
(2015) 02 JH CK 0066
In the Jharkhand High Court
Case No : Writ Petition (S) No. 6626 of 2007

Firoj Khan

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 20-02-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2015) 2 JLJR 261

Hon'ble Judges : Pramath Patnaik, J.

Bench : Single Bench

Advocate : S.N. Pathak, Senior Advocate, for the Appellant; Faiz-ur-Rahman, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Pramath Patnaik, J.—In the instant writ application, the petitioner has inter alia, prayed for issuance of writ in the nature of certiorari for quashing order dated 17.05.2002 passed by the disciplinary authority and the order dated 30.09.2002 passed by the appellate authority and also order dated 03.07.2003 passed by revisional authority whereby and whereunder the respondents have imposed punishment upon the petitioner, in the departmental proceeding, subjecting the petitioner to minimum pay-scale and stopping of increments for three years in that minimum pay-scale and also the increments will have the effect of the future pay scale and nothing be paid except the subsistence allowance in the period of suspension and the petitioner further has prayed for payment of the suspension period i.e. from 09.11.2001 to 13.02.2002.

2. The factual matrix, as revealed and stated in the writ application in a nutshell, is that the petitioner was appointed on 18.03.1993 as constable at Shaktinagar in Central Industrial Security Force (hereinafter referred to as the "C.I.S.F.") in Uttar Pradesh. After undergoing training at R.T.C., Arrenacullam on 17.01.1994, he was posted in B.S.L, Bakau and then on 26.07.1999 he was posted at A.T.C., Ranchi. On 09.11.2001 a disciplinary proceeding was initiated and charges were

framed against the petitioner in contemplation of departmental enquiry. As per the statement of Article of Charge framed against the petitioner, under Annexure 1 to the writ application, petitioner was detailed for induction duty at Kolkata Airport on 07.11.2001 and he was informed by the Coy Commander and CHM of HMTP Coy to report to party in-charge of H.E.C contingent on 07.11.2001 (Afternoon) for collection of Arms and Ammunitions and to move for Kolkata Airport by Hatia-Howrah Express. But he did not turn up and intentionally remained absent without leave (AWL) to avoid induction duty at Kolkata Airport. Neither he intimated any of his problem nor he had taken any permission from the competent authority and the act of the petitioner tantamounts to gross indiscipline, disobedience of lawful order of his superiors, gross negligence and dereliction of his duty being a member of an Armed Force of Union and accordingly statement of imputation of charge or negligence, dereliction of duty, indiscipline and disobedience of lawful orders of his superiors, in support of Article of Charge, was framed against the petitioner. Consequent thereupon, the petitioner was suspended vide order dated 09.11.2001, under Annexure 2 to the writ application. Vide order dated 31.01.2002, under Annexure 3 to the writ application, enquiry officer was appointed to enquire into the matter, who submitted inquiry report (Annexure 4), which was served upon the petitioner vide memorandum dated 11.04.2002, vide Annexure 5 and in pursuance thereto the petitioner submitted his explanation. The impugned order of punishment dated 17.05.2002 has been passed, vide Annexure 6, against which the petitioner filed an Appeal, which was rejected vide order dated 30.09.2002, under Annexure 7 to the writ application. Against the order of appellate authority, Revision was filed before the Director General, C.I.S.F, who vide order dated 03.07.2003, under Annexure 8 to the writ application, rejected the said Revision. Being aggrieved by the order passed by the disciplinary proceeding, appellate authority and the revisional authority, the present writ petition has been preferred by the petitioner praying for the aforesaid reliefs.

3. The respondents have filed the counter affidavit repelling the assertions made in the writ application. It has been stated and submitted in the counter affidavit that the petitioner was placed under suspension by the competent authority vide order dated 09.11.2001 and was charge-sheeted under Rule 36 of the C.I.S.F. Rules-2001 by the Commandant, C.I.S.F Unit, H.E.C., Ranchi and on completion of departmental enquiry, the Enquiry Officer submitted his inquiry report and found the charges levelled against the petitioner proved. The disciplinary authority having agreed with the inquiry report and findings of enquiry officer dated 6.4.2002, supplied a copy of the said enquiry report to the petitioner vide letter dated 11.04.2002 with a direction to make representation, if any, against the enquiry report, within 15 days of its receipt. The petitioner acknowledged the receipt of the inquiry report on 14.04.2002 and submitted his written representation to the disciplinary authority on 20.04.2002. Subsequently, the disciplinary authority after careful examination of all records passed the impugned order. Being aggrieved of the order of penalty by disciplinary authority,

