

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

+ **WP(C) No.7452/2011**

% **Date of Decision: 11.01.2012**

Ex.Const. Ram Chander Petitioner

Through Ms.Rekha Palli, Ms.Punam Singh &
Ms.Amrita Prakash, Advocates

Versus

Union of India & Ors. Respondents

Through Mr.Jatan Singh, Advocate

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR
HON'BLE MR. JUSTICE J.R.MIDHA

ANIL KUMAR, J.

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1. The petitioner, who worked as a Constable in the CISF has sought the quashing of order dated 16th November, 2010 passed by the Commandant, CISF Unit, GBS Zone, New Delhi, compulsorily retiring the petitioner from the service with 2/3rd pension and gratuity benefits. The petitioner has also sought the quashing of order dated 18th February, 2011 passed by the Inspector General, Airport Sector Headquarter and order dated 30th June, 2011 passed by the Dy.Inspector General, CISF GBS Zone rejecting the appeal and revision petition of the petitioner. The petitioner has also prayed for directions to

the respondents to reinstate the petitioner with all consequential benefits.

2. Brief facts to comprehend the disputes are that the petitioner joined the Central Industrial Security Force (hereinafter referred to as "CISF") on 4th February, 1991 and had been working with this paramilitary force in different parts of the country.

3. On 8th May, 2010, the petitioner was detailed for night duty from 2100 hours to 0500 hours on 9th May, 2010 in the Telecommunication Front, Yojna Bhawan. According to the petitioner, when he reached the Yojna Bhawan for his duty, his senior official SI Shivale Chaturvedi sent him outside to bring some articles which took some time and the petitioner reached back late by a few minutes to join his duty. The petitioner alleged that when he joined the duty he was shocked to know that his absence from the duty had been recorded in the Roznamcha, alleging that he was absent without prior permission from the competent officer. The Roznamcha entry also incorporated that the petitioner had behaved in an indecent manner.

4. The petitioner has alleged that he was unwell due to depression and weakness and that he had been undergoing treatment for the same from Ram Manohar Lohia Hospital. The petitioner was prescribed medicines like, Belonin syrup and Neurobin due to which he was feeling

drowsy. The drowsiness of the petitioner was misinterpreted and was perceived as the petitioner being intoxicated on account of consuming alcohol. The petitioner contended that on account of the petitioner's walking style, he was perceived to be intoxicated or that he had misbehaved as he was sent by SI Shivale Chaturvedi to the duty officer Inspector Subhash Chand and NRO Assistant Commandant Shambhu Kumar. The petitioner was taken to Ram Manohar Lohia Hospital where he was examined in the presence of the officials of CISF who told the doctor on night duty that the petitioner was under the influence of alcohol, and, therefore, despite the petitioner representing to the doctor that he was under medication, the concerned doctor gave a report stating that the petitioner had consumed alcohol. The petitioner also made a grievance that the copy of the medical report was not provided to the petitioner despite his specific request about it. He also claimed that a preliminary inquiry was conducted, inquiring into the alleged incident, however, the statement recorded in the preliminary inquiry was not supplied to him.

5. The petitioner was suspended by order dated 12th May, 2010 passed by the Commandant, CISF Unit, GBS Zone, and the subsistence allowances payable to the petitioner was fixed by order dated 11th May, 2010. A Memorandum of charge dated 28th May, 2010 was issued to the petitioner leveling three charges. The charges framed against the petitioner were that firstly on 8th May, 2010 for night duty from 2100

hours to 9th May, 2010 up to the 0500 hours he remained absent for some time without permission of the competent officer and that when he came to assume his duties at 2130 hours he showed indecent behaviour with the official in-charge, secondly, that on coming late for duty at 2130 hours in Yojna Bhawan Room, he found to be in abbreviated condition and finally that the petitioner had been given 12 minor punishments during his service period. The details of the minor punishments during the service period of the petitioner as shown in the charge sheet are that he was found gossiping and sitting under a tree leading to the punishment "censure" by order dated 27th January, 1993; for over staying leave for 46 days from the period of 27th March, 1993 to 12th May, 1993 which led to the punishment of one stoppage in salary increment for two years without cumulative effect by order dated 29th September, 1993; that the petitioner was found sleeping on duty and that he was given the punishment of salary deduction for three days by order dated 4/12th March, 1994; that he was found sleeping on duty and he was given the punishment deduction of salary for two days by order dated 24th June, 1994; for over staying leave for 72 days leading to the punishment of one stoppage in salary increment for one year without cumulative effect by order dated 30th January, 1995; that he was found sleeping on a wooden box on duty, entailing the punishment of one stoppage in salary increment for one year without cumulative effect by order dated 14th July, 1996; for remaining absent from duty on 8th April, 1996 and found sleeping on duty, resulting into

the punishment of salary deduction for two days by order dated 8th April, 1996; for remaining absent from wrestling competition for the period of 9th September, 1998 to 10th September, 1998 resulting into the punishment of salary deduction for one day by order dated 20th March, 1999; for abusing the guard commander during duty resulting into the punishment of one stoppage in salary increment for one year without cumulative effect by order dated 3rd September, 2002; for misguiding the higher officers by making false allegations leading to punishment of censure by order dated 20th January, 2005; for remaining absent from duty on 12th June, 2004 entailing the punishment of censure by order dated 20th January, 2005 and the refusal to go on duty on 18th August, 2005 which was punished by salary deduction for one year by order dated 18th August, 2005.

6. Along with the charge sheet, the list of documents in support of the charges framed against the petitioner were also given which included the MLC Sheet No. E/64541/10 dated 8th May, 2010 issued in respect of the medical test done by the medical officer, Dr. Ram Manohar Lohia Hospital, New Delhi.

7. The petitioner in reply to the article of charges submitted a letter dated 10th June, 2010 denying all the charges. He, however, asked for the copies of the statement of witnesses recorded in the preliminary inquiry and further demanded the medical report and contended that

he would submit the detailed reply to the memorandum dated 28th May, 2010 after the copies of the statements of witnesses and the medical report was given to him. The petitioner, however, did not deny that the copies of the documents relied on in Schedule-III of the articles of charge including the MLC Sheet dated 8th May, 2010 were given to him.

8. An Inquiry Officer was appointed by order dated 2nd July, 2010. According to the petitioner, before the Inquiry Officer also he demanded the copy of the blood test/medical report and the copies of the statements of the witnesses, recorded in the preliminary inquiry. According to the petitioner, he was, however, denied the above noted documents and rather he received a reply dated 31st July, 2010 stating that the copies of all the documents referred to in Schedule-III of the charge sheet had already been supplied to him.

9. During the inquiry proceedings seven departmental witnesses were examined. The statement of the petitioner was also recorded in which he reiterated that he had come to join his duty on time but he had been asked by SI Shivale Chaturvedi to bring some of his articles from outside which resulted in the petitioner joining the duty with some delay. He also contended that he was feeling lazy and drowsy on account of the medicines taken by him prescribed by the doctors of Dr. Ram Manohar Lohia Hospital and that he was not intoxicated, nor had he consumed alcohol.

10. According to the petitioner, he was not given the documents demanded by him. The presenting officer submitted his note on 20th September, 2010 which was replied to by the petitioner by his application dated 30th September, 2010.

11. The Inquiry Officer after considering the statements of the witnesses, held that all the charges against the petitioner were fully proved and gave an inquiry report stipulating the same, which was supplied to the petitioner along with a letter dated 7th October, 2010. The petitioner replied to the inquiry report by his letter dated 20th October, 2010 denying the charges against him and again demanded the copies of the statements recorded in the preliminary inquiry and the copy of the blood test report.

12. The Disciplinary Authority, Commandant, CISF Unit, GBS Zone, by his order 4th November, 2010 and by order dated 16th November, 2010 held the petitioner guilty of the charges framed against him and awarded the punishment of compulsorily retirement from service with 2/3rd pension and gratuity benefits. The petitioner, thereafter filed an appeal dated 29th November, 2010 before the Dy.Inspector General, CISF, GBS Zone, which was dismissed by order dated 18th February, 2011.

13. Against the dismissal of the appeal by the Dy.Inspector General, CISF, GBS Zone, the petitioner filed a revision petition dated 9th March, 2011 which was also dismissed by the Inspector General by order dated 30th June, 2011. Aggrieved by the order of punishment of compulsory retirement and dismissal of his appeal and revision petition, the petitioner has challenged the same in the present writ petition by contending that the bias and the predetermined mind of the respondents is established by their denial and silence on the issue of the production of the blood test report and the statements of the witnesses despite repeated requests. The petitioner has asserted that the actions of the respondents are contrary to the principle of natural justice. Regarding 12 previous punishments, the petitioner contended that they are all minor and related to the incident which are trivial and cannot be justifiable to bring his service to an end. The petitioner contended that the respondents also failed to take into consideration that the petitioner was taking some medicines at the time of incident, prescribed by the doctors of Dr. Ram Manohar Lohia Hospital. The petitioner also emphasized on the testimonies of the witnesses recorded before the Inquiry Officer and contended that none of them had deposed that he was smelling of alcohol. The petitioner contended that the witnesses before the Inquiry Officer had merely deposed that there was an imbalance in the petitioner's walk which gave them the impression that he was intoxicated. He stated that he himself had admitted that he

was not able to walk properly as he was under treatment for weakness and depression at the time and that it was the nature of the medicines he was consuming that made him to walk in the said manner. The petitioner attributed the delay in joining the duty because of obeying the order of his senior to bring his articles from outside. In the circumstances, it is contended that he has been held guilty without giving him reasonable opportunity and that the punishment of compulsorily retirement and 2/3rd pension and gratuity is disproportionate to the alleged lapses on his part.

14. Learned counsel for the petitioner mainly contended that the copies of the statement of witnesses recorded during the preliminary inquiry were not supplied, nor was the copy of the blood test been given to the petitioner, and thus, the petitioner has been denied reasonable opportunity and the inquiry proceedings and the punishment awarded to him are vitiated on these grounds. Learned counsel for the petitioner has also contended that from the perusal of the statement of the witnesses recorded before the enquiry officer, it will be apparent that it cannot be inferred that the petitioner smelled of alcohol and therefore, the inferences that the petitioner was intoxicated is perverse and based on mere assumptions.

15. Learned counsel for the respondents who has appeared pursuant to an advance notice has contended that the writ petition against the

order of the dismissal seeking judicial review is not an appeal from the decision of the dismissal but a review of the manner in which the decision had been made. He contends that the power of judicial review is to be exercised to insure that the delinquent/charged employee had received a fair treatment. In order to substantiate his plea, he has relied on B.S.Chaturvedi v. Union of India & Ors., (1995) 6 SCC 749. Learned counsel also contended that the petitioner has failed to show that on account of not supplying the medical report, which had not even been relied on by the Inquiry Officer, no prejudice had been caused to the petitioner and therefore, the petitioner himself has failed to show that prejudice has actually been caused to him. Learned counsel has contended that there has not been any violation of any rule in conducting the inquiry and not supplying the copies of the documents which were not relied on by the Inquiry Officer. As it has not caused any prejudice to the petitioner, the inquiry proceedings and the punishment awarded to the petitioner will not be vitiated.

16. Learned counsel also relied on Union of India v. Alok Kumar (2010) 5 SCC 349 to contend that when a large number of documents are relied on, majority of which are furnished and an opportunity is granted to the charged employee to defend himself and if copies of some of the formal documents had not been furnished to the charged employee, then the onus is upon the employee to show that the non-furnishing of the formal documents has resulted in *de facto* prejudice

and that such employee has been put to a disadvantage as a result thereof. It is contended that prejudice cannot be based upon a mere apprehension or even on a reasonable suspicion. According to the learned counsel, the element of prejudice should exist as a matter of fact. He contended that the petitioner has failed to disclose some definite inferences of likelihood of prejudice flowing from such default. In any case, according to him, there is no violation of any statutory provisions and in the circumstances, it will not vitiate the inquiry proceedings and the punishment awarded by the Disciplinary Authority in the facts and circumstances.

17. This Court has heard the learned counsel for the parties in detail. Learned counsel for the petitioner has not disputed that the copies of all the documents relied on during the inquiry proceedings were supplied to the petitioner including MLC Sheet No. E/64541/10 dated 8th May, 2010. This is also not disputed by the learned counsel for the petitioner that the statements recorded during the preliminary inquiry have not been referred to and relied on by the Inquiry Officer while giving his report holding that all the charges against the petitioner are made out.

18. Learned counsel for the petitioner has not shown any statutory provision or any other rule which directs that the copies of the documents not relied on by the Inquiry Officer have to be supplied to

the charged employee.

