

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10777 of 1999

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Bishun Singh, S/o Chandra Singh, resident of Village Pati Bigha, P.O. Chandhari,
P.S. Islampur, Dist. Nalanda at Biharsharif.

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Home Affairs, North Block, New Delhi.
2. D.G. cum I.G. of Police, C.R.P.F., North Block, New Delhi.
3. The I.G. of Police, C.R.P.F. Western Sector, New Bombay (Mahasastra).
4. The D.I.G. of Police, C.R.P.F. Gandhi Nagar, Gujrat.
5. The Commandant, 68, Battallian, C.R.P.F. Ashok Paper Mills, Jogi Gopa, Assam.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Hriday Prasad, Adv.
Ms. Maruti Kumari, Adv.

For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

Date: 11-08-2015

Heard learned counsel for the parties.

2. In this writ application, the petitioner has prayed
following relief:-

“1. That this is an application for issuance of appropriate writ, order or direction to quash the order of Commandant (Annexure-1), to quash the order of D.I.G. (Annexure-2) and to quash the order of I.G. and D.G. of Police if adverse to the petitioner and for grant of all consequential benefits.”

3. Learned counsel for the petitioner in support of the
aforementioned prayer has made following submissions:-

(i) The witnesses, who had been examined in course of
departmental proceeding, had not supported the charges.

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- (ii) The petitioner was denied opportunity to examine the defence witness.
 - (iii) The copy of the preliminary enquiry was not given to the petitioner.
 - (iv) No subsistence allowance was paid to the petitioner and, as such, the petitioner, being a poor person, could not participate in the enquiry.
 - (v) There was a criminal case in relation to one of the two charges against the petitioner, the authorities ought to have stayed the departmental proceeding till criminal case was over.

4. No one appears on behalf of the respondent.

5. This Court, however, having perused the materials on record, would find no merit in any of the aforesaid five submissions.

The reasons thereof are as follows:-

6. The petitioner was facing departmental proceeding in relation to very serious charge, namely,

“ARTICLE-I

“That the said No. 903083121 CT/GD Bishun Singh while functioning as Constable/GD committed misconduct in his capacity as a Member of the Force, U/s 11(1) of the CRPF Act-1949, in that, he left the B/c8 Coy HQR premises which was situated in Rajgarh Tea Estate in (Assam) at 11.30 Hrs on 23/11/96 at his own without obtaining prior permission from any authority, competent to grant it i.e. his section Commander, Platoon Commander, CHM or his

Commander.

ARTICLE-II

“That the said No. 903083121 CT/GD Bishun Singh while functioning as Constable/GD committed misconduct in his capacity as a Member of the Forces, U/s 11(1) of the CRPF, Act-1949, in that, he went to the nearby Tea Estate Garden Rajgarh (Assam) on 23/11/96 at about 11.30 Hour and tried to outrage the modesty of a local lady Smt. Rina Indwar wife of Shri lphons Indwar which is also an offence under Section 354 of I.P.C.”

7. Admittedly, the petitioner never appeared in the departmental enquiry and, therefore, when the departmental proceeding was conducted ex-parte, the petitioner cannot be allowed to raise any grievance either with regard to non-supply of the documents i.e. the report of the criminal enquiry or can have allowed to lead evidence in defence. To that extent, this Court would find force that the respondents have duly explained in the counter affidavit on this aspect that the petitioner, despite being given repeated notices, did not choose to appear before the enquiry officer. Paragraph nos. 8, 9, 11, 12 & 13 being relevant is quoted herein below:-

“8. That the earlier enquiry officer Shri Pankaj Kumar vide letter dated 24.4.97 had directed the petitioner to appear before him by 7.5.97 and to attend the proceeding of the departmental enquiry. But the petitioner chose not to appear in the proceedings of the departmental enquiry. On the other hand, he sent a representation dated nil informing that he was sick and denied the charges against him and requested to drop the departmental proceeding stating that at the



time of incident he was present in the camp and it was a case of mistaken identity. From the order as contained in Annexure-1 of the writ petition it is clear that the memorandum of charge along with article of charge imputation of misconduct list of documents and list of witnesses were sent to the petitioner at his home address through registered /A.D. post. It is further stated that a copy of the charge was sent to the petitioner by the enquiry officer Shri Pankaj Kr. vide letter dated 24.4.97, in reply to which he sent his show-cause. Thus it is false to say that the copy of the charge was not available with the petitioner prior to the same were disclosed in the order of the commandant. It is submitted here that on this score alone, this writ petition is fit to be dismissed as the petitioner has made false statement in the writ petition with an intention to obtain a favourable order from this court.

