

*** THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO**

AND

THE HON'BLE MRS. JUSTICE ANIS

+ WRIT APPEAL No.160 of 2015

% 07-09-2015

The Union of India and 4 others

....Appellants

And

\$ Shamsheer Singh
Respondent

....

! Counsel for the Appellants : Sri B. Narayana Reddy

^ Counsel for the Respondent : Sri D.L. Pandu

<Gist :

>Head Note:

? Cases referred:

[1] 1987 AIR 2386

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND
THE HON'BLE MRS. JUSTICE ANIS

WRIT APPEAL No.160 of 2015

ORDER: (Per Hon'ble Sri Justice Nooty Ramamohana Rao)

This writ appeal is preferred by the Union of India and its officers, who are managing and manning the Central Industrial Security Force Organization. This appeal is preferred against the judgment rendered by a learned Single Judge of this Court in W.P.No.7356 of 2014.

The respondent herein is a constable enrolled with Central Industrial Security Force. On 08.05.2013, when the petitioner reported to duty he was suspected to be under the influence of an alcoholic beverage. Therefore, he was taken to the KGH Hospital, Visakhapatnam for medical examination. It appears the respondent has declined to cooperate for undergoing the medical examination. However blood and urine samples were collected and they were sent to A.P. Forensic Science Laboratory, Hyderabad for analysis. The analysis by that laboratory revealed that there was no content of ethyl alcohol therein. However, the Central Industrial Security Force has treated the act of non-cooperation by the petitioner as a serious misconduct and a charge sheet was drawn for subjecting him to disciplinary control. On the premise that charges were held established, the petitioner has been punished by imposing punishment of removal from service with immediate effect on 10.07.2013. The appeal and revision preferred there against have also failed. Hence, he filed the writ petition. The following are articles of charge against the petitioner:

“1. Article of Charge-I: That No.854350171 HC/GD Shamsher Singh of CISF Unit STPP Simhadri is charged with gross misconduct, dereliction to his duty, violation of orders and an act of indiscipline in that on 08.05.2013 he was detailed in 'C' shift duty from 21.00 hrs. to 05.00 hrs. at NTPC Store. During shift briefing by shift in-charge SI/Eex. R.K. Sharma at 20.40 hrs. in unit line, it was found by the shift in-charge that HC/GD Shamsher Singh was under the influence of

alcohol as such he was not taken on duty. Reporting for duty after consuming alcohol/under the influence of alcohol is an act of gross misconduct, dereliction to duty, violation of orders of an act of indiscipline which is unbecoming on the part of a member of an Armed Force of the union like CISF. Hence, the charge.

2. Article of Charge-II: That No.854350171 HC/GD Shamsheer Singh of CISF Unit STPP Simhadri is charged with gross misconduct, indiscipline and violation of orders in that on 08.05.2013 when he was taken to NTPC Hospital, Simhadri and KGH Hospital, Vizag for medical checkup by Coy. Commander SI/Exe S. Bhattacharya along with 02 other Unit personnel, he refused medical examination by on-duty doctors and misbehaved as well as disobeyed the order of his seniors who were detailed to get him medically examined by appropriate medical authorities. Misbehaving with senior officers as well as disobeying lawful orders of senior officers is an act of gross misconduct, violation of orders and act of indiscipline which is unbecoming on the part of a member of an Armed Force of the union like CISF. Hence, the charge.

3. Article of Charge-III: No.854350171 HC/GD Shamsheer Singh of CISF Unit STPP Simhadri, was awarded with 04 minor penalties for various misconducts during his entire service. In spite of 04 penalties awarded to him, he has not improved his conduct as a good member of the Force and committed offences which shows his incorrigible attitude towards his duties, responsibility, conduct and discipline as a disciplined member of the force which amounts to gross misconduct, negligence, dereliction to duty and an act of serious indiscipline on the part of No.854350171 HC/GD Shamsheer Singh. Hence, the charge.”

A reading of the above would disclose that the respondent/writ petitioner was detailed for shift duty from 21.00 hours to 05.00 hours at NTPC Store, Visakhapatnam. During the shift briefing by the shift in-charge at 20.40 hours in the unit line, it was found that he was under the influence of alcohol and consequently, he was not taken on duty. He was brought to the NTPC hospital, Simhadri for medical examination. The on-duty doctor of NTPC Hospital referred him to KGH Hospital at Visakhapatnam and during the medical examination at 00.45 hours on 09.05.2013, it was found by the duty doctor that smell of alcohol is present and hence, his blood and urine samples were collected for chemical analysis and examination. Article 2 talks of his non-cooperation with medical officers on duty and also his misbehaviour and disobedience of the orders of his superior. Article 3

talks of number of minor penalties suffered by him in the past 28 years of service, on four different occasions.

Article 3 of the charge cannot form part of the charge memo for, the employee was already punished previously for the proven misconduct. The fact that he has suffered punishment in the past will have some bearing while finalizing the appropriate punishment to be imposed for the proven misconduct this time around. But, however, the fact that previously he has suffered punishments that too 4 minor punishments in a service spanning over 28 years cannot by itself become misconduct. After all no person can be penalized for the same misconduct twice. Obviously, the disciplinary authority has not realized the distinction between looking into the past history of punishments undergone by an employee while considering the quantum of punishment that should be handed down this time around and instead treated the past misconduct as again an element of misconduct this time also. Similarly, so far as item No.2 is concerned, the non-cooperation extended by a patient to undergo medical examination by a Doctor perhaps, is difficult to be viewed as a serious misconduct. At best, that can be treated as not a good conduct. For a conduct to become misconduct there should be something more than mere absence of good conduct. Further, the Doctrine of proportionality propounded by Lord Diplock has been successfully introduced to our system by the Chief Justice M.N. Venkatachalliah in the judgment rendered in **Ranjit Thakur Vs. Union of India and others**^[1], wherein it is now held that the punishment must be proportionate and should match the quantum of misconduct and should also match the status of the employee. The status of the employee in this case is a head constable and the quantum of misconduct held established is relevantly on a lesser scale which, does not warrant imposition of punishment of removal from service. When we made our views known in this regard, on 23.07.2015, Sri B.Narayana Reddy, learned Assistant Solicitor General has taken time to have another round of

consultation with the officers of CISF. Today, learned counsel deputizing for Sri Narayana Reddy has placed before us a communication received by him from the Inspector General, CISF, Southern State Head Quarters at Chennai, wherein it has been informed that the Directorate of CISF has examined the matter and then it has been decided by the competent authority to impose a lesser punishment upon the respondent on humanitarian grounds if this Court remits the matter back for consideration afresh.

We are very happy to note and record our appreciation of the efforts put in by all concerned in this regard. In view of our opinion that the punishment imposed upon the respondent was disproportionate and harsh, it would only be appropriate that the matter should be remitted back for consideration afresh with regard to the appropriate punishment which is liable to be handed down.

In that view of the matter, we dispose of the writ appeal remitting the matter back for consideration afresh with regard to imposition of suitable punishment other than removal from service on the respondent/writ petitioner. Let this exercise be completed as expeditiously as possible, preferably, within a maximum period of two months from the date of receipt of a copy of this order.

Accordingly, this writ appeal is disposed of.

Consequently, miscellaneous petitions, if any, pending shall also stand closed. No costs.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE ANIS

07.09.2015

Note: L.R. Copy to be marked

(B/o)
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[\[1\]](#) 1987 AIR 2386