

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 16th March, 2010

Date of decision : 26th March, 2010

+ **W.P.(C) No.745/2009**

RISHIPAL SINGH Petitioner
Through Mr. A.K. Trivedi, Advocate

versus

UNION OF INDIA & ORS. Respondents
Through Mr. Anil Gautam, Advocate

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether reporters of local papers may be allowed to see the Judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

GITA MITTAL, J

1. The present writ petition has been filed by the petitioner challenging the order dated 8th May, 2007 being a disagreement memorandum issued by the Commandant, 2nd Res. Battalion, Central Industrial Security Force, Mahipalpur, New Delhi as the disciplinary authority; the final order dated 23rd May, 2007 passed by the Commandant under Rule 32 read with schedule 1 of the Central Industrial Security Force Rules, 2001 (hereinafter referred to as 'CISF Rules, 2001' for brevity) ordering that the pay of the petitioner be reduced by one stage from Rs.3880/- to Rs.3795/- in the time scale of Rs.3200-85-4900/- for a period of one year with immediate effect. It was further ordered that the petitioner will not earn increments of pay during the period of reduction and that on expiry of this period, the

reduction would have the effect of postponement of his future increments of pay. The petitioner has also laid a challenge to the appellate order passed by the Deputy Inspector General (Security) of the Central Industrial Security Force (hereinafter referred to as 'CISF' for brevity) dated 3rd September, 2007 and the revisional order dated 6th July, 2008 passed by the Inspector General of the CISF rejecting the petitioner's statutory appeal and revision respectively against the order of disciplinary authority and confirming the order of penalty imposed upon him.

2. The petitioner was appointed in the CISF w.e.f. 24th June, 1994. On 28th October, 2006, the petitioner was serving as a constable posted at rear gate & front gate of CISF Headquarters, 13, CGO Complex, Lodhi Road, New Delhi between 0900 hours to 1300 hours armed with an SMG Carbine 9MM with each interval of two hours at rear gate and front gate.

3. It is noteworthy that after the incident, the respondents had also constituted a Board of Officers/Court of inquiry of four persons which conducted its proceedings between the 31st October, 2006 and 3rd November, 2006 for ascertaining the circumstances leading to the accidental firing of the one round from the petitioner's weapon. The report of the court of inquiry has been placed before us. The relevant portion thereof reads as follows:-

“From the statement and circumstances it is revealed that the accidental firing of one round 9MM occurred on dated 28.10.06 from the weapon SMG Carbine by Const. Rishipal Singh due to the technical flaws of the weapon as stated by the Const./Armr. In his statement and hence the board is of the opinion that the accidental weapon cannot be attributed on the part of the individual

concerned. It is also pertinent to mention here that there was no loss of life or any damage of property. Hence the board is of the opinion that the cost of the bullet may be borne by the state."

4. The commandant of the CISF 2nd Res. Battalion, however, did not agree with the findings of the board observing that the petitioner should have personally checked the weapon at the time of checking over of duty and if any shortfall was observed, then the weapon should not have been used. It was observed that the incident was the result of poor handling of the weapon by the petitioner. In view thereof, the disciplinary proceedings were proposed against the petitioner.

5. On account of the accident of firing from the petitioner's weapon, a chargesheet under Rule 36 of the CISF Rules, 2001 was issued vide a memorandum dated 6th of December, 2006. Departmental enquiry proceedings were proposed against the petitioner on the following article of charge:-

"CISF No.944470534 Const. Rishipal Singh (U/S), of VIP Security, CISF Campus, Mahipalpur, New Delhi, was detailed for duty with SMG Carbine 9MM Butt No.44, Regd. No.16199704 on 28.10.06 from 0900 hrs. to 1300 hrs., with each interval of 2 hrs, at rear gate and front gate of CISF Hqrs, 13-CGO Complex, Lodhi Road, New Delhi. On 28.10.06 Const. Rishipal Singh at about 1110 hrs., has fired one round accidentally from his above said SMG Carbine during his duty hours due to his sheer carelessness towards duty and is unbecoming of a member of a disciplined force like CISF. Hence the charge."

6. The petitioner's representation against the charge memorandum was found unsatisfactory by the disciplinary authority and a regular departmental inquiry under the provisions of Rule 36 of

the CISF Rules, 2001 was proposed. During the course of inquiry, the inquiry officer recorded the statement of six witnesses and also examined the documents which were placed before him. The inquiry officer submitted an inquiry report dated 21st April, 2007 holding that the incident of firing on the 28th October, 2006 was accidental and on account of weakness of spring lever and free movement of the change lever which was a mechanical fault. On these findings, the petitioner was completely exonerated of the charge.

7. The disciplinary authority, however, did not agree with the findings in the inquiry report. A disagreement note dated 8th May, 2007 (page 18 of the paper book) was issued to the petitioner calling upon him to furnish his representation if any in writing. It is noteworthy that the disciplinary authority in its note dated 8th May, 2007 had recorded as follows:-

“3. In view of the above discussion, I hold the charged official guilty of charge framed against the charged official.

4. If you wish to make any representation or submission against the enquiry report and disagreement note of Disciplinary Authority, you may do so in writing to the Disciplinary Authority within 15 days of the receipt of this memorandum. If no representation/submission is received within a stipulated time it will be presumed that you have nothing to say/represent.”

8. The petitioner submitted his representation to the disciplinary authority on 11th May, 2007. However, the same was not found favourable. As a result, the disciplinary authority passed the order dated 23rd May, 2007 in exercise of power under Rule 32 of the CISF Rules, 2001 ordering that the petitioner's pay be reduced by one stage from Rs.3880 to Rs. 3795/- in the time scale of Rs.3200-85-

4900/- for a period of one year with immediate effect. It was also ordered that the petitioner would not earn increments at first stage within a period of one year with cumulative effect.

9. Aggrieved thereby, the petitioner filed an appeal to the DIG (Security), Jam Nagar House, New Delhi being the appellate authority. This appeal was rejected by an order dated 3rd September, 2007 passed by the appellate authority. The petitioner thereafter assailed the orders passed against him by the disciplinary authority and the appellate authority by way of a statutory revision under Rule 54 of CISF Rules, 2001 before the office of the Inspector General on several points. However, the revisionary authority was of the view that the charge against the petitioner was serious and that he was unable to substantiate his ground of challenge. It was also held that the penalty imposed upon the petitioner was proportionate to the proven negligence. The revision filed by the petitioner was rejected by an order dated 6th August, 2008 as being devoid of merit.

10. The petitioner has challenged the impugned order on several grounds which were urged before the appellate and revisionary authority as well. The petitioner, inter alia, places reliance on the proceedings of the Board of Officers/Court of inquiry as well as the findings of the inquiry officer to contend that the charge against him was not made out. It has been vehemently urged that there was no evidence to support the findings of culpability of the petitioner and the orders have been passed without application of mind.

11. The main ground of challenge to the impugned orders however is premised on the contention that the disciplinary authority has

failed to comply with the requirement of law in issuing the disagreement memorandum dated 8th May, 2007 after holding the petitioner guilty of the charge framed against him. It is contended that in the event of disagreement with the findings of the inquiry officer, the disciplinary authority was bound to have communicated its disagreement note and to give an opportunity to the petitioner to make a representation against the same before drawing a final conclusion. Having failed to do so, the note dated 8th May, 2007; the final order dated 23rd May, 2007 as well as the appellate and revisionary orders are vitiated and not sustainable in law.

12. We have heard learned counsel for the parties and also perused the original record of the proceedings which have been placed before us. The short question which is required to be answered in the instant case is as to whether the disagreement note dated 8th May, 2007 gave an opportunity to the petitioner to make a representation against the points on which the disciplinary authority was disagreeing with the findings of the inquiry officer.

13. The legal principles based whereon the action of the respondents is required to be tested, are well settled by the pronouncements of the Supreme Court in ***Punjab National Bank & Anr. Vs. Kunj Bihari Mishra (1998) 7 SCC 84*** and ***AIR 1999 SC 3734 Yoginath D. Bagde Vs. State of Maharashtra & Anr.***

14. So far as the manner in which the disciplinary authority would proceed in the event of disagreement with the findings of an inquiry officer exonerating a charged officer of the charges is concerned, the principles have been authoritatively laid down by Supreme Court in

(1998) 7 SCC 84 Punjab National Bank Vs. Kunj Bihari Mishra

as follows:-

“18. Under Regulation 6, the enquiry proceedings can be conducted either by an enquiry officer or by the disciplinary authority itself. When the enquiry is conducted by the enquiry officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with the decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the enquiry officer. Where the disciplinary authority itself holds an enquiry, an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer, they are deprived of representing to the disciplinary authority before that authority differs with the enquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of enquiry as explained in Karunakar case.

19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”

15. Valuable light on this issue has been thrown by the authoritative pronouncement of the Apex Court in **Yoginath D. Bagde Vs. State of Maharashtra & Anr.** (supra), the court held as follows:-

“.....Where the Rules are in this regard silent and the Disciplinary Authority also does not give an opportunity of hearing to the delinquent officer and records findings, different from those of the Inquiring Authority that the charges were established, “an opportunity of hearing” may have to be read into the Rule by which the procedure for dealing with the Inquiring Authority's report is provided principally because it would be contrary to the principles of natural justice if a delinquent officer, who has already been held to be ‘not guilty’ by the Inquiring Authority, is found ‘guilty’ without being afforded an opportunity of hearing on the basis of the same evidence and material on which a finding of “not guilty” has already been recorded.”