9. *That it is further stated that the plea of the petitioner that he was sick at that time was found untenable as in response to his letter dated nil, received in the office on 27.3.1997, the petitioner was asked to go for second medical opinion vide letter dated 22.5.97 to medical officer, Group Centre, C.R.P.F., Mokamagha, but he did not do so and instead vide his application dated 19.6.97 informed that he had recovered from sickness. However Shri Prabhajan Kumar, on appointment as Enquiry Officer vide his letter dated 28.8.97 directed the petitioner to appear before him in connection with the departmental proceeding. But he chose not to appear. Hence the Enquiry officer proceeded Ex-parte.*
11. *That in reply to the statements and submission made in paragraph 6 of the writ petition it is submitted that the departmental proceeding was conducted in strict compliance of the Principles of natural Justice and in*

accordance with the statutory provisions.

However it is submitted that the copies of the relevant document were supplied to the petitioner at appropriate time. The enquiring officer taking all the evidence into account submitted his enquiry report and on due consideration of enquiry report, the commandant rightly agreed with the report of the enquiry officer and passed the order of dismissal. It is stated that statements made in paragraphs C-(i) is misconceived as on the basis of the material available before the enquiry officer, he reached to the conclusion that the petitioner was found absent at about 11.30 Hrs. when he outraged the modesty of a local lady. It is submitted that the statement of witnesses referred to do not disprove the fact of the petitioner sneaking away from the campus at about 11.30 Hrs.

12. *That in reply to 6(ii), it is stated that it is wrong to say that the petitioner was not given opportunity of cross-examination.*
13. *That statement in paragraph 6 (iii) of the writ petition is misconceived. It is stated however that the petitioner was sanctioned subsistence allowance vide Comdt. 68 B n o/6 No. P VIII-1/96-EC-IL dated 24.11.96 which was subsequently reviewed vide O/O No. P. VIII-3/96-68-EC-II dated 27.4.97. However the petitioner overstayed permission granted to him to leave the Hqrs. till the finalization of inquiry without proper permission of the competent authority. Accordingly, the subsistence allowance was drawn but had to be deposited into the Govt. Treasury as he was absenting unauthorisedly. Hence the contention regarding payment of subsistence allowance is untenable.”*

8. Let it be noted that there is a rejoinder to the counter

affidavit but none of the aforesaid submissions have been specifically denied which will leave nothing for this Court to conclude that the departmental proceeding was conducted and concluded after giving all possible opportunity to the petitioner to remain present in course of departmental proceeding.

9. This becomes also very clear from the part of the truncated order of punishment as produced by the petitioner wherein the disciplinary authority has recorded as follows:-

“The EO Shri Pankaj Kumar A/c, vide letter No. I.X.1/97 dated 24/4/97 had directed the delinquent to appear before him by 7/5/97 and to attend the DE proceeding, but the delinquent did not appear and instead sent a representation dated nil and informed that, he was sick, he also denied the charges against him and requested to drop the Inquiry against him pleading that, at the time of incident he was present in the Camp and it was a case of mistaken identity. The plea of the accused that, he was sick is untenable as in response to his application dated nil received in this office on 27/3/97, vide this office endt. No. P.VIII.3/96-68-EC-II dated 22/5/97 he was directed to go for second Medical opinion to Medical Officer Group Centre CRPF Mokamaghat, but he did not do so and instead vide his application dated 19/6/97 informed that, he had recovered the sickness. However again Shri Prabhanjan Kumar, Asstt. Comdt. on appointment as EO vide his letter No. P.VIII.1/97 dated 28/8/97 directed the delinquent to appear before him on or before 12/9/97 and to attend DE proceedings, but the delinquent did not appear. Hence the EO proceeding to conduct the DE proceedings Ex-parte and on completion of DE he has submitted his report vide letter No. P.VIII.1/97 dated 5/11/97.”

