

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (S) NO.5727 OF 2008**

R.K. Banjare S/o late B.D. Banjare, aged about 39 years, Ex. Constable, CISF, Unit Bhilai, District Durg (CG) R/o Quarter No.16, Sector-3, Road No.1, Block 1/6, Bhilai, District Durg (CG).

...Petitioner(s)

Versus

1. Union of India, Ministry of Home Affairs, Through the Inspector General (North Sector) Central Industrial Security Force Campus, Post Malviya Nagar, New Delhi-110017.
2. The Deputy Inspector General, CISF Unit, Sector 3, Bhilai, District Durg (CG).
3. The Commandant (Appointing Authority), CISF Unit, Sector 3, Bhilai, District Durg (CG).
4. The Assistant Commandant (Enquiry Officer), CISF Unit, Sector 3, Bhilai, District Durg (CG).
5. Presenting Officer, CISF Unit, Bhilai, District Durg (CG).

... Respondent(s)

For Petitioner	:	Shri N.K. Malviya, Advocate
For Respondents	:	Shri R.K. Gupta, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

08.08.2019

1. Challenge in the present writ petition is to the three orders Annexures P/9, P/10 and P/1. Annexure P/9 is the order dated 22.01.2008 passed by the Disciplinary Authority i.e. Commandant imposing punishment of compulsory retirement from service along with full pension and gratuity as applicable to him. The said order was challenged by way of departmental appeal before the DIG and the DIG vide order dated 24.05.2008 (Annexure P/10) rejected the same. The two orders were later on questioned by way of a Revision before the I.G. and the I.G. also vide order dated 28.07.2008 (Annexure P/1) rejected the revision affirming the order passed by the Disciplinary Authority as also by the Appellate Authority.
2. The facts of the case is that, the petitioner was working as a Constable in the Central Industrial Security Force (in short, CISF). The petitioner, at the

relevant point of time, was posted at NSPCL, Bhilai. The allegation against the petitioner is that, on 24.09.2007 at around 9 PM while the petitioner was leaving the gate after completion of his duty hours was found to be in possession of around 5 KG of Brass and Copper articles hidden inside the raincoat that was tagged to the carrier of his bicycle. The guard posted at the gate from where the petitioner was carrying that article i.e. at Boria gate of the said plant stopped the petitioner and checked the raincoat and found that there were two rings and some copper coils weighting roughly around 5 KG hidden in the said raincoat. Thereafter, he took the petitioner along with the seized articles to the higher officers and the petitioner was asked to wait in the guard room, but the petitioner refused to wait and immediately left the place.

3. The petitioner was subsequently issued with a charge sheet on 26.09.2007. To the said charge sheet, the petitioner gave his reply on 04.10.2007. Not satisfied with the reply of the petitioner, the authorities decided to hold a departmental enquiry and appointed Enquiry Officer and Presenting Officer. Finally enquiry report was submitted on 28.12.2007 (Annexure P/7). Copy of enquiry report was submitted to the petitioner and his explanation was sought. The petitioner gave his explanation to the said notice also and finally the disciplinary authority, based on the findings of the enquiry officer, passed the order placing the petitioner under compulsory retirement from service along with full pension and gratuity as applicable to him. The said order was challenged before the appellate authority as well as before the revisional authority who have also rejected the appeal and revision vide Annexure P/9 and P/1 respectively.
4. The challenge in the present writ petition to the three impugned orders are on the ground that the authorities concerned have not properly appreciated the defence that the petitioner had taken from the beginning.

He submits that the petitioner had totally denied the allegations right from the first day itself, yet the authorities did not adduce cogent evidence to substantiate the same. It is further the contention of the petitioner that the petitioner infact had not been stopped on the gate, rather he was permitted to go out of the gate and he went to his house and the entire case has been made out as an afterthought. Lastly, the alleged seized articles from the possession of the petitioner was also not made available before the enquiry officer and neither is there any Panchnama or any sort of document available with the respondents to establish that these property were seized from the possession of the petitioner.

