
(2009) 10 OHC CK 0052
In the Orissa High Court

Ram Prit Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-10-2009

Acts Referred:

Citation : (2010) 109 CLT 152 : (2010) 124 FLR 896 : (2010) 1 OLR 51

Hon'ble Judges : L. Mohapatra, J;B.K. Patel, J

Bench : Division Bench

Judgement

B.K. Patel, J.—In this writ application the petitioner assails the legality of order of minor penalty of withholding one increment of pay for a period of one year without cumulative effect imposed on him by the Disciplinary Authority under Annexure-3 and confirmed by the Appellate Authority under Annexure-3 and by the Revisional Authority under Annexure-7.

2. Petitioner is a member of the Central Industrial Security Force (CISF) in the rank of Head Constable posted at TTPS, Talcher. Disciplinary proceeding was initiated against him on the following charge under Annexure-3:

CISF No. 801390049 HC/GD R.P. Singh of CISF Unit NTPC/TTPS Talcher was detailed from 2100 hrs on 17.07.2007 to 0500 hrs on 18.07.2007 at Watch Tower No. 5/Broken wall PTL with walkie-talkie set, SI/Exe. P.C. Patnaik shift in-charge while after asking the situation report of the duty post over walkie talkie, passed instruction to HC/GD R.P. Singh to remain in contact with the sentry of debris-yard by blowing whistle. Hearing such instruction HC/GD R.P. Singh misbehaved with shift in-charge over walkie talkie and said "You are very fond of listening whistle? Should I blow whistle over walkie talkie? You have no work in control room and talking nonsense (BAKBAS) while sitting in control room." This has been recorded in control room GD at about 0210 hrs vide GD No. 801 dated 18.07.2007. Such act on the part of HC/GD R.P. Singh shows sheer negligence, carelessness to his duty, indiscipline activity and misbehaviour.

The petitioner filed written reply denying the charge. It was stated in the written

reply that the petitioner was in contact with debris-yard sentry. It was further stated that the Shift-in-charge asked him over walkie talkie as to whether he was in possession of whistle or not to which the petitioner replied that it could be verified as to whether he was having whistle or not, and explained that if he blew whistle, employees of NTPS would feel bad. He denied to have any other conversation with the Shift-in-charge.

3. Considering the charge and reply to the same by the petitioner, Disciplinary Authority held that the petitioner guilty of conduct which amounted to gross negligence towards his bonafide duty, highly indisciplined and indecent unbecoming of a member of disciplined force like CISF. Accordingly, punishment of withholding of one increment for a period of one year without the effect of postponing his future increment was awarded to the petitioner.

4. It was contended by the learned Counsel for the petitioner that without any enquiry to find out veracity of allegation made by Shift-in-charge against the petitioner, the authorities should not have held the petitioner to be guilty of alleged misconduct. Explanation offered by the petitioner ought to have been accepted. It was further contended that taking into account the trivial nature of allegation made against the petitioner and the fact that the petitioner was a low paid subordinate staff of the CISF, instead of imposing punishment which has financial implication, lesser punishment of censure or warning would have met the ends of justice. It was vehemently argued that quantum of punishment is not commensurate with the charge.

In reply, it was submitted by learned Counsel appearing for the opposite parties that the crux of allegation made in the charge is that the petitioner disobeyed the command of Shift-in-charge to blow whistle while performing duty. Such conduct on the part of a member of a disciplined force like CISF requires to be firmly dealt with. It was argued that imposition of minor punishment of withholding of one increment is not at all disproportionate to the nature of allegation made in the disciplinary proceeding.

5. While exercising writ jurisdiction, the High Court is not hearing an appeal against the decision of the Disciplinary Authority imposing punishment upon the delinquent employee. There is no scope to set aside the punishment altogether or impose some other penalty unless it is found that there has been a substantial non-compliance of the rules of procedure or a gross violation of rules of natural justice which has caused prejudice to the employee and has resulted in miscarriage of justice or the punishment is shockingly disproportionate to the gravamen of the charge. In exercise of power of judicial review, High Court cannot trench upon the jurisdiction of the statutory authority to re-appreciate the evidence and to arrive at its own conclusion. When the conclusion of the authority is based on evidence, the Court is devoid of power to re-appreciate the evidence. Interference is permissible provided the Court comes to the conclusion that the finding of fact recorded by the authority is not based on facts or authority fails to take into consideration the relevant facts. In this context,

decisions of the Hon"ble Supreme Court in Government of India and Anr Vs. George Philip, and of this Court in Jogeswar Bagh v. Registrar (Admn.) Orissa High Court and three Ors 2009 (I) OLR 483 may be referred to.

6. Admittedly, minor punishment has been imposed on the petitioner on the basis of allegation made by the Shift-in-charge and reply to the same filed by the petitioner. There was no enquiry in course of which oral evidence was taken. Considering the materials on record which included entry made in the General Diary by the Shift-in-charge and the petitioner's version contained in his reply, Disciplinary Authority held the charge to have been substantiated. Therefore, this is not a case in which it can be said that the order passed by the Disciplinary Authority is not supported by any evidence. The gravamen of charge against the petitioner is that he blatantly disobeyed the command of Shift-in-charge to blow whistle while performing duty. While doing so, the petitioner also misbehaved with his superior by making disrespectful remarks. In his reply the petitioner did not dispute to have refused to blow whistle. However, the petitioner denied to have misbehaved with the Shift-in-charge and explained that he refused to blow whistle on the ground that blowing of whistle would disturb the residents of TTPS and NTPS. Keeping in view the fact that the petitioner is a member of CISF which is supposed to be a disciplined organization, refusal to obey command certainly amounts to misconduct. However, in imposing the punishment the authority ought to have taken into account the petitioner's explanation also. Though such explanation does not absolve the petitioner of the charge of disobedience, it is relevant for considering the nature of punishment to be imposed on the petitioner. Moreover, the petitioner being an officer of the rank of Head Constable, punishment imposed on him resulting in pecuniary loss appears to be disproportionate with the nature of misconduct established against the petitioner in the background of the tenor of petitioner's explanation. Therefore, we are of the view that instead of directing withholding of one increment, the petitioner should be let off with the punishment of censure or warning.

7. For the reasons stated above, while holding that the finding recorded by the Disciplinary Authority to the effect that the petitioner is guilty of misconduct is immune from interference, we allow the writ application to the extent that the penalty imposed by the Disciplinary Authority and confirmed by the Appellate and the Revisional Authorities appears to be shockingly disproportionate. The Disciplinary Authority is directed to impose penalty on the petitioner in the light of the observations made above.

L. Mohapatra, J.

I agree.