

(2009) 05 JH CK 0041
In the Jharkhand High Court
Case No : Writ Petition (S) No. 259 of 2002

Dipchand Dohre

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-05-2009

Acts Referred:

Central Industrial Security Force Rules, 1969 — Rule 29A, 31A
Central Reserve Police Force Act, 1949 — Section 11(1)
Central Reserve Police Force Rules, 1955 — Rule 27

Citation : (2009) 05 JH CK 0041

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Advocate : B.K. Dubey, for the Appellant; Faiz-ur-Rahman, C.G.C., for the Respondent

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—Petitioner, in this writ application, has prayed for quashing the order dated 27.05.1995 (Annexure-3), passed by the Respondent No. 3, whereby the petitioner was dismissed from his service and also for quashing the order dated 06.10.1995 (Annexure-5), passed by the appellate authority-Respondent No. 2, whereby the appeal filed against the order of dismissal was dismissed.

2. The petitioner was appointed as a Constable under the C.I.S.F. and was posted at the C.I.S.F. Unit, B.C.C.L., Jharia.

On 30.01.1995, he was served with a chargesheet, issued by the Respondent No.

3. The chargesheet contained two separate articles of charges which are as under:

Article of Charge No. 1

No. 844360647 Const. Deep Chand of Bhalgora Post, Area No. VIII. CL Unit, BCCL, Jharia is charged with misconduct, indiscipline and negligency of duty in that he replaced 04 Rounds of 7.62 of Lot year 1992 with 04 rounds of 7.62 Lot

Year 1987 on 04.12.94 while he was on Cash Guard duty as a guard Commandant Bhalgora Post.

Article of Charge No. II

No. 844360647 Const. Deep Chand of Bhalgora Post, Area No. VIII, CL Unit, BCCL, Jharia is charged with misconduct, Indiscipline and dereliction of duties in that he was found absent from duties on following occasions without any information/permission of competent authority:

1. On 04.02.1994 between 1230 hrs to 0615 hrs on 5.12.94
2. On 05.12.94 between 0900 hrs to 2046 hrs.
3. He was again absent from "C shift on 05.12.94 2100 hrs to 05 hrs on 06.12.94.

3. Not being satisfied with the explanation offered by the petitioner, a departmental proceeding was initiated against him after putting him under suspension. After concluding the enquiry in which the petitioner was allowed to participate, the enquiry Officer submitted his Report holding that the charges were; proved against the petitioner. On the basis of the Enquiry Report the Respondent No. 3 issued a show cause notice to the petitioner enclosing therewith a copy of the enquiry report calling upon the petitioner to submit his explanations as to why he should not be awarded the punishment of dismissal from service.

4. The petitioner submitted his explanation by way of his show cause replies.

The disciplinary authority after considering the findings of the enquiry officer and the explanation offered by the petitioner, passed the impugned order dated 27.05.1995 (Annexure-3) of dismissal from service.

5. Against the order of his dismissal, the petitioner filed an appeal before the appellate authority, namely the Deputy Inspector General, C.I.S.F. The appellate authority dismissed the appeal by the impugned order dated 06.10.1995 (Annexure-5) affirming the punishment awarded by the disciplinary authority and holding that the punishment was commensurate with the gravity of the misconduct.

6. Against the order of the appellate authority, the petitioner preferred a writ application before the Madhya Pradesh High Court, Indore vide W.P. No. 20 of 1997. The writ application was disposed of on 03.03.1997, holding that the cause of action did not arise within the jurisdiction of the Madhya Pradesh High Court.

7. Against the order of the Single Judge, the petitioner preferred an L.P.A. before the Division Bench vide L.P.A. No. 229 of 1998, which was also disposed of on 12.04.2001, dismissing the appeal and confirming the order of the Single Judge.

8. Thereafter, the petitioner filed the instant writ application on 09.01.2002,

challenging the impugned orders on the following grounds:

(i) Neither the enquiry Officer nor the Disciplinary authority had considered the petitioner's explanations in proper perspective and the impugned order of dismissal was passed without proper application of mind.

(ii) The appellate authority had also acted in a mechanical manner without considering the materials available on record and without appreciating the evidence adduced by the petitioner in his defence.

(iii) That even otherwise, the extreme punishment of dismissal is highly disproportionate to the gravity of the charges.

