

(2011) 05 CHH CK 0012
In the Chhattisgarh High Court
Case No : Writ Petition No 2729 of 2002

Ram Sagar Sinha

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 02-05-2011

Acts Referred:

Central Civil Services (Conduct) Rules, 1964 — Rule 3
Madhya Pradesh/Chhattisgarh Special Armed Forces Act — Section 16, 17

Citation : (2011) 2 CG.L.R.W. 353

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.—By this petition, the Petitioner seeks to quash the order of dismissal dated 30.09.2002 (Annexure - A/8), passed by the Deputy Inspector General of Police (for short "the DIG"), Chhattisgarh Special Armed Forces (for short "CGSAF"), Bhilai. Thereafter, subsequent order passed in appeal confirming the order of the dismissal.

2. The indisputable facts, in nutshell, as pleaded by the Petitioner, are that the Petitioner was appointed as Constable in the Special Armed Force on 31.1.1985. The Petitioner was posted at 2nd Battalion, CGSAF, Sakri, District Bilaspur. The Petitioner was posted at Samari, Police Station Kusmi, District Surguja. On 01.02.2001, during a roll call, he was absent. There is an allegation that the Petitioner abused with filthy language to the Post Commander. A panchnama was prepared and it was found that the Petitioner was inebriated.

3. The departmental enquiry was initiated on 25.05.2001 vide D.E. No. 4/2001. The enquiry officer was appointed and by his report dated 10.08.2001 (Annexure A-3) charge No. 1 was held as proved partially and charge No. 2 was found proved fully, proposing the minor punishment of stoppage of increment for one year. The Petitioner was issued a notice along with an enquiry report on 13.08.2001. The Petitioner vide letter dated - nil - submitted his response

(Annexure A- 4) denying all the charges and stated that the charges have not been found proved against the Petitioner. Thus, the Petitioner may be given one more opportunity to serve and prove his conduct.

4. The Disciplinary Authority i.e. the Respondent No. 4 vide order dated 31.08.2001 (Annexure A-5) having considered all the aspects of the matter, came to the conclusion that the charge of abusing the Post Commander was not proved. However, remaining absent unauthorisedly was found proved.

Accordingly, a minor punishment of withholding of one year increment was passed.

5. Thereafter, the DIG took up the matter suo motu and issued a show-cause notice dated 17.05.2002, holding that if the reply was not filed within a period of one week, it may be deemed that the Petitioner has nothing to say in the matter and the proposed punishment of dismissal from service may be passed. The Petitioner could not file his reply within a period of one week. However, reply was filed on 20.07.2002 (Annexure A-7) submitting that the charge of abusing with filthy language to the Post Commander has not been found proved and, as such, the charges were not of serious nature to take recourse to the punishment of dismissal from service.

6. The DIG by the impugned order dated 30.09.2002 (Annexure A-8), after considering response of the Petitioner and examining the departmental enquiry report, held that the Petitioner was an arrogant indisciplined constable and in the past, three major and fourteen minor punishments have been imposed upon him. In spite of the same, there was no improvement in his conduct. Thus, the punishment of withdrawal of one year increment imposed by the Disciplinary Authority was modified and the Petitioner was dismissed from service. Thereagainst, the Petitioner preferred an appeal before the Inspector General of Police on 01.11.2002 (Annexure A-9), which was also dismissed. Thus, this petition.

7. Shri Kesharwani, learned Counsel appearing for the Petitioner, submits that firstly; the order passed by the DIG was unreasoned order; secondly; the notice issued by the DIG was a post decisional notice and thirdly; the principles of natural justice was not followed and, as such, the order passed by the DIG, dismissing the Petitioner from service is bad in law, unjust and vitiated.

8. Learned Counsel further submits that the enquiry officer has not found the allegation of abusing the Post Commander as proved and the imposition of punishments earlier, may not be a good ground for dismissal of the Petitioner from service.

9. On the other hand, Shri Shridhar, learned Panel Lawyer appearing for the State/Respondents, submits that the Petitioner had committed misconduct under the provisions of Sections 16 & 17 of the M.P/C.G. Special Armed Forces Rules (for short "the MP/CG SAF Rules"). On 1.2.2001, the Petitioner while posted at

Samari, Police Station Kusmi, District Surguja, remained unauthorisedly absent from the camp, without intimation to the higher authority and without prior approval. The area was naxalite affected area, thus, maintenance of discipline was more necessary. In the roll call, called by the Post Commander, the Petitioner came and abused with filthy language to the Post Commander. The Petitioner was in inebriation. Even in the past, the Petitioner was punished with three major punishments and fourteen minor punishments. The Petitioner was earlier removed in the year 1996 also and in appeal, on human consideration, it was set aside. It is not the case of the Petitioner that there was any irregularity or illegality in the enquiry.

10. Learned Counsel further submitted in support of the order passed by the DIG in revision, which was maintained in appeal preferred before the Inspector General of Police.

