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**(2015) 10 JH CK 0134**  
**In the Jharkhand High Court**  
**Case No : W.P. (S) No. 3911 of 2007**

Jiw Lal Ram

APPELLANT

Vs

The Union of India and Others

RESPONDENT

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**Date of Decision :** 30-10-2015

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2016) 1 JLJR 15

**Hon'ble Judges :** Pramath Patnaik, J.

**Bench :** Single Bench

**Advocate :** Rajiv Ranjan, Sr. Advocate and Shresth Gautam, Advocate, for the Appellant; Laxman Kumar, C.G.C., for the Respondent

**Final Decision :** Dismissed

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## Judgement

Pramath Patnaik, J.—In the aforesaid writ application, the petitioner has inter-alia prayed for issuance of a writ of certiorari for quashing the final order dated 29.07.2002 (Annexure-7) passed by the Commandant, CISF H.E.C. Ranchi pertaining to the order of dismissal from services and order passed in Appeal dated 15.03.2003/02.04.2003 (Annexure-9) by the Appellate Authority and also order of revision dated 5th March, 2004 (Annexure-11).

2. The facts as emanated from the averments of the writ application, in a nutshell, is that the petitioner was appointed by the competent authority as a constable under Central Industrial Security Force and was posted at C.I.S.F unit of Heavy Engineering Corporation Ltd. Ranchi. While continuing as such, on 15.10.2001 a complaint was made against the petitioner by the firing point officer that the petitioner was found in drunken conditions and was advised to deposit his rifle, but, he did not obey the lawful order given to him by his superior officer. On the basis of said complaint, a disciplinary proceeding was contemplated against the petitioner exercising powers conferred under sub-rule (1) of Rule 30 of CISF Rules 1969 the petitioner was suspended with immediate effect. On 07.01.2002 a memorandum of charge sheet was served upon the

petitioner with a direction for submitting the written statement within 10 days of the receipt of this memorandum. In pursuance to memorandum of charges, the petitioner submitted his reply on 08.02.2002. However, the respondents appointed an enquiry officer to enquire into the charges levelled against the petitioner, who submitted enquiry report on 19.06.2002 vide Annexure-4 to the writ application. During course of inquiry, the petitioner cross examined the P.Ws 1, 2, 7 and 9 during the course of recording statements in enquiry trial. However, P.Ws 3, 4, 5, 6 and 8 were not cross examined by the petitioner. It is submitted that none of the witnesses has confirmed that they have observed that the petitioner was seen in drunken conditions. It is submitted that medical enquiry was ordered by Assistant Commandant and accordingly, the petitioner was carried to the Sadar Hospital. It is further submitted that medical examination of the petitioner was also done, in which, it has been declared that he can completely control himself. However, the petitioner was not physically examined. Thereafter, basing on the inquiry report, final order dated 29.07.2002 vide Annexure-7 terminating the petitioner from the services was passed. Against the order of termination/dismissal the petitioner preferred an appeal before the Appellate Authority i.e. Deputy Inspector General CISF HEC Ranchi and the Appellate Authority dismissed the appeal filed by the petitioner on 15.03.2003 confirming the order of dismissal passed by the Disciplinary Authority. Being aggrieved by the order, the petitioner filed revision petition before the revisional authority who dismissed the revision petition vide order dated 05.03.2004 as per Annexure-11 to the writ application.

3. Being aggrieved by the order of dismissal/termination passed by the disciplinary authority being confirmed by the Appellate as well as Revisional Authority the petitioner left with no other alternative, efficacious and speedy remedy has approached this Court invoking extra-ordinary jurisdiction under Article 226 of the Constitution of India for redressal of his grievances.

4. Counter-affidavit has been filed on behalf of respondents controverting the averments made in the writ application. In the counter-affidavit, it has been submitted that the petitioner along with other CISF personnel was detailed to attend Annual Range Classification on 15.10.2001 at Bariatu Firing Range, Bariatu, Ranchi. On search in Bariatu firing range, the firing point officer Inspector/Exe Kameshwar Khan, Reserve Inspector found the petitioner is in drunken condition and sitting in water tanker behind the driver and Constable S.K. Singh of CIW. The petitioner was personally advised by Inspector/Exe Kameshwar Khan to deposit Rifle in the Kote and not move for firing range in such a drunken condition. But the petitioner did not obey the lawful order given to him by his superior officer. Thereafter, the range officer did not allow him for firing and sent him to Sadar Hospital, Ranchi for medical check up. Dr. S.K. Kisku, Medical Officer, Sadar Hospital, Ranchi examined the petitioner and made following remarks:--

"Examined J.L. Ram C. No. 802310208 of C.I.S.F., HEC, Ranchi and found the

following:--

Smell (mild) of alcohol is there in his mouth. He has taken the alcohol but can completely control himself."

On the basis of said medical examination report, preliminary enquiry report was submitted by Inspector/Exe F. Tirkey, upon which, the petitioner was placed under suspension w.e.f. 18.10.2001. Thereafter, memo of charge was served upon the petitioner on the allegation of gross misconduct, indiscipline, disobedience and dereliction of duty, under rule 36 of CISF Rules, 2001 (amended Rules-2003) by the Commandant, CISF Unit HEC, Ranchi.

