
(2013) 02 JH CK 0053
In the Jharkhand High Court
Case No : CWJC No. 1882 of 1998 (R)

Hari Om Sharma

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 28-02-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 2 AJR 684 : (2013) 2 JLJR 25

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Rajesh Kumar, for the Appellant; Mokhtar Khan, Faiz-ur Rahman and D.K. Malityar, for the Respondent

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J.—Heard the counsel for the parties. The order of punishment dated 2.8.1997 (Annexure-10) passed by the Commandant, CISF Unit, BSL by which petitioner was removed from service is under challenge in the present writ application. The appellate order dated 4.11.1997 (Annexure-11) passed by the D.I.G., CISF Unit confirming the punishment is also under challenge so is the Office order dated 27.1.1998 (Annexure-12) passed by the Inspector General, Eastern Sector Headquarters, Patna whereby the mercy appeal (revision) of the petitioner has also been rejected.

2. The short facts of the case are that the petitioner was working as a constable in the Central Industrial Security Force (C.I.S.F.) at the relevant point of time when on complaint of the Sub-Inspector-Fire, P.K. Thapliyal made on 13.1.1997, a departmental proceeding was initiated against the petitioner for charges of major misconduct. The petitioner was also placed under suspension by the order dated 13.1.1997 (Annexure-2). The charge-sheet dated 4.4.1997 (Annexure-4) indicates that the petitioner was charged with gross misconduct and indiscipline as he had assaulted the Sub-Inspector, P.K. Thapliyal injuring him on 9.1.1997 at about 15.15 hours. The petitioner made his reply on the charges and, thereafter,

it being found unsatisfactory, an inquiry officer was appointed. Petitioner objected to the appointment of the said inquiry officer, who was of the rank of Inspector and requested for appointment of another inquiry officer not below the rank of Assistant Commandant. The said request was rejected by the disciplinary authority as being devoid of merit and petitioner was asked vide letters dated 19.5.1997, 27.5.1997, 11.6.1997 and 16.6.1997 to cooperate with the inquiry officer in the departmental inquiry. The petitioner, however, did not turn up in the said inquiry. The inquiry officer, thereafter, conducted the inquiry ex-parte and submitted his findings to the disciplinary authority wherein he found the charge levelled against the petitioner to be proved. During the course of the inquiry 7 witnesses were examined. P.W. 1, Saaudagar Singh deposed that on the fateful day after hearing noise he came out to find that the petitioner was running out of the room and the S.I., P.K. Thapliyal was also coming out of the room with blood oozing out from his lateral part of his head and was told by one constable Ajit Singh that he had been assaulted by the petitioner. P.W. 2, Premchand, who was also constable gave his statement that he also rushed on hearing noise and found the petitioner running out of the room of S.I. in a P.T. Dress and while coming out of the room, in haste he also fell down. Similarly, P.Ws. 2 to 6 have also deposed about the incident and on the basis of which the inquiry officer arrived at a finding of guilt of the delinquent-petitioner. Petitioner, thereafter was given a copy of the inquiry report for submitting his representation, if any within 15 days. The petitioner's representation had been submitted before 30.6.1997 within the time fixed for filing representation. The disciplinary authority i.e. Commandant of C.I.S.F. Unit B.S.L., thereafter, by a detailed reasoned order passed the order of punishment dated 2.8.1997. The disciplinary authority took into account the grounds raised by the petitioner that his request for change of inquiry officer was rejected and recorded in his findings that the petitioner has failed to make out a valid ground for change of the inquiry officer. He has also stated that the inquiry was conducted ex-parte since, petitioner did not cooperate in the inquiry by turning up before the inquiry officer. The disciplinary authority after consideration of the entire evidences including the statement given by the witnesses, the representation as also the report of the inquiry officer, came to a finding that the petitioner had committed gross misconduct in a uniformed service like the C.I.S.F. for which he should be imposed maximum penalty by removing him from service. The petitioner, thereafter, preferred appeal before the D.I.G., C.I.S.F. The Appellate Authority by the order dated 4.11.1997 discussed all the grounds which have been taken by the petitioner-appellant, which were mere reiteration of the grounds taken before the inquiry officer inter alia that the inquiry officer was not changed, conducting ex-parte inquiry and the disciplinary authority has not considered his defence. Thereafter, the appellate authority also came to a concurrent finding that the order of the punishment imposed upon the petitioner does not suffer from any error and accordingly, the punishment of removal from service was affirmed. Petitioner once again preferred revision/mercy appeal. It is submitted by the counsel for the respondent that there is no provision of any mercy appeal rather the same

was treated as revision. Accordingly, the revision preferred by the petitioner was considered by the Inspector General of C.I.S.F., Eastern Headquarters, who again discussed the entire grounds raised by the petitioner enumerated as (a) to (g) in the order dated 27.1.1998 and the order of punishment and the appellate order were also confirmed.

