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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 13789/2018

MANOJ SHARMA

..... Petitioner

Through: Mr. Abhishek Kumar Choudhary,
Advocate.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Bhagwan Swarup Shukla,
CGSC with Mr. Mukesh Pandey
and Mr. Murari Shukla, Advocates.**CORAM:****JUSTICE S. MURALIDHAR****JUSTICE TALWANT SINGH****ORDER**

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18.10.2019

1. The Petitioner joined the Respondent organisation/Central Industrial Security Force ('CISF') as Constable (GD) in June, 2007. He was removed from service on 7th March, 2015 by the orders of Senior Commandant, CISF Unit BSL, Bokaro. The Petitioner filed an appeal addressed to DIG, CISF, Bokaro Steel Plant, Bokaro Jharkhand on 6th April, 2015 against the order of his removal. The said appeal was dismissed by order dated 20th June, 2015. Thereafter, the Petitioner filed a revision petition dated 7th October, 2015, which was also dismissed on 27th January, 2016. The Petitioner then filed a representation dated 14th February, 2018 to which no reply was received. He therefore filed the present writ petition with the following prayers:

“A. Issue Writ in nature of Mandamus or Direction or Order to Respondents to immediately appoint the petitioner with the Respondent Department or any other government department;

B. Alternatively, Issue Writ in the nature of Mandamus or Direction or Order to Respondents to provide an appropriate equitable relief to the Petitioner to rehabilitate the Petitioner,”

2. The case of the Petitioner is that he had reported for duty in the Unit on 13th July, 2014. On that day, he had appeared before the Assistant Commandant of the Unit at about 1100 hours and then he was asked to go for familiarization with the plant till 1830 hours. The Petitioner had reached the Bokaro Unit by train on 13th July, 2014 itself. In the evening after eating food, at about 1945 hours the Petitioner started feeling unwell. He has also mentioned about the history of suffering from jaundice 1 ½ months before joining the Unit and he was treated for the same in PGIMS, Rohtak. The Petitioner wanted to go to hospital but the officials told him to prepare for night duty. The Petitioner had taken medicine “Liver-52” and that is the reason that a liquor-like smell was coming from his mouth although he had taken two-three table spoons of the said medicine as advised.

3. The Petitioner was served with the charge-sheet detailing the following charges:

"ARTICLE OF CHARGE-I"

"Force No. 074 440014 Constable/GD Manoj Sharma of CISF Unit BPSCL Bokaro was detained for duty in shift on 14/07/2014. Constable/GD Manoj Sharma was found absent at the time of shift fall in and briefing of night shift force member at about 2040 hours. Therefore, the above act on the part of the Constable/ GD Manoj Sharma being a member of an Armed force amount to gross indiscipline and misconduct towards his duties. Hence the Charge.

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"ARTICLE OF CHARGE- II"

Force no. 074440010 Constable/ GD Manoj Sharma of CISF Unit BPSCL Bokaro was found sleeping on his bed in intoxicated condition at about 2050 hours on 14/07/2014 at BPSCL barracks situated at CISF BSL training block and was found absent in the night shift duty. Therefore, the above act on part of Constable/GD Manoj Sharma being a member of an Armed Force, amounts to gross indiscipline and misconduct towards his duties. Hence the Charge.

"ARTICLE OF CHARGE-III"

"Force No. 074440014 Constable/GD Manoj Sharma of CISF Unit BPSCL, Bokaro have been awarded earlier 04 minor and 01 major punishment for OSL, consuming alcohol during duty and other indiscipline acts, as per his service documents. Therefore Constable/GD Manoj Kumar was given repeated opportunities to improve him but despite this he was completely failed to improve in his conduct, therefore Constable/GD Manoj Sharma is habitual of gross negligence and indiscipline towards duty. Hence the Charge"

4. He filed a reply to the above chargesheet on 10th September, 2014, which was not found to be satisfactory and a Departmental Enquiry was initiated against him. The Enquiry Officer had given a report mentioning therein that all the charges stood proved against the Petitioner and thereafter he filed the aforesaid appeal to DIG on 6th April, 2015.
5. The Petitioner has challenged the report of the Enquiry Officer as arbitrary and illegal. As per him, he had also undergone treatment in the past from 27th September, 2014 to 15th October, 2014 and from 17th

October, 2014 to 9th November, 2014 but that was not taken into consideration. No scientific or technical method of examination was adopted by the doctors in the hospital to find out whether Petitioner was intoxicated and merely an observation that alcoholic smell coming out from his mouth does not lead to the conclusion that the Petitioner was drunk, as the smell was there due to intake of medicine "Liver-52". The Petitioner was not keeping well for several months and he had faced mental and physical stress. He was on medication for jaundice and he had informed the CHM/PW-2 SI Surender Singh, who had mentioned in his report that Petitioner was lying on the bed in an unconscious condition and he was taken to the hospital. The Petitioner was not well and he was admitted in hospital till 17th July, 2014. So, charge no.1 of absenting from duty does not stand proved against him as no doctor would admit a patient of intoxication for three days.

