

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 382 of 2016**

Nicholas Kujur S/o Shri J. Kujur, Aged About 60 Years Occupation Constable No.609 (Driver) Police Line, Ambikapur, Police Station Ambikapur, District Surguja Chhattisgarh.

---- Appellant**Versus**

1. State Of Chhattisgarh (Earlier State Of M.P.) Through Secretary, Department Of Home (Police) Mahanadi Bhawan, Mantralaya, Capital Complex, Naya Raipur, Civil and Revenue District Raipur Chhattisgarh.
2. Director General Of Police, P.H.Q. Raipur (Earlier Bhopal), Police Station Civil Lines, District Raipur Chhattisgarh.
3. D.I.G., Bilaspur Range, Bilaspur District Bilaspur Chhattisgarh.
4. Superintendent Of Police, Ambikapur, District Ambikapur Surguja Chhattisgarh.

---- Respondents

For Appellant : Shri Vaibhav A. Goverdhan, Advocate.
 For Respondent/State : Ms. Richa Shukla, Deputy Government Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board**21/01/2019****Per Ajay Kumar Tripathi, Chief Justice**

1. Heard counsel for the parties.
2. The writ application of the present Appellant was dismissed by the learned Single Judge on 13.06.2016. The Appellant assailed the order of termination dated 15.04.1996 by the disciplinary authority i.e. Superintendent of Police, Surguja. Effort on the part of the Appellant to file an appeal against the order of the disciplinary authority also did not beget him any relief since his appeal was also dismissed by the Deputy Inspector General on 31.07.1996.

3. The Appellant was holding the post of Constable (MT). He came to be suspended on 03.08.1995 as he was found in a state of intoxication and it is also alleged that in a state of intoxication while reversing the official vehicle, he dashed the vehicle against the window of Police Station of Manendragarh and caused damage to Government property.

4. Charge-sheet was served. Enquiry was held. Based on the evidence which came, finding of guilt was recorded and based on such finding, the disciplinary authority decided to impose punishment of dismissal from service.

5. Similar kind of submission which were made before the learned Single Judge is sought to be raised before the Division Bench as a ground for setting aside the order of punishment since those submissions have already been taken note of and answered by the learned Single Judge. The same are reproduced as under:-

“4. After conclusion of enquiry, he was served with show cause notice on 6.3.1996 along with enquiry report and thereafter another noticed was served on 21.3.1996. The petitioner submitted his reply to the first show cause notice dated 6.3.1996 vide Annexure-A/6 inter alia submitting that he has not been served with statements of witnesses, therefore, he could not cross-examine the witnesses properly. He also stated that witness Inspector Vijay Singh has not been examined. Therefore, he could not prove his innocence. He also stated that doctor has not been examined and thus, enquiry has not been conducted in accordance with law. However, he admitted that while reversing the vehicle, it dashed against the windows of the Police Station but denied having consumed liquor at that time.

5. With reference to charge No.2, he stated that at the relevant time he was sleeping in the vehicle and was not on duty, however, all of a sudden he was sent for medical examination. By another reply dated 18.3.1996, he stated that although he has endorsed in the official papers that he has received statement of witnesses but the said copies were not supplied to him. It is in this background, second notice was issued on 21st March, 1996 along with copies of statement of witnesses.

6. In the enquiry report (Annexure-A/5), the enquiry officer has recorded a categorical finding that on 24.7.1995 the petitioner was driving vehicle after consuming liquor and while reversing the same he broke the windows of the Police Station. The finding is based on Rojnamcha Sanha which is a public document and has been duly proved by the prosecution witness SI, Mr. Dubey. Similarly, Rojnamcha Sanha of 25.7.1995 wherein also the fact that the petitioner was attending the duties after consuming liquor has again been recorded. This Sanha (Ex.P/2) has been proved by PW-4. The medical report prepared by Dr. S.K. Gupta has been produced before the enquiry officer as Ex.P/3 and was proved by PW-4. PW-1 Mr. Dubey has also submitted a report to the S.P. which has been proved as Ex.P/5. The enquiry officer also found that the delinquent was provided full opportunity to defend his case and has cross-examined the witnesses. Since he refused to examine any defence witness, enquiry was closed and on the basis of evidence, both the charges were found proved.

7. The disciplinary authority concurred with the finding recorded by the enquiry officer and imposed penalty of removal from service. The disciplinary authority has passed an elaborate order running into 5 pages considering the entire evidence on record and the statement made by the petitioner in reply to the charges and in reply to show cause notice. The medical report of the petitioner has been proved by Dr. S.K. Gupta, Block Medical Officer, CHC, Manendragarh. In this statement, Dr. Gupta has stated that on medical examination the petitioner was found to have consumed liquor but was conscious. Thus, the fact that the petitioner was attending the duties after consuming liquor has been fully established.

8. Learned counsel for the petitioner has laid much emphasis on the judgment rendered by the Supreme Court in the matter of *Mumma Lal Vs. Union of India and Others* {(2010) 15 SCC 399} to argue that mere consumption of alcohol is not a misconduct."

6. We have gone through the enquiry report independently as to the findings and the opinion recorded by the learned Single Judge. The findings are based on evidence which was brought before the enquiry officer on which the present Appellant had nothing much to offer in terms of defence. The effort made on behalf of the counsel for the Appellant to show that the enquiry was not conducted in a

free and fair manner and there was violation of the principles of natural justice does not impress us for the reason that whatever prejudice the Appellant perceives now was never raised during the course of enquiry. Nothing has been agitated or objected to at the enquiry stage.

7. The enquiry report indicates that it was a prolonged enquiry and there was participation of the Appellant in the said enquiry but during the course of the enquiry, he hardly put up any resistance by trying to cross-examine the witnesses or raised dispute about the documentary evidence which were produced in support of charges so brought.

8. The findings are overwhelming with regard to the misconduct. We are not here to reappraise the evidence to reach yet another conclusion. The allegation of violation of principles of natural justice is more made than made out.

9. In the given facts and circumstances of the case, the view so taken by the learned Single Judge based on various judicial precedents which are reflected from the impugned order does not make the order of the disciplinary authority or the learned Single Judge vulnerable.

10. The appeal has no merit. It is dismissed.

Sd/-

(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-

(Parth Prateem Sahu)
JUDGE