SC 2188, State of Punjab Vs. Ram Singh** where in the respondent was serving with the police and stood dismissed from service for a single act of heavy drinking of alcohol while on duty. The respondent has challenged the disciplinary proceedings on the ground that his act was not covered within the definition "misconduct". We find that while considering the matter, the Supreme Court has occasion to examine the conduct of a member of a force who imbibed alcohol on a single occasion.

The observations of the court on this aspect of the matter

would have a bearing on the issue which arisen for consideration deserve to be considered in extenso. The same reads as follows:-

8. The next question is whether the single act of heavy drinking of alcohol by the respondent while on duty is a gravest misconduct. We have absolutely no doubt that the respondent, being a gunman having service revolver in his possession, it is obvious that he was on duty; while on duty he drunk alcohol heavily and became uncontrollable. Taking to drink by itself may not be a misconduct. Out of office hours one may take to drink and remain in the house. But being on duty, the disciplined service like police service, the personnel shall maintain discipline and shall not resort to drink or be in a drunken state while on duty. The fact is that the respondent after having had heavy drink, was seen roaming or wandering in the market with service revolver. When he was sent to the doctor for medical examination he abused the medical officer on duty which shows his depravity or delinquency due to his drinking habit. Thus it would constitute gravest misconduct warranting dismissal from service. The authorities, therefore, were justified in imposing the penalty of dismissal. The Courts below failed to properly appreciate the legal incidence and the effect of the rules.

It is, therefore, evident that the act of consuming alcohol and mis-behaving with the medical officer on duty to whom the petitioner was sent for medical examination has been construed as such serious conduct which merited the punishment of dismissal from service.

15. We may notice that an objection has been laid to the territorial jurisdiction of this court to entertain and adjudicate upon the subject matter of this writ petition. However, the learned counsel for the petitioner submits that the representation which was made by him to the authority of

Delhi was maintainable and the order dated 20th May 2009 which have been passed are within jurisdiction. Having regard to the fact that the detailed submissions have been made by the counsel for the parties and we have decided the matter, we are not inclined to examine this issue any further and have open the same for consideration in an appropriate proceeding.

16. The present writ petition is devoid of merit, which is hereby dismissed.

GITA MITTAL, J

J.R. MIDHA, J

SEPTEMBER 27, 2010
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