

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7058 of 2014

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Nikesh Gunjan son of Sri Ram Udagar Choudhary resident of village Charopur, Police Station Muffasil, District Munger.

.... Petitioner/s

Versus

1. The Union of India through the Secretary Ministry of Home Affairs, New Delhi.
2. The Inspector General, Central Industrial Security Force, Eastern Zone, Head Quarter, Boring Road, Patna.
3. The Deputy Inspector General, Central Industrial Security force, Eastern Zone, Head Quarter at Patna
4. The Commandant, Central Industrial Security Force, Unit PT Paradeep, Orissa.
5. The Commandant, C.I.S.F. Unit, B.C.C.L. Dhanbad.
6. The Commandant, C.I.S.F. Unit, L.O.C. Barauni.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nagendra Dubey, Adv

For the Respondent/s : Mr. Sanjay Kumar A.S.G.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

2 09-02-2015

Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application reads as follows:-

“Issuance of writ in the nature of certiorari quashing the order no. 11998 dated 27.9.2010 passed by the Commandant, C.I.S.F.Unit, B.C.C.L., Dhanbad and quashing the order no. 256 dated 18/19.3.2013 passed by the Deputy Inspector General, C.I.S.F., Easter Zone Head Quarter, Patna annexed as Annexure-7 and 9 to this petition.

Issuance of a writ in the nature of mandamus commanding the respondents to remain the petitioner in the pay scale with all consequential benefits which petitioner was getting prior to the said charge i.e. dated 4.8.2004.”

Learned counsel for the petitioner while assailing



the impugned orders dated 27.09.2010 and 19.03.2013, has basically concentrated on the aspect that there was no evidence against the petitioner so as to hold him guilty. He has also submitted that as a matter of fact the person who was accompanying him on the fateful day had also not supported the charged against the petitioner in course of departmental proceeding.

3. Learned Assistant Solicitor General appearing on behalf of respondents on the other hand has submitted that the petitioner has been given punishment only in keeping with the observations of this Court because on the earlier occasion when the petitioner was punished and had moved this Court, all that was said was that such punishment against the petitioner being excessive should be reduced. He therefore, is of the view that when the respondents have in terms of the directions issued by this Court reduced the punishment, no further judicial review will be available to the petitioner as against the aforementioned order.

4. In the considered opinion of this Court, the



submission of learned Assistant Solicitor General has to be accepted for more than one reason. In this very departmental proceeding against the order of punishment and its affirmance in the appellate order whereby and whereunder, the petitioner was punished by way of reduction of pay by three stages for four years and also no increment in these four years. When this matter was agitated by this Court at the instance of the petitioner, all that it was held that since no one had made any complaint against the petitioner, the disciplinary authority should pass a fresh order of punishment by refusing the punishment. To that extent, it would be profitable to quote the order of this Court dated 06.07.2010 passed in C.W.J.C No. 9099 of 2009 which reads as follows:-

“Heard learned counsel for the petitioner and the counsel for the Union of India.

2. Petitioner is Constable serving the Central Industrial Security Force(CISF) is aggrieved by the order dated 3.2.2005, Annexure-4 whereunder after conclusion of the departmental proceeding he has been punished and awarded punishment of demotion by three stages for four years and no increment for those four years. Against the order dated 3.2.2005 petitioner filed appeal and revision, which was dismissed under orders dated 21.1.2006 and 21.4.2009, Annexures-

5 and 7. The appellate and revisional orders have also been challenged in the instant writ application.

3. From perusal of the three orders it appears that petitioner was proceeded against for illegal collection of Rs.31/- in an unauthorized manner from the truck owners visiting the dock while petitioner was manning the dock gate. Aforesaid charge was refuted by the petitioner stating that while entering the dock gate petitioner did not inform the competent authority that he has come to the dock with Rs.31/- in his pocket and the allegation that he collected the amount from the drivers coming to the dock is not correct. In support of the plea that petitioner did not collect any amount from the drivers, it is submitted that none of the drivers visiting the dock on that particular day reported against the petitioner nor they were examined in the proceeding. In such view of the matter it is submitted that punishment of demotion by three stages for four years and no increment for those four years is too severe to have been imposed on the petitioner.

4. Having heard counsel for the petitioner and the Union as also having noticed the fact that none of the drivers made any complaint against the petitioner, I set aside the impugned punishment/appellate/revisional orders dated 3.2.2005, 21.1.2006 and 21.4.2009, Annexures-4, 5 and 7 and remit back the matter to the disciplinary authority directing him to pass punishment order by reducing the punishment. The arrears of increment if not released in the light of the earlier punishment order be released forthwith.

5. The writ application is, accordingly, disposed of."

5. It is only in compliance of the underlined operative portion of the order that the respondents have now passed the order of punishment which reads as follows:-



*“NOW THEREFORE, as per judgment order dated 06.07.2010 passed by the Hon’ble High Court of Patna the punishment of **“Reduction of pay by three stages from Rs. 3575/- to Rs. 3350/- for a period of four years.** In the pay scale of Rs. 3050-75-3950-80-4590 with further direction that he will not earn annual increments during the currency of punishment and the punishment will have the effect of postponing of his future increments of pay” awarded vide Commandant CISF Unit PPT Paradip order NO. (26) dated 03.02.2005 and upheld by the appellate/revisional authorities vide order dated 21.01.2006 & 21.04.2009 is **modified to the extent of “Reduction of pay by one stage from Rs. 3575/- to 3500/- for a period of four years** in the pay scale of Rs. 3050-75-3950-80-4590 with further direction that the he will not earn annual increments during the currency of punishment and punishment will have the effect of postponing of his future increments of pay.”*

6. As would be evidenced, the respondents had no option but to pass the order of punishment and the punishment which has been inflicted is definitely much lesser than the earlier punishment inflicted on the petitioner.

7. In view of the aforesaid inescapable position both on fact and in law, this Court would find it difficult to once again go into the issue as to whether there was some evidence against the petitioner or not because that would amount to sitting over the earlier inter parte order which was allowed to become final between the parties. Even otherwise, this Court in

exercise of power under Article 226 of the Constitution of India cannot go into the quantum of punishment unless it is shocking to conscience of this Court. Reference in this connection may usefully be made to the judgment of Apex Court in the case of *B.C. Chaturvedi Vs. Union of India & Ors.* reported in *1995(6)SCC 749*.

8. The present modified punishment against the petitioner definitely not shocking to the conscience of this Court and infact is in keeping in view of the misconduct on the part of petitioner being a member of disciplined force.

9. Thus for all these reasons indicated above, this Court would find no merit in this application.

10. It is, accordingly, dismissed.

(Mihir Kumar Jha, J)

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