

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(S) No. 3597 of 2009

with

W.P.(S) No. 4558 of 2008

with

W.P.(S) No. 4613 of 2008

Hira Lal Dubey, son of Late Harendra Nath Dubey, resident of village Jugalsalboney, P.O. Gamaria, P.S. Baharagora, District East Singhbhum.

..... **Petitioner** (in W.P.(S) No. 3597 of 2009)

Dhananjoy Hansda, S/o Late Singari Hansda, R/o Q. No.1417 Sector 11C, Bokaro Steel City, P.O. & P.S. Bokaro, District Bokaro, Jharkhand

..... **Petitioner** (in W.P.(S) No. 4558 of 2008)

Jay Ram Majhi, S/o Late Samay Majhi, R/o Q. No.1149 Sector 11C, Bokaro Steel City, P.O. & P.S. Bokaro, District Bokaro, Jharkhand.

..... **Petitioner** (in W.P.(S) No. 4613 of 2008)

Versus

- 1.The Union of India, through Secretary, Ministry of Home Affairs, Government of India, New Delhi.
- 2.Director General, Central Industrial Security Force, New Delhi.
- 3.Deputy Inspector General, Central Industrial Security Force, BSL Unit, Bokaro.
- 4.Commandant/Administration, Central Industrial Security Force, Bokaro Steel Limited, Bokaro.
- 5.Assistant Commandant (Administration), Central Industrial Security Force, Bokaro Steel Limited, Bokaro.

..... **Respondents** (in W.P.(S) No. 3597 of 2009)

- 1.Union of India, through Director General Manager, Central Industrial Security Force (Ministry of Home Affairs), C.G.O. Complex, P.S. Lodhi Road, New Delhi.
- 2.Inspector General/ES, Central Industrial Security Forces, (Ministry of Home Affairs), Eastern Sector Head Qrs., Boaring Road, Patliputra, Patna, Bihar.
3. Deputy Inspector General, Central Industrial Security Force, (CISF), (Ministry of Home Affairs), CISF Unit, BSL, Bokaro, District Bokaro.
- 4.Commandant/Administration, Disciplinary Authority, CISF Unit, B.S.L., Bokaro, District Bokaro.
- 5.Deputy Commandant/Administration, CISF Unit, B.S.L., Bokaro, District Bokaro.

..... **Respondents** (in W.P.(S) No. 4558 of 2008)

- 1.Union of India, through General Manager, Central Industrial Security Force (Ministry of Home Affairs) New Delhi.
- 2.Inspector General/ES, Central Industrial Security Forces, (Ministry of Home Affairs), Eastern Sector Head Qrs., Boaring Road, Patliputra, Patna, Bihar.
3. Deputy Inspector General, Central Industrial Security Force, (CISF), (Ministry of Home Affairs), CISF Unit, BSL, Bokaro, District Bokaro.
- 4.Commandant/Administration, Disciplinary Authority, CISF Unit, B.S.L., Bokaro, District Bokaro.
- 5.Deputy Commandant/Administration, CISF Unit, B.S.L., Bokaro, District Bokaro.

.... **Respondents** (in W.P.(S) No. 4613 of 2008)

CORAM: HON'BLE MR. JUSTICE PRAMATH PATNAIK

For the Petitioners : Mr. Rohit Roy, Adv.
 For the Respondent-UOI : Mr. Binod Singh, Adv. (in W.P.(S) No. 3597 of 2009)
 For the Respondent-UOI : Mr. Rajiv Singh, ASGI (in W.P.(S) No. 4558 of 2008)
 For the Respondent-UOI : Mr. Madan Prasad, Adv. (in W.P.(S) No. 4613 of 2008)

CAV on 27/04/2017

Per Pramath Patnaik, J.

Pronounced on 22/09/2017

Since the reliefs sought for in all the writ petitions are identical, with the consent of the respective counsels, all the writ petitions are heard together and are being disposed of by this common order/judgment.

2. In the aforesaid writ applications, the petitioners who were continuing as Head Constable, Constable and Assistant Sub Inspector (Shift in charge) have inter alia challenged the impugned orders of punishment passed by the disciplinary authority which have been confirmed by the appellate authority as well as revisional authority and the petitioners have further prayed for direction to the respondents for reinstatement in services with all consequential benefits.

3. The factual matrix, as has been delineated in the writ applications, in a nut shell is that the petitioners were employed as Head Constable, Constable and Assistant Sub Inspector (Shift in charge) respectively in the CISF Unit in Bokaro Steel Plant. On 23.06.2007 while they were posted on duty at one of the gates of the factory for preventing entry of unauthorized vehicles through the gate into the factory premises, on the said date, a truck bearing Registration No.WB-39-9954 was found loaded with Scrap material and Copper near Weight Bridge No.5 inside the factory premises. The vehicle was seized by the employees of the CISF. Consequent upon seizure of the truck from factory premises, the petitioners were placed under suspension vide departmental order dated 23.06.2007 in contemplation of departmental proceeding. Thereafter, charge sheet dated 05.07.2007 i.e. memo of charges were served upon the petitioners, calling them to submit their explanation to the charges. The gist of the charge against the petitioners is that while they were deployed on duty at Mansa Singh Gate on 23.06.2007 they failed to detect unauthorized entry of truck bearing Registration No.WB-39-9954 which entered the premises of the plant on 23.06.2007 without any valid document and loaded Scrap/Copper material were found parked near Weight Bridge No.5. The petitioners submitted their reply to the charge sheet by