11. It is further submitted that the DIG is fully competent to take up the matter under revision suo motu, under the provisions of the Regulation 270 (1) of the M.P./C.G. Police Regulations, and if it is found that the punishment imposed by the Disciplinary Authority was not just and proper, the punishment may be enhanced after affording an opportunity of hearing to the parties interested. In the case on hand, the Petitioner was given full opportunity of hearing and on consideration of his response dated 20.07.2002 (Annexure A-7), the impugned order was passed on 30.09.2002 (Annexure A- 8).

12. I have heard learned Counsel appearing for the parties, perused the pleadings and the documents appended thereto.

13. The charge sheet was issued to the Petitioner on 25.05.2001 (Annexure A-2) containing two charges along with a list of witnesses and list of documents. The charges were that the Petitioner remained absent unauthorisedly on 1.2.2001, thereafter came to the camp, abused the Post Commander and created unlawful scene, thus, that amounts to violation of Rule 16(b) and 17(e) & (f) of the MP/ CG SAF Rules read with the provisions of Rule 3(a) of Civil Services (Conduct) Rules, 1965. Secondly, the Petitioner has not improved his conduct and had indulged into illegal & unlawful activities, when the Petitioner was imposed with fourteen minor punishments and three major punishments with twenty five awards in the last sixteen years.

14. The enquiry officer by his report dated 10.08.2001 (Annexure A-3) held that remaining absent from duty was found proved, however, using abusive language was not proved; thus, charge No. 1 was partly proved. The charge No. 2 was found fully proved. Thereafter, a notice was issued to the Petitioner on 13.08.2001. The Disciplinary Authority, having agreed with the enquiry report, issued a notice to the Petitioner, which was replied to by the Petitioner vide Annexure A-4. After considering the report and response of the Petitioner, the Disciplinary Authority imposed a punishment of withholding of one year increment in the pay-scale.

15. The DIG under Regulation 270 (1) took up the matter for revision suo motu and issued a notice to the Petitioner on 17.05.2002 (Annexure A-6), proposing a punishment of dismissal on the ground that the conduct of the Petitioner was of a very serious nature, which is not permissible in the Police Force, thus, why the Petitioner be not dismissed from his service. The Petitioner submitted his reply on 20.07.2002 (Annexure A-7). The DIG considered the reply to the show cause notice, departmental proceedings as well as all service records and came to the conclusion that the above-stated two charges were fully proved and having regard to the past history of the Petitioner, the Petitioner was an arrogant and indisciplined employee, he did not show any improvement in his conduct, thus, the impugned order dismissing the Petitioner from service was passed on 30.09.2002 (Annexure A-8). The appeal thereagainst to the Inspector General of Police was also dismissed.

16. The question arises for consideration whether a suo motu revision by the DIG was justified in view of the fact that there was no order to exonerate from punishment, but the minor punishment was imposed withholding one year increment.

17. Regulation 270 reads as under:

270. (1) Every order of punishment of exoneration, whether original or appellate shall be liable to revision suo-motu by any authority superior to the authority making the order.

(2) Every appellate order by a final appellate authority shall be liable to revision by such final appellate authority, on application made in that behalf by the Petitioner against whom the order has been passed.

Explanation - For the purposes of this clause, the expression "final appellate authority" means the final authority empowered to hear an appeal under Police Regulation 262.

(3) The provisions of Regulations 266, 267, 268 and 271 shall, as nearly as may be, apply to an application for revision.

(4) The revising authority may for reasons to be recorded in writing exonerate or may remit, vary or enhance the punishment imposed or may order a fresh enquiry or the taking of further evidence in the case:

Provided that it shall not vary or reverse any order unless notice has been served on the parties interested and opportunity given to them for being heard

18. The Regulation 270 (1) provides for suo motu revision only in case of exoneration from punishment. In other cases, the revision is maintainable only on the application made in that behalf by the person against whom the order has been passed. In the case on hand, the Petitioner was not exonerated from punishment, but the Disciplinary Authority, having agreed with the enquiry report, wherein the charge of abuse was not found proved, imposed a minor

penalty of withholding of one year annual increment.

19. Accordingly, the DIG was not competent to take the matter suo motu in revision and pass the order of dismissal after affording an opportunity of hearing, ignoring completely the enquiry report, which was accepted by the Disciplinary Authority.

20. The Disciplinary Authority has rightly considered that in the enquiry only charge of remaining absent unauthorisedly on 1.2.2001 was proved, the Petitioner was present when the roll call was made. The earlier punishments are not of very much relevance for imposing the hardest punishment of dismissal from service, which is disproportionate also to the alleged misconduct of the Petitioner. The same shocks conscience of a prudent man. Thus, the DIG has exceeded his jurisdiction in taking up the matter suo motu without having any power under the provisions of 270(1) of the Police Regulation.

21. Recording of cogent and strong reasons before taking a divergent view is sine qua non of fair play in action, which is completely missing in the impugned order; therefore, on this ground also, the impugned order is vitiated.

22. For the reasons mentioned hereinabove, the impugned order dated 30.9.2002 (Annexure - A/8) is quashed. The writ petition is allowed, with all consequential benefits flowing from this order.

23. There shall be no order asto costs.