

(2024) 02 CHH CK 0029**Chhattisgarh High Court****Case No:** Writ Petition (S) No. 584 Of 2006

Ravinder Kumar

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision: Feb. 12, 2024**Acts Referred:**

- Constitution of India, 1950 - Article 226, 227
- Central Industrial Security Force Rules, 2001 - Rule 36, 36(5)(a)
- Central Industrial Security Force Act, 1968 - Section 8, 9, 9(2A)

Hon'ble Judges: Goutam Bhaduri, J**Bench:** Single Bench

Advocate: V.K. Pandey, K. Radhika, Ramakant Mishra, Tushar Dhar Diwan

Final Decision: Dismissed

Judgement

Heard.

1. At the very outset, learned counsel for the respondents/UOI would submit that entire record was traced but they could not lay hand despite all efforts, therefore in view of that, the case would be adjudicated on the basis of the documents available in the case.

2. The petitioner has challenged the orders dated 06/08/2004, 03/06/2005 and 02/01/2006 whereby he has been found guilty in the departmental enquiry conducted and thereafter, the petitioner was removed from service. Having preferred the appeal and subsequent revision, both were too dismissed.

3(i) The facts of this case, in nutshell, is that the petitioner was working as a constable in C.I.S.F in the year 1992. Then during his course of employment, he was transferred to Korba Super Thermal Power Station wherein the incident of misconduct happened. The petitioner was charge sheeted stating, inter alia, that under the influence of liquor he gave a blow by a mosquito net rod to his colleague on his head on 28/03/2004. The other charges were that on the same date and subsequent date he failed to report the duty on time in the uniform and since he came late he was not allowed to join. Having served with the charge sheet, he filed the reply on 15/04/2004 and denied the charges. Instead the allegation was clamped on the person who was said to have been assaulted that he kicked the food plate of the petitioner thereby the dispute occurred and the complainant himself got injury as he fell down under the influence of the liquor. Having not satisfied with the reply of the petitioner, departmental enquiry was contemplated and then commenced.

3(ii) During the course of enquiry, the petitioner was given the opportunity to cross-examine the witnesses and the opportunity was granted. Subsequently, according to the finding of the departmental enquiry, charges were found to be proved and he was again served with a notice giving him opportunity to show cause as to why the punishment be not be imposed. Thereafter, the removal from the services was imposed on the petitioner under Section 8 of the Central Industrial Security Force Act, 1968 (hereinafter referred to as 'the Act of 1968'). Being aggrieved by such order, the petitioner filed an appeal under Section 9 of the Act of 1968. The said appeal was also dismissed. Thereafter, the petitioner filed a revision under Section 9 (2A) of 'the Act of 1968' that too was dismissed. Thereafter, the present petition has been filed.

4. The contention of the petitioner before this Court is that he was not given fair opportunity of hearing during the departmental proceeding and the complainant himself acted as an enquiry officer prejudicial to the interest of the petitioner thereby the entire proceeding of the departmental enquiry is vitiated. He would further submit that reading of the evidence and the cross-examination makes the entire facts clear that no offence of misconduct is actually made out. Since the respondent acted in a biased manner, the finding of the enquiry and the disciplinary proceeding are required to be set aside by reinstating the petitioner with past back wages.

5. The respondents vehemently contested the petition and stated that it was because of the fact that the petitioner assaulted other member of the force in an inebriated condition, therefore, the C.I.S.F since it requires to have a set of discipline, same cannot be lightly condoned. Submission is made before this Court that even the finding of the enquiry would show that proper opportunity of hearing was given to the petitioner and he was allowed to cross-examine the witnesses and he was also allowed to access all the documents. Therefore, the finding which is arrived at by the disciplinary authority is well merited and this court in exercise of power under Article 226 of the Constitution of India would not sit as a court of appeal over the finding of the disciplinary authority. Therefore, the order is well merited which do not call for any interference.

6. I have heard the learned counsel for the parties and perused the documents annexed with the petition.

7. It is not in dispute that the petitioner was a member of C.I.S.F. The following charges were imposed on him which are reproduced hereunder for ready reference :-

8. The aforesaid memorandum of charges was received on 8/04/2004 and reply was filed by the petitioner on 15/04/2004 wherein he denied the allegations and instead clamped allegations on the complainant who lodged a report of assault that because of the fact he kicked the food plate of the petitioner, complainant himself has committed the misconduct and he fell down of his own in a state of intoxication thereby he sustained injuries.

9. Thereafter by order dated 24/04/2004 one Inspector Mohan Lal was appointed as an enquiry officer. Rule 36 of the Central Industrial Security Force Rules, 2001 (hereinafter referred to as 'the Rules of 2001') laid down the procedure to be followed. When the enquiry which leads to a major penalty and in order to inquire into the truth of any imputation of misconduct against the enrolled member, the disciplinary authority under Section 36(2) may either inquire into or appoint an authority to inquire into the truth thereof.

10. In the instant case, the disciplinary authority has not enquired into matter himself and instead the Inspector was appointed. According to the Rules 36(5)(a) which prescribes that the matter of major penalty is required to be dealt with by the authority not below the rank of 'Inspector' to be appointed. In this case, this fact is not in dispute that the Inspector was appointed to enquire, therefore the procedural compliance which was required under 'the Rules of 2001' was substantially met with.

11. Now coming back to the question of disciplinary enquiry. The documents which is attached with this petition would show that after the charge sheet was given and having filed the reply when the enquiry was sought to be commenced, the petitioner participated in the enquiry. Perusal of the record would show that the petitioner himself appeared, cross-examined the witnesses at length by the questionnaire and refuted the allegation. On behalf of the respondents, the list of witnesses was given alongwith copy of the documents. Thereafter, the witnesses were examined at length and the petitioner cross-examined them and after the entire examination, enquiry authority found the charges stand proved. Allegation against the petitioner that he assaulted one of the other member of the C.I.S.F. by rod on his head and the other charge was that he came late to the duty. Perusal of the entire documents do not show that any right of fair opportunity to defend to the petitioner was not given. Therefore, *prima facie* it shows that the enquiry held by the competent authority was in accordance with the procedure established by law and the principles of natural justice were followed. The nature of evidence which is on record also do not show that irrelevant and extraneous consideration or any exclusion of the admissible or material evidence or immaterial evidence have influenced the decision of the enquiry.

12. The Supreme Court in the matter of Union of India and others Vs. P. Gunasekaran reported in (2015) 2 SCC 610 has laid down the following proposition. Para 12 of the judgment is reproduced hereunder:-

"12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

(a) the enquiry is held by a competent authority;

(b) the enquiry is held according to the procedure prescribed in that behalf;

(c) there is violation of the principles of natural justice in conducting the proceedings;

(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence."

13. In the case in hand, since after close scrutiny and the nature of the allegation, which shows that the allegation against the petitioner was found proved that he assaulted one of his colleague with rod on his head. The charges having been found proved, apart from the charges that he came late to the duty found proved, the disciplinary authority gave him opportunity to explain but instead he filed application to supply the legible copy of the enquiry report. The enquiry report was further given to him and after considering the nature of charges, order for removal from the services was passed which was affirmed in the departmental appeal and the revision thereafter. Considering the nature of allegations, no interference can be called for by this Court in exercise of power under Article 226/227 of the Constitution of India. Petition sans merit and accordingly it is dismissed.