

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.221 of 2012

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Raj Kishore Mandal S/O Gopal Mandal R/O Village- Nawadah, P.O.- Tilakpur,
P.S.- Sultanganj, District- Bhagalpur

.... Petitioner

Versus

1. The Govt. Of India Through The Secretary Ministry Of Home Affairs, New Delhi
2. The Director General Central Industrial Security Force, New Delhi
3. The Inspector General Central Industrial Security Force, East Kolkata Township, Kasba, Kolkata - 107
4. The Deputy Inspector General C.I.S.F. Unit, D.S.P., Durgapur, District - Burdwan (West Bengal)
5. The Senior Commandant, C.I.S.F. Unit D.S.P. Durgapur, District- Bardwan (West Bengal)

.... Respondents

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Appearance :

For the Petitioner : Mr. Banbari Sharma, Advocate
Ms. Pravina Kumari, Advocate
For the U.O.I. : Mr. Rajesh Kumar Verma, C.G.C.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date: 25-01-2018

Heard Sri Banbari Sharma, learned counsel for the

petitioner and Sri Rajesh Kumar Verma, Central Government

Counsel representing the Union of India.

2. The petitioner, in the present case, is seeking

following reliefs:

I. A writ in the nature of certiorari setting aside the
Final Order No. 2669 dated 23.03.2009 as contained
in Annexure-9 passed by respondent Sr.
Commandant C.I.S.F. Unit as Disciplinary Authority
in a departmental proceeding, whereby and
whereunder petitioner has been removed from
service and the period of suspension with effect from
4.6.2008 to the date & receipt of the order will be
treated as suspension only and he will not be paid



any thing more than whatever he has already been paid as subsistence allowance during the period of suspension and also for setting aside the order passed by the respondent no. 3 by which again the same is rejected by respondent no. 3 vide order No. 6532/dated 21st November, 2011.

II. For setting aside the Appellate order vide order No. 830 dated 18.5.2009 as contained in Annexure-10 issued from the level of respondent Deputy Inspector General, C.I.S.F. Unit, whereby and whereunder without giving an opportunity of personal hearing the appellate authority has upheld the punishment order and rejected the appeal of the petitioner.

III. For setting aside the order No. 7667 dated 21.10.2010 as contained in Annexure-13, whereby and whereunder the respondent I.G., C.I.S.F. has rejected the revision petition without considering the report that alleged allegation in Departmental Proceeding is same in Criminal Proceeding and in criminal proceeding petitioner has been acquitted from charges and as such the punishment or removal from service is disproportionate to the alleged charges and ignoring the same in routine manner revision application has been rejected and order of punishment has been affirmed and again the same order is passed by the concerned authority i.e. I.G., C.I.S.F. vide order dated 21.11.2011 affirmed by the Hon'ble High Court.

IV. A writ in the nature of Mandamus commanding and directing upon the respondent to reinstate the petitioner in service with consequential monetary benefit and also to pay the full salary of the petitioner during period of suspension and without complying the principle of natural justice as no



specific show cause has been asked in this regard.

3. Earlier, being aggrieved by the order of the disciplinary authority, the appellate authority and the revisional authority passed in the departmental proceeding conducted against this petitioner dismissing him from service, the petitioner had moved this court in CWJC No. 20225/2010 for setting aside of those orders. A co-ordinate Bench of this court vide its judgment and order dated 08.07.2011 disposed of the writ application after considering the submissions advanced on behalf of the parties. The relevant operative part of the order dated 08.07.2011 are quoted hereunder:

“I have considered the submissions of the parties. Filing of criminal case against the petitioner by officer of the C.I.S.F. led to his incarceration which prevented the petitioner from reporting on expiry of the Earned Leave. The respondents may be correct in their submissions that all the procedures in the decision making process was/were complied with and the petitioner was afforded adequate opportunity of hearing and as such the order passed by the disciplinary authority and duly affirmed by the appellate authority merit no interference. However, the authorities in fairness to the case of the petitioner is definitely required to take into consideration the fact that he was tried and acquitted of the criminal charge by the Trial Court.

At the trial, no witness was produced on behalf of the prosecution. Learned Judicial Magistrate, 1st Class, Bhagalpur by judgment dated 10th March, 2010 acquitted him of the charge having held as under:

“5. The prosecution in support of its case has not



examined any witness after having sufficient opportunities. There is no any other piece of evidence available on record which may prove the guilt of the accused persons. Accordingly the prosecution has not succeeded to prove its case beyond the shadow of reasonable doubts.”

If the officers of the respondents have lodged a case alleging impersonation then the informant and the witnesses ought to have diligently pursued the trial. that was not done which resulted in acquittal of the accused/petitioner. As I have already noticed, his overstaying from duty and subjecting to criminal charge is/are the main charge in the departmental proceeding. It appears that the revision application of the petitioner was pending when the judgment and order of acquittal was recorded by learned Trial Court. The impact of acquittal of the petitioner of the criminal charge in relation to charges framed in the departmental proceeding need to be considered. It can appropriately be appreciated by the revisional authority where the matter was then pending. In that view of the matter, I am satisfied, the revisional authority can be directed to reconsider the revision application of the petitioner and dispose of the same afresh in accordance with law.

