
(2017) 02 JH CK 0185
In the Jharkhand High Court
Case No : 343 of 2012

Mehendi Ansari @ Mahendi Ansari

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 23-02-2017

Acts Referred:

[Central Industrial Security Force Rules, 1969](#), [Rule 34](#) — Rule 34(6)

Citation : (2017) 02 JH CK 0185

Hon'ble Judges : D.N. Patel, Ratnaker Bhengra

Bench : DIVISION BENCH

Advocate : Rajiv N. Prasad, Binod Singh

Judgement

1. This Letters Patent Appeal has been preferred by the original petitioner, being aggrieved and feeling dissatisfied by the judgment delivered by the learned Single Judge in Civil Writ Jurisdiction Case No. 4138 of 2000 dated 26th July, 2012. By this judgment, petition preferred by this appellant was dismissed and punishment inflicted by the Disciplinary Authority, which was confirmed by the Appellate Authority, has been upheld and writ was dismissed and therefore, original petitioner has preferred this Letters Patent Appeal.

2. Counsel appearing for the appellant submitted that there is a violation of principles of natural justice, no cross examination of the witnesses in course of inquiry was given, there is also violation of sub-rule (6) of Rule 34 of Central Industrial Security Force Rules, 1969. Counsel appearing for the appellant submitted that punishment inflicted upon this appellant -delinquent is unreasonable, excessive and shockingly disproportionate. This aspect of the matter has not been properly appreciated by the learned Single Judge, while dismissing the writ petition preferred by this appellant and hence, the said judgment deserves to be quashed and set aside.

3. Counsel for the respondents has submitted that gross is a misconduct as this appellant-delinquent is a member of the disciplined force- Central Industrial

Security Force (hereinafter referred to as "CISF" for the sake of brevity).He was posted on duty on 7.9.1998 at about 21.00 hours till 8.9.1998 at about 5 a.m. Purpose for which this appellant-constable was posted nearby the shop No.020 and CPL building of HMBP. Attempt of theft was committed by one person in the very same shop where this appellant was posted for duty. This is the degree of care taken by this appellant. This is charge no. 1. So far as charge no. 2 is concerned, when this appellant was called by the high- ranking administrative officer of CISF on 8.9.1998 at about 15.30 hours, rough reply was given that this appellant was feeling sleepy. Both the charges were levelled against this appellant-delinquent about dereliction in duty and on the direction of the superior officer, enquiry officer was appointed. Three witnesses and other documentary evidences were placed before the enquiry officer and ultimately, enquiry officer gave his reply on 26.4.1999 and the charge, levelled against this appellant, was held as proved. Thereafter, second show cause for quantum of punishment was also given to the delinquent and ultimately, respondent no.4- the Deputy Inspector General, Central Industrial Security Force dismissed this appellant from the services vide order dated 31.7.1999 against which, departmental appeal was preferred by this appellant and the same was also dismissed by the appellate authority- The Inspector General, Central Industrial Security Force, Eastern Sector II vide order dated 4.12.1999. Against which writ petition bearing Civil Writ Jurisdiction Case No. 4138 of 2000 was preferred which was dismissed by the learned single judge vide order dated 26th July, 2012. It is further submitted by the counsel for the respondents that there is no illegality committed by the respondents in holding the inquiry. Adequate opportunity of being heard was given. So far as quantum of punishment is concerned, looking to nature of misconduct and the nature of the duty to be performed by this appellant being a member of the disciplined force- CISF and in presence of this appellant - constable attempt of theft was committed and moreover, he was called by the high- ranking administrative officer of CISF on 8.9.1998 on the next day at about 15.30 hours, this appellant has not obeyed this order and gave reply that he was feeling sleepy. Hence, his services have been removed. Therefore, quantum of punishment cannot be considered as unreasonable, excessive nor it can be said that it is shockingly disproportionate. These aspects of the matter have been properly appreciated by the learned Single Judge while dismissing the writ petition preferred by this appellant, hence this letters patent appeal may not be entertained by this Court. R E A S O N S

4. Having heard counsel for both the sides and looking to the facts and circumstances of the case, we see no reason to entertain this Letters Patent Appeal mainly for the following facts, reasons and judicial pronouncements :-

(i) This appellant was working as constable in CISF. He was posted on duty on 7.9.1998 at about 21.00 hours nearby the shop No.020 and CPL building of HMBP up to 5.00 a.m of 8.9.1998;

(ii) The shop at which duty was assigned to the police constable, attempt of theft

was committed. Thus, in presence of this appellant attempt of theft was committed. This is the grossest charge upon the appellant. There is no sense of duty in this appellant. Bear minimum duty of the constable of CISF is to prevent the theft. In the very same shop somebody has entered into, at about 3.20 a.m. Later on, person, who committed theft, was chased by others and not by this appellant. Offender ran away, leaving the stolen articles at a same distance from the shop. Matter was reported to the high-ranking administrative officer of CISF;

