

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11412 of 2008

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Rajendra Singh, Son of late Sarju Singh, resident of Village- Barharwa, P.S.- Majorganj, District- Sitamarhi, at present posted as ASI, CISF Unit, NTPC, Barh, District- Patna.

.... Petitioner

Versus

1. The Union of India through the Secretary, Department of Home, New Delhi.
2. Jt. Secretary (Police), Ministry of Home Affairs, Government of India, New Delhi.
3. Director General, Central Industrial Security Force, CGO Complex, Block No.13, Lodhi Road, New Delhi.
4. Inspector General, Central Industrial Security Force, Eastern Sector, Patliputra, Boring Road, Patna.
5. Dy. Inspector General, Central Industrial Security Force, Eastern Zone, Patna.
6. Commandant, CISF Unit, Bharat Coking Coal Ltd. Dhanbad, Jharkhand.
7. Astd. Commandant, CISF Unit, Bharat Coking Coal Ltd. Dhanbad, Jharkhand.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Yogendra Mishra, Advocate
: Mr. Raghunath Kumar, Advocate
For the Respondent/s : Mr. Kumar Priya Ranjan, CGC

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 22-01-2016

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

2. The petitioner has prayed for the following reliefs:

- (i) A writ in the nature of certiorari quashing the order of punishment dated 04.03.1993 passed by the respondent no.6 as contained in Annexure-1 and the order of modification dated 04.08.1993 passed by the respondent no.5 as contained in Annexure-2 and confirmation thereof by the order dated 08.06.2001 passed by the respondent no.4 as contained in Annexure-3, be issued.

(ii) An appropriate writ, order or direction commanding the respondents to make payment of the difference of pay etc on account of restoration of increments within a time frame, be issued.

3. The facts of the case in short is that in the year 1992, the petitioner was posted as constable (General Duty), in BCL, Dhanbad after transfer from F.C.I. Ramagundam (Andhra Pradesh). On arrival at Dhanbad, the petitioner requested the DIG, CISF (respondent no.5) to provide him temporary accommodation, which was done temporarily in the official premises. He was later asked to vacate the quarter. However, he did not vacate and instead filed writ petition in Jharkhand High Court against the directions asking him to vacate the premises, which was dismissed. For his alleged act of omission and commission, he was departmentally proceeded for the following four charges vide memorandum dated 17.08.1992, reproduced herein below:

Article of Charge-I

No.734510398 Const. Rajender Singh of Area VI has reported to CISF Unit, BCCL on regular posting from FCI Ramagundam. The individual has brought his family to the new duty station without obtaining prior approval of competent authority. He had also posed administrative problem by requesting to provide temporary accommodation to his family.

Article of Charge-II

No.734510398 Const. Rajender Singh of CISF Unit, BCCL Area-VI has committed an act of gross misconduct, indiscipline and willful insubordination in that he when ordered to vacate the government quarter given to him to accommodate his family temporarily for a day at Koyla Nagar on reporting on regular posting, refused to vacate despite lawful order of competent authority.

Article of Charge-III

No.734510398 Const. Rajender Singh of CISF Unit, BCCL Area-VI has committed an act of gross misconduct and misbehaviour in that on 25.7.92, he had sent his wife to AC/Area No.VI where she had misbehaved with Shri S.D. Dobhal, Asstt. Commandant using discourteous and indecent words in presence of Shri Ahmed Sher, Insp/Exe and B. Tiwary, SI/E.

Article of Charge-IV

No.734510398 Const. Rajender Singh of CISF Unit, BCCL Area-VI has committed an act of gross indiscipline and dereliction in his duty in that he while posted at Area VI was unauthorisedly residing outside without obtaining valid permission of competent authority.

4. The petitioner submitted his written representation denying the charges. One Satvir Sindhu, Assistant Commandant was



appointed as enquiry officer but on objection of the petitioner, one Shri Bharat Ram, Inspector/Exe. replaced him vide order dated 16.10.1992. On completion of enquiry, the enquiry officer recorded a finding of guilt against the petitioner and submitted the enquiry report to the disciplinary authority, who forwarded a copy of the same vide order dated 1/2.02.1993 to the petitioner for his response. The petitioner submitted his response against the findings recorded by the enquiry officer denying the allegations. The disciplinary authority on consideration of the enquiry report as well as the representation of the petitioner against the adverse findings, awarded punishment of dismissal from service w.e.f. 04.03.1993 (Annexure-1). The period of suspension from 23.07.1992 to 24.08.1992 was directed to be treated as not on duty and that he would not be entitled to anything more than what he was paid as subsistence allowance.

