

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

% *Judgment Reserved on: January 13, 2014*
Judgment Pronounced on: January 20, 2014

+ **W.P.(C) 3008/2001**

CHANDRA VIR SINGH Petitioner
Represented by: Mr.H.S.Dahiya, Advocate

versus

UNION OF INDIA & ORS. Respondents
Represented by: Ms.Richa Kapoor, Advocate with
Ms.Saahila Lamba, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR.JUSTICE JAYANT NATH

PRADEEP NANDRAJOG, J.

1. The present petition challenges the order dated May 10, 1999 passed by the disciplinary authority, Group Commandant, CISF Navi Mumbai, dismissing petitioner from service as also the appellate order dated October 27, 1999 passed by the appellate authority, DIG Western Zone, Mumbai, rejecting the appeal filed by the petitioner. We note that the petitioner has preferred a revision petition which was dismissed vide order dated November 14, 2000, by the revisional authority, which order has not been challenged.

2. The factual matrix leading to the filing of the present petition is that on February 19, 1999, while working as a constable with CISF, the petitioner along with Ct.M.L.Sharma were posted for duty at the Container In-gate at the Jawarharlal Nehru Port Trust, Navi Mumbai. As claimed by Asst.Commdt.Akashdeep Ramdev, he conducted a surprise

check at the Container Gate at 04:30 AM. He directed the petitioner and Ct.M.L.Sharma to accompany him to the adjacent room. Whereas Ct.M.L.Sharma obeyed the said direction, the petitioner disobeyed the same and instead went into an adjacent room. Petitioner emerged from the room shortly, which roused the suspicion of Asst.Commdt.Akashdeep Ramdev, who went to the room which petitioner had entered and found a sum of ₹860/- lying there. He confronted the petitioner and Ct.M.L.Sharma who confessed having received the said sum as bribe from drivers/transporters.

3. Asst.Commdt.Akashdeep Ramdev reported the incident to the superior authorities. SI Rajeev Sharma was directed to conduct a preliminary fact finding inquiry, and based upon the material which he could gather, two charges were framed against the petitioner. The charge memo dated March 06, 1999, containing the two charges was served upon the petitioner. The two Article of Charge read as under:-

“Article –I

Force No.942291377 Const.C.V.Singh, CISF Unit, JNPT, Sheva, was deputed for afternoon duty at the container gate on 18.02.99. At about 04.30 hrs .On 19.02.99 when Asst.Commdt. CISF Unit, JNPT, Sheva, came for inspection at the container gate, and on arriving at the container gate the Asst.Commdt. asked the charged force member to come up to him. Then Const.C.V.Singh by violating the orders of the Asst.Commdt. straight away went to the adjacent room which shows the violation of the orders of the higher officer by a disciplined force member.

Article –II

When Force No.942291377 Const.C.V.Singh, CISF Unit, JNPT, Sheva, after going to the adjacent room, came out, then Asst. Commdt. himself went to that very room and recovered a sum of ₹860/- lying on the floor which Const. C.V.Singh had taken as bribe from the truck drivers for

permitting entry. This act shows gross misconduct and indiscipline on the part of the force member.”

4. A perusal of the charge-sheet would reveal that petitioner was indicted for two distinct and severable offences; firstly for having disobeyed his superior officer and secondly for having taken bribe from truck drivers to permit entry into the precincts of the Port Trust.

5. The first date of hearing before the Inquiry Officer was April 03, 1999, on which date he put the usual questions, which we find being put to every delinquent at inquiries conducted by CISF officers concerning whether the delinquent had received the charge-sheet, whether he agrees with the charges, whether he wants to be represented by a defence assistant, whether he wants to inspect any document or take copy, whether he objects to the Inquiry Officer conducting the inquiry and whether he was prepared for the inquiry to proceed. The undernoted seven questions along with their answers stand recorded as per the order-sheet dated April 03, 1999:-

“Q: In which language you want the inquiry proceedings

Ans: In Hindi language.

Q: Whether you have received the charge memorandum No.V-15014/MAJ/CISF/Gp/Disc/99-1102 dated 6-7-99 issued by the Group Commandant.

Ans: Yes, I have received.

Q: Do you agree with the charges levelled by the above mentioned memorandum?

Ans: I do not accept.

Q: Whether you want to take help of another force member to conduct your case.

Ans: No, I want to do it myself.

Q: Whether you want to inspect any document or take copy.

Ans: Yes, I want to take and I shall give application in this regard.

Q: Whether you have any objection in me, Sh. U.S.Pradhan inquiring into this case.

Ans: No, Sir.

Q: Whether you are mentally prepared for the inquiry proceedings.

Ans: Yes, I am ready.”

6. With reference to the fifth question whether petitioner wanted to inspect any document or take copy, the answer evidences that the petitioner informed the Inquiry Officer that he wanted to obtain some documents and for which he undertook to submit an application. The petitioner submitted an application praying that he be supplied : (i) copies of the depositions of the witnesses examined during preliminary inquiry; and (ii) a copy of the checking register of the date February 19, 1999. On the application itself, on April 05, 1999, in his own hand writing the petitioner acknowledged : *‘have received a copy of the documents as per my application’*.

7. Petitioner having denied both charges, four witnesses were examined by the department at the inquiry.

8. Asst.Commdt.Akashdeep Ramdev PW-1 deposed that on February 19, 1999 as 04.:30 AM he conducted a surprise check at the Container In-gate of the Jawaharlal Nehru Port Trust, Navi Mumbai where petitioner and Ct.M.L.Sharma were on duty and he directed them to accompany him to an adjacent room; whereas Ct.M.L.Sharma

accompanied him, petitioner disobeyed the command and went to another adjacent room and returned shortly which roused his suspicion and as he went to the room to which the petitioner had gone he found ₹860/- lying there being two currency notes of denomination ₹100/-, ten currency notes of denomination ₹50/-, two currency notes of denomination ₹20/- and twelve currency notes of denomination ₹10/-. Questioned about the money, petitioner confessed having obtained the same from drivers of vehicles as bribe money.

9. On being cross-examined PW-1 stated that he did not see the petitioner with any driver, much less saw the petitioner receive money from any one. He stated that he did not see the petitioner put the money in the adjacent room. He admitted that no one else was present when he recovered the currency notes.

10. It needs to be highlighted that the deposition of PW-1 that when asked to accompany him, the petitioner went to adjacent room and made a confession when the money was recovered was not even challenged during cross-examination.

11. SI Dalip Singh PW-2 deposed that he was the duty officer and was on duty at the Container In-gate at the time of the incident. He saw Asst. Commdt.Akashdeep Ramdev signaling petitioner and Ct.M.L.Sharma to come up to him, whereas he saw Ct.M.L.Sharma walked towards Asst.Commdt.Akashdeep Ramdev, the petitioner first went into an adjoining room and thereafter he went towards Asst.Commdt.Akashdeep Ramdev. He saw the Asst.Commdt. go to the room visited by the petitioner and returned with some money in his hand which he asked him i.e. SI Dalip Singh to count. He counted the money. It was ₹860/-. At that both constables sought forgiveness from the Asst.Commdt.

12. The limited cross-examination conducted by the petitioner of the witness was whether the two officers were seen by him standing before the Asst.Commdnt when he came out of the Control Room to which he replied in negative. The petitioner did not challenge the testimony of SI Dalip Singh on any other aspect and we highlight that the petitioner did not challenge the testimony that when the money was recovered, the two constables sought pardon from the Asst.Commdt.

13. SI Ram Bhagat PW-3 deposed that pertaining to petitioner and Ct.M.L.Sharma being on duty at the Container In-gate he had made an entry in the rozmancha. The witness was not cross-examined.

14. Ct.M.L.Sharma PW-4 i.e. the other Constable on duty along with the petitioner at the Container In-gate on February 19, 1999, deposed that at 04:30 AM, Asst.Commdt.Akashdeep Ramdev came for inspection and called out to the officers. He, along with the petitioner went to Asst.Commdt.Akashdeep Ramdev who left the Control room; returning 10 minutes later with some money in his hand, saying that it belonged to them and they had taken the same from truck drivers. They denied the same, stating that they were family men and had not taken any money.

15. On being cross-examined Ct.M.L.Sharma admitted the suggestion that the petitioner did not take any money from any vehicle owner and that when called by Asst.Commdt.Akashdeep Ramdev the petitioner immediately went to the room as directed and did not visit any other room prior thereto.

16. Vide his report dated April 13, 1999 the Inquiry Officer held the petitioner guilty of the charges framed against him. The petitioner was furnished a copy of the report of the Inquiry Officer for his response and considering the same, vide order dated May 10, 1999 levied the penalty

of dismissal from service upon the petitioner by accepting the report of the Inquiry Officer. Relevant would it be to note that while dealing with the petitioner's response to the report of the Inquiry Officer, the disciplinary authority in his order dated May 10, 1999 has referred to the preliminary inquiry report submitted by SI Rajeev Sharma.

17. The petitioner preferred an appeal to the appellate authority, the DIG, Western Zone, CISF, against the order levying penalty and in the appeal took a ground that the listed documents as per the charge memo were not supplied to him. Dealing with the said contention in appeal as also other contentions, the appellate authority while rejecting the appeal vide order dated October 27, 1999 inter-alia, observed as under:-

“6. I have gone through the appeal of the appellant, para-wise comments submitted by the disciplinary authority and inquiry report dated 13-4-99 along with relevant papers, documents. The appellant was given adequate opportunity to defend his case. The inquiring officer has recorded statements of witnesses and the charge was brought home with adequate evidence. The points raised by the appellant in his appeal bear no weight. First point of the appellant that the listed documents had not been supplied for preparation of his reply to the charge-sheet, is not admissible. He could have asked for the same before submitting his reply, but he did not ask for any document and had submitted his reply. Further, during the course of the inquiry, the appellant had submitted an application to the inquiry officer on 4-3-99 regarding supply of documents, which were given on 5-4-99. The appellant has taken another plea that no prosecution witness had seen him taking illegal gratification from the drivers. The appellant when called by ShrA.D.Randev, Assistant Commandant, did not report to him directly and went inside the adjacent room and then came to Asstt.Commandant. The Asstt.Commandant went inside the room and found ₹860/- on the ground, which he picked up and came out. The above activities of the appellant are established from the statement of prosecution witness-I Shri A.D.Randev, Asstt Commandant

and prosecution witness-2 (SI Dalip Singh). Thus the charges leveled against the appellant have been rightly established by the inquiring officer. The disciplinary authority after going through the evidences and inquiry report in detail, has passed a spoken order.”

18. Aggrieved, the petitioner filed the instant writ petition advancing, inter-alia, the following grounds:-

- (i) Firstly, that the preliminary inquiry report was not supplied to him and this prejudiced him in his defence as also in making a response to the report of the Inquiry Officer, more so in light of the fact that the disciplinary authority while considering his response with reference to the report of the Inquiry officer had relied upon the preliminary inquiry report.
- (ii) That the appellate authority having admitted that documents were not supplied to the petitioner, erred in taking the view that before submitting his reply to the report of the Inquiry Officer, the petitioner could have asked the disciplinary authority to have supplied the documents.
- (iii) No witness had deposed having seen petitioner accepting the bribe and the testimony of PW-4 categorically established that the petitioner had not received any bribe.

19. Before dealing with the submissions advanced, we would be failing if we do not remind once again, for the reason we have written in various judgments that the disciplinary authority and the appellate authority should carefully look into the record to ascertain the true and correct facts while dealing with representations made by delinquent officers and not go about giving *ipse dixit* reasons, as we find in the instant case.

20. To wit : the appellate authority, while dealing with the contention of the petitioner that he was not supplied the relied upon documents and the preliminary inquiry report, took the view that if this was so, the petitioner ought to have requested the disciplinary authority to supply him with the said documents to enable petitioner to respond to the report of the Inquiry Officer. The disciplinary authority overlooked the fact that the record would evidence that the preliminary proceeding held on April 03, 1999, seven questions were put to the petitioner, the fifth question being whether the petitioner wants to inspect or take copy of any document, to which the petitioner replied in the affirmative with further statement that he would submit an application in this regard. The appellate authority overlooked that the petitioner moved an application before the Inquiry Officer praying that he should be supplied with copies of the depositions of the witnesses examined at the preliminary inquiry as also a copy of the checking register and acknowledged on the application itself on April 05, 1999 that he had received the documents which he had prayed for in his application.

21. We now proceed to deal with the three contentions urged.

22. The petitioner never sought supply of the preliminary inquiry report to him. Indeed, the Inquiry Officer has not referred to the report of the preliminary inquiry.

23. But the disciplinary authority has done so.

24. A perusal of the order dated May 10, 1999 passed by the disciplinary authority would evidence that the disciplinary authority has independently considered the issue with reference to the evidence led at the inquiry and the report of the Inquiry Officer. He has also referred to the preliminary fact finding report. The reference to the preliminary fact

finding report is in paragraph 3 of the order. In paragraph 4 of the order the disciplinary authority has referred to the record of evidence at the departmental inquiry.

25. The reference to the preliminary inquiry report in paragraph 3 is more in the nature of a narrative of events and facts as they transpired and not by way of a reference to some incriminating material. The reference to the incriminating material in paragraph 4 pertains to the regular departmental inquiry, and thus the plea urged to challenge the order passed by the disciplinary authority, having no legs to stand on, is negated.

26. Pertaining to the second contention urged, we write no further save and except to incorporate the facts and our reasoning noted in paragraph 20 above.

27. The third contention that no witness deposed petitioner having been seen accepting bribe, is neither here nor there for the reason the testimony of PW-1, PW-2 and PW-3 would reveal that the petitioner and Ct.M.L.Sharma were on duty at the Container In-gate. When beckoned by PW-1 Asst.Commdt.Akashdeep Ramdev to proceed to the adjoining room, petitioner's conduct of first going to another adjoining room and then returning, in which room visited by the petitioner ₹860/- were found lying is good evidence to infer that the petitioner sensed that the Asst.Commdt. would search him and Ct.M.L.Sharma and since petitioner possessed ill-gotten wealth he proceeded to a room to get rid of the same. The circumstances unerringly point the finger of guilt at the petitioner. That nobody saw petitioner accept bribe is neither here nor there. The petitioner had to explain why before proceeding towards Asst.Commdt.Akashdeep Ramdev he went to an adjoining room where

₹860/-were lying. Further, as noted by us while briefly pen profiling the testimony of the witnesses, the petitioner did not challenge the testimony of PW-1 and PW-2 that when the money was recovered from the adjoining room the petitioner pleaded for forgiveness.

28. Before bringing the curtains down we also would like to pen another note for the guidance of CISF officers.

29. From the testimony of the witnesses it is apparent that the petitioner and Ct.M.L.Sharma were together at the Container In-gate. Merely because Ct.M.L.Shama obeyed the command of Asst.Commdt.Akashdeep Ramdev and proceeded towards him when beckoned to do so but the petitioner went to the adjoining room to do away with the ill-gotten wealth has probably led the authorities to only indict the petitioner, overlooking the fact that the petitioner could not have collected the bribe from drivers without the active participation by Ct.M.L.Sharma for the reason both were jointly performing duties at the Container In-gate. It is apparent that between the two there was an understanding that the petitioner would at the first instance keep the bribe money to be shared between the two later on. The circumstances appearing from the evidence and material collected at the preliminary inquiry were sufficient to proceed against even Ct.M.L.Sharma. We are penning this second note in our opinion for the reason we are finding that CISF officers act as mechanists and capture the evidence mechanically and not meaningfully. As in the instant case merely because no money was recovered from Ct.M.L.Sharma and he obeyed the lawful command of Asst.Commdt.Akashdeep Ramdev, the mechanical view taken is that Ct.M.L.Sharma was above board. But if a thoughtful appraisal of evidence gathered at the preliminary inquiry was done, the thoughtful

mind would have posed the question : What would be the impact of the material gathered on the conduct of Ct.M.L.Sharma keeping in view that he and the petitioner were jointly responsible to manage the Container In-gate. Could the petitioner have taken the money for himself and not to be shared by Ct.M.L.Sharma. Had these questions been posed by the disciplinary authority, it would have downed on him that there was sufficient material to proceed even against Ct.M.L.Sharma.

30. We dismiss the writ petition but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(JAYANT NATH)
JUDGE

JANUARY 20, 2014
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