

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12447 of 2010

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Mukund Kumar Singh S/o Late Vijay Kumar Singh R/O Vill. And P.O. Phul
Malik, P.S. Sahebpur Kamal, Distt.- Begusarai

... .. Petitioner/s

Versus

1. The Union of India
2. The Inspector General Of Central Industrial Security Force, New Delhi
3. The Deputy Inspector General Of Central Industrial Security Force, Eastern
Zone, New Patliputra, Bo
4. The Senior Commandant, Central Industrial Security Force Unit, Kh Stpp,
Kahalgau, Distt.- Bhagalpu
5. The Assistant Commandant, Central Industrial Security Force Unit, Kh Stpp,
Kahalgau, Distt.- Bhaga

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Manoj Priyadarshi, Advocate Mr. Jogendra Kumar, Advocate
For the Respondent/s	:	Mr.Ravinder Kumar Sharma, Advocate Mr. Lokesh, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 20-09-2022

In the instant petition, petitioner has prayed for the
following reliefs:-

*“For issuance of writ in the
nature of CERTIORARI for quashing the
order of dismissal dated 09.04.2010 vide
letter no. V-15014/Kh STPP/DISC/2010 by
which the petitioner was dismissed from
service which is quite illegal in the eye of law
and also for issuance of writ in the nature of
MANDAMUS for direction, directing the
Respondents to reinstate the petitioner in
service with all full back wages and
continuity in service. And for any other
relief/reliefs for which the petitioner would
be found entitled under the facts and
circumstances of the case.”*



02. Petitioner was subjected to disciplinary proceedings and it was concluded in imposition of penalty of dismissal from service on 09.04.2010. Feeling aggrieved and dissatisfied with the order of dismissal he preferred appeal before appellate authority on 05.05.2010 under Rule 46 of Central Industrial Security Force Rules, 2001 (for short “Rules, 2001”).

03. One of the contention raised by the petitioner is that the appellate authority had relied on preliminary enquiry report and the same was not part and parcel of the disciplinary proceedings as it is evident from the disciplinary authority order of dismissal, therefore, the appellate authority has taken extraneous material into consideration while confirming the order of dismissal dated 09.04.2010.

04. *Per contra*, learned counsel for the respondent has not disputed that appellate authority has taken note off preliminary enquiry report and the same was not subject matter of disciplinary proceedings and disciplinary authority has also not relied on preliminary enquiry report.

05. Heard learned counsel for the respective parties.

06. The petitioner was subjected to disciplinary proceedings and it was concluded in imposition of penalty of dismissal from service on 09.04.2010 and it was affirmed by the



appellate authority on 28.06.2010. The aforesaid contention of the petitioner that the appellate authority has considered extraneous material which is not part and parcel of disciplinary authority's order dated 09.04.2010 in dismissing the petitioner from service. Rule 52 of Rules, 2001 relating to consideration of appeals reads as under:-

“ 52 Consideration of appeals. —

(1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of ³² [rule 33] and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

(2) In the case of an appeal against the order imposing any of the penalties specified in rule 34, or enhancing any penalty imposed under the said rules, the appellate authority shall consider-

(a) whether the procedure laid down in these rules has been complied with and if not whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the disciplinary authority are warranted on the basis of the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is excessive, or adequate, or inadequate and pass orders—

(i) confirming, enhancing, reducing or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty, or to any other authority with such directions it may deem fit in the circumstances of the case;

[(iii) No order imposing enhanced penalty shall be made in any other case unless the



appellant has been given a reasonable opportunity, as far as may be in accordance with the provisions of rule 37, of making a representation against such enhanced penalty.] Provided that—

(i) If such enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (i) to (v) of rule 34 and an inquiry under rule 36 has not already been held in the case, the appellate authority shall, subject to the provisions of rule 39, itself hold such an inquiry or direct that such inquiry be held in accordance with rule 36 and thereafter on a consideration of the proceedings of such inquiry make such orders as it may deem fit; and

(ii) If the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (i) to (v) of rule 34 and an inquiry under rule 36 has already been held in the case, the appellate authority shall make such orders as it may deem fit.”

07. In the light of the aforesaid provision and powers entrusted with the appellate authority, the appellate authority is required to take note off Rule 52(1) and (2). Whereas the appellate authority in his order dated 28.06.2010 has considered extraneous material like taking note of preliminary enquiry report when it was not taken note off by the disciplinary authority.

08. In the light of these facts and circumstances, order of the appellate authority dated 28.06.2010 is set aside and the matter is remanded to the appellate authority to pass afresh order. The petitioner is permitted to file additional grounds in support of appeal, if any, within in a period of eight weeks from today. If such



additional grounds for appeal is submitted in that event the appellate authority is hereby directed to consider the petitioner’s memorandum of appeal read with additional grounds of appeal to be submitted, if any, the same shall be taken note off to pass details speaking order while considering each of the contentions raised by the petitioner. He is hereby directed to pass a speaking order within a period of four months from the date of receipt of this order and communicate the decision to the petitioner.

Accordingly, the present petition stands allowed in part.

(P. B. Bajanthri, J)

abhishekk/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	N/A
Transmission Date	N/A

