
(2016) 02 OHC CK 0056
In the Orissa High Court
Case No : W.P.(C) No. 4431 of 2006

Chattarpal Singh

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 24-02-2016

Acts Referred:

Constitution of India, 1950 — Article 136, Article 226

Citation : (2016) 02 OHC CK 0056

Hon'ble Judges : Dr. Akshaya Kumar Rath, J.

Bench : Single Bench

Advocate : J. Tiwari, Advocate, for the Appellant; B. Dash, Central Government Counsel, for the Respondent

Final Decision : Allowed

Judgement

Dr. Akshaya Kumar Rath, J.—1. The petitioner, a condemned employee, approached the portals of this Court under Article 226 of the Constitution of India to quash the order of punishment of dismissal passed by the disciplinary authority, which was upheld by the appellate authority as well as the revisional authority.

2. The petitioner was working as a Constable in Central Industrial Security Force (in short "C.I.S.F.") Unit, Rourkela Steel Plant, Rourkela. On 31.5.2000, the Deputy Commandant, CISF, Rourkela Steel Plant issued a memorandum of charges. The charges included;

"(i) Gross misconduct and dereliction of duty in that No. 912292412 Constable Chattar Pal Singh of "C" Coy CISF Unit, RSP Rourkela who was detailed for duty in "B" Shift at Tarapur Filter House from 1300 hrs to 2100 hrs on 06.5.2000, absented from his duty post unauthorisedly without obtaining any permission from his superior authority between 1720 hrs to 2005 hrs.

(ii) Gross misconduct and indiscipline in that No. 912292412 Constable Chattar Pal Singh of "C" Coy CISF Unit, RSP Rourkela has violated the lawful orders of his

superiors in which he unauthorisedly entered the Plant through Material Traffic Gate at about 1930 hrs on 06.5.2000 on his motor cycle alongwith a civilian who was sitting behind him and remained inside the Plant unauthorisedly for a period of about 35 minutes and left the plant at about 2005 hrs on 06.5.2000 leaving the civilian inside the plant. Further he violated the orders by making his entry/exit from plant through the gates other than permitted for CISF Personnel.

(iii) Gross misconduct and indiscipline in that No. 912292412 Constable Chattar Pal Singh of "C" Coy CISF Unit, RSP Rourkela alongwith a civilian visited PS-II area unauthorisedly on 06.5.2000 at about 1930 hrs and worked out the theft of Zinc lead from PS-II Area of RSP Rourkela, as a result of which attempt of theft of Zinc lead took place on 07.5.2000 at about 0950 hrs which was foiled by the Crime wing personnel from this area.

(iv) Gross misconduct in that No. 912292412 Constable Chattar Pal Singh of "C" Coy CISF Unit, RSP Rourkela has developed an irresistible habit of committing acts of indiscipline and failed to show any improvement in his work and conduct in spite of Ten punishments, i.e., two major and eight minor punishments awarded to him from time to time during the tenure of his service. Hence his past bad service records is being made a subject of charge for deciding the quantum of punishment in the instant case."

3. The petitioner submitted his written statement of defence denying the charges. The disciplinary authority was not satisfied to the explanation submitted by the petitioner and appointed one Mr. R.S. Chauhan as Enquiry Officer to enquire into the charges. After holding enquiry, the Enquiry Officer submitted report holding inter alia that the charges had been proved. A copy of the enquiry report was supplied to the petitioner. On 29.7.2000, the petitioner sent a letter contending that the report is perverse and based on no evidence. The Enquiry Officer had placed him under suspension and conducted enquiry and as such the report is vitiated. Further the copies of certain documents asked for by him had not been supplied to him.

4. The disciplinary authority concurred with the findings of the Enquiry Officer and dismissed the petitioner from services on 12.8.2000. Aggrieved by and dissatisfied with the order of the disciplinary authority, the petitioner preferred an appeal before the DIG, CISF with a prayer to impose lesser punishment. But then, the appellate authority dismissed the appeal on 11.9.2000. It was held that the punishment awarded by the disciplinary authority commensurate with the gravity of the proven misconduct. The petitioner unsuccessfully challenged the order passed by the appellate authority in revision before the IG, Eastern Sector Hqrs., CISF, Patna, which was eventually dismissed on 24.6.2001. Thereafter he filed a declaratory suit, being Suit No. 252/03 in the court of the learned Civil Judge (Sr. Divn), Delhi. By judgment dated 11.5.2005, the learned Civil Judge (Sr. Divn.), Delhi came to hold that the court has no territorial jurisdiction to try the suit. With this factual scenario, the instant application has been filed to quash the order of punishment dated 12.8.2000 passed by the disciplinary

authority vide Annexure-4, the order dated 11.9.2000 passed by the appellate authority vide Annexure-5 and the order dated 24.6.2001 passed by the revisional authority vide Annexure-6 respectively.

