

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 232 of 2019

(Arising out of order dated 17-09-2018 passed by the learned Single Judge in WPS No. 401 of 2012 and WPS No.501 of 2012)

1. State of Chhattisgarh Through Department of Home (Jail), Mantralaya, Mahanadi Bhawan, Atal Nagar, District Raipur Chhattisgarh. 492002.
2. Director General of Police Jail Evam Sudharatmak Sevaye, Chhattisgarh.
3. The Jail Superintendent Central Jail, Jagdalpur Chhattisgarh.
4. Jail Superintendent, District Jail, Dantewada, Chhattisgarh.

---- Appellants

Versus

1. Jaiprakash Kanouje S/o Mahesh Ram Aged About 46 Years Head Jail Warder, District Jail, Dantewada Chhattisgarh.

---- Respondent

And

WA No. 250 of 2019

1. State of Chhattisgarh Through Department of Home (Jail), Mantralaya, Mahanadi Bhawan Atal Nagar District Raipur Chhattisgarh 492 002.
2. Inspector General of Police Jail Evam Sudharatmak Sevaye, Chhattisgarh, Raipur.
3. The Jail Superintendent Central Jail, Jagdalpur Chhattisgarh.
4. Jail Superintendent, District Jail, Dantewada, Chhattisgarh.

---- Appellant

Versus

1. Sunil Kumar Pujari S/o Kunwar Singh Pujari Aged About 32 Years, Jail Warder, District Jail Dantewada District Dantewada, Chhattisgarh

----- Respondent

For Appellants/State : Shri Chandresh Shrivastava, Dy. Advocate General.

For Respondents : Shri Goutam Khetrapal, Advocate.
(Writ Petitioners)

(Proceedings through Video Conferencing)

Hon'ble Shri Prashant Kumar Mishra, Ag. CJ

Hon'ble Smt. Rajani Dubey. J.

Judgment on Board

By

Prashant Kumar Mishra, Ag. CJ.

15-07-2021

1. These two separate writ appeals would call in question the common order dated 17-09-2018 passed by the learned Single Judge in the writ petition filed by Sunil Kumar Pujari (WPS No.401/2012) and Jaiprakash Kannouje (WPS No.501/2012).
2. Since, the learned Single Judge has passed a common order, the writ appeals are also considered and decided by this common order.
3. In the writ petition preferred by Sunil Kumar Pujari, the challenge was to the order of punishment dated 11-05-2011 (Annexure P-5) passed by the Jail Superintendent, Central Jail, Jagdalpur, Bastar (C.G.) and the appellate order dated 11-01-2012 (wrongly mentioned as 13-01-2011) (Annexure P-6) passed by the Director General, Jail, Chhattisgarh,

Raipur, whereas in the writ petition preferred by Jaiprakash Kannouje, the order of punishment and order passed in appeal are same, as in the earlier petition, vide Annexures P-4 and P-5 respectively.

4. At the relevant time, the petitioner Sunil Kumar Pujari was working as Prahari (प्रहरी), whereas the petitioner Jaiprakash Kannouje was working as Mukhya Prahari (मुख्य प्रहरी). As on 16-12-2017, they were posted at District Jail, Dantewada. On the said date, an incident of jail break happened in the afternoon between 2.00 pm to 6.00 pm wherein 299 inmates escaped. A departmental enquiry was constituted against the petitioners on charges that when some inmates assembled in the kitchen; started shouting; and throwing utensils here and there, the petitioners did not use Walkie Talkie to inform the Guard In-charge, Chakkar In-charge, main gate keeper and Senior Officers nor they blew the whistle because of which the jail break happened. Due to this act of negligence, they were alleged to have violated the rule 3 (1) a (2) of the Chhattisgarh Civil Services (Conduct) Rules, 1965 and Regulation 236 (f) (h) (i) (o) (r) of the Chhattisgarh Police Regulations, 1968 which are punishable under Regulation 281 and Section 54 (1) of the Prisons Act, 1894.
5. The petitioners were sent for departmental enquiry on these two charges vide Annexure – P/1 dated 28-1-2008 to which the petitioners submitted their written defence statement vide Annexure – P/2 denying the charges and stating that they have used Walkie Talkie, but they did not get any reply and that they had taken all such steps which are required to calm down the inmates, who were shouting and throwing utensils

here and there. Both the petitioners have narrated in detail as to the happening on the said date in which due to violence let lose by the inmates, they were over powered and subjected to assault in which the petitioners sustained injuries. It was specifically stated that one prisoner Sujeet Vapaska fired on petitioner Jaiprakash Kannouje, however, when he bent down to save himself one inmate Vishwajeet sustained gun shot. Both the petitioners were pushed on ground and their hands were tied. Inmate Madavi Vargees assaulted the petitioner Sunil Kumar Pujari over his head due to which he fell unconscious. Sunil Kumar Pujari has also filed the discharge ticket issued by the Government Medical College Associated Maharani Hospital, Jagdalpur, showing treatment given to him for gun shot injuries although in his written defence Annexure – P/2 he has only mentioned that he was assaulted by club.

6. Learned Single Judge has allowed both the writ petitions on the ground that the Enquiry Officer himself was, *prima facie*, of the view that the petitioners were helpless considering the manner in which the attack took place on them and the inmates escaped, therefore, once such finding is recorded. The subsequent finding that the charges are proved is perverse.
7. In these appeals, learned counsel appearing for the State would submit that the learned Single Judge has committed serious error of law by interfering with the finding recorded by the Enquiry Officer affirmed by the Disciplinary Authority. He would further submit that in such matters the scope of interference is very limited and the present were not

such cases where there is no evidence against the petitioners and yet they have been punished.

8. Learned counsel appearing for the writ petitioners (respondents herein), *per contra*, would support the order impugned passed by the learned Single Judge.
9. Record of the enquiry proceedings has been produced by the learned counsel for the State.
10. A perusal of the record would reveal that all the witnesses have supported the defence version put forth by the delinquents that the inmates attacked and assaulted them by club and by firing gun shot. It is also stated by the witnesses that hands of both the delinquents were tied, which was opened later on after the inmates escaped.
11. In page 1 to 3 of the enquiry report the facts have been stated and the findings on all the charges have been recorded in only one page in a perfunctory and perverse manner without considering the entire evidence. The report refers to one administrative enquiry conducted by R.S. Vishwakarma the then Regional Development Commissioner, Bastar, however, in the entire charge sheet there is no mention that this administrative enquiry report shall be used as evidence against the delinquent. The list of documents served on the petitioners along with the charge sheet nowhere refers to the administrative enquiry report. It is, thus, abundantly clear that the enquiry report has not at all considered the relevant evidence, which had material bearing on the charges and on the contrary it has considered documents which were not

mentioned in the list of documents supplied with the charge sheet.

12. It is the trite law that the writ Court can interfere with the findings recorded by the enquiry officer if the same is based on no evidence or is such as could not be reached by an ordinary prudent man or is perverse. (See : ***Kuldeep Singh v Commissioner of Police and Others*** reported in (1999) 2 SCC 10).
13. Having seen the enquiry report, we are satisfied that the order passed by the learned Single Judge and the finding recorded therein does not suffer from any such illegality warranting interference in intra Court appellate jurisdiction.
14. As a result, both the writ appeals, *sans substratum*, are liable to be and are hereby dismissed, leaving the parties to bear their own cost(s).

Sd/-

(Prashant Kumar Mishra)
Acting Chief Justice

Sd/-

(Rajani Dubey)
Judge

Gowri