IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(S) No. 2010 of 2020

Rakesh Kumar Singh,

… … Petitioner

Versus

1. Union of India
2. Inspector General of Central Industrial Security Force (CISF), Eastern Divisional Head Quarter, having office at Dhurwa, P.O. Dhurwa, P.S. Jagannathpur, District-Ranchi
3. Deputy Inspector General, CISF, Eastern Zone Head Quarter, Patna, P.O. P.S. and District-Patna
4. Commandant, CISF Unit, C.T.P.S. Chandrapura, P.O. and P.S. Chandrapura, District-Bokaro **… … Respondents**

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner : Mr. Saurav Arun, Advocate
For the Respondents : Mr. Shiv Kumar Sharma, Advocate
: Mr. Sujit Kumar Lala, Advocate

09/**08.08.2022** Heard Mr. Saurav Arun, learned counsel appearing on behalf of the petitioner.

2. Heard Mr. Shiv Kumar Sharma, learned counsel appearing on behalf of the respondents along with Mr. Sujit Kumar Lala, Advocate.

3. This writ petition has been filed for the following reliefs: -

(i) For issuance of direction in the nature of certiorari for quashing the order dated 24.09.2012 as contained in Annexure-10 to the writ application by which punishment has been imposed upon the petitioner i.e. reduction of two stage from 8440-GP- 2400 to R.7790-GP2400 in the time scale of pay for the period of two years with immediate effect and further directed that the petitioner will not earn increment of pay during the period of reduction and that on expiry of that period the reduction will have the effective of postponing the future increment of pay without considering the fact there is no fighting with Ajay Srivastava outsider nor the petitioner was absent from duty and all these aspect has not been considered and major penalty has been imposed upon the petitioner.

(ii) For quashing of letter dated 18 October, 2014 as contained in Annexure-10/1 to the writ petition subsequently a corrigendum has been issued by which the pay scale which has wrongly been mentioned in the impugned order, has been corrected.

(iii) For issuance of direction for quashing of the appellate order dated 31.01.2013 contained in Annexure-12 to the writ petition by which the appeal so preferred by the petitioner has been rejected without considering the

ground taken by the petitioner in appeal, hence the order of appellate authority is illegal, void and without jurisdiction and the same has been passed without application of mind and without considering the ground of appeal.

(iv) For issuance of direction for quashing of letter dated 09.10.2019 as contained in Annexure-14 by which the revision so preferred by the petitioner has been rejected on the ground the same is barred considering the fact the petitioner is losing increment because of the impugned order which is excessive in nature and does not commensurate with the charges leveled against the petitioner.

(v) Issuance of direction for keeping in abeyance the impugned orders as contained in Annexure- to the writ petition during the pendency of this writ petition.

4. Learned counsel for the respondents have raised a preliminary objection with regard to the writ petition by submitting that the petitioner had also filed a revision application before the appropriate authority in terms of Section 9 (2-A) of the Central Industrial Security Force Act, 1968 after expiry of more than 6 years from the date of the appellate order dated 31.01.2013, although the time period prescribed is only 6 months and the revision application has been rejected on the ground that the same was badly time barred and there was no explanation for delay of 6 years. Learned counsel submits that the petitioner had already accepted the order of punishment. The revisional authority having rejected the revision as aforesaid and there being no illegality in said order as contained in Annexure-14, no relief can be granted to the petitioner in this writ petition.

Arguments of the petitioner

5. Upon this, learned counsel for the petitioner has submitted that even if the revision was barred by limitation, and there was no explanation for delay of 6 years, still the same will not be an impediment in exercise of power under Article 226 of the Constitution of India and the case can be taken up on merits and appropriate order be passed. Learned counsel, while assailing the impugned order, has submitted that primarily the petitioner has been punished by reduction of 2 stages in the time scale of pay for a period of two years with a further direction that he will not earn the increment of pay during the period of reduction and on expiry of that period, reduction will have

the effect of postponing his future increments of pay. He submits that punished imposed is shockingly disproportionate to the allegation against the petitioner who is said to have remained absent from duty for a period less than 24 hours. He further submits that there is no finding recorded by the authorities regarding his willful absence and therefore, otherwise also, the impugned action of the respondents is bad in law. Learned counsel has relied upon a judgment passed by the Hon'ble Supreme Court reported in ***2012 AIR SCW 1633 (Krushnakant B. Parmar versus Union of India & Anr.)*** to submit that in absence of any finding regarding willful absence, the impugned order cannot be sustained in the eyes of law.

