

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

% **Date of decision: 10th December, 2020.**

+ **W.P.(C) 9092/2020 & CM No.29341/2020 (for stay)**

BANKE RAM **Petitioner**

Through: Mr. Milind P. Singh, Adv.

Versus

GOVT. OF INDIA & ANR. **Respondents**

Through: Mr. Rahul Sharma, Mr. Siddharth Khatana and Mr. C.K. Bhatt, Advs.
Mr. Ankur Chhibber, Adv./Amicus Curiae.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

1. The petitioner, an Inspector in the respondents Central Industrial Security Force (CISF), has filed this petition, (i) impugning the order dated 20th August, 2020 of the Director General of respondents CISF, directing the Enquiry Officer to take 'sample voice' of the petitioner to the concerned State Forensic Laboratory; and, (ii) seeking directions to the Director General of respondents CISF, to complete its departmental enquiry against the petitioner, in a time bound manner, before the date of superannuation of the petitioner i.e. October, 2021.

2. The averments in the petition are vague and the petition is poorly drafted and the facts are incomprehensible therefrom. However, on perusal of the documents annexed to the petition, it transpires that a preliminary enquiry was conducted against the petitioner and on the basis of findings thereof, disciplinary proceedings under Rule 36 of the Rules aforesaid were initiated. The petitioner was served with a Memorandum dated 3rd August, 2019 by the Commandant of respondents CISF, informing the petitioner that an enquiry under Rule 36 of Central Industrial Security Force Rules, 2001 was proposed to be held against the petitioner. The substance of the imputation of misconduct or misbehaviour in respect of which the enquiry was proposed to be held was set out in the enclosed statement of articles of charge and the petitioner was directed to submit written statement of his defence and to state, whether he desired to be heard in person. The petitioner, vide the said Memorandum was also informed that an enquiry will be held only in respect of those charges as were not admitted. The statement of article of charge enclosed to the aforesaid Memorandum was as under:

"That, No.884110020 Insp/Exe Bankey Ram of CISF Unit RAPS/HWP Kota was on deputation with NCB as Intelligence Officer NCB (Delhi Zonal Unit) wef. 04.07.2013 and was repatriated on 03.07.2018 after completion of his deputation. During follow up action in NCB Delhi Zonal Unit Crime No.07/2018, Insp/Exe Bankey Ram of CISF Unit RAPS Kota was found to have indulged in corrupt activities in a particular Narcotics case affected by the zone. He has failed to maintain integrity and exhibited gross negligence, dereliction of duty, gross indiscipline and absolute lackadaisical approach towards duty. Thus he acted in a manner unbecoming of a Government servant violating the provision of Rule 3(1)(i),(ii) and (iii) of CCS (Conduct) Rule, 1964. Hence the charge."

The statement of imputations of misconduct or misbehaviour in support of the article of charge aforesaid, the list of documents and the list of witnesses was also enclosed to the Memorandum.

3. The impugned order dated 20th August, 2020 records, (i) that the petitioner submitted his written reply dated 10th September, 2019 to the Charge/Memorandum dated 3rd September, 2019, denying the charges framed against him; (ii) accordingly, the Enquiry Officer and the Presenting Officer were appointed; (iii) that the Enquiry Officer conducted the enquiry and submitted the enquiry report to the Disciplinary Authority, not approving the charges leveled against the petitioner; (iv) that the Disciplinary Authority found variance in the statements of some of the prosecution witnesses (PWs) who deposed in the preliminary enquiry, vis-à-vis the statements they deposed in the departmental enquiry; (v) that while PW-1, 2 & 3, during the conduct of preliminary enquiry had stated that in the suspicious conversation, voice of the other person seemed to be that of the petitioner, they, in the departmental enquiry stated that they could not clearly say, whether the voice in the conversation was of the petitioner or not; (vi) that the petitioner did not appear inspite of repeated opportunities and appeared to be not interested in recording of his statement and was evading the enquiry; and, (vii) that the Enquiry Officer, despite variation in the statements of the witnesses during the preliminary hearing and during the departmental enquiry and other inconsistencies, had not analyzed the same by sending the Compact Disk (CD) recording the telephonic conversation to the Forensic Laboratory, to obtain an expert opinion. Therefore, in exercise of powers conferred in the Disciplinary Authority, the

case was remitted to the Enquiry Officer with a direction to send the CD to the concerned State Forensic Laboratory for their opinion before finalizing the case, along with the sample voice of the petitioner and the Enquiry Officer was directed to submit fresh enquiry report, after analyzing the report of the State Forensic Laboratory.

4. This petition has been filed, contending (a) that the Director General, CISF in directing the Enquiry Officer to take the sample voice of the petitioner, had acted beyond his jurisdiction and against the provisions of the Constitution of India, particularly Article 20(3) whereby "no person accused of any offence shall be compelled to be a witness against himself"; (b) that the said act of the Director General, CISF was also against the Central Industrial Security Force Act, 1968 and the CISF Rules; (c) that no First Information Report had been registered/pending against the petitioner; (d) that the departmental enquiry had also exonerated the petitioner from all the charges; (e) that the preliminary enquiry had also not found anything adverse to the petitioner; (f) that the direction of the Director General, CISF was contrary to the Clarification/Notification dated 8th January, 2015 issued by the Ministry of Home Affairs (MHA) and the relevant extract whereof is as under:

S.N.	Issue raised	Clarification:
2.	"Whether the intercepts can be shared for initiation of department action/ enquiry / proceedings against the erring officers to prove the charge of	"The intercepts cannot be shared for departmental actions / enquiry proceedings for misconduct or for violation of CCS

	misconduct leveled against them as the primary evidence available are only the intercepted materials"	(Conduct) Rules".
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and, (g) that the CISF Act and the CISF Rules do not permit sample voice to be taken.

5. The petition came up before this Court first on 18th November, 2020, when with respect to the contentions aforesaid contained in the petition, it was enquired from the counsel for the petitioner, whether not it was open to the Director General, CISF, as Disciplinary Authority, to, if not agreeing with the findings returned by the Enquiry Officer, to remit the case to the Enquiry Officer and whether not the Disciplinary Authority was not bound by the findings/observations of the preliminary enquiry and the departmental enquiry.

6. The counsel for the petitioner agreed and confined the challenge to, the direction by the Director General CISF as the Disciplinary Authority to the Enquiry Officer, to collect the sample voice of the petitioner and to send it to Central Forensic Science Laboratory (CFSL) for comparison with the voice on the CD of the recorded telephonic conversation amounted to the petitioner being compelled to self-incriminate.

7. On 18th November, 2020, *inter alia* the following order was passed:

"6. We have enquired from the counsel for the petitioner, how Article 20(3) of the Constitution of India will apply in a departmental enquiry which is only concerned with a finding of

*disciplinary misconduct by an employee. In disciplinary proceedings, the charged employee is not accused of any offence. In our view, the protection of Article 20(3) of the Constitution of India is only in proceedings relating to conviction. Attention of the counsel is invited to **Selvi Vs. State of Karnataka** (2010) 7 SCC 263 and to **Duncan Agro Industries Ltd. Vs. Union of India** MANU/DE/0062/1988.*

7. *The counsel for the petitioner has drawn our attention to Annexure P-2, being order dated 8th January, 2015 issued by the respondent no.1 and states that the direction of the Inquiry Officer is contrary to the guidelines of the respondent no.1 Ministry of Home Affairs.*

8. *On perusal of Annexure P-2, we are unable to find any rule therein with respect to the direction impugned.*

9. *The counsel for the petitioner has next contended that the Inquiry Officer had found no charge to have been proved against the petitioner.*

10. *Even if that be so, the Disciplinary Authority can always pass any order deemed appropriate, as has been done in the present case.*

11. *It is deemed appropriate to give time to the counsel for the petitioner to prepare.*

12. *The counsel for the petitioner to, today itself, electronically transmit a copy of the petition with all annexures to Mr. Siddharth Khatana, counsel for the respondents, who may also prepare on the aforesaid lines.*

13. *It is also deemed appropriate to appoint an Amicus Curie. Mr. Ankur Chhibber, Advocate has graciously consented to act as Amicus Curie in this case. Copy of the petition with annexures along with this order be also transmitted by the Court Master to the Amicus Curie.*

14. *List on 10th December, 2020."*

8. The counsel for the petitioner has today argued, (i) that the direction of the Disciplinary Authority to the Enquiry Officer, to collect the voice sample of the petitioner, amounts to coercing the petitioner to self-incriminate himself and is violative of Article 20(3) of the Constitution of India; (ii) that there is no provision in the CISF Act or the CISF Rules, for the course of action followed by the Director General, CISF as the Disciplinary Authority; and, (iii) that once the MHA, vide Notification, relevant paragraph whereof is reproduced in the petition (as reproduced above) has clarified that intercepts cannot be shared for departmental actions/enquiries/proceedings for misconduct or for violation of CCS (Conduct) Rules, the telephonic conversation cannot form the basis of the departmental enquiry underway against the petitioner.

