
(2011) 12 JH CK 0014
In the Jharkhand High Court
Case No : WP (S) No. 7210 of 2005

Shiv Kumar Mishra

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 13-12-2011

Acts Referred:

Citation : (2012) 1 JLJR 118

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Advocate : Ritu Kumar and Samavesh Bhanj Deo, for the Appellant; Faiz-ur-Rahman, for the Respondent

Final Decision : Dismissed

Judgement

D.N. Patel, J.—The present writ petition has been preferred mainly against the order, passed by the Commandant, Central Industrial Security Force, Patratu, dated 11th November, 2003, which is an order of imposing punishment upon the present petitioner, upon which an appeal was preferred before the Deputy Inspector General, Central Industrial Security Force, whereby, there is deduction in the punishment vide order dated 24th January, 2005, against which a revision application was preferred and the revision application was dismissed vide order dated 14th September, 2005, against which the present writ petition has been preferred. Counsel for the petitioner submitted that looking to the nature of punishment awarded by the appellate authority though it is reduced, it is shockingly disproportionate and the respondents-authorities have not appreciated the fact that crucial witness, namely Suresh Chand, has not been examined. Moreover, it is submitted by the counsel for the petitioner that the petitioner has worked honestly, sincerely, diligently and to the satisfaction of the respondents for several years as Sub-Inspector in Central Industrial Security Force.

2. It is further submitted by the counsel for the petitioner that in alternate, at least the order dated 24th January, 2005, which is at Annexure-8, may be

ordered to be complied with by the respondents. It is not quashed because whatever reduced punishment has been awarded by the appellate authority by order dated 24th January, 2005, ought to have been implemented by the respondents.

3. Counsel for the Union of India submitted that looking to the nature of misconducts, it appears that the petitioner was always demanding money from other members of the Central Industrial Security Force and was not returning the money and upon insisting to return the money, the petitioner used to tell that if they complain against his superior, then only their money would be returned. This attitude was adopted by the petitioner with an intention not to return the money or if he has at all to return the money, he will receive a complain against his superior, from the person to whom the money is to be returned. These charges have been proved in the departmental inquiry. Several witnesses were examined and adequate opportunity of being heard was given to the petitioner and on the basis of the inquiry report, the decision was taken by the Commandant, Central Industrial Security Force, dated 11th November, 2003 imposing punishment to reduce one stage of pay scale for a period of two years with effect from 11th November, 2003 and during his period of reduction of pay scale, he will not be entitled to earn the increment. This punishment is reflected in paragraph no. 7 of the order, passed by the Commandant, Central Industrial Security Force, in his order dated 11th November, 2003. Against this order, a departmental appeal was preferred by the petitioner and an appellate order dated 24th January, 2005 was passed by the Deputy Inspector General, Central Industrial Security Force, after giving adequate opportunity of being heard to the petitioner and the punishment was reduced by the appellate authority whereby, reduction in pay of one stage for a period of four years was awarded and during this period, the petitioner was entitled to earn the increments and on expiry of a period of four years, his future increments will be paid to the petitioner. This order is at Annexure-8 to the present petition. Thereafter, a revision petition was preferred by the petitioner, which was dismissed by the Inspector General, Central Industrial Security Force, vide order dated 14th September, 2005, which is at Annexure-9. Thus, there is no procedural defect in holding inquiry and imposing punishment and an adequate opportunity of being heard was also given to the petitioner. Now, the only question left out is the quantum of punishment whether it is shockingly disproportionate or not.

4. Counsel for the respondents submitted that the charges levelled against the petitioner are very serious in nature. He has a habit of taking money from others and upon insisting to return the money he uses to demand some complain to be filed against his superior before returning the money. In a disciplinary force, this type of attitude cannot be tolerated. Moreover, the petitioner has already been punished by major/minor punishments for one dozen times. Thus, this is thirteenth misconducts committed by present petitioner. Enough leniency have been shown by the appellate authority by reducing the punishment and this punishment, which is reduced by the appellate authority, cannot be therefore,

said to be shockingly disproportionate to the nature of the misconducts committed by the present petitioner and therefore, the present petition deserves to be dismissed.

5. Having heard counsel for both the sides and looking to the facts and circumstances of the case, I see no reason to entertain this writ petition mainly for the following facts and reasons:--

(i) The petitioner is a member of the disciplinary force, namely Central Industrial Security Force. The charges levelled against the present petitioner is that he had taken money from one Surendra Singh for some period, which was to be returned to Surendra Singh, who is also a member of Central Industrial Security Force. When the said officer, namely Surendra Singh, insisted to return the money, the present petitioner demanded from him some complain to be filed against his superior otherwise, the money would not be returned by him. This type of attitude, which has been shown by the present petitioner, is reflected from charge no. 1. So far as charge no. 2 is concerned, there are one dozen major/minor punishments awarded to the petitioner and he still continuing with the similar type of misconducts again and again. Charges levelled against the present petitioner have been proved in the departmental inquiry conducted by the inquiry officer. Thus, adequate opportunity of being heard was given to the petitioner, looking to the order, passed by the Commandant, Central Industrial Security Force, Patratu Thermal Power Station, Patratu, dated 11th November, 2003, which is at Annexure-7 to the memo of the present petition.