(iii) When this appellant was called on the next day i.e. 8.9.1998 by highranking administrative officer of CISF at about 15.30 hours, rough reply was given by this appellant that he was feeling sleepy. Thus he avoided the order passed by the high-ranking administrative officer of CISF and leisurely at his own time this appellant reported the high-ranking administrative officer. This is a second charge upon the delinquent-appellant

(iv) For ready reference, charge levelled against this appellant by chargesheet dated 17.11.1998 reads as under :-

"Article of Charge-I:

No. 802230188 Constable B.N. Sharma of FFP Coy, CISF Unit, HEC, Ranchi while posted at HMBP "D" Coy was detailed in "C" shift from 2100 hrs to 0500 hrs on date 7.9.98 at 020 Shop and CPL. On date 8.9.98 at about 03.20 hrs some miscreants try to steal three gunny bags of brass chips approximate weight is 248.500 Kgs and the cost is Rs.19,880/- due to his carelessness. By this act, he shows misconduct, disobedience and dereliction of duty. Hence the charge.

Article of Charge-II:

No.802230188 Constable B.N. Sharma of FFP Coy, CISF Unit, HEC, Ranchi while posted in HMBP "D" Coy he was detailed at 020 shop of HMBP on date 07/08.9.98 and at about 0320 hrs a theft was occurred during his duty hours. In this connection, the Asstt. Commandant of HMBP ordered him to appear in orderly room on 08.9.98 at 15.30 hrs. But, the member of the Force did not appear in orderly room without prior information and permission. This act by the member of the Force shows misconduct, indiscipline and disobedience. Hence the charge."

v) It further appears from the facts of the case that with the aforesaid two charges chargesheet was issued. Enquiry officer was appointed. Necessary documentary evidence was given by the witnesses. Three witnesses were also examined. Adequate opportunity of being heard was given to the appellant. Delinquent never demanded cross-examination of the witnesses. This appellant had also given a reply to the chargesheet. Enquiry officer gave his report on 26.4.1999 (Annexure-8).Charges levelled against this appellant-delinquent have been held as proved by this enquiry officer;

(vi) Looking to the enquiry officer's report, it cannot be said that the finding of the enquiry officer is based upon no evidence. On the contrary, looking to the

report of the enquiry officer, there is enough evidence against this appellant. Moreover, there is no procedural lacuna in holding the departmental proceeding. Copy of the charge sheet, which is at annexure-4, was given to the appellant. Adequate opportunity of filing reply was also given. This appellant had filed his reply. Thereafter, witnesses were examined during course of enquiry. These witnesses were examined in presence of this appellant. Thus, there is no procedural lacuna nor there is any violation of principles of natural justice in holding the departmental proceeding. Departmental proceeding is legal and valid.

(vii) Once this court is considering the departmental proceeding is legal and valid, the only question left out for this court is to look at the quantum of punishment. Looking to the nature of the charges levelled against this appellant that shop No.020 and CPL building of HMBP, at which duty was assigned to this appellant CISF constable, in the very same shop, attempt of theft was committed by one person and because of vigilant approach of the other persons, the person who committed theft, was chased. Throwing away the stolen articles, the accused ran away, meaning thereby, in presence this appellant theft was committed. This appellant played no role in preventing the theft and in presence of this appellant, thief ran away. This is an honour and respect given by this appellant to his duty as constable. Looking to the second charge when he was called to report the high ranking administrative officer of CISF at about 15.30 hours on 8.9.1998 he gave rough reply, that he was feeling sleepy. Duty hours of this appellant was over by 5 a.m in the morning of 8.9.1998. After more than ten hours, this appellant was called by the high ranking officers of CISFS and the aforesaid reply was given by this appellant. Thus looking to the nature of charges and looking to the fact that this appellant was working in a disciplined force CISF, it cannot be said that punishment of removal from the services is shockingly disproportionate nor it can be labelled as unreasonably excessive.

(viii) It has been held by Hon"ble Supreme Court in Govt. of A.P. and Others v. Mohd. Nasrullah Khan, (2006) 2 SCC 373, as under:

"15. This takes us to the last submission of the counsel for the respondent. Learned counsel for the respondent contended that the offence, said to have been committed, being minor in nature and no loss being caused to the owner of the property, inasmuch as the same had been recovered on the spot, lenient punishment may be awarded in place of dismissal from service. We are unable to countenance this submission. The gravity of the offence must necessarily be measured with the nature of the offence. The respondent was a member of a disciplined force holding the rank of Head Constable. The duty assigned to him was a "bandobast" duty during the visit of the then President Bill Clinton, who ran a security risk of the highest grade. His misconduct could have led to serious security lapse resulting in fatal consequences. But, because of timely detection by the electrician, PW 4, the lens was recovered and immediately restored. We entirely agree with the inquiry officer that the charges are serious in nature, being committed by a member of a disciplined force, who deserved stringent

punishment. To instil the confidence of the public in the establishment, the only appropriate punishment in such cases is dismissal from service, which has been correctly awarded."