In pursuance thereto the petitioner submitted his reply, which was found unsatisfactory. Thereafter, the departmental enquiry was conducted by the enquiry officer within the ambit of CISF Rules and regulation by giving sufficient opportunity to the petitioner to defend his case. Statements of all the prosecution witnesses were recorded in the presence of petitioner and opportunities were given to the petitioner by the enquiry officer for the cross examining the prosecution witnesses which he fully availed. During the course of departmental enquiry, the petitioner was supplied with the copies of statement recorded by the Enquiry Officer on day to day basis. The Enquiry Officer conducted the departmental enquiry on day to day basis and submitted his enquiry report on 20.06.2002 to the Disciplinary Authority holding all the charges as proved against the petitioner. The disciplinary authority accepted the enquiry report submitted by the enquiry officer and copy of enquiry report was supplied to the petitioner which was acknowledged on 26.06.2002 whereby the petitioner was directed to submit his reply against the enquiry report and the petitioner submitted his reply on 13.07.2002, which was received by the office of disciplinary authority on 16.07.2002. The disciplinary authority after considering the departmental enquiry proceeding agreed to the findings of the enquiry officer and passed an order of removal from services with immediate effect vide final order dated 29.07.2002. Being aggrieved by the penalty order of dismissal the petitioner preferred an appeal, which too was rejected being devoid of merit by the Appellate Authority vide order dated 15.03.2003/02.04.2003 and the revision preferred by the petitioner was also rejected by IG, CISF, ES Headquarters, Patna vide order dated 05.03.2004, being devoid of merit.

5. Heard Mr. Rajiv Ranjan, learned senior counsel appearing for the petitioner and Mr. Laxman Kumar, Central Government Counsel and perused the records minutely.

6. Learned counsel for the petitioner has strenuously urged that the action of the respondents is grossly illegal and arbitrary and the order of dismissal from services is vitiated in law as well as on facts. It has been submitted that since the petitioner was not examined by Sadar Hospital, Ranchi Doctor Sri S.K. Kisku on 15.10.2001, the medical report given to this effect was fake and this was not at all brought to petitioner's knowledge otherwise the petitioner would have

protested for secondary medical report. Learned counsel further submitted that not a single witness has deposed that they have observed the petitioner in drunken condition while constable S.K. Singh P.W.-7 who accompanied with the petitioner in water tanker clearly in his cross examination stated that the petitioner was not in a drunken condition. In such circumstances, it is apparent that the entire false and fabricated story has been narrated by Ins/Exe Kameshwar Khan and the charges levelled against the petitioner is totally false and fabricated. Learned counsel for the petitioner further submits that the petitioner's entire life has been jeopardized and his career has been put to an end by infliction of major punishment, which is grossly disproportionate to the charges.

To buttress his arguments, learned counsel for the petitioner has referred to decision of the Hon'ble Apex Court reported in *Munna Lal Vs. Union of India (UOI) and Others*, , in particular, paragraphs 4 and 5, which are as under:

"4. The learned counsel appearing for the respondent submitted that the appellant was found guilty of dereliction of duty previously also and there were other disciplinary proceedings against the conduct of the appellant. But in the instant case it was not proved that the appellant was drunk on the day when he was on duty. Evidence was not satisfactory to prove that he was found with any alcohol and he was also not taken to Safdarjung Hospital as suggested by the first doctor."

"5. In the absence of positive evidence, we are of the view that the charge levelled against the appellant was not proved satisfactorily. In the absence of sufficient proof, the disciplinary authority should not have imposed such penalty. Therefore, the punishment imposed was illegal and the appellant is entitled to be reinstated in service and he is entitled to get 50% of the back wages for the period he was out of service. The respondents are directed to reinstate the appellant in service forthwith. The appellant's service during this period would be treated for other service benefits such as seniority, increment and pension.

7. Learned counsel for the respondents has vehemently submitted that by virtue of the medical examination report coupled with the inquiry officer's report holding the petitioner's guilty of charges, just punishment has been inflicted by the respondents, which has rightly been confirmed by the Appellate as well as revisional authority.

8. After having heard the counsels for the parties at length and on perusal of the documents on records, I find that the petitioner has not been able to make out a case to interfere due to the following facts and reasons:--

"(a) On perusal of the records, it appears that after proper consideration of the documentary as well as the oral evidences adduced by the witnesses during the course of departmental enquiry, defense witnesses, inquiry report submitted by the inquiry officer, written submission of the petitioner against the inquiry report and gravity of offence committed by the petitioner, the Competent Authority has

passed the final order awarding him the punishment of "Removal from service with immediate effect" vide order dated 29.07.2002, which was confirmed by the Appellate authority and Revisional Authority. Furthermore, the petitioner has been examined by Dr. S.K. Kisku and the medical report of Dr. Kisku finds corroboration in the inquiry conducted by the inquiry officer. Therefore, the conclusion is irresistible that the petitioner consumed alcohol.

(b) On perusal, it further appears that there has been no procedural irregularity from the initiation of disciplinary proceeding till its culmination. 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.

(c) Now, the sole question which falls for determination by this Court is as to whether the impugned order of punishment as awarded by the disciplinary authority, confirmed by appellate authority as well as revisional authority, can be interfered with by this Court on the ground of doctrine of proportionality. In this context, 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.

(d) The Hon''ble Apex Court in the case of Apparel Export Promotion Council Vs. A.K. Chopra, in paragraph 22 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".....

(e) 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, .

Applying the aforesaid case laws laid down by Hon"ble Apex Court, I find no reason to interfere with the impugned order on the question of quantum of punishment.

(f) The decision cited by the learned counsel for the petitioner is of little assistance to the petitioner because of the fact that the petitioner has chequered career having been inflicted with one major and 18 minor punishment. Moreover, being an employee of the disciplined force, the petitioner ought to have maintained absolute integrity and decorum."

9. On the cumulative effect of facts and reasons stated in the foregoing paragraphs I am of the considered view that the impugned order dated 29.07.2002, appellate order dated 15.03.2003/02.04.2003 and revisional order dated 05.03.2004 do not warrant any interference by this Court.

10. Accordingly, the writ petition is dismissed being devoid of any merit.