5. Being aggrieved by the order of the Commandant/DNB, the petitioner preferred an appeal before respondent no. 5 (Dy. Inspector General, CISF, Eastern Zone). The appellate authority took the view that the punishment of dismissal was too harsh and the appellant ought to be given a change to mend himself in future. Thus while setting aside the order of dismissal awarded the following punishments:

“Reduction of pay by Three stages for a period



of 02 years with cumulative effect. This punishment will take effect after expiry of the earlier penalty. It is further directed that his pay will be reduced by Three stages from Rs.1080/- to Rs.1020/- in the time scale of pay for a period of two years. He will not earn increment of pay during the period of reduction and that on expiry of this period, the reduction will have the effect of postponing his future increments of pay”.

6. The petitioner still aggrieved, challenged the order of appellate authority before respondent no.4 (Inspector General, CISF, Eastern Zone), which was rejected vide order dated 08.06.2001 (Annexure-3).

7. Mr. Yogendra Mishra, learned counsel appearing for the petitioner has assailed the impugned orders on the following grounds: The charges are vague and non-est and are not born out from the materials on record. He submits that the punishment awarded by the appellate authority is not one of the punishments listed in Rule 31 of the CISF Act / Rules.

8. Mr. Kumar Priya Ranjan, learned counsel appearing for Union has justified the impugned actions against the petitioner. He submits that the petitioner has a chequered history in so much so he has been awarded 16 punishments in the past.



Furthermore, the petitioner was given temporary accommodation for one day on his request. However, the petitioner in a most unbecoming manner, did not vacate the temporary accommodation. He even challenged his eviction in the Jharkhand High Court, which too was dismissed. The enquiry was conducted in accordance with law. Witnesses were examined and the necessary documents were placed before the enquiry officer. He next submits that the petitioner appeared only on two dates, despite notice and as such the departmental proceeding was conducted, thereafter ex-parte.

9. I have heard the learned counsel for the parties. It is well settled that the enquiry proceeding cannot wait indefinitely if a delinquent does not choose to appear and participate and he has to bear the consequences, for his act of imprudence. The scope of judicial review in a disciplinary proceeding is limited to correction of error of law and procedure. This Court would not look into sufficiency or otherwise of the materials on which the enquiry officer has recorded his finding. The Court sitting in judicial review is not a court of appeal and it would not arrogate itself the power of the appellate authority and reverse the findings recorded on the ground that other view as equally possible.

10. In the light of the settled law, I would now examine whether the charges are vague and non-est or as to whether

the findings recorded by the disciplinary authority is in accordance with law. Before I examine the claim of the petitioner that the charges are not made out, I would like to point out that sufficient opportunity has been given to him to defend his case and there is no flaw in the proceeding.

11. Reference: Charge No.-I: So far as charge no.I is concerned, the case of the respondents is that the petitioner breached the Rules of the Uniform Force by bringing his family to the new duty station without obtaining prior approval of competent authority. It is the further case of the respondents that the petitioner forced administrative problem by requesting to provide temporary accommodation. The stand of the petitioner is that there is no circular or there is no administrative order or circular which debars a constable from bringing his family to the new duty station without prior approval. I find from perusal of the materials on record that the respondents have not brought any circular or specific instructions on record in support of their submission that a transferred CISF personnel cannot bring his family to the new duty station without obtaining prior approval of the authority. Furthermore, mere requesting to provide temporary accommodation cannot be a misconduct. It was very much open for the authority to refuse any such accommodation. As such, I find that charge no.1 is vague and

not born out from the materials on record.

12. Charge No.-II: So far as charge no.II is concerned, I find that the respondents have produced witnesses in support of the allegations that the petitioner committed a gross misconduct, indiscipline and willful insubordination by refusing to vacate the government quarter given to him to accommodate his family temporarily for a day. As such, I find that the respondents have been able to establish charge no.II.

13. Charge No.III: So far as charge no.II is concerned, the petitioner has denied the allegation that he sent his wife to AC/Area No.VI where she had misbehaved with Shri S.D. Dobhal, Asstt. Commandant. Though this Court would not approve the action of the wife of the petitioner, there is no concrete material on record to come to the conclusion that it was the petitioner who sent his wife to AC/Area No.VI, where she misbehaved Shri S.D. Dobhal, Asstt. Commandant.

14. Charge No.-IV: So far as charge no.IV is concerned, the case of the petitioner is that he did not commit any misconduct by staying outside officers premises without prior approval of the valid permission from the higher authority.

15. I find that the respondents have adduced credible evidence in support of the submission/charge that the delinquent could

not have stayed outside officers premises, without prior approval and as such charge No. IV has rightly been held to be proved.

16. Thus only two of the four charges are proved against the petitioner and as such the impugned order of punishment passed by the three authorities on the basis of all the four charges, are set aside and the matter is remitted to the appellate authority, namely, Dy. Inspector General, CISF, Eastern Zone to consider the quantum of punishment on the basis of two proved charges only, preferably within a period of two months from the date of receipt/production of a copy of this order.

17. With the aforesaid observations and directions, this application is allowed to the extent mentioned above.

(Samarendra Pratap Singh, J.)

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