

**Ajay Kumar Vs. Union of India and Ors**

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**Court :** Jharkhand

**Decided On :** Nov-27-2015

**Appellant :** Ajay Kumar

**Respondent :** Union of India and Ors

**Judgement :**

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No. 2043 of 2010  
Ajay Kumar, son of Late Asharfi Lal Sahu, resident of Qrs. No.4/47, Sector- XI C,  
P.O- Sector-XI, P.S. Sector-XI, District-Bokaro .... .. Petitioner Versus 1. Union of  
India through the Secretary, Ministry of Home Affairs, Union of India, New Delhi 2.  
Director General, Central Industrial Security Force, CGO Complex, Lodhi Road,  
New Delhi.

3. Inspector General, Central Industrial Security Force, Eastern Zone  
Headquarters, Boring Road, Patna 4. Deputy Inspector General, Central Industrial  
Security Force, Bokaro Steel City, Bokaro 5. Senior Commandant/Administrator,  
Central Industrial Security Force Unit, Bokaro Steel Limited, P.O., P.S. and  
District- Bokaro (Jharkhand) .... . Respondents ----- CORAM: HONBLE MR.  
JUSTICE PRAMATH PATNAIK ----- For the Petitioner : Mr. Niranjana Kumar,  
Advocate For the Respondents-UOI : Mr. Binod Singh, (CGC) ----- th CAV  
on:15 October, 2015 Pronounced on 27/11/2015 Per Pramath Patnaik, J.:

1. In the accompanied writ application, the petitioner has inter alia prayed for  
quashing the order dated 17.03.2009 pertaining to reduction of scale to one stage

which will affect his annual increment in future and for quashing of order dated 17.07.2009 passed by the appellate authority (respondent no.4) confirming the order of the disciplinary authority and for quashing the order dated 15.01.2010 issued by respondent no.3 confirming the order of the disciplinary authority and also for direction commanding upon the respondents to forthwith release salary along with entire arrears of interest.

2. Sans details, the facts as disclosed in the writ application, in a nutshell is that the petitioner joined his services as Head Constable Driver in the C.I.S.F Unit on 31.05.1999. While the petitioner was posted in Bokaro Steel Plant, Bokaro, one memorandum was issued to him on 04.08.2008 levelling two allegations. One with respect to the fact that he was driving in drunken stage and the second that he has over taken the truck, and in course of overtaking, his vehicle was subjected to accident. The matter was enquired into by the enquiry officer and after recording the statement of the witnesses, 2 the enquiry officer came to the conclusion that the charge no.1 has not proved but with respect to charge no.2, he has found the charge proved. On the basis of the said enquiry report, the respondent no.5 has passed order dated 17.03.2009 imposing major punishment upon the petitioner for lowering down the pay scales of the petitioner to one stage for the period of one year and the same will adversely affect the annual increment of the petitioner in future. Against the said order dated 17.03.2009 the petitioner filed an appeal before the respondent no.4 raising the entire facts and respondent no.4 without appreciating the entire facts has rejected the appeal by confirming the order of the disciplinary authority. Against the order of the appellate authority, the petitioner filed revision and the revisional authority-respondent no.3 vide order dated 15.01.2010 affirmed the order of the disciplinary authority as well as the appellate authority. Being aggrieved by the order of disciplinary authority and the order of the appellate authority as well as the revisional authority, left with no alternative and efficacious remedy, the petitioner has approached this Court under Article 226 of the Constitution of India, invoking extraordinary jurisdiction of this Court for redressal of his grievance.

3. Per contra, respondents have filed counter affidavit controverting the averments made in the writ application. In the counter affidavit, it has been stated that

petitioner was charge sheeted under Rule 36 of CISF Rule 2001 (Amended Rule 2003) vide charge memo dated 04.08.2008. Considering all the facts on record and gravity of offence, disciplinary authority awarded the punishment of reduction of pay by one stage for a period of one year and after completion of said period the reduced pay will have effect on the future increment and the appellate authority as well as the revisional authority have rejected the claim of the petitioner confirming the order of the disciplinary authority. It has further been submitted that there has been no procedural irregularity in conducting the departmental enquiry and petitioner was provided ample opportunity to defend himself and during enquiry and if the charge levelled against the petitioner has been proved beyond doubt, therefore, on the basis of prosecution and documentary evidences there has been no violation of principles of natural justice. It has further mentioned that the petitioner was awarded the punishment for proven act of misconduct during the departmental enquiry and for good and sufficient reasons it was commensurate with the gravity of offence. It has further been submitted that 3 as per the service record of the petitioner, he has been awarded four punishments during his past service for his various misdeeds and also warned on two occasions. Therefore, the contention of unimpeachable service is far from truth.

