

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 1388 of 2009**

Gajendra Singh Tomar son of Late Bharat Singh Tomar, aged 47 years, posted as Constable at Dibrugarh KISF Unit Oil Duliyan, Assam

---- Petitioner**Versus**

1. Union of India, through the Secretary, Ministry of Home Affairs, Shastri Bhawan, New Delhi
2. The Central Industrial Security Force, Through its Commandant, CISF Unit, VSTPS Sankthi Nagar, Sonebhadra (UP)
3. The Inspector General, CISF, CISF Complex, Boring Road, New Patliputra Colony, Patna
4. The Deputy Inspector General, CISF, Eastern Zone, Patna
5. The Senior Commandant, CISF, KSTPP, Korba Chhattisgarh

---- Respondents

For Petitioner	: Shri N.N.Roy, Advocate.
For Respondents	: None

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice**Order on Board****01/02/2019**

1. The Petitioner, a general duty Constable is working under the Central Industrial Security Force (for short 'the CISF'). He was appointed on the post of Constable way back in the year 1985. He came to be placed under suspension vide order dated 26.05.2007 by the Deputy Commandant, CISF, KSTPP, Korba in anticipation of conducting a departmental proceeding.
2. Four articles of charges were drawn up which related to the conduct of the Petitioner while he was on authorised earned leave.
3. The reason for the authorities to proceed against the Petitioner arose when he did not report back to duty after expiry of the earned leave. It was a case of overstay without any permission of the competent authority. It also transpired that one of the reason for overstay of the Petitioner was that during the period of leave, a criminal case came to be instituted against him under various sections of the Indian Penal Code including Section 307, for

which he was arrested and put under judicial custody till he was granted bail on 20.05.2007.

4. A departmental proceeding was initiated against the Petitioner. Opportunity to defend himself was given to the Petitioner. Findings with regard to at least two aspects that the Petitioner had overstayed his leave and was on unauthorised leave between 14.05.2007 to 27.05.2007 stood established. That the Petitioner was arrested and sent to judicial custody till he was released on bail is also an accepted position. Another aspect which was taken note of was the part of the charge that on three earlier occasions, certain minor punishment came to visit the Petitioner on matters relating to indiscipline etc. but it did not have any sobering effect on him.
5. Based on the findings of the enquiry officer at least with regard to article of charge No. 2 and 4, the disciplinary authority decided to impose punishment in the following words:

"Reduction of pay by one stage from Rs. 4390/- to Rs. 4305/- in the time scale of pay Rs. 3200-85-4900 for a period of one year with immediate effect. It is further directed that he will not earn increment of pay during the period of reduction and that on expiry of this period the reduction will have the effect of postponing his future increments of pay."

6. The Petitioner preferred an appeal against the order of punishment before the Deputy Inspector General, CISF, however, the appellate authority did not find any infirmity with either the enquiry or the findings. Reasons subsisted for imposition of the punishment, therefore, the appeal was dismissed vide order dated 27.05.2008 (Annexure P/2).
7. A revision petition thereafter was filed before the Inspector General, CISF. The revisional authority considered the charges as well as the evidence including the findings in relation to the charges. He refused to interfere with the order of the disciplinary authority or the appellate authority. The revision petition was dismissed vide order dated 28.11.2008, a copy of which is

Annexure P/1.

8. The aforesaid three orders therefore have been assailed in the present writ application.
9. Submission of the counsel for the Petitioner is that the overstay of the Petitioner was not because of his free will. It is a fact that he was under judicial custody for a false case which was thrust upon him by his neighbour. This fact can be established by having a look at the trial court's order which exonerated the Petitioner after due trial and to that extent he has been made to suffer for no fault.
10. He also submits that he did try to inform the superior authorities through the police about his detention but the information was not sent by the police despite the details having provided by him at the time of his arrest. He got a fax message sent through one of his relatives and in view of the above circumstances, the order of punishment should be interfered with, if nothing else on the charges of disproportionality or the punishment being excessive to the charges.
11. I have been through the impugned orders as well as the record of the case. I do not find any infirmity in the manner in which the enquiry was conducted. Some of the factual aspects in fact are matters of record, therefore cannot be denied which includes the factum of overstay by the Petitioner between 14.05.2007 to 27.05.2007 as well as the Petitioner being put in judicial custody in between the same period before he came to be enlarged on bail. The Respondents authorities also made the previous punishment on three occasions as one of the charges where minor punishment had come to visit him and the said charge was brought against him with the object of establishing that the Petitioner was in the habit of being indisciplined even in the past.

12. Since I do not find that there is any violation of principles of natural justice or the procedure adopted in the conduct of the departmental proceedings, the question which arises for consideration is whether the punishment imposed by the disciplinary authority in the given facts and circumstances can be said to be excessive or shocking to the conscience.
13. In my opinion, the punishment which has been imposed by the disciplinary authority do not seem to be excessive for the reason that a person belonging to a disciplined force is expected to behave in a particular manner even in his personal domain while dealing with general public. There is an effort made on the part of the Petitioner to keep the factum of his arrest under the wraps. The assertion that he had got sent a fax message to his Unit about his detention was not established during the enquiry. In fact, PW-2 categorically denied of having received any such communication. Therefore, the overstay without permission and non information to the Unit of the Petitioner having been put under judicial custody is not a matter of argument any more.
14. In totality therefore, the Court is of the opinion that the disciplinary authority as well as the appellate authority and the revisional authority have taken a lenient view of the matter in imposition of punishment but in the given facts and circumstances, it cannot be a case of exoneration for that will send a wrong message to the other members of the Unit where discipline is paramount.
15. The writ application stands dismissed being devoid of merit.

Sd/-

(Ajay Kumar Tripathi)
CHIEF JUSTICE