5. The further contention of the petitioner is that the seizure proceedings is totally unacceptable as there are so many doubtful situations in the same and infact the seizure was made on the next date i.e. on 25.05.2007 which further falsifies the case of the department. Moreover, according to the petitioner, no FIR was also lodged and in the absence of any criminal case being initiated, the charge of committing theft itself becomes doubtful. Further, for the alleged misconduct even if it is accepted, the punishment which has been imposed is highly disproportionate and the department could have granted a lighter punishment.
6. On the contrary, the counsel appearing for the respondents, opposing the petition submits that it is a case where the petitioner who was working as a Constable was required to maintain full integrity in the course of discharge of duties. The petitioner, however, with malafide intention had stolen Brass and Copper articles which he had hidden in his raincoat and was taking out the said articles from the factory premises when he was caught. The uniformed officers has to otherwise maintain a great element of discipline as also the integrity part also has to be maintained as the person who has himself been posted for the safety of the establishment

cannot be permitted to commit theft in the same premises where he is posted. The management infact has taken a fool-proof enquiry wherein the petitioner was granted full opportunity of defence and which the petitioner has also availed. It is only thereafter that the impugned order of punishment was passed. It is a case where the management infact has led evidence of all the material witnesses in the course of proving the charges which have been levelled against the petitioner and for this reason also there is no scope of interference left for this court to decide. Thus, prayed for rejection of the writ petition.

7. From the pleadings that has been made by the petitioner and the submissions put forth by the respondents, what is not in dispute is the fact that the petitioner was working as a Constable in the CISF and was posted at NSPCL plant at Bhilai. The petitioner was infact served with a charge sheet on 26.09.2007. The allegation against the petitioner was that of theft and also leaving the premises inspite of being stopped by the guards. The document enclosed along with the writ petition further reveal that the management/department had led evidence of three officers of CISF to prove the charges which were levelled against the petitioner. The three persons examined were Shri Mahabir Singh, Sub Inspector, Shri K.P. Sarkar, Head Constable and Vinay Kumar Pathak, Constable. The petitioner-delinquent employee, apart from recording his statement, has not led any independent witness or departmental witness to substantiate the defence that he has raised.
8. The pleadings raised in the petition does not disclose any challenge being raised to the enquiry proceedings or the procedure adopted by the enquiry officer while conducting departmental enquiry. Undisputedly, the charge sheet was issued to the petitioner; he was permitted to participate in the departmental enquiry; he was also granted full opportunity of defence and

moreover the departmental witnesses, and as such there does not appear to be any procedural illegality or the violation of the principles of natural justice so far as the departmental enquiry is concerned.

9. Now, so far as the contention of the petitioner is concerned, what is to be seen is that the evidence which has been led by the management is in respect of three persons who were available on the date at the place of incident and before whom the incident transpired. Vinay Kumar, PW-3 was a Constable who was posted at the gate on the date of incident and who had stopped the petitioner while moving out of Borai gate of the plant. Said Vinay Kumar is the person who immediately called upon Shri PK Sarkar (also reflected as KP Sarkar) who came to Borai gate and searched the raincoat of the petitioner which was attached to the carrier of petitioner's bicycle and found that there were two Brass coils and one Copper winding weighing roughly 5 KG. Vinay Kumar and PK Sarkar thereafter called upon Shri S.C. Mishra and had submitted the articles to Shri Mishra and the petitioner was asked to wait in the guard room. This fact stands established from the statement of Shri Vinay Kumar and Shri PK Sarkar from their evidence which was led both during the preliminary enquiry as also during the departmental enquiry. There is no strong discrepancy or anomaly so far as the statement made by these two persons. The statement of these two persons stand further corroborated from the evidence of Mahabir Singh, Sub Inspector, PW-1, who infact is the person who lodged Rojnamcha in respect of the incident.
10. All these statements recorded before the enquiry officer goes un-rebutted with no cogent evidence or proof to disbelieve the same or to hold it to be a perverse finding or a wrong appreciation of fact.
11. So far as scope of interference in disciplinary matter is concerned, it has been time and again reiterated by the Supreme Court that in matters

pertaining to disciplinary proceedings the scope is very limited and it can be interfered with only on the findings being either erroneous or is manifestly arbitrary or the finding is such which is not based on facts and materials which are produced before the enquiry officer.

12. Supreme Court in this regard in the case of S. R. Tewari Vs. Union of India, (2013) 6 SCC 602 in paragraph 19, 20 & 21 have held as under :-

“19. In the case of CIT v. Mahindra & Mahindra Ltd., AIR 1984 SC 1182, this Court held that various parameters of the court’s power of judicial review of administrative or executive action on which the court can interfere had been well settled and it would be redundant to recapitulate the whole catena of decisions. The Court further held:

“11.It is a settled position that if the action or decision is perverse or is such that no reasonable body of persons, properly informed, could come to, or has been arrived at by the authority misdirecting itself by adopting a wrong approach, or has been influenced by irrelevant or extraneous matters the court would be justified in interfering with the same.”