5. Heard Mr. J. Tiwari, learned counsel for the petitioner and Mr. B. Dash, learned Central Government Counsel for the opposite parties.

6. Mr. Tiwari, learned counsel for the petitioner submitted that Mr. R.S. Chauhan, who was appointed as Enquiry Officer to enquire into the charges had placed the petitioner under suspension and as such he was biased. Thus the enquiry report smacks mala fide. He further submitted that the charges levelled against the petitioner had not been proved. Further the petitioner had asked with certain documents, but the same were not supplied to him. It was further submitted that for non-examination of the material witnesses, the proceeding is vitiated. Finally, he submitted that even if the charges had been proved, the punishment awarded by the disciplinary authority and upheld by the appellate authority as well as the revisional authority is disproportionate with the gravity of the charges.

7. Per contra, Mr. B. Dash, learned Central Government Counsel submitted that as per the requirement the charge-sheet along with the list of witnesses and list of documents basing on which charges were framed had been supplied to the petitioner. In his written statement of defence, the petitioner had never asked for any document. During the enquiry, the petitioner had never questioned the integrity and impartiality of the Enquiry Officer nor before the disciplinary authority requesting the latter to change the Enquiry Officer. Almost all the witnesses corroborated about the unauthorised absence of the petitioner from the duty post, unauthorised entry and stay inside the plant for 35 minutes with a civilian. Though a copy of the enquiry report had been furnished to the petitioner whereafter he made a representation, but he had taken a ground that it was not supplied. Considering the gravity of the charges and previous ten punishments imposed on him, the disciplinary authority imposed the punishment of dismissal from services. The appellate authority as well as the revisional authority considered the matter in the proper perspective and concurred with the finding of the disciplinary authority.

8. The scope of interference of the High Court under Article 226 of the Constitution of India to the order passed by the disciplinary authority is no more *res integra*.

9. In the case of *State of Andhra Pradesh and others v. S. Sree Rama Rao*, , AIR 1963 SC 1723, the Supreme Court in paragraph 7 of the report held:

"7. There is no warrant for the view expressed by the High Court that in considering whether a public officer is guilty of the misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court, must be applied, and if that rule be not applied, the High Court in a petition under Article 226 of the Constitution is competent to declare the order of the

authorities holding a departmental enquiry invalid. The High Court is not constituted in a proceeding under Article 226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent Officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."

10. On the anvil of the decision cited *supra*, the case of the petitioner may be examined.

11. The submission of Mr. Tiwari, learned counsel for the petitioner that the petitioner had asked for certain documents and the same had not been supplied to him has no legs to stand. All the documents were supplied to the petitioner along with the charge examined. The petitioner had not filed any application before the disciplinary authority for supply of any other document. Four charges were framed against the petitioner. During enquiry, the management had examined as many as ten witnesses. The petitioner had examined three witnesses in support of his defence. The petitioner had been afforded opportunity of cross-examination the management witnesses and examined the witnesses on his behalf. A bald plea had been taken that no opportunity of hearing was provided to him. Rather the record reveals that sufficient opportunity was provided to him. True it is Mr. R.S. Chauhan, Enquiry Officer had placed the petitioner under suspension, but the same was approved by the higher authorities. The petitioner had not filed any application before the Enquiry Officer nor the higher authorities to change the Enquiry Officer. Rather he participated in the enquiry. Since the report is not palatable him, at a latter point of time he made frivolous allegation against the Enquiry Officer without any basis. The allegations have no legs to stand. Scanning of evidence is beyond the purview of

the writ court, unless the same is perverse. The High Court is not an appellate authority. The witnesses examined on behalf of the management as well as the petitioner unequivocally stated that the petitioner was absent from duty hours. This is lapse on the part of the petitioner. He belongs to a disciplined force. He remained unauthorised absence for 35 minutes without taking prior permission from the authorities. With regard to the charge that the petitioner had entered into the Steel Plant through Material Traffic Gate on his motor cycle along with a civilian, who was a pillion rider and there was attempt of theft of zinc, the said pillion rider was not apprehended. Moreover one B.K. Kumar, Constable was caught in a suspicious condition along with a gunny bag of zinc at PS-I on 7.5.2000. The same was reported by one witness. Thus, it cannot be said that one civilian remained in the Steel Plant till the next date.

