

(2009) 08 JH CK 0097
In the Jharkhand High Court

Man Mohan Singh

APPELLANT

Vs

The Union of India (UOI), The Deputy Inspector general,
C.I.S.F., Eastern Zone and The Commandant, 4th Reserved
Battalion, Central Industrial Security Force

RESPONDENT

Date of Decision : 25-08-2009

Acts Referred:

Citation : (2009) 08 JH CK 0097

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—By Court Heard Niki Sinha, learned Counsel for the petitioner and Faiz-Ur-Rahman, learned Counsel for the respondents.

2. Petitioner in this writ application has challenged" the order dated 23.08.2004 (Annexure-11) passed by the Disciplinary Authority by which his services were terminated with immediate effect.

Challenge is also to the order dated 24.01.2005 (Annexure-12) whereby the appeal preferred by the petitioner against the order of his dismissal, was rejected. The petitioner has prayed for a direction to the respondents to reinstate him in service with all consequential benefits.

3. The petitioner being a Constable in the CISF, was posted at Internal Security Company No. 43, Oil Duliajan, Assam.

On 20.01.2004, he was deployed at the main gate of the CISF SS Camp, Rajgarh between 17.00 Hrs. to 21.00 Hrs. with his S.L.R. Butt No. 270, Registration No. 16055161. The Head Constable, General Duty, namely Sri M. Tirkey and Constable Sri K.L. Vaiphei were the other personnel who were deployed at the gate on duty.

On the charges that he had left his place of. duty leaving the S.L.R. at the gate

and had gone outside inspite of objections made by his superior namely tike Head Constable, General Duty and further on the charge that after having gone out from the place of duty, he had indulged in quarral with outsiders and had also consumed alcohol and after returning to the place of duty he had indiscriminately fired two rounds from his S.L.R. without any prior permission from his superior in office, he was put under suspension and a departmental proceeding was initiated against him.

5. To the charges which were served upon him, he had submitted his written statements and he was also allowed to participate in the departmental proceeding.

On conclusion of the departmental proceeding, the Enquiry Officer recorded his finding that the. charges.against the petitioner were proved.

A copy of the enquiry report along with the second show cause notice was served upon the petitioner.

In response, the petitioner had submitted his show cause replies against the proposed punishment.

The Disciplinary Authority, being not satisfied with the explanation offered and on the basis of the enquiry report, passed the impugned order of punishment terminating the petitioner"s service with immediate effect.

Against the Order of his termination, the petitioner preferred appeal but the appeal was dismissed by the Appellate Authority vide the impugned appellate order.

6. Assailing the impugned order of termination and the order of the Appellate Authority, the petitioner contends that the findings of the departmental proceeding is based virtually on distorted and incomplete evidences] in as much as the enquiry officer has acted merely on the statements of the security guards who were deployed along with the petitioner at the gate whereas no witness was examined by the department in order to prove the charge that he had . quarreled with outsiders and neither was any medical examination of the petitioner was conducted to confirm that he was found in a drunken condition while performing his duty at the assigned post.

It is further contended that the findings as recorded by the Enquiry" Officer is apparently based on conjectures and surmises and the Enquiry Officer has also failed to consider the stand taken by the petitioner and the justification offered by him for firing two rounds from his S.L.R. explaining that there was an attack from the extremists at the relevant time which had prompted him to fire from his S.L.R in order to scare away the extremists.

7. Counter affidavit has been filed on behalf of the respondents. Taking a preliminary objection as to the maintainability of the writ application, learned Counsel for the respondents submits that none of the grounds as advanced by

the petitioner, is tenable and since there is a concurrent finding of fact both by the Enquiry Officer and the Disciplinary Authority which indicates that the charges against the petitioner have been proved, there is no perversity or impropriety in the impugned order of the petitioner's dismissal from service.

It is further submitted that the petitioner, belonging to the armed force, he is required to maintain strict discipline in performance of duties and the evidences adduced on record in course of the enquiry, adequately confirm that the charges have been proved against the petitioner, and he is liable for punishment.

8. From the perusal of the findings of the enquiry report, it appears that at the enquiry, statements of witnesses were recorded in presence of the petitioner and he was given opportunity to cross examine them. These witnesses were the same security, personnel who were deployed at the gate along with the petitioner at the relevant time in discharge of their duties. The evidences of the witnesses do confirm that the petitioner had deliberately left the place of his duty and had gone outside the gate and on return, the witnesses found him in inebriated condition and furthermore, the petitioner fired two rounds from his S.L.R. without any apparent reason and neither did he obtain any prior permission from his superior in office for firing from his S.L.R.

9. Unlike in criminal trial where strict evidence is required to prove the charge beyond reasonable doubt, in departmental proceedings insufficiency of the evidences would not, in itself, be a ground to interfere with the findings as long as the evidences on record do clearly make out the charge of misconduct by way of preponderance of probabilities. In the present case, as it appears from the findings recorded by the Enquiry Officer, there was sufficient evidence for him to draw the inference that the charges against the petitioner have been proved. Such charges related to the conduct of the petitioner in performance of his duties, which under the Service Rules, have been declared as acts of misconduct and for which extreme punishment of dismissal, is undisputedly permissible.

10. The petitioner has not raised any grievance against the propriety of the procedure in conducting the departmental proceeding or that the rules of equity and natural justice have not been adhered to or that the petitioner was not given adequate opportunity to defend himself.

11. There being no such defects pointed out by the petitioner, this Court cannot look into the evidences or re-appreciate the evidences on record.

12. I find no perversity or impropriety in the impugned order of the petitioner's dismissal from service. I have also gone through the order of the Appellate Authority and I find that the Appellate Authority had referred to the evidences collected in course of the departmental enquiry and has also discussed the evidences and has concurred with the findings of the Enquiry Officer. There is no impropriety or perversity in the order of the Appellate Authority.

13. For the above reasons, I do not find any merit in this writ application.

Accordingly this writ application is dismissed.