
(2013) 04 CHH CK 0032
In the Chhattisgarh High Court
Case No : Writ Petition No. 724 of 1999

S.L. Narsaiah

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 08-04-2013

Acts Referred:

Citation : (2013) 2 CGBCLJ 274

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J.—By this petition, the petitioner seeks quashing of the impugned orders dated 28.07.1998 (Annexure P/46 & P/51) whereby the appeals of the petitioner against the order dated 22.05.1998 (Annexure P/44 & P/49) issued by the Commandant, Central Industrial Security Force (for short "the CISF") Unit Bhilai. Under order dated whereunder the petitioner was imposed with a punishment of removal from service. The facts, in brief, as projected by the petitioner are that the petitioner was a member of CISF, posted as Lance Nayak in Bhilai Unit at Dalli Rajhara Mines. The petitioner was allotted official accommodation which was later on cancelled on 22.08.1997 (Annexure P/1) on the ground that he was not residing in that quarter along with his family. Against the said cancellation order, the petitioner preferred a representation on 27.08.1997 (Annexure P/2) requesting the authorities to permit him to retain the quarter. The respondent authorities directed the petitioner by letter dated 29.08.1997 (Annexure P/3) to vacate the said quarter in response to which the petitioner submitted his explanation on 30.08.1997 (Annexure P/4) stating that his family has arrived at Rajhara and they are staying with him. The petitioner was asked to report to the Orderly Room for indiscipline on 18.09.1997 (Annexure P/6) and on 19.09.1997 (Annexure P/7), the petitioner was placed under suspension.

2. Thereafter, a departmental enquiry was conducted against the petitioner under

the provisions of the Central Industrial Security Force Rules, 1969 (for short "the Rules") after issuance of memo of charges containing three charges on 06.10.1997 (Annexure P/41). The petitioner filed his response on 21.10.1997 (Annexure P/42). On 05.11.1997, one A.A. Ashtekar, Inspector, CISF was appointed as Enquiry Officer. Thereafter, notices were issued to the petitioner but he did not turn up to attend the DE. The suspension order dated 19.09.1997, however, was revoked on 21.11.1997 (Annexure P/19). The petitioner reported back to his Unit on 06.01.1989. Thereafter, the enquiry was completed ex-parte and EO submitted his findings on 08.01.1998 (Annexure P/43). After completion of the enquiry, the petitioner was punished with the penalty of removal from service on proving of allegation of three charges, as aforesaid, by order dated 22.05.1998 (Annexure P/44). For one other separate charge also, the petitioner was imposed with penalty of removal from service on the same date i.e. 22.05.1998 (Annexure P/49). Against these orders, the petitioner preferred two separate appeals which were also rejected by the appellate authority on 28.07.1998 (Annexure P/46) and (Annexure P/51). Thus, this petition.

3. Shri Tamaskar, learned counsel appearing for the petitioner would submit that the petitioner was never served with second show cause notice before imposition of the final order of dismissal from service. The absence of the petitioner was on account of urgent domestic need, thus, remaining absent without prior intimation would not come within the definition of indiscipline. The petitioner resided in the official accommodation without his family for a very short period, thus, it cannot be said that he has committed any misconduct. He would further submit that u/s 8 of the Central Industrial Security Force Act, 1968 (for short "the Act"), removal of a member of a force has been made subject to Article 311 of the Constitution and also subject to Rule 34 of the Rules, 1969. He would next contend that the Commandant, CISF was having no authority to remove the petitioner from service.

4. On the other hand, Shri Kashif Shakeel, learned counsel appearing for the respondents would submit that the petitioner, being a member of Armed Force, has committed serious misconduct and indiscipline which is highly unbecoming. Firstly, the petitioner occupied the official accommodation and when it came to the knowledge of the respondents that he was residing alone, and not with his family, he was asked to vacate the same, but instead of vacating the said quarter, he declined to do so. Further, when he was ordered to report in the Orderly Room, and to put his signature in the Register, he denied to do so, which amounts to clear disobedience of the orders of his superior authority. The DE was conducted in a free and fair manner, as prescribed under the Act, 1968 and the Rules, 1969. The petitioner was noticed number of times but he declined to cooperate in the DE. Thus, the EO had to conclude the DE, ex-parte. On 07.02.1998 (Annexure P/25 and R/6), the petitioner was granted opportunity to examine the prosecution witnesses, to produce his defence witness and to examine any document, if required which was declined by the petitioner on 21.02.1998 (Annexure P/30) and submitted an application stating that he has

nothing to say except what was stated in applications dated 14.10.1007, 29.10.1997 and 21.10.1997. He also informed that he did not want to submit any separate statement. Thereafter, the EO submitted his findings on 26.03.1998 and ultimately, the impugned order of dismissal from service was passed.

