

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.497 of 2013

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1. Shatrughan Prasad Singh @ S.P. Singh Son of Late Kusheshwar Prasad Singh
Village + P.O. - Dularpur, Via - Teghra, District - Begusarai, at present posted as
Constable/G.D. No.- 943441508, of Central Industrial Security Force, Unit
KHSTPP, Kahalgaon, Bhagalpur (Bihar)

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Home Affairs, New Delhi
2. The Commandant, Central Industrial Security Force, Unit Khstpp, Kahalgaon, Bhagalpur (Bihar)
3. The Inspector/Work cum Conducting Officer, Central Industrial Security Force, Unit Khstpp, Kahalgaon, Bhagalpur (Bihar)
4. The Commandant, Administrative Officer, Central Industrial Security Force, Unit Khstpp, Kahalgaon, Bhagalpur (Bihar)
5. The Deputy Inspector General cum Appellate Authority, Central Industrial Security Force, Eastern Zone Head Quarters, Boring Road, Patna - 13
6. The Inspector General, Central Industrial Security Force, Eastern Zone Head Quarters, Boring Road, Patna - 800013
7. The Inspector General (Rule & Regulation), Central Industrial Security Force, Block No. 13, C.G.O. Complex, Lodhi Road, New Delhi - 3

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gyan Prakash, Adv.

For the Respondent/s : Mr. Anshuman Singh, CGC

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 01-09-2016

Heard Mr. Gyan Prakash, learned counsel for the petitioner and
Mr. Anshuman Singh learned counsel appearing for the Central
Industrial Security Force.

With the consent of the parties, the matter has been heard with a
view to its final disposal at the stage of admission itself.

The petitioner is aggrieved by the order bearing No.1736 dated
31.3.2011 passed by the Commandant-cum- Disciplinary Authority,



Central Industrial Security Force (hereinafter referred to as the 'CISF') whereby the petitioner has been awarded the punishment of reduction of pay by one stage i.e. from Rs.8590+2400 to a lower scale of Rs. 8270 +2400 in the time scale of pay Rs. 2500 to 20,000. The order of penalty further stipulates that it would remain in operation for one year and during which period the petitioner would not be entitled to any increment. The order further stipulates that the reduction would have an effect of postponing future increments. The order does not stop here rather proceeds to restrict the pay and allowance for the suspension period to the subsistence allowance drawn by the petitioner. The order of the Disciplinary Authority impugned at Annexure-5 has been confirmed by the Appellate Authority vide Annexure-7 and even the revision preferred by the petitioner has been rejected by the revisional authority, a copy of which order is impugned at Annexure-9. The petitioner feeling aggrieved is before this Court.

A copy of the charge is impugned at Annexure-1 and charges the petitioner of indiscipline, misconduct and dereliction in duty on discovery of a theft stated to have been committed at the EDP area of the National Thermal Power Corporation Project at Kahalgaon. The theft had been committed by cutting the grill of the office and the TFT monitor, key board, mouse and wall clock had been stolen from the



office of the Personal Secretary to the A.G.M. (Project). The petitioner who was on shift duty from 21.00 hrs. in the night of 31.8.2010 until 5.00 A.M., the following morning on 1.9.2010, was held guilty of not being able to prevent the theft and resulting in the penalty impugned which is put to question before this Court.

The sum and substance of argument advanced by Mr. Prakash learned counsel for the petitioner is that the allegation is based on mere suspicion and is not supported by any evidence. Mr. Prakash has made a reference to the issues raised by the petitioner at paragraph 6 of the writ petition to submit that these issues have not been answered by the respondent either in the counter affidavit except a bald denial or the enquiry report nor the order of the Disciplinary Authority provides an answer to the issues. According to learned counsel, the theft did not take place during the duty hours of the petitioner. The petitioner took over charge at 9 P.M. in the night of 31.8.2010 and found nothing untoward. It is submitted that during the duty hours of the petitioner i.e. from 9 P.M. in the night of 31.8.2010 until following morning on 1.9.2010 at 5 A.M., no theft was committed and the position stands supported by the report of his successor T.K. Prasad who took charge from the petitioner at 5 A.M., who again reported no such incident. He submits that the Shift Incharge Narendra Pandey, who assumed charge at around 6 A.M. has, upon



verification of the area, not reported any theft and which position is also confirmed from his evidence as a court witness. It is submitted that no F.I.R. was instituted for the occurrence nor the Personal Secretary to A.G.M. (Project) was examined by the department. He thus submits that the imputation of the allegation on the petitioner is simply on grounds that he discharged duty at night hours and according to the department, a theft is only possible during night hours. Learned counsel has taken this Court through the evidence of P.W.1, P.P. Yadav, P.W.2, M.K. Pathak and P.W. 3, D.P. Kar to submit that while each of the witnesses have supported the fact that the petitioner was found alert, the confirmation of the guilt is resting on a probability of a theft during night hours.

The argument of Mr. Prakash has been vehemently contested by Mr. Anshuman Singh learned counsel for the 'CISF' and who while producing the records of the proceedings has gone through the evidences so led by the department for driving home the charge to submit that a mere non reporting of the theft by the successor on duty of the petitioner T.K. Prasad or the failure on the part of the Shift Incharge Narendra Pandey to record any theft at 5 A.M. would not enure to the benefit of the petitioner, since the circumstances existing do reflect that the theft must have taken place during night hours.

