

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.201 of 2018

In

Civil Writ Jurisdiction Case No.16824 of 2014

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Rajiv Kumar, Son of Karelal Singh resident of Village- Kunnath, P.S.-
Shambhuganj, District- Banka

... .. Appellant/s

Versus

1. The Union of India through the Secretary, Home Department, Government of India, New Delhi
2. Director General, Central Industrial Security Force, New Delhi.
3. The Deputy Inspector General/ Principal C.I.S.F., M.P.R.T.C., P.O.- Anantpura, Behror, District- Alwar
4. Commandant CISF, MPRTC, Behror, Rajasthan
5. Divisional Inspector, General, CISF, Head Quarter, Patna
6. Reserve Inspector, CISF, Patna

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Yogesh Chandra Verma, Sr. Advocate Mr. Javed Aslam, Advocate
For the Respondent/s	:	Mr. S.D. Sanjay, Addl. S.G. Mr. Rajesh Kumar Verma, C.G.C.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 26-02-2019

Heard Shri Yogesh Chandra Verma, learned Senior Counsel for the appellant and Shri S.D. Sanjay, learned Additional Solicitor General of India for the respondent Central Industrial Security Force (hereinafter referred to as "CISF").

2. The appellant participated in the selection process for selection of Constables in the CISF. After having



undergone training upon selection, an anonymous complaint in the name of one Mr. Pawan and Mr. Santosh reached the office of the CISF upon which an inquiry was set into motion.

3. The allegation against the appellant was that he had allowed one Sarvesh to participate in the Physical Evaluation Test in his place and, therefore, an impostor having participated in place of the appellant during the Physical Evaluation Test, his candidature was liable to be cancelled and he deserved to be terminated.

4. Treating the appellant to be a temporary engagee of the CISF, his services were dispensed with, against which the appellant preferred C.W.J.C. No. 11059 of 2011 that was allowed on 17th of February, 2014 setting aside the order of termination and leaving it open to the authorities to take appropriate action only in accordance with law and the provisions of the Central Industrial Security Force Act, 1968 read with the Central Industrial Security Force Rules, 2001.

5. The appellant was accordingly reinstated but the inquiry proceeded against him.

6. During the course of the inquiry, the appellant was called upon to get his statement recorded, whereafter he was also cross-examined. This is evident from the proceedings



that have been brought on record and have been discussed by the Disciplinary Authority in the impugned order. During the course of inquiry on 22nd June, 2010, the appellant got his statement recorded where he categorically stated that when he appeared for the Physical Evaluation Test he instead of running himself asked his friend Sarvesh Kumar to run in his place as he was suffering an injury in his leg. While being cross-examined and on questions being put to him about this act being unlawful, the appellant categorically admitted that it was on account of unemployment and his poor financial status that he attempted to get into the job by adopting such means. On a particular question with regard to the allotted number of the candidate appearing, he admitted that the number mentioned on the plate was his but the photograph which was pasted in the document pertaining to Physical Evaluation Test was not of the appellant.

7. After the inquiry, the appellant sought to controvert the aforesaid proceedings during the inquiry contending that he had been called upon to sign certain documents and which in effect he was forced to do and, therefore, his statement made on 22nd of June, 2010 should not be treated to be an evidence against him.

8. After having considered the entire defence and



the aforesaid proceedings, the Disciplinary Authority on an assessment of the said evidence came to the conclusion that the appellant was guilty of the charge of having allowed someone else to have run in the Physical Evaluation Test and that his allegation about signatures having been obtained on the statement forcefully are not correct.

9. Shri Yogesh Chandra Verma, learned Senior Counsel vehemently urged that the procedure of inquiry has not been followed and the violation of principles of natural justice is evident, inasmuch as, the appellant was not given any opportunity by fixing any date allowing him or calling upon him to produce any further evidence. This according to Shri Verma was in violation of Rule 36 of the 2001 Rules.

10. We have considered the submissions raised and we have also heard Shri S.D. Sanjay, learned Additional Solicitor General of India for the respondent who has invited the attention of the Court to the documents of the proceedings on record to indicate that the photographs were different and that his admission during the course of inquiry was itself sufficient to corroborate the same. It has further been urged that no *mala fides* were alleged against the officials who conducted the selection process and otherwise also the appellant had



succeeded in getting selected, but it is only after the complaint that arrived almost seven months after the training, that this inquiry was set up. In this background, no *mala fides* can be entertained with regard to the selection process except for the fact that it was the appellant who somehow or the other manipulated his participation in the Physical Evaluation Test.

11. We accept the aforesaid argument of the learned counsel for the respondent CISF, but at the same time, we are equally surprised that if the procedure prescribed for Physical Evaluation Test was such that a person entering the arena where the test was being carried out, could not come out once he entered the same, then in what manner and in what way did the officials allow the entrance of a different person other than the appellant to partake the test when the appellant admittedly had gone to drink water. This lapse on the part of the selection team that was enjoined with the duty of holding free and fair selections during the Physical Evaluation Test, therefore, is questionable and calls for an inquiry by the Forces themselves.

12. Nonetheless, the evidence on record does indicate that a different person in place of the appellant had participated in the Physical Efficiency Evaluation Test. Consequently, in the absence of any evidence to the contrary, a



bald denial about the recording of the statement during the inquiry process by the appellant does not in any way inspire any confidence so as to take a different view in the matter. The conclusion drawn by the Disciplinary Authority as well as by the Appellate Authority after having assessed the entire records clearly indicates that the appellant had succeeded in entering the service of the Force by dubious methods. This, therefore, deserved a correction and consequently, if his services have been terminated on the strength of such evidence, then we do not find any reason for interference by this Court in the exercise of extraordinary jurisdiction.

13. Apart from this, the findings so recorded are based on facts. No perversity could be found on the basis of the material on record so as to warrant any interference with the findings recorded either by the Inquiry Officer or by the Disciplinary Authority. The allegation that the impugned proceedings suffer from the vice of violation of principles of natural justice also do not deserve any credit, inasmuch as, it is evident from the records that if the opportunity was given to the appellant to participate in the inquiry proceedings and also get himself cross-examined, it was open to the appellant to have led any evidence of his choice which he thought who could have



been a vital evidence in support of his defence. The appellant having not availed of any opportunity, the same cannot stand converted into a charge of violation of principles of natural justice on the part of the respondents.

14. Consequently, for all the reasons aforesaid, we do not find any error, much less, a legal error in the findings recorded by the learned Single Judge and by the authorities in the impugned orders. The appeal lacks merit and is accordingly dismissed.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

P.K.P./-Jagdish

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