6. No eye-witness was examined to prove that the Petitioner had consumed Alcohol or that he had misbehaved in any manner with anyone. The past punishments mentioned in charge No. 3 have no connection with the present charge and the said punishments were illegally considered against the Petitioner. Petitioner was never given any opportunity to present his case before the order of removal from service was passed against him. As per the Petitioner, his fundamental rights under Articles 14,15,16,19 and 21 of the Constitution of India have been violated. Hence, he has filed the present writ petition.

7. Notice was issued in the present petition on 19th December, 2018. The

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Respondent organization has filed counter affidavit and it is mentioned therein that the CISF is a Central Armed Police Force of Union of India which is deployed in sensitive Sectors such as Airports, Ports, and Units of Atomic Energy, Department of Space, Power and Steel. Hence, it is required to maintain discipline of the highest order. It is stated that the Petitioner was dealt with as per Rule 36 of the CISF Rules, 2001 (which deals with procedure for imposing major penalties) as he was found absent at the time of briefing before his night duty on 14th July, 2014 at around 2040 hours; he was found sleeping on his bed in the barrack under influence of liquor at around 2050 hours on 14th July, 2014; and that in the past, he was awarded four minor and one major punishments because of reporting for duty under intoxicated condition/OSL etc. and that he did not improve himself inspite of being given chances to do so.

8. As per the Respondents, the Enquiry Officer conducted the enquiry as per the laid down procedure. The disciplinary authority agreed with the findings of the Enquiry Officer and a copy of the enquiry report was handed over to the Petitioner on 9th February, 2015 but no representation was submitted against the same. Hence, the disciplinary Enquiry awarded the punishment of removal from service on 7th March, 2015 to the Petitioner. His appeal and revision petition were duly considered and rejected as being devoid of merits.

9. As per the Respondent, the Petitioner was earlier awarded five punishments during his short span of service period. The Appellate and Revisioning Authority had minutely gone through the appeal and the

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revision filed by the Petitioner and had found that the charges framed against the Petitioner had been conclusively proved and the punishment awarded was commensurate with the gravity of offence committed by the Petitioner, who is incorrigible and did not mend his conduct even after receiving five punishments in the past.

10. The Respondent has denied receipt of any representation dated 14th February, 2017 from the Petitioner. It has been denied that on 13th July, 2014, Petitioner was asked to go for "plant familiarization" as no such order was issued. The Petitioner simply appeared before the Unit Commander on his arrival on regular transfer on 14th July, 2014 and he was deployed for plant patrolling duty in the intervening night of 14-15th July, 2014 but he did not turn up for duty and was found sleeping on his bed under the influence of liquor by the CHM (Company Hawaldar Major). Other officials also reached the barrack and they found smell of liquor coming from the mouth of the Petitioner. On searching his bag, half a bottle of liquor was found alongwith his personal belongings. The Petitioner was taken to Bokaro General Hospital whereby doctor gave the remarks "Alcohol Intoxication" on the prescription slip. The CHM had submitted the report regarding absence from duty of the Petitioner on 15th July, 2014 which is reproduced hereunder:

NO.CISF/BPSCL/ CIW/14/

DATED: 15th July, 2014

SUB: SPECIAL REPORT ON ABSENT FROM DUTY

It is found that No 074440014 CT/GD Manoj Sharma has been deployed "C" shift duty at plant area patrolling on 14/07/2014. The shift is likely to depart at 2040 hrs from line area; CHM

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informed that CT/GD Manoj Sharma is unable to perform duty as he is lying on the bed in unconscious condition. At about 2100 hrs shift I/C ASI/EXE Gajender Singh also informed that CT/GD Manoj Sharma is absent from briefing.