I have heard learned counsel for the parties and I have perused

the records.

The issues canvassed by the petitioner has been summarized by me in my order dated 11.8.2016 and basically revolves around the following issues:-

- (a) No F.I.R. was instituted for the theft;
- (b) The petitioner took charge at 9.00 P.M. in the night of 31.8.2010 after physical verification of the area and found nothing untoward. He relinquished his duty the next day i.e. 1.9.2010 at 5.00 A.M. to his successor Mr. T.K. Prasad who again did not report any untoward incident;
- (c) Mr. Bishwajit Banerjee, P.A. to A.G.M., discovered the theft at 7.45 a.m. i.e. three hours after the petitioner relinquished charge; and
- (d) Mr. Bishwajit Banerjee was not examined by the Department.

There is no dispute on facts that though a theft was reported by a Personal Secretary of the A.G.M., (Project) at 7.45 A.M. in the morning of 1.9.2010 but neither the C.R.P.F. proceeded to lodge any F.I.R. nor do they have any intimation whether any such police complaint was filed by the NTPC. Meaning thereby, the complaint whatsoever by the Personal Secretary ended at the level of the respondents itself with no police complaint.

The Enquiry Officer and the Disciplinary Authority have relied upon the chargesheet at Annexure-1, the theft report of the Personal Secretary of the AGM, (Project) Bishwajit Banerjee and the duty deployment registers for recording their opinion. Though the theft is



reported at 7.45 A.M. by Bishwajit Banerjee the Personal Secretary of A.G.M., (Project) but the charge is drawn upon the petitioner whose duty has already ended at 5 A.M. in the morning of 1.9.2010. As already noted the petitioner took charge of the duty at 9 P.M. in the night of 31.8.2010 and did not report any such kind of incidence meaning thereby, nothing happened at the time the petitioner took charge of the duty. The duty of the petitioner ended at 5 A.M. the following morning on 1.9.2010 and the charge was taken by T.K. Prasad, a Constable in the force. Again T.K. Prasad while taking charge did not report any untoward incident and it would be presumed that he has verified the area before he took charge from the petitioner. The issue does not stop here there is another person posted as a Shift Incharge and who overlooks the performance of the Constable(s) on duty, to guard the project. The Shift Incharge who took charge at about 6 A.M. on 1.9.2010 namely Narendra Pandey was summoned by the Enquiry Officer as a witness and his evidence would be very relevant for the contest herein. The file of the disciplinary proceedings has been produced by Mr. Anshuman Singh and the evidence of Narendra Pandey is present at page 83 of the relevant file. The statement of Narendra Pandey clearly shows that he assumed charge as Shift Incharge of Gate No.1 in the morning of 1.9.2010 and proceeded for inspection of the area of the project office. He clearly



mentions that he returned to his post at 8 P.M. and entered a verification report in the duty register finding nothing untoward. Meaning thereby that as until the assumption of charge by the Shift Incharge in the morning of 1.9.2010, no untoward incident had occurred. The said Narendra Pandey next mentions in his statement that it is at 8.15 A.M. that the Inspector summoned him mentioning that a theft had taken place in the EDP Office and enquired from him as to who was on duty during night hours and when he was informed that it was the petitioner who was on night duty and P.P. Yadav was the Shift Incharge during night hours.

In my opinion, this single piece of evidence of Narendra Pandey who was the Shift Incharge in the morning of 1.9.2010 together with his report that everything was in order, by itself would clear all suspicion and doubt against the petitioner. The opinion of disciplinary authorities rests merely on suspicion and on probability of a theft possible only at night hours. Even if the opinion expressed by the Enquiry Officer as upheld by the disciplinary authority, is a possibility, it is not a conclusive proof of an incident. In fact whatever be the opinion formed, the evidence of the departmental witnesses stands clarified by the evidence of Narendra Pandey, whose evidence has neither been doubted nor has been rejected. The Enquiry Officer despite taking notice of the evidence on record, has concluded his

opinion on suspicion and the Disciplinary Authority has proceeded therefrom. Even if a finding in a departmental proceedings is to be founded on a preponderance of probability but it would be a travesty of justice to hold the petitioner guilty on applying such principle merely due to the duty hours of the petitioner despite absence of any cogent evidence and in spite of a clear report by the successor in duty of the petitioner T.K. Prasad as well as the Duty Incharge Narendra Pandey reporting everything to be in order in the morning of 1.9.2010.

In result, the order of penalty impugned at Annexure-5 together with its affirmation by the Appellate Authority vide Annexure-7 and the order of the revisional authority vide Annexure-9, cannot be upheld and are accordingly quashed and set aside. The writ petition is allowed. As a consequence the petitioner is restored to the same position as he was on the date of imposition of penalty and would be entitled to all consequential benefits to be calculated and provided to him within a period of three months from the date of receipt/production of a copy of this order.

Bibhash/-

(Jyoti Saran, J)

AFR	
CAV DATE	
Uploading Date	17.9.16
Transmission Date	