4. Heard Mr. Niranjana Kumar, learned counsel appearing for the petitioner as well as Mr. Binod Singh (CGC) appearing for the respondents- UOI.

5. Learned counsel for the petitioner has strenuously urged that the impugned order of punishment should have been under Rule 34 (VIII) of the CISF Act and not under Rule 34 (IV). Learned counsel for the petitioner further by referring to I.A. No.1355 of 2015 submitted that the Director General, CISF, New Delhi issued a notification dated 14.10.1992 on the basis of order of several High Court that Rule 31(e) of the CISF Rules 1969, it has been held that the disciplinary authority can only withhold the increment without cumulative effect, as per annexure-1 to the interlocutory application. Learned counsel for the petitioner further submitted that Honble Madras High Court vide order dated 21.09.2006 had decided the similar nature of issue as per Annexure-2 to the interlocutory application. It has further been contended that the notification issued by the Director General, CISF, New Delhi has not been modified by any authority therefore, the said notification is

applicable to the petitioner.

6. As against the submission of learned counsel for the petitioner, learned counsel for the respondents-UOI has vehemently submitted that on perusal of counter affidavit, it is quite evident that petitioner has himself stated that he had over taken the bus which was driven by another CISF driver as he was seeking pass from very long distance, but, driver of bus was not giving pass for going ahead and hence he had over taken the bus from left side is itself violation of traffic rules, and the charge no.2 has been proved by the enquiry officer, therefore, the petitioner has been awarded punishment for his proven charge in duly constituted departmental enquiry is fully commensurate with the gravity of offence. Further, the petitioner has been punished previously for various omission and commission and the past services rendered by the petitioner is not free from blemishes, therefore, the impugned order of punishment being confirmed by the appellate as well as the revisional authority do not justify interference by this Honble Court. 4 7. Having heard learned counsel for the parties at length and on perusal of the documents, I am of the considered view that the impugned order of punishment of reduction of pay with cumulative effect being confirmed by the appellate authority as well as the revisional authority do not warrant any interference due to the following facts reasons and judicial pronouncements: (I) Admittedly, while being posted in CISF Unit, Bokaro, the petitioner was charge sheeted under Rule 36 of CISF Rule 2001 (Amended Rule 2003) for the following charges: (i) On 14.07.2008 petitioner was detailed with Truck No.BEV9014and was driving the same in drunken condition. (ii) Further due to his rash & negligence driving, the vehicle met with an accident and got damaged. A departmental enquiry under Rule-36 of aforesaid Rule was conducted and on the basis of materials on record the first charge could not be proved but the second charge was proved and petitioner has been found guilty and on the basis of the said enquiry report, reduction of pay with cumulative effect has been passed which has been confirmed by the appellate as well as the revisional authority. Therefore, in the instant case, there has been no procedural irregularity so far as conducting of departmental proceeding is concerned. (II) In the case in hand, in view of the seriousness of allegation and misconduct committed by the petitioner, the power of judicial review cannot be applied and moreover the fact finding given by the

enquiry officer based on the material on record cannot be interfered with, as has been held by the Honble Apex Court in the case of State of Uttar Pradesh and Another Vs. Man Mohan Nath Sinha & Another as reported in (2009) 8 SCC310 specially at paragraph 15, which is quoted herein below:

15. The legal position is well settled that the power of judicial review is not directed against the decision but is confined to the decision-making process. The court does not sit in judgment on merits of the decision. It is not open to the High Court to reappreciate and reappraise the evidence led before the inquiry officer and examine the findings recorded by the inquiry officer as a court of appeal and reach its own conclusions

8. In that view of the matter, I find no reason to interfere with the impugned order, applying the aforesaid principles of Honble Apex Court, as indicated hereinabove.

5 9. As a cumulative effect of the facts and reasons stated in the foregoing paragraphs, the impugned order of punishment dated 17.03.2009 being confirmed by the appellate authority and the revisional authority vide orders dated 17.07.2009 and 15.01.2010 respectively, do not warrant any interference of this Court.

10. Accordingly, the writ petition is dismissed being devoid of merit. (Pramath Patnaik, J.) Saket/-

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