AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on : 05/12/2023

Order passed on : 29/02/2024

WPS No. 3235 of 2014

Shiv Balak Singh, S/o Shri Mathura Prasad Singh, aged about 49 years, R/o Village & Post Office – Barhiya, Tola Dhanraj, P.S. Barhiya, District Lakhisarai, Bihar Pin 811302

---- Petitioner

Versus

1. Union of India, through Secretary Ministry of Home Affairs, New Delhi.
2. Inspector General, CISF, Western Sector CISF Camps, Sector 35, Kharghar, Nawi Mumbai – 10.
3. Dy. Inspector General, Central Industrial Security Force, BSP, Bhilai, At P.O. & P.S. Bhilai, District Durg (CG)
4. Sr. Commandant, CISF Unit, BSP Bhilai, District Durg (CG)
5. The Commandant, CISF Unit having its office at Bhilai, District Durg (CG)
6. Jaswant Singh, Inspector CISF Unit having its office at Bhilai, District Durg (CG)

---- Respondents

For Petitioner : Mr. Vinod Deshmukh, Advocate.
For Respondents : Mr. Vaibhav P. Shukla, ASG.

Hon'ble Smt. Justice Rajani Dubey, J

CAV ORDER

This petition has been filed by the petitioner under Article 226 of the Constitution of India challenging the legality and validity of the order dated 22.7.2010 (Annexure P/1) passed by respondent No.4 whereby he has been compulsorily retired from service with immediate

effect on normal pension and 3/4th of retirement gratuity and granted only subsistence allowance for the suspension period from 20.11.2009 (245 days). The petitioner has also called in question the legality and validity of the orders dated 11.9.2010 (Annexure P/2) and 18.3.2011 (Annexure P/3) passed by respondents No. 3 & 2 dismissing the petitioner's appeal and revision respectively.

02. Brief facts of the case, as mentioned in the writ petition, are that while the petitioner was working as Head Constable at Central Industrial Security Force (CISF) Unit BSP, Bhilai on 9.12.2009 the petitioner was served with a charge sheet in respect of misbehaviour with and assault on Jaswant Singh, Inspector, CISF Unit, Bhilai, to which the petitioner in his reply categorically denied the charges on 16.12.2009. Being not satisfied with the petitioner's reply, departmental enquiry was conducted against him by Shri Ajit Singh, Inspector who was an officer of the rank of Shri Jaswant Singh. The Enquiry Officer without following the prescribed procedure in respect of conducting departmental enquiry and without considering the defence and grounds raised by the petitioner, conducted the same in violation of principal of natural justice and held the charges proved against him, and submitted the report to the disciplinary authority on 19.4.2010. Thereafter, the disciplinary authority having supplied copy of enquiry report to the petitioner on 11.5.2010 sought his representation thereon within 15 days which was duly submitted by the petitioner on 15.5.2010 categorically pointing out therein the illegality and perversity committed in the enquiry.

The disciplinary authority vide order dated 22.7.2010 (Annexure P/1) without considering the submission and grounds raised by the petitioner in his representation, only relying upon the findings of the Enquiry Officer, imposed punishment on the petitioner of compulsory retirement with immediate effect on normal pension and 3/4th retirement gratuity. The appeal preferred against the said order was dismissed by respondent No.3 on 11.9.2010 (Annexure P/2) and further, the petitioner's revision was also dismissed by respondent No.2 vide order dated 18.3.2011 (Annexure P/3). Hence this petition has been filed for the following reliefs:

> "10.1 This Hon'ble Court be pleased to set aside the impugned Quash the order dated 18th March, 2011 by which the Inspector General/WS (Respondent No.2) has been pleased to reject the revision/memorial of the petitioner.
>
> And
>
> Quash the order dated 11.09.2010 passed by the Dy. Inspector General, CISF, BSP, Bhilai (Respondent-3) by which reject/dismissed the appeal preferred by the petitioner against order dated 22.07.2010
>
> And
>
> Quash and cancel the order dated 22.07.2010 passed by Sr. Commandant, CISF, BSP, Bhilai (Respondent-4) by which the petitioner, who was head Constable, Security Force No.851380490, was made to retire compulsorily with immediate effect on normal pension and 3/4th of retirement, gratuity and was also ordered that period from

20.11.2009, total 245 days, will be deemed to be period of suspension and he will be entitled only for subsistence allowance.

