

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****WPS No. 1176 of 2008**

- V.S. Bhadoria Son Of Shri Jandel Singh, aged about 33 years,
Working As Constable In C.I.S.F. Unit Bailadeela Iron Ore
Project, Depot 14, Post Kirandul, District Dantewada
Chhattisgarh

---- Petitioner**Versus**

1. Union Of India through the Secretary, Ministry of Home Affairs,
Shastri Bhawan, New Delhi.
2. The Central Industrial Security Force thorough its Commandant,
Central Industrial Security Force Unit NALCO, Damanjodi,
District Koraput (Orissa)
3. The Deputy Inspector General, Central Industrial Security Force,
Eastern Zone Headquarters, Patna Bihar
4. The Inspector General, Central Industrial Security Force, CISF
Premises, Patliputra Colony, Patna (Bihar)

---- Respondents

For Petitioner	:-	Shri N. Naha Roy, Advocate
For Respondents	:-	Shri R.K. Gupta, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board**

05/12/2019

1. Petitioner is aggrieved by order dated 14.11.2006 (Annexure-P-7) passed by the Disciplinary Authority imposing upon him penalty of reduction of pay by five stages from Rs.3650-3275 for a period of 03 years with further direction that during the period of reduction he will not earn increments of pay and on the expiry of the said period, reduction will have the effect on future increments of pay. Challenge is also to the Appellate order dated 26.4.2007 Annexure-P-9, whereby the appeal was dismissed as barred by limitation and thereafter to the revisional order dated 19.11.2007 (Annexure-P-10) by which the revision has been dismissed on merits.
2. Brief facts, necessary to be referred for disposal of the Writ Petition are that while the petitioner was posted as Constable, CISF Unit BIOP Dep-14, he was issued a charge sheet on 12.05.2006 constituting a departmental enquiry against him for the charge of committing gross misconduct and indiscipline by helping criminals in committing theft of scrap material from BIOP, Dep-14.
3. It is charged that during the intervening night of 5th & 6th May 2006, he accepted illegal gratification from the criminals to facilitate the said theft. The charge was based on a preliminary enquiry in which the persons involved in committing theft

namely; Sanju Biswas, Mangal Jain and Santosh Baghel informed the department that the petitioner was helping them in committing theft and has accepted bribe amount of Rs. 10,000/- and 8000/- on two occasions for facilitating theft of iron ore. Similar statement was made by Santosh Baghel and Mangal Jain also. These three persons were separately sent for prosecution for offence under Section 379 of I.P.C.

4. The charge sheet contained a list of documents mentioning the statements of the above three civilians recorded during the preliminary enquiry. These statements were also relied by the presenting officer as is mentioned in the enquiry report.
5. In course of enquiry, Sanju Biswas and Santosh Baghel were examined, however, they have not deposed before the enquiry officer as to the fact which was stated by them to the department during the preliminary enquiry meaning thereby that the very basis of the charge framed against the petitioner of obtaining illegal gratification of Rs.10,000/- and 8000/- from Sanju Biswas and Santosh Baghel for facilitating removal/ theft of iron ore was not substantiated in course of enquiry.
6. In view of this, the enquiry officer himself recorded a finding which is available at internal page 26 of the report that the allegation of obtaining improper financial benefit leveled on the petitioner is not proved. The enquiry officer instead of concluding that the charge is not proved proceeded further to

refer to the statements of not only Sanju Biswas and Santosh Baghel who have resiled from their preliminary enquiry statement but also referred to the statement of Mangal Jain who has not at all been examined in course of regular enquiry.

7. Having referred to their statement recorded during preliminary enquiry, the enquiry officer observed that such statement cannot be disbelieved because not only during preliminary enquiry but before the Kirandul Police also such statement was made by the above three civilians. The findings of the enquiry officer has been accepted by the disciplinary authority to impose the impugned punishment.
8. The seminal issue falling for consideration is, whether statement of witnesses recorded during preliminary enquiry can be made basis for proving the misconduct when such statements have not been made by the witnesses during the regular enquiry?
9. It is not necessary to dwell on the issue for a longer period in view of the law laid down by the Supreme Court in the matter of **Nirmala J. Jhala Vs. State of Gujarat and Another** in (2013) 4 SCC 301. In the said matter the Supreme Court referred to its earlier constitution bench judgment in the matter of **Amalendu Ghosh v. North Eastern Railway** in AIR 1960 SC 992 and thereafter to another judgment in **Champakal Chimanlal Shah vs. Union of India** in AIR 1964 SC 1854 to conclude that the preliminary enquiry and its report loses significance/

importance, once the regular enquiry is initiated by issuing charge sheet to the delinquent.

10. It is also settled that the purpose of holding the preliminary enquiry in respect of alleged misconduct is only for the purpose of finding a particular fact and prima-facie, to know as to whether the alleged misconduct has been committed and on the basis of finding recorded in preliminary enquiry no order of punishment can be passed.

11. The above being a settled legal position, the finding recorded by the enquiry officer for proving the misconduct is wholly impermissible and therefore, it cannot be sustained and consequently the order of penalty passed on such finding is also not sustainable.

12. For the above stated reasons, the order dated 14.11.2006 (Annexure-P-7); Appellate order dated 26.4.2007 (Annexure-P-9); and the revisional order dated 19.11.2007 (Annexure-P-10) are set-aside. The petitioner shall be entitled to all consequential benefits as a result of quashment of orders.

13. In the result, the writ petition is allowed.

SD/-
(Prashant Kumar Mishra)
Judge

Ayushi