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**(2004) 09 JH CK 0028**

**Jharkhand High Court**

**Case No:** L.P.A. No. 767 of 2003

The Commandant, CISF

APPELLANT

Vs

Deep Singh and Others

RESPONDENT

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**Date of Decision:** Sept. 22, 2004

**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Citation:** (2004) 4 JCR 494

**Hon'ble Judges:** S.J. Mukhopadhaya, Acting C.J.; Narendra Nath Tiwari, J

**Bench:** Division Bench

**Advocate:** M.M. Prasad and Nidhi Jaiswal, for the Appellant; B.B. Sinha and Senior Standing Counsel (CG), for the respondents 2 to 5, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

S.J. Mukhopadhaya, A.C.J.

1. This appeal has been preferred by the appellant Commandant, CISF, Unit HEC Dhurwa, Ranchi, against the judgment and order dated 23rd August, 2003, passed by the carried single Judge In CWJC No. 2286 of 1998(R), whereby and whereunder, the order of dismissal from service, passed against the 1st respondent-writ petitioner (Deep Singh) as affirmed by the appellate and revisional authorities, has been set aside with a direction to the appellant to reinstate the 1st respondent in service.

2. The brief facts of the case are that the 1st respondent while serving as Constable at CISF. Unit HEC, Ranchi, was proceeded against departmentally under Rule 34 of the CISF, Rules. 1969 by the disciplinary authority vide Charge Memorandum No. V-15014/HEC/Adm-III/Maj-25/94-1307 dated 17th November, 1994 on account of the following charges :

"Gross misconduct, indiscipline and carelessness on duty in that while he was detailed for "C" shift duty from 2100 hrs. on 31.10.1994 to 0500 hrs. on 1.11.1994 at CTI Hostel duty post of HMTP plant with Arm and Ammunition was found sleeping on the floor of his duty post at 2300 hrs. on 31.10.1994 when checked by general night checking duty officer Inspector/Exe S.K. Mishra. He was found in intoxicated condition and was smelling Alcohol."

3. In the departmental proceeding the delinquent employee was given opportunity in accordance with law and rules of natural justice. The enquiry officer after hearing both the sides and taking into consideration all the relevant evidences on record held both the charges proved i.e., the delinquent was sleeping during duty hours without caring for proper safety of arms and ammunitions and was under the influence of liquor while on duty. The disciplinary authority i.e., Commandant, CISF. Unit HEC, Ranchi agreed with the findings of the enquiry officer and dismissed the employee (1st respondent) vide final order dated 15th July, 1995. The appellate authority, in its turn, dismissed the appeal vide reasoned order dated 17/18th November, 1995. The revisional authority also upheld that order of the appellate authority by its detailed order dated 22nd November/4th December, 1997, affirming the order of dismissal.

4. The learned single Judge, on appreciation of the evidences, disbelieved the allegation and accepted the stand taken by the 1st respondent-writ petitioner and held the order of punishment illegal on the ground that the authorities had not taken into consideration all the aspects and the charges were not so grave, warranting punishment of dismissal from service.

5. The main plea taken by the appellant is that the learned single Judge should not have re-appreciated the evidences under Article 226 of the Constitution of India and to substitute his findings in place of the findings recorded by the enquiry officer and that the order of dismissal from service was commensurate with the gravity of the charges.

6. Counsel for the 1st respondent while opposed the submissions, relied on the evidences, which were relied by the learned single Judge, to suggest that there was no evidence to prove the charges.

7. For coming to the conclusion that the enquiry officer and disciplinary authority failed to consider certain aspects and that the charges were not grave, the learned single Judge relied on some evidences, as was noticed and observed, as follows :-

"3. The Enquiry Officer, while submitting this report vide Annexure 2/1 has given details of the documents that were brought on record during the course of enquiry. One such document is at Serial No. 4 and it mentions the medical prescription dated 31.10.1994, Registration No. E/13757/94. This document has been brought on record by the respondents themselves vide Annexure F to the counter-affidavit at running page 87 herein. When one reads, goes through and comprehends the

nothings of the Doctor, no prudent man would ever come to a conclusion that the person who was examined was "in drunken state" because this report says :

(A) He was fully conscious.

