

Saroj Kumar Singh Vs. Central Industrial Security Fo

Saroj Kumar Singh Vs. Central Industrial Security Fo

SooperKanoon Citation : sooperkanoon.com/110610

Court : Jharkhand

Decided On : Jul-25-2017

Appellant : Saroj Kumar Singh

Respondent : Central Industrial Security Fo

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 4616 of 2009
----- Saroj Kumar Singh, son of Late Badri Nath, Resident of Village - Faridabad,
P.O - I.T.I Siddiquepur, P.S. - Saraikhawaja, District - Jaunpur (U.P.) ... Petitioner
Versus 1.Central Industrial Security Force, through Director General (Ministry of
Home Affairs), Block No. 13, C.G.O Complex, Lodhi Road, New Delhi -03.
2.Deputy Inspector General (Personnel), Central Industrial Security Force, through
Director General (Ministry of Home Affairs), Block No. 13, C.G.O Complex, Lodhi
Road, New Delhi -03. 3.Commandant, 2nd Reserve Battalion, Central Industrial
Security Force, Jharkhand, Ranchi. 4.Union of India through Secretary Ministry of
Home Affairs, New Delhi. Respondents ----- CORAM: HONBLE MR. JUSTICE
PRAMATH PATNAIK ----- For the Petitioner : Mr. Saurabh Shekhar, Advocate.
For the Respondents : Mr. Binod Kumar Singh, C.G.C ----- C.A.V on 28.04.2017
Delivered on 25 /07/2017 Per Pramath Patnaik, J.: In the accompanied writ
application, the petitioner initially prayed for quashing order dated 07.09.2009
whereby request for providing relevant documents related to departmental
proceeding has been rejected and for direction upon the respondents to forthwith
provide adequate opportunity by providing relevant documents; and further prayer

was made for direction upon the respondents to permit the petitioner to cross-examine the witnesses and direct them to conclude the proceeding at an early date. However, during pendency of the writ petition, the department proceeding was concluded and petitioner was imposed with a punishment of reduction of pay of three stages till his retirement with cumulative effect and further the petitioner will not earn increments of pay during the period of such reduction, which the petitioner challenged by filing amendment petition, being I.A. No. 2857 of 2011.

2. The facts, in brief, is that the petitioner while serving as Assistant Commandant, CISF at Ranchi in contemplation of departmental proceeding, a memo of charge dated 24th June, 2009 was served upon the petitioner along with list of name of witnesses and list of documents, on the allegation that while the petitioner was posted at CISF Unit, BVFCL Namrup during the period 28.11.2004 to 31.05.2007, he did not take proper preventive steps during Dharna in front of administrative building of BVFCL by Namrup Anchalik Chhatra Snastha on 31.03.2007 at about 11.30 a.m., as a result thereof, a group of about 40-50 students forcibly entered into CMD's Office and created nuisance and obstructed the normal official work by shouting slogans and thereby lowered the image of the CISF. It has further been averred that some relevant documents were not enclosed with the memo of charge mainly letter dated 31.03.2007 of which reference was also given in memorandum of charge, in which, respondents- authorities have alleged that they have given advance information of assembly of said crowd at the gate and it is alleged that even it is known to the petitioner, but he knowingly evaded his duty. It has further been submitted that the copy of enquiry report, which is a vital piece of documents for the petitioner to defend his case, and basing on which the personnels (Inspectors and Constable) posted at Gate were punished were never supplied to the petitioner. Thereafter, the petitioner vide application dated 3 22.07.2009 requested the respondents to provide some relevant documents but it was denied vide order dated 07.09.2009 stating that there is no such provision for providing additional documents. Being aggrieved, the petitioner preferred the instant writ application. However, during pendency of the writ application, the enquiry proceeded and after conclusion of the enquiry, the petitioner was issued one second show cause notice along with copy of enquiry report. Pursuant thereto the petitioner submitted a detailed reply denying all the charges but without

considering the reply submitted by petitioner, the impugned order of punishment was passed in contravention of procedure as has been given in All India Services (Discipline & Appeal) Rules.