6. Learned counsel has submitted that the petitioner had gone out to attend his ailing mother and had to take his mother to Hospital for treatment and therefore the petitioner under compelling circumstances had to leave from duty for a short period. He submits that there was sufficient explanation on the part of the petitioner to leave without permission and therefore the impugned orders call for interference by this Court.

7. Learned counsel further submits that the appellate authority also did not consider these aspects of the matter properly and mechanically rejected the appeal of the petitioner.

8. However, it is not in dispute from the side of the petitioner that the revision was filed after delay of more than six years and there was no explanation for delay in filing the revision petition.

Arguments of the Respondents

9. Learned counsel appearing on behalf of the respondents, on the other hand, has opposed the prayer and has submitted that on account of the aforesaid preliminary objection and even on merits, the petitioner does not have any case. He submits that admittedly the petitioner had left without due permission and the plea of the petitioner with regard to ill health of his mother being the reason to leave without permission was rejected during the enquiry proceedings. He further submits that the petitioner did not lead any evidence in connection with the illness of his mother before the enquiry proceedings.

10. Learned counsel submits that the petitioner had also taken a plea before the enquiry proceedings that he was granted written permission but no such document has been exhibited in the enquiry proceedings and this aspect of the matter has also been dealt with by the enquiry officer. Learned counsel submits that on account of the rejection of the explanation furnished by the petitioner for his absence, his absence was certainly willful and accordingly the judgment relied upon by the petitioner does not apply to the facts and circumstances of this case. Learned counsel submits that all the charges leveled against the petitioner stood duly proved in the enquiry proceedings after considering the materials on record. There is no perversity in the finding recorded in the enquiry proceedings and considering the limited scope of interference in the departmental proceedings, no interference is called for under Article 226 of the Constitution of India.

Findings of this Court

11. After hearing the learned counsel for the parties, this Court is of the considered view that following points are for consideration by this Court:

> *i. Whether the impugned proceeding and the order of punishment dated 24.09.2012(Annexure – 10), upheld by the appellate order dated 31.01.2013, against which revision application has been dismissed as hopelessly time barred, are fit to be interfered with in writ jurisdiction and thereby ignoring the dismissal of the revision unexplained delay and laches on the part of the petitioner in filing the revision application?*
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> *ii. Whether, otherwise also, the impugned order of punishment dated 24.09.2012, confirmed by the appellate authority vide order dated 31.01.2013 (Annexure – 12) and also confirmed by the revisional authority vide order dated 09.10.2019 (Annexure-14), calls for any interference under Article 226 of the Constitution of India?*

Point no. (i)

12. So far as the point no. (i) is concerned, this Court finds that the order of punishment, arising out of disciplinary proceedings, was dated 24.09.2012 (Annexure-10) and the appeal against the same was dismissed vide order dated 31.01.2013 (Annexure–12) and admittedly,

the revision in terms of Section 9 (2-A) of Central Industrial Security Force Act, 1968 was filed after expiry of more than six years from the date of the appellate order which was admittedly barred by limitation as prescribed period for filing revision was only six months. Admittedly, from the records of this case and also from the impugned order, the petitioner failed to furnish any explanation, much less any cogent explanation for such inordinate delay and consequently the revision application was rejected as "time barred".

13. This Court is of the considered view that once the statutory remedy of revision available to the petitioner has been held to be barred by limitation and being without any explanation for inordinate delay and no arguments having been advanced in connection with the legality and validity of the revisional order dismissing the revision as time barred, any interference in writ proceedings against the order of punishment and/or appellate order would amount to stretching the exercise of power under Article 226 of the Constitution of India too far and beyond the permissible limits. In the present case, neither any jurisdictional issue nor any serious allegation of infraction of any fundamental right of the petitioner nor any serious allegation of arbitrary action on the part of the statutory authorities, are involved. The petitioner has also not given any explanation of the inordinate delay on the part of the petitioner in approaching the revisional authority calling for any interference in the rejection order of the revisional authority holding the revision hopelessly barred by limitation. This Court is of the considered view that unexplained and inordinate delay and laches in approaching the statutory authorities invoking statutory remedies is also an important consideration in exercising discretionary powers under Article 226 of the Constitution of India. It is well settled that the writ courts do not sit in appeal against the orders passed by the authorities in the matter of disciplinary proceedings and the scope of judicial review is very limited. This Court finds no illegality in the order of revisional authority holding the revision hopelessly barred by limitation and in such circumstances, there is no scope of interfering in the order of punishment and also the appellate order as any such interference will amount to ignoring the order of dismissal of revision. **Accordingly,**

the point no. (i) is decided against the petitioner and in favour of the respondents.