I No 120203286 SI/Exe Surender Singh immediately rushed to the line area and found CT/GD Manoj Sharma is lying on his bed unconscious condition. At about 2130 I informed to unit commander, CISF Unit BPSCL Bokaro. At about 2145 hrs Unit commander along with coy commander came at the spot. CT/GD Manoj Sharma taken to BGH for medical examination with proper escort as per the order of unit commander. Drs recommended him to admit in the hospital and hence admitted in the hospital ward No 3A at bed No 366 with a care taker.

I/C CIW
CISF Unit BPSCL(B)"

11. As per the Respondents, during Departmental enquiry, a question was put to the Petitioner by the Enquiry Officer and in response to the said question the Petitioner had admitted that he had consumed liquor. The translated copy of the memorandum of questioning of the Petitioner by Enquiry Officer is as under:

TRANSLATED COPY

Examination of CISF No. 074440014 CT/GD. Manoi Sharma (Charged Official) by Enquiry Officer:

Q. No. 01: Whether you were sleeping on your bed in intoxication condition on 14/07/2014, and in-spite of tried by PW-5 & PW-6 to wake up you to proceed for night shift duty, you did not arise from the bed? Which was established from the statements and documentary evidences produced by PW-1/P. Exhibit- 1&2 during the course of enquiry?

Answer: PW-05 and PW-06 did not try to wake up me from the

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bed for night shift duty. Both of them are telling lie.

Q.N0.-O2: Is it correct and accepted by you, as per statements given by PWs- 1,2,3,4,5,6 and documentary evidences produced by PW-1/P.Exhibit-1,2,3&4 during the course of enquiry that on 14/07/2014 you could not go to duty post for night shift duty due to your intoxicated condition.

Answer: Yes, as per their statements, on 14/07/2014 I could not go for night shift duty, but I was not in intoxicated condition but due to physical and mental tiredness, I could not go.

Q. No.03: Whether you are satisfied with the enquiry proceedings, till now?

Answer: Yes.

Q. No.04: On perusal of your medical certificate and discharge ticket wherein the Doctor mentioned 'alcohol intoxication' produced by PW-1 during the course of enquiry, the fact comes to notice that you had consumed alcohol, whether you accept it as correct?

Answer: Yes, I consumed alcohol, in limit as a medicine and was fully in consciousness.

Q. N0.-O5: Whether you would like to submit your written statement?

Answer: Yes, I would like to submit my written statement."

12. The stand of the Respondent is that the Petitioner was awarded the punishment of "removal from service" due to gross indiscipline and misconduct towards his duties and he had himself admitted before the Enquiry Officer in response to Question No. 4 that he had consumed liquor. If the Petitioner had taken treatment in September, 2014 or

thereafter, it has no bearing on the merits of this case. In view of the report of the CHM (reproduced hereinabove) it has been submitted that the averments made by the Petitioner that he had informed CHM that he was not feeling well is totally false. Principles of natural justice were not violated at any stage of the inquiry and the Petitioner was held guilty of the charges. Hence, there is no question of violation of any Article of Constitution of India.

13. We have heard learned counsel for the parties and we have gone through the record. The above-detailed report on absence from duty dated 15th July, 2014 prepared by the CHM duly shows that the Petitioner was absent from briefing for his night shift and when the CISF officials reached his barrack, he was found lying on his bed in unconscious condition and he was taken to the hospital. When he was examined by Enquiry Officer and the evidence was put to him, in response to question No. 4 the Petitioner had replied that he had consumed liquor but that was in limited quantity as a medicine and he was fully conscious.

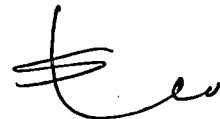
14. The previous conduct of Petitioner also shows that on five different occasions he was awarded punishments, which included four minor and one major punishment for consuming alcohol during duty/ OSL and other acts of indiscipline as per his service record. He was given opportunities to improve his conduct, but failed to do so. Hence he was found to be grossly negligent and undisciplined towards his duty. The charges against him have been duly proved. The appeal and revision petition filed by the Petitioner were also duly considered by the competent authorities and

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detailed reasoned orders were passed while dismissing the same on merits. The CISF being a para-military force entrusted with duty of safeguarding the vital institutions of the Government has to enforce strict discipline amongst its personnel. This type of misconduct ought not to be tolerated in such a force.

15. Under these circumstances, we find that neither any principle of natural justice was violated nor any fundamental right of the Petitioner has been violated. He has been rightly removed from service by the order dated 7th March, 2015.

16. The writ petition is without any merit and the same is hereby dismissed.



S. MURALIDHAR, J.



TALWANT SINGH, J.

OCTOBER 18, 2019

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