3. Counsel for the petitioner, during the course of his submissions has assailed the impugned order primarily on the grounds that the inquiry officer was not changed despite request of the petitioner made before the disciplinary authority; that the inquiry was conducted in an ex-parte manner; that the petitioner was not given adequate opportunity, since no second show cause was served upon him before passing of the impugned order by which maximum penalty of removal from service was imposed. Petitioner has relied upon the judgment passed by the Hon"ble Supreme Court of India rendered in the case of B.D. Gupta Vs. State of Haryana, , para 16 thereof to submit that in order to enable the petitioner to make effective representation against the proposed punishment, the second show cause is an essential requirement which has not been followed in the instant case and therefore, the entire orders passed by the disciplinary authority and subsequently affirmed by the higher authorities are vitiated in law.

4. Counsel for the respondents on the other hand submitted that the petitioner was proceeded against for serious misconduct of assault on a superior officer in the uniformed disciplined force like CISF. The petitioner made representation for changing the inquiry officer, which was rejected by the disciplinary authority as no valid reason was given by the petitioner. The disciplinary authority communicated to the petitioner at least on 5 occasions to participate in the inquiry, which he failed to do so and, thereafter, the inquiry was proceeded ex-parte after considering the evidences of the witnesses, adduced by the presenting officer before the inquiry officer. Thereafter, he came to a finding of guilt of the petitioner for the alleged charges. It is further submitted that petitioner was served copy of the inquiry report and was given 15 days time for filing representation, which was filed within time and after that the disciplinary authority took into account the inquiry report, discussed all the evidences adduced during the inquiry as also the representation of the petitioner on the inquiry report and has come to a cogent finding of fact relating to the guilt of the petitioner which does not suffer from perversity or error. Counsel for the respondent has further submitted that in a case of disciplinary proceeding, this Court is concerned only with the decision making process in exercise of judicial review and does not sit in an appeal as appellate body. This is not a case of no evidence. Sufficiency of evidence is not to be weighed while considering such matter arising out of a disciplinary proceeding in exercise of the powers under Article 226 of the Constitution of India. It is further submitted on behalf of the respondents that the petitioner has preferred an appeal as also revision and consistent findings have been arrived at by the higher authorities, which should not be interfered with as the petitioner has failed to make out a case of perversity or error of law or on facts. It is further submitted that petitioner has

got adequate opportunity to file his representation, which he filed within the time limit and the disciplinary authority passed the order of punishment after considering his representation and the evidences adduced on behalf of the presenting officer. Therefore, no prejudice as such has been caused to him before the order of punishment has been passed.

5. I have heard counsel for the parties at length and gone through the relevant materials on record. From the facts narrated in the earlier part of the order, it appears that petitioner has been proceeded against for major misconduct for assaulting Sub-Inspector in the organization where he was employed as constable. He could not make out a case for change of the inquiry officer in the absence of valid reasons. The inquiry officer gave him adequate opportunity to participate in the inquiry which he failed to do so and thereafter, the inquiry was proceeded ex-parte, which established the guilt of the petitioner. 6 witnesses were examined by the inquiry officer and thereafter he submitted his report, copy of which was served upon the petitioner and as referred in the impugned order of punishment, he was given opportunity to file representation in his defence against the charges levelled against him, which he did also and thereafter the impugned order of punishment was passed after detailed reason recorded therein. For such major misconduct in the uniformed service like C.I.S.F., the punishment of removal from the service is not at all disproportionate to the charges levelled and established against the delinquent for assaulting a superior authority. The appellate as well as revisional authority has come to a consistent finding of fact by affirming the original order. Petitioner had never made the ground before the appellate or the revisional authority or in the memo of the writ petition that no second show cause was served upon him before imposing the impugned order. Even from perusal of the writ petition it appears that no such ground has been raised before the Court either. On the basis of the records produced by the respondents on the direction of this Court earlier, it has been stated by the learned counsel for the respondent that petitioner had been served the copy of the inquiry report and also asked to file his representation in his defence against the findings of the inquiry officer for the charges levelled against him, before the disciplinary authority proceeded to pass the impugned order of removal from service. The requirement of the second show cause is to enable the delinquent to offer his defence on the findings of guilt recorded by the enquiry officer before the order of punishment is passed by the disciplinary authority. In the instant case since the aforesaid requirement was also met, no prejudice has been caused to the petitioner. So the judgment relied upon by the petitioner does not help him as in the instant case, admittedly the petitioner was granted opportunity to file his representation on the inquiry report before the order of punishment was passed. In these circumstances, I find that the order of punishment is not excessive or disproportionate to the charges of misconduct. The petitioner has failed to make out a case for interference in the impugned orders. Accordingly, this writ petition is dismissed as devoid of any merit.