3. Learned counsel for the petitioner submitted that actual fact is that on the fateful day i.e. on 31.03.2007, the petitioner was called upon by the Town Deputy Superintendent of Police for a discussion with regard to law and order problem due to the activities of U.L.F.A, Assam and on the way he was informed by the C.M.D of BVFCL that some crowd has assembled near the gate of C.I.S.F. Unit and immediately after knowing the fact, the petitioner returned from the way at the gate of the unit and took necessary steps to control the crowd and because of his sincere effort the mob could be controlled. It has further been submitted knowing the fact that the petitioner was not at the said gate and some CISF personnel right from the rank of Inspector to constable posted there, the Deputy Inspector General of the area along with Assistant Commandant enquired the matter, basing on which the CISF personnels who were posted at the gate of the Unit were 4 imposed with punishment of withholding of one increment for a period of one year. Thereafter, the matter was set at rest. But, all of a sudden after two year on 24.06.2009, the memo of charge was served upon the petitioner. It has further been submitted that witnesses in their examination-in-chief and cross-examination have specifically stated that there was no official communication dated 31.03.2007 by the Chief Administrative Officer, BVFCL, Namrup to CISF unit with respect to so-called Dharna and further P.W. 1 in his cross-examination has stated that the petitioner was present at the spot at the time of disbursement of gathering, hence, the very basis of charge is incorrect and baseless. Drawing attention of deposition of P.W. 4, learned counsel for the petitioner further submitted that P.W. 4 in his deposition has specifically stated that petitioner immediately after knowing the fact about the entry of processionists, rushed to the spot and due to petitioner's sincere effort crowd could be disbursed and on the instruction of petitioner, an F.I.R was lodged by P.W.

4. It has been submitted that actually the local police have showed slackness and it was duty of the local administration to look out the activity beyond the unit. It has further been submitted that from plain reading of enquiry report, it does appear

that the enquiry officer travelled beyond the charge and came to an erroneous conclusion, basing on which the petitioner has been imposed with the impugned punishment. Learned counsel for the petitioner further submitted that the impugned order has been passed by the disciplinary authority without adhering to the procedure enumerated in All India Services (Discipline & Appeal) Rules, and sending of matter to 5 Union Public Service Commission for obtaining its opinion for reduction of pay was an empty formality as in the case at hand no proposed punishment is reflected in the 2nd show cause notice and petitioner was only directed to represent against the inquiry report meaning thereby the disciplinary authority has not applied its mind for imposing the punishment.

4. In support of his contention, learned counsel for the petitioner has referred to the decision rendered in the case of Inspector Prem Chand Vs. Govt. of NCT Delhi & Ors as reported in (2007) 4 SCC566 and in the case of State of Punjab & Ors Vs. Ram Singh Ex. Constable as reported in (1992) 4 SCC54 and further in the case of Union of India & Ors Vs. S.K. Kapoor passed in Civil Appeal No. 5341 of 2006.

5. Controverting the averments made in the writ application, learned counsel for the respondents submitted that the entire proceeding has been conducted in strict adherence with the departmental rules/regulations and after following the principles of natural justice. It has been submitted that during the course of enquiry, the petitioner requested the enquiry officer to provide him certain additional documents, which was accepted and all the documents demanded by the petitioner was made available to him and he actively participated in the departmental proceeding. Learned counsel for the respondents further submitted that from bare perusal of deposition of P.W. 01, P.W. 4 and P.W. 10, and defence statement of petitioner himself, it is evident the matter of dharna was well within the knowledge of petitioner and he was in receipt of advance information about dharna by AASU6 on 31.03.2007 at BVFCL Namrup. Even otherwise also, there was paper publication in local news paper that AASU followers might stage dharna and might gherao CMD of BVFCL Namrup on certain demands. Learned counsel for the respondents further submitted that as per evidence on record only 07 personnels were available at the main gate at the time of forcible entry of AASU Children and from the statement of witnesses, it is established that the petitioner

