

(2015) 10 JH CK 0129
In the Jharkhand High Court
Case No : W.P. (S) No. 2907 of 2011

Parwej Khan

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 30-10-2015

Acts Referred:

Central Industrial Security Force Act, 1968 — Section 9
Constitution of India, 1950 — Article 226, 227, 32

Citation : (2016) 1 JLJR 557

Hon'ble Judges : Pramath Patnaik, J.

Bench : Single Bench

Advocate : Satish Prasad, Advocate, for the Appellant; Rajiv Sinha (ASG-1) and B.K. Prasad, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Pramath Patnaik, J.—In the accompanied writ application, the petitioner has inter-alia prayed for issuance of a writ of certiorari for quashing of order dated 25.01.2010 passed by the Group Commandant of C.I.S.F, HQ, Chandigarh, by which, the petitioner was dismissed from services and appellate order dated 17.05.2010 passed by D.I.G.-C.I.S.F., North Zone, New Delhi, and also order dated 16.12.2010 passed by Inspector General, North Zone, Saket, New Delhi, by which the revision preferred by the petitioner was dismissed confirming the order passed by disciplinary authority as well as by appellate authority and also order dated 16.03.2011, by which the another revision preferred by the petitioner was rejected.

2. The facts, as averred in the writ application, in a nutshell, is that the petitioner was enrolled as Member of Central Industrial Security Force (CISF) on 11.02.2006 and confirmed after two years. While continuing in the post two charges were levelled against the petitioner. Charge No. 1 pertains to use of abusive language on 07.05.2009 at 8.00 in quarter Guard against Deputy Commandant and working Sub-Inspector also trying to snatch Rifle from Santry

Harmel Singh. Charge No. 2 pertains to while the petitioner was deputed for short refresh course training -Mundali on 14.04.2009 between 06:00-08:00 hours he misbehaved with trainer-Bimal Ram, BHM, Security Personnel Jai Prakash and Security Personnel Arvind Sainny and remaining absent from physical training (P.T.) on 16.04.2009 at 0615. The petitioner submitted his reply to the aforesaid charges and the matter was enquired into by the inquiry officer and the inquiry officer/conducting officer started departmental proceeding and found the charges to be proved. Basing on the findings of the inquiry officer, the petitioner was dismissed from services by order dated 25.01.2010 passed by the Group Commandant of C.I.S.F., HQ, Chandigarh. Being aggrieved by the order of dismissal passed by the disciplinary as well as appellate authority, the petitioner approached this Court in W.P.(S) No. 4453 of 2010 and the said writ petition was dismissed as withdrawn with a liberty to prefer a revision application in terms of subsection (2A) of Section 9 of the Central Industrial Security Force Act, 1968. As per direction in W.P.(S) No. 4453 of 2010, the petitioner submitted his representation before the Inspector General (I.G.), C.I.S.F North Zone, Saket, New Delhi, who rejected the prayer made against the dismissal order vide order dated 16.12.2010 and finally the D.G. of C.I.S.F. rejected the second revision of the petitioner vide office letter dated 16.03.2011. The petitioner left with no other alternative efficacious and speedy remedy, has approached this Court invoking extra-ordinary jurisdiction under Article 226 of the Constitution of India for redressal of his grievances.

3. Per-contra the respondents have filed counter-affidavit repelling the averments made in the writ application. In the counter-affidavit, it has been submitted that a preliminary enquiry was ordered by the Dy. Commandant which was conducted by SI/Executive C.I.S.F. A prima facie case against the petitioner was established and accordingly he was placed under suspension with effect from 07.05.2009. The incident was reported to the CISF Hqrs. North Sector and North Zone New Delhi vide Dy. Commandant CISF Unit BSPS Surangani vide letter dated 07.05.2009. The disciplinary authority i.e. Group Commandant Chandigarh after carefully going through the proceeding, files, statement of prosecution, defence, documentary evidences adduced during the course of enquiry and the findings of the enquiry and the charges levelled against the petitioner proved beyond doubt on the basis of corroborative evidences adduced by the prosecution awarded punishment of dismissal from services vide final order dated 25.01.2010. Being aggrieved with the said order of dismissal from service, the petitioner preferred an appeal to the DIG/NZ CISF Hqrs. New Delhi which was rejected by the Appellate authority vide order dated 17.05.2010 being devoid of merit. Therefore, there is no arbitrariness, illegality, ex-parte and disproportionate punishment inflicted on the petitioner.

4. Heard Mr. Satish Prasad, learned counsel appearing for the petitioner and Mr. Rajiv Sinha, learned counsel appearing for the respondents and perused the records minutely.

5. Learned counsel for the petitioner has strenuously urged that the impugned order of punishment is based on no evidences, as Dy. Commandant has not been examined or moreover the impugned order of punishment is hit by doctrine of proportionality. During course of argument learned counsel for the petitioner has referred to the reply to counter-affidavit wherein it has been submitted that charge No. 1 is based on hearsay and no evidence. Learned counsel further submits that there is failure to follow up the established procedure while conducting enquiry against the petitioner as alleged in the allegations that the petitioner has abused by Dy. Commandant but Dy. Commandant has never been examined by the enquiry officer. Petitioner never met any time on 07.05.2009 with Dy. Commandant. When the petitioner was not in confrontation to each other with Dy. C.O. how he abused him, so petitioner submits that petitioner is dismissed on ground of no evidence so order of dismissal is perverse. Learned counsel further submits that C.I.S.F Rules of 2011 provides in Section 36 Sub Section 3(ii)(b) for procedure of imposing major penalties and the documents by which a list of witness or witnesses, by whom the articles of charge, as proposed, to be sustained. In the instant case, these rules has not been followed by the Dy. Commandant and is not listed as witness and he was never examined by Enquiry Officer, who was supposed to be the main witness rather centres on the entire episode of the Departmental proceeding against the petitioner. Thereafter, the penalty is shockingly disproportionate to the proved misconduct or misdeeds. For, all sorts coming in the proceeding, shall call for judicial review by this Hon'ble Court, for which the petitioner prayed for quashing the dismissal order passed by respondent No. 3 which is subsequently confirmed by respondent Nos. 4, 5 and 6. Learned counsel for the petitioner has referred to the decision rendered in the case of State of Uttar Pradesh and Others Vs. Ram Daras Yadav, .

6. On the contrary, Learned counsel for the respondents has submitted that on perusal of impugned order of punishment of dismissal i.e. Annexure-2 dated 25.01.2010, it appears that the disciplinary authority after careful consideration of the evidences on record, in pursuance to Section 36 of C.I.S.F. Rules of 2001, has been pleased to pass the order of dismissal of the petitioner from services with immediate effect. Learned counsel for the respondents, on the other hand, while justifying the order of dismissal passed by the respondents has vehemently submitted that the scope of interference in a disciplinary proceeding is very limited under Article 226 of the Constitution of India. In the course of arguments, learned counsel for the respondents has referred to the decision rendered in the case of The Commandant, 22 Battalion, CRPF Srinagar, C/o 56/APO and Others Vs. Surinder Kumar, , in particular, paragraph 15, which is as under:

"15. Moreover, it appears from the impugned order that the High Court has in exercise of power of judicial review interfered with the punishment of dismissal on the ground that it was disproportionate. In Union of India v. R.K. Sharma, this Court has taken the view that the punishment should not be merely disproportionate but should be strikingly disproportionate to warrant interference

by the High Court under Article 226 of the Constitution and it was only in an extreme case, where on the face of it there is perversity or irrationality that there can be judicial review under Articles 226 or 227 or under Article 32 of the Constitution. Since this is not one of those cases where the punishment of dismissal was strikingly disproportionate or where on the face of it there was perversity or irrationality, the Division Bench of the High Court ought not to have interfered with the order of dismissal from service."

7. After having heard the counsels at length and on perusal of the documents on records, I am of the considered view that the petitioner has not been able to make out a case to interfere due to the following facts, reasons and judicial pronouncements:-

"(i) On perusal of the records, it appears that the disciplinary authority i.e. Group Commandant Chandigarh after carefully going through the proceeding files, statement of prosecution, defence, documentary evidences adduced during the course of enquiry and findings of the enquiry, the charge levelled against the petitioner being proved beyond doubt on the basis of corroborative evidences adduced by the prosecution passed the order of dismissal from services, which has been affirmed by the Appellate as well as revisional authority dated 17.05.2010 and 16.12.2010 respectively. Therefore, from the date of initiation of the proceeding till its culmination, no procedural irregularities has been committed by the respondents so as to call for any interference. In the instant case, the petitioner is a member of disciplined force and the charges are quite serious which has been proved by the inquiry officer so it cannot be said that the inquiry is based on no evidences.

(ii) So far as quantum of punishment is concerned, the Hon"ble Apex Court in case of Union of India and Others Vs. R.K. Sharma, has taken a view that the punishment should not be merely disproportionate, but should be strikingly disproportionate to warrant interference by the High Court under Article 226 of the Constitution and it was only in an extreme case, where on the face of it, there is perversity or irrationality that there can be judicial review under Articles 226 or 227 or under Article 32 of the Constitution of India. Since this is not one of those cases where the punishment of dismissal was strikingly disproportionate or where on the face of it there was perversity or irrationality, the impugned order of punishment dated 25.01.2010, appellate order dated 17.05.2010 and revisional order dated 16.12.2010 do not call for any interference by this Court."

8. Accordingly, the writ petition is dismissed being devoid of merit.