

(2005) 09 AHC CK 0140
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No's. 43752 and 47859 of 2004

Pal Singh

APPELLANT

Vs

Deputy Commandant, Central Industrial Security Force,
(C.I.S.F.) (Ministry of Home Affairs) Unit Indian Oil
Corporation Limited (Sri R.P. Mishra at present posted and
holding the charge of Deputy Commandant, Central Industrial
Security Force, (C.I.S.F.), (Ministry of Home Affairs) Unit
Indian Oil Corporation Limited), Commandant Central
Industrial Security Force (C.I.S.F.) Unit Indian Oil Corporation
Limited and Deputy Inspector General, Northern Zone
(Central Industrial Security Force, (C.I.S.F.) (Ministry of
Home Affairs)

RESPONDENT

Date of Decision : 20-09-2005

Acts Referred:

Central Industrial Security Force Rules, 2001 — Rule 33(1)
Constitution of India, 1950 — Article 311, 311(1)
General Clauses Act, 1897 — Section 16
Penal Code, 1860 (IPC) — Section 119, 120, 168, 169, 211

Citation : (2005) 6 AWC 5838

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : P.K. Mishra, for the Appellant; B.N. Singh and B.P. Tripathi, S.S.C.
and Addl.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—Heard Sri P.K. Misra, learned counsel for the petitioner and Sri B.P. Tripathi, Additional Standing Counsel, Central Government for the respondents.

2. The petitioner joined Central Industrial Security Force (CISF) as a Constable in the year 1970. He was promoted as Assistant Sub Inspector in 1991. While posted at Bokaro Steel Ltd. District Dhanbad in June 2000 he was transferred and posted as Assistant Sub Inspector, CISF Indian Oil Corporation Ltd. Mathura.

In the Writ Petition No. 47859 of 2003, the petitioner has prayed for quashing an order by which Deputy Commandant, CISF Unit, IOC Ltd. Mathura placed him under suspension under Rule 33 (1) of CISF Rules 2001 and the attachment order dated 30.8.2003 by which he was attached to CISF unit PTPC Panki, Kanpur. By interim order dated 28.10.2003 the suspension order as well as attachment orders were stayed making it open to the respondents to continue with the disciplinary proceedings. In the Writ Petition No. 43752 of 2004 the petitioner has prayed for a direction to the Commandant, CISF, IOC Ltd. Mathura to give him documents claimed by him vide applications dated 24.2.2004 and 24.3.2004, and further to accept the petitioner's reply to the charge sheet and only then to proceed further with the enquiry.

3. A perusal of the charge sheet dated 21.2.2004 issued by Commandant, CISF unit Mathura shows that the petitioner has been charged with committing an act pre-judicial to good order and discipline, in that he submitted false medical bills vide vouchers dated 17.12.2002 for Rs. 1486.00 and medical expenses with malafides intention of wrongfully gaining Government money, committing gross indiscipline, misconduct and violation of the rules by making a petition directly to Home Secretary, Ministry , Home Affairs, Director, CBI, Director General, CISF and Executive Director, IOC Ltd. Mathura, with regard to his grievances, bypassing the prescribed channels of communications; committing the gross indiscipline, misconduct and disobedience in refusing to accept/receive official letters dated 30.8.2003 and having failed to comply with the instructions given by the Commandant, in accusing Commandant and Assistant Commandant for taking specially cooked food brought from hotels outside, and entertaining the our side guests without making payments at the cost of dining members between November 2000 to March 2002 whereas the dining members were given dried chapattis, watery dal; for disobeying the law in leaving his designated head - quarters at CISF Unit lines Mathura without valid permissions w.e.f. 1.10.2003 to 10.11.2003. The charge sheet is accompanied with the statement of imputations of misconduct with regard to each of the charges and the list at the documents to support the charges levelled under Rule 36 of CISF Rules 2001.

4. Sri P.K. Misra, learned counsel for the petitioner submits that under Rule 16 of the CISF Rules of 2001, the Commandant, is the appointing authority of the petitioner, and thus the petitioner could not be suspended by an officer below the rank of the Commandant. The charges are absolutely frivolous and that the petitioner is being persecuted on account of his complaints with regard to irregularities and financial mismanagement, narrated to DIG, CISF on his visits. The petitioner raised genuine grievance and for which he is being victimized by the Deputy Commandant of the unit. The documents demanded by him are necessary for preparation of his defence and that denial of principle of natural justice at any stage of the departmental proceeding gives right to the petitioner to file a Writ Petition claiming fairness in the proceedings.

5. Sri B.R. Tripathi, learned counsel appearing for the respondents submits that

in Schedule-I under Rule 32 of CISF Rules 2001, the Deputy Commandant is empowered to issue suspension order, to all the enrolled members of the force. According to him the appointing authority or any authority which is subordinate to the disciplinary authority or any other authority empowered in that behalf by the President by a general and special order may place an enrolled member of the force under suspension provided that whether the order of suspension is made by an authority lower than the appointing authority such authority shall forthwith report to the appointing authority the circumstances in which the order was made and obtained his approval within thirty days from the date of order. In the present case the Deputy Commandant placed the petitioner under suspension on 27.8.2003, and got the approval of the Commandant on 3.9.2003.

6. The approval by the Commandant i.e. Appointing Authority has been annexed as Annexure CA-1 to the counter affidavit of Sri Jarnail Singh, Group Commandant, CISF, Group Headquarters, Allahabad. The suspension order was served on 27.8.2003 and was acknowledged by the petitioner and that approval of the Commandant was received within thirty days.

7. Learned counsel for the respondents submits that the petitioner had submitted medical bills which were found doubtful by the then Medical Superintendent, District Hospital, Mathura. He made false complaint against the Unit Administration addressed to the Director General, CISF, Director General, CBI, Home Secretary and President, Human Rights Commission. He also filed Court case against Sri Jai Hind, A.C. And Sri Swadesh Kumar, the then Commandant in the Court of Judicial Magistrate, Mathura u/s 119, 120, 168, 169, 219, 211, 463, 511, IPC and under Sections 456 of the Explosive Substantive Act 1903. These complaints related to the period between from December 2000 and that the petitioner started making applications directly to Senior Officers from January, 2002. The petitioner received poor ACR gradings and his promotion was stopped giving rise to the complaints. The Deputy Inspector General, NZ, CISF Complex, Shaket New Delhi enquired into the complaints made by the petitioner. In his report dated 4/5.11.2003 submitted to Inspector General/NS, CISF Complex Shaket., he confirmed that A.C. Jai Hind had not handled the situation after recovery of explosives from the car of Sri Rajeev Gupta, Senior Engineer, 10lh Mathura to which the I.O.C. Engineers Association had taken a strong view and that A.C. Jai Hind and Commandant Sri Swadesh Kumar, I.P.S. should have taken better care of the incedent. Mrs.v. Khamo Singh, Deputy Commandant found that there was lack of effective supervision in running the messes. However, the allegations of pilferage were not found substantiated. The petitioner was reported to have committed misconduct in writing directly to National Human Rights Commission, Home Secretary, Director, C.B.I. besides Director General, Inspector General and Deputy Inspector General, CISF without proper channel and in registering the court cases against Sri Jai Hind, A.C. and Sri Swadesh Kumar, Commandant. There was no material on the file whether he had taken recourse to solve the issue within the department before moving to the Court.

8. I find that under Rule 32 read with Rule 33, of C.I.S.F. Rules 2001 the Deputy Commandant has been empowered to issue suspension order. The suspension order, however, should be approved within thirty days from the appointing authority i.e. the Commandant. In the present case, the order was approved by the Commandant within thirty days. Ordinarily the authority, who appoints a member of civil service is alone competent to dismiss him, and that suspension order should also be passed by the appointing authority, however, Article 311 of the Constitution of India does not talk of suspension. The power of suspension, pending investigation or enquiry is a step in aid of the departmental enquiry, and is not treated as a punishment. In *State of Madhya Pradesh and Others Vs. Shardul Singh, ; and P.V. Srinivasa Sastry v. Comptroller & Auditor General of India* 1993 (1) SC 419, the Supreme Court held that the guarantee given in Article 311(1) does not include a further guarantee that the disciplinary proceedings should also be initiated and conducted by the authorities mentioned in the Article. The legislation or the statutory rules made to regulate conditions of service, means all such conditions which regulate the holding of post including initiation and conclusion of the disciplinary enquiry. In the absence of the rules any superior authority, who can be held to be the controlling authority can initiate such proceedings. Where the statutory rules have been made the power of suspension flows from such Rules. Where no authority is prescribed to issue the suspension order, then in view of Section 16 of the General Clauses Act only the appointing authority can issue the suspension order. The Rules, however in the present case, may provide for an authority to suspend a delinquent employee. In the present case the Rules have been carefully drafted, to get approval of the appointing authority within thirty days.

9. The Central Civil Services (Classification, Control and Appeal) Rules 1965 provides that the appointing authority or the authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the President by general or special order, may place a government servant under suspension. Under Rule 4 of the Railways Service (Disciplinary and Appeal) Rules lays down, in the first proviso to the Rule that for exceptional circumstances any authorities specified in any of the schedule may place any subordinate Railway servant specified therein under suspension. The second proviso provides that where any action is taken under foregoing proviso the authority concerned shall forthwith report to the authority competent to place such railway servant under suspension. Unless the rules provide it is not necessary that the suspension order must be passed only by the disciplinary authority empowered to dismiss or remove the delinquent employee from the service.

10. The respondents caused a preliminary enquiry into the allegations made by the petitioner. The complaints made by him, criminal case lodged against the superior officers and writing directly to higher authorities amounts to misconduct. The fact that the petitioner raised these complaints much latter to the actual incidents of recovery of explosive, irregularities in mess, and corruption in the organization prima facie shows that he had some axe to grind. Ordinarily a

government servant is not entitled to make complaints directly to higher authorities. The good order and disciplinary requires exercise of restraint and to take recourse to solve the issue within the department before moving to the higher authorities. The petitioner has been only been charged with raising doubtful medical bills but also making complaints against a senior officer. These charges may not be serious for a civil servant discharging duties of public administration. However in armed forces a higher degree of discipline is desired. The charges as they are framed may result into a major penalty, and thus petitioner's suspension cannot be held to be unjustified. In Writ Petition No. 43752 of 2004 the petitioner has made a prayer to direct the respondents to give to the petitioner the documents vide his applications dated 24.2.2004 and 24.3.2004 or to accept the petitioner's reply to the charge sheet and then to proceed further with the enquiry. In these applications it is stated that in absence of documents demanded by the petitioner it will not be possible for him to give any effective and to cross examine to the witnesses.

12. The principle of natural justice required that delinquent employee must be informed by the authorities with the charges and evidence to be relied upon in proof of imputation of misconduct. Where enquiry officer relies upon any document in support of the charge or the delinquent employee requires any further any relevant documents for his defence such document must be supplied or be allowed to be inspected by the delinquent employee. This right, however, cannot given a cause of action to file a writ petition before conclusion of the enquiry or the decision taken by the disciplinary authority. In case he is not given copies or allowed inspections of such documents he may assail the findings of the enquiry officer and the punishment order if any made against him. A writ petition, however, during the pendency of the enquiry for a direction to furnish documents is not ordinarily maintainable. In the present case I do not find that the charges are vague or are not supported by sufficient material which has been supplied to the petitioner. It will be open to the enquiry officer to supply the relevant documents to the petitioner or to allow him inspections of such document, demand by him.

13. Both the writ petitions are accordingly dismissed.