
(2015) 03 JH CK 0059
In the Jharkhand High Court
Case No : Writ Petition(S) No. 5565 of 2013

Shilendra Singh Rathore

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 24-03-2015

Acts Referred:

Citation : (2015) 03 JH CK 0059

Hon'ble Judges : Rongon Mukhopadhyay, J.

Bench : Single Bench

Advocate : Jay Prakash Pandey, for the Appellant; P. Kumar, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Rongon Mukhopadhyay, J.—Heard Mr. Jai Prakash Pandey, learned counsel appearing on behalf of the petitioner and Mr. P. Kumar, learned counsel appearing on behalf of the respondent-Union of India.

2. In this application, the petitioner has prayed for quashing the order as contained in memo No. 1984 dated 24.03.2012 by which the charges levelled against the petitioner was found proved and in terms of Rule 32(1) and Rule 34 of the C.I.S.F. Rules, 2001 the petitioner was given a punishment of removal from service which order was affirmed in appeal as contained in memo No. 4965 dated 27.04.2012 as well as in revision as contained in memo No. 9959 dated 07.09.2012 and which are also the subject matter of challenge in this present application.

3. The petitioner was employed as a constable and was posted at C.I.S.F. Unit, BCCL, Dhanbad. A departmental enquiry was ordered to be conducted against the petitioner with respect to the charges which are quoted hereinunder:-

4. The petitioner had given a detailed reply to the charges on 22.06.2012 in which so far as the charge No. 1 is concerned, the same was denied but the petitioner has accepted the charge with respect to the previous punishment on

account of indisciplined action on his part. In course of the departmental proceedings having found both the charges proved an order was passed on 24.03.2012 by the respondent No. 4 as contained in memo No. 1984 in which while exercising the powers under the C.I.S.F. Rules, the petitioner was given a punishment of removal from service. The order dated 24.03.2012 was challenged in appeal in which on 27.04.2012 the respondent No. 3 dismissed the appeal preferred by the petitioner. A revision followed before the respondent No. 2 and vide order dated 07.09.2012 as contained in memo No. 9959 the revision preferred on behalf of the petitioner was also dismissed.

5. The learned counsel for the petitioner has assailed the impugned order of punishment and its subsequent affirmation in appeal and revision by submitting that the departmental proceeding which was conducted against the petitioner were not in terms of the prescribed rules. It has also been submitted that infact the petitioner had not consumed liquor and the doctor has also confirmed about his normal condition which has not been properly taken into consideration by either of the authorities. It has also been submitted by the learned counsel for the petitioner that infact on account of cough and fever he had taken Paracetamol tablet and cough syrup on 01.02.2012 and that he had grave doubts that someone was misusing his rifle on account of which he had taken the rifle from the barrack for safety purposes and such circumstances have not been considered while passing the impugned order of removal from service. It has also been submitted by the learned counsel for the petitioner that the punishment is not in-commensuration with the charges leveled against the petitioner and in such circumstance also the order of punishment being highly disproportionate should be set aside.

6. The learned counsel for the respondents-Union of India, on the other hand, has submitted that so far as the charge No. 1 is concerned, the same was with respect to the petitioner firing one round from his service rifle under the influence of liquor and the said indisciplined act on the part of the petitioner has already been proved. It has been submitted that as regards charge No. 2 is concerned, the petitioner himself has admitted that earlier also on account of indisciplined behavior he was given minor punishments on six occasions. It has also been submitted by the learned counsel for the respondents while referring to the impugned order that the medical report which was marked as Exhibit - 7 had been supported by the witness No. 1 which substantiates the charge that the petitioner was in an intoxicated state of mind. It has also been submitted by the learned counsel for the respondent that the defence of the petitioner seems to be totally frivolous inasmuch as if the petitioner was indeed of the view that his service rifle was being misused, he could have referred the matter to the higher authorities but he chose to keep silent and only in course of the departmental proceeding the said ground was taken by the petitioner. The learned counsel for the respondents also submitted that the entire facts which have been narrated in the order of punishment reveals that the behavior of the petitioner who was a member of a disciplined force was incorrigible and that the petitioner did not

have any remorse with the indisciplined acts for which he was found guilty in the past.

7. After hearing the learned counsel for the parties and after going through the records, I find that the charges which have been leveled against the petitioner have been duly proved by the departmental authority which has subsequently been upheld in appeal as well as in revision. The petitioner admittedly was a member of C.I.S.F. which is a disciplined force but the past conduct of the petitioner which relates to charge No. 2 shows that the indisciplined act of the petitioner was irretrievable and irreversible. The petitioner was on earlier occasions prior to the order of removal from service handed out six minor punishments but no improvement or remorse was shown by the petitioner while committing another act of indisciplined behavior which could have seriously resulted in injury to another personnel of the C.I.S.F. The medical report clearly proves that the petitioner had consumed liquor and that he had fired one round from his service rifle deliberately. The defence of the petitioner seems to be flimsy and only has been created as an afterthought. It has been consistently held by the disciplinary authority, the appellate authority as well as the revisional authority that the acts of the petitioner were found proved in course of the departmental proceeding and taking into consideration such indisciplined act as well as the past conduct of the petitioner an order for removal from service was passed against the petitioner on 24.03.2012 which on the facts and circumstances gathered above was absolutely correct and justified.

8. The learned counsel for the respondent has placed reliance on a judgment in the case of Mohd. Yunus Khan Vs. State of U.P. and Others, which considered as to whether the past conduct of an employee can be taken into consideration while imposing a punishment and it was held as follows:-

"34. The courts below and the statutory authorities failed to appreciate that if the disciplinary authority wants to consider the past conduct of the employee in imposing a punishment, the delinquent is entitled to notice thereof and generally the charge-sheet should contain such an article or at least he should be informed of the same at the stage of the show-cause notice, before imposing the punishment.

35. This Court in Union of India v. Bishamber Das Dogra considered the earlier judgments of this Court in State of Assam v. Bimal Kumar Pandit, India Marine Service (P) Ltd. v. Workmen, State of Mysore v. K. Manche Gowda, Colour-Chem Ltd. v. A.L. Alaspurkar, DG, RPF v. Sai Babu, Bharat Forge Co. Ltd. v. Uttam Manohar Nakate and Govt. of A.P. v. Mohd. Taher Ali and came to the conclusion that it is desirable that the delinquent employee be informed by the disciplinary authority that his past conduct could be taken into consideration while imposing the punishment. However, in case of misconduct of a grave nature, even in the absence of statutory rules, the authority may take into consideration the indisputable past conduct/service record of the delinquent for "adding the weight to the decision of imposing the punishment if the fact of the case so required".

9. Even otherwise Article 1 of the charge itself being grave in nature and having been proved in course of the departmental enquiry the order for removal from service is proportionate to the charge which have been proved against the petitioner.

10. In such circumstance, therefore, there being no illegality in the impugned orders, this writ petition fails and the same is, accordingly, dismissed.