

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 5313 of 2012

Umesh Kumar Rathore S/o Haricharan Rathore, aged about 39 years, Occupation Service and posted as Constable in Central Industrial Security Force (CISF) and at present posted at Bhilai NSPCL, District Durg (C.G.), R/o village Kharwani, Post Sohagpur, Via-Champa, District Korba (C.G.), P.S. Kotwali Korba.

---Petitioner

Versus

1. Union of India through the Secretary (Home), Government of India, New Delhi.
2. Deputy Inspector General of Police, CISF (Home Department), Taloja Salghar, New Mumbai (M.S.).
3. Commandant, CISF (Home Department), Unit JNPT Seva, District Raigarh (M.S.).
4. Deputy Commandant, CISF (Home Department) Unit JNPT Seva, District Raigarh (M.S.).
5. Deputy Commandant, CISF, NSPCL Bhilai, District Durg (C.G.).

---Respondents

For petitioner	:	Shri Awadh Tripathi, Advocate.
For respondent No.1	:	Shri Rajkumar Gupta, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

03/08/2018

1. The challenge in the present Writ Petition is to the orders Annexures-P/1, P/9 and P/4 dated 07/04/2010, 25/11/2009 and 04/09/2009 respectively.
2. In this case, the petitioner was working as a Constable under the respondents posted at NSICT Gate of the JNPT, Navi Mumbai since 2009 and during the course of the duty, he was found to have picked up a bottle of liquor from the customs department and had placed it in the pocket of his

jacket which on intervention of the Assistant Commandant namely Shri A.K.Tikku, the petitioner initially said that it was a bottle filled of water and subsequently he admitted it to be a liquor bottle that he picked from the customs office.

3. The respondents thereafter imposed the petitioner with penalty of stoppage of one increment without cumulative effect for a period of one year vide order Annexure-P/4 dated 04/09/2009.

4. Against the said order, the petitioner preferred an appeal before the Commandant who vide order Annexure P/6 dated 23/10/2009 first dismissed the appeal maintaining the order of the disciplinary authority of stoppage of one increment.

5. However, subsequently, the Commandant without any power of review issued a fresh show cause notice to the petitioner and reviewed his earlier order and this time vide Annexure P/9 dated 25/11/2009 enhanced the punishment from stoppage of one increment to stoppage of two increments without cumulative effect.

6. Against this order, the petitioner preferred a revision before the DIG, CISF who too, vide the order Annexure-P/1 dated 07/04/2010 further enhanced the punishment from stoppage of two increments to stoppage of three increments without cumulative effect.

7. At the outset, the counsel for the petitioner submits that, the order of review passed by the Appellate Authority at the first instance vide Annexure-P/9 is per-se illegal and bad in law for the reason that, there was no power or

authority conferred upon the Appellate Authority after having decided the appeal on 23/10/2009 to have reviewed his own order under the provision of appeal under Rule 46 of CISF Rules, 2001. He submits that, once when the Appellate Authority had after due consideration of the appeal dismissed the appeal of the petitioner on 23/10/2009, the authorities could not have suo-moto reviewed his order and enhanced the punishment order. He further contended that, there was hardly any material available for the respondents to enhance the punishment or maintain the punishment for the simple reason that, though the charge against the petitioner is that of having picked up a bottle of liquor from the customs department, but the bottle of liquor was neither seized nor available with the respondents at any point of time, nor is it a case of the respondent that subsequent to the liquor bottle being recovered from the petitioner, he had misappropriated or played mis-chief in its disappearance and thus in the absence of the recovery of the liquor bottle or the seizure of the liquor bottle, the entire disciplinary action itself is without any basis and stands collapsed. He further submits that, once when the Appellate Authority himself had enhanced the punishment by suo-moto review vide Annexure-P/9, the revisional authorities concerned could not have further enhanced it by another stage. Though the power of the revisional authority is there for enhancing the penalty, but once when the Appellate Authority itself has enhanced the punishment, the revisional authority should not have further enhanced it and for all these reasons, the three impugned orders are not sustainable and thus he prayed for setting aside of the same.

8. The counsel for the respondent – Union of India however defending the case of the respondents submits that, it is a case where the Assistant Commandant namely Shri A.K.Tikku found the petitioner inserting some bottle in his Jacket from the CCTV camera and when he intercepted the petitioner, he was told that it was a liquor bottle and he took that bottle and gave it to another person who rapped it in a paper and kept it with him.

9. The contention of the counsel for the respondent is that, the punishment imposed upon the petitioner was based upon his admission that he has made before the Assistant Commissioner at the time when he was found in possession of that liquor bottle. According to the counsel for the respondent, it is always within the power and domain of the appellate authority so also the revisional authority to review a decision earlier taken if they find an error apparent on the face of record.

10. In the instant case, the appellate authority as well as the revisional authority have enhanced the punishment and the same was after due compliance of all the provisions of rules and regulations governing the field.

11. It was further contended by the counsel for the respondent that, the punishment cannot be said to be either disproportionate or shocking to the conscious of this Court and therefore prayed for dismissal of the Writ Petition.

12. Having heard the contentions put forth on either side and on perusal of record what is not in dispute is the fact that, the respondents authorities have not seized or recovered any of the alleged liquor bottle which was recovered

from the possession of the petitioner. From the perusal of the record it appears that, there was some bottle recovered from the petitioner, whether it was a liquor bottle or was a bottle with water in it has not been got determined or established by the respondents at any point of time. To add with it, the respondents even did not have the bottle with them at the time of imposition of the original punishment order on 04/09/2009 itself.

13. In the absence of the alleged liquor bottle in possession of the respondents, the initiation of disciplinary action and imposition of the punishment and the further enhancement of the same at all levels both at the Appellate stage as well as at the revisional stage would not be sustainable.

14. All the three impugned orders of punishment apparently appears to be without the material substance available with them on the date of imposition of punishment and also later while deciding the appeal and revision.

15. Moreover, the order of the Appellate Authority dated 25/11/2009 reviewing his earlier order also does not seem to be proper, legal and justified for the reason that, the Act does not empower for reviewing of ones own order. The review could be possible in case if there was some error apparent on the face of record like clerical or typographical error which have cropped up while deciding the appeal.

16. A review as such cannot be substituted as an altogether fresh appeal itself to be decided all over again. The said order Annexure-P/9 also is not sustainable.

17. For all the aforesaid reasons, the three impugned orders Annexures-P/1, P/9 and P/4 dated 07/04/2010, 25/11/2009 and 04/09/2009 respectively being without any basis deserve to be and are accordingly set-aside/quashed.

18. Consequences to follow.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit