

Allahabad High Court

Mahendra Nath Chaubey Son Of Sri ... vs The Director General, Central ... on 18 May, 2007

Author: R Tiwari

Bench: R Tiwari

JUDGMENT Rakesh Tiwari, J.

1. Heard counsel for the parties and perused the record.
2. The petitioner was appointed as Assistant Sub Inspector (Executive) in the department of Central Industrial Security Force vide order dated 18th May, 1976 passed by Inspector General, Central Industrial Security Force on probation for a period of two years.
3. It is alleged by the petitioner that on account of personal work he had to go to his ancestral home as such he applied for casual leave w.e.f. 1.2.1985 to 8.2.1985 suffixing 9th and 10th of February, 1985 which was granted with permission to leave the station.
4. It is stated that unfortunately he fell ill and could not report back for duty, hence in the circumstances he informed the competent authority about his illness and also applied for extension of his leave on 13.2.1985 through registered letter dated 13.2.85 addressed to the Commandant, C.I.S.F. (Admn) Jeal Gora which was delivered on 16.2.85.
5. It is submitted that as the petitioner had to further extend the leave he sent another application dated 5.3.85 requesting for medical leave for period of 25 days. Since he did not recover from the ailment during this period as such he again asked for extension further for 40 days of medical leave from 11.6.85 to 18.7.85.
6. In the mean time, he received two letters by which the competent authority refused to extend the leave applied for by the petitioner. After recouping from his illness the petitioner submitted his joining report along with fitness certificate but it is alleged that he was not permitted to join the duty by the respondents.
7. The petitioner states that in these circumstances he moved a representation dated 26.7.85 in this regard to the Deputy Inspector General, Dhanbad requesting him to permit the petitioner to join his duties; instead he received a registered letter dated 11th September, 1985 from the office of the Deputy Inspector General, Dhanbad informing that he has been removed from service w.e.f. 18.7.85.
8. Against the aforesaid order dated 18.7.85 the petitioner filed an appeal before the Director General, C.I.S.F. which was also rejected vide order dated 15.4.86 on the ground that the medical certificates submitted by the petitioner were doubtful and he was in habit of overstaying leave.
9. The petitioner then filed revision against the order dated 15.4.86 before the Director General, C.I.S.F. New Delhi which too was rejected vide order dated 10th November, 1986, hence this writ petition.

10. The counsel for the petitioner submits that the respondents had stated in the counter affidavit that the charge sheet dated 25/26.4.1985 was sent to the petitioner by registered post but no proof regarding the same had been given in the counter affidavit; that by letter dated 19.6.85 information was sent regarding enquiry which had taken place on 28.6.85 and time period would clearly substantiate the claim of the petitioner that actually it had been delivered to him on 29.6.1985 to his native village, therefore, he could not have participated in the enquiry however, respondents have nowhere in the counter affidavit made any averments regarding factum of sending of chargesheet, enquiry report or any other document to the petitioner prior to the submission of appeal or revision by him.

11. It is submitted that the enquiry was conducted *ex parte* and thereafter removal order was passed without providing any opportunity of hearing to the petitioner and without supplying charge sheet and the copy of the enquiry report to him; hence in these circumstances the petitioner could not have filed appeal within the stipulated time. It is further submitted that the representation which the petitioner had moved to D.I.G. (CISF) and D.G. (CISF), were wrongly treated as appeal and by order dated 15.4.86 the appeal of the petitioner was dismissed by the D.I.G. (CISF) mainly on the grounds (i) that the petitioner was charge sheeted for overstaying from casual leave w.e.f. 11.2.85 till the date of removal from service without proper permission or authority thereby had committed gross indiscipline and misconduct; and (ii) that two notices dated 15.2.85 and 19.3.85 were sent to the petitioner to report for duty which he had failed to comply and continued to remain absent without authority.

12. It is also submitted that the appellate authority had found the petitioner guilty of both the charges and had made a mention in the order itself that no regular appeal was filed. The representation of the petitioner was rejected not only on the ground of being time barred the authority had also discussed the merits of the case and ignored all the material certificates on technical ground ignoring the fact that the petitioner had never been given any opportunity to defend his claim.

13. He further submits that the respondents in para 19 of the counter affidavit had made a categorical submission and also made wild allegation that the petitioner willfully and knowingly refused to accept the final order and copy of the enquiry report from the postal authority but at the same time had not submitted any record to prove these allegations; that the appellate authority had also rejected the claim of the petitioner on the ground of doubtful medical certificates, the details of which are mentioned in paragraph 20 of the counter affidavit.

14. According to the counsel these clearly shows that there was no ambiguity in the medical certificates but the respondents have deliberately ignored the fact that the petitioner had in fact fell ill at his native village and taken medical aid available in village itself.