9. Mr. B.K. Dubey, learned Advocate for the petitioner would want to explain that the petitioner's explanation to the charges ought to have been considered by the disciplinary authority and the appellate authority in proper perspective. The petitioner had offered adequate explanation in respect of both the charges expressing his innocence but the same was not considered by the concerned authorities. Learned Counsel adds further that the charges at best indicate a marginal lapse on the part of the employee regarding his casual absence and it did not warrant the extreme punishment of dismissal from service. Learned Counsel would obtain support in this context from the judgment of the Supreme Court in the case of *Mandip Kumar and Ors. v. State of Haryana and Anr.* (1996) 32 ATC 139.

10. As regards the delay in filing his writ application, learned Counsel submits that the delay was caused due to improper advice on account of which the petitioner had initially challenged the impugned orders of his dismissal before the Madhya Pradesh High Court on the plea that the Madhya Pradesh High Court can entertain his writ application, since at the relevant time, he was living at his native town, Dhar District (M.P.). It was only after the writ applications were finally dismissed by the Division Bench of the Madhya Pradesh High Court in 2001, that the petitioner on obtaining proper advice, has filed the instant writ application in this Court and as such, the delay on the part of the petitioner needs to be condoned.

11. In their counter affidavit, the Respondents have denied and disputed the entire grounds of the petitioner. A preliminary objection has been taken on the ground that the instant writ application having been filed after a delay of almost 7 years from the date of passing of the impugned orders, and therefore, the writ application is liable to be dismissed outrightly. The further stand taken by the Respondent is that the charges framed against the petitioner included not only his absence from duty on several occasions but also of gross negligence in performance of his duties in as much as he has deliberately replaced 04 rounds of 7.62 mm ammunitions having the lot of year 1992, which were issued to him, but while depositing, he had deposited 04 rounds 7.62 mm ammunitions having the lot of year 1987.

12. The petitioner was found guilty of both the charges. It is also explained that the punishment of dismissal from service for absence without sanction of leave, can validly be awarded u/s 11(1) of the C.R.P.F. Act read with Rule 27 of the C.R.P.F. Rules, 1955, by the competent authority and since the petitioner was found guilty of both the charges amounting to gross misconduct, and negligence in performance of duty, the punishment awarded to him was proportionate to the gravity of the guilt. The petitioner being a member of the highly disciplined forces, the misconduct proved against him cannot be termed as minor.

13. As regards the objection taken by the Respondents on the ground of delay, it is well settled Rule which says that the Court may not enquire into belated and stale claim, is not a rule of law but a rule of practice, based on sound and proper exercise of discretion. There can be no strait jacket principle in such matters nor is there any fixed period of limitation as to when and where relief will be denied on the sole ground of delay. It depends on the discretion of the Court and on consideration of facts of each case. 14. The petitioner has explained the reason for delay and I am satisfied that there is genuine case for ignoring the delay in filing this writ application.

14. From the facts stated, it cannot be disputed that the petitioner was afforded adequate opportunity to defend himself at the departmental enquiry and also before passing the impugned order of dismissal.

15. The ground which the petitioner would emphasize is that the extreme punishment awarded to him is highly disproportionate to the gravity of the charges.

16. As observed above, the charges on which the departmental proceedings was conducted against the petitioner were not only in respect of his absence from duty without any information/prior permission of the competent authority on as many as three separate occasions but also of replacing the ammunitions, which were entrusted to him while he was deputed on cash guard duty as a Guard commandant on Dhalgora Post.

17. Considering the findings of the enquiry Report, the disciplinary authority has observed that the petitioner has indulged in acts amounting to dereliction of duty, negligence and further, that the integrity of the individual in this respect also becomes doubtful and therefore, the delinquent deserves the stringent punishment as laid down under Rule 29(A) read with Rule 31(A) of the C.I.S.F. Rules, 1969.

18. In the light of the above facts, the petitioner cannot argue that the charges constituted only a marginal lapse on his part and therefore, did not call for the extreme punishment of dismissal.

19. The Judgment in the case of Mandip Kumar (Supra) as relied upon by the petitioner, would not apply to the facts of the present case, as because in the case of Mandip Kumar (Supra), the charge was confined only to the delinquent's

absence which ranged between one to two days on a few (3 or 4) occasions, and such absence was converted into casual leave. The petitioner being a member of the highly disciplined force, is required to maintain strict discipline having regard to the nature of the duties enjoined to these forces.

20. Considering the aforesaid facts and circumstances, I do not find any reason to interfere with the punishment awarded to the petitioner in the light of the nature of charges proved against him. There being no merit in this writ application, the same is dismissed.