
(2005) 01 MP CK 0047
In the Madhya Pradesh High Court
Case No : Writ Petition No. 790 of 1995

D.N. Rai

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-01-2005

Acts Referred:

Central Industrial Security Force Rules, 1969 — Rule 34, 37
Constitution of India, 1950 — Article 311(2)

Citation : (2005) 3 MPHT 120 : (2005) 3 MPLJ 120

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : Avinash Jargar, for the Appellant; Indira Nair and Jasmin Channa, for the Respondent

Final Decision : Allowed

Judgement

Arun Mishra, J.

Petitioner in this writ petition has assailed an Order (P-2), dated 23-7-94 of termination of his services passed by the Commandant, Central Industrial Security Force.

It is averred in the petition that petitioner was recruited as Constable on 1-4-90 at NTPC, Shaktinagar, District Mirzapur (U.P.) as a member of the Central Industrial Security Force. Petitioner was posted from November, 1992 to February, 1994 as a Constable at CISF Unit, Eastern Coal Field Ltd., Seetalpur Campus Lalmatia, District Burdwan (West Bengal). He was transferred to Beladella Iron Ore Project (BIOP), Deposit-5, Bachel, Bastar (M.P.). While he was posted at Lalmatia, and incident took place during the intervening night 5th and 6th June, 1993 in which a local miscreant un-authorisedly entered the CISF unit area with an intention to commit theft, on raising alarm the miscreant was caught hold of by some of the Constables of Unit and was given beating. It is further alleged that the said miscreant succumbed to the injuries. FIR was lodged by the father of the deceased. The matter was investigated by the police and

after no material/evidence, the police submitted final report; case was found not worth investigating.

It is further averred in the petition that petitioner at the time of occurrence had retired for rest/sleeping in his barrack, after finishing his duties at 10:00 p.m. in the night. He was awakened by the alarm raised as a result of the incident and only thereafter the petitioner came to know of the occurrence of the incident. Incident had no nexus or even remote connection with the petitioner; he was not at all involved in it. In February, 1994 he was transferred from Lalmatia (West Bengal) to CISF Unit, BIOP, Deposit-5 Bachel Bastar (M.P.) as per Order (P-1), dated 25-2-94. All of a sudden an Order (P-2) dated 23-7-94 was received on 3-8-94 by the petitioner dismissing him from services by invoking Rule 37 (b) of the Central Industrial Security Force Rules, 1969 (hereinafter referred to as "the CISF Rules, 1969") by holding that in the circumstances it is not reasonably practicable to hold enquiry under Rule 34 of the CISF Rules, 1969. Petitioner filed an appeal. It was contended that power under Rule 37(b) has to be exercised in exceptional cases. Appeal has been dismissed as per Order (P-4), dated 15-9-94, hence, writ petition has been preferred. Reliance has been placed on Rule 34 of the CISF Rules, 1969. The reasons given do not satisfy the exceptional requirement of dispensing with an enquiry. It is not a case where it was not possible to conduct an enquiry as provided under the Rules. Petitioner was dismissed only after preliminary enquiry. Requirement as per Rule 37(b) is akin to one under Article 311(2)(b) of the Constitution of India, hence, the impugned order deserves to be quashed.

In the return filed by the respondents, it is contended that ECL Security guard raised alarm and in the process the miscreants fired one round at ECL security guard, thereafter one of the constables also blew whistle and on hearing the sound of the whistle, some subordinate officers, Asstt. Commandant Shri Madhu reached the spot immediately and started searching. Again the miscreants fired one round as a result, the bullet hit SI/Ex. S.K. Chouhan, he was taken to the hospital under the escort of ASI (M) S.P. Choudhary, Const. Vinod Kumar and other CISF constables. As per the statement of Constable Ramesh Chand, Constable B.L. Meena, HC/Dvr Rajeev Kumar, a person was seen in suspicious condition and trying to run away. The person (Md. Rais Ansari) was apprehended by the CISF personnel and taken to CISF campus and kept near quarter guard. The culprit (Md. Rais Ansari) was also taken to the police by Constable D.N. Rai from quarter guard area for interrogation. After interrogation, the police sub-inspector told Const. D.N. Rai to leave him outside the campus, but Const. D.N. Rai again took him to quarter guard area. Const. D.N. Rai started beating severely Md. Rais Ansari alongwith Const. Duli Chand, Const. Shispal Singh, Const. Nirpan Das, Const. N. Kumar, L/Naik D. Singh, Const. Jasbir Singh, Const. Amar singh and Const. J.R. Prasad. Due to unbearable beating and inhuman behaviour of Const. D.N. Rai the suspect Md. Rais Ansari died. Const. D.N. Rai had beaten him with lathi, burnt his beard, pubic hair and penis with a lighted candle. He also inserted a stick (short lathi) into his anus. As a result of inhuman

