

Ravi Kumar Vs. The Union of India Through the Director General and Ors

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Court : Jharkhand

Decided On : Jun-16-2017

Appellant : Ravi Kumar

Respondent : The Union of India Through the Director General and Ors

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 3917 of 2014
----- Ravi Kumar, son of Sri Hardwari Lal, resident of Village & P.O - Pinna, P.S. Kotwali Nagar, District Muzaffarnagar (Uttar Pradesh) ... Petitioner Versus 1.The Union of India, through the Director General, Central Industrial Security Force (CISF), Ministry of Home Affairs, having office at Lodi Road, New Delhi. 2.The Deputy Inspector General, Central Industrial Security Force (CISF), having office at Eastern Zone, Head Quarters, Patna - 800013. 3.The Senior Commandant, Central Industrial Security Force (CISF), Dhurwa, P.O & P.S. - Dhurwa, Town and District- Ranchi. . Respondents ----- CORAM: HONBLE MR. JUSTICE PRAMATH PATNAIK ----- For the Petitioner : Mr Manoj Tandon, Shiv Shankar Kumar & Kumari Rashmi, Advocates For the Respondents : Mr. Rajiv Sinha, ASGI ----- C.A.V on 18.01.2017 Delivered on 16/06/2017 Per Pramath Patnaik, J.: In the accompanied writ application, the petitioner has inter alia prayed for quashing penalty order dated 21.03.2013 whereby petitioner has been removed from services and for quashing order dated 18.6.2013 whereby appeal preferred by the petitioner has been rejected and further prayer has been made for reinstatement of the petitioner with all consequential benefits.

2. The facts, in brief, is that the petitioner was appointed as Constable in Central Industrial Security Force on 16.11.2009. While continuing as such, the petitioner was suspended vide order dated 27.09.2012 and a memo of charge was served upon the petitioner on 31.10.2012 alleging inter alia that while the 2 petitioner was on leave for ten days between 31.07.2012 to 09.08.2012, he was arrested in a case being F.I.R. No. 210 of 2012 on 06.08.2012, but, he did not inform the department about his arrest as per Rule. Pursuant thereto, the petitioner submitted his reply. Being dissatisfied with the reply submitted by the petitioner, departmental proceeding was initiated against the petitioner, in which, the Enquiry Officer found the charges levelled against the petitioner to be proved. Basing on such finding, the disciplinary authority passed the impugned order of removal from services, against which the petitioner preferred appeal which rejected. Hence, the petitioner knocked the door of this Court invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India for redressal of his grievances.

3. Learned counsel for the petitioner submitted that while the petitioner was on leave, in between on 06.08.2012 he was taken into judicial custody and was released on 06.11.2012, hence, there was no occasion for the petitioner to inform the department about the same. However, the petitioner through one of his friends, namely, Vivek Kumar, informed the department by FAX on 8.8.2012 about his arrest. Moreover, the Sr. Superintendent of Police, Muzaffar Nagar through FAX on 30.07.2012 also informed the Senior Commandant that non-bailable warrant has been issued against the petitioner and for its compliance. Hence, the petitioner cannot be held guilty of suppression of fact. It has further been submitted that immediately the petitioner came out from jail on 6.11.2012, he reported the duty but his joining was refused. Referring to order dated 6.11.2012 passed in Cr. Misc. 3 Bail Application No. 29025 of 2012, learned counsel for the petitioner submitted that Honble Court considering all the materials, given relief by way of granting bail, but, this fact has neither been considered by the disciplinary authority nor by the appellate authority. Referring to Rule 3 of the CCA Rules, learned counsel for the petitioner submitted that conduct of the petitioner does not come under the zone of misconduct, hence, the punishment awarded is excessive, disproportionate and de hors any Rule. Lastly, learned counsel for the petitioner

submitted that the criminal case instituted against the petitioner has ended with acquittal of the petitioner vide order dated 12.12.2014, but, in spite of his innocence, he had to suffer a lot for no fault on his part.

4. As against this, learned counsel for the respondents submitted that basing on charges of suppression of arrest, enquiry was conducted against the petitioner strictly in accordance with the rules after affording all ample opportunities to the petitioner to defend his case, and hence, there has been no violation of principles of natural justice. It has been submitted that as per CCS Conduct Rules, every Govt. Servant is duty bound to intimate the fact of his arrest for any reason, failing therewith will amount to suppression of information, and renders him for suitable disciplinary action. It has further been submitted that though in his defence reply the petitioner claimed that he communicated the matter through one of his friend on 8.8.2012 but there was no such communication received by the Department. Hence, the disciplinary authority rightly adjudged his 4 case and awarded penalty of removal from services, which is well commensurate with the gravity of proven charge.

5. From the pleadings available on record, it appears that while the petitioner was on leave from 31.07.2012 to 09.08.2012, in between on 6.8.2012 he was arrested in a case being F.I.R. No. 210 of 2012, however, later on, released on bail on 06.11.2012 by Honble Allahabad High Court. The charge against the petitioner is that he did not inform the department about his arrest and basing of such charge, departmental proceeding was initiated against the petitioner, which culminated in passing of impugned order of removal from services. On perusal of the records, it is quite evident that there has been no procedural irregularity from initiation of disciplinary proceeding till its culmination. Hence, the moot question that falls for consideration is whether the case of petitioner comes under the zone of consideration of disproportionate punishment.

6. In the instant case, considering the materials available on record, the punishment appears to be grossly disproportionate to the alleged misconduct, hence the impugned order of punishment passed by the disciplinary authority and appellate order are hit by doctrine of proportionality so far as quantum of

punishment is concerned. Although, it is the exclusive domain of the disciplinary authority to award punishment as per the charges and the delinquency but looking at the factual position in the case at hand, it appears gross prejudice has been caused in dispensing with the services of the petitioner. Moreover, now the petitioner has been acquitted in the said criminal case, which is the root of the matter and that clinching piece of evidence was not available to the disciplinary authority or to the appellate authority while passing the impugned order. 5 7. As a cumulative effect of the aforesaid facts, reasons and logical sequitur to the discussions made in foregoing paragraphs, the penalty order dated 21.03.2013 and appellate order dated 18.6.2013 are hereby quashed and set aside and the matter is remitted to the disciplinary authority to pass an appropriate order, within a period of two months from date of receipt/production of copy of this order, taking into consideration the observations made by this Court in the preceding paragraphs and also the fact the petitioner has now been acquitted in the said criminal case.

8. With the aforesaid observations and directions, the writ petition stands disposed of. (Pramath Patnaik, J.) Alankar/-

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