

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12435 of 2003

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S.K.Rai @ Sunil Kumar Rai, son of Sri Shiv Kumar Rai, resident of Village
 & P.O. Andhari, P.S. Chauri (Sahar), District Bhojpur (Arrah)

.... Petitioner

Versus

1. The Union of India through Secretary, Ministry of Home Affairs, North
 Block, Lodi Road, New Delhi
 2. D.G., C.I.S.F., North Block, Lodi Road, New Delhi
 3. I.G. of C.I.S.F., Eastern Sector, HQRS Bailey Road, Patna
 4. Group Commandant, C.I.S.F., Headquarter, Boring Road, Patliputra,
 Patna-13

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Anand Kumar Ojha, Advocate
 Mr. Rakesh Kumar Sharma, Advocate
 For the Union of India : Mr. Anjani Kumar Sharna, CGC

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**CORAM: HONOURABLE MR. JUSTICE SAMARENDRA
 PRATAP SINGH**
ORAL ORDER

6 20-03-2015 The petitioner was posted as Constable in CISF Unit,
 Airport Security on 10.3.2001. He is said to have fired three
 rounds unauthorizedly from the SLR issued to him at 9.19 PM on
 10.3.2001. He was departmentally proceeded for the following
 four charges under Rule 34 of CISF Rules, 1969 now Rule 36 of
 CISF Rules, 2001 vide memorandum dated 12.4.2001 of Group
 Commandant, Headquarter, Patna:

“Charge No.1- Gross misconduct, indiscipline and
 dereliction of duty of petitioner of CISF Unit, APSU,
 Patna at about 2119 hours on 10.03.2001 fired three
 rounds unauthorisedly from the SLR issued to him ‘C’
 shift duty. This act on the part of the petitioner is a
 serious offence and has tarnished the image of the
 Force. Hence the Charge.



Charge No.2- Gross misconduct and indiscipline of the petitioner is that after taking over the charge of Arms and Ammunition for 'C' shift duty on 10.03.2001 and after firing 03 rounds from service rifle SLR, deliberately tampered with the records of handing/taking register. This act shows gross indiscipline and unbecoming of a member of the disciplined Force. Hence the Charge.

Charge No.3- Gross misconduct and grave indiscipline is that during the aforesaid act, the petitioner was under the influence of liquor which was established by Medical Check up. This act shows gross indiscipline and unbecoming of a member of the disciplined Force. Hence the charge.

Charge No.4- As per the service documents of the petitioner, he had been awarded 02 major punishments and 04 minor punishments for different offences which shows that he is a habitual offender. Hence of the charge”.

2. On conclusion of the proceeding, the Inquiry Officer submitted his report finding the petitioner guilty on all the four counts. An opportunity was given to the petitioner to represent against the adverse findings recorded in the enquiry proceeding. The disciplinary authority not being satisfied with the representation of the detainee, imposed penalty of removal from

service vide order dated 23.7.2002. The petitioner consequently filed an appeal and representation against the order of punishment which too were rejected.

3. It is relevant to state herein that the petitioner had earlier filed C.W.J.C.No.3096 of 2003 against the order of his removal dated 23.7.2002 and the Appellate Order dated 10.1.2003 dismissing the appeal which was dismissed with an observation to prefer a revision under Rule 49 of the CISF Rules, 1969. The revision filed by the petitioner too was rejected.

4. Here in this writ application, the petitioner prays for quashing of the order of removal from service dated 13.7.2002 passed by the Group Commandant, CISF, Headquarter, Patna, the appellate order dated 10.1.2003 passed by the IG, CISF, Eastern Zone, Patna (Annexure-5) and the revisional order dated 12.9.2003 passed by the IG, CISF, Eastern Sector, Headquarter, Patna (Annexure-6).

5. The petitioner has challenged the impugned proceeding and the order of punishment on more than one grounds:

(i) He submits that he was deprived of reasonable opportunity to prove his innocence;

(ii) His plea to examine the defence witnesses were arbitrarily rejected;

(iii) The evidence does not bear out the charges against

him.



6. The petitioner in support of his submissions relied upon a decision in the case of Sur Enamel and Stamping Works Ltd. Vs. The Workmen, reported in AIR 1963 SC 1914, particularly paragraph 4, in which it has been observed that an enquiry cannot be said to have been properly held unless, (i) the employee proceeded against has been informed clearly of the charges leveled against him, (ii) the witnesses are examined- ordinarily in the presence of the employee- in respect of the charges, (iii) the employee is given a fair opportunity to cross-examine witnesses, (iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and (v) the enquiry officer records his findings with reasons for the same in his report. He also relied upon a decision in the case of Town Area Committee Jalalabad vs Jagdish Prasad, reported in 1978 SC 1406 approved in case of Kulbansh Singh, reported in 1991(1)Suppl. SCC 504, wherein it has been observed that the delinquent should be given opportunity to prove his defence.

7. On the other hand, learned counsel for the respondents submits that the prosecution has been able to prove all the charges against the petitioner beyond all reasonable doubt.

