
(2015) 02 JH CK 0162

In the Jharkhand High Court

Case No : Writ Petition (S) No. 1831 of 2006

Indra Pal Singh

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 13-02-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 2 AJR 439

Hon'ble Judges : S.N. Prasad, J

Bench : Single Bench

Advocate : S.K. Verma, for the Appellant; Faizur Rahman, C.G.C., Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sujit Narayan Prasad, J.—The petitioner has challenged the Order dated 20-7-2002, as contained in Memo No. 1085 issued under the signature of Deputy Inspector General, CISF, BSL, Bokaro by which penalty of reduction of pay by one stage from Rs. 8550/- to Rs. 8275/- in the time scale of pay for a period of two years in the pay scale of Rs. 8000-275-13500/- with immediate effect and further the petitioner shall not be entitled to any increment during the period of reduction and the same shall have effect of postponing his future increment of pay. The petitioner has further challenged the order dated 21-1-2003, as contained in Memo No. 309 passed by the Inspector General, CISF, East Sector Headquarter, Patna by which the appeal preferred by the petitioner against the order dated 20-7-2002 has been rejected and revisional order 31-7-2003 whereby the revision filed by the petitioner was rejected. Heard the parties and perused the documents on record.

2. The brief fact of the case of the petitioner is that the petitioner while holding the post of Inspector at BSL Unit at Bokaro was served with a memorandum of charge for allegation of his work as prejudicial to good order and discipline as he failed to restrain CISF Personnel from entering into Lewatand village which

resulted in scuffle between Lewatand villagers and CISF personnel of CISF Unit BSL Bokaro. Inaction on the part of the petitioner tarnished the image of CISF in the eyes of public. Besides instead of controlling CISF personnel from indulging in un-desired acts, he instigated them to do so. The above acts on the part of the petitioner amounts to gross misconduct, dereliction of duty and unbecoming of a good member of the Armed Force.

3. Counsel for the petitioner has submitted that after the incident took place a Court of inquiry was conducted in which the committee had reached to the conclusion that it is not only the petitioner, rather other CISF personnel were also involved and in order to save the life of one of the CISF personnels, the things had happened.

4. After conclusion of court of inquiry, a memorandum of charge was served upon the petitioner with a direction to appear before the Inquiry Officer to face the inquiry. The petitioner accordingly appeared before the Inquiry Officer and defended his case. Before the Inquiry Officer altogether ten witnesses have been examined and the documents have also been produced. On the basis of the material produced before the Inquiry Officer, the Inquiry Officer had submitted the report wherein according to the petitioner charge has not found to be proved.

5. The inquiry report was submitted before the disciplinary authority i.e. the Deputy Inspector General, who has passed the impugned order of punishment. Against the order of punishment a memorandum of appeal has been filed before the Inspector General who according to the petitioner has not appreciated the entire aspect of the matter and confirmed the order of punishment.

6. Counsel for the petitioner has assailed the impugned order on the ground:

"(i) that in the inquiry report the charge has not been found to be proved, but the disciplinary authority has imposed the punishment without following due procedure,

(ii) that the order of punishment is too harsh because in the Court of inquiry it has come that it is not only the petitioner, rather several other CISF personnel were found involved in the same only to save life of one of the personnel."

7. On the other hand, learned counsel for the respondents has submitted that the order of punishment has been passed after giving all opportunity of being heard. The inquiry report has been submitted wherein in the last line it has come that the charge is not found to be proved, but in the upper part of the inquiry report the Inquiry Officer has given finding regarding proof of the charge.

8. Further submission has been made by the learned counsel for the respondent that the disciplinary authority has passed the order of punishment after giving disagreement note and thereafter the impugned order has been passed by the disciplinary authority.

9. After hearing the parties and going through the documents on record, the

reason due to which the punishment has been inflicted upon the petitioner which as per the memorandum of charge is that due to inaction of the petitioner the image of force has tarnished in the eye of the public and he instigated the other CISF personnel in causing disturbance which amounts to gross misconduct, dereliction of duty and unbecoming of a good member of the Armed Force. Thus, the allegation has been levelled that the petitioner being a member of disciplined force in spite of controlling the situation, has instigated the other personnel to enter into the colony of local villagers and caused disturbance there which according to the charge is not expected from a member of the disciplined force.

10. Although the court of inquiry was conducted by the respondent authorities wherein it has come after that other personnel of the Force were also involved. The contention of learned counsel for the petitioner that in the court of inquiry nothing has come against the petitioner is contrary to the record because in the court of inquiry the name of other personnel have come including the petitioner who were involved in the incident.

11. The respondents - Central Industrial Security Force, on the basis of the finding given by the court of inquiry has framed the charge. The petitioner has been provided an opportunity to defend as per the Rule laid down in the Central Industrial Security Force Act, 1968 as also the rules. The witnesses have been called for their examination which were ten in numbers.

12. After perusal of the inquiry report it appears that all the witnesses have supported the case of incidence, due to reason that since one of the members of the Force had been abducted by the local villagers hence they had entered into the area only to save the life of his CISF personnel. But so far as the allegation levelled against the petitioner is concerned, all witnesses have supported the same.

13. From perusal of the inquiry report I find that the petitioner instead of preventing the members of the force from entering into Lewatand village, had instigated the CISF personnel to enter and thereafter scuffle took place and due to that image of CISF has tarnished in the Public. But however in the last one line the Inquiry Officer has given finding that the charge is not proved.

14. Counsel for the petitioner has placed much emphasis on the last line that the charge has not been proved, but the reliance placed by the counsel only on the last line cannot be accepted, because the inquiry report has to be read out in the entirety. The disciplinary authority after perusing the inquiry report and discussing the matter, second show-cause notice was issued to the petitioner asking him reply within fifteen days.

15. The disciplinary authority thereafter passed the impugned order of punishment whereby and where under the punishment of reduction of pay by one stage from Rs. 8550/- to Rs. 8275/- in the time scale of pay for a period of two years in the pay scale of Rs. 8000-275-13500/- with immediate effect and further the petitioner shall not be entitled to any increment during the period of

reduction and the same shall have effect of postponing his future increment of pay.

16. Learned counsel for the petitioner has submitted that the nature of punishment is major and the respondents can not impose simultaneously both minor and major punishments and as such on this ground the decision taken by the disciplinary authority is not sustainable.

17. With respect to the submission the order of punishment which has been mentioned under Rule-34 of Central Industrial Security Force Rules, 2001 wherein under the heading of major penalty 34(v) description of the punishment imposed against the petitioner has been made which is as follows:--

"34.(v) save as provided for in clause (viii) below, reduction to a lower stage in the time scale of pay for a specified period with further directions as to whether or not the enrolled member will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will have the effect of postponing the future increments of his pay."

18. The submission of learned counsel for the petitioner is that the nature of punishment both are minor and major because in the one hand the order has been passed for reduction of pay by one stage for a period of two years which is minor and subsequently the order has been passed to postpone the future increment which is major, but this contention of learned counsel for the petitioner cannot be accepted in view of the specific punishment prescribed in Rule-34(v) in course of the same the order of punishment has been passed reducing the pay scale of the petitioner to lower scale for a period of two years and further direction has been passed for postponing the future increment of his pay. Meaning thereby the respondent has imposed major penalty.

19. The minor penalty has been dealt with under said heading wherein under Rule 34(viii) it has been provided that reduction to a lower stage in the time scale of pay by one stage for a period not exceeding three years, without cumulative effect and will not adversely affect his pension.

20. The petitioner thereafter preferred an appeal before the Inspector General who after discussing the facts has confirmed the order passed by the disciplinary authority considering the gravity of the nature of allegation.

21. Thereafter, petitioner preferred revision before the revisional authority, which was dismissed by the order dated 31-7-2003 upholding the order passed by the disciplinary authority and appellate authority.

22. The petitioner admittedly was a member of disciplined Force and, as such, his action should be like a member of disciplined Force and not like a civilian, otherwise there will be no difference in between the civilian and a member of disciplined force. It is a fact that some scuffle had taken place but that does not mean that a member of disciplined Force will take the law in hand and will make trouble. If it will be permitted then there will be a chaotic situation in the society.

Taking this aspect into consideration the disciplinary authority has inflicted the punishment and no other harsh punishment has been imposed like dismissal from service, removal from service or compulsory retirement.

23. The disciplinary authority after perusal of the entire record of Inquiry Officer and after appreciating the deposition made by the witnesses came to the conclusion of charge being proved and accordingly imposed the impugned order/punishment. The same has been upheld by the appellate authority. It is not a case of the petitioner that he has not been provided with adequate opportunity of being heard, rather from perusal of the record, it appears that the petitioner has been provided with all opportunity of defending himself.

24. The disciplinary authority has come to the finding on the basis of the submission made by the witnesses and this Court sitting under Article 226 of the Constitution of India is not expected to disturb the finding by appreciating the evidence as has already been held by Hon"ble Supreme Court in the case of State of U.P. and Another Vs. Man Mohan Nath Sinha and Another, AIR 2010 SC 137 : (2009) 123 FLR 162 : (2009) 12 JT 479 : (2009) 11 SCALE 377 : (2009) 8 SCC 310 : (2009) 2 SCC(L&S) 435 : (2009) 14 SCR 348 : (2010) 1 SLJ 236 : (2009) 8 SLR 522 wherein at paragraph-15 Hon"ble Apex Court held as follows:--

"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 reappreciate 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.

...."

25. Applying ratio of Hon"ble Supreme Court in which judgment referred herein above and if compared with the facts of this case, the disciplinary authority after appreciating the evidence has found the charge proved and which has been affirmed by the appellate authority. In that view of the matter, I find no reason to interfere with the impugned order. Hence, the writ petition is dismissed.