
(2009) 03 JH CK 0067
In the Jharkhand High Court

Nirmal Kumar Ram

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-03-2009

Acts Referred:

Citation : (2009) 2 JCR 323

Hon'ble Judges : Ajit Kumar Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajit Kumar Sinha, J.—The present writ petition has been preferred for the following reliefs:

(i) To quash the order dated 02.07.2002 passed by Commandant, C.I.S.F. Unit Patratu vide final order No. V-15014/CISF/PTPS/Disc/02/563 dated 02.07.02 whereunder the Commandant has passed the order for dismissal from service against the petitioner.

(ii) To quash the appellate order dated 02.01.03 passed by the respondent No. 4, Deputy Inspector General, C.I.S.F., Eastern Zone, Patna, whereby and where under the appeal of the petitioner has been rejected and the final order aforesaid has been confirmed.

(iii) To declare the orders passed as aforesaid to be grossly Illegal, arbitrary and highly excessive and disproportionate to the charges.

2. The facts, In brief, are set out as under:

The petitioner was working as a Constable In C.I.S.F., PTPS, Patratu Unit and was issued a charges sheet on 16.1.2002. The main charge against the petitioner is that during the operation time at the tower he was found sleeping with arms by the inspecting officer. The petitioner accordingly gave his explanation on 23.1.02 stating that he was on working place and further refuted that he was sleeping during the duty hours. The petitioner's reply was not accepted and he

was awarded minor punishment of fine equivalent to seven days wages vide order dated 2.2.2002 by the Assistant Commandant, C.I.S.F. It appears that he was again issued a show cause notice on 28.2.2002 to which he replied and denied that he was not sleeping at the time of duty and an enquiry was initiated again after considering the evidence and vide impugned order dated 2.1.2003 he was dismissed from service vide order dated 2.7.2003. The petitioner preferred an appeal before the Deputy Inspector General of Police who also dismissed the appeal vide order dated 2.2.2003.

3. The main contention raised by the petitioner is that for the same set of charges the disciplinary authority could not have initiated another enquiry proceeding and award punishment of dismissal from service.

4. The respondents, in their counter affidavit, have submitted that the gravity of offence and the punishment of dismissal was commensurate to the charges. It further submits that sleeping on duty that also with arms and ammunition in naxalite prone area like Patratu is a serious misconduct. It has also been stated in the counter affidavit that all reasonable opportunities were given and there was full compliance of the principles of natural Justice. The respondents in their counter affidavit at para 6 have stated as under:

The appellate authority i.e. Commandant, CISF Unit FTPS Patratu reviewed the case suo-motu and found that the punishment awarded to Const. N.K. Ram does not commensurate to gravity of offence and thereby issued show cause notice vide letter No. V-15014/CISF/PTPS/Disc/02/183 dated 28.2.2002 as to why disciplinary action under Rule 36 of CISF Rules, (Major Proceeding) should not be initiated against him and also ordered that if he wishes to prefer/submit representation against the above show cause notice, he should do so in writing within three days on receipt of this notice, to the Commandant CISF Unit PTPS, Patratu.

5. I have considered the submissions made on behalf of the parties and also the pleadings and one thing does not stand to reason as to how and under what circumstances and authority the appellate authority suo motu reviewed the case and found that the punishment awarded was not commensurate. The entire action of the appellate authority is per-se Illegal and arbitrary on the face of it and it also takes away the right of appeal provided in the statute for the sole reason that the appellate authority himself suo motu reviewed the minor punishment awarded to the petitioner and converts it to the major punishment of dismissal. There is another aspect of the matter as to whether the second show cause and enquiry for the same set of charges initiated not by the disciplinary authority but the appellate authority, sustainable in the eyes of law. Even otherwise the punishment on review by the disciplinary authority suo motu is devoid of jurisdiction and disproportionate to the charge levelled against the petitioner.

6. Considering the aforesaid facts and circumstances of the case it is clear that

the appellate authority usurped the power of the disciplinary authority and acted wither Jurisdiction and thus the entire order is vitiated and is accordingly quashed.

7. This writ petition is allowed.