8. The petitioner next contended that there is no reliable material to come to a conclusion that he was drunk at the time of



alleged offence. In support of his submissions, he submits that he was not subjected to any relevant medical examination like blood, urine test to come to a definite conclusion. The certificate was issued only on the basis that his mouth was smelling foul of alcohol. In support of his submission, he relied upon a decision in the case of Bachubhai Hassanalli Karyani vs. State of Maharashtra, reported in 1971 (3) SCC 930.

9. Now I will examine one by one the charge in the back drop of the defence taken by the petitioner. So far as Charge No.1 is concerned, the petitioner does not deny the firing. His primal defence is that the firing was accidental. It is not in dispute that he opened fire while he was stationed at the Airport. P.W.1, P.W.2 P.W.3 and P.W. 4 unequivocally stated that the petitioner resorted to indiscriminate firing without any rhyme or reason. P.W. 1, P.W. 2 and P.W. 3 before the Enquiry Officer stated that they ran towards the petitioner hearing first fire shot. Soon thereafter, second round was fired, where upon they screamed at the petitioner to stop firing but before they could snatch the rifle, the petitioner opened third round of firing also.

10. I find that there is ample evidence that the petitioner opened fire without any cause or reason. The submission that the firing was accidental or on account of ailment is devoid of any substance.



11. Charge No.2 relates to interpolation and tampering with the register in order to give impression that he did not take charge of rifle, from which firing was done. The allegation is that there was a cut mark against the column of signature which is said to be of the petitioner. The petitioner submits that none of the witnesses stated that they saw the petitioner making interpolations in the Register. It is true that no one has seen the petitioner making interpolation but there is sufficient circumstances from which the authorities inferred that it was the petitioner who made the interpolations as no one else was to gain from the said interpolation. This Court in the matter of disciplinary proceeding will go into sufficiency or otherwise of the materials on the basis of which the disciplinary authority records its findings unless and until there is a grave error of law or the findings is based on no material. I accordingly hold Charge No.2 as proved.

12. So far as Charge No.3 is concerned, counsel for the respondents state that the Doctor of P.M.C.H. opined in his certificate that the petitioner was under the influence of liquor at the time he resorted to indiscriminate firing.

13. Countering the argument of the State, counsel for the defence argued that merely because the petitioner's breath was smelling of alcohol, it cannot be concluded that he was under the

influence of liquor.

14. I may broadly agree with the submission of the petitioner in view of the decision reported in Bachubhai Hassanalli Karyani(supra) that it would not be safe to hold that a person was under the influence of liquor merely because his breath was smelling foul. As such, I find that Charge No.3 is not made out against the petitioner.

15. Charge No.4 relates to past history of the petitioner which reveals that he has been awarded two major punishments and four minor punishments which has failed to reform and deter him from committing more serious act.

16. Counsel for the petitioner submits that earlier the order of punishment has not been brought on record.

17. Counsel for the respondents submits that the petitioner has no where denied that he has been awarded two major punishments and some minor punishments.

18. There is substance in the submission of the respondents that earlier punishment have no deter the petitioner in committing further mistakes. As such, I find that Charge No.4 is proved.

19. Counsel for the defence submits that he was suffering from mental stress and the attending Doctor, namely Dr. Rajendra Narayan Sinha in his certificate dated 14.2.2001 advised him bed rest. He submits that the respondents arbitrarily did not allow him

to examine Dr. R.N. Sinha.

20. On the other hand, learned counsel for the respondents submits that the petitioner had not informed any authority about his mental illness prior to the proceeding and as such he was not allowed to examine Dr. R.N. Sinha in absence of any foundational facts.

21. The petitioner has not been able to demonstrate that he has at any earlier time informed the authority of his mental illness or of the certificate issued by Dr. R.N. Sinha advising him bed rest. Thus, I do not find that the respondents have acted illegally in not allowing Dr. R.N. Sinha to be examined.

22. Further more, the respondents submitted that the petitioner was duly given the copies of the deposition of the witnesses and he was given sufficient opportunity to cross-examine the witnesses.

23. Counsel for the petitioner lastly argued that in case of accidental firing upon by one HC/GD S.S.Singh and a Constable M. Rahman, the punishment awarded was only reduction of pay by two stages for a period of one year with cumulative effect which will not have effect of his future increment of pay and reduction of pay by one stage for a period of two years respectively without future increment of pay.

24. According to the respondents, in their case, it was

established that the firing was accidental which not the situation is in the instant case. I find that the case of the petitioner is different than that of those two persons. The petitioner has failed to prima facie establish that in his case the firing was accidental.

25. On the other hand, the prosecution has been able to establish that the firing was not accidental. However, the punishment of removal from service has been passed on consideration of all four charges and as I have held that one of the charges is not proved, the matter is remitted to the IG, CISF, Eastern Sector, Patna to take a decision with respect to quantum of punishment. This Court has not expressed any opinion on the merit of quantum of punishment which is to be decided on its own merit.

26. With the aforesaid observations and directions, this writ application stands disposed of.

(Samarendra Pratap Singh, J)
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