

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

% *Judgment Reserved on: September 18, 2012*
Judgment Pronounced on: September 28, 2012

+ **WP (C) No.4732/2012**

SURENDER SINGH Petitioner
Represented by: Ms.Rekha Palli, Advocate with
Ms.Punam Singh, Advocate along
with petitioner in person.
versus

UNION OF INDIA AND ANR Respondents
Represented by: Ms.Barkha Babbar, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The present writ petition under Article 226/227 of the Constitution of India has been filed by the petitioner seeking quashing of the order dated 20th December, 2011 passed by respondent No.1 dismissing the petitioner's petition under Section 9(3) of CISF Act; order dated 8th June, 2007 passed by respondent No.3 dismissing the petitioner's review petition; order dated 27th October, 2006 passed by respondent No.4 dismissing the petitioner's appeal; and the order dated 31st July, 2006 passed by respondent No.5 imposing the penalty of pay reduction by 3 stages for a period of 2 years with a further direction that he would not earn any increment of pay during the period of reduction and that on expiry of the period his further increments of pay would also be postponed.

2. The petitioner was appointed in CISF as a Constable on 1st January, 1987. On 14th April, 2005 the petitioner was posted to CISF Unit at IOC

Mathura, U.P. On 9th December, 2005 a dinner was organized in the Unit Lines. The petitioner was assigned duty at Watch Tower No.6 from 13:00 hrs to 21:00 hrs. An incident took place.

3. A disciplinary proceeding under Rule 36 of CISF Rules, 2001 was ordered against the petitioner vide Memorandum No.V-15014/MR/Disc/SS/2005-2091 dated 24.12.2005 on the following charge:-

“Charge-1

By gross indiscipline, indecent conduct and misconduct Force No.874500631 Constable Surender Singh (Suspended) on 09-12-2005 at about 2230 hours at the unit lines during the dinner scuffled with Force No.884656391 Constable Puran Chand under the influence of liquor. The above said act of Constable Surender Singh is a representation of gross indecency and indiscipline which is extremely unbecoming for member of a disciplined force and lackluster the image of the force. Hence the charge.”

4. The petitioner made a representation on 3rd January, 2006 for removing Const. Puran Chand from the company office. Mr.G.R.Basiya was appointed as an Enquiry Officer on 5th January, 2006 by respondent No.5. On 9th January, 2006 the petitioner made an application requesting for appointment of an Enquiry Officer from any other Unit alleging apprehension that Const.Puran Chand who was the Company Writer would be able to influence the Enquiry Officer. On 12th January, 2006 Const.Puran Chand was removed from the post and departmental enquiry continued.

5. 7 prosecution witnesses, 1 Court witness and 6 defence witnesses were examined. The Enquiry Officer submitted his report on 19th June, 2006. A copy of the inquiry report was provided to the petitioner who made representation dated 5th July, 2006 against the enquiry report. However, respondent No.5 vide his order dated 31st July, 2006 imposed a penalty of reduction of pay by 3 stages from Rs.4050-3795 for a period of two years.

The petitioner thereafter filed an appeal dated 30th August, 2006 to respondent No.4 but the same was dismissed on 27th October, 2006. Feeling aggrieved by the said order, the petitioner preferred a revision petition dated 31st March, 2007 to respondent No.3. The same was also dismissed vide order dated 8th June, 2007.

6. After the gap of more than 4 years, the petitioner filed the petition before the Ministry of Home Affairs on 26th June, 2011 for setting aside the penalty imposed upon him. The said petition was dismissed vide order dated 20th December, 2011.

7. Thereafter, the petitioner has filed the present writ petition in May, 2012 seeking prayer for quashing of the order dated 20th December, 2011 passed by Ministry of Home Affairs, order dated 8th June, 2007 passed by respondent No.2, order dated 27th October, 2006 passed by respondent No.4 and order dated 31st July, 1996 passed by respondent No.5.

8. The case of the petitioner is that when he went to the Community Hall to have dinner, Const.Puran Chand who was the Company Writer came to him in an intoxicated state and started making inquiry from the petitioner in regard to his complaint about the distribution of duties to the Company CHM but on his denial about making a complaint, Const. Puran Chand hit the petitioner in the presence of various witnesses.

9. The main grounds taken in the writ petition are that the charges leveled against the petitioner were illegal and improper and he was himself the complainant in the said incident, but no action was taken on his written complaint. He was beaten by Const. Puran Chand and suffered injuries. The said aspect has been ignored by the respondents. The medical report issued by the District Hospital, Mathura was rejected by the respondents. The Superior Officers of the Unit did not take any action against Const.

Puran Chand. Even though it was stated by the petitioner in his representation that Const. Puran Chand was the copy writer under Sh.G.R.Bajiya, the Enquiry Officer who could not conduct the inquiry in fair manner. The Disciplinary Authority had wrongly imposed the penalty on petitioner with a pre-determined mind. Therefore, it was argued that the petition is liable to be allowed.

10. We have heard the learned counsel for the parties and have also examined the record of the inquiry conducted against the petitioner which was produced and retained by the Court.

11. At the inquiry, it has been proved at the time of incident the prosecution witnesses PW-1 Inspector/Exe. S.S.Yadav, PW-2 Const. Pushpraj, PW-4 SI/Exe. V.V.Singh, PW-6 SI/Exe. Sultan Singh and PW-5 H.C.Paras Ram were present there.

12. Insp./Exe. Sher Singh PW-7 in his testimony had stated that on 9th December, 2008 dinner was organized in the Unit Lines. At about 22:30 hrs after the departure of the guests, he and PW-1, PW-2, PW-4, PW-5 and PW-6 were standing on the road in front of the community hall. The petitioner came to them and told that Const. Puran Chand had slapped him. PW-7 Sher Singh asked PW-2 Pushpraj to call Const. Puran Chand. PW-2 brought Const. Puran Chand. When he was making inquiries with Const. Puran Chand, the petitioner suddenly started slapping Const. Puran Chand. They were all shocked to see this. Sometime later, the petitioner went towards his residential colony. PW-7 Sher Singh immediately sent PW-2 Pushpraj behind the petitioner to bring him back. PW-2 Pushpraj went behind the petitioner to call him. After coming back, he told them that he called the petitioner from behind but he did not come back and went inside his quarter. It is stated by the witness that from the manner and the body

language of the petitioner and some smell coming out from his mouth, PW-7 thought that the petitioner had drunk liquor. Thereafter, they all came to RI office and got prepared ASI P.P.Singh to get the medical of the petitioner done. At about 00:15 hrs the petitioner came to RI office and stated that he wanted to make written complaint. The petitioner submitted his written complaint and went outside the RI office on the excuse of vomit. After about 5-10 minutes later, his wife came to RI office and stated that "*You people are not doing justice with my husband...*" Thereafter, the occurrence of the incident was conveyed to the Senior Commandant by PW-7 and recorded in the general diary at Entry Nos.77, 78 & 79 dated 9/10.12.2005 which was exhibited as Ex.PW7/P9, Ex.PW7/P10 and Ex.PW7/P11.

13. All the prosecution witnesses deposed that at the time of incident, the petitioner had consumed liquor as smell of liquor was oozing from his mouth. They made their statements confirming about the fact of fighting by the petitioner with Const. Puran Chand in intoxicated state on 9th December, 2005. Similarly, PW-1 Insp./Exe. S.S.Yadav had made the statement which was in consonance with the statement of PW-7. The other prosecution witnesses had also corroborated the statement made by PW-7.

14. The statement of Amar Singh, Assistant Commandant, CW-1, CISF Unit, IOC, Mathura was also recorded. He was cross-examined by the petitioner with the help of Defence Assistant. In his cross-examination, he has made a statement that during the dinner, he was having food with other officers in the community hall. The petitioner neither came to him nor told him anything at that time. This witness further stated that when he was sitting in the vehicle to go to his residence, the petitioner came there holding the food plate in his hand and told that Const. Puran Chand had quarreled with him. The petitioner was not in normal condition at that time and no

blood was oozing from his mouth. He was speaking lies. The witness told the petitioner that they would see the next day. However, he asked Inspector Sher Singh to ascertain what had happened.

15. During the enquiry the petitioner examined six witnesses in his defence. The cross examination was done by the presenting officer, DW-1 Const. Ram Singh who corroborated the statement of the petitioner, as per record was on earned leave between 25.11.2005 to 25.12.2005. Similarly, in case the statements of other witnesses are read together none of the defence witnesses appears to have correct knowledge regarding the incident in question, the exact time. There were various contradictions between the statements made by them. Their statement therefore cannot be said to be reliable evidence.

16. All the defence witnesses had made almost similar statement by narrating the incident that the petitioner was standing in queue of having food. Const. Puran Chand came close to him and took him to one side of the community hall and thereafter, he slapped and abused the petitioner. Blood was oozing from the mouth of the petitioner and the Asstt. Comdt. Amar Singh told him that he would conduct inquiry. In case the statements of all these witnesses are read together, it is evident that there is a contradiction in their statements regarding the number of members present at the time of incident, number of members intervened in the fight between Const. Puran Chand and the petitioner, and their talks before the incident regarding coming/oozing of blood from the mouth of the petitioner. They have failed to state the true facts of the incident as well as about the time of the incident. It is pertinent to mention that none of the defence witnesses had denied the fact that the petitioner had not slapped Const. Puran Chand, nor any of them had stated that he was not under the influence of liquor.

17. It is settled law that in writ jurisdiction, the High Court has limited scope of interference in the administrative action of State in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India. The Court will not interfere in such matters unless the decision is tainted by any vulnerability like illegality, irrationality and procedural impropriety. Whether action falls within any of the categories is to be established and mere assertion in that regard may not be sufficient. To be "irrational" it has to be held that on material, it is a decision "so outrageous" as to be in total defiance of logic or moral standards. If the power is exercised on the basis of facts which do not exist or reaching conclusions which are patently erroneous, such exercise of power shall be vitiated. Exercise of power will be set aside if there is manifest error in the exercise of such power or the exercise of power is manifestly arbitrary. To arrive at a decision on "reasonableness" the Court has to find out if the respondents have left out a relevant factor or taken into account irrelevant factors. In (1995) 6 SCC 749, **B.C.Chaturvedi vs. Union of India & Ors.**, the Supreme Court at page 759 has held as under:-

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on

some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.”

18. The grievance, on facts, urged before us at the hearing of the writ petition was that firstly the Inquiry Officer and thereafter the Disciplinary Authority, the Appellate Authority and the Revisional Authority have treated the testimony of the departmental witnesses as the gospel truth and have not even discussed the testimony of the six defence witnesses who have clearly stated that it was Const.Puran Chand who was in the wrong. Learned counsel for the petitioner was at pains to urge that since Const.Puran Chand was the Company Writer he used to assign duties to the jawans and junior level officers and thus he could manipulate the witnesses of the department.

19. It always become a nightmare where six witnesses depose one way and six depose the other way. In the instant case seven witnesses of the department have stated a version which inculpatates the petitioner and six witnesses of the petitioner have stated a version which exculpates the

petitioner and inculpates Const.Puran Chand. But, what breaks the impasse is the General Diary entry recorded immediately after the incident, and surely by which time Const.Puran Chand could not have manipulated anybody. The General Diary entry PW-7 Ex.P-9 has been proved by the author thereof, Const.Sher Singh who appeared as PW-7. The GD entry clearly records that in a state of intoxication petitioner had assaulted Const.Puran Chand. Further, we do not think that Const.Puran Chand could have manipulated Asstt.Comdt.Amar Singh who had appeared as CW-1 who has deposed that the claim of the petitioner of having complained to him about the incident was incorrect, except that when the witness was about to go to his residence the petitioner came and told him that Const.Puran Chand had quarreled with him, but categorically stated that he did not see blood oozing from the mouth of the petitioner. We highlight that all witnesses examined by the petitioner had deposed that when Const.Puran Chand assaulted the petitioner, blood started oozing from the mouth of the petitioner.

