

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (S) No.1847 of 2008Order reserved on: 29-7-2021Order delivered on: 27-9-2021

Rameshlal, S/o Shri Kishan Singh, Aged about 46 years, Ex. CISF Member No.851300412, 3<sup>rd</sup> Reserve Battalion, Resident at Qtr. No.1/163, CISF-UTAI, District Durg (C.G.)

---- Petitioner

Versus

1. Union of India, Through the Secretary, Ministry of Home, North Block, New Delhi.
2. The Inspector General (WS), (Revisionary Authority) Central Industrial Security Force, West Zone Headquarters, RCFL Complex, Chembur, Mumbai-400074
3. The Dy. Inspector General, (Appellate Authority) Central Industrial Security Force, West Zone Headquarters, RCFL Complex, Chembur, Mumbai-400074
4. The Commandant, (Disciplinary Authority) Central Industrial Security Force, 3<sup>rd</sup> Reserve Battalion, Bhilai, District Durg.

---- Respondents

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 For Petitioner: Mrs. Renu Kochar, Advocate.  
 For Respondents: Ms. Purnima Singh, Advocate.  
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Hon'ble Shri Justice Sanjay K. AgrawalC.A.V. Order

1. The petitioner herein calls in question legality, validity and correctness of order dated 26-11-2007 passed by the reviewing authority by which the reviewing authority has dismissed the review petition affirming the order of the appellate authority dated 31-8-2007, whereby the appellate authority has dismissed the appeal affirming the order of the disciplinary authority dated 21-4-2007 imposing major punishment of dismissal from service against the petitioner under Rule 34(i) of the Central Industrial Security Force Rules, 2001 (for short, 'the CISF

Rules').

2. The aforesaid challenge has been made on the following factual backdrop: -
3. It is the case of respondent No.4 that the petitioner while returning from leave from his home to his workplace at Bhilai – CISF Unit BIOP Depot 5, he was arrested by the jurisdictional police on the allegation that he possessed 3.5 Kgs. of narcotic drug namely, Ganja for which Crime No.78/2006 for the offence punishable under Section 20(b)(ii) (B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') was registered against him and consequently, he was placed under suspension by the order of the competent authority vide Annexure P-2 dated 29-7-2006 and thereafter, on 12-9-2006, vide Annexure P-3, disciplinary proceeding was initiated against him on the allegation that on 21-5-2006, during leave period, he was arrested by Police Station Nagarnar, District Bastar, on the allegation that he was found in possession of 3.5 Kgs. of narcotic drug Ganja which amounts to indiscipline and violation of the CISF Rules and which has been reiterated by the Superintendent of Police, Bastar-Jagdalpur by its letter dated 4-7-2006. On 29-1-2007, vide Annexure P-4, the office of respondent No.4, issued an Enquiry Notice to the petitioner holding that enquiry will be held on the next date 30-1-2007 at Central Jail, Jagdalpur, on day-to-day basis and the petitioner was directed to appear before the Enquiry Officer; to produce the name of defence assistants, if he so desires, along with their consent letter / willingness certificate; to produce the list of documents in writing which he wants to inspect or receive, if any; and also directed to produce the list of defence witnesses with their consent letter in writing, if any; and further informed that if he fails to attend the enquiry on the date, time

and place as specified in the Enquiry Notice, enquiry against him will be held ex parte. In the said enquiry, Mr. Z. Kullu, Sub-Inspector, was appointed as Presenting Officer on 29-1-2007 and thereafter, Mr. D.S. Kadiyan, Assistant Sub-Inspector, Police Station Nagarnar; Mr. Mohan Patel, Reader, Office of the Superintendent of Police, Jagdalpur, District Bastar and Mr. A.K. Rawat were examined by the Enquiry Officer. The petitioner's statement was also taken on 1-3-2007 and the enquiry was completed on that day itself. Meanwhile, on 19-4-2007, the jurisdictional criminal court acquitted the petitioner from the pending criminal trial, on merits and immediately thereafter, on 21-4-2007, respondent No.4, finding the charges proved against the petitioner, inflicted the penalty of dismissal from service upon him with disqualification for future employment under the Government under Rule 34(i) of the CISF Rules against which the petitioner preferred an appeal to the appellate authority which was rejected on 31-8-2007 and further, the review petition preferred was also dismissed on 26-11-2007 and as such, all the three orders have been sought to be challenged in this writ petition by the petitioner alleging that on same set of facts and evidence, criminal proceeding and disciplinary proceeding cannot lie and once the petitioner has been acquitted from criminal charges, he could not have been punished departmentally in the disciplinary proceeding. Even otherwise, the disciplinary authority ought to have waited for the outcome of the enquiry report. Even the appellate authority and the reviewing authority did not take into consideration the order of the criminal court acquitting the petitioner from criminal charges and order of both the authorities suffers from non-application of mind and the petitioner was not afforded reasonable opportunity of hearing to disprove the charges alleged

against him, as he remained in jail throughout the departmental enquiry and could not defend himself properly which has resulted in denial of reasonable opportunity to defend himself and thus, it is violative of the principles of natural justice and therefore the orders impugned are liable to be set aside.

