

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18919 of 2008

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Rajesh Kumar Singh, son of Sri Haricharan Singh, resident of Village- Aakuchak,
P.S. Taraiya, District- Saran.

.... Petitioner.

Versus

1. The Union of India, Ministry of Home Affairs, New Delhi through its Secretary.
2. The Director General, C.I.S.F., New Delhi.
3. The Inspector General, C.I.S.F., Eastern Sector, Patna.
4. Deputy Inspector General, C.I.S.F., RSP, Raurkela, Orissa.
5. Senior Commandant, C.I.S.F. Unit, Raurkela, Orissa.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. ARBIND KR.SINGH I

Mr. Ranjeet Kumar 2

Mr. Raghwanand

For the Respondent/s : Mr. Kumar Priya Ranjan

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 16-09-2015

Heard learned counsel for the Petitioner and the Union of
India.

2. The Petitioner is a constable in the service of Central Industrial Security Force (hereinafter referred to as ‘the CISF’). In the year, 2007 he was posted in Bolani unit within the district of Raurkela in the State of Orissa. He was departmentally proceeded vide Memo dated 17.09.2007 under Rule 36 of CISF Rules, 2001 for following charge:

“An act of gross misconduct, dereliction of duty and tarnished the image of the Force in that petitioner of CISF Unit BOM Bolani failed to protect/theft an Electric Welding Machine of SURARC make 440 volt



portable wheel mounted, weight 80 Kg. cost Rs.60,000/- apx. from Light Vehicle Bottam garage shop flour of BOM Bolani on 02/03.08.2007, which was guarded by CISF. On joint raid/searching by Local Police and CISF, the above materials have been recovered in the intervening night of 3/4.08.2007 and handed over the same to the Management of BOM Bolani on 06.08.2007. During investigation the culprits disclosed the name of petitioner who was involved the aforesaid theft”.

3. On conclusion of charge, the disciplinary authority, namely, the Senior Commandant, CISF Unit RSP Rourkela vide its order, dated 19.12.2007 imposed a penalty of a reduction of pay by one stage from Rs.3880/- to Rs. 3795/- in the time scale of pay i.e. Rs. 3200-85-4900/- for a period of two years with cumulative effect.

4. Against the finding of guilt and punishment, the petitioner preferred an appeal before the DIG, CISF, RSP, Rourkela, Orissa, which was rejected. The revision preferred by the petitioner was also rejected on 30.07.2008 by the I.G., C.I.S.F. All these orders are in challenge in this writ application.

5. Being aggrieved, the petitioner challenged the departmental proceeding as well as order of punishment on a number of grounds in this writ application. Before I consider the case of the petitioner, it would be necessary to notice the facts of the case in

brief:

6. In the night of 02/03.08.2007, an Electric Welding Machine of SURARC make of 440 volt portable wheel mounted, weighing 80 Kg. and valuing about 60 thousand rupees was stolen from Bolani Unit of the C.I.S.F. The said machine was recovered in the night of 03-04.08.2007 with the joint effort of CISF as well as local police on 06.08.2007. In course of search, the police arrested one Pecha Karwa, who was interrogated in presence of the members of the C.I.S.F., Bolani Unit. He stated that the welding machine was stolen with the aid and help of the petitioner and some others. On the fateful night, the petitioner was seen moving on his motorcycle with one more person. The petitioner had not denied that on the relevant night, he was moving on motorcycle was his brother.

7. The petitioner submits that there is no substantive evidence against him. That the prosecution is based on the hearsay statement of P.W.- 2, P.W.-3, P.W.4 and P.W.5, who deposed that one Pecha Karwa has spoken about his involvement in the alleged theft before them and the police. But neither Pecha Karwa has been examined nor the police officers, before whom Pecha Karwa made the said statement. The statement of Pecha Karwa was reduced into writing, which too was not produced. The petitioner submits that the owner of the building from where the Welding machine was

recovered allegedly on the statement of Pecha Karwa, has not been arrested. Furthermore, no F.I.R. was lodged, though the disclosure made out a cognizable offence. He submits that the offence took place in the night of 2-3.08.2007, but the matter was reported for the first time at 10.00 A.M. on 04.08.2007.