(B) He was well oriented.

(C) He could walk on a straight line himself.

(D) He could take care of himself; and

(E) Very faint smell of alcohol was therein the mouth.

How can this. therefore, be a case of heavily drunk person? Consequently, the finding on the charge-sheet to the effect that he was in a "drunken condition" cannot be believed because the charge against the petitioner was that he was in a drunken state. A person can only be in this state when he is heavily drunk. The petitioner has himself given explanation that on account of his excruciating pain in the leg, he consulted a doctor who prescribed medicines to him on the same day. It is possible that on account of the pain, the petitioner was lying down or he may have fallen asleep. Without taking into consideration this aspect and, without at all considering the medical prescription and, without examining the doctor, the offence alleged against the petitioner was definitely not so grave that it warranted the punishment of dismissal from service vide Annexure 3. which was confirmed by the appellate authority vide Annexure 5 and by the revisional authority vide Annexure 6."

8. I disagree with the aforesaid finding of the learned single Judge. It is a settled law that the High Court neither can act as a Court of appeal nor can substitute its own opinion for the views, expressed by the disciplinary authority under Article 226 of the Constitution of India. It can interfere only when the view expressed is such which cannot be arrived at by a reasonable man or is based on no evidence or if the proceeding is conducted in violation of the rules of natural justice, such as, not giving fair opportunity to the delinquent employee; the disciplinary authority and/or the enquiry officer is biased; the enquiry officer or the disciplinary authority has not given reasons for coming to the conclusion.

9. In the present case. two charges were levelled against the 1st respondent; (i) the delinquent employee was sleeping during the duty hours without caring for proper safety of the arms and ammunitions, which has been proved by the prosecution by placing evidence on record and as discussed by the enquiry officer. The learned single Judge cannot sit in appeal over such finding by substituting his opinion that too on presumption that " it is possible that on account of pain, the petitioner was lying down or he may have fallen asleep," This part of observation of the learned single Judge is uncalled for and is also not based on evidence. This apart, (the 2nd charge is very grave that the delinquent employee was under the influence of liquor while on duty. It is not the question here as to whether the delinquent

employee-had heavily drunken or had taken a little bit of liquor. The doctor, who examined the 1st respondent, in his report, though mentioned that the 1st respondent was fully conscious, well oriented, would walk on a straight line himself and can taken care of himself, but specifically reported regarding the smell of alcohol in the mouth of the 1st respondent. Admittedly, the 1st respondent was found sleeping on the floor on his duty post at 23.00 hours on 31st October, 1994, when checked by General Night Checking Duty Officer Inspector/Exe S.K. Mishra. Subsequently, he was sent for medical check-up and even at that stage, smell of alcohol was there in the mouth of delinquent-1st respondent. In such a situation, it was not open for the learned single Judge to sit in appeal over the findings of the enquiry officer to hold that "a person can only be in this state when he is heavily drunk". The question for determination was as to whether the charge employee was in intoxicated condition during the duty hours or not. It has been found that the delinquent-1st respondent was in an intoxicated condition while on duty and was sleeping during the duty hours, without caring for the arms and ammunitons. It is also not in dispute that the delinquent-1st respondent was a Constable in CISF. In such a situation, the charge being grave, I find no ground to differ with the findings of the enquiring officer, the dismissal of the delinquent-1st respondent from service, being commensurate with such gravity of charges.

10. In the result, the impugned judgment and order dated 23rd August, 2003. passed by the learned single Judge in CWJC No. 2286 of 1998 (R), cannot be upheld. It is, accordingly, set aside and consequently this Letters Patent Appeal is hereby allowed. However, there shall be no order as to costs.

Narendra Nath Tiwari, J.

I agree.