10.2 This Hon'ble Court be pleased to direct the respondent authority to reinstate the petitioner in service with all consequential service benefits and back wages.

10.3 This Hon'ble Court be pleased to call for the entire records in respect of the departmental enquiry.

10.4 Any other relief as deemed fit by this Hon'ble Court."

03. Learned counsel for the petitioner submits that the very initiation of enquiry against the petitioner is malafide and result of bias under the influence of Inspector Jaswant Singh who had started harassing the petitioner since 16.11.2009 by not allowing him to join duty and succeeded in getting him out of service. From the evidence of the witnesses it would appear that the Enquiry Officer has not acted independently and impartially, he put questions not one or two to the witnesses but also cross-examined the witnesses as if he is a party to the proceeding and thereby tried to extract statement of witnesses which may support the case of the department and thus, proved the charges leveled against the petitioner. The fact that four official witnesses, on the basis of whose statements the charges were framed against the petitioner, challenged the legality and correctness of their own statements during the course of enquiry, manifestly shows

malafide exercise of power by the Inspector Jaswant Singh. The enquiry officer Shri Ajit Singh, Inspector was of the rank of Jaswant Singh which is also illegal. No independent witness was examined during the enquiry and the four official witnesses did not support the allegations of Inspector Jaswant Singh against the petitioner. The Enquiry Officer failed to consider as to how the petitioner got multiple abrasions and was admitted in hospital. This fact was suppressed by the department and no explanation has been offered as to how the petitioner who was on duty on 20.11.2009 got these injuries. The enquiry report is bad because the enquiry officer heavily relied on such facts and evidence relating to overstay of the petitioner while on leave or such other matters which were not subject matter of the charge and no statement or copy of any such document was given to the petitioner.

He further agued that the disciplinary authority acted in violation of the established procedure of law while issuing second show cause notice without disclosing the fact that he is in agreement with the enquiry report for the reasons mentioned therein and further, he did not mention the proposed punishment. The impugned order of the disciplinary authority is bad in law due to non-consideration of the evidence adduced by the petitioner and not affording him a personal hearing. The disciplinary authority relied on the documents submitted by Inspector Jaswant Singh whereas no copy of such documents was ever supplied to the petitioner. Likewise, the appellate and the

revisional authorities also acted arbitrarily and with malafide intention and dismissed the appeal and revision of the petitioner without proper appreciation of the defence and evidence put forward by the petitioner. Therefore, the impugned orders are liable to be set aside and the petitioner be reinstated with all consequential benefits and backwages.

Reliance has been placed on the decisions of the Hon'ble Supreme Court in the matters of **MV Bijlani Vs. UOI & others, 2006 SCC (L&S) 919; Moni Shankar Vs. UOI & another; (2008) 1 SCC (L&S) 819; Roop Singh Negi Vs. Punjab National Bank & others, (2009) 1 SCC (L&S) 398; the order dated 28.3.2023** of this Court in **WPS No.4583/2012** in the matter of **Rishi Sharma Vs. State of CG and others; order dated 25.4.2023** of this Court in **WPS No.1384/2014** in the case of **Rupesh Kumar Soni Vs. State of CG and others**;; and **the judgment dated 12.9.2023** of Division Bench of this Court in **WA No. 362/2023** in the matter of **Satan Kumar Dubey Vs. Union of India and others**.