denying and disputing all the charges levelled against them. In the explanations it is mentioned that the alleged unauthorized vehicle in question had loaded the material from the shed No.17 which is about 10 kilometers from Mansa Singh Gate whereas Duggal gate is just about one kilometer from the place of loading. It has further been submitted that Mansa Singh gate is protected by two locks of CISF and two locks by the security after which they are sealed and the same are opened after the keys are obtained from PCR. Mr. V.K Kakkar, Assistant Commandant was appointed as enquiry officer and Kameshwar Khan, Inspector was appointed as presenting officer. During enquiry witnesses were examined by the prosecution as well as defence, however none of the witnesses have deposed the involvement of the petitioners in their examination in-chief and cross examination. On the self same set of charges, a criminal case was set into motion against the petitioners. The enquiry officer submitted its report and the petitioners were given opportunity to submit their reply to the enquiry and petitioners submitted their explanation of the enquiry report, disputing the findings of the enquiry officer and the respondents without considering the reply imposed the punishment of dismissal from services in case of petitioners in W.P.(S) No.3597 of 2009 and W.P.(S) No.4558 of 2008 and compulsory retirement in case of petitioner in W.P.(S) No.4613 of 2008. The appeal and the revision preferred by the petitioners challenging the order passed by the disciplinary authority were dismissed by the appellate as well as the revisional authority, which are impugned in the instant writ applications.

4. Assailing the impugned orders, the petitioners have raised the following grounds:

(i) The impugned orders are as a result of procedural irregularities going to the root of the case and also suffers from non application of mind because of the fact that the allegations of truck entering through Mansa Singh Gate was based on the statement of one Anil Munda, who was examined in preliminary enquiry but not in the enquiry conducted by the enquiry officer, therefore, the findings recorded by the enquiry officer without examining the material witness has resulted in recording a perverse finding, basing on which charges have been alleged to have been proved. Therefore, in the absence of

clinching and unimpeachable evidence during enquiry, the imposition of major punishment is not legally sustainable.

(ii) The findings were recorded by the enquiry officer were based on no reliable evidence. The enquiry officer has relied upon the statement of the hearsay witnesses and the Driver in question was not examined at all, therefore, the findings of the enquiry officer are perverse since it is not supported by any legal evidence. From a cursory glance of the finding of the report, it would be manifest that the findings were recorded by the enquiry officer only, on the basis of suspicion and on the basis of conjectures and surmises drawn by the enquiry officer.

(iii) Even otherwise, the article of charges and the allegations against the petitioners does not make out a case of wilful negligence nor does it suggest that the petitioners had acted in collusion with other persons. The article of charge only makes out a case of negligence simplicitor and, as such, infliction of major punishment is grossly disproportionate to the charges levelled against the petitioners.

5. During course of hearing learned counsel for the petitioners submits that the case of the petitioners is fully covered by the decision of this Hon'ble Court rendered in the case of *Anand Kumar vs. Union of India & Ors.* reported in **2009 (4) JCR 75 (Jhr)**. It has also been submitted by learned counsel for the petitioners that the decision rendered in case of Anand Kumar (supra) was further challenged in the letters patent appeal which was also dismissed, therefore, the decision reported in case of Anand Kumar (supra) having attained its finality, squarely covers the case of the petitioners, be disposed of in the light of the order passed in the aforesaid case. Learned counsel for the petitioners further submits that on perusal of the enquiry report, it would be manifestly clear that out of P.W-1, P.W-2, P.W-3 and P.W-4 and court witness nos.1 and 2, none have supported the case of the prosecution, therefore, in the absence of any finding of guilt on the part of the petitioners, no major punishment could have been inflicted to the petitioners. Learned counsel for the petitioners submits that the petitioners have been acquitted in the criminal case bearing T.R. No.1339 of 2015 (G.R. No.896/2007) vide judgment dated 15.06.2015 by the learned C.J.M, Bokaro, therefore, no criminal case is pending against the petitioners.