15. He then submits that the petitioner had preferred revision on the ground that he was not provided any opportunity to defend his case and was not communicated the order of removal from service and as such could not file the regular appeal and no charge sheet as required under Rule 34(2) of C.I.S.F. Rules had ever been served on the petitioner prior to the conclusion of enquiry but

merely on technicalities without consideration of regular revision, respondent No. 2 had rejected the claim of the petitioner without verifying as to when the charge-sheet and enquiry report had been sent to the petitioner. It is stated that these were neither sent with the appellate order or with the revisional order and even have not been appended with their counter affidavits, hence the entire enquiry proceedings against the petitioner are vitiated being against the rules regulations of CISF and the natural justice.

16. It is urged that in the counter affidavit the respondents have made averments which were not part of enquiry and also discussed the past conduct of the petitioner in para 5 of the counter affidavit for which remarks had already been given, therefore, the respondents can not now raise new issues in the counter affidavit and also can not substantiate their contention by means of counter affidavit which is in the circumstances liable to be ignored by this Court.

17. It is lastly submitted that the respondents had not allowed the petitioner to join the duty, therefore, he had filed contempt petition No. 519 of 1992 which was dismissed on the ground of afflux of time.

18. In support of his above submissions, the counsel for the petitioner has relied upon the following rulings.

1. , Managing Director, ECIL Hyderabad and Ors. v. B. Karunakar and Ors.;
2. , B.C. Chaturvedi v. Union of India and Ors.;
3. , Union of India and Ors. v. Giriraj Sharma;
4. (2002) 1 UPLBEC-325, N.K. Musafir Yadav v. Commandant, 47 Bn. CRPF Gandhi Nagar (Gujrat);
5. ESC (2003) 4 page-2216 Constable R. Velapandi v. Union of India and Ors.;
6. ESC (2001) 2 page-509, Union of India and Ors. v. Bishwambhar Nath Mishra; and
7. , State of Tamil Nadu and Ors. v. M. Natrajan and Anr.

19. In Managing Director, ECIL Hyderabad (supra) it has been that the delinquent is entitled to the copy of the enquiry report before the Disciplinary Authority take decisions regarding guilt or innocence. Refusal to furnish copy amounts to denial of reasonable opportunity. In B.C. Chaturvedi (supra) the Hon'ble Apex Court has held that the disciplinary authority and on appeal; appellate authority are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/ Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it

may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof. In *Union of India and Ors. (supra)* it has been held that the disproportionate punishment-Punishment of dismissal-Grounds-Overstaying leave period by employee subsequent to order of rejection of application for extension of leave. No willful intention to flout the order. Punishment harsh and disproportionate. Resulting of reinstatement with all monetary and service benefit granted with liberty to visit minor punishment. Dismissal on the ground of over staying leave period is harsh and disproportionate. In *N.K. Musafir Yadav (supra)* it has been held that for over staying after expiry of sanctioned leave is disproportionate to the charge. Order and proceedings are arbitrary. Dismissal has been substituted with reinstatement with only 50% of back wages. In *Constable R. Velapandi (supra)* it has been held that the petitioner a constable was dismissed from service on misconduct, negligent of duty and disobedience of order. He was found guilty of charge only relating to leaving of place of duty without permission. There would lesser punishment and should have been awarded. Matter was remanded to the Disciplinary Authority to consider the question of imposing minor punishment. In *Union of India and Ors. v. Bishwambhar Nath Mishra (supra)* it has been held that removal- Substituted into punishment of compulsory retirement by Tribunal taking humanitarian approach. After enquiry he was removed from service. The apex Court in view of the decision in *B.C. Chaturvedi's case* has held that the High Court and Tribunal can substitute the punishment awarded by the authority in appropriate case to some lesser punishment. In *State of Tamil Nadu (supra)* it has been held that Constitution of India, Article 311 Removal from service- Validity-Misconduct by Police officers- Criminal proceedings and departmental proceedings initiated simultaneously. Delinquent Officer is not participating in the disciplinary enquiry despite several opportunities. Disciplinary enquiry cannot be said to be vitiated by procedural illegalities. Punishment of removal from service imposed by the Disciplinary Authority however, set aside. Disciplinary Authority was directed to impose punishment of stoppage of increments.

20. The counsel for the respondents submits that the petitioner was under orders of transfer to southern Zone, Madras vide letter dated 11/12th December, 1984 and he was posted to CISF Unit FACT, Udyog Mandal Madras vide order dated 7.1.85; that on request of the petitioner he was granted casual leave from 1.2.85 to 10.2.85 and on expiry of the same he failed to report for duty on 11.2.85. The petitioner was then issued two call up notices by registered post dated 15.2.85 and 19.3.85 to report for duty immediately but he failed to respond despite the fact that by the aforesaid letters it was also informed to him that no extension of leave had been granted to him and disciplinary action would initiated against him for overstay of leave.