torture by Const. D.N. Rai and others Md. Rais Ansari, Md. Rais Ansari died at about 0330 hrs. on 6-6-93. Thereafter, his dead body was covered with a blanket by Const. D.N. Rai. As per the statement of L/Naik Ravindra Singh, Const. P. Ramachandran and HC T.K. Singh, they tried to stop Const. D.N. Rai and his group from torturing Md. Rais Ansari but they did not pay any heed to their advice not to commit such offence. Later on, the message of expiry of Md. Rais Ansari was passed by them. Under the leadership of HC T.K. Singh, as escort party comprising HC Y. Abhimanyam, Const. T. Raju and Const. Amar Singh was arranged to carry the dead body of Md. Rais Ansari from the CISF campus in a pick up van to pass through Godda, Bhagalpur, Kahalgaon, Chitra. At about 1930 hrs the dead body was thrown under a culvert on the road side by the escort party to hide from this criminal offence which is very serious on his part being a member of disciplined Armed Force of the Union. After receipt of the preliminary enquiry report from CISF Unit, ECL Seetalpur, the Group Commandant, Group Hqrs. Bombay was fully satisfied with the report and keeping in view of the involvement of a larger number of personnel in the most despicable and heinous act and the required evidence was not likely to come on record because of lack of independent evidence. It was not reasonably practicable to hold an enquiry under Rule 37(b) of the CISF Rules, 1969. Conduct of the petitioner was such to warrant imposition of penalty of dismissal as he had indulged himself in committing such a heinous act, hence, no interference is called for in this writ petition; same deserves to be dismissed.

A rejoinder has been filed by the petitioner. Facts have been denied. Petitioner was never asked to take Mohd. Rais Ansari to the police from quarter guard area. Whenever a person is taken out from quarter guard area, there has to be written orders in respect of the same issued to the constables etc. No such written order was ever given to the petitioner and it manifests that the petitioner never took the deceased with him. There was conspiracy against the petitioner. Petitioner has been falsely implicated and made a scape goat in the offence.

An additional return has been filed by the respondents. Facts have been repeated. It is asserted that petitioner was involved in the offence of committing such a heinous act, he had been remiss and negligent in the discharge of his lawful duty, hence, he was dismissed which is very commensurate, power has not been misused.

An additional rejoinder has also been filed in which it is submitted that petitioner's service record was good. He had disciplined service career. He was rewarded 6 times from 1991 to 1994. There was no possibility of indulging in the heinous crime.

Shri Avinash Jargar, learned Counsel for the petitioner, has submitted that it was possible to conduct an enquiry in the case; as such power u/s 37(b) of the CISF Rules, 1969 could not have been exercised in the facts and circumstances of the case. Facts are disputed. Petitioner ought to have been given opportunity of defence, in the inquiry to be held as provided in Rule 34 which contains

procedure for imposing major penalty; as enquiry itself has been dispensed with, an order of termination of service deserves to be quashed.

Ms. Indira Nair, learned Sr. Counsel with Ms. Jasmin Channa appearing on behalf of the respondents, has submitted that offence was heinous and considering the peculiar facts and circumstances of the case, decision was taken to dispense with the enquiry as large number of personnels were involved in despicable and heinous act. It was considered that independent evidence was not available, hence, enquiry was dispensed with.

The main question for consideration is whether dispensation of enquiry under Rule 37(b) can be said to be justified in the facts & circumstances of the case in the instant case. It is clear that FIR lodged. Police has found that case was not worth investigation. Final report was submitted. It was not a case where the order was passed forthwith. The incident took place in the intervening night of 5/6th June, 1993. Order was passed on 23-7-94. In such a serious offence and charge, in my opinion, full opportunity ought to have been given to the petitioner of defending himself after following the due procedure of imposing the major penalty as prescribed under Rule 34 of CISF Rules, 1969. Charge-sheet was not issued. The reasons which have been assigned in the Order (P-2) for dispensing with the enquiry that offence is despicable and heinous, can not be a ground to dispense with the enquiry. Facts were disputed, thus, the enquiry was necessary before the right to livelihood is taken away. There is no presumption that unit persons would only support the petitioner and they are not independent persons. Merely because large number of persons involved, the petitioner could not have been singled out, in the facts and circumstances of the case for imposition of punishment of dismissal from services as per Order (P-2). In my opinion, the formation of the opinion in Order (P-2) to dispense with the enquiry can not be said to be justified in the facts and circumstances of the case. In similar circumstances, the Apex Court in S.J. Meshram v. Union of India,, 1987 (Supp) SCC 164) and in Union of India and Others Vs. Kishorilal Bablani, , has laid down that enquiry should be held.

Resultantly, the writ petition is allowed. Impugned Order (P-2) is quashed. Respondents are at liberty to conduct enquiry as per Rule 34 of the CISF Rules, 1969. It is stated by respondents' Counsel that enquiry has to be held by the respondents. The question of back wages shall depend upon the enquiry which is to be held by the respondents, however, petitioner has to be reinstated owing to the quashment of the impugned Order (P-2). Parties to bear their own costs as incurred.