

GAHC010107672011



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4248/2011

TRILOCHAN PATRA
PRESENTLY RESIDING AT QTR. NO. MCR-2 UPENDRA BHAVAN, WARD NO.
10, T.P.CHALIHA ROAD, NAMGHAR CHARIALI, MELAHAKAR, SIVASAGAR,
DIST SIVASAGAR,

VERSUS

THE UNION OF INDIA and ORS
REP. BY THE MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA, NEW DELHI

2:INSPECTOR GENERAL

CENTRAL INDUSTRIAL SECURITY FORCE/NES
MINISTRY OF HOME AFFAIRS OFFICE OF THE INSPECTOR GENERAL
CENTRAL INDUSTRIAL SECURITY FORCE/NES MINISTRY OF HOME
AFFAIRS OFFICE
PREMISES NO. 553
EAST KOLKATA TOWNSHIP
KASBA KOLKATA-107

3:DY INSPECTOR GENERAL

CENTRAL INDUSTRIAL SECURITY FORCE UNIT
ONGC
NAZIRA
DIST SIVASAGAR
ASSAM

4:THE SR. COMMANDANT

CENTRAL INDUSTRIAL SECURITY FORCE UNIT ONGC NAZIRA
DIST SIVASAGAR

ASSAM

5:THE COMMANDANT

CENTRAL INDUSTRIAL SECURITY FORCE UNIT ONGC NAZIRA
DIST SIVASAGAR
ASSA

For the Petitioner (s) : Mr. H.K. Sarma, Advocate.

For the Respondent (s) : Mr. G. Pegu, Advocate.

Date of Hearing & Judgment : **10.08.2023**

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER(ORAL)

The instant writ petition has been filed challenging the dismissal of the Petitioner from service vide the order dated 05.05.2009 passed by the Commandant, Central Industrial Security Force Unit ONGC, Nazira as well as the subsequent orders by which the Appellate Authority as well as the Revisional Authority had dismissed the appeal as well as the Revision Petition filed by the Petitioner.

2. The facts of the instant case is that on 01/07/2003 an altercation had happened between the Petitioner and some other officials of the Central Industrial Security Force at the mess of the outpost of CHAI Rig of RDS Sector. Thereupon a order was issued on 3rd of July, 2003 whereby the Petitioner was dismissed from service by dispensing with

the requirement of holding any enquiry. The said order was upheld by the Appellate Authority vide an order dated 30.12.2003. It reveals from the records that the said order of dismissal on 3rd of July, 2003 as well as the order by which the said order of dismissal was confirmed were put to challenge before this Court in a Writ Petition being W.P.(C) No. 2308/2004. This Court vide a judgment dated 24.7.2008 set aside the order of dismissal dated 3.7.2003 and further directed the Respondents to confer all consequential benefits to the Petitioner forthwith. This Court further granted the liberty to the Respondents to proceed afresh against the Petitioner but strictly in accordance with law. The Petitioner thereupon was reinstated on the basis of the order passed by this Court on 24.7.2008 in W.P.(C) NO. 2308/2004 but was kept under suspension. This aspect could be seen from the order dated 26.9.2008. It further reveals from the records that on 11.10.2008, the Respondent No. 5 issued a Memorandum to the Petitioner stating interalia that an enquiry would be held against the Petitioner under Rule 36 of the CISF Rules, 2001. To the said Memorandum, the Articles of Charges were enclosed as Annexure-I and a statement of imputation of misconduct or misbehavior in support of each article of charge were enclosed as Annexure-II. Further to that, the list of documents as well as the list of witnesses by which the Articles of Charges were proposed to be proved were enclosed as Annexure-III and Annexure-IV respectively. From a

perusal of the enclosures to the Memorandum dated 11.10.2008 the three charges leveled against the Petitioner are reproduced hereinunder :-

ARTICLE OF CHARGE No. I

“That No. 773170108 HC/GD Trilochan Patra of CISF Unit ONGC Nazira who was detailed for duty from 1300 hrs to 1700 hrs on 01.07.2003 at Main Gate Morcha of CHAI Rig of RDS sector alongwith arms & ammunition, left the duty post at about 1315 hours without any intimation or permission from the Competent Authority and arrived at Cooking hut cum mess of the outpost, under influence of liquor. Thus, he exhibited an act of gross misconduct, indiscipline and also an act of unbecoming of a good member of the Armed Force of the Union like CISF. Hence the charge.