21. When the petitioner in the aforesaid circumstances failed to report back for duty the Commandant CISF BCCL appointed an Enquiry Officer under Rule 34 of the CISF Rules, 1969 vide letter dated 30.5.1985 to inquire into the charges levelled against the petitioner and charge sheet dated 25/26.4.1985 was issued to the petitioner levelling the following two charges-

(1) that he overstayed casual leave w.e.f. 11.2.85 without proper permission or authority, thereby exhibited an act of gross indiscipline and misconduct being serving in disciplined force;

and (2) that he was issued with two registered call up notices dated 15.2.85 and 19.3.85 at his home address directing him to report for duty immediately but he failed and continued to remain absent

without authority thereby violated the order and exhibited an act of gross indiscipline, disobedience and misconduct; that a registered letter dated 4.6.1985 was issued by the Enquiry Officer addressed to the petitioner to appear before him to attend the departmental enquiry scheduled to be held on 15.6.1985 and similarly another registered letter dated 19.6.85 was issued requiring to appear on 28.6.85 but again he failed to appear before the Enquiry Officer as such the enquiry proceeded ex-parte.

22. He further submits that the Enquiry officer found the petitioner guilty of the charges in the enquiry report submitted to the Disciplinary Authority who after consideration of various facts and evidences on record as well as the inquiry report, imposed penalty on the petitioner of removal from service w.e.f. 18.7.85.

23. It is further submitted that the final order along with the enquiry report was also dispatched to the petitioner by registered post but was received back undelivered with remarks of the postal authority that the petitioner had refused to receive the same which established the fact that all correspondence to the petitioner had been sent to his correct address which had been received by him but he was deliberately not complying with the directions. The appeal and revision preferred by him were too rightly dismissed in the circumstances by the authorities vide orders dated 15.4.86 and 10.11.86 holding him unworthy of retention in the disciplined force.

24. He next submits that the petitioner reported back in the unit on 19.7.85 and submitted medical certificates for different diseases from different private doctors issued on plain paper and not by any Doctor of Government hospital as required under the rules.

25. In support of above submissions, the counsel for the respondents has relied upon the following rulings.

1. 2005(1) ESC Allahabad-577, Gokulesh Sharma v. D.I.G. North Zone, CISF, New Delhi;
2. 2006(3) UPLBEC 2449, Bhanu Pratap Pandey v. Union of India Ors.;
3. Apparel Export Promotion Council v. A.K. Chopra;
4. , Union of India and Ors. v. R.K.Sharma
5. 2002(3) ESC SC-42, Union of India and Anr. v. Narain Singh; and
6. 2007 (1) UPLBEC-218 Union of India and Ors. v. Dwarika Prasad Tiwari.

26. In Gokulesh Sharma (supra) it was found that the petitioner, a member of C.I.S.F. was dismissed from service for failing to carry out the transfer orders and refusing to receive letter issued by the department after departmental enquiry and show cause notice. The petitioner had a chequered history of indiscipline. He was awarded warning censure entries and minor penalties on thirteen occasions. No ground found to review the punishment of dismissal from service. In Bhanu Pratap

Pandey (supra) the Petitioner, a constable in CRPF posted in Nagaland, without permission of the Competent Authority left for his home to attend his wife who was so sick. He remained absent for 36 days. Charge sheet was issued and enquiry ensued. On receipt of enquiry report services of the petitioner were terminated on, the charge of unauthorized absence and willful desertion. Aggrieved the petitioner filed appeal which was too dismissed, hence he filed revision that was also dismissed. Then he filed writ petition, which was also dismissed holding that the petitioner was a member of disciplined force and he failed to maintain the discipline and trust imposed upon him, he has been given a fair opportunity at three stages for defending himself and that there is no error in the three impugned orders.

27. In Apparel Export Promotion Council (supra) the Court held that-

while imposing punishment of dismissal, Disciplinary Authority as well as appellate authority were of the view that respondent taking advantage of his high level post, committed sexual harassment of subordinate female employee. High Court after reassessment of evidence found it to be a case of attempted molestation. The Apex Court has held that reassessment of evidence by the High Court is not permissible and the writ jurisdiction is not appellate jurisdiction. Thus the High Court has committed error of law.

