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Date: 20/10/2025

Maqsud Ansari Vs Union of India (UOI) and Others

None

Court: Jharkhand High Court

Date of Decision: April 1, 2010

Hon'ble Judges: Dhirubhai Naranbhai Patel, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

D.N. Patel, J.
The present petition has been preferred against an order of punishment, passed by the Disciplinary Authority, dated 26th

March, 2009 (Annexure-"4") as well as against an order passed by the appellate authority, dated 19th May, 2009 (Annexure-"8") whereby, the

order of punishment was confirmed as well as against an order, passed in Revision application, dated 7th September, 2009 (Annexure-10)

whereby, the earlier orders are confirmed. Thus, orders at Annexure-"4", Annexure-"8" and Annexure-"10" are under challenge.

2. It is vehemently submitted by the learned Counsel for the petitioner that the petitioner was a Constable and was working with the Central

Industrial Security Force and several charges were levelled against the present petitioner. Alleged mis-conduct was committed by the petitioner on

27th July, 2008. It is submitted by the learned Counsel for the petitioner that the charges were levelled against the petitioner are absolutely false

and frivolous and they have not been proved, at all. There is no cogent or convincing evidences before the Inquiry Officer, nonetheless, the Inquiry

Officer wrongly arrived at a conclusion that charges are proved and, therefore, the order of punishment, inflicted by the Commandant, dated 26th

March, 2009 deserves to be quashed and set aside.

3. It is further submitted by the learned Counsel for the petitioner that for the proper defence, the petitioner had requested the concerned

respondent-authorities to allow his next friend Mr. Firoz Khan to argue his case, but, it was never allowed by the respondents and, thus, there is

violation of principles of natural justice. Therefore, also the order, passed by the Commandant of the Central Industrial Security Force, dated 26th

March, 2009 deserves to be quashed and set aside and consequently, the orders, passed in Appeal by the Deputy Inspector General of Police,

dated 19th May, 2009 (Annexure-"8" to the memo of petition) also deserves to be quashed and set aside and likewise, order, passed in Revision

by the Inspector General of the Central Industrial Security Force, dated 7th September, 2009 (Annexure-"10" to the memo of petition) also

deserves to be quashed and set aside.

4. I have heard learned Counsel for the respondents, who has submitted that the petitioner was a Constable in the Central Industrial Security Force

and he has committed grave mis-conduct on 27th July, 2008, when he was on duty. Charge No. 1 is to the effect that the petitioner had committed

indecent act with, a minor-girl of seven years, who is daughter of one Shri Ramesh Paswan. Second charge is to the effect that previously also

there were six punishments, inflicted upon this petitioner, but, he has not improved his behaviour and thereafter, inquiry officer was appointed and

inquiry was conducted. The respondents have examined several witnesses, whereas, not a single witness have been examined by the present

petitioner. Charges levelled, against the petitioner have been proved, as per inquiry report, dated 18th February, 2009 and ultimately, the petitioner

was punished and he was given a punishment of compulsory retirement vide order dated 26th March, 2009(Annexure-4). Appeal as well as

revision application, preferred by the petitioner have been dismissed vide order dated 19th May, 2009 as well as vide order dated 7th September,

2009 respectively.

5. It is also submitted by the learned Counsel for the respondents that thus, there is no procedural defect in holding inquiry by the respondents. The

petitioner was given enough adequate opportunity of representing his case. So far as defence by Firoz Khan is concerned, who is his next friend,

looking to the facts of the case, as recorded in the present case, the next friend of the petitioner namely, Mr. Firoz Khan, never shown his

willingness to defend the case of the petitioner. The petitioner was given all opportunities to examine his witnesses to make his defence and

thereafter, inquiry report was given. Thus, the inquiry was conducted without any procedural defect.