the petitioner filed Appeal dated 03.07.2003, which was also rejected being devoid of any merit and thereafter the petitioner filed Revision petition dated 17.05.2002, which was considered and the same was rejected being devoid of any merit vide order dated 03.07.2003. The order of disciplinary authority, appellate authority and revisional authority have been annexed as Annexures A, B and C respectively to the counter affidavit. It has been reiterated in the counter affidavit that the disobedience of lawful order of superior officer and indiscipline act of petitioner is grave in nature in disciplined force and the act of the respondents cannot be termed as illegal and arbitrary against the provisions of law. Moreover, the petitioner being a member of the armed force of the union is expected to maintain high standard of conduct and discipline but the petitioner failed to do so and brought misdemeanor by doing undesirable misdeeds. So far as reduction of minimum pay-scale is concerned, it has been submitted that the Commandant being the appointing authority and the disciplinary authority is fully competent to award penalty of reduction of pay in lower time scale to any enrolled member of the Force as empowered under sub-rule (1) and (3) of C.I.S.F. Rules-2001 specified in Schedule 1, as per Annexure D and E to the counter affidavit.

4. Heard Dr. S.N. Pathak, learned senior counsel for the petitioner and Mr. Faiz-ur-Rahman, learned counsel appearing for respondents-Union of India.

5. Learned senior counsel for the petitioner has strenuously urged that the respondents-authority, without appreciating the fact that the absence was only one day and that was also because of compelling circumstances, as the petitioner was hospitalized because of acute pain in his abdomen, which finds support from medical certificate, discharge slip, X-ray report and admission by the inquiry officer, the appellate authority and revisional authority, the impugned orders have been passed. Learned senior counsel for the petitioner further submits that for absence of one day three punishment in one proceeding for a single charge has been awarded by the respondents-authority, which is harsh, excessive and disproportionate to the charges, as such the punishment order should be quashed and set aside.

6. In support of his argument, learned counsel for the petitioner has relied upon the case rendered in the case of B.C. Chaturvedi Vs. Union of India and others, , specially on paragraphs 18, 22, 23, 24 and 26. Learned counsel further relied on the case rendered in the case of Bhagat Ram Vs. State of Himachal Pradesh and Others, , specially paragraphs 5 and 6.

7. Learned counsel for the respondents on the other hand has vehemently submitted that petitioner being found of guilty of charge has been awarded just punishment by the disciplinary authority and there has been no procedural irregularity in conducting disciplinary proceeding, therefore, there is absolutely no ground to interfere with the impugned order of punishment by the disciplinary authority as affirmed by the appellate authority and revisional authority.

8. On perusal of the records, it is quite evident that there has been no procedural irregularity from the initiation of disciplinary proceeding till its culmination as the petitioner has been found guilty of the charges by the enquiry officer. The Hon''ble Apex Court in the case of State of U.P. and Others Vs. Raj Kishore Yadav and Another, at paragraph 4 has held that:

"4. ...It is a settled law that the High Court has limited scope of interference in the administrative action of the State in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India, and, therefore, the findings recorded by the enquiry officer and the consequent order of punishment of dismissal from service should not be disturbed.... " The Hon''ble Apex Court further in the case of Krushnakant B. Parmar Vs. Union of India (UOI) and Another, has held that High Court under Article 226 cannot disturb the facts and findings given by the disciplinary authority.

9. Therefore, after having heard counsel for the parties at length and after perusing the entire materials available on record, the moot question which falls for determination by this Court is as to whether the impugned order of punishment can be interfered with by this Court on the ground of doctrine of proportionality or in other words on the question of quantum of punishment.

10. The Hon''ble Apex Court in the case of Union of India and another Vs. G. Ganayutham (Dead) by LRs., held that in the matter of penalty imposed in a disciplinary case, unless the Court/Tribunal opines in its secondary role, that the administrator was, on the material before him, irrational, the punishment cannot be quashed.

11. The Hon''ble Apex Court in the case of Apparel Export Promotion Council Vs. A.K. Chopra, held as under:

"...The High Court should not have substituted its own discretion for that of the authority. What punishment was required to be imposed, in the facts and circumstances of the case, was a matter which fell exclusively within the jurisdiction of the competent authority and did not warrant any interference by the High Court. The entire approach of the High Court has been faulty. The impugned order of the High Court cannot be sustained on this ground alone"....

12. The Hon''ble Apex Court further in the case of B.C. Chaturvedi Vs. Union of India and others, has held that the Court will not interfere with the order, unless the punishment order is one which shocks the conscience of the Court. Similar view has been expressed by the Hon''ble Apex Court in the case of Madhya Pradesh Electricity Board Vs. Jagdish Chandra Sharma, .

13. The Hon''ble Apex Court in the case of Bhagat Ram Vs. State of Himachal Pradesh and Others, has held that it is equally true that the punishment imposed must be commensurate with the gravity of the misconduct and any penalty disproportionate to the gravity of the misconduct will be violative of Article 14.

14. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, I am of the opinion that the writ application does not warrant any interference by this Court and the same is dismissed, being devoid of any merit.