In the result, the application is disposed of by the following order:

The Revisional order dated 27.10.2010 (Annexure-13) is quashed and set aside. The matter goes on remand to the Revisional Authority for re-consideration and disposal of revision application afresh in accordance with law. Petitioner would be at liberty to file additional/supplementary memo of revision enclosing therewith a copy of the judgment of acquittal recorded in the Trial within four weeks alongwith a copy of this order whereafter the said respondent shall consider and dispose of the revision application in accordance with law as quickly as possible.”



4. It appears that after passing of the said order by this Hon'ble Court, the revisional authority considered the matter afresh and passed the order, as contained in Annexure-16 to the writ application, which is dated 21.11.2011. The revisional authority *inter alia* held thus:

“..... There was no procedural irregularity in the conduct of the departmental enquiry by the inquiry officer and by the disciplinary authority in dealing with the case of the petitioner.....”

5. It has been further held that the principle of natural justice has been complied with in letter and spirit, the charges proved against the petitioner are grave in nature subversive to force discipline, grave misconduct and unbecoming member of the Force. Thereafter, the revisional authority held that :

“it will not be out of place to mention that the approach and objective in the criminal proceedings and disciplinary proceedings are distinct and different in the disciplinary proceedings the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment as the case may be, whereas in the criminal proceedings the question is whether the offences registered against the Government Servant are established and if established what sentence can be imposed on him. In the departmental proceedings, the principle of pre-ponderance of probability is maintained. It has already been



mentioned above that the charges against the petitioner in the departmental proceedings have been proved. Further the charges levelled against the petitioner in the departmental proceedings which have been proved in the departmental enquiry are undoubtedly serious in nature and finding him guilty of such charges merits his removal from the service of an armed force of the Union like CISF. Had the petitioner been acquitted honourably by the Hon'ble court in the criminal case, the revision petition would warrant interference in the order of penalty awarded by the Disciplinary Authority. But the petitioner in the above criminal case has only been acquitted on ground of benefit of doubts. Therefore after re-considering his earlier revision petition dated 22.05.2010, the instant revision petition dated 23.07.2011 repeated the same by the petition dated 17.10.2011. I find no reason to interfere into the final order passed by the disciplinary authority vide final order dated 23.03.2009, which was upheld by the DIG CISF Unit DSP Durgapur vide his appellate order dated 18.05.2009. Therefore, his revision petitions dated 22.05.2010, 23.07.2011 and dated 17.10.2011 are rejected being devoid of merit.”

6. In view of the aforesaid order once again petitioner has approached this Court for setting aside of the disciplinary order, appellate order and the fresh revisional order which has been passed on 21.11.2011.

7. At the outset, Mr. Rajesh Kumar Verma,



Central Government Counsel has raised an issue of territorial jurisdiction. According to Mr. Verma, no part of the cause of action has arisen within the jurisdiction of this Court. He would submit that the officers right from disciplinary authority up to the revisional authority were all sitting in the State of West Bengal. The disciplinary proceeding was conducted there only and the orders passed by the authorities were also served on the petitioner in the State of West Bengal except the revisional order, which has been passed afresh pursuant to the orders of this Court. He has relied upon a judgment of learned co-ordinate Bench of this Court in the case of *Sunil Kumar Yadav Vs. Union of India* reported in *2016(3) PLJR 870*; paragraph 35 of the judgment on which reliance has been placed reads as under: -

“35. In the case of **Ram Chandra Singh vs. The Union of India & Ors.** reported in 2003(3) PLJR 479, the matter with regard to territorial jurisdiction of the High Court came up for consideration. In the aforesaid case, the person was employed in security force. A proceeding was initiated against him and ultimately he was awarded a punishment of rigorous imprisonment and was dismissed from service. The order was communicated to the Commandant. The Court held at Headquarter of the BSF at Kupwara is in the State of Jammu & Kashmir. The petitioner of that case filed an appeal before Deputy Inspector General. The rigorous imprisonment was changed to simple imprisonment but the order of dismissal



was maintained. Against that order, he preferred a statutory petition and was informed that his statutory petition has been rejected by the Director General of the Force. The Court considered several judgments such as **Naval Kishore Sharma vs. Union of India and Ors.** (1983 BBCJ 23), **Rameshwar Prasad vs. The Union of India and Ors.** [2003(2) PLJR 151] and **Sunil Kumar Pandey vs. Union of India and Ors.** [2001(4) PLJR 678] and held that mere filing of statutory petition from a place within the State of Bihar and the decision of the said petition being communicated within this State, shall not confer jurisdiction to this Court to entertain the petition.”

8. On the other hand, Sri Banbari Sharma, learned counsel representing the petitioner submits that, in the present case, earlier this Court has entertained the writ application filed by the petitioner where no question of territorial jurisdiction was raised on behalf of the Union of India. He further submits that once the Union of India has not raised the issue of territorial jurisdiction in the first round of writ application, they are not justified in raising this plea at this stage.

