

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (S) No.3541 of 2010

Rajendra Kumar Mahilange, S/o Shri Dharam Das Mahilange, Aged about 32 years, R/o Anant Vihar Colony, St No.4, Qua No.57, Daldal Sivni Road, Mua Post Saddu, District Raipur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Home Affairs, D.K.S. Bhawan, Mantralaya, Raipur (C.G.)
2. Director General (Jail), Raipur (C.G.)
3. Superintendent, Central Jail, Raipur (C.G.)

---- Respondents

 For Petitioner: Mr. Rajkamal Singh, Advocate.
 For Respondents/State: Mr. Avinash Singh, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

30/07/2021

1. Proceedings of this matter have been taken-up through video conferencing.
2. The petitioner calls in question the impugned order dated 25-5-2010 by which respondent No.2 has dismissed the appeal of the petitioner affirming the order dated 26-4-2010 passed by respondent No.3 inflicting the penalty of dismissal from service for the alleged misconduct said to have been committed by the petitioner.
3. Mr. Rajkamal Singh, learned counsel appearing for the petitioner, would submit that the penalty which has been imposed upon the petitioner is not proportionate to the misconduct alleged to have been committed by him and it is grossly disproportionate to the misconduct alleged to have been committed, as the only charge with which the

petitioner has been served is that he tried to escort one of the prisoners from jail premises to the hospital for the purpose of treatment contrary to the direction of the Chief Warder which is in violation of Rule 236(1) of the Chhattisgarh Prisons Rules, 1968 read with Rule 3(1)(2) of the Chhattisgarh Civil Services (Conduct) Rules, 1965. As such, the impugned orders passed by the disciplinary authority and the appellate authority, both, deserve to be set aside.

4. Mr. Avinash Singh, learned State counsel, would support the impugned orders and submit that the petitioner has rightly been terminated from service, as he acted contrary to the direction of the Chief Warder and tried to take one of the prisoners Rajak Khan in his motorcycle to the hospital which is in violation of Rule 236(1) of the Chhattisgarh Prisons Rules, 1968 read with Rule 3(1)(2) of the Chhattisgarh Civil Services (Conduct) Rules, 1965.
5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
6. The charge levelled against the petitioner is that on 9-1-2010, the competent authority directed the petitioner – Warder and other four Warders to escort ten prisoners who were ill to the hospital for their medical checkup by ambulance, but contrary to the instructions, the petitioner tried to take only one prisoner Rajak Khan in his motorcycle which is in violation of Rule 236(1) of the Chhattisgarh Prisons Rules, 1968 read with Rule 3(1)(2) of the Chhattisgarh Civil Services (Conduct) Rules, 1965. The enquiry officer after enquiry, found the charge proved on 15-4-2010 which was accepted by the disciplinary authority and the petitioner was inflicted with the penalty of dismissal from service under Rule 10(ix) of the Chhattisgarh Civil Services

(Classification, Control and Appeal) Rules, 1966 which was appealed by the petitioner before the appellate authority and the appellate authority has also affirmed the findings of the disciplinary authority and maintained the punishment awarded to him holding that it is a case of gross misconduct.

7. Rule 236(1), (2) & (3) of the Chhattisgarh Prisons Rules, 1968 provides as under: -

“236. General duties of Warders.—(1) Each warder shall have a particular duty assigned to him by the Superintendent or Jailor, such as charge or a particular ward or set of wards, charge of particular workshop or set of workshops, charge of a particular gang of prisoners inside or outside the jail.

The posts duties of warders shall be frequently exchanged so as to prevent the warders from forming permanent relations with any of the prisoners.

(2) Warders in-charge of work-shops will be responsible for all tools and property to kept in them.

(3) It shall be duty of all warders not merely to prevent escape but also to aid their superior officers in seeing that prisoners carry out the rule of jails that they industriously apply themselves to their work and complete their tasks; also.—

xxx	xxx	xxx
xxx	xxx	xxx”

8. Non-compliance of the regulations or breach of the regulations is liable to punishment under Rule 281 of the Chhattisgarh Prisons Rules, 1968 which states as under: -

“281. Punishment to subordinate officers for breach of any regulations.—Every subordinate officer who shall at any time be found to have been guilty of any breach of any law, regulation, direction or order for the time being in force in regard to the duties, or any of the duties which he is required to perform or the manner in which he is required to perform or the manner in which is required to perform

them, or any of them, shall be liable to be punished by any one or more of the punishments specified in rule 9 of the Madhya Pradesh Civil Services, (Classification, Control and Appeal) Rules, 1966.”

9. A careful perusal of Rule 236(3) read with Rule 281 of the Chhattisgarh Prisons Rules, 1968 would show that if a subordinate officer is found guilty of any breach of any law, regulation, direction or order for the time being in force in regard to the duties, or any of the duties which he is required to perform or the manner in which he is required to perform them, or any of them, he shall be liable to be punished by any one or more of the punishments specified in Rule 9 of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966.
10. It is the case of the respondents / State that the Chief Warder on 9-1-2010 has directed the petitioner – Warder and other similarly situated Warders to escort the convicted prisoners in the ambulance, but contrary to the order of the Chief Warder, the petitioner attempted to take one prisoner Rajak Khan by his own motorcycle and thereby he breached the order issued by the Chief Jail Warder under Rule 236(3) of the Chhattisgarh Prisons Rules, 1968 which falls under Rule 281 of the said Rules and which is liable to be punishable under Rule 9 of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966. In fact, Rule 9 of the Rules of 1966 speaks of suspension and it is Rule 10 which provides for punishment.
11. Assuming the charges levelled against the petitioner have been proved though he has violated Rule 236(3) of the Chhattisgarh Prisons Rules, 1968 and did not obey the order of the Chief Warder issued on 9-10-2010 for escorting the prisoners to the hospital and tried to escort one prisoner in the motorcycle, but before he could

leave the jail premises he was called back by the jail authorities and therefore, he could not escort the said prisoner to the hospital and in fact, there was no casualty like absconding of accused person from the custody of jail and jail authorities. Therefore, in my considered opinion, even if it is held to be violation of Rule 236(3) of the Chhattisgarh Prisons Rules, 1968 which falls within punishment under Rule 281 of the said Rules of 1968 and Rule 10 of the Rules of 1966. It is not the case where major penalty could have been inflicted by the disciplinary authority. In the considered opinion of this Court, one of the minor penalties would be sufficient for such a minor misconduct alleged to have been committed by the petitioner.

12. Now, the course open to this Court is to remit the matter for imposition of appropriate penalty to the disciplinary authority, but since this writ petition is pending for last 10 years before this Court and to finalise the disciplinary proceeding, it would be appropriate to impose any of the minor penalties within the meaning of Rule 10, sub-rules (i) to (iv), of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 by the disciplinary authority.
13. Accordingly, the impugned orders passed by the disciplinary authority and the appellate authority to the extent of imposing major penalty of dismissal, both, are hereby set aside and that is substituted with stoppage of two increments with non-cumulative effect under Section 10(iv) of the Rules of 1966. The petitioner would be entitled for reinstatement on the post of Jail Warder with all consequential benefits except full back-wages and allowances. The question of full back-wages and allowances shall be considered by the competent authority in accordance with Rule 54 of the Fundamental Rules within 60 days from the date of receipt of a copy of this order.

14. The writ petition is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma