

IN THE HIGH COURT OF JHARKHAND AT RANCHI

L.P.A. No. 405 of 2021

Akhilesh Tiwari

.... Appellant(s)

Versus

1. The Union of India through the Director General, Central Industrial Security Force (CISF), Ministry of Home Affairs, New Delhi.
2. The Inspector General, CISF, Ministry of Home Affairs, CISF Complex, Boring Road, Patna.
3. The Deputy Inspector General, CISF, Ministry of Home Affairs, CISF Complex, Patna.
4. The Senior Commandant, CISF Unit, CTPS Chandrapura, Bokaro.
5. Sri Arjun Singh, Sub-Inspector, CISF Unit, Chandrapura, Bokaro
6. Sri Santosh Kumar, Constable General Duty, CISF Unit, Chandrapura, Bokaro.

.... Respondent(s)

**CORAM : SRI SANJAYA KUMAR MISHRA, C.J.
SRI ANANDA SEN, J.**

For the Appellant(s)

: Mr. Deepak Kumar Dubey, Advocate.

For UOI

: Mr. Prabhat Kr.Sinha, CGC

05/ Dated:22.03.2023

Upon hearing the learned counsel for the parties, this Court passed the following, (Per, Sanjaya Kumar Mishra, C. J.)

ORDER

1. By filing this intra- court appeal under Clause 10 of the Letters Patent Appeal, the appellant being the petitioner in WP(S) No. 6102 of 2015 has prayed to set aside the order passed by the learned Single Judge on 29.1.2021, whereby the writ petition, filed by petitioner for setting aside the final order of the enquiry, the order of the Appellate Authority and the Revisional Authority and the final order passed by the Disciplinary Authority terminating the service of the petitioner, has been dismissed.

2. The petitioner is a member of Central Industrial Security Force (CISF). He was issued a charge sheet for dereliction of duty being in a drunken condition and sleeping during the night duty and also abusing the officers. A full fledged enquiry was conducted and the Enquiry Officer reported that the charge has been established. Thereafter, the Disciplinary Authority passed the order of removal of petitioner from service. An appeal was preferred by the delinquent employee, which was also dismissed. The Revisional Authority also attended the revision application but did not interfere with the findings recorded by the Enquiry Officer or the Appellate Authority..

3. In course of hearing the writ petition, the learned counsel for the petitioner, Mr. Anjani Kumar Verma, confined his argument only to the proportionality of punishment and submitted that the petitioner may be given

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liberty to file a mercy appeal before the respondent authorities. However, the said submission was not countenanced by the learned Single Judge. He having considered the matter that the petitioner has been found guilty at three levels i.e. the level of departmental proceeding, the proceeding before the Appellate Authority and the Revisional Authority, who did not inclined to interfere with the matter. It was the further opinion by the learned Single Judge that in a disciplined organization like the CISF, in order to preserve the chain of command and discipline in Para Military Forces, a serious view should be taken also on the question of punishment.

4. The learned counsel for the appellant submits that the counsel who argued the writ petition has committed error by confining his argument only to the extent of proportionality of the punishment and for that fault, the petitioner should not be punished. In that view of the matter, we have also considered the merit of this case.

5. The learned counsel for the appellant-writ petitioner have submitted that as there was no medical report that the appellant was in a drunken condition, the court should have interfered with the matter and could have set aside the order of finding, guilt etc. He also submits that the procedure for imposing major penalties as provided under Rule 36 of the Industrial Security Force Rules, 2001 has not been complied with, as the appellant was not provided with the copy of the statement of witnesses and the documents, relied upon by the employer. From perusal of the writ petition, it reveals that the petitioner had not raised a specific plea in the writ petition that there is a violation of Rule 36 of the aforesaid Rules.

6. However, in an application for issuance of writ of *certiorari*, the jurisdiction of the Court in pursuance of Article 226 of the Constitution is rather limited. *Certiorari* under Article 226 of the Constitution is issued for correcting gross error of jurisdiction i.e. when a subordinate Court is found to have acted (i) without jurisdiction- by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction- by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice. The writ of *certiorari* is not available to be issued to correct mere errors of fact or of law, unless the court is satisfied that the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance and utter disregard of the provisions of law and secondly a grave injustice or gross failure of justice has occasioned thereby.

7. A patent error or an error apparent on the face of record was set out by the Hon'ble Supreme Court in the case of **Satyararayan Laxminarayan Hegde Vs. Mallikarjun Bhavanappa Tirumale**, reported in **AIR 1960 SC 137** wherein it was held that the error should be self evident. The error which needs to be established by lengthy and complicated arguments or an error in a long drawn process of reasoning on points where there may conceivably be two opinions cannot be called a patent error. In a writ of certiorari, the High Court may quash the proceedings of the tribunal or authority or court but may not substitute its findings or directions in lieu of the one given in the proceedings forming the subject matter of *certiorari*. *Certiorari* jurisdiction though available is not to be exercised as a matter of course. The High Court would be justified in refusing the writ of *certiorari* if no failure of justice has been occasioned. In exercising the *certiorari* jurisdiction the procedure ordinarily followed by the High Court is to command the inferior court or tribunal to certify its record or proceedings to the High Court for its inspection so as to enable the High Court to determine whether on the face of the record the inferior court has committed any of the preceding errors mentioned above and has it is the way of failure of justice.

8. In our considered opinion, the supply of documents or list of witnesses and the statements of the witnesses are essential question of fact and it cannot be demonstrated in a short and crisp argument, rather the learned counsel for appellant-writ petitioner have indulged in a long drawn process of reasoning, which is not permissible in exercise of writ jurisdiction for issuance of certiorari.

9. In that view of the matter, we find no merit in this intra court appeal. Accordingly, this appeal is **dismissed** at the threshold in limine, being devoid of any merit.

(Sanjaya Kumar Mishra, C.J.)

Anu/-Cp2.

(Ananda Sen, J.)