8. Counsel for the Union submits that the departmental proceeding has been initiated not on the ground that the petitioner is an accused in a criminal case but on the ground of misconduct. He had actively cooperated in theft. Furthermore, as many as four witnesses deposed that Pecha Karwa has alleged his involvement in the crime. Furthermore, the petitioner had stated before the enquiry officer that in the night of 2/3.08.2007, he went out from his complex on his Motorcycle for about 20 minutes along with his brother, which corroborates the statement of Pecha Karwa before the police.

9. I have heard the counsel for the parties.

10. The petitioner was posted in CISF Unit BOM Bolani in 2007. In the night of 2/3-08-2007, "Welding machine of SURARC make 440 volt portable wheel mounted" was stolen from Bolani mines. A Sanha was lodged with the Bolani police station. The machine was recovered in the night of 3/4-08-2007 with the conjoint effort of C.I.S.F. Unit, Bolani and the Bolani police. In course of search of the stolen machine, one Pecha Karwa was arrested, who



confessed his guilt and also reported and disclosed involvement of the petitioner along with others in the commission of theft. A charge-sheet was issued on 26.11.2007 and the petitioner was given an opportunity to file his show-cause reply. Not being satisfied with the show-cause, a departmental proceeding was initiated under Rule (36) 2 of C.I.S.F. Rules, 2001. An Enquiry Officer and Presenting Officer were appointed and as many as five witnesses were examined on behalf of the CISF. The petitioner was provided opportunity to examine his witnesses. One Harmender Pal (inspector) was examined as C.W.1 and Constable Ramji Pandey and S. Dodrai were examined as D.W.1 and D.W.2.

(b) The enquiry officer on completion of enquiry held the petitioner guilty of the charge. The disciplinary authority forwarded the copy of the enquiry report to the petitioner for his response. Not being satisfied with the petitioner's explanations, he was inflicted punishment of reduction of pay by one stage from Rs.3880/- to Rs.3795/- in the time scale of pay i.e. Rs.3200-85-4900/- for a period of two years with cumulative effect, with a further stipulation that reduction will have the effect of postponing his future increments. The appeal and revision filed by the petitioner were dismissed.

11. I find that the prosecution witnesses, namely, P.W.2, P.W.3, P.W.4, P.W.5 and P.W.6 stated before the enquiry officer that



Pecha Karwa disclosed the involvement of the petitioner before them in commission of theft of the Welding Machine. Furthermore, though no F.I.R. was lodged, the statement of police officer on which the petitioner had made his signature was made available to him. It is relevant to state here that yardstick of Rules in the disciplinary proceeding is different than the proof required in a criminal case. Equally, the strict Rules of Evidence Act would not be applicable in departmental proceeding. The evidence of prosecution witnesses established that Welding machine was stolen and recovered on the admission of Pecha Karwa, from a nearby building. Thus, merely because Pecha Karwa and the police official were not examined, the same would not demolish the evidence of as many as 4 P.Ws., who consistently stated that the arrested accused Pecha Karwa disclosed before them the involvement of the petitioner in the commission of theft. There is nothing to do with the statement of these witnesses.

12. The petitioner had argued that all the relevant documents were provided to him including the F.I.R. The petitioner has not been able to demonstrate as to how the non-supply of a particular document prejudiced his case. Besides this, I find that the petitioner has admitted the fact that he has gone out on motorcycle at about 3.00 A.M. outside the family complex and returned at about 3.30 hours. One cannot say that the guilt of the petitioner is based no

evidence. This Court in the matters of disciplinary proceeding will not examine the sufficiency or otherwise of the materials considered by the departmental authorities while arriving at a finding of guilt.

13. In the result, I find no infirmity in the departmental proceeding. However, I find that the authorities have inflicted punishment of reduction of pay by one stage for a period of two years with cumulative effect. This Court would only observe that the disciplinary authority would reconsider the punishment, so far the reduction of pay would have the effect of postponing the future increments.

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

(Samarendra Pratap Singh, J.)

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