

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**W.P.S. NO. 2873 OF 2009**

- CISF No. 94331374 Const. P.B. Mannu, aged 37 years, S/o Shri Mannu Pawar, CISF Unit BSP Bhilai-01, Tahsil & District Durg (CG)

... Petitioner**versus**

1. Union of India, through- Secretary, Ministry of Home Affairs, Govt. of India, New Delhi.
2. Deputy Inspector General, Central Industrial Security Force, Unit-Bhilai Steel Plant, Bhilai-01, Tahsil & District Durg (CG)
3. Commandant, Central Industrial Security Force, Unit-Bhilai Steel Plant, Bhilai-01, Tahsil & District Durg (CG)

... Respondents

For Petitioner	:	Mr. V.G. Tamaskar, Advocate.
For Respondents	:	Mr. Raj Kumar Gupta, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****04/09/2018**

1. Challenge in the present writ petition is to the order dated 13.1.2008, Annexure P-2, passed by respondent no.3 whereby the petitioner has been reduced from pay scale of Rs.3965/- to the pay scale of Rs.3200 for a period of 2 years and it was also ordered that for the said period the petitioner would not be entitled for the annual increments and which will have a cumulative effect.

2. Learned counsel for the petitioner submits that the impugned order is not sustainable for the reason that the prosecution has not been able to establish the misconduct before the Inquiry Officer and that the entire finding is on the basis of assumption and presumption more particularly only on the basis of the statement of an alleged investigating officer. Counsel for the petitioner further submits that the complainant in the instant case, i.e., a truck driver, namely, Surya Bahadur, the driver of Truck no. CG07-E-9786, himself has not supported the case of the prosecution before the Inquiry Officer and has even not identified the present petitioner of having committed any misconduct; the entire proceedings and the entire findings

stand vitiated on this ground alone. So far as charge no.1 is concerned, counsel for the petitioner submits that the Assistant Commandant (Administration) had already vide order dated 25.3.2008 given a warning and as such the subsequent charge-sheet and the finding in this regard also is not sustainable.

3. Learned counsel for the respondents however opposing the petition submits that it is a case where the petitioner and one of the accomplice, namely, BSD Rao, projected themselves as police officer and tried to extort money from the driver Surya Bahadur who resisted the same which led to a fight. That the petitioner and his accomplice is said to have tried to assault the driver and later the accomplice BSD Rao was taken to the police station Bhilai by the said driver.

4. The same driver when he appeared before the Inquiry Officer has not supported the case of the prosecution and the Inquiry Officer thereafter proceeded to record the statement of the S.H.O., Police Station Bhilai. However, the statement of the said S.H.O. also does not disclose as to the involvement of the present petitioner except for the statement made by BSD Rao, which cannot be an admissible piece of evidence. That, the driver himself having turned hostile before the Inquiry Officer, the charge as such has not been conclusively proved before the Inquiry Officer. The Inquiry Officer could not have given a finding only on the basis of a statement of the alleged investigating officer. There is no material on record whether the petitioner has been prosecuted for any criminal case on the basis of the matter being reported before the police authorities.

5. Given the fact, unless the charges are proved conclusively before the Inquiry Officer, the petitioner could not have been inflicted with a punishment so far as the incident which is alleged to have occurred with the complainant Surya Bahadur is concerned. So far as charge no.1 is concerned, the

allegation is only that the petitioner has not promptly given an intimation so far as the purchase of motorcycle is concerned. The petitioner had brought on record the order dated 25.3.2008 passed by the Assistant Commandant who had taken note of the fact that instead of giving the intimation within 30 days from the date of purchase the petitioner had given the intimation after about 45 days and for which the petitioner has already been warned and let off.

6. Given the said the said subsequent issuance of the charge-sheet for the same offence also would not be sustainable. Moreover, it is not a case of non-intimation of any assets acquired. It is only a case of delay of a few days in giving the intimation to the authorities and as such the same also may not be so grievous a misconduct which may require imposition of the punishment which has been imposed upon the petitioner, which otherwise has an effect of a major penalty.

7. Given the aforesaid facts and circumstances, the impugned order, Annexure P-2, is not sustainable and the same deserves to be and is accordingly set aside with consequences to follow.

8. At this juncture, learned counsel for the respondents has raised an objection of having an alternative remedy against the impugned order of punishment. The petition is of the year 2009 and after about 9 years of the matter pending consideration before this Court, it would not be a fit case for relegating the petitioner for availing the alternative remedy. The said objection of the respondents thus stands rejected.

9. The writ petition stands allowed and disposed of accordingly.

**Sd/-
(P. Sam Koshy)
Judge**