(ix) It has been held by Hon"ble Supreme Court in Commissioner of Police and Others v. Syed Hussain, (2006) 3 SCC 173, as thus:

"12. Thus, even assuming that a time has come where this Court can develop "administrative law" by following the recent decisions of the House of Lords, we are of the opinion that it is not one of such cases where the doctrine of proportionality should be invoked. In ex p Daly it was held that the depth of judicial review and the deference due to the administrative discretion vary with the subject-matter. It was further stated: (All ER p. 447, para 32) "It may well be, however, that the law can never be satisfied in any administrative field merely by a finding that the decision under review is not capricious or absurd."

As for example in Huang v. Secy. of State for the Home Deptt. referring to R. v. Secy. of State of the Home Deptt., ex p Daly, it was held that in certain cases, the adjudicator may require to conduct a judicial exercise which is not merely more intrusive than Wednesbury, but involves a full-blown merits judgment, which is yet more than [what] ex p Daly requires on a judicial review where the court has to decide a proportionality issue.

13. It is, therefore, beyond any doubt or dispute that the doctrine of proportionality has to be applied in appropriate case as the depth of judicial review will depend on the facts and circumstances of each case.

14. The respondent herein was a Constable. He was to uphold the rule of law. It was his duty to aid the prosecution in getting the guilty punished. It was not his duty to aid or abet the accused in fleeing from justice. The accused in question Ahmed Qureshi, in view of the finding of fact arrived at by the disciplinary authority, was a hardened criminal. He had been involved in a series of snatching cases. Not only that, the respondent was also helping other accused persons in obtaining bail from the courts. It has been pointed out that in the case in which the respondent stood surety for the said Ahmed Qureshi, he had jumped bail. Presumably because the respondent a Constable had stood as his surety, he was enlarged on bail by the court.

15. In a situation of this nature, keeping in view the nature of duties that a protector of law is required to perform, we are firmly of the opinion that the disciplinary authority cannot be said to have committed an error in imposing the punishment of removal from service upon the respondent, particularly when on earlier two occasions also he had been found guilty of commission of misconduct and punished therefor. The High Court thus committed a manifest error in arriving at a finding that the respondent had unblemished record for 28 years. We are not sure whether the High Court's attention was drawn to the statements made in the counteraffidavit filed on behalf of the appellants herein before the Andhra Pradesh Administrative Tribunal which showed the contra but on the basis

of the materials on record which was before the High Court such finding could not have been arrived at.

16. Furthermore, the punishment of removal from service is not imposed only in the case of fraud or defalcation of government funds but even where a misconduct is committed by a person who holds a position of trust and on whom society looks forward as a protector of law and in such cases punishment of removal from service cannot be said to be wholly disproportionate, and thus the same was not even violative of the doctrine of proportionality."

(x) It has been held by Hon"ble Supreme Court in Samar Bahadur Singh v. State of Uttar Pradesh and Others, (2011) 9 SCC 94 , as under:

"8. Now, the issue is whether punishment awarded to the appellant is disproportionate to the offence alleged. The appellant belongs to a disciplinary force and the members of such a force are required to maintain discipline and to act in a befitting manner in public. Instead of that, he was found under the influence of liquor and then indulged himself in an offence. Be that as it may, we are not inclined to interfere with the satisfaction arrived at by the disciplinary authority that in the present case punishment of dismissal from service is called for. The punishment awarded, in our considered opinion, cannot be said to be shocking to our conscience and, therefore, the aforesaid punishment awarded does not call for any interference."

(xi) Counsel for the appellant has submitted that there is a violation of principle of natural justice. Cross examination of witnesses was not held. This contention is not accepted by this Court mainly for the reasons that -:

(a) Witnesses were examined in presence of this appellant during course of inquiry;

(b) Never this appellant demanded for cross- examination; (c) In the appeal memo, before the departmental appellate authority, which is at annexure-11, this ground of cross- examination has never been raised;

(d) Copy of the chargesheet was given and the reply was given by this appellant of the chargesheet. Second show cause notice along with enquiry report was also given to the appellant before imposing punishment by the disciplinary authority and therefore, adequate opportunity of being heard was also given by the departmental appellate authority.

Thus there is no violation of principles of natural justice by the respondents. Departmental appeal preferred by this appellant was dismissed by the Inspector General, Central Industrial Security Force, Eastern Sector II vide order dated 4.12.1999 (Annexure-12).

5. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, no error has been committed by the learned Single Judge while dismissing the writ petition preferred by this appellant being Civil Writ

Jurisdiction Case No. 4138 of 2000 dated 26th July, 2012. We see no reason to interfere with, the order passed by the learned Single Judge. There is no substance in this Letters Patent Appeal and the same is therefore dismissed.