“20. The court can exercise the power of judicial review if there is a manifest error in the exercise of power or the exercise of power is manifestly arbitrary or if the power is exercised on the basis of facts which do not exist and which are patently erroneous. Such exercise of power would stand vitiated. The court may be justified in exercising the power of judicial review if the impugned order suffers from mala fide, dishonest or corrupt practices, for the reason, that the order had been passed by the authority beyond the limits conferred upon the authority by the legislature. Thus, the court has to be satisfied that the order had been passed by the authority only on the grounds of illegality, irrationality and procedural impropriety before it interferes. The court does not have the expertise to correct the administrative decision. Therefore, the court itself may be fallible and interfering with the order of the authority may impose heavy administrative burden on the State or may lead to unbudgeted expenditure. (Vide: Tata Cellular v. Union of India, AIR 1996 SC 11; People’s Union for Civil Liberties & Anr. v. Union of

India & Ors., AIR 2004 SC 456; and State of N.C.T. of Delhi & Anr. v. Sanjeev alias Bittoo, AIR 2005 SC 2080).”

“21. In Air India Ltd. v. Cochin International Airport Ltd., AIR (2000) SC 801, this Court explaining the scope of judicial review held that the court must act with great caution and should exercise such power only in furtherance to public interest and not merely on the making out of a legal point. The court must always keep the larger public interest in mind in order to decide whether its intervention is called for or not.”

13. A similar view has also been taken by the Supreme Court in the case of

Sanjay Kumar Singh Vs. Union of India & Ors., AIR 2012 SC 1783 and

also in the case of **Union of India & Others Vs. Bodupalli**

Gopalaswami, (2011) 13 SCC 553, wherein the Supreme Court has in a

very categorical terms held that in departmental enquiry proceedings the

scope of Court's are very limited. It has been reiterated by the Supreme

Court that in a disciplinary proceeding matters the Court cannot substitute

its own finding and thus by replacing the finding arrived at by the authority

that too after detailed appreciation of the evidence brought on record. It

has been repeatedly held by the Supreme Court under Article 226 of

Constitution , the High Court does not sit as an appellate authority over

the findings of the disciplinary authority as also the appellate authority. It

has also been repeatedly held by the Supreme Court that the High Court

under Article 226 would not re-appreciate the entire evidence and come to

a different and independent finding.

14. A similar view also has been taken by the Supreme Court in the case of

Union of India & Others Vs. P. Gunasekaran, (2015) 2 SCC 610, For

ready reference paragraph 12 & 13 of the said judgment reproduced

hereinunder :-

“12. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence.

The High Court can only see whether:

- a. the enquiry is held by a competent authority;
- b. the enquiry is held according to the procedure prescribed in that behalf;
- c. there is violation of the principles of natural justice in conducting the proceedings;
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- i. the finding of fact is based on no evidence.”

“13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

- (i). re-appreciate the evidence;
- (ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii). go into the adequacy of the evidence;
- (iv). go into the reliability of the evidence;
- (v). interfere, if there be some legal evidence on which findings can be based.
- (vi). correct the error of fact however grave it may appear to be; (vii). go into the proportionality of punishment unless it shocks its conscience.”

15. Once when the law is settled that in disciplinary proceedings unless there is a ground of perversity or the finding being contrary to the evidence on record or there being technical flaw in the conducting of the departmental enquiry, the Court should be slow in interfering with such findings which are based on evidence which has come on record.

16. The Hon'ble Supreme Court 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).”

17. Given the aforesaid legal position as it stands and the evidence which has come on record, this court is of the opinion that the findings arrived at by the authorities cannot be said to be, in any manner, bad in law, arbitrary or contrary to the rules.
18. So far as ground of proportionality raised by the petitioner is concerned, this court is of the opinion that such ground would not be available for the petitioner to raise as the ground of proportionality is available only in cases of dismissal or termination from service and not in cases where punishment is other than dismissal and termination.
19. For all the aforesaid reasons, the writ petition fails and is accordingly rejected.
20. Dismissal of this petition would not come in the way of the petitioner in receiving the pension and other dues that he would be entitled for in accordance with rules governing the field. Subject to the petitioner's completing all the formalities for the same, the settlement should be done at the earliest.

Sd/-
(P. Sam Koshy)
Judge