Point no. (ii)

14. The crux of the arguments which has been advanced by the learned counsel for the petitioner before this Court is that he had gone to attend his ailing mother who had to be taken to hospital for treatment and therefore the petitioner was compelled to leave from duty for a short period and consequently there was sufficient explanation on the part of the petitioner to leave without permission and in such circumstances, there is no willful absence on the part of the petitioner. Therefore, it has been submitted that in view of the judgment passed by the Hon'ble Supreme Court reported in ***2012 AIR (SCW) 1633 (Krushnakant B. Parmar Vs. Union of India & Anr.)***, the impugned punishment is perverse and fit to be set aside. The learned counsel has also submitted that there is no finding of willful absence and therefore the impugned action of the respondent is bad in law. He has submitted that the impugned action touches upon the violation of the fundamental rights of the petitioner, in as much as, the impugned action is arbitrary and violative of Article 14 of the Constitution of India. It has also been argued that the punishment imposed is disproportionate to the charges levelled against the petitioner.

15. This Court is of the considered view that no jurisdictional issue is involved in the present case. The present case is also not a case of violation of principle of natural justice or violation of any provision of the applicable rules regarding conduct of the disciplinary proceeding as pointed out by the learned counsel appearing on behalf of the respondents. Upon perusal of the enquiry report, it is clear that the specific case of the petitioner before the enquiry officer was that he was granted written permission to leave, but no such document was ever exhibited in the enquiry proceeding and this aspect of the matter has been dealt with upon enquiry officer and the cited reason for absence has been rejected. On account of rejection of the explanation furnished by the petitioner for his absence, there being no explanation for his absence as proved in the departmental enquiry, the case of the petitioner would certainly fall within the realm of willful absence. In

case of absence from duty and when allegation is made regarding willful absence, it is certainly for the delinquent employee to plead and prove the reasons for his absence from duty as such reason for absence from duty, if any, is certainly within the exclusive knowledge of the delinquent employee. In case, the reason for absence is not proved or not brought on record by the delinquent employee, the onus to prove the reasons for absence being bonafide or to prove that the absence was not willful, cannot be said to have been discharged by the concerned delinquent employee. In the present case, the reason for absence as put forth by the petitioner was rejected by the enquiry officer. The enquiry officer has considered the materials on record and concluded that the charge no. (i) as imposed against the petitioner that on 28.06.2012, the petitioner had fought with one civilian namely Ajay Shrivastava, but no information to that effect was given to the department amounted to gross indiscipline on the part of the petitioner. With regard to charge no. (ii), the enquiry officer recorded that on 28.06.2012 at 18.30. pm., the petitioner was found absent without any permission and this act of the petitioner was act of gross indiscipline on his part. With regard to charge no. (iii), the enquiry officer recorded that on 28.06.2012 at 18.30 hours, the petitioner had remained absconder without any permission and came back only on 29.06.2012 at 11.30 hours which was also an act of gross indiscipline on the part of the petitioner. The perusal of the enquiry report reflects that the reason of absence as submitted by the petitioner that he had gone to attend his mother for her treatment and that he had taken a written permission from the Commandant could not be proved by the petitioner having granted opportunity to do so and the petitioner could not produce any such material oral or documentary evidence in support of his contention. The enquiry report of the enquiry officer further reflects that the petitioner had also taken a plea that he after attending his mother returned on 28.06.2012 at 22 hours, but this aspect of the matter could also not be proved by the petitioner in the enquiry proceeding and his plea was rejected by taking into consideration the materials available on record including the various entries at the main gate register. Thus, the absence of the petitioner remained totally unexplained from the side of the petitioner which was

coupled with the fact that during his absence, he fought with one civilian and his various explanation regarding his absence could not be established by the petitioner during the enquiry proceeding and accordingly, the argument of the petitioner that the enquiry officer did not record a finding that the absence of the petitioner was willful is devoid of any merit. A copy of the enquiry report was forwarded to the petitioner to which the petitioner duly responded and his explanation was considered threadbare by the disciplinary authority while passing the impugned order of punishment dated 24.09.2012 and the disciplinary authority concurred with the finding of the enquiry report and held that the petitioner on 28.06.2012 at 18.30 hours was found absent from his duty on his own violation without any permission and was absconder till he returned to duty on 29.06.2012 at 11.30 hours. This finding was with regard to charge no. (iii). The disciplinary authority held that the petitioner on 28.06.2012 at 18.30 hours was found absent at the time of check roll call and the disciplinary authority also rejected the explanation furnished by the petitioner that he had gone for treatment of his mother. This was with regard to the finding of charge no.(ii). The disciplinary authority also recorded that the petitioner on 28.06.2012 was involved in physical assault with one Ajay Shrivastava (civilian) and this aspect of the matter was not disclosed by the petitioner which amounted to gross violation of indiscipline and consequently the disciplinary authority found that charge no. (i) stood also proved. The punishment of the disciplinary authority was followed by corrigendum dated 18.10.2014. The appellate authority vide impugned order dated 31.01.2013 as contained in Annexure 12 has rejected the appeal after considering the grounds raised and passed a detailed order considering the materials on record which is apparent from para 4 of the order passed by appellate authority and the appellate authority did not find any reason to interfere with the order of the disciplinary authority and recorded that the appeal was bereft of any merit and dismissed the same. The revisional authority found the revision hopelessly barred by limitation as revision was filed after expiry of period of six years, although, the prescribed time period was only six months.