04. On the other hand, learned counsel for the respondents strongly opposes the prayer of the petitioner and submits that CISF is a Central Armed Police Force of Union of India which is deployed in sensitive sectors such as Airports, Ports, Units of Department of Atomic Energy, Department of Space, Delhi Metro, Power and Steel etc. and the Force personnel are required to maintain a high degree of discipline. Any exception becomes a precedent for other employees of the Force and leads to indiscipline which is detrimental to the interest of the Force.

The reply of the petitioner to the charge sheet being not satisfactory, the disciplinary authority felt it necessary to conduct a departmental enquiry and appointed Shri Mukesh Kumar, Assistant Commandant, CISF Unit NSPCL, Bhilai as Enquiry Officer and Inspector/Exc. N.N. Meena, CISF Unit, BSP, Bhilai as Presenting Officer vide order dated 22.12.2009 (Annexure R/2). However, on the request of the petitioner for change of enquiry officer vide application dated 31.12.2009, the disciplinary authority appointed Shri Ajit Singh, Inspector/Exe, CISF Unit NSPCL, Bhilai as Enquiry Officer in place of Shri Mukesh Kumar vide order dated 5.1.2010 (Annexure R/3). The petitioner himself acted as defence counsel to defend himself and not sought any assistance as provided in CISF Rules, 2001. The Enquiry Officer conducted departmental enquiry in accordance with the principles of natural justice by giving proper opportunity to the petitioner to defend himself. The respondent authorities examined witnesses namely Inspector Jaswant Singh; HC/GD AK Upadhyay; Const. VP Naidu; Const. SD Vhoi; HC/GD VKS Naidu to prove the misconduct committed by the petitioner. The witnesses were cross-examined by the petitioner, however, their evidence regarding misconduct of the petitioner remained unshaken. After recording statements of the witnesses and upon due appreciation of the overall evidence on record, the Enquiry Officer recorded a finding that the charges leveled against the petitioner stand proved. After seeking representation from the petitioner on the enquiry report, the disciplinary authority was of the opinion that the charges leveled against the petitioner stands fully

proved and thus, awarded penalty of compulsory retirement from service with immediate effect with normal pensionary benefits and 3/4th retirement gratuity vide order dated 22.7.2010, which is commensurate with the gravity of his misconduct. The period of suspension has been treated as suspension in accordance with the prescribed rules. The appeal and revision of the petitioner were also rightly dismissed by the competent authorities for being without any substance. Thereafter, the petitioner filed CWJ No.15095/2011 before the High Court of Patna against the order of compulsory retirement from service, which came up for hearing on 3.2.2014 and was dismissed on the ground of lack of territorial jurisdiction. In view of above, the orders impugned being strictly in accordance with law need no interference by this Court and the present petition is liable to be dismissed.

05. Heard learned counsel for the parties and perused the material available on record.

06. It is an admitted position in this case that the petitioner was working as Head Constable at Central Industrial Security Force (CISF) Unit BSP, Bhilai and he was served with a charge sheet in respect of misbehaviour with and assault on Jaswant Singh, Inspector, CISF Unit, Bhilai. In respect of the said incident, departmental enquiry was conducted against him and the Enquiry Officer submitted his report before the disciplinary authority on 19.4.2010 and thereafter, the disciplinary authority supplied copy of enquiry report to the petitioner

and sought his representation thereon within 15 days which was submitted by the petitioner on 15.5.2010. The disciplinary authority vide order dated 22.7.2010 (Annexure P/1) imposed punishment on the petitioner of compulsory retirement with immediate effect on normal pension and 3/4th retirement gratuity. The appeal preferred by him against the said order was dismissed by respondent No.3 vide order dated 11.9.2010 (Annexure P/2) and his revision was also dismissed by respondent No.2 vide order dated 18.3.2011 (Annexure P/3).

07. The petitioner has contended in this petition that it is Jaswant Singh, Inspector, who initiated all these disputes and he pressurized and influenced the witnesses to depose against the petitioner and that the Enquiry Officer acted as a prosecutor.

