

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16248 of 2013

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Bhola Prasad Trivedi, Son of Sri Bisheshwar Trivedi, Resident of Village -
Chousima, P.S. - Sakra, District - Muzaffarpur

... .. Petitioner/s

Versus

1. The Union Of India through the Chief Secretary (Home Department), Govt. of India, New Delhi.
2. Secretary Home (C.I.S.F.), Govt. Of India, New Delhi
3. Inspector General, Central Industrial Security Force, New Patliputra, Patna
4. Deputy Inspector General, C.I.S.F. Unit R.S.P. , Rourkela
5. Senior Commandant, C.I.S.F. Unit R.S.P. , Rourkela
6. Deputy Commandant, C.I.S.F. Meghakiri, Unit, Meghahatuguru, District Singhbhoom

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Prasad, Sr. Advocate Mr. Ritesh Kumar, Advocate Mr. Pramod Kumar, Advocate
For the Respondent/s	:	Mr. Rajesh Kumar Verma, CGC.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 13-03-2019

Heard the parties.

In the present case, the petitioner is challenging the order dated 5.06.2013 passed by the Inspector General, C.I.S.F., Eastern Zone, Head Office, Boring Road, Patna (Respondent No.3) dismissing the Revision Application No.4/2013 (Annexure-1) as well as the order dated 26.12.2012 passed by D.I.G., C.I.S.F. Unit R.S.P. Raurkela (Respondent No.4) dismissing the Appeal No.36 of 2012 (Annexure-2) as also the order dated 31.08.2012 passed by Senior Commandant, C.I.S.F. group (Respondent No.5) as contained in Annexure-3.



The petitioner, who is an Ex-Army man, was inducted in the service of CISF and was posted on duty at Meghahatuguru. While he was on duty on 1.05.2012 in the first half from 5 hours to 13 hours, the Deputy Commandant made a surprise checking at 12.50 hours and from his pocket, Rs.20/- was recovered, but from his personal bag, Rs.250/- was recovered and thereby he has violated the guideline issued by the CISF is an act of indiscipline and a misconduct, whereafter, the respondent authority has decided to initiate a departmental proceeding against him and, accordingly, the charge sheet was framed and supplied to him, which is Annexure-4, which specifically mentioned the incident as stated above and mentioned the violation of the guideline of keeping the money with himself. Ultimately, charges have been proved against the petitioner, but the punishment has been passed for dismissal from service.

As it appears from the proceeding that the background of initiation of proceeding is keeping the money of Rs.250/- in his bag is the result of inflicting of punishment has been claimed to be higher of degree of punishment of dismissal, but during enquiry, it transpired that he had admitted that he had taken the money from the truck driver for the purposes of tea and biscuit, which of course is very serious allegation, but in the present case revolves around



the fact that there is no such charge has been framed by the Department of securing to Rs. 250/- by way of realization from the Truck Driver, though the facts come during the inquiry cannot be a basis and a background for awarding the punishment of dismissal. The person can be proceeded and punished only with regard to the charges framed therein or charges are amended or supplemented. It is well known principal of law that the charges should be specific and clear term known to the delinquent and its scope cannot be extended while holding enquiry against the employee concerned. From the charges, which has been mentioned here-in-above, the allegation has been made that he was keeping Rs. 250/- in his bag and Rs. 20/- in his pocket, which is the violation of the guideline, but merely a person has kept Rs. 250/- without making allegation of procurement from the Truck Driver cannot be treated to have been a part of the charge-sheet unless specifically mentioned therein, but all the authorities have wrongly swayed away by the evidences came during the inquiry but the fact remains that the charge has remained unamended in tune with the evidence recorded during the enquiry .

Learned counsel for the petitioner submits that he can be held guilty with respect only to the charges mentioned therein, but the scope of consideration of charge cannot be enlarged and he



cannot be punished for the charge which has not been mentioned therein, whereas the counsel for the Union of India has placed reliance on two judgments of Hon'ble Supreme Court, one is reported in ***(2016) 15 SCC 122 (Uttar Pradesh State Road Transport Corporation Vs. Pradeep Kumar)*** where the proportionately and quantum of punishment has been discussed in paragraphs 4 and 5 and another judgment is reported in ***(2015) 2 SCC 610 (Union of India & Ors. Vs. P. Gunasekaran)*** where the Court has considered the permissibility and scope for interference of the higher Court with regard to the disciplinary matter. In paragraph 12, the Court has delineated the scope and power under Articles 226 and 227 of the Constitution of India and the Hon'ble Supreme Court has mentioned in the said paragraph the scope and parameter of consideration by the writ Court and what should not be done has been mentioned in paragraph 13, in paragraph 13 (vii), it has been mentioned that Court would not go into the proportionately of punishment unless it shocks its conscience.

The present case is revolving around the fact about the interference by this Court on the quantum of punishment. The Hon'ble Supreme Court in long line of judgments has held that the awarding of punishment to the delinquent employee lies with the domain of the executive. In normal circumstances, the Court



should not interfere with the order of punishment unless it is shockingly disproportionate to the imputation mentioned in the charge-sheet and reliance can be placed on the case of Pradeep Kumar (*Supra*) where it has been very much clearly defined that normally, the Courts would not interfere with the punishment unless they are shockingly disproportionate and if the punishment is interfered or substituted lightly in exercise of their extraordinary jurisdiction then it will amount to abuse of the process of the Court.

In the present case, the imputation which has been levelled against the petitioner of keeping of Rs. 250/- without making allegation of illegal acquisition of money of the part of the charge-sheet, but those facts of wrong acquisition came during the inquiry but the Disciplinary Authority or the competent Authority failed to amend the charge-sheet which could have framed a separate charge-sheet and proceeded departmentally, but the respondent authority has only confined its proceeding with regard to recovery of Rs. 250/- from his bag even if this part of charge is proved, the order of dismissal would be shockingly disproportionate, could not be basis for inflicting the punishment of order of dismissal, merely violation of guidelines unless the



imputation is made of illegal procurement of money in the charge sheet.

Hence, this Court is of the view that though this Court would not have interfered with the order of punishment, had charge of illegal procurement has been mentioned in the charge sheet but missing, hence, the order of punishment of dismissal is shockingly disproportionate on the backdrop of fact of mere keeping Rs.250/- in bag is in violation of guideline, hits the conscience of the Court and, on that ground alone, the order of punishment is not sustainable in law.

Accordingly, the order dated 5.06.2013 (Annexure-1), order dated 26.12.2012 (Annexure-2) and order dated 31.08.2012 (Annexure-3) are quashed and the matter is remanding back to the Authorities concerned to take a decision on the question of quantum of punishment.

With this observations and directions, this petition is allowed to the aforesaid extent.

(Shivaji Pandey, J)

V.K.Pandey/
S. Katyayan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	26.03.2019
Transmission Date	N.A.

