

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 7433 of 2011**

- Virendra Saxena S/o Shri Jang Bahadur Saxena, Aged About 51 Years
R/o House Of Shri Ram Das Pratapati Rajholi, Hathi Gadda Bhind,
Distt. Bhind M P

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Home
And Police, Mantralaya, D.K.S. Bhawan, Raipur (C G)
2. The Director General Of Police, Raipur, District - Raipur (C G)
3. The Commandant 3rd Battalion, Special Armed Force, Amaleshwar
Durg (C G)
4. State Of Madhya Pradesh, Through The Secretary, Department Of
Home And Police, Mantralaya, Vallabh Bhawan, Bhopal (M P)
5. The Director General Of Police, Bhopal, Bhopal, (M P)
6. The Deputy Superintendent Of Police Special Armed Force, Jabalpur
(M P)
7. The Commandant, 16th Battalion, Special Armed Force, Sagar (M P)

---- Respondent

For Petitioner : Shri Jitendra Gupta, Advocate.
For Respondent/State : Shri Shashank Thakur, Govt. Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**C A V Order****Passed on : 29/10/2015**

1. The petitioner has assailed the order dated 14.12.2000 passed by the

Commandant 16th Battalion, SAF, Sagar imposing punishment of removal from service; the subsequent appellate order dated 7.7.2001 passed by the DIG, SAF, Jabalpur; the order dated 2.4.2007 passed by the DGP, Chhattisgarh dismissing his mercy appeal; the order dated 4.10.2007 passed by the State Government of Chhattisgarh refusing to interfere in the matter and the order dated 4.10.2010 informing the petitioner about dismissal of the petitioner's appeal/representation.

2. Facts of the matter, briefly stated, are that while the petitioner was posted as Constable in the 16th Battalion, SAF, Sagar, a charge sheet was issued to him vide Annexure-P/2 which contained 3 charges namely, (1) acting in contravention of Rule 23 of the Civil Services (Conduct) Rules, 1965 by remaining in a state of intoxication at 9 am on 25.2.2000, (2) roaming around the battalion premises in a state of intoxication and showing indiscipline in the presence of senior officers, and (3) being habitual in consuming alcohol and not improving him despite being repeatedly punished and thus making himself ineligible for the police service.
3. The enquiry was duly constituted and conducted wherein the petitioner participated and was thus given proper opportunity of hearing. At the end of enquiry, the enquiry officer submitted a report wherein all the charges were found to be proved against the petitioner. A show cause notice was issued to the petitioner on 2.11.2000 whereas copy of the enquiry report was served on him on 8.11.2000. The petitioner

submitted his reply on 16.11.2000/21.11.2000. In the reply, he promised that he would not commit any mistake in future. The disciplinary authority perused the record of the disciplinary proceeding and concluded that the petitioner who was appointed on 23.2.1984 has already been punished with 5 major penalties and 21 minor penalties during his service career including commission of indiscipline in a state of intoxication. Considering the entire fact situation of the case, the disciplinary authority passed the order removing the petitioner from service.

4. It is argued that upon creation of the State of Chhattisgarh on 1.11.2000, 16th battalion was moved/transferred to Raipur, therefore, the Commandant, 16th Battalion, Sagar had no jurisdiction to pass the order. It is also argued that one AP Singh was complainant, however, in violation of principles of natural justice, the said AP Singh was made enquiry officer, therefore, the impugned order is unsustainable. Learned counsel for the petitioner has also argued that proper opportunity of hearing was not provided because the enquiry was conducted at Sagar whereas the petitioner was posted at Raipur.
5. Insofar as challenge to the jurisdiction of the Commandant, 16th Battalion, Sagar is concerned, it is reflected from the order (Annexure-R/1) that on account of creation of new State of Chhattisgarh, personnel of 16th Battalion, Sagar were temporarily shifted to Raipur, however, the battalion was not finally transferred. There is no document on record

thereby the petitioner's services were allocated to the State of Chhattisgarh at any point of time prior to 14.12.2000 when the punishment of removal from service was imposed on the petitioner by the Commandant 16th Battalion, SAF, Sagar.

6. The petitioner's contention that Mr. AP Singh being complainant, he could not have been made enquiry officer is referred only to be rejected because neither charge sheet nor the order of removal indicates that proceedings were initiated against the petitioner on the complaint made by Mr. A.P. Singh. If the petitioner was found in a state of inebriation and was involved in the act of indiscipline in the presence of senior officers on which he was sent for medical examination, it cannot be said that all such senior officers who were present at the relevant point of time would be treated as complainant. Similarly, the plea concerning violation of principles of natural justice by not giving proper opportunity of hearing to the petitioner is also unsustainable because the petitioner has participated in the enquiry and has never made any complaint on this count nor any ground was raised before the appellate authority that he has not been given proper opportunity of hearing.
7. It is settled law that the writ Court would not judicially review the finding recorded by the enquiry officer or the disciplinary authority.
{See : **General Manager (Operations) State Bank of India and another Vs. R. Periyasamy**, (2015) 3 SCC 101}.

8. Similarly the scope of judicial review to quash the order of removal from service when the order has been passed after holding regular enquiry is very limited. To make out a case, the delinquent has to allege and prove violation of principles of natural justice or violation of statutory provisions which has caused prejudiced to the petitioner or the decision is vitiated by extraneous considerations or the finding recorded by the enquiry officer is perverse. The petitioner has failed to point out any such illegality or irregularity either in the conduct of enquiry or in the punishment imposed so as to warrant exercise of jurisdiction by this Court under Article 226 of the Constitution of India.
9. In conclusion, the writ petition being devoid of any substance deserves to be and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve