
(2013) 07 PAT CK 0105
In the Patna High Court
Case No : CWJC No. 9031 of 2008

Jagbir Singh

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 16-07-2013

Acts Referred:

Citation : (2013) 4 PLJR 551

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Advocate : Pramod Kumar Sinha, for the Appellant; Priya Ranjan, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Kumar, J.—Heard Sri Pramod Kumar Sinha, learned counsel for the petitioner and Sri Kumar Priya Ranjan, learned Central Government Counsel, who appeared on behalf of all the respondents. The petitioner, who was a Head Constable (Driver) has approached this court while invoking its extraordinary writ jurisdiction with a prayer to quash an order dated 19th July, 2001 passed by the Commandant, C.I.S.F. Unit, BALCO, Korba/disciplinary authority (Annexure-6), whereby, the disciplinary authority has passed order for removal of the petitioner from service with immediate effect. The punishment has been imposed under Rule 34 of C.I.S.F. Rules, 1969. The petitioner has also prayed for quashing of Memo No. 3528 dated 3.4.2007 passed by Inspector General, C.I.S.F., Eastern Zone Headquarter at Patna (Annexure-13), order contained in Memo No. 2393 dated 25.7.2002 passed by Deputy Inspector General, Eastern Zone Headquarter at Patna (Annexure-10) and order contained in Memo No. 8409 dated 5.12.2001 passed by Deputy Inspector General, C.I.S.F., Eastern Zone Headquarter at Patna (Annexure-8).

2. Short fact of the case is that the petitioner was departmentally proceeded on two charges. First charge was that he overstayed for ten (10) days and second charge was that he overstayed for 272 days i.e. from 11.5.2000 to 6.2.2001

without any information. In the departmental enquiry after receipt of the report of the conducting officer the disciplinary authority by the impugned order i.e. Annexure-6 to the writ petition, has passed the order of removal of the petitioner from the service. Against order of disciplinary authority, the petitioner preferred appeal, which was dismissed vide Annexure-8 to the writ petition, whereafter, he preferred revision, which too was rejected by the competent authority.

3. Sri Pramod Kumar Sinha, learned counsel for the petitioner, while assailing aforesaid orders has argued that during the departmental proceeding he had brought on record sufficient material to show that his absence was bona fide, however, ignoring the defence of the petitioner, the conducting officer submitted his report against him. He further submits that the punishment of removal from service of the petitioner is disproportionate to the charges leveled against him. He submits that in case of disproportionate punishment this court can well interfere while exercising its writ jurisdiction. In support of his argument he has relied on Ranjit Thakur Vs. Union of India (UOI) and Others, . He has also placed reliance on Chairman cum Managing Director, Coal India Limited and Another Vs. Mukul Kumar Choudhuri and Others, He has further relied on another judgment of the Apex Court reported in Indu Bhushan Dwivedi Vs. State of Jharkhand and Another, . He submits that charge of overstay is not such a serious charge which warrants dismissal or removal from service, and as such, it is a fit case for setting aside the order of punishment and matter may be remitted back to the authority concerned.

4. Sri Kumar Priya Ranjan, learned Central Government Counsel has vehemently opposed the prayer of the petitioner. He submits that though the petitioner at the relevant time was only on probation, the authority concerned had proceeded against him departmentally and during departmental proceeding full opportunity was provided to the petitioner and only thereafter order of punishment has been imposed. So far quantum of punishment is concerned, he has referred to an order of the Delhi High Court, copy of same has been annexed as Annexure-1 to the counter affidavit, which has been filed on behalf of the respondents. He submits that charge of overstay in Uniform Services is treated as a serious charge, which warrants order of removal or dismissal. He submits that this view was approved by the Apex Court particularly in a case reported in (2005) 13 SCC 709 (Union of India and Ors. v. Datta Linga Toshatwad). It was submitted that Delhi High Court almost in identical case has approved the order of dismissal and Delhi High Court in paragraph No. 17 of the judgment, which is Annexure-1 to the counter affidavit of respondents, has quoted the view of the Apex Court regarding the quantum of punishment and misconduct in respect of Armed Forces personnel. He further submits that even in case of Chairman cum Managing Director, Coal India Limited and Another Vs. Mukul Kumar Choudhuri and Others, , the Apex Court had not interfered with the order of punishment. Though in the said case delinquent had fairly accepted his absence and gave plausible explanation and as such the petitioner may not get any assistance from the judgment of Mukul Kumar Choudhuri case. In any event, he submits that

during the departmental enquiry no irregularity or illegality was committed, rather petitioner was provided full opportunity to defend his case, and thereafter, punishment order was passed. He submits that order of disciplinary authority has been approved by the appellate authority as well as revisional authority by assigning detailed reasons, and as such, the writ petition is fit to be rejected.

5. Besides hearing learned counsel for the parties, I have also perused the materials available on record. On perusal of Annexure-6 to the writ petition, it is evident that petitioner at the relevant time was on probation. For the employees/officers while on probation there is no requirement for conducting departmental proceeding as provided in case of regular employees/officers, but in the present case even though the petitioner was a probationer, he was afforded full opportunity and regular departmental proceeding was initiated against him. From the order impugned the court is satisfied that no irregularity or illegality was committed during the departmental enquiry. So far quantum of punishment is concerned, the court is in complete agreement with the views expressed by Delhi High Court in case of Kuldeep Singh v. Union of India, the judgment of same has been annexed as Annexure-1 to the counter affidavit of respondents. Moreover, unauthorized absent in Armed Forces has been treated as serious misconduct by the Apex Court and removal or dismissal of such Armed Forces personnel has been approved by the Apex Court in Datta Linga Toshawad Case (supra). So far as the argument which was advanced by learned counsel for the petitioner that the delinquent had justified his stand before the conducting officer is concerned, the court is of the opinion that while exercising power of judicial review it would not be appropriate for this court to go into the merit and facts of the case since at the time of judicial review scope of High Court under its writ jurisdiction is very limited. This has been approved by the Apex Court in Chairman cum Managing Director, Coal India Limited and Another Vs. Mukul Kumar Choudhuri and Others, . In paragraph No. 13 of its judgment the Apex Court has noticed as follows:-- 13. It has been time and again said that it is not open to the High Court to examine the findings recorded by the inquiry officer as a court of appeal and reach its own conclusions and that power of judicial review is not directed against the decision but is confined to the decision-making process. In a case such as the present one where the delinquent admitted the charges, no scope is left to differ with the conclusions arrived at by the inquiry officer about the proof of charges. In the absence of any procedural illegality or irregularity in conduct of the departmental enquiry, it has to be held that the charges against the delinquent stood proved and warranted no interference.

I have also perused the order of the appellate authority as well as revisional authority. From the charges it is evident that it was not an isolated case of unauthorized absent on one occasion but from the charges it is evident that at least on two occasions he (petitioner) remained unauthorisedly absent. First charge was of 10 days of unauthorized absence and second charge in the present case is of unauthorized absence of 272 days. In view of the facts and circumstances particularly keeping in view the seriousness of the charges, the

court is of the opinion that petitioner may not get any help from the judgment of the Apex Court in Ranjit Thakur case (supra) or Indu Bhushan Dwivedi case (supra). In Ranjit Thakur case the allegation was of flouting the direction of the superior authority. So far as Indu Bhushan Dwivedi case is concerned, the said case was decided on peculiar facts and circumstances of the case. In the present case keeping in view the seriousness of the charges as well as the fact that the petitioner was on probation it would not be appropriate to interfere either on the merit of the case or on the quantum of punishment. I do not find any ground for interference. The writ petition stands dismissed.