08. The Hon'ble Supreme Court in the matter of **MV Bijlani** (supra) held in para 25 of its judgment as under:

> "25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidences to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the

burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

09. The Division Bench of this Court in WA No.362/2023 in the matter of **Satan Kumar Dubey** (supra) observed in paras 14 & 15 of its judgment as under:

14.The Supreme Court in the matter of ***Ram Lakhan Sharma (supra)*** has reiterated the law laid down in the case of ***State of U.P. Vs. Saroj Kumar Sinha {(2010) 2 SCC 772}*** wherein this proposition was laid down that the Inquiry Officer is a quasi-judicial authority, he has to act as an independent adjudicator and he is not a representative of the department/disciplinary authority/Government. In para 27 of ***Ram Lakhan Sharma (supra)*** the Court has reproduced the principles laid down which are quoted herein below:-

27. In ***State of U.P. V. Saroj Kumar Sinha 2010 (2) SCC 772***, this Court had laid down that inquiry officer is a quasi-judicial authority, he has to act as independent adjudicator and he is not a representative of the department/disciplinary authority/Government. In paragraphs 28 and 30 following has been held:

"28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/ Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been

> observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.
>
> 30. When a departmental Inquiry is conducted against the government servant it cannot be treated as a casual exercise. The Inquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service."

15. Further the principles which has been laid down that when the statutory rules do not contemplate appointment of Presenting Officer, the non-appointment of Presenting Officer *ipso facto* will not vitiate the inquiry but the principles of natural justice was given a preference if it is held to be violated then the Court can interfere as the I.O. cannot act as the prosecutor. Para 28 of the judgment is reproduced hereinbelow:-

> 28. When the statutory rule does not contemplate appointment of Presenting Officer whether non-appointment of Presenting Officer ipso facto vitiates the inquiry? We have noticed the statutory provision of Rule 27 which does not indicate that there is any statutory requirement of appointment of Presenting Officer in the disciplinary inquiry. It is thus clear that statutory provision does not mandate appointment of Presenting Officer. When the statutory provision does not require appointment of Presenting Officer whether there can be any circumstances where principles of

> natural justice can be held to be violated is the broad question which needs to be answered in this case. We have noticed above that the High Court found breach of principles of natural justice in Inquiry Officer acting as the prosecutor against the respondents. The Inquiry Officer who has to be independent and not representative of the disciplinary authority if starts acting in any other capacity and proceed to act in a manner as if he is interested in eliciting evidence to punish an employee, the principle of bias comes into place."

10. In light of the above legal principles, if the facts of the present case are examined, it transpires from the enquiry report that no Presenting Officer was appointed and from the statements of some of the witnesses it is also clear that they were under the influence and pressure of Jaswant Singh. In this situation, appointment of Presenting Officer in the departmental enquiry was essential.

11. Thus, in the totality of facts and circumstances of the case and the above guidelines of the Hon'ble Supreme Court and this Court, the impugned order of punishment as also the appellate and revisional orders are not sustainable in law and deserve to be set aside. Accordingly, the impugned orders are hereby set aside.

Since this Court is setting aside the impugned orders on technical ground of non-appointment of Presenting Officer, this Court only directs that the petitioner would be entitled for reinstatement forthwith, reserving the right of the respondent authorities to proceed

further, if they so want, against the petitioner from the stage of non-appointment of Presenting Officer. Further, in light of order dated 23.8.2019 passed by this Court in WPS No.298/2011 in the matter of Keshav Singh Vs. State of CG, as the petitioner was out of employment since July, 2010 till date, applying the principles of 'No Work, No Pay', he would not be entitled for monetary benefits for the intervening period. However, for all practical purposes such as seniority and other incidental benefits which shall be prospective, the said intervening period will be treated as continuous service.

12. In the result, the writ petition stands allowed to the above extent.

Sd/
(Rajani Dubey)
Judge

Khan