6. It is further submitted by the learned Counsel for the respondents so far as the quantum of punishment is concerned, looking to the nature of

misconduct and looking to the previous six misconducts, the punishment, inflicted upon the petitioner cannot be labelled as unreasonably excessive

or shockingly disproportionate punishment. On the contrary, by this compulsory retirement, the petitioner is going to get 100% pension and

Gratuity, which has been observed by the Inspector General of Police in a revision order, dated 7th September, 2009 (Annexure-10 to the memo

of petition). Thus, a very lenient view has been taken while imposing punishment upon the petitioner, looking to the nature of proved misconduct.

On the contrary, it was a prime duty of the Constable, being a police personnel to protect the citizens instead thereof, he has misbehaved with

minor-girl, daughter of one Shri Ramesh Paswan. Looking to Charge No. 1, grave is the misconduct and, therefore, this Court may not interfere

with the quantum of punishment, inflicted upon the present petitioner and hence, the petition deserves to be dismissed.

7. Having heard learned Counsel for both the sides and looking to the facts and circumstances of the case, I see no reason to entertain this writ

petition for the following facts and reasons:-

(i) The petitioner was a Constable in the Central Industrial Security Force while he was on duty on 27th July, 2008, he had committed indecent act

with a minor daughter of One Shri Ramesh Paswan, as per Charge No. 1.

Looking to the Charge No. 2, as many as six punishments were inflicted for misconduct, present one is the 7th mis-conduct and still, he has not

improved his behaviour

(ii) It appears that charge-sheet was issued upon the petitioner on 28th August, 2008, as per Annexure-1 to the memo of petition. Thereafter,

inquiry officer was appointed and during the course of inquiry several witnesses have been examined by the respondent-authorities. The petitioner

was also given adequate opportunity to represent his case and to examine his witnesses. The petitioner has neither examined a single witness nor

his next friend-Firoz Khan has given a consent to defend the case of the present petitioner. Looking to the evidences, collected on record, it

appears that both the charges levelled against the petitioner have been proved. Inquiry report was given on 18th February, 2009 (Annexure-3 to

the memo of petition). Thus, looking to the evidences on record, I am of the opinion that the inquiry was properly conducted and there is no

procedural defect in holding an inquiry. Inquiry report and conclusion, is also fully based upon evidence on record.

(iii) Looking to the order at Annexure-4, passed by the Commandant, imposing punishment vide order dated 26th March, 2009, it appears that

the nature of misconduct, which has been committed by the present petitioner, who is a constable in the Central Industrial Security Force,

punishment of compulsory retirement has been inflicted. Looking to the seriousness of the charge and looking to the evidences, the punishment

inflicted upon the present petitioner, cannot be labelled as unreasonably excessive punishment nor it can be said that it is shockingly

disproportionate. The police must protect the citizens instead thereof, this petitioner has committed a grave misconduct while on duty on 27th July,

2008. Behaviour of the police personnel should be as far as possible, an ideal one. If a Police Constable behaves like this, it cannot be allowed by

the police force or by the Central Industrial Security Force and, therefore, quantum of punishment, inflicted upon the petitioner is absolutely, in

consonance with the nature of misconduct, committed by him. No error has been committed by the Commandant, while imposing the punishment

vide order dated 26th March, 2009 (Annexure-4 to the memo of petition).

(iv) The petitioner has earlier been also punished for six times for six earlier misconducts. This is seventh misconduct. Delinquent has not improved

his behaviour.

(v) It appears that thereafter, appeal was preferred, before the Deputy Inspector General of Police, by the petitioner. This appeal has also been

dismissed vide order dated 19th May, 2009, after giving adequate opportunity of being heard to the petitioner before the Inspector General of the

Central Industrial Security Force, which has also been dismissed vide order dated 7th September, 2009 vide order at Annexure-10 to the memo

of petition. Thus, there is concurrent finding of facts by the Commandant, by appellate authority i.e. Deputy Inspector General of C.I.S.F. and

lastly by the Inspector General of C.I.S.F. in the revision application.

8. As a cumulative effect of the aforesaid facts and reasons, there is no substance in this writ petition and the same is hereby, dismissed.