19. Learned counsel for the petitioner has not disputed and cannot dispute that when an inquiry is conducted on the charges of misconduct by an employee, the Court is concerned with whether the inquiry was held by a competent officer and whether the rules of natural justice were complied with. The Court also has to determine whether the findings or the conclusions are based on some evidence and also if the authorities entrusted with the power to hold inquiry has the requisite jurisdiction, to reach a finding of fact to conclusion. In B.C.Chaturvedi (supra), the Supreme Court at page 759 had 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 re-appreciate 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.”

20. The respondents have produced the entire proceedings of the departmental inquiry conducted by the respondents. This Court has also perused the statements of the witnesses. The petitioner in the writ petition had contended that none of the witnesses deposed that the petitioner was in a state of intoxication. However, perusal of the statements of the witnesses reveals to the contrary. Sh.Shambhu Kumar, Assistant Commandant, PW7 had categorically deposed that the petitioner had reported in the state of intoxication on 8th May, 2010, and therefore, he was taken along with other officers PW-4 and PW-6 to the Hospital to be medically examined. Sh.Subhash PW-2 has also categorically deposed that the petitioner was drunk and that he was in the state of intoxication and was not fit to join the duty. According to him, when he reached Yojna Bhawan at 2200 hours, the petitioner was found lying on a sofa in the reception room and on seeing his condition he had informed the Assistant Commandant, Sh.Shambhu Kumar who had appeared as PW-1. The said witness deposed specifically that the doctor examined the petitioner and recorded the smell of alcohol in his breath as positive in the MLC report. Perusal of the MLC report also

substantiates that the doctor had recorded that the petitioner had smelled of alcohol. The said MLC report, copy of which was given to the petitioner was exhibited as Exhibit-I. In the circumstances, the plea of the petitioner that none of the witness had deposed that the petitioner was in the state of intoxication is contrary to the record.

21. Perusal of the statements also reveals that Sh.Subhash Chand specifically deposed that when he had asked the petitioner for the reason for coming late, he had held his shirt at the chest and stated that “I am Ram Chander people call me” and that he did not give any reason for coming late. Even PW-4 Shiv Pal Singh deposed that the petitioner came on duty in an intoxicated state. PW-5 Constable Satnam Singh also deposed that the petitioner had been intoxicated and that he was delayed in assuming his duties. At the time when he was asked the reason for the delay he had stated that “he has seen many wrestler like you” to the shift in charge.

22. The Inquiry Officer has considered the statements recorded before him. From the perusal of the statements from the original record produced by the respondents, it cannot be inferred that the inferences drawn by the Inquiry Officer are perverse or such that no reasonable man could draw such inferences.

23. Learned counsel for the petitioner has also not been able to state as to what prejudice has been caused to the petitioner on account of the copies of the statements recorded during the preliminary hearing, which were not even relied on by the Inquiry Officer, not being given to the petitioner. In *Alok Kumar (supra)*, the Supreme Court had held that the departmental inquiry cannot be vitiated on hyper technical approach. It was held that the prejudice cannot be based on apprehension or even a reasonable suspicion. Learned counsel for the petitioner has not been able to make out the ground of prejudice even on the basis of mere apprehension or reasonable suspicion in the facts and circumstances. The petitioner ought to have established the prejudice as a matter of fact. In any case, the entire inquiry proceedings and the punishment awarded to the petitioner cannot be set aside merely on the basis of apprehended prejudice. The Supreme Court in para 89 of *Alok Kumar (supra)* had held as under:-

“89. The well-established canons controlling the field of bias in service jurisprudence can reasonably be extended to the element of prejudice as well in such matters. Prejudice de facto should not be based on a mere apprehension or even on a reasonable suspicion. It is important that the element of prejudice should exist as a matter of fact or there should be such definite inference of likelihood of prejudice flowing from such default which relates to statutory violations. It will not be permissible to set aside the departmental enquiries in any of these classes merely on the basis of apprehended prejudice.”

24. In the totality of the facts and circumstances, the petitioner has failed to make out any illegality, irregularity or any such perversity in the orders of the respondents punishing the petitioner with compulsorily retirement and awarding him only 2/3rd of pension and gratuity which will require any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition is without any merit and it is therefore, dismissed.

ANIL KUMAR, J.

J.R.MIDHA, J.

January 11, 2012
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