

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9009 of 2016

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1. Rajendra Singh @ Rajender Singh S/o Sri Jamuna Singh R/o Village -
Ghorwanchi Tola, Chatar, P.O. - Puhupi, P.S. - Dinara, District - Rohtas.

.... Petitioner/s

Versus

1. The Union of India through the Inspector General, Central Industries Security Force, Ministry of Home Affairs, Eastern Head Quarter, Boring Road, Patna.
2. The Inspector General Industries Security Force, Ministry of Home Affairs, Eastern Head Quarter, Boring Road, Patna.
3. The Deputy Inspector General Central Industrial Security Force, Ministry of Home Affairs, Eastern Head Quarter, Patna.
4. The Group Commandant Central Industrial Security Force, Ministry of Home Affairs, Eastern Head Quarter, Boring Road, Patliputra, Patna - 13.
5. The Deputy Commandant Central Industries Security Force, KBUNL Unit, Kanti, Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nadeem Seraj, Adv.
Mr. Shailesh Kumar, Adv.
For the Respondent/s : Mr. S.D Sanjay (ADDL. SOC. GEN.)
Ms. Poonam Kumari Singh, CGC

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 06-03-2017

The petitioner through this writ petition prays for the following
reliefs:

- “(i) For issuance of a writ of certiorari for quashing of order vide V-15014/CISF/Adm-1/Dic/ RASI/15/ 2260 dated 22.05.2015 issued under the signature of respondent no. 4/Group Commandant, CISF, GP Head Quarter, Patna, whereby and where under the petitioner has been compulsory retired from service with full compensation pension and gratuity benefits with immediate effect in contemplation of Rule-32 read with Rule 34(iii) of CISF Rules-2001.



- (ii) For issuance of a writ of certiorari for quashing of order vide V-11014/EZ/Ad-II/Apl-6/RKS/ 2015/ 6639 dated 06.07.2015 issued under the signature of respondent no. 3/The Deputy Inspector General, CISF, Ministry of Home Affairs, Eastern Head Quarter, Patna, whereby the appeal preferred by the petitioner on 01.06.2015 has been rejected being devoid of merit by ignoring the overwhelming evidences on record under Rule-52 of the CISF Rules-2001 (Amended Rule-2013)
- (iii) For issuance of a writ of certiorari for quashing of order vide V-11015/EZ/VVNI/Revi-15/2015-13721 dated 30.12.2015 issued under the signature of respondent no. 2/ The Inspector General, CISF, Ministry of Home Affairs, Eastern Zone Head Quarter, Patna, whereby the revision preferred by the petitioner on 03.08.2015 and 11.08.2015 has been rejected on a non-est ground and beyond the charges basing on the finding of departmental enquiry and without applying his quasi-judicious approach in deciding the issue involved in the matter.
- (iv) For issuance of writ of mandamus for direction to the respondent to reinstate the petitioner into service with all benefits accrued to him by considering the fact that the charges of negligence and non discharging official duties is nothing except an attempt to show the supremacy and power upon the subordinate employee like the petitioner.
- (v) For issuance of a writ of mandamus for direction to the respondents to pay all other consequential benefits to the petitioner as admissible under law.
- (vi) For issuance of any other relief/reliefs as may deem fit and proper and for which the petitioner is entitled.”

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

Bare essential facts of the case necessary for disposal,



culminating in the order of punishment is that the petitioner joined service of the respondents on 5.8.1989 and was lastly posted at the unit of the Central Industrial Security Force (hereinafter referred to as the 'CISF') at the Kanti Bijali Uttapaden Nigam Ltd., Kanti ('KBUNL' for the sake of brevity) in the district of Muzaffarpur from Orissa on 23.7.2012. The issue at hand relates to the intervening night of 27-28.08.2007 when the petitioner was on guard duty with effect from 21.00 hours on 27.8.2012 to 5.00 hours on the following day i.e. 28.8.2012, at the M.G.R. Gumti post 'KBUNL', Kanti plant for the safety and security purpose. On completion of duty at 5.00 A.M. in the morning of 28.8.2012, the petitioner handed over the charge to his successor R.A. Rai who is stated to have carried out checking of the area and noticed that 19 TMT rods of 32 mm, specification was found missing. Accordingly, he reported the matter to the high officials. A combing operation was carried out and the rods were found hidden in a water pond outside the boundary wall of the plant. The recovered material was identified by the A.G.M. (C & M) 'KBUNL', Kanti. A preliminary enquiry was carried out, prima-facie attaching responsibility on the petitioner for collusiveness in the attempted theft and the petitioner was placed on suspension with effect from 30.8.2012. A charge memo dated 18.9.2012 was served on the



petitioner , a copy of which is present at Annexure-2, whereunder the petitioner was put on two set of charges. While charge No.1 related to the alleged attempted theft, charge No.2 related to his earlier acts of alleged indiscipline. The petitioner filed his reply vide Annexure-3 disowning the charge. The Enquiry Officer submitted his report on 19.2.2013 upholding the charges. A second show cause was served on the petitioner. The petitioner filed his reply reiterating his earlier stand. The disciplinary authority not being satisfied with the reply, passed order of compulsory retirement on 13.3.2013 with full compensation and gratuity. The petitioner went in appeal before the Deputy Inspector General which also was rejected and even the revision was rejected.