28. In Union of India and Ors. v. R.K. Sharma (Supra) the Hon'ble Supreme Court has held that Charges of disobeying the command, received from Headquarters by the respondent officer, Deputy Commandant of Assam Rifles) to visit the forward posts immediately "to check alertness and report OK", by instead sending a JCO there and making false entries in tour diary to show that he himself had visited those posts and also of drawing ration for personal consumption of Rs. 930.37 from Quartermaster without paying for the same. Charges under Sections 63, 57(a) and 45 of the Act found proved and punishment of dismissal from service imposed by General Court Martial by taking a lenient view. The Apex Court has held that the High Court has erred in taking the view that the punishment was too harsh considering the charges proved and the dismissal of the petitioner from service was held to be valid. In Union of India and Anr. v. Narain Singh (supra) the respondent was charge sheeted for two charges: (a) disobeying the lawful command of superior officer and (b) assaulting the superior officer. Disciplinary Authority dismissed the respondent from service. In writ petition High Court set aside the order of dismissal and imposed an order of stoppage of three grade increments on the basis of sympathy and mercy. In SLP the Apex Court set aside the order of the High Court and has held that once the Court came to the conclusion that the charges were proved and that the charges were of serious nature, it was not the function of the Court to interfere in the quantum of punishment.

29. In Union of India and Ors. v. Dwarika Prasad Tiwari the Hon'ble Supreme Court has held that-

Firing by a police constable without orders and sufficient reasons. Disciplinary proceedings were initiated against him which culminated in the termination of his services. The petitioner approach the High Court against termination the order of termination of his services. The High Court found the punishment shockingly disproportionate and ordered his reinstatement. The Department went to the Hon'ble Supreme Court. The apex Court while allowing the appeal partly has held that High

Court did not disclose any reasons for arriving at the conclusion that the punishment was shockingly disproportionate to the misconduct, therefore directed that the order of reinstatement cannot be sustained. The matter was remitted to the High Court for consideration afresh only on the quantum of punishment.

30. After hearing the counsel for the parties and perusing the records it appears that the medical certificates submitted by the petitioner were not on the proper prescribed form as required under Rule 60 of the CISF Rules 1969 (now Rule 62 of CISF Rules 2001) read with Central Civil Services (Medical Attendant) Rules 1944; thus the veracity and genuineness of these certificates were held to be doubtful in as much as surprisingly another disease started just the next day on the expiry of the last date given by the previous doctor; as a matter of fact the medical certificate of Dr. Sri Ram Misra dated 10.4.85 for dysentery recommended his rest from 1.3.85 to 10.4.85 whereas the medical certificate was issued on 10.4.85 and advised rest from 1.3.85 and the last medical certificate declared him fit to resume duty w.e.f. 19.7.85 under whom he was never under treatment, whereas the medical certificate issued by Dr. R.C. Tiwari dated 11.6.85 for jaundice recommended 40 days rest from 11.6.85 to 20.7.85. The petitioner had been a habitual offender and had overstayed leave on six occasions in the past but however, had been let off with minor punishments. Thus the medical certificates submitted by the petitioner created ample room for doubt on account of his past performance record.

31. During his total tenure of service was awarded a major penalty of reduction in rank vide order dated 28.12.81 besides a number of adverse remarks in his ACRs of 1978, 1979 and 1984 with regard to poor performance of documentary work and maintenance of discipline.

32. The petitioner was removed from service after a duly constituted and conducted departmental enquiry and he was duly intimating him well in advance but he deliberately did not avail this opportunity and did not appear before the Enquiry Officer even though two call up notices had been issued to him at his home address by registered post one of which he refused to accept and further he had also been earlier informed of his non extension of leave and directed to join the force and report immediately.

33. The Enquiry Officer correctly rightly found that the petitioner guilty of the charges and the disciplinary authority agreeing with the findings of the Enquiry Officer has rightly terminated the services of the petitioner in his capacity of supervisory officer under Sections 4, 7 and 8 of the CISF Act, 1968 inasmuch as the overall career profile of the petitioner too, establishes on record a chequered history of indiscipline and gross negligence in discharge of duties and responsibilities as a member of the disciplined force.

34. In so far as the question of proportionately of the quantum of punishment is concerned the Hon'ble Apex Court in a catena of decisions has time and again held that it is wholly within the domain of the disciplinary authority and there is no scope of interference in it unless the punishment imposed by the Disciplinary Authority or Appellate Authority shocks the conscience of the Court; that in Apparel Export Promotion Council v. A.K. Chopra it has been further held that reduction of sentence by the High Court would have a demoralizing effect and would be a retrograde

step as once the charges were proved and are of serious nature and it was not the function of the Court to interfere with the quantum of punishment and thus the writ petition is deserves to be dismissed.

35. For the reasons stated above, the writ petition is dismissed. No order as to costs.