ARTICLE OF CHARGE No. II

“That No. 773170108 HC/GD Trilochan Patra of CISF Unit ONGC Nazira in possession with arms & ammunition, left his duty post at about 1315 hours on 01.07.2003 went to the cooking hut cum mess of CHAI Rig and deliberately fired 4 rounds from service weapon (SMG) aiming at HC/GD Sanjay Dubey. As a result, one of the bullets ricocheted and scratched the left side head of HC/GD Sanjay Dubey causing minor injury. Thus, No. 773170108 HC/GD Trilochan Patra of CISF Unit ONGC Nazira exhibited heinous act, thereby unbecoming of a good member of the Armed Force of the Union like CISF. Hence the charge.

ARTICLE OF CHARGE No. III

“That an act of misconduct and highly prejudicial of good order and indiscipline that No. 773170108 HC/GD Trilochan Patra of CISF Unit ONGC Nazira fired 4 rounds on 01.07.2003 at about 1315 hours under intoxication without any reason thus, resulted loss to the Government property i.e. 04 rounds. The above act on the part of 773170108 HC/GD Trilochan Patra of CISF Unit ONGC Nazira amounts to gross misconduct, indiscipline and an act of unbecoming of a good member of the Armed Force of the Union like CISF. Hence the charge.”

3. It further reveals from the records that the Petitioner herein had submitted a reply on 21.10.2008. In paragraph No. 9 of the said reply,

it was the stand of the Petitioner that he was on duty on 1.7.2003 at 1300 hrs. to 1700 hrs. and he signed the duty register under one Shri Sanjay Dubey and the allegations of influence of liquor was a fabricated one. He further stated that had he been under the influence of liquor, he would not been allowed to take his position. It was further mentioned that one Sri Baljinder Singh No. 2229 was released by him and the Petitioner was in the Main Gate Morcha of CHAI Rig of RDS Sector. He further stated that after he took charge of the main gate which was at a distance of 30 ft. from the mess/ the cooking hut, he heard a big voice/hue and cry in the cooking hut and the sound of big laughing and enjoyment. It was the further the case of the Petitioner as stated in his reply that after a few minutes of taking charge one unknown Assamese person came near the gate and informed him that he had come to meet Shri Sanjay Dubey, Sri Baljinder Singh and Constable Narvender Singh. The Petitioner then informed the said person that the said persons were in the mess/the cooking cell and asked him to wait so that he can give message to the said persons. Thereupon the Petitioner went to the mess/the cooking hut, wherein he saw the said three persons namely Sri Sanjay Dubey, Sri Baljinder Singh and Constable Narvender Singh were having liquor. Thereupon it is the case of the Petitioner that there were certain altercations between the Petitioner and the three persons and the three persons came out of the mess and dragged the petitioner with

his arms and ammunitions and forcibly snatched away the arms for which the Petitioner and Sri Sanjay Dubey fell down on the ground and in such scuffling the arms belonging to the Petitioner fired and after that the arms of the Petitioner was snatched by Shri Sanjay Dubey.

4. It reveals further from the records that a departmental proceedings was initiated wherein on behalf of the employer evidence of 5 witnesses were adduced. The statement of the Petitioner was also taken. On the basis of the above, the learned Enquiry Officer came to the conclusion that all the three charges were proved against the Petitioner. The Petitioner thereupon was served the Enquiry Report and was given an opportunity to reply to the same. The Petitioner accordingly replied to the same. It is further seen that vide an order dated 5.5.2009 taking into account that the charges were duly proved, the Respondent No. 5 in exercise of the powers under Rule 32 (1) read with Schedule 1 and Rule 32 (I) of CISF Rules, 2001 awarded the penalty of dismissal from service which shall ordinarily be a disqualification for future employment under the Government. It was further mentioned that the suspension period from 4.10.2008 to 5.5.2009 would be treated as suspension and not on duty for the purpose. Further to that, it was also observed that the Petitioner shall not get any other benefit other than the subsistence allowance which had already been paid to him during the period of suspension.

5. The Petitioner thereupon preferred an Appeal against the said order and the said Appeal was dismissed vide an order dated 18.7.2009 passed by the Deputy Inspector General, CISF Unit ONGC, Nazira. From a perusal of the said Appellate Order, it reveals that the Appellate Authority had duly taken note of that the principles of natural justice were duly complied with and had also discussed the findings arrived at by the Enquiry Officer on merits and found no reason to differ with the opinion of the Enquiry Officer.

6. It further reveals from the records that the Petitioner thereupon preferred a Revision before the Revisional Authority which was also dismissed vide an order dated 18.3.2010 holding interalia that the charges leveled against the Petitioner was proved on the basis of the evidence adduced by the Enquiry Officer during the course of the departmental enquiry. It was also further held that the Petitioner was afforded all reasonable opportunity to defend himself and there was no procedural irregularity in conducting the departmental enquiry by the Enquiry Officer and the Disciplinary Authority in dealing with the case of the Petitioner. It was further held that the allegations/the charges proved against the Petitioner are serious in nature and subversive to the Force discipline. Further to that, it was also held that the penalty awarded by the Disciplinary Authority and confirmed by the Appellate Authority commensurates with the gravity of the proven act of the misconduct.