4. Return has been filed by the respondents supporting the penalty imposed upon the petitioner alleging that he was found in possession of narcotic drug and he has rightly been dismissed from service and rightly the appeal and the review petition have been dismissed.
5. Rejoinder and additional return have been filed by the parties to support their respective stand.
6. Mrs. Renu Kochar, learned counsel appearing for the petitioner, would submit that the petitioner has not been afforded reasonable opportunity of hearing, as he was lodged in jail during the course of departmental proceeding and could not defend himself properly and that has resulted in violation of the principles of natural justice, even he was not asked to cross-examine the departmental witnesses and therefore the enquiry proceeding has resulted into a mere empty formality which is liable to be set aside.
7. Ms. Purnima Singh, learned counsel appearing for the respondents, would support the impugned orders and submit that looking to the misconduct that has been found proved against the petitioner, the punishment imposed is in accordance with law and no interference is warranted in exercise of extraordinary jurisdiction under Article 226 / 227 of the Constitution of India and the writ petition is liable to be dismissed.
8. 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.

9. It is not in dispute that offence punishable under Section 20(b)(ii)(B) of the NDPS Act was registered against the petitioner for having been found in possession of 3.5 Kgs. of narcotic drug Ganja on 21-5-2006 upon which he was placed under suspension on 29-7-2006 and charge-sheet was served to him on 12-9-2006 for the above-stated misconduct of having been found in possession of 3.5 Kgs. of narcotic drug Ganja, by the jurisdictional police. The petitioner denied the charges and thereafter, Enquiry Officer was appointed and Presenting Officer was also appointed and admittedly, departmental enquiry took place inside the jail, as the petitioner was in jail pending trial.
10. A careful perusal of the record would show that by Enquiry Notice dated 29-1-2007, 30-1-2007 was fixed for recording the evidence of the parties and on 29-1-2007, the Enquiry Officer directed the petitioner to give the names of defence assistants, if he so desires, along with their consent letter/willingness certificate and also to produce the list of documents in writing which he wants to inspect or receive, if any, and further directed to produce the list of defence witnesses with their consent letter in writing, if any, and further informed the consequences of failing to attend the enquiry on the date, time and place as specified in the Enquiry Notice, and accordingly, the enquiry took place on 30-1-2007 in Central Jail, Jagdalpur where the petitioner was detained as under trial prisoner. On 30-1-2007, Mr. D.S. Kadiyan, ASI; Mr. Mohan Patel, Reader to the SP, Jagdalpur; and Mr. A.K. Rawat, ASI/Clerk, all three witnesses, were examined. Thereafter, the Enquiry Officer again fixed the matter for some other day.

11. The question is, the manner in which the enquiry has been conducted against the petitioner in jail pursuant to the notice dated 29-1-2007 and the enquiry conducted on 30-1-2007 pursuant to the said notice and thereafter, whether the petitioner has been given reasonable opportunity of defending himself in the departmental enquiry against him, that too when he was lodged in Central Jail, Jagdalpur, and that too on day-to-day basis?
12. It is well settled law that during the pendency of criminal trial, the Department can proceed to hold departmental enquiry, but the important factor in administration of justice is that the delinquent who is likely to be affected by disciplinary proceeding has to be given fair and proper opportunity of being heard which means that opportunity has to be an effective opportunity and not a mere pretence.
13. In the matter of State of U.P. v. Shatrughan Lal and another<sup>1</sup>, their Lordships of the Supreme Court have held that one of the principles of natural justice is that a person against whom an action is proposed to be taken has to be given a reasonable opportunity of hearing. This opportunity has to be an effective opportunity and not a mere pretence.
14. In the matter of State Bank of Patiala and others v. S.K. Sharma<sup>2</sup>, their Lordships of the Supreme Court have held that while applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rules, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

