

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9636 of 2003

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Kedar Nath Sharma, S/o Late S.G. Sharma, R/v Rasalpur, P.O. Dadhipa,
P.S. Madanpur, Distt. Aurangabad.

.... Petitioner/s

Versus

1. The Union of India through the Ministry of Home Affairs, Govt. of India,
New Delhi.
2. The D.G. of Police, CISF, North Block, New Delhi
3. The I.S. of Police, CISF, Eastern Zone, Patna, Bihar
4. The D.I.G. of Police, CISF, Eastern Zone, Head Quarter, Patna-1
5. The Commandant, C.I.S.F., Unit Nalco Angul, Orissa.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ram Hriday Prasad, Adv. Mrs. Maruti Kumari, Adv.
For the U.O.I	:	Mr. Kumar Priya Ranjan, (CGC) Mr. Niraj Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date: 13-02-2018

The short facts of the case are that the petitioner, who was working as a driver/constable, was preceeded departmentally and vide memo dated 4.09.1999 charge-sheet was served on the petitioner wherein four charges were levelled. One of the charges levelled against the petitioner is that he had tried to implicate the higher officials and levelled allegation against them by saying that he was compelled to un-officially take the official jeep to the market for the purpose of purchasing liquor and the other charge is using the



photocopy of the log book in an unauthorized manner.

2. It appears that a full fledged departmental proceeding was conducted against the petitioner herein and the charges levelled against him are contained in charge-sheet dated 04.09.1999 whereafter the enquiry officer submitted an enquiry report. The copy of the said enquiry report was supplied to the petitioner herein vide memo dated 25.11.1999, asking him to submit his representation against the said enquiry report. The petitioner had submitted his representation before the Commandant, CISF whereafter, Commandant, CISF by an order dated 29.12.1999 came to the finding that the enquiry officer had rightly held the petitioner guilty of the charges alleged against him. In such view of the matter, the Commandant, CISF by the punishment order dated 21.12.1999 inflicted the following punishment against the petitioner herein:

“Reduction on of pay to initial stage i.e. from Rs. 3795/- to Rs. 3200/- in the time scale of pay for a period of three years with immediate effect. It is further directed that he will earn increments of pay during the period of reduction and that on expiry of this period, the reduction will not have the effect of postponing his future increment of pay. The period of suspension from 27.08.1999 to the date of receipt of this order, is treated as non-duty for all



purposes and he will not be paid any more pay and allowances except the subsistence allowance already paid during the period of suspension.”

3. The petitioner had then filed an appeal against the aforesaid final order of punishment dated 21.12.1999 before the Deputy Inspector General, CISF and the Inspector, CISF, vide an order dated 06.07.2000, was pleased to hold that the punishment awarded against the petitioner is just and fair hence, the appeal filed by the petitioner herein was rejected.

4. It appears that the petitioner had then submitted a revision petition before the Inspector General, CISF, however, the same was also rejected.

5. Learned counsel for the petitioner has submitted that so far as the aforesaid charges levelled against the petitioner, as contained in charge sheet dated 04.09.1999 is concerned, the petitioner has already been inflicted with the punishment of warning by an order dated 06.10.1998, which is Annexure-2 to the writ petition.

6. In fact, the said order of warning has been communicated to the petitioner by letter dated 30.12.1998 issued by the Commandant, CISF whereby and whereunder the petitioner was warned further to desist from making false allegation against other



members of the Force, otherwise stern disciplinary action will be taken against him. It was further observed in the said letter that the petitioner should improve and correct himself and to desist from such types of nefarious activities.

7. The learned counsel for the petitioner submits that once the petitioner has already been punished for the alleged misconduct, neither a fresh departmental proceeding could have been initiated nor a fresh punishment order could have been passed. The petitioner submits that the well settled principle to the effect that a person cannot be punished twice for the same offence, is fully applicable in the present case.

8. Learned counsel for the respondents has submitted that it is clear from the punishment order dated 21.12.1999 that the petitioner had firstly made a complaint dated 08.08.1998 and thereafter, an enquiry was conducted on 17.09.1998 and the order of warning was issued on 06.10.1998. Hence, the complaint of the petitioner had culminated into passing of the warning order. However, the petitioner again sent a complaint dated 15.09.1998 to the D.I.G., Patna without following the proper channel, hence the same was not entertained, therefore the petitioner again submitted yet another complaint dated 15.09.1998, finding that no action has been taken on his complaint dated 08.08.1998, and, thereafter, the petitioner had



sent his complaint again through registered post on 16.09.1998 whereupon, the present departmental proceeding is said to have been initiated. Hence, the passing of the punishment order of warning and the present punishment order dated 21.12.1999 can not be said to be arising out of one of the same cause of action. Having heard the learned counsel for the parties and having considered the materials on record, I find that on the same set of allegations, the order of warning dated 06.10.1998 and the order of punishment dated 30.12.1998 have been passed. The competent authority, again on the same charges which had culminated into punishment of working, the departmental proceeding had initiated which was conducted against the petitioner herein and the same has resulted in final order of punishment dated 29.12.1990, which is clearly not permissible under the law. It is settled law that a person cannot be punished twice for the same offence. Article 20(2) of the Constitution of India postulates that:- “20(2) no person shall be prosecuted and punished for the same offence more than once. The doctrine of double jeopardy in Article 20(2) of the Constitution of India is circumscribed only to prosecution culminating into conviction i.e. imbibes only principle of autrefois convict and does not imbibe within it principle of autrefois acquit.

9. Having regard to the facts and circumstances of the present case, the order of punishment dated 29.12.1999, the appellate



order dated 6.7.2000 and the revisional order dated 21.12.2001 are set aside.

10. The writ petition is allowed.

(Mohit Kumar Shah, J)

sushma/-

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CAV DATE	---
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