9. Learned counsel further submits that, in the present case, the part of cause of action would be deemed to have arisen within the jurisdiction of this Court, inasmuch as the alleged act for which the charge no. 2 was framed is said to have taken place at Bhagalpur within the jurisdiction of this



Court, and, therefore, at least a fraction of the cause of action has definitely arisen within the territorial jurisdiction of this Court.

10. Learned counsel further submits that this case was filed as back as in the year 2012, and it was admitted for final hearing and disposal. Thus, relegating the petitioner to another forum, at this stage, would cause much hardship to him and this Court being a constitutional court may protect the petitioner from being relegated at this stage, on a mere technicality of law.

11. In the facts of the present case, I am of the considered opinion that even though the issue of territorial jurisdiction seems to have been raised on behalf of the Union of India in its counter affidavit, but because the writ application was admitted, and then, it is coming for final disposal after about six years from the date of its filing, taking into consideration that, in the earlier round of the writ application, this question was not raised, and perhaps that would have given a bona fide understanding in the mind of the petitioner to approach this court once again, it would not be just and proper to throw out the writ petition on this ground alone. I am not inclined to relegate back the petitioner to another forum, as according to me, it is likely to cause much hardship to the



petitioner. The plea raised on behalf of the Union of India as regards the territorial jurisdiction of this Court is not acceptable because earlier the writ petition was admitted and was remained pending for more than 6 years by now in the facts stated hereinabove.

12. The parties have been heard on the merits of the case. Mr. Sharma, learned counsel representing the petitioner submits that because the petitioner was charged for the alleged act whereunder he was said to have been impersonating for the candidates who were participating in the recruitment process and thereby cheating by way of impersonation, the said charge not having been proved in the criminal proceedings and the petitioner has been acquitted of the charge in the criminal case, the order passed by the disciplinary authority must go.

13. Learned counsel submits that where the charges levelled in the disciplinary proceedings and the criminal proceedings are same and the result of both the proceedings are dependent upon the same set of evidences Acquittal in the criminal case will certainly have an effect on the disciplinary proceedings and the order passed in that disciplinary proceedings is liable to be recalled in case where the delinquent employee has been acquitted in the criminal



case.

14. On the other hand, Mr. Verma, learned counsel representing the Union of India submits that the disciplinary proceedings and the criminal proceedings are two independent proceedings and once the disciplinary authority has upon going through the evidences produced in the disciplinary proceedings found the petitioner guilty of the charges levelled against him, the same cannot be found fault with only because the petitioner in the present case has been acquitted giving him benefit of doubt in the criminal trial.

15. Learned counsel further submits that a bare perusal of the charges would show that the allegations against the petitioner were that of committing gross misconduct, negligence and violation of lawful order. He was also charged for committing gross misconduct by committing act of cheating as he was arrested while trying to impersonate the candidate namely Devesh Mandal, son of Shri Ganesh Mandal for whom he was participating in the Physical Efficiency Test for recruitment of Constable.

16. Learned counsel submits that in the earlier writ application the issues relating to the procedural aspect followed in the decision making process in course of disciplinary proceedings were duly considered by the learned



co-ordinate Bench of this Court, but the Court did not find any fault with the procedures adopted in course of disciplinary proceedings. He submits that pursuant to the order passed by this Court, which was limited to the remittance of the matter to the revisional authority to consider the effect of the order of acquittal, the revisional authority has considered the same and has passed a reasoned order, as contained in Annexure-16 to the writ application. He further submits that no illegality or infirmity may be found with the revisional order dated 21st November, 2011 (**Annexure-16**).

17. I have heard learned counsel for the parties and perused the records. To me, it appears that in the earlier round while disposing of CWJC No. 20225/2010, a co-ordinate Bench of this Court was persuaded only to the extent to direct the revisional authority to consider the effect of the judgment of acquittal recorded in the trial against the petitioner wherein the petitioner was acquitted giving him benefit of doubt.

18. The revisional authority has now passed a fresh order as stated hereinabove and on going through the order passed by the revisional authority, I am not persuaded to interfere with the same. The revisional authority has rightly held that no procedural irregularity in the conduct of the departmental enquiry and by the disciplinary authority could be



found, the principle of natural justice has been duly complied with and the approach and objective in the criminal proceedings and disciplinary proceedings are distinct and different. He has also noticed that the petitioner was not acquitted honourably by the court in the criminal case, he was given benefit of doubt while acquitting him from the case.

19. Submission of learned counsel for the petitioner is that, in the facts of the present case, the order passed by the disciplinary authority is fit to be interfered only because in the criminal case the petitioner has been acquitted giving him benefit of doubt is not fit to be accepted in view of the settled judicial pronouncements on the subject.

20. I do not find any merit in this writ application.
This Writ Application is, accordingly, dismissed.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.01.2018
Transmission Date	NA