Feeling aggrieved the petitioner came before this court in C.W.J.C. No. 3440 of 2014 and a bench of this Court vide judgment and order dated 22.7.2014 placed at Annexure-4 quashed the punishment order and remanded the matter to the disciplinary authority to pass orders afresh in consideration of the materials on record including the relevant entries in the Beat Book. The petitioner was reinstated in service. The Union of India alongwith the authorities of the 'CISF' filed Letters Patent Appeal against the Bench decision giving rise to LPA No.1624 of 2014 and which was disposed of by the



Division Bench without interfering with the order of the writ court vide judgment and order dated 11.2.2015 placed at Annexure-5. The Division Bench while allowing the disciplinary authority to act in accordance with law and in tune with the direction of the writ court has noted that the second charge was a super addition on the alleged occurrence and even when minor punishments have been imposed in respect of the said charges, it had been made an independent charge again. The division bench held that the second charge was untenable and thus the disciplinary authority could proceed in context of only the first charge.

On remand a notice was issued by the respondent Group Commandant on 27.4.2015 directing the petitioner to join the 'CISF' unit and accordingly the petitioner joined on 30.4.2015 which order/joining is enclosed at Annexures- 6 and 7 respectively. Vide order dated 20.5.20015 of the Group Commandant placed at Annexure-9, the petitioner was put under suspension. By a subsequent order dated 22.5.2015, a fresh order was passed by the disciplinary authority i.e. the Group Commandant reiterating the punishment of compulsory retirement under Rule 32 read with Rule 34(iii) of the 'CISF' Rules framed under the 'CISF' Act, a copy of the order is impugned at Annexure-11. The petitioner feeling aggrieved filed an



appeal vide Annexure-12 and which was rejected by the appellate authority i.e. the Deputy Inspector General, Central Industrial Security Force, Patna who vide order dated 6.7.2015 dismissed the appeal thus upholding the order of the disciplinary authority. Even the revision of the petitioner has been dismissed by the Inspector General of 'CISF' vide order dated 30.12.2011 impugned at Annexure-15 and feeling aggrieved he is before this Court.

Mr. Nadeem Seraj learned counsel has appeared on behalf of the petitioner while the respondents are represented by Mr. S.D. Sanjay learned Additional Solicitor General who appears along with Ms. Poonam Kumari Singh learned Central Government Counsel.

It is the argument of Mr. Nadeem Seraj learned counsel for the petitioner that the entire allegation is resting on mere suspicion and even when there is no evidence to connect the petitioner with the alleged theft yet a presumptuous finding has been given by the Enquiry Officer and which has been endorsed by the disciplinary authority that the theft must have taken place during the duty hours of the petitioner. He submits that even when it is much after the petitioner handed over the charge to his successor, when a report was made regarding the alleged theft yet the attempted theft has been shouldered on the petitioner without any evidence. He submits that



there is no eye witness to the occurrence and every witness is hearsay.

The sum and substance of argument of Mr. Seraj is that even though the charge is resting on mere suspicion, an extreme punishment of compulsory retirement has been inflicted on such suspicion.

The arguments of Mr. Seraj has been contested by Mr. S.D. Sanjay learned ASG and who has taken this court through the orders passed by the disciplinary authority and the appellate authority to submit that the orders have been passed after due opportunity to the petitioner to rebut the allegations but since the petitioner could not satisfy that the alleged attempted theft did not take place during his duty hours rather his successor immediately informed his superiors and whereafter a combing operation took place leading to the recovery of rods which was lying in the pond, there is no escape for the petitioner from the punishment. Learned counsel has referred to the order of the disciplinary authority to submit that it is relying on the evidence led during the proceeding and the petitioner was entitled to examine and cross-examine the witnesses but has not been able to contest the evidence available.

Mr. Sanjay has referred to the judgment(s) of the Supreme Court reported in **(2006) 2 SCC 584 (South Bengal State Transport**



Corporation Vs. Sapan Kumar Mitra and Ors.) and (2010) 6 SCC 555 (U.P. State Road Transport Corporation Vs. Suresh Chand Sharma) to submit that there is a very limited scope of interference in such matters and the High Court may not weigh the evidence relied upon by the disciplinary authority to conclude in the matter. He submits that a mere possible second opinion may not be sufficient ground to substitute the views and once the disciplinary authority has concluded on the charge on the basis of the evidence available, the punishment order need not be interfered with. It is also the argument of Mr. Sanjay that the orders passed by this Court in the earlier round of proceedings present at Annexures-4 and 5 would reflect that the scope of remand was well described and the only issue on which the disciplinary authority was asked to satisfy itself was whether the Beat Book relied upon by the petitioner, supported his case. He submits that the Beat Book was examined and made no difference to the opinion earlier found and thus the reiteration of punishment.

