
(2016) 03 JH CK 0147
In the Jharkhand High Court
Case No : W.P.(S) No. 1275 of 2009

Himanshu Verma (Ex-Constable)	Vs	APPELLANT
Union of India and others		RESPONDENT

Date of Decision : 16-03-2016

Acts Referred:

Central Industrial Security Force Rules, 2001 — Rule 36
Constitution of India, 1950 — Article 226

Citation : (2016) 2 JBCJ 307 : (2016) 3 JCR 83 : (2016) 2 JLJR 280

Hon'ble Judges : Pramath Patnaik, J.

Bench : Single Bench

Advocate : Binod Singh, S.C. (L &C), for the Respondent

Final Decision : Dismissed

Judgement

Pramath Patnaik, J. C.A.V. - In the accompanied writ application, the petitioner has inter alia, prayed for quashing final order dated 19.02.2008 (Annexure 2) passed by the disciplinary authority-respondent no. 3 pertaining to punishment of removal from services and for quashing of the appellate order dated 30.04.2008 (Annexure 3) passed by respondent no. 4 and also the revisional order dated 28.11.2008 (Annexure 6) passed by respondent no. 5 rejecting the revisional application of the petitioner and confirming the order of the disciplinary and appellate authority and also for direction upon the respondents to give all consequential benefits.

2. Heard Mr. B.K. Dubey, learned counsel for the petitioner and Mr. Binod Singh, learned counsel for the respondents-State and perused the documents available on record.

3. Sans details, the facts as described in the writ application, in a nutshell is that the petitioner being an employee of CISF while posted at Tripler Belt Area of Dhanbad chased away the miscreants indulged in rampant smuggling of coal. It is alleged that on the basis of one false and concocted story, one Namita Bouri

lodged an F.I.R alleging commission of rape against the petitioner. Thereafter, the petitioner was put under suspension w.e.f 13.06.2007 vide order dated 19.06.2007 and on 01.09.2007, the petitioner was served with a memo of charge containing three article of charge. Pursuant thereto, the petitioner submitted written statement dated 11.09.2007 denying imputation of charges. Thereafter, the disciplinary authority appointed a Presenting Officer, who during departmental proceeding examined 7 prosecution witnesses, all members of the force, 2 Court witnesses and petitioner was also examined and prepared the enquiry report and found the charges levelled against the petitioner to be proved and placed the same before the disciplinary authority, who after serving the copy of inquiry report to the petitioner and considering the reply submitted by petitioner passed the final order awarding the punishment of removal from services, which has been confirmed by the appellate as well as by revisional authority.

4. It has been contended by learned counsel for the petitioner that petitioner has been honourably acquitted in the criminal case lodged under Section 376 of the Indian Penal Code vide judgment dated 08.09.2008 passed in S.C. No. 1 of 2008/ S.T. No. 2 of 2008. Learned counsel for the petitioner further submitted with vehemence that the departmental proceeding and criminal proceeding being based on the same set of charges and in view of the fact that the petitioner has been honourably acquitted, the order passed by the disciplinary, appellate and revisional authority is not legally sustainable. It has been submitted that in any event, the punishment imposed on the petitioner is too harsh and does not commensurate with the charges levelled. Learned counsel further submitted that out of the three charges, Charge No. 2 goes in view of honourable acquittal of petitioner in the criminal case. So far as charge mentioned in Article No. 3 is concerned, it is nothing but is a reference of previous punishments, which amounts to double jeopardy.

5. In order to buttress his argument, learned counsel for the petitioner has referred to a decision rendered in the case of Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Anr. as reported in (1999) 3 SCC 679, wherein the Hon"ble Apex Court has held that "Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case".

On the same issue, learned counsel for the petitioner further referred to the judgments rendered in the case of Ram Khelawan Paswan v. The State of Jharkhand and Ors as reported in 2008 (2) JLJR 618.

6. Counter affidavit has been filed on behalf of respondents repelling the contentions made in the writ application. In the counter affidavit, it has been submitted that the petitioner, ex-constable of CISF, was proceeded under Rule 36

of CISF Rules, 2001. It has been submitted that preliminary hearing of the case was conducted on 09.10.2007 and during the preliminary hearing, the petitioner refused to take assistance of any member of the Force and all the prosecution witnesses and Court Witnesses were examined by the Enquiry Officer. In the departmental proceeding sufficient opportunity was afforded to defend his case. However, the charges levelled against the petitioner was found proved. As regard to Charge No. 1, wherein the petitioner was found absent on 13.06.2007 during debriefing, the petitioner was found lying in his bed in Unit under the influence of liquor, which was identified by the CISF Personnel. As regards charge no. 2, that the petitioner had outraged the modesty of a civilian lady, namely, Smt. Namita Bouri, the allegation has also been proved during the course of departmental enquiry. The version of the petitioner that he has been acquitted in the criminal case, therefore, he should be exonerated from the allegation levelled in the departmental proceedings, this version of the petitioner carries no force as in the criminal proceedings, the ingredients are looked as per the provisions of I.P.C and as per the evidence Act, whereas in the departmental proceedings preponderance of probability is looked into. As regards charge no. 3, the petitioner has been found repeating misconduct time and again, for which, he was awarded three punishments in past but he failed to mend himself though sufficient opportunity were afforded to him. Learned counsel for the respondents further submits that since the charges levelled against the petitioner have been proved, hence, in view of the concurrent findings by three authorities, the scope of judicial review under Article 226 of the Constitution of India can be remotely applied in this case.

7. After having heard learned counsel for the respective parties at length and on perusal of the documents on record, the petitioner has not been able to demonstrate any legally tenable point to warrant interference by this Court, due to following facts, reasons and judicial pronouncement:

(I) Admittedly, in the case at hand, there has been no procedural irregularity from the initiation of disciplinary proceeding till its culmination to dismissal of petitioner from services. Hence, in view of the seriousness of allegations and concurrent findings by three authorities, namely, disciplinary, appellate and revisional authority, the power of judicial review cannot be applied. It is well settled that the fact findings given by three consecutive authorities, based on material on records cannot be interfered with. The Hon''ble Apex Court in the case of State of U.P. and Another v. Man Mohan Nath Sinha and Another as reported in (2009) 8 SCC 310 at paragraph 15 has held that:

" 15. The legal position is well settled that the power of judicial review is not directed against the decision but is confined to the decision-making process. The court does not sit in judgment on merits of the decision. It is not open to the High Court to re-appreciate and reappraise the evidence led before the inquiry officer and examine the findings recorded by the inquiry officer as a court of appeal and reach its own conclusions. "

Applying the aforesaid principles of Hon''ble Apex Court, as indicated herein above, I find no reason to interfere with the impugned order.

(iii) So far as Charge No. 1, wherein the petitioner was found absent on 13.06.2007, the petitioner was found lying in his bed in Unit under the influence of liquor, has been proved in the departmental enquiry. As regard, charge no. 3, it is also alleged that the petitioner has been found repeating misconduct time and again, for which, he was awarded three punishments in past but he failed to mend himself.

(ii) So far as the judgments referred by learned counsel for the petitioner is concerned, there is no quarrel over the ratio decided but the decisions rendered therein is not not applicable to the case in hand.

8. As a logical requiter to the discussions made in foregoing paragraphs, the writ petition, being devoid of any merit, does not warrant interference by this court, which is accordingly is dismissed.