1 JT 1998 (6) SC 55

2 AIR 1996 SC 1669

15. In this regard, Rule 36 of the CISF Rules deserves to be noticed which provides giving reasonable opportunity of hearing to the delinquent CISF servant for defending himself during the course of enquiry. As noticed herein-above, proceeding of departmental enquiry during the pendency of criminal trial is no bar and the respondent Department has rightly proceeded with the departmental proceeding. At the time when the petitioner was in judicial custody undergoing pending trial in Central Jail, Jagdalpur, by notice dated 29-1-2007, the Enquiry Officer directed the petitioner to appear before him on 30-1-2007 at 12 noon for the departmental proceeding to be held in jail on day-to-day basis and further directed him to produce the names of defence assistants, if he so desires, along with their consent letter / willingness certificate on the said date and also to produce the list of documents in writing which he wants to inspect or receive, if any, and also to produce the list of defence witnesses with their consent letter in writing, if any. On 30-1-2007 itself, the entire departmental proceeding was completed. The Enquiry Officer on 30-1-2007 not only took the statements of three departmental witnesses, but also directed the petitioner to produce the names of defence assistants along with their consent letter / willingness certificate, produce the list of documents, and also to produce the list of defence witnesses with their consent letter, and on that day itself the entire enquiry was conducted. But no material has been brought on record to establish that the jail authorities have given permission to the petitioner, who was in custody and allowed him to take steps for preparation of departmental enquiry like taking the services of defence assistants / assistance of counsel to file reply to the charge-sheet / to prepare defence, etc.. No material has been brought on record that the 4<sup>th</sup> respondent has made any attempt to

ensure permission from the jail authority allowing the petitioner to take steps for effective representation in the departmental enquiry. As such, the petitioner was not given proper opportunity of hearing or to engage a defence assistant of his choice which goes to show that fair and proper opportunity to defence himself has not been afforded to the petitioner and thus, the very essential principle of natural justice has been violated.

16. The petitioner having been lodged in jail and suffering pending trial, the Enquiry Officer merely completed the empty formality of making enquiry by giving notice dated 29-1-2007 to appear before him, to give list of defence assistants along with their consent letter / willingness certificate, to produce list of documents in writing which he wants inspect or receive and to produce the list of defence witnesses with their consent letter in writing. It was virtually impossible for a person who was lodged in jail and suffering criminal trial and it cannot be expected from a person in jail to collect defence documents, seek consent of defence assistants and to select defence assistants, obtain their willingness and to consult the counsel and to seek permission for inspection of documents and also difficult to produce the list of defence witnesses with their consent in writing. Even no reasonable time was allowed to prepare for the departmental proceeding. No permission was obtained from the jail authorities to provide reasonable opportunity to the petitioner to engage defence assistant and to consult his counsel as the petitioner was in jail custody.

17. Justice M. Hidayatullah, C.J. (as his Lordship then was), in the matter of Sawarna Transport Co. Ltd. v. Appellate Authority Nagpur and others<sup>3</sup> held that,

3 AIR 1956 Nagpur 235

“what is meant by the term and principles of natural justice’ is not easy to determine but every administrative tribunal in India which is required to decide upon the rights of the parties must act in a manner conformable to the essence of justice and one cardinal factor in the administration of justice is that every litigant must be given a fair and proper opportunity of being heard and allowed to state his case to the utmost. This requirement is not fulfilled where there is mere lip service done to the principles of natural justice and an audience allowed which amounts to nothing. There must be always a substantial opportunity and a proper latitude to meet everything which is likely to be considered against a party.”

18. Reverting to the facts of the case in the light of the aforesaid factual backdrop, it is quite apparent that respondent No.5 has completely failed to provide reasonable opportunity to defend to the petitioner while holding departmental enquiry at one go on 30-1-2007 by a short notice issued on 29-1-2007 and it was difficult for a person remained in judicial custody to prepare himself for enquiry, to cross-examine the departmental witnesses, to prepare list of documents to be inspected / to be obtained from the Enquiry Officer and to select the names of defence assistants and to seek the consent of said defence assistants and also to produce list of witnesses with their willingness. As such, the enquiry remained an empty formality by making lip service by respondent No.5 which has resulted in complete denial of reasonable opportunity to defend himself and therefore the very essential principle of natural justice has been violated. Consequently, the order passed by the disciplinary authority dismissing the petitioner from service and the appellate order as well as the revisional order, all are hereby set aside.
19. In view of the aforesaid discussion, the order dismissing the petitioner from service is set aside and the petitioner is directed to be reinstated in service with all consequential benefits except back-wages if he has

not crossed the age of superannuation, if he has crossed the age of superannuation, he will be entitled for service benefits till the date of superannuation. The question of back-wages will be considered by the competent authority taking into consideration all the relevant material on record within two months from the date of receipt of record. The petitioner will be also be allowed to make representation qua back-wages. Liberty to the respondents to hold enquiry against the petitioner is not being given in view of the fact that the matter is old one and the order of the disciplinary authority was passed on 21-4-2007 i.e. more than 14 years back.

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

Sd/-  
(Sanjay K. Agrawal)  
Judge

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