

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 3469 of 2008

Ramavtar Singh Marco, S/o. Late Chaitu Singh Marco, Aged about 41 years, R/o. Village Darri, P.O. Vijaypur, P.S. Takhatpur, District Bilaspur, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Director General of Police, D.K.S. Bhawan, Raipur.
2. The Inspector General of Police, Range Bilaspur, District Bilaspur, Chhattisgarh
3. The Superintendent of Police, District Korba, Chhattisgarh

---Respondents

For Petitioner	:	Ms. Sharmila Singhai, Advocate along with Mr. Kanwaljeet Singh Saini, Advocate
For State	:	Ms. Sunita Jain, G.A.

Hon'ble Shri Justice P. Sam Koshy
Order on Board

24/06/2019

1. The challenge in the present writ petition is to the three orders passed by the respondents i.e. Annexure P/1, P/2 & P/6. Annexure P/6 is the order of dismissal from service passed by the Superintendent of Police, Korba dated 31.03.2005 against which the petitioner had preferred an appeal and the appeal stood rejected by the Inspector General of Police, Bilaspur range vide order dated 13.08.2005 (Annexure P/2). Later on the petitioner preferred a Mercy Appeal before the Director General of Police, which too stood rejected vide the impugned order (Annexure P/1) dated 06.09.2006, leading to the filing of the present writ petition.
2. The petitioner was placed under suspension on 03.05.2004 while working as a Constable at district Korba. The petitioner was served with a charge-sheet on 10.06.2004 in respect of three major charges, first being that of not depositing the arms and ammunitions including the official rifle, which the

petitioner had received from the Police Station after completion of duty hours. The second being that of the 50 rounds of ammunitions, which was handed over to the petitioner, he has lost 10 ammunitions because of his negligence. The third charge being that the petitioner under the influence of alcohol is said to have misbehaved with an Auto Driver Sanjay Kumar Sharma and is also have threatened him by pointing the official rifle that was in his possession. To the said charge-sheet dated 10.06.2004 the petitioner gave a detailed reply on 05.07.2004.

3. It is pertinent to mention at this juncture that from the plain perusal of the reply to the charge-sheet, it clearly reflects that there was a categorical admission by the petitioner in respect of all the charges or allegations, which were leveled against him. Subsequently, an Inquiry Officer was appointed to inquire into the allegations leveled and finally based on the inquiry report, the Superintendent of Police, Korba vide Annexure P/6 dismissed the petitioner from service on 31.05.2005, which has further been affirmed by the departmental Appellate Authority as also by the Director General of Police in the Mercy Appeal vide the two orders dated 13.08.2005 and 06.09.2006 issued by the Inspector General of Police, Bilaspur range and the Director General of Police vide their orders Annexure P/2 & P/1 respectively. It is these three orders, which are under challenge in this writ petition.
4. The contention of the petitioner is that during the course of the departmental inquiry, there have been a few of the witnesses, who have been examined and who have not supported the case of the establishment. Thus, it cannot be said that the charges have been fully proved before the Inquiry Officer. The further contention of the petitioner is that the departmental Appellate Authority so also the Director General of Police while deciding the Mercy

Appeal have not applied their mind and have decided the appeal and the Mercy Appeal without giving sufficient reason. It was lastly contended by the petitioner that the punishment order otherwise seems to be highly disproportionate and harsh and does not meet the nature of misconduct or allegations that have been leveled against the petitioner and thus prayed for setting aside of the impugned orders.

5. The State counsel on the other hand opposing the petition submits that the reply to the charge-sheet submitted by the petitioner is by itself self-explanatory. According to the State counsel, there is a categorical admission of his guilt by the petitioner in his reply that he has filed. That in the light of the admission, the decision arrived at by the Disciplinary Authority, which has also been affirmed by the Appellate Authority as well as by the Director General of Police in a Mercy Appeal, nothing further remains to be adjudicated upon and thus prays for rejection of the writ petition.
6. The State counsel further referring to the depositions, which were recorded during the course of the inquiry, submitted that even otherwise, the charges, which have been leveled against the petitioner has been proved by the witnesses, who have been adduced by the prosecution before the Inquiry Officer and on this ground also, there is no scope of interference with the impugned order.
7. Having heard the contentions put forth on either side and on perusal of record, what has to be borne in mind paramount is that the petitioner was a member of a Uniformed Force. The petitioner in the course of his duties was allotted a rifle and 50 rounds of cartridge. The petitioner was on 01.05.2004 sent on duty to a different place i.e. Bango Police Station for search operation along with other colleagues. After the official work, the petitioner was supposed to come back and hand over the arms and ammunitions at

the concerned Police Line on the same date. The petitioner did not deposit the same on the same date. On 02.05.2004, the petitioner went and deposited the rifle and ammunitions and while depositing the same, it was found that the ammunitions were short by 10 cartages. There is a clear admission on the part of the petitioner in this regard in the reply to the charge-sheet that he has filed. In addition, there is no dispute so far as the loss of ammunitions is concerned, so also there is no dispute in respect of the petitioner having consumed liquor on the previous date i.e. on 01.05.2004 as also on 02.05.2004. The fact of having consumed liquor stands established from the medical report, which confirmed that the petitioner had consumed liquor, as the smell of alcohol was coming from mouth as well as from his breath as certified by the Doctor.

