

(2021) 03 JH CK 0041
In the Jharkhand High Court
Case No : Writ Petition (S) No. 4961 of 2019

Karuna Shankar Mishra

APPELLANT

Vs

Union of India And Ors

RESPONDENT

Date of Decision : 03-03-2021

Acts Referred:

Central Industrial Security Force Act, 1968 — Section 18
Central Industrial Security Force Rules, 2001 — Section 32(1)

Citation : (2021) 03 JH CK 0041

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Ankit Apoorva, Rajiv Sinha

Final Decision : Dismissed

Judgement

1. Heard Mr. Ankit Apporva, learned counsel for the petitioner and Mr. Rajiv Sinha, learned counsel for the respondents.

2. This writ petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising

due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been heard.

3. The Court asked the learned counsel for the petitioner to withdraw the writ petition and move before the Court having territorial jurisdiction but the

learned counsel for the petitioner insisted to decide the matter on merit that is why, the matter is being heard on merit.

4. At the outset, learned counsel for the petitioner submits that he is not pressing the prayer 1.(b) of the writ petition. He is confining his prayer with regard to quashing of order dated 29.06.2017, to regularize the period from the

date of removal to the date of reinstatement of service (04.02.1994 to 20.06.2016) and for payment of other consequential benefits.

5. The petitioner was working as constable no. 8417284 in Central Industrial Security Force at B.T.N. Mines Turandeeh Project Sundar Nagar, Bihar.

On 13.12.1992 when the petitioner was on duty at about 10.15 hours he had recovered some articles from his duty side. The respondent no. 4 issued

show cause to the petitioner on 20.02.1993 for not recording in general diary with regard to recovered articles. The petitioner submitted his reply on

12.03.1993 and denied the said charges. The Enquiry proceeding was initiated against the petitioner. The Enquiry Officer submitted detailed report.

The Enquiry Officer found the charge nos. I & II not proved and charge no. III was found to be proved. The first charge was with regard to that the

petitioner was deployed at Turandin Project and was found to be absent from duty at about 10.15 hours at store and steel yard post which amounts to

gross misconduct and dereliction of duty within the meaning of section 18 of C.I.S.F. Act, 1968 whereas the second charge was that the petitioner left

his place of duty store and steel yard duty post on 23.12.1992 came to old security barrack, engaged himself in removing the copper and was caught

red-handed along with three meters of copper cable pieces by the post commander which amounts to misconduct within the meaning of Section 18 of

the C.I.S.F. Act, 1968. 3rd Charge was found to be proved by the Inquiry Officer. Thereafter, the petitioner was terminated from service by order

dated 06.06.2016. Aggrieved with this, the petitioner moved before this Court in W.P.(S) No. 1737 of 2008 which was allowed by this Court and

remanded back to the respondents to consider the case of the petitioner on the ground that before differing with the opinion of the Enquiry Officer, the

Disciplinary Authority has not followed the procedure of law and the opportunity of hearing was not provided to the petitioner. The said order was

taken by the respondent-C.I.S.F. in L.P.A. No. 151 of 2015 and the said L.P.A. was dismissed meaning thereby the order of the learned Single Judge

was affirmed. After reconsidering the case of the petitioner by order dated 29.06.2017 the punishment of termination has been reduced and further

punishment has been passed as reduction of pay by minimum stage from Rs. 920/- to 855/- in the time scale of Rs. 825-15-900-EB 20- 1200 for a

period of 05 years with cumulative effect. Aggrieved with this, the petitioner

again filed this writ petition.

6. Mr. Ankit Apoorva, learned counsel appearing on behalf of the petitioner argued the only point that in the light of earlier direction of the High Court, the impugned order has been passed which is again in violation of the well-settled principle of law. He draws the attention of the Court to the rejoinder filed by the petitioner and submits that disagreement note of the earlier round of litigation and present round are similar. He submits that again order has been passed without applying the mind and on these grounds, the impugned order is fit to be quashed.

7. Per contra, Mr. Rajiv Sinha, learned A.S.G.I. appearing on behalf of the respondents took the Court to the impugned order. By way placing several paragraphs of the impugned order, he demonstrates that before passing of impugned order new opportunity was provided to the petitioner and in compliance of order of the Hon'ble High Court in the earlier round of litigation, the petitioner was provided full opportunity, thereafter the impugned order has been passed. He contradicts the argument of the learned counsel for the petitioner with regard to disagreement note. By way of placing new assignment note he submits that authority concerned has held that the charge nos. I & II are to be proved. Thereafter, enquiry proceeding has been initiated and the petitioner was provided full opportunity and the impugned order has been passed which is in terms of order of the Hon'ble High Court in the earlier round of litigation. He submits that the impugned order dated 29.06.2017 has been passed at Hyderabad and this Court has got no territorial jurisdiction.

8. Having heard the learned counsel for the parties, the Court has ventured to go through the materials on record. It is an admitted position that earlier the petitioner moved before this Court in W.P.(S) No.1737 of 2008 which was allowed on the ground that before differing with the opinion of the Enquiry Officer, the Disciplinary Authority has not followed the procedure of law and has differed with the law laid down in the case of "" Punjab National Bank V. Kunj Bihari Misra"" reported in (1998) 7 SCC 84. The learned Single Judge has further given liberty to the respondent to consider the case and to take afresh decision. The Division Bench of this Court affirmed the order of the learned Single Judge. Pursuant thereto the impugned order has been passed. On perusal of disagreement note, it is crystal clear that

after remand the authority concerned has held that so far Charge Nos.

1 & II are concerned that are to be proved wherein earlier disagreement note which was subject matter of the earlier round of litigation, he has held

that charges have been proved. This argument of the learned counsel for the petitioner that disagreement note of the present is same of earlier, is

found to be untrue. On perusal of punishment order Annexure-4, it is clear that opportunity of hearing was provided to the petitioner. In para 10 of the

impugned order, it has been clearly stated that after receiving disagreement note, the petitioner was directed to file written reply within 15 days.

Pursuant thereto, the petitioner filed written reply on 27.06.2017 wherein he denied the charge nos. I and II. The Disciplinary Authority has looked into

reply dated 27.06.2017 minutely and came to the conclusion that the petitioner is guilty of misconduct in view of Rule 32(1) of the C.I.S.F Rules. Thus,

on perusal of impugned order, it is crystal clear that the sufficient compliance has been made before passing the impugned order in view of order of

this Court in earlier round of litigation. In the light of direction of this Court and after afresh consideration lighter punishment has been inflicted and the

petitioner has been reinstated in service. Learned counsel for the petitioner fairly submits that after reinstatement the petitioner is posted at

Hyderabad. The impugned order has been passed at Hyderabad. The petitioner has not pressed the prayer no. 1(b) and it appears that only making

territorial jurisdiction prayer has been made in prayer no. 1(b) which is with regard to earlier round of litigation and the same was already quashed by

this Court which was affirmed by the Division Bench. The impugned order has been passed at Hyderabad and petitioner is posted at Hyderabad. On

the ground of territorial jurisdiction the writ petition is not maintainable.

9. As a cumulative effect of the discussions made above, no relief can be extended to the petitioner. Accordingly, this writ petition is hereby

dismissed.

10. I.A if any also stands disposed of.