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

Mr. S.D. Sanjay, learned Additional Solicitor General is absolutely right to submit that the scope of interference in matters arising from disciplinary proceeding is rather circumscribed. The



limitations to exercise of power by the High Court under Article 226 of the Constitution of India in such matters, stand well settled and it does not require a reference to any judgment to appreciate the objection. While this Court would go alongside the submission advanced by Mr. Sanjay as regarding the scope of intervention by the writ court in matters arising from disciplinary proceedings, his reliance on the order of this Court present at Annexures-4 and 5 to submit that the scope of remand was rather limited, is not a correct appreciation of the orders and which is confirmed by the operative portion of the order passed by the Division Bench, when the Division Bench while upholding the untenability of Charge No.(2), has observed that the matter has to go to the disciplinary authority for fresh consideration and for passing an order after taking into consideration the explanation to be submitted by the respondent i.e the writ petitioner, in relation to charge No.(1) including the entries in the Beat Book. In fact para 7 of the order passed by the disciplinary authority impugned at Annexure-11 does confirm that the disciplinary authority has acted in implementation of the order passed by the Division Bench to consider the explanation advanced by the petitioner on charge No.(1). It is thus to be seen whether at all charge No.(1) can withstand the test on the evidence led by the Department.



Some undisputed facts of the matter are as follows:

- (a) The duty of the petitioner in the intervening night of 27/28.8.2012, was with effect from 21.00 hours in the night of 27.8.2012 until 5.00 hours the following day i.e. 28.8.2012.
- (b) The charge was handed over by the petitioner to his successor R.A. Rai at 5.00 hours on 28.8.2012; and
- (c) While taking over charge, the successor did not report any untoward circumstance existing within the precincts of the unit rather the charge was taken in O.K. condition and an O.K. report was also given.
- (d) No complaint was filed by the authorities of the Thermal Power Plant as regarding the missing rods.
- (e) Even though the missing rods is stated to have been identified by A.G.M. Rank Officer of the Kanti Thermal Power Plant but he was not examined as a witness; and
- (f) There is no eye witness to the occurrence.

According to the evidence of R.A. Rai who was examined as P.W.3, it is after he took over charge that he moved around the unit and found the rods missing. He informed the Shift Incharge R.K. Singh and who along with others carried out a combing operation and



when the rods were found in a pond across the perimeter wall of the unit. The evidence of the shift incharge R.K. Singh as P.W.2 mentions that it is around 6 A.M. that he was informed by R.A. Rai, the successor on duty of the petitioner, regarding the alleged stolen rods. The other witnesses that have been led by the department are mere hearsay and have endorsed the statements. It can thus be seen that it is on the mere statement of the successor R.A. Rai that the alleged attempted theft is being thrust on the shoulder of the petitioner even when the handing over/taking over of charge has taken place in between the petitioner and his successor R.A. Rai at 5.00 A.M. in O.K condition with no adverse report regarding any thing untoward being reported by his successor at that stage.

It is on the directions of this Court that the file of the disciplinary proceedings has been produced by the respondents and which gives rather startling revelations. The first important document is the Standing Order at page 26 of the file issued under the signature of the Deputy Commandant and which at paragraph 7 specifically provides that any kind of deficiency found at the time of handing over/taking over charge, should be immediately reported to the Shift Incharge. Meaning thereby, it was the duty of the successor R.A. Rai to point out any untoward situation at the stage of taking over charge



from the petitioner for it is at that stage that any kind of deficiency could be attributed to his predecessor and/or the predecessor could have explained/rebutted the deficiency. The evidence of the successor R.A. Rai as P.W.3 and the evidence of the Shift Incharge R.K. Singh as P.W. 2, before whom the successor had reported, would thus confirm that it is almost one hour after the handing over charge took place around 5 A.M. that a complaint regarding the missing rods was reported. The time lag gains importance in the matter more particularly in the nature of charge framed.

