

Suraj Prasad Vs. Union of India and Ors

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Court : Jharkhand

Decided On : May-02-2016

Appellant : Suraj Prasad

Respondent : Union of India and Ors

Advocate for Def. : Mr. Prashant Vidyarthi

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 953 of 2010
Suraj Prasad, S/o Shri Ramdhari Prasad, resident of village-Shiriyani, P.O. & P.S.-
Karghir, District-Rohtas, Bihar. Petitioner Versus 1. Union of India, through
Secretary, Central Industrial Security Force, Ministry of Home Affairs, P.O. + P.S.-
Delhi, New Delhi.

2. Inspector General, CISF, Office Complex, Boring Road, Patliputra, P.O. & PS-
Patliputra, District-Patna, Bihar.

3. Dy. Inspector General, CISF, Bokaro Steel City, Sector-IV, P.O.& P.S.- Sector-
IV, B.S. City, District-Bokaro.

4. Sr. Commandant, CISF, Koyla Nagar, P.O. P.S. & District-Dhanbad. ...
Respondents --- CORAM : HON'BLE MR. JUSTICE PRAMATH PATNAIK --- For
the Petitioner : Mr. Sanjeev Thakur, Advocates For the Union of India : Mr.
Prashant Vidyarthi, Advocate ----- 15/02.05.2016 In the instant writ application the
petitioner has, inter alia, prayed for quashing of the order dated 31st March, 2008

passed by respondent no.2 confirming the order passed by the respondent no.3 dated 14.08.2007 vide memo no.2473 of 2007 in appeal preferred by the petitioner wherein the respondent no.3 has modified the order of disciplinary authority imposing compulsory retirement to the petitioner and for direction to respondents to reinstate the petitioner in his post.

2. Sans details, the facts as disclosed in the writ application is that while the petitioner was posted as Constable at CISF unit of BCCL, Koylanagar, Dhanbad, as Head Constable, the petitioner received show cause. In pursuance to the show cause to the alleged charges, the petitioner has submitted his reply and the matter was enquired by the investigating officer and the investigating officer has submitted his inquiry report dated 12.08.2007 holding the petitioner guilty of charges and the disciplinary authority (respondent no.4) after perusal of the inquiry report has inflicted punishment of compulsory retirement with further direction that 80% of pension and gratuity as admissible to him on the date of compulsory retirement as per Rule 40 of CCS (Pension) Rules, 1972 vide order dated 31.05.2007 Annexure-3 to the writ application.

3. Being aggrieved by the impugned order of punishment, the petitioner preferred an appeal before the appellate authority and the appellate authority vide order dated 14.08.2007 has been pleased to modify the order of compulsory retirement by giving full benefit of pension and gratuity as per rule 40 of CCS (Pension) Rule by confirming the order of punishment of compulsory retirement imposed by the respondent no.4 as evident from annexure-5 to the writ petition. Thereafter, the petitioner preferred revision application before the respondent no.2 and the revisional authority has been pleased to reject the said revision vide Annexure-6 to the writ application. The petitioner having no other efficacious, alternative and speedy remedy has approached this Court by invoking extra-ordinary jurisdiction under Article 226 of the Constitution of India for redressal of his grievances.

4. Mr. Sanjeev Thakur, learned counsel appearing for the petitioner, during course of argument, has submitted that the disciplinary proceeding has been initiated wherein the petitioner has become a victim of the wrath of the superior authorities. Learned counsel for the petitioner has submitted that on perusal of the charges, it

is quite evident that charge no.6 pertains to old charges where punishment order has already been passed and so far as the other charges are concerned, these are minor charges which do not warrant infliction of major punishment. Learned counsel for the petitioner further submits that the impugned order of punishment passed by the disciplinary authority is shockingly disproportionate to the gravity of charges and the alleged misconduct. Learned counsel for the petitioner further submits that no reason has been assigned by the appellate authority as to the defence taken by the petitioner therefore, order of the appellate authority also suffers from non- application of mind being non-reasoned and non-speaking order. Therefore, the action of the respondents in imposing the punishment of compulsory retirement is against the provision of Article 14, 16, 19(g) and 309 of the Constitution of India.