7. Being aggrieved by the order of dismissal dated 5.5.2009 which was confirmed by the Appellate Authority as well as the Revisional Authority, the instant writ petition was filed on 8th of August, 2011.

8. It reveals from the records that this Court had issued notice on 24.8.2011 and there was an interim order passed that till the returnable date, if the Petitioner has not been removed or evicted from the quarter allotted to him, he shall not be ousted subject to the condition that he may abide by the terms and conditions and maintain discipline as may be imposed by the authority. It further reveals that this Court vide an order dated 18.11.2011 issued Rule. It is however relevant also to take note that vide an order dated 23.7.2012, this Court taking into account that the Petitioner has been dismissed from service pursuant to a departmental proceeding on serious charges of dereliction of duty observed that the Petitioner cannot be permitted to retain the quarter allotted to him and accordingly the interim order dated 24.8.2011 was vacated. It has been submitted at the Bar that the Petitioner thereupon had vacated the quarter.

9. The records further shows that the Respondent Nos. 1, 2, 3, 4 & 5 had filed their joint Affidavit-in-Opposition on 7th of December, 2011 supporting the dismissal order, Appellate Order as well as the Revisional Order. In the Affidavit-in-Opposition, it was stated that the Petitioner was granted due opportunity and thereupon after following

the principles of natural justice and taking into account the matter in the entirety, the Disciplinary Authority had imposed the punishment vide the order dated 5.5.2009. It was further mentioned that the Appellate Authority as well as also the Revisional Authority had also duly taken note of the facts and had confirmed the findings of the Enquiry Officer.

10. Mr. H.K. Sarma, the learned counsel for the Petitioner submitted that simultaneously alongwith the departmental proceedings a criminal proceedings was also initiated against the Petitioner. In the departmental proceedings what was held to be proved against the Petitioner was negated by the Court of the Sessions Judge, Sivsagar in Sessions Case No. 35 (S-S)/2006 under Section 307 IPC read with Section 27 of the Arms Act and as such the entire departmental proceedings including the enquiry report suffers from perversity. He submitted that the Enquiry Officer, the Appellate Authority as well as the Revisional Authority did not take into consideration that there was no proof that the Petitioner was under intoxication as well as also that the Petitioner had fired 4 rounds. The learned counsel further submitted that nothing was taken into consideration during the departmental proceedings as regards whether there was any injury so caused on the basis of any materials. It is therefore the submission of the learned counsel that the departmental enquiry was carried out most perfunctorily and in order to only make the Petitioner a

scapegoat.

11. On the other hand, Mr. G. Pegu, the learned counsel appearing on behalf of the Respondents submitted that the Enquiry Officer had after duly taking into account the evidence had come to the findings to the effect that all the three charges leveled against the Petitioner had been proved. This aspect of the matter was confirmed by the Appellate Authority as well as the Revisional Authority by resorting to the facts in detail. The learned counsel further submitted that taking into account that this is exercising a jurisdiction under Article 226 of the Constitution, the contours of jurisdiction will only be limited to the decision making process insofar as to whether the decision making process was arbitrary, unreasonable and perverse as well as have caused manifest injustice to the Petitioner. The learned counsel therefore submitted that in a recent judgment of the Supreme Court in the case of **Union of India and Ors. Vs. Constable Sunil Kumar** reported in **(2023) 3 SCC 622**, the Supreme Court had clearly laid down the contours of the jurisdiction under Article 226 of the Constitution in respect to departmental enquiries.

12. Further to that, Mr. G. Pegu also submitted that the exoneration of the Petitioner in the criminal case would have no nexus on the departmental enquiry inasmuch as in the criminal case the proof which is to be adduced is beyond reasonable doubt whereas in a departmental proceedings the same has to be taken into

consideration on the basis of preponderance of probabilities.

13. I have heard the learned counsel for the parties and have also perused the materials on record.

14. As regards the procedure so followed in the departmental proceedings, it is seen that the Petitioner was duly given the opportunities for the purpose of defending his case and as such the procedures so adopted by the Enquiry Officer as well as the subsequent actions so taken by the Disciplinary Authority and the Appellate Authority as well as the Revisional Authority cannot be called into question.