16. It is important to note that while rejecting the revision as barred by limitation, the revisional authority has also touched upon the merit of the case and has consequently recorded that the authority had gone through the case filed and other evidence on record with reference to the plea put forth by the petitioner. It was found that the enquiry was conducted as per laid down procedure and no infirmity was noticed. It was also recorded that the petitioner was provided ample opportunity to defend his case and no violation of natural justice has been noticed. It was further recorded that it was proved by the enquiry officer that on 28.06.2012, the petitioner manhandled Sri Ajay Shrivastava (civilian), resident of Chandrapara, Pahari Basti. The revisional authority clearly held that based on the proved facts, disciplinary authority rightly awarded the punishment which has also been upheld by the appellate authority. None of the aforesaid aspects of the matter, which has been recorded by the revisional authority while dismissing the revision application, is under challenge in the present proceedings. It is not in dispute that the enquiry was conducted as per the laid down procedure, the petitioner duly participated in the enquiry proceeding and was granted opportunity to defend his case and there has been no violation of principle of natural justice. It was also proved before the enquiry officer that on 28.06.2012, the petitioner manhandled Sri Ajay Shrivastava (civilian) and based on the proved misconduct, the disciplinary authority awarded the punishment which was upheld by the appellate authority.

17. So far as the judgement reported in ***2012 AIR (SCW) 1633 (Krushnakant B. Parmar Vs. Union of India & Anr.)*** is concerned, the same does not apply to the facts and circumstances of this case. The Hon'ble Supreme Court in the aforesaid judgment has clearly held that absence from duty without any application or prior permission may amount to unauthorized absence, but it does not always mean willful as there may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalization, etc. It has also been held that in a departmental proceeding, if allegation of unauthorized absence from duty is made, the disciplinary authority is required to prove that the absence is

willful and in absence of such finding, the absence will not amount to misconduct. In the case before the Hon'ble Supreme Court, the enquiry officer on appreciation of evidence though held that the appellant was unauthorizedly absent from duty but the enquiry officer failed to hold that the absence was willful and this was coupled with the fact that the appellant had taken a specific defence in the enquiry that he was prevented from attending duty by another officer who prevented him to sign the attendance register and also brought on record 11 defence exhibits in support of his defence, but his defence and evidences were ignored and on the basis of irrelevant fact and surmises, the enquiry officer held the appellant guilty. In the present case also, the petitioner had tried to justify his absence from duty by taking a plea that the leave was granted in writing and that he had gone to attend his mother who was ill. However, such plea of the petitioner was rejected by the enquiry officer by a detailed discussion of the material on record. In the present case, though the petitioner had set-up a defence explaining his absence, but the same having been rejected by the enquiry officer after considering the materials on record and thereafter the petitioner was held guilty of as many as 3 charges as mentioned above. Thus, the present case is clearly distinguishable on facts from the aforesaid judgement relied upon by the petitioner.

18. So far as the quantum of punishment is concerned, this court is of the concerned view that considering the nature of proved charges against the petitioner, this case is not a case of mere absence from duty for a short time but the absence of the petitioner is coupled with involvement of the petitioner in physical assault with one Ajay Shrivastava (civilian) during such period of absence and this aspect of the matter was not disclosed by the petitioner amounting to gross indiscipline which was proved charge no (i). Considering the totality of proved charges against the petitioner, this court is of the considered view that the quantum of punishment for a person serving disciplined force like the petitioner is not disproportionate to the proved charges against the petitioner.

19. **Thus, the point no. (ii) is also decided against the petitioner and in favour of the respondents.**

20. As a cumulative effect of the aforesaid discussions and findings, this court finds no merit in this writ petition calling for any interference in limited jurisdiction of judicial review under writ jurisdiction. Accordingly, this writ petition is dismissed.

21. Interim order, if any, stands vacated.

22. Pending interlocutory application, if any, is closed.

(Anubha Rawat Choudhary, J.)

Mukul/