

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(S) No.2628 of 2014

- Gajadhar Prasad Dubey S/o Shri R.S. Dubey, aged about 53 years, CISF No.833460093 Resident of Central Industrial Security Force, Unit B.I.O.M., Bachel, District Dantewada, Revenue and Civil District Dantewada (C.G.)

---- Petitioner

Versus

- Union of India Through Secretary, Ministry of Home Affairs Department, New Delhi
- The Director General, Central Industrial Security Force, Block No.13 C.G.O. Complex, Lodhi Road, New Delhi
- The Deputy Inspector General, CISF third Reserve Battal, Utai, Bhilai, District Durg (C.G.)
- The Senior Commandant, CISF Unit, N.T.P.C. Korba (C.G.)
- The Deputy Commandant, CISF Unit, N.T.P.C. Sipat (C.G.)

---- Respondents

For Petitioner
For Respondent/UOI

Mr. Yogeshwar Sharma, Advocate
Mr. R.K. Kesharwani, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

28/7/2015

Heard.

(2) The petitioner is a Head Constable in the N.T.P.C., Seepat Unit of Central Industrial Security Force (CISF). He is challenging the legality and validity of the orders– Annexure P/8 and P/3, whereby, the appellate authority reduced the penalty imposed by the disciplinary authority,

however, the penalty of censure has been imposed and the revision preferred by the petitioner was also dismissed.

(3) At the relevant time, the petitioner was assigned duty in the Dam Patrolling duty post between 21:00 hours to 05.00 hours. In the intervening night of 15th and 16th of April 2013, when the Unit Commander was on checking at about 21.15 hours, he found the petitioner absent from the duty post and instead, he was roaming around the bungalow area of the Executive Director. The petitioner was thereafter served with a show cause notice on 27.04.2013, to which, the petitioner submitted his reply on 01.05.2013. By order dated 24.05.2013, the Deputy Commandant, CISF, Seepat, imposed minor penalty of recovery of 3 days salary and thereafter, the petitioner's appeal was partly allowed by the appellate authority vide order dated 08.11.2013 reducing the penalty imposed by the disciplinary authority to the penalty of censure. Revision preferred by the petitioner before the DIG, CISF, Bhilai has also been rejected vide Annexure P/3.

(4) Learned counsel for the petitioner would submit that because of the impugned punishment, the petitioner is not getting the amount of MACP, which he should have got on and from 01.06.2013. According to him, the petitioner was not at fault at the relevant time, as at that time, key of the duty check post was not available and the petitioner had gone in search of the said key and had gone to the area of E.D. Bungalow to obtain newspaper. He would submit that since nothing untoward has happened in the petitioner's absence from the duty post, it is not a case of commission of misconduct by him.

(5) It appears that the disciplinary authority as well as the appellate authority have considered the explanation offered by the petitioner and

after considering the entire facts and circumstances of the case, the penalty of stopping of three days salary has been reduced to the penalty of censure. The fact that the petitioner was not available in the Dam Patrolling duty post, but was moving around in a different area, near E.D. Bungalow, has been established and the said finding is a finding of fact, which cannot be interfered by this Court in exercise of its powers under Article 226 of the Constitution of India (See : **Registrar General, High Court of Patna Vs. Pandey Gajendra Prasad and others (2012) 6 SCC 357 and General Manager (Operations) State Bank of India and another vs. R. Periyasamy (2015) 3 SCC 101**)

(6) Likewise, the penalty imposed on the petitioner has already been reduced. When the fact of petitioner's absence from duty area has already been established, this Court is not entitled to interfere with the quantum of punishment. The petitioner being a member of disciplinary force, his absence from duty area is itself a misconduct, therefore, even if, nothing untoward happened in the absence of petitioner, the same cannot be taken as a ground to interfere with the penalty imposed on the petitioner.

(10) For the foregoing, this Court does not find any substance in the writ petition. It fails and is hereby dismissed.

Sd/-

Judge

(Prashant Kumar Mishra)