5. Mr. Prashant Vidyarthi, appearing for the respondents, U.O.I during course of argument, has reiterated the submissions made in the counter- affidavit. It has been stated in the counter-affidavit that the petitioner was proceeded under Rule 36 of CISF Rules, 2001 for various misconducts i.e. overstaying on joining time unauthorizedly for 17 days, found sleeping on duty by the officer-in-charge of Panchet Police Station in Magazine duty post at about 2.30 P.M. on 07.08.2006, leaving the magazine duty post unauthorizedly from 07.30 P.M. to 08.00 P.M. on 10.08.2006, absence from magazine duty post unauthorizedly from 09.00 A.M. on 11.08.2006 to 04.00 P.M. on 13.08.2006, did not turn up for duty from 13.08.2006 to 19.08.2006 without intimation/permission of the competent authority and despite award of 16 punishments for various indisciplined activities during his service career remained incorrigible. After careful consideration of all the materials available in the case file, the enquiry officer established the article of charges framed against the petitioner as proved. Since the petitioner has committed gross misconduct, indiscipline and dereliction of duty by overstaying on joining time, sleeping on duty and that in vital post like magazine, leaving the magazine insecured, remaining absent from duty without permission/information of competent authority which cannot be taken leniently in a disciplined force of the Union. Further the petitioner was given several opportunities to improve his performance by award of 16 punishments earlier. Therefore, the disciplinary authority awarded the penalty of compulsory retirement with 80% pension and

gratuity as admissible to him. However, considering his obligations towards his family, the appellate authority granted him 100% gratuity and pension under Rule 40 of CCS (Pension) Rules, 1972. Thereafter, the revisional authority has been pleased to reject the revision being devoid of merit vide order dated 31.03.2008. Learned counsel for the Union of India has assiduously submitted that there is absolutely no infirmity so far as departmental proceeding is concerned nor the punishment is shockingly disproportionate to the alleged misconduct therefore, the writ petition is liable to be dismissed in limine.

6. Having heard learned counsel for the respective parties and on perusal of the records, I find that the punishment of compulsory retirement being affirmed by the revisional authority do not call for any interference, in view of the following facts, reasons and judicial pronouncements: (i) In pursuance to 6 charges the enquiry officer found the petitioner guilty all the charges. Subsequently, the disciplinary authority on the basis of findings of the inquiry officer has inflicted the order of compulsory retirement with 80% of pension but the appellate authority taking lenient view has passed the order of compulsory retirement with 100% of pension. Therefore, on perusal of the order passed by the disciplinary authority, appellate authority as well as revisional authority no procedural irregularity in conducting the departmental proceeding has been found. So as to come within ambit and scope of judicial review and exercise of power under Article 226 of the Constitution of India. (ii) It is an admitted fact that being an employee of a disciplined force serious misconduct like dereliction of duty, indiscipline of lawful orders have been committed by the petitioner which has culminated in infliction of punishment by the disciplinary authority for proven misconduct, carelessness and dereliction of duty. (iii) On perusal of the records, it is quite evident that there has been no procedural irregularity from the initiation of disciplinary proceeding till its culmination as the petitioner has been found guilty of the charges by the enquiry officer. The 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 SCC673at 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 services should not be disturbed.....

7. In view of reasons stated in the foregoing paragraph and as a logical sequitur, the impugned order of punishment passed by disciplinary authority dated 31.05.2007 (Annexure-3) and order of appellate authority dated 14.08.2007 (Annexure-5) being confirmed by revisional authority dated 31.03.2008 (Annexure-6) do not warrant any interference by this Court. Resultantly, the writ petition sans merit is dismissed. (Pramath Patnaik, J.) RKM

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