12. Though Mr. Das, learned Central Government Counsel submitted that the disciplinary proceeding was initiated against Mr. B. Kumar, who was caught red handed along with a gunny bag of zinc and he was dismissed from services. The petitioner is no way concerned with the theft of materials. So far as the charge No. 4 is concerned, the same pertains to previous conduct of the petitioner. Some minor punishment had been imposed. But the authorities allowed the petitioner to remain in service.

13. On taking a holistic view of the matter, this Court is of the opinion that for unauthorised absence from duty for 35 minutes the punishment of dismissal from services is too disproportionate.

14. The question does arise as to whether this Court can substitute the punishment imposed by the disciplinary authority? This is not a virgin ground so far the question is concerned?

15. In *B.C. Chaturvedi v. Union of India and others*, , AIR 1996 SC 484, the Supreme Court in paragraphs 17 and 18 held as follows:-

"17. The next question is whether the Tribunal was justified in interfering with the punishment imposed by the disciplinary authority. A Constitution Bench of this Court in *State of Orissa v. Bidyabhushan Mohapatra*, , AIR 1963 SC 779 held that having regard to the gravity of the established misconduct, the punishing authority had the power and jurisdiction to impose punishment. The penalty was not open to review by the High Court under Article 226. If the High Court reached a finding that there was some evidence to reach the conclusion, it became unassessable. The order of the Governor who had jurisdiction and unrestricted power to determine the appropriate punishment was final. The High Court had no jurisdiction to direct the Governor to review the penalty. It was further held that if the order was supported on any finding as to substantial misconduct for which punishment "can lawfully be imposed", it was not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The court had no jurisdiction, if the findings prima facie made out a case of misconduct, to direct the Governor to

reconsider the order of penalty. This view was reiterated in *Union of India v. Sardar Bahadur*, , (1972) 2 SCR 218 : , (1972) Lab IC 627). It is true that in *Bhagat Ram v. State of Himachal Pradesh*, , AIR 1983 SC 454, a Bench of two Judges of this Court, while holding that the High Court did not function as a court of appeal, concluded that when the finding was utterly perverse, the High Court could always interfere with the same. In that case, the finding was that the appellant was to supervise felling of the trees which were not hammer marked. The Government had recovered from the contractor the loss caused to it by illicit felling of trees. Under those circumstances, this Court held that the finding of guilt was perverse and unsupported by evidence. The ratio, therefore, is not an authority to conclude that in every case the Court/Tribunal is empowered to interfere with the punishment imposed by the disciplinary authority. In *Rangaswami v. State of Tamil Nadu*, , AIR 1989 SC 1137, a Bench of three Judges of this Court, while considering the power to interfere with the order of punishment, held that this Court, while exercising the jurisdiction under Article 136 of the Constitution, is empowered to alter or interfere with the penalty; and the Tribunal had no power to substitute its own discretion for that of the authority. It would be seen that this Court did not appear to have intended to lay down that in no case, the High Court/Tribunal has the power to alter the penalty imposed by the disciplinary or the appellate authority. The controversy was again canvassed in *State Bank of India's case* (1994 AIR SCW 1465) (*supra*), where the court elaborately reviewed the case law on the scope of judicial review and powers of the Tribunal in disciplinary matters and nature of punishment. On the facts in that case, since the appellate authority had not adverted to the relevant facts, it was remitted to the appellate authority to impose appropriate punishment.

18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

16. The same view was taken in the case of *Union of India and another v. G. Ganayutham (Dead) by LRs.*, , AIR 1997 SC 3387. The Supreme Court held that unless the Court/Tribunal opines in its secondary role, that the administrator was, on the material before him, irrational the punishment cannot be quashed. Even then, the matter has to be remitted back to the appropriate authority for reconsideration. It was further held that the principles in *B.C. Chaturvedi* (*supra*)

that only in very rare cases Court might to shorten litigation think of substituting its own view as to the quantum of punishment in the place of the punishment awarded by the competent authority has been made in exercise of the power of the Supreme Court under Article 136 of the Constitution, which is different.

17. In the wake of aforesaid, the order of punishment dated 12.8.2000 passed by the disciplinary authority vide Annexure-4, the order dated 11.9.2000 passed by the appellate authority vide Annexure-5 and the order dated 24.6.2014 passed by the revisional authority vide Annexure-6 respectively are quashed. The matter is remitted back to the disciplinary authority to substitute a lesser punishment. The entire exercise shall be completed within three months.

The petition is allowed. No costs.