16. From a reading of the principles laid down by the Apex Court in the aforementioned two pronouncements, it is apparent that it is the requirement of law that a charged officer is entitled to an opportunity to represent to the disciplinary authority before that authority differs with the inquiry officer report and while recording a finding of guilt, the charged officer must have an opportunity to represent before the disciplinary authority before finding a final findings on the charges are recorded and any punishment is imposed upon him. The Apex Court has explained that this is the requirement to be done as part of the first stage of the inquiry as was explained in **(1993) 4 SCC 727 : 1994 AIR SCW 1050 Managing Director, ECIL, Hyderabad Versus B. Karunakar.**

17. As a result, the disciplinary authority is required to record its tentative reasons for such disagreement and give an opportunity to

the charged officer to represent before it records its findings. It has been held that this requirement is an essential part of compliance with the principles of natural justice which is required to be read into, even in rules governing the disciplinary proceedings which are silent thereon.

18. In the instant case, we find that the disciplinary authority had arrived at a conclusive finding of guilt of the petitioner before issuance of the memorandum dated 8th May, 2007. An opportunity for making a representation or submission was given after arriving at such a finding. Any opportunity to the petitioner to make a representation after the disciplinary authority had made up its mind, would be violative of the principles of natural justice and meaningless in the eyes of law.

19. A similar opportunity of making a representation against the inquiry report and the disagreement note after arriving at a conclusion of guilt by the disciplinary authority was rejected by the Supreme Court in ***Yoginder D. Bagde Vs. State of Maharashtra (supra)*** in the following terms:-

“36. Along with the show-cause notice, a copy of the findings recorded by the Enquiry Officer as also the reasons recorded by the Disciplinary Committee for disagreeing with those findings were communicated to the appellant but it was immaterial as he was required to show-cause only against the punishment proposed by the Disciplinary Committee which had already taken a final decision that the charges against the appellant were proved. It was not indicated to him that the Disciplinary Committee had come only to a "tentative" decision and that he could show cause against that too. It was for this reason that the reply submitted by the appellant failed to find favour with the Disciplinary Committee.

37. Since the Disciplinary Committee did not give any

opportunity of hearing to the appellant before taking a final decision in the matter relating to findings on the two charges framed against him, the principles of natural justice, as laid down by a Three-Judge Bench of this Court in Punjab National Bank and Ors. v. [Kunj Behari Mishra](#) : (1998) II LLJ 809 SC, referred to above, were violated.”

It is noteworthy that in ***Yoginath D. Bagde Vs. State of Maharashtra & Anr.*** (supra), notices had been issued to the petitioner to show cause against a proposed penalty.

20. In the instant case, by the memorandum dated 8th May, 2007, the respondents have conveyed the reasons for the disagreement with the findings of the inquiry officer before passing the order dated 23rd May, 2007. The same would make no difference at all to the present consideration for the reason that we are concerned with the fact that the disciplinary authority had made up its mind and held the petitioner guilty before giving an opportunity to the petitioner to submit a representation against the same. The representation or submission which was invited by respondents was against the finding of guilt and not against the tentative disagreement with the inquiry report. The opportunity given by the memorandum dated 8th May, 2007 was in fact meaningless and in violation of the well settled principles of natural justice.

The order dated 3rd September, 2007 of the appellate authority and the order dated 23rd May, 2007 of the revisional authority upholding the order dated 23rd May, 2007 are also contrary to law for the same reason and cannot stand.

21. In view of the above discussion, the memorandum dated 8th May, 2007; order dated 23rd May, 2007 of the disciplinary authority;

order dated 3rd September, 2007 of the appellate authority and the order dated 6th July, 2008 of the revisionary authority are not sustainable in law and are hereby set aside and quashed.

22. The respondents, however, shall be at liberty to examine the matter afresh from the stage of consideration of the inquiry report by the disciplinary authority and to proceed in the matter in accordance with law.

23. It is made clear that we are not examining any other issue or ground of challenge raised by the petitioner. It shall be open for the petitioner to assail any action taken by the respondents against him in future by way of appropriate proceedings in case the respondents proceed against him any further in the matter. We also make it clear that nothing herein contained is an expression of opinion on the merits of the petitioner's contention or defence in the disciplinary proceedings.

This petition is allowed to the aforesaid extent.

GITA MITTAL, J

VIPIN SANGHI, J

March 26th, 2010
aa