15. The next question therefore arises whether this Court should interfere with the findings on merits arrived at by the Enquiry Officer which has been upheld by the Appellate Authority as well as the Revisional Authority. This Court have duly gone through the departmental enquiry report and from a perusal of the said enquiry report, this Court could not find any perversity in the findings so arrived as regards the charge Nos. 1, 2 and 3. It is also relevant to take note of that the Appellate Authority as well as the Revisional Authority had also duly taken note of the evidence on record and had come to a finding that the opinion of the Enquiry Officer was in conformity with the evidence so adduced.

16. Now the question arises as regards the punishment so imposed

upon the Petitioner by the Disciplinary Authority which was confirmed by the Appellate Authority as well as the Revisional Authority. This Court at this stage finds it relevant to take note of the judgment of the Supreme Court in the case of **Constable Sunil Kumar (supra)** and more particularly to Paragraph Nos. 10, 11 and 12 of the said judgment which are reproduced hereinunder : -

“10. In Surinder Kumar⁴, it is observed that even in a case when a CRPF personnel was awarded imprisonment under Section 10(n) for an offence which though less heinous, he can be dismissed from service, if it is found to be prejudicial to good order and discipline of CRPF. Under the circumstances, the reasoning given by the High Court that as the respondent is deemed to have committed a less heinous offence, the order of penalty of dismissal can be said to be disproportionate is not required to be accepted.

11. Even otherwise, the Division Bench of the High Court has materially erred in interfering with the order of penalty of dismissal passed on proved charges and misconduct of indiscipline and insubordination and giving threats to the superior of dire consequences on the ground that the same is disproportionate to the gravity of the wrong. In Surinder Kumar⁴ while considering the power of judicial review of the High Court in interfering with the punishment of dismissal, it is observed and held by this Court after considering the earlier decision in Union of India v. R.K. Sharma⁵ that in exercise of powers of judicial review interfering with the punishment of dismissal on the ground that it was disproportionate, the punishment should not be merely disproportionate but should be strikingly disproportionate. As observed and held that only in an extreme case, where on the face of it there is perversity or irrationality, there can be judicial review under Articles 226 or 227 or under Article 32 of the Constitution.

12. Applying the law laid down by this Court in the aforesaid decision(s) to the facts of the case on hand, it cannot be said that the punishment of dismissal can be said to be strikingly disproportionate warranting the interference of the High Court in exercise of powers under Article 226 of the Constitution of India. In the facts and circumstances of the case and on the charges and misconduct of indiscipline and insubordination proved, the CRPF being a disciplined force, the order of penalty of

dismissal was justified and it cannot be said to be disproportionate and/or strikingly disproportionate to the gravity of the wrong. Under the circumstances also, the Division Bench of the High Court has committed a very serious error in interfering with the order of penalty of dismissal imposed and ordering reinstatement of the respondent."

17. Taking into account the above proposition of law as laid down by the Supreme Court and applying the same to the facts of the instant case, wherein the charges so leveled against the Petitioner which have been proved constitutes grave and serious misconduct, this Court is of the opinion that the imposition of the penalty of dismissal was proportionate to the charges proved.

18. Taking into account the above, this Court therefore finds no grounds to interfere with the order of dismissal dated 5.5.2009 as well as the Appellate Order dated 18.7.2009 and the Revisional Order dated 18.3.2010 respectively.

19. Before parting with the record, this Court further finds it relevant to take note of the submissions made by the learned counsel for the Petitioner that pursuant to the order dated 24.7.2008 passed in W.P. (C) No. 2308/2004 the Petitioner is entitled to the consequential benefits arising out of the setting aside of the dismissal order dated 3.7.2003. It is the specific submission of the learned counsel for the Petitioner that for the period from 3rd of July, 2003 till his reinstatement on 4.10.2008, the Petitioner has not been granted the consequential benefits which however enures upon the Petitioner

pursuant to the order dated 24.7.2008 passed by this Court in W.P.(C) No.2308/2004. On the other hand Mr. G. Pegu, the learned counsel appearing on behalf of the Respondents submits that the said consequential benefits had already been given to the Petitioner.

20. Taking into account the above submissions, this Court directs the Respondent No. 5 to verify as to whether the Petitioner has been granted the consequential benefits in pursuance to the judgment and order dated 24.7.2008 passed in W.P.(C) No.2308/2004 for the period from 3.7.2003 to 4.10.2008. This Court further directs the Respondent No. 5 that in the event if it is found that such consequential benefits have not been paid to the Petitioner, the Petitioner be granted such benefits within a period of 50 days from the date a certified copy is served upon the Respondent No. 5.

21. Accordingly, the instant writ petition stands dismissed save and except the observations made in Paragraph No. 20.

JUDGE

Comparing Assistant