did not give detailed instructions and briefing on how to handle the situation and did not take preventive measures like extra deployment of force at the main gate and other security measures required to handle the situation. It has further been submitted that from the deposition of P.W. 7, it is crystal clear that the petitioner was absent at the main gate when it was required and he arrived at the main gate of the plant subsequently. Furthermore, P.W. 8, P.W. 09 and P.W. 11 in their deposition has in unequivocal terms has stated that forcible entry could have been prevented by extra deployment at the main gate and extra force arrived only after the forcible entry of AASU Children inside the BVFCL. Learned counsel for the respondents further submitted that in the enquiry it was fully established that the petitioner did not prioritize the task and instead of remaining at the main gate at the crucial time of marching and forcible entry by AASU children, he preferred to sit in the main office leaving the security of the plant at main gate to be handled by his subordinates. For the reasons aforesaid, the impugned order need not warrant any interference by this Court. 7 6. After hearing learned counsel for the respective parties at length and having bestowed my anxious consideration to the materials available on record, I am of the considered view that the case of the petitioner does not fall under the scope of judicial review under Article 226 of the Constitution of India, for the following facts, reasons and judicial pronouncements: (I).From perusal of memo of charge, it appears that main charge against the petitioner is that despite having advance information from Chief Administrative Officer of BVFCL, Namrup vide letter dated 31.03.2007, he did not take proper preventive steps during Dharna in front of administrative building of BVFCL by Namrup Anchalik Chhatra Sanastha on 31.03.2007, as a result thereof, a group of 40-50 students forcibly entered into CMD's Office and created nuisance and obstructed the normal official work by shouting slogans and thereby lowered image of CISF. From the findings recorded by enquiry officer, it is amply clear that the Chief Administrative Office vide letter dated 31.03.2007 informed the CISF Unit well in advance, which fact finds support from the evidence of P.W. 01, P.W. 04 and P.W. 10 and it is established from their depositions that despite having advance information, the delinquent did not give specific instructions to handle the situation nor took any proactive measures to prevent the processionists. The enquiry officer from the depositions of P.W.01, P.W. 02, P.W.04 and P.W. 10

further came to the conclusion that students who made forcible entry jam packed the office and obstructed the normal functioning of the PA to 8 CMD Office by shouting slogans and creating nuisance and CISF unit deployed there failed to prevent them, which lowered the image of CISF. Basing on such proved charges, after due consultation of UPSC, the impugned order of punishment has been passed. (II). From perusal of record, it can safely be concluded that in the case at hand there is no violation of principles of natural justice and sufficient opportunity has been afforded to the petitioner to defend his case. Furthermore, this Court can neither re-appreciate nor reappraise the evidence led before the inquiry officer and cannot examine the findings recorded by the inquiry officer as scope of interference under Article 226 of the Constitution of India is very limited. View of this Court gets fortified by the decision of Hon'ble Apex Court in the case of State of U.P. and others Vs Raj Kishore Yadav and Another as reported in (2006) 5 SCC 673 at paragraph 4 has held that:

4. It is a settled law that the High Court has limited scope of interference in the administrative action of the State in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India, and, therefore, the findings recorded by the enquiry officer and the consequent order of punishment of dismissal from service should not be disturbed..... The Hon'ble Apex Court further in the case of Krushnakant B. Parmar Vs. Union of India and Another as reported in (2012) 3 SCC 178 has held that High Court under Article 226 cannot disturb the facts and findings given by the disciplinary authority. (iii). Moreover, in the case at hand, in view of the seriousness of allegation and misconduct committed by the petitioner, the power of judicial review cannot be applied even on the count of doctrine of proportionality as the punishment awarded does not shock the conscience of this Court so as to require any interference.

7. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, I am of the considered opinion that the petitioner has not been able to make out a case for interference by this Court. Accordingly, the writ petition is dismissed, being devoid of any merit. (Pramath Patnaik, J.) Alankar/-