10. Thus, this Court will not find any procedural error in



the departmental proceeding. The witnesses including the lady had also identified the petitioner were examined and documents were exhibited. That would bring this Court now to accept as to what the witnesses had stated in course of ex-parte proceeding. The petitioner relies on the statement of P.Ws. 3, 4, 5 & 6 and in fact these aspects were also raised by the petitioner in his memo of appeal wherein the appellate authority, having perused the evidence on record of those witnesses, had concluded that their overall statements did not exonerate the petitioner. The appellate authority in this regard had held as follows:-

“5(a) ----- Though PWs as stated in the petition have seen the delinquent at different timings and places but they could not keep regular watch on the appellant for his presence/absence in the Campus area during lunch hours. He was found absent at about 11.30 hrs and distance from camp to the place of incident is very short. The statements of these witnesses do not disprove the possibilities of delinquent sneaking away from camp area and going to the place of incident for making an attempt to outrage the modesty of Smt. Rina Indewar at about 11.30 Hrs. Hence plea taken by the appellant is not acceptable.”

11. This Court would not find any error in such consideration and the issue raised by the petitioner before this Court, inasmuch as, this Court is also mindful of the settled principles that in a departmental proceeding, the findings and the conclusions have to be arrived on the principle of preponderance of probability unlike in

the criminal case where the charge has to be proved beyond reasonable doubt.

12. The issue that the petitioner was not paid subsistence allowance will again need no separate answer. The petitioner remained throughout absent from the Headquarter fixed in the order of the suspension. As noted above, the petitioner took a plea of his being ill. Thus, if the petitioner was not present in the Headquarter, he was not required to be paid any subsistence allowance. No prejudice can be said to have been caused to the petitioner if he himself had boycotted the departmental enquiry and left the Headquarter fixed under the order of suspension without any prior permission.

13. Finally as with regard to the plea that the criminal case at the behest of the lady whose modesty was sought to be allegedly outraged by the petitioner, this Court would not find any merit in the submission that such departmental proceeding could not have proceeded during continuation of the criminal case. Law in this regard is well settled by a long line of cases by the Apex Court that both the departmental proceeding and criminal case can proceed simultaneously on the same set of charges. Reference in this case may usefully be made to the case of **M.Paul Anthony v. Bharat Gold Mines Ltd.**, reported in **(1999) 3 SCC 679**.

14. Thus for the reasons stated above, this Court does not find any error in the impugned order.



15. Let it be noted that the petitioner has neither produced the copy of the enquiry report nor the complete copy of the order of disciplinary authority and yet his learned counsel has proceeded to make submissions questioning the findings of the enquiry officer and disciplinary authority by suppressing materials. In the circumstances, this Court will have to proceed on the basis of the materials on record and, therefore, the full consideration made by the appellate authority to each and every aspect, as would be evident from reading of paragraph no.4 & 5 thereof, should be sufficient to satisfy this Court that the case of the petitioner was considered in all possible ramifications and he was found guilty in respect of two very serious charge. If a member of the disciplined armed force starts behaving in a manner in which the petitioner, is said to have done while outraging the modesty that by itself would be sufficient to inflict punishment. Here in this case, this charge also had been found to be proved.

16. This Court would like to record that each and every aspect, as noted above, having been raised by the petitioner in the memo of appeal, was answered by the appellate authority. This Court also must take note of the fact mentioned in supplementary affidavit and reliance placed heavily on a document dated 9.11.1992. On the basis of this document, learned counsel for the petitioner had tried to make out a case that he had filed an application in his defence before the enquiry officer. How absurd this claim can be becomes apparent

from the perusal of the order of the appellate authority. As noted, enquiry had already been concluded by submission of the enquiry report on 5.11.1997 and, therefore, on 9.11.1997, the petitioner claims to have sent this fact to the enquiry officer by registered post (for which there is no proof). This Court therefore would not find any error in the said document being not taken into consideration by the enquiry officer.

17. Thus, on overall analysis of the materials on record, this Court would find no reason to interfere with either of the two impugned orders, whereby and whereunder, the petitioner has been dismissed from service.

18. In the result, this application fails and is, accordingly, dismissed.

19. There would be, however, no order as to costs.

(Mihir Kumar Jha, J)

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