(ii) It appears that the respondents have examined several witnesses and on the basis of these evidences on record, the charges levelled against the petitioner is found to be proved. No error has been committed by the respondents in holding the inquiry. Several witnesses have been examined by the respondents. Counsel for the petitioner submitted that the important witness, namely Suresh Chand, has not been examined by the respondents. This argument is not accepted by this Court mainly for the reason that the said witness ought to have been examined by the delinquent himself.

(iii) It appears that the decision taken by the Commandant, Central Industrial Security Force is after following correct procedure and after giving an opportunity of being heard to the petitioner. Against this order, an appeal was preferred by the petitioner before the Deputy Inspector General, Central Industrial Security Force. Again an opportunity of being heard was given to the petitioner and the quantum of punishment was altered by the appellate authority. Thereafter, revision application was preferred by the petitioner before the Inspector General, Central Industrial Security Force and the revision application was dismissed vide order dated 14th September, 2005, which is at Annexure-9 to the memo of the present petition. Thus, looking to the aforesaid three orders at Annexures-7, 8 and 9 passed by the respondents, there is no procedural lapse in holding inquiry and an adequate opportunity of being heard was given to the petitioner.

(iv) Now, the only question left out to be considered by this Court is the quantum of punishment, which have been inflicted upon the petitioner by the appellate authority vide his order dated 24th January, 2005 at Annexure-8. Looking to the nature of misconducts, it appears that the present petitioner used to demand money from his other colleagues, who are working in the Central Industrial Security Force and upon insistence to return the money, the demanded some complain against his superior, from the person to whom money is to be returned. This type of attitude of the petitioner in the disciplinary forces like Central Industrial Security Force, cannot be tolerated. Enough leniency have been shown by the departmental appellate authority by reducing the punishment and therefore, I see no reason to take any other view than what is the view taken by the departmental appellate authority. On the contrary, looking to the nature of the misconducts and the leniency shown, it cannot be said that the punishment awarded by the disciplinary authority is shockingly disproportionate to the nature of the misconducts. Moreover, previously, one dozen misconducts were committed by the present petitioner and one dozen major/minor punishments have been inflicted upon the present petitioner. This is thirteenth proved misconduct committed by the very same delinquent. In this set of circumstances also, in Central Industrial Security Force, where the petitioner is working, such an attitude of the petitioner cannot be tolerated. Punishment awarded by the appellate authority, which is at Annexure-8, is a bare minimum punishment inflicted upon the petitioner.

(v) It has been held by the Hon''ble Supreme Court in the case of Govt. of A.P. and Others Vs. Mohd. Narsullah Khan, especially in paragraph no. 15, which reads as under:--

15. This takes us to the last submission of the counsel for the respondent. Learned counsel for the respondent contended that the offence, said to have been committed, being minor in nature and no loss being caused to the owner of the property, inasmuch as the same had been recovered on the spot, lenient punishment may be awarded in place of dismissal from service. We are unable to countenance this submission. The gravity of the offence must necessarily be measured with the nature of the offence. The respondent was a member of a disciplined force holding the rank of Head Constable. The duty assigned to him was a "bandobast" duty during the visit of the then President Bill Clinton, who ran a security risk of the highest grade. His misconduct could have led to serious security lapse resulting in fatal consequences. But, because of timely detection by the electrician, PW-4, the lens was recovered and immediately restored. We entirely agree with the inquiry officer that the charges are serious In nature-being committed by a member of a disciplined force, who deserved stringent punishment. To instil the confidence of the public in the establishment, the only appropriate punishment in such cases is dismissal from service, which has been correctly awarded.

(Emphasis supplied)

In view of the above decision also, the punishment inflicted upon the petitioner by the appellate authority vide order dated 24th January, 2005, at Annexure-8, is absolutely in consonance with the nature of the misconducts proved against the present petitioner.

Similarly, no error has been committed in dismissing the revision application by the Inspector General, Central Industrial Security Force, vide his order dated 14th September, 2005, which is at Annexure-9 to the memo of the present petition. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncement, there is no substance in this writ petition. Hence, the same is hereby, dismissed. Respondents are hereby, directed to implement their own order at Annexure-8 dated 24th January, 2005, which has been passed by the appellate authority, if no further punishment has been inflicted upon the petitioner.