6. Controverting the averments made in the writ applications, counter affidavit has been filed by the respondents, wherein it has been submitted that the petitioners while being posted at Bokaro Steel Plant were detailed to perform duties on 23.06.2007 at Mansa Singh Gate to ensure that only authorized vehicle be allowed to enter/exit inside the plant premises. During their duty hours, a truck bearing Registration No.WB-39-9954 entered inside the plant premises through Mansa Singh Gate without any valid document. The truck was later seized by the Head Constable/GD A.K. Sharma & others of intelligence wing of CISF when the said truck was parked, loaded with scrap materials near Kanta No.5 under suspicious circumstances. Therefore, petitioners were dealt under Rule 36 of the CISF Rule 2003 on the following charges:

- (i) On 23.06.2007 while the petitioners were detailed to perform day shift duty for ensuring the entry/exit of authorized vehicle inside the plant premises through Mansa Singh Gate, a truck bearing Registration No.WB-39-9954 entered inside the plant premises unauthorizedly without any valid document and was caught at parking area of Kanta No.5 unauthorizedly loaded with scrap and copper materials by the Head Constable/GD A.K. Sharma, Constable S.K. Singh and Constable Deepak Kundu of crime and Intelligence wing. Hence, they failed to stop unauthorized entry of truck bearing Registration No.WB-39-9954 through Mansa Singh Gate. This act on the part of the petitioners is an act of gross indiscipline, misconduct and dereliction towards their duty.
- (ii) The petitioners were given full reasonable opportunity by enquiry officer to defend their case during departmental enquiry. During course of departmental enquiry four witnesses were examined on behalf of the prosecution and one witness was examined as court witness. In addition, four documents were produced by the PWs and one by court witness. The petitioners were given all reasonable opportunities to produce their defence witness as well as documents but they did not produce any witness. The enquiry officer has submitted his finding proving the charge alleged against the petitioners. A copy of the finding of enquiry officer was also served to the petitioners by the disciplinary authority before passing the orders. After going through all the documents and considering the gravity of

offence, the petitioners in W.P.(S) No.3597 of 2009 and W.P.(S) No.4558 of 2008 were awarded penalty of dismissal and compulsory retirement in case of petitioner in W.P.(S) No.4613 of 2008. Thereafter, the petitioners filed appeal and revision which have been rejected by the appellate authority and revisional authority being devoid of merit. Therefore, it has been submitted that the departmental enquiry has been conducted in all fairness, and just and proportionate punishments have been awarded to the petitioners.

7. In support of his submission, learned ASGI for the respondents-UOI has referred to the decisions of the Hon'ble Apex Court reported in **(2016) 1 SCC 671** and **AIR 2015 SC 545** (Para-13).

8. After giving my anxious consideration to the rivalized submissions and on perusal of the records, this Court is inclined to interfere in the impugned orders of punishment, due to the following facts, reasons and judicial pronouncements:

(I) On perusal of the judgment reported in **2009 (4) JCR 75 (Jhr)** (*Anand Kumar vs. Union of India & Ors.*) there is no gainsaying of the fact that the case of the petitioners stand on the same footing like that of Mr. Anand Kumar and the petitioners are entitled to be extended with the same benefits as has been held in the case of said Anand Kumar (supra).

(II) The alleged charge levelled against the petitioners is of willful negligence of duty which led to unauthorized entry of truck into the factory premises. The sole charge was based on statement of one truck driver who was examined during preliminary stage. Except the said driver, none of the witnesses have supported the case of the prosecution, but the driver who was the most material witness for the reasons based known to the respondents has not been examined, therefore, the findings recorded by the enquiry officer basing on the statement of driver who was examined in the preliminary stage but not during the enquiry, can be described as a perverse finding and in the absence of any sufficient clinching and unimpeachable evidence, the respondents ought not to have inflicted major punishment, since it is a settled position of law that suspicion or presumption cannot take place of proof even in a domestic enquiry.

(III) During pendency of the writ application, another point which hinges for consideration is that during pendency of the writ application vide order dated 15.06.2015 petitioners have been acquitted in the criminal case bearing T.R. No.1339 of 2015 (G.R. No.896/2007) by the learned C.J.M, Bokaro for lack of evidence and the charges in the departmental proceeding and criminal case were identical without there being no iota of difference. Therefore, the distinction which shall prove in the departmental as well as criminal case on the basis of approach, burden of proof would not be applicable in the instant case, therefore in view of the honourable acquittal of the petitioners in the aforesaid criminal case, findings recorded in the departmental proceeding requires to be set at naught, in view of the decisions of the Hon'ble Apex Court reported in **(1999) 3 SCC 679 (Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another)** and **(2006) 5 SCC 446 (G.M Tank vs. State of Gujarat and Ors.)** (para-30 & 31).

(IV) While continuing departmental proceeding the enquiry officer performed as a quasi judicial body. The finding of the guilt recorded against the petitioners in the departmental proceeding which are based on no legal evidence are certainly perverse, therefore, the impugned orders passed by the disciplinary authority vide Annexures-9 (W.P.(S) No.3597 of 2009), Annexure-3 (W.P.(S) No.4558 of 2008) and Annexure-3 (W.P.(S) No.4613 of 2008) are hereby quashed and set aside and for the same reasons the impugned orders of the appellate authority and the revisional authority are bad, as having been passed without application of judicial mind are also quashed and set aside.

9. Resultantly, the writ applications are allowed. The petitioners shall be entitled to reinstatement in services provided that they have not reached the age of superannuation in the meantime and the period from date of dismissal till reinstatement shall be treated in services without any back wages and that period shall be computed for the purpose of grant of post retiral benefits.

(Pramath Patnaik, J.)