

GAHC010144662023



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

Case No. : Review.Pet./89/2023

KALADHAR CHAUBEY
S/O SHARDA PRASAD CHAUBEY R/O. HATHIAR KHURD, P.O. KATI HAR
KALA, P.S. CHOLAPUR, DIST VARANASI U.P

VERSUS

THE UNION OF INDIA AND 3 ORS.
REP. BY THE HOME SECY, GOVT.OF INDIA, NEW DELHI.

2:THE DY. INSPECTOR GENERAL
CISF
N.E.Z
KOLKATA-17

3:THE COMMANDANT
CISF
UNIT ONGC
JORHAT.

4:THE ASSTT. COMMANDANT

CISF
UNIT ONGC
JORHAT

Advocate for the Petitioner : MR. R MAZUMDAR

Advocate for the Respondent : DY.S.G.I.

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

02.08.2023

Heard Mr. R. Mazumdar, learned counsel for the review petitioner and Ms. A. Gayan, learned CGC for the Union of India.

2. This review petition has been filed against the Judgment and Order dated 06.06.2023 passed in W.P(C) No. 4518/2008. The review petitioner was working as a Constable in CISF at the relevant point in time when an incident which had occurred during his service tenure, disciplinary proceedings were initiated. The enquiry was ordered by the respondent authority against the petitioner as well as a fellow Constable. The disciplinary enquiry was separately initiated against both the Constables. The Enquiry Officer conducted the enquiry submitted his report on 16.09.1996 with a copy being served upon the petitioner. On the basis of the report submitted by the Enquiry Officer, the disciplinary authority, namely, the Commandant, CISF Unit, Jorhat issued the impugned order dated 30.10.2016, whereby the petitioner was dismissed from service. Initially, the petitioner had approached the Allahabad High Court, however, the writ petition therein was dismissed by the Allahabad High Court on the ground of lack of territorial jurisdiction and thereafter, the petitioner approached this Court.

3. A similar writ petition was also filed by the other Constable against whom similar disciplinary enquiry was instituted in respect of the same incident and against whom similar punishment namely, an order of dismissal from service, was issued. The said delinquent employee had also filed a writ petition being W.P.(C) No. 4517/2008. This writ petition came to be heard and disposed of vide Judgment dated 10.05.2018, whereby a Co-ordinate Bench of this Court had interfered with the order passed by the enquiry officer as well as the

consequential dismissal order. Against this order, a writ appeal being W.A. No. 120/2019 was filed and the writ appellate Court vide Judgment and Order dated 29.08.2019 dismissed the writ appeal and upheld the order passed by the learned Single Judge. No further appeal was carried to the Apex Court.

5. During the course of the hearing of the writ petition in which the present review petition has been filed, it was submitted that at the relevant point in time the writ petition being W.P(C) No. 4518/2008 came to be dismissed for non-prosecution and therefore the same could not be taken up together for hearing along with W.P(C) No. 4517/2008.

6. Upon hearing the learned counsels for the parties and upon due perusal of the materials before the Court as well as the pleadings on record, this Court by Judgment and Order under review, allowed the writ petition by interfering with the order of dismissal.

7. This writ petition was disposed of with a finding that this Court had agreed with the conclusions arrived at by the Co-ordinate Bench passed in W.P.(C) No. 4517/2008 and that there were no grounds to defer with the conclusions arrived at by the Co-ordinate Bench.

8. In the said Judgment which is now under review, it came to be recorded that the petitioner had in the meantime crossed the age of superannuation and consequently, the prayer for reinstatement and notional benefits as granted by the Co-ordinate Bench in W.P.(C) No. 4517/2008 was not granted.

9. The learned counsel for the review petitioner submits that the finding of the Court was arrived at on the basis of submissions made which were found to be not supported by the records. The learned counsel for the petitioner submits that by oversight it was submitted that the petitioner had crossed the age of

superannuation when as on date he is about 51 years and the age of superannuation under CISF is 60 years.

10. As such, the review petition has been preferred on the following grounds:

***I.** For that the Ld. Counsel for Writ Petitioner has failed to point Out that Review Petitioner has remaining 9(Nine) years of Service at the time of hearing the case. Due to failure on the Part of Counsel of Writ Petitioner, Hon'ble Court has wrongly recorded that the Writ Petitioner/ Review Petitioner has crossed the age of superannuation, but the said fact is not correct. At the time of filing the parent Writ Petition, i.e. 2008, the review petitioner / writ petitioner was aged about 35 years and as on date he has attained the age of 51 years. As per service records also, date of birth of Review Petitioner is 01.02.1972. Thus Review Petitioner has remaining almost 9 (nine) years of Service.*

***II.** For that Since the Order of Removal has been interfered with by the Hon'ble Court, thus Review Petitioner entitled to reinstate in Service till actual date of attaining the age of superannuation.*

***III.** For that any view of the matter, the Judgment and order dated 06.06.2023 passed in W.P.(C) No. 4518/2008 is need to be reviewed as there is an apparent error on the factual ground on the face of records and thus liable to be interfered with."*

11. The learned CGC appearing for the respondents does not dispute the fact that the Judgment of the Co-ordinate Bench is W.P.(C) No. 4517/2008 has attained finality as on date. It is also not in dispute that the incident for which the enquiry was initiated in respect of the present review petitioner as well as the petitioner in W.P.(C) No. 4517/2008 are one and the same. The witnesses produced during the course of the enquiry were one and the same. It is also not disputed by the learned counsel for the respondents that no appeal in the meantime has been preferred against the Judgment and Order presently under

review.