The examination of the records of the proceedings produced by Mr. Sanjay also contains two Newspaper reports reporting on the alleged attempted theft of the 19 rods in question and its recovery. The newspaper also reports a firing in between CISF and thieves near a watch tower and which has failed the attempt. The newspaper report also mentions that the local Thana Incharge had raised objections as to the role of the 'CISF' who did not bother to inform the local police station even though the recovery was made beyond the precincts of the unit casting suspicion on the role of the CISF itself. These two Newspaper reports create serious doubts on the manner of occurrence, the charge as well as the conduct of the respondent authorities because if firing had taken place near a watch tower on the



same day then it was a dacoity attempt and not a surreptitious act of the thieves in removing the rods from the precincts of the Thermal Power Plant. While the Newspaper reports on the failed attempt, it is rather surprising that none of the witnesses have reported such. It is even more surprising that even when cross firing was taking place at one of the watch towers, there is no eye witness to the occurrence and that it is on a report given by the successor of the petitioner one hour after he took over charge from the petitioner on the following day that the alleged theft has transpired and despite no substantive evidence connecting the petitioner to the alleged theft, yet the charges have been upheld.

Mr. Sanjay has relied upon the evidence led in the disciplinary proceeding but then the evidence so led is a mere endorsement of the version given by the successor of the petitioner R.A. Rai and whose version is being treated as a gospel even when the successor never objected to any thing untoward while taking over charge from the petitioner at around 5.00 A.M. in the morning of 28.8.2012. In other words, it is only on the complaint of P.W.3 R.A. Rai that the allegation rests and which is the foundation for the impugned punishment, even though it was lodged one hour after the charge has been taken by the successor.



In my opinion, it was the duty of the successor to have satisfied himself as regarding the situation and the circumstances existing within the precincts of the units before accepting an O.K condition.

The presumptuous conclusion drawn on the matter is reflected from the opinion recorded by the disciplinary authority at paragraph 8 of the order of compulsory retirement dated 22.5.2015 impugned at Annexure-11 and which reads as under.

“(8)On perusal, it is found that during the said night only 4 checkings were carried out by the different night checking officers at 1028 hours, 0052 hours, 0225 hours and 0410 hours at the interval of approximately 02 hours. Though at every time the petitioner was found to be alert on duty but it does not mean that no theft had taken place during the night in the area of responsibility of the petitioner with his connivance.....”

It is rather strange that even when the disciplinary authority takes notice of the report of the night checking squad and acknowledges that the petitioner at each stage of the checking was found to be alert on duty but he yet proceeds to attach the attempted theft on the petitioner holding him guilty of connivance despite complete absence of evidence to substantiate such serious charge. It is again rightly argued by Mr. Sanjay that strict rules of evidence are not to be applied in a disciplinary proceeding but then there has to be some evidence to connect the delinquent to the charge. In the present



case, there is none, except the complaint of the successor and which also has been lodged one hour after he has taken charge from the petitioner without any objection. A mere suspicion cannot take place of a proof and in the present case, there is no scope of even suspicion, in absence of any objection raised by the successor.

Considering the matter in totality, I am persuaded to reserve my opinion on the role of the disciplinary authority as well as the Enquiry Officer because right from the beginning, this proceeding is infracted.

The very resolve of the disciplinary authority to include the second charge would confirm that the proceeding right from start, was designed for a punishment and not for finding the truth. The untenability of Charge No. (2) was confirmed by the Division Bench and realizing the position that the disciplinary authority dropped the same to proceed against the Charge No.1. In my opinion, the damage as to the fairness of the decision making process had already been done. The second serious aspect of the matter is the role of the Enquiry Officer. The reproduction by the Enquiry Officer of the evidence of P.W.6 Ramji Rai in the Enquiry report, is completely at variance from his evidence present at page 34 of the proceedings. The same is the situation with the reproduction of the evidence of P.W. 3, the complainant.



These are very serious matters and do confirm that the proceeding lacks fairness and impartiality rather is motivated with a view to punish. Not only the petitioner has been made an escapegoat but in view of the Newspaper reports which finds place in the records of the proceedings produced by Mr. Sanjay, I am persuaded to believe that the petitioner has been victimized for reasons other than those attributed.

The case in hand is not only a case of bereft of evidence but it is a case of planted evidence where the authorities have joined together to placate the petitioner by generating evidence. The records reveal a rather unfortunate state of affairs.

For the reasons and discussions aforementioned, the orders of punishment dated 22.05.2015 passed by the respondent No.4/Group Commandant, CISF, GP Head Quarter, Patna, order dated 06.07. 2015 passed by the respondent No.3/the Deputy Inspector General, CISF, Ministry of Home Affairs, Eastern Head Quarter, Patna and order dated 30.12.2015 passed by the Inspector General, CISF, Ministry of Home Affairs, Eastern Zone Head Quarter, Patna impugned at Annexure -4, Annexure-13 and Annexure-15 respectively are quashed and set aside.



The writ petition is allowed. The petitioner stands reinstated on his post together with all consequential benefits.

Let the records of the proceedings produced by Mr. S.D. Sanjay, learned Additional Solicitor General be returned to his custody.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	10.03.2017
Transmission Date	NA