5. Shri Shakeel would further submit that a second DE was conducted in which charge sheet was issued to the petitioner on 10.12.1997, which was sent to the petitioner's native place but no response was received from the petitioner. On 31.12.1997, B. Raju, Inspector, CISF was appointed as EO to enquire into the allegations. When the petitioner reported back to his Unit a notice was issued on 06.01.1998 (Annexure P/23) granting opportunity to defend his case. The EO submitted his findings and held the charges to be proved which was communicated to the petitioner on 16.03.1998, affording an opportunity of hearing to submit his response. Another opportunity to file a representation was granted to the petitioner on 28.04.1998 but the petitioner did not file any representation. Ultimately, by the impugned order dated 22.05.1998 (Annexure P/49) the petitioner was removed from service. Against the said order, the petitioner preferred an appeal which was also dismissed on 28.07.1998 and again, the petitioner preferred a revision before the Home Minister, which was referred to the Inspector General, CISF being the competent authority. The said revision was also dismissed on 22.03.2000 (Annexure R/10).

6. Shri Shakeel would lastly submit that the petitioner was afforded every opportunity and the principles of natural justice and fairplay in action was followed. Before passing the final order of removal from service, the petitioner was given show cause notice and opportunity to put forward his case, and the same was availed by the petitioner. Thus, there may be no interference by this Court with the orders impugned herein.

7. Heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto.

8. The petitioner was served with a charge sheet for the first time on 06.10.1997 (Annexure P/14) for having occupied family accommodation without having family, and secondly, committed serious indiscipline by not vacating the premises despite the order dated 29.08.1997 for vacating the premises, thirdly, the petitioner declined to attend the orderly room on 18.09.1997 and also declined to sign the orderly room register. This is a serious allegation of indiscipline. Enquiry was held and the enquiry report was submitted by the Enquiry Officer on 08.01.1998. In the meantime, the petitioner reported back to his Unit on 06.01.1998. Thereafter the petitioner was again granted opportunity by the Disciplinary Authority to examine the prosecution witnesses, produce his defence witness and examine the documents in defence, however, the same was declined by the petitioner on 21.02.1998. The Enquiry Officer again submitted his findings on 12.03.1998 and a copy of the enquiry report was also served to the petitioner and was granted opportunity to file response to the same. It is evident that even after serving various notices, the petitioner did not participate in the enquiry

proceedings and as such, ex-parte enquiry was concluded. In the meantime, one more enquiry was conducted in which the petitioner was alleged to have remained absent unauthorisedly from 11.11.1997 and was declared absconding. The petitioner was served with a charge sheet on 10.12.1997 which was sent to the petitioner's native place. The petitioner failed to file any reply to the said notice. When the petitioner reported back to his Unit, he was served with a second show cause notice on 06.01.1998. The Enquiry Officer submitted his report which was communicated to the petitioner on 16.03.1998. The petitioner was again granted opportunity to submit his response on 28.04.1998, but the petitioner did not file any response to the subsequent charge sheet also. Thus, on the basis enquiry report as aforesaid in both the departmental appeals, final order was passed on 22.05.1998 (Annexure P/44 & P/49). The appeal preferred by the petitioner was also dismissed with a reasoned order.

9. It is an admitted position that the petitioner did not cooperate in the enquiry proceedings. Firstly, the petitioner failed to file any response to several show cause notices, secondly, when the second notice was issued after submission of the enquiry report, even then the petitioner did not file any response. The petitioner was afforded opportunity of hearing more than it was required under the procedure as laid down under the provisions of law. The petitioner did not give full opportunity of hearing which he declined and failed to cooperate with the EO. Thus, the EO was constrained to conclude the departmental enquiry ex-parte. The petitioner has clearly disobeyed the orders of his superior authority by not vacating the official accommodation which was meant for residing for the personnel who were having family, further, the petitioner declined to sign the register in the orderly room and lastly, the petitioner also remained absent unauthorisedly for which no strong or cogent reasons were assigned by the petitioner. The petitioner even did not care to respond to the notices and communications sent by the respondent authorities. Thus, the petitioner cannot take shelter of the ground that he was not issued second show cause notice, which was in fact duly issued to the petitioner. The petitioner has utterly failed to point out any procedural defect in the conduct of the entire departmental enquiry or error in legality and validity of the punishment.

10. Thus, this Court is of the strong view that the enquiry was properly conducted and the punishment awarded to the petitioner is just and proper, warranting no interference. Resultantly, the writ petition is dismissed. No order as to costs.