12. Under such circumstances, more particularly, in view of the findings of this Court that there are no grounds to differ with the conclusions arrived at by the Co-ordinate Bench and further the said Judgment dated 10.05.2018 passed in W.P.(C) No. 4517/2008 had also been upheld in the meantime by order dated 29.08.2019 passed in W.A. No. 120/2019, the conclusions arrived at by the Co-ordinate Bench in W.P.(C) No. 4517/2008 have been concurred with by this Court.

13. The learned counsels for the parties have been heard. The review petition has been carefully perused. The Judgment under review as also the Judgment dated 10.05.2018 passed in W.P.(C) No. 4517/2008 and the order dated 29.08.2019 passed in W.A. No. 120/2019 have also been carefully perused.

14. By the Judgment under review passed in W.P.(C) No. 4518/2008, this Court had arrived at a conclusion that the facts situation being similar and the incident in respect of which the enquiry and the consequential dismissal orders have been passed is one and the same in both the writ petitions namely W.P.(C) No. 4517/2008 as well as W.P.(C) No. 4518/2008. This Court after due consideration of issues involved and the rival arguments had concluded that there was no ground to differ with the conclusions arrived at by the Co-ordinate Bench of this Court in its Judgment dated 10.05.2018 passed in W.P.(C) No. 4517/2008. Furthermore, the said Judgment of the Co-ordinate Bench dated 10.05.2018 passed in W.P.(C) No. 4517/2008 had also been upheld by a Division Bench of this Court vide Judgment dated 29.08.2019 passed in W.A. No. 120/2019. There is no dispute at the bar that no further appeal had been carried to the Apex Court against the Judgment dated 29.08.2019 passed in W.A. No. 120/2019 upholding the Judgment dated 10.05.2018 passed by the

Co-ordinate Bench in W.P(C) No. 4517/2008. In that view of the matter, the findings arrived at by the Co-ordinate Bench in the Judgment dated 10.05.2018 passed in W.P.(C) No. 4517/2008 had attained finality and under such circumstances in view of the conclusions of this Court that there are no ground to differ with the conclusions arrived at by the Co-ordinate Bench in the Judgment dated 10.05.2018 passed in W.P.(C) No. 4517/2008, the writ petition was allowed with the directions as contained in Para-16 of the said Judgment. However upon careful perusal of the pleadings read with the Judgment dated 10.05.2018 passed in W.P.(C) No. 4517/2008, it is seen that certain factual inconsistencies are noticed which had perhaps crept due to the submissions inadvertently made by the counsel for the petitioner. These inconsistencies are apparent on the face of the record and therefore, the same is required to be rectified. Such rectification will not alter the findings and the conclusions arrived at by this Court in the Judgment under review.

15. In that view of the matter and in view of the discussions made above, this Court is of the view that the Judgment and Order dated 06.06.2023 passed in W.P(C) No. 4518/2008 needs to be reviewed in so far as the directions contained in Para-16 of the Judgment is concerned. In Para-16 of the said Judgment and Order, it was ordered as under:

“16. It is submitted that the petitioner had in the meantime already crossed the age of superannuation and therefore, this Court considers it appropriate to grant similar relief as had been done by the Co-ordinate Bench in W.P(C) No. 4517/2008 and therefore, direct payment of lumpsum amount of Rs. 2,00,000.00 as backwages as it is considered to be as just and proper compensation for the injuries suffered by the petitioner because of the suffering endured by the petitioner.”

16. In view of the findings arrived at by this Court and in view of the

discussions referred above, the Para-16 of the present Judgment under review now stands recalled and instead the following directions are issued.

17. In view of the discussions held above, this Court considers it appropriate to grant similar relief as has been done by the Co-ordinate Bench in W.P.(C) No. 4517/2008. As such, in view of the interference by this Court of the enquiry report dated 16.09.1996 as well as the order of dismissal dated 30.10.2016 passed by the disciplinary authority, the petitioner is directed to be reinstated as Constable in CISF with immediate effect and the service benefits applicable to the petitioner will be released by the authorities as per provisions of law. The petitioner will be given the notional benefit of his service and the seniority be also protected.

18. In view of the injustice found to have been caused to the petitioner, this court substance the payment of lumpsum of Rs. 2,00,000/- as backwages which would be considered to be as just and proper compensation for the injuries suffered.

19. The review petition is accordingly closed.

20. This order shall be read together with the Judgment and order dated 06.06.2023 passed in W.P.(C) No. 4518/2008.

JUDGE

Comparing Assistant