8. The conduct of a personnel from the Uniformed Force is always required to be one with great element of discipline. In the instant case, the requirement of discipline was the more required as the petitioner and his companions were provided with 100 rounds of cartages i.e. 50 each along with a rifle to each of them. The arms and ammunitions have to be safely kept by personnel and those are not to be lightly used or used casually. What is also evident from the record is that during the course of departmental enquiry, the petitioner i.e. the delinquent employee has admitted the allegations that were leveled against him both in respect of consumption of alcohol as also in respect of the loss of ammunitions. This aspect is also supported by the Doctor PW/13 Dr. R.K. Divya.
9. Given the aforesaid admitted factual positions as it stand, what now is to be seen is the scope of interference by the High Court, while dealing with the issue of a Disciplinary Authority's order. It is by now a well settled proposition of law that the disciplinary proceedings have not to be lightly

interfered by the High Court while exercising its powers of judicial review under Article 226 of Constitution of India. The Hon'ble Supreme Court time and again has repeatedly held that the High Court while exercising its power of judicial review would not sit as an Appellate body over the decision of the Disciplinary Authority. In the instant case, the order of the Disciplinary Authority had already been subjected to appeal one before the Inspector General of Police and second before the Director General of Police and both the appeals had been rejected.

10. The Hon'ble Supreme Court dealing with the same issue in the case of “State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaya” reported in 2011 (4) SCC 584 in paragraph No.7 held as under:

“7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. Courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (vide B. C. Chaturvedi -Versus- Union of India – 1995 (6) SCC 749, Union of India vs. G. Gunayuthan – 1997 (7) SCC 463, and Bank of India -Versus- Degala Suryanarayana – 1999 (5) SCC 762, High Court of Judicature at Bombay vs. Shahsi Kant S Patil – 2001 (1) SCC 416).”

11. Another aspect, which cannot be brushed aside is the fact that there is no allegation of the findings of the Inquiry Officer or the decision of the Disciplinary Authority to be in any manner perverse or contrary to the

evidence, which has come on record. Since there is no allegation of a perversity or the finding being contrary to evidence, the only thing left now for this Court is to assess whether the punishment imposed is proportionate to the nature of misconduct or not. As has been discussed in the preceding paragraphs, admittedly the petitioner was a member of an Armed Force. The armed personnels are entrusted with arms and ammunitions to be taken care of in the event of any untoward incidents. The arms and ammunitions have to be retained by the armed personnels with great care, caution and protection. The same has also to be always kept in safe custody of the armed personnels and it cannot be handled casually and at the same time, it should not be left loosely without proper safety observations.

12. In the opinion of this Court, there cannot be a greater misconduct to be committed by a member of Armed Forces Personnels, than by loosing his ammunitions, which have been entrusted to him. Perusal of the record would also show that the petitioner has not been able to show or give any proper plausible explanation so far as the loss of those 10 cartridges are concerned. The petitioner has also not been able to give any justification of having not deposited the arms and ammunitions in the previous night itself i.e. on 01.05.2004 after the duty hours. Moreover, there are evidence to show that the colleagues with whom the petitioner had gone and who was also entrusted with a rifle and 50 rounds of cartridges namely Shri R.A. Daman Ekka to have deposited the arms and ammunitions including the rifle on 02.05.2004 before the concerned authority.
13. There is also no challenge so far as the competency of the Inquiry officer, the District Commander or the subsequent Authorities, who have decided the case of the petitioner. It is also not a case where there was no evidence for the Inquiry officer or for the Disciplinary Authority to have taken a

different view. Since there is no perversity and the findings being not contrary to evidence, what can be safely concluded is that the decision making process has not been faulted with by the authorities concerned at any point of time. Under the circumstances, the decision taken by the authorities also cannot be said to be in any manner bad in law or inappropriate.

14. Given the aforesaid facts and circumstances of the case, this Court is of the opinion that no strong case has been made out by the petitioner to interfere with the impugned orders. The writ petition therefore fails and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

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