20. There is no force in the submission of the learned counsel for the petitioner that the enquiry was not conducted as per the procedure laid down. The petitioner admittedly acknowledged the receipt of charge sheet on 27th December, 2005 as he submitted his written statement of defence on 3rd January, 2006 denying the charge. Disciplinary authority viz. Sr.Commandant, CISF Unit, IOC, Mathura, decided to hold a regular departmental enquiry and appointed Sh.G.R. Bajiya, Inspector Exe. CISF Unit, IOC Mathura as Enquiry Officer vide order dated 5th January, 2006 to enquire into the charge levelled against the petitioner. Sh.R.K.Mishra, Sub-Inspector/Exe., CISF Unit, IOC Mathura was also appointed as Presenting Officer on behalf of the Disciplinary Authority vide order dated

5th January, 2006. The petitioner appeared before the Enquiry Officer on 12th January, 2006 and his first plea was recorded. The petitioner vide his representation dated 14th January, 2006 requested for appointment of Const. P.Krishnan of CISF Unit, IOC Mathura as his defence assistant to present his case during the proceedings. Thereafter, the Enquiry Officer conducted the enquiry on various dates. Both, the petitioner as well as his defence Assistant, were given opportunities to cross examine the witnesses. The Presenting Officer also submitted his written brief, copy of which was provided to the petitioner on 29th May, 2006. The petitioner acknowledged the receipt of brief and submitted his written brief to the Enquiry Officer on 31st May, 2006.

21. It is evident from the record of the proceedings that Inspector/Exe. Sh.G.R. Bajiya was appointed as an Enquiry Officer in the case by the Disciplinary Authority vide order dated 5th January, 2006. The notice was sent by him. The petitioner was called for first plea on 12th January, 2006. He appeared and accepted Sh.G.R.Bajiya as Enquiry Officer. It is evident from the record that the petitioner was informed that Const. Puran Chand has been detached from the duties of copy writer and the enquiry will be conducted by Inspector/Exe. G.R.Bajiya as per the procedure. The petitioner did not raise any objection about Sh.G.R.Bajiya being as Enquiry Officer. Therefore, the grounds taken by him in the writ petition is without any substance.

22. It appears from the record that both, the petitioner and his defence assistant, were given reasonable opportunities to cross-examine the witnesses. However, it appears that the petitioner failed to rebut the charge and prove his innocence. It is rightly observed by the respondent No.3 that since no *prima facie* case was made out in the preliminary enquiry

conducted by Inspector/Exe. Krishan Lal and no evidence in the statements of prosecution witnesses came on the surface to sustain that Const.Puran Chand manhandled or assaulted the petitioner, the question of initiation of disciplinary action against him does not arise at all.

23. As regards the medical examination report of District Hospital, Mathura, the Revisionary Court has apparently rightly held that the same appears to have been managed by the petitioner to cover up his offence, as the authorized hospital for treatment of personnel posted at CISF Unit, IOC Mathura is the Refinery Hospital and not the District Hospital, Mathura. The petitioner opted to get himself examined at District Hospital, Mathura without being referred by the Refinery Hospital for the reasons best known to him. We agree with the observation made in the order dated 8th June, 2007 that the evidence on record proves that the petitioner was under excessive influence of liquor and fled away to his quarter on the context of vomiting from the spot to avoid his medical examination.

24. It is pertinent to mention that while passing the order of a disciplinary proceeding, it appears from the order dated 27th October, 2006 that the entire gamut of the matter was examined. The revision filed by the petitioner against the order passed by respondent No.5 was also dismissed on 8th June, 2007 by a speaking order after considering the evidence of the parties. The petitioner made a petition under Section 9 of the CISF Act against the order dated 8th June, 2007 after the expiry of more than 4 years and the present writ petition has been filed after a span of 5 years from the date of order dismissing the revision petition of the petitioner. The writ Court cannot re-assess the evidence produced by the parties. In the present case, the Enquiry Officer has given his report dated 19th June, 2006 after having considered the evidence of the parties as well as the conduct of the

petitioner.

25. In view of reasons stated above, there is no merit in the petition and the same is dismissed.

26. No costs.

(MANMOHAN SINGH)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

SEPTEMBER 28, 2012/ka/jk