

(2009) 08 CAL CK 0015

Calcutta High Court

Case No: F.M.A. No. 349 of 2002

Commandant, Central Industrial
Security Force

APPELLANT

Vs

R.S. Singh and Others

RESPONDENT

Date of Decision: Aug. 6, 2009**Hon'ble Judges:** Kalidas Mukherjee, J; Ashim Kumar Banerjee, J**Bench:** Division Bench**Advocate:** Uttam Kumar Majumder, Sujoy Bandyopadhyay and Prasenjit Saha, for the Appellant; R.N. Das, D.P. Dutta and Souvik Sen, for the Respondent**Final Decision:** Dismissed

Judgement

1. The respondent/writ petitioner was a CISF Constable. He fixed his daughter's marriage on April 13, 1988. He did not have much leave to his credit. He prayed for twenty days half-pay leave and twenty-five days earned leave with effect from April 4, 1988. He also applied for loan of Rs. 4,000/- from his Provident Fund Account. The loan was not sanctioned, so as the leave as asked for. He was granted only fifteen days earned leave as he did not have any further leave to his credit. He immediately proceeded to his native place for his daughter's marriage. He tried his level best for the financial resource; he could not do it within the scheduled date. He had to defer his daughter's marriage and ultimately, his daughter was married, but by that time he had already overstayed. When he came back, he was served with a charge-sheet. It further transpires that he was subsequently granted loan of Rs. 2,000/-. The appellant however, contends that he withdrew his application for loan and as such it was not correct to say that his loan was not sanctioned. He was put under suspension. He was proceeded in an enquiry proceeding and ultimately he suffered the order of removal from service. He preferred an appeal where he was unsuccessful. His revisional application was also dismissed. Challenging the order of removal he approached the learned Single Judge by filing the writ petition.

2. On analysis of the pleadings and the documents annexed thereto His Lordship (Arun Kumar Mitra, J.) came to a finding that the authority was biased as against the respondent. His Lordship placed reliance on the fact that the chargesheet itself would manifest the element of bias as the authority by the chargesheet informed the delinquent that they would be holding an enquiry. His Lordship observed that when a chargesheet was issued, opportunity should have been given to the delinquent to explain his conduct and offer his version to the charges brought against him. Only upon consideration of the charges and reply offered there for, the authority would have to come to a conclusion whether they would proceed further or drop the proceeding at that stage. When the authority themselves in the chargesheet itself informed the delinquent that they would proceed against him in an enquiry proceeding, the element of bias was apparent.

3. His Lordship further held that the proceeding was vitiated by illegality as there had been violation of the principle of natural justice. Copies of the documents as asked for, were not given at the appropriate stage so that the delinquent could effectively deal with the charges and defend himself in the said proceeding. His Lordship also held that the punishment was shockingly disproportionate. His Lordship ultimately, quashed the order of removal, however, denied back wages for nineteen years when the delinquent was out of service.

4. Being aggrieved, the appellant filed the instant appeal.

5. The writ petition was disposed of by the learned Single Judge by judgment and order dated October 5, 2001. The appeal was preferred on April 17, 2002. The Division Bench stayed the order quashing the order of removal and directed filing of paper book. The appeal was dismissed for default on December 15, 2006. The restoration application was filed on March 7, 2008, which was allowed by us on July 28, 2009. It now appears that the authority in the meantime, decided to allow the delinquent to join the service and passed an order accordingly on December 1, 2008. The delinquent accordingly joined his post in terms of the order passed on December 1, 2008 and thereafter, was superannuated on July 31, 2009 after attainment of natural age of superannuation.

6. We have heard Mr. Uttam Majumder, learned Counsel appearing for the appellant and Mr. R.N. Das, learned Senior Counsel appearing for the delinquent.

7. Mr. Majumder in support of his appeal has drawn our attention to various documents to show that the order of suspension was issued completely on different context and had nothing to do with the disciplinary proceeding which the delinquent suffered. Hence, the observation of the learned Single Judge on that score is devoid of merit. He contends that the delinquent misbehaved with senior official in intoxicated manner on the foundation day of CISF which compelled the authority to suspend him. Such order of suspension had nothing to do with the disciplinary proceeding under challenge.

8. On the issue of violation of natural justice Mr. Majumder contends that the observation of the learned Single Judge on that score is also without any basis as the copies of the documents were furnished by the authority and the allegations were unfounded.

9. Mr. Majumder further contends that His Lordship was not correct to observe that the appellate authority or the revisional authority did not assign any reason while dismissing the appeal or the revisional application's the case may be.

10. Mr. Majumder lastly contends that CISF being a disciplined paramilitary force must maintain strict discipline amongst the Force. Overstay is an act of indiscipline, which cannot be ignored. In this regard, he has relied upon the Apex Court decision in the case of [Mithilesh Singh Vs. Union of India \(UOI\) and Others,](#)

11. Mr. Majumder lastly contends that in case this Court is not inclined to upset the decision of His Lordship, it should modify the order of punishment by replacing the order of removal by order of compulsory retirement which would provide all opportunities to the delinquent to obtain pecuniary benefit on superannuation.

12. We have considered the rival contentions of the parties. We have carefully perused the judgment and order of His Lordship.

13. We would be failing in our duty if we do not record our feeling after reading the judgment and order impugned herein. The judgment is well versed, so well written coupled with emotion and sentiment, that too without stepping out from the boundary of law.

14. We fully agree with Mr. Majumder that CISF being a disciplined force must maintain discipline in strict manner. We are little bit rigid on identical charges when faced by any paramilitary staff as the question of safety and security of our country would be at stake, if these cases are dealt leniently, even then we do not find any scope of interference with the decision of His Lordship.

15. A poor Constable prayed for sanction of loan of poultry sum of Rs. 4,000/-, that too from his Provident Fund Account for his daughter's marriage which was fixed on April 13, 1988. He prayed for adequate leave for the said purpose. He knew that he did not have sufficient leave to his credit. He prayed for half-pay leaves. The authority, in our view, should have been little magnanimous on that score. He was neither paid the money at the right time nor sanctioned adequate leave.

16. Mr. Majumder has relied upon the Apex Court decision in the case of Mithilesh Singh (supra), wherein the delinquent surrendered his arms and ammunition to the Guard Commander telling that he was proceeding home. The Guard Commander asked him not to go without permission, but he disobeyed the order and left his duty: Considering such backdrop, the Apex Court observed, removal from service was appropriate.

17. In the instant case, the delinquent proceeded on authorized leave, He had to overstay. For that he had already suffered immense punishment by losing nineteen years' wages. We do not find any further punishment which could be inflicted upon him.

18. We abundantly make it clear that the delinquent must get all his financial benefit as a consequence of the judgment and order impugned in this appeal.

19. The appeal thus fails and is hereby dismissed.

20. There would be no order as to costs.