9. The learned Amicus Curiae has emailed to us, the following judgments:

(A) *Raja Narayanlal Bansilal Vs. Maneck Phiroz Mistry* AIR 1961 SC 29 and *S.A. Venkataraman Vs. The Union of India* AIR 1954 SC 375. The question for consideration in the former was, whether Section 240 of the Companies Act, 1913 which empowered the Registrar of Companies to issue notices by which the appellant therein was called upon to give evidence and to produce documents pertaining to an investigation relating to the affairs of the Company he was managing, offends against the fundamental constitutional right guaranteed by Article 20(3) of the Constitution of India. It was held, (i) that the argument was no doubt attractive; (ii) however the construction of Article 20 in general and Article 20(2) and (3) in

particular, had been the subject matter of some decisions of the Supreme Court and the argument had to be decided in the light of the said decisions; (iii) in *Maqbool Hussain Vs. State of Bombay* AIR 1953 SC 325, it was held that the words "prosecuted and punished" used in Article 20(2) indicate that the proceedings contemplated therein, were of the nature of criminal proceedings, before a Court of Law or a Judicial Tribunal and 'Prosecution' in this context would mean an initiation or starting of proceedings of a criminal nature before a Court of Law or in a Judicial Tribunal, in accordance with the procedure prescribed in the statute, which creates the offence and regulates the procedure and that the proceedings initiated by the Customs Authorities did not amount to prosecution of a party; (iv) reference was made to *S.A. Venkataraman* supra, where an enquiry had been made against the appellant therein under the Public Servants (Inquiries) Act, 1850 and in pursuance whereof the appellant therein was dismissed and subsequent thereto, a charge sheet was filed against him of offence under Sections 161/165 of the Indian Penal Code, 1860 and Section 5(2) of the Prevention of Corruption Act, 1947 and it was held that proceedings taken under the Public Servants (Inquiries) Act did not amount to a prosecution; and, (v) that with respect to Article 20(3) also it had been held in *M.P. Sharma Vs. Satish Chandra, District Magistrate, Delhi* AIR 1954 SC 300 that the constitutional guarantees under Article 20(3) of the Constitution are available to a person against whom a formal accusation relating to commission of an offence has been leveled, which in the normal course may result in prosecution; that one of the essential conditions for invoking the

constitutional guarantee enshrined in Article 20(3) is, that a formal accusation relating to the commission of an offence which would normally lead to his prosecution, must have been leveled against the party who has been compelled to give evidence against himself.

(B) ***D.S. Jadhav Vs. The Hon'ble the Chief Justice, Bombay High Court, Bombay*** 1994 SCC OnLine Bom 644 (DB), where an inquiry under Article 235 of the Constitution of India was held against a Civil Judge cum Judicial Magistrate and report of which was accepted by the High Court, which dismissed the Judicial Officer. Challenging the said dismissal, it was the contention of the petitioner therein that the adverse inference drawn, from non-appearance of the petitioner, in the enquiry, was erroneous as much as the petitioner was not bound to file his written statement or examine himself as a witness during the course of disciplinary enquiry, in view of the provisions contained in Article 20(3) of the Constitution of India. It was held, (i) that there was no merit in the said plea; (ii) that the factual foundation concerning the said plea was non-existent; (iii) that no one compelled the petitioner to be a witness against himself; and, (iv) that Article 20(3) of the Constitution is applicable only to criminal proceedings and has no application to civil proceedings or departmental enquiries.

(C) ***Oriental Rubber Industries Private Limited Vs. Competition Commission of India*** 2016 SCC OnLine Del 2438, where one of us (Rajiv Sahai Endlaw, J.) sitting singly, also held that since the person summoned was not an accused, Article 20(3) had no application and

there was no constitutional right to claim comforts to which the person is used to, during investigation.

(D) *The State of Bombay Vs. Kathi Kalu Oghad* AIR 1961 SC 1808, where a bench of eleven Judges of the Supreme Court held, (i) that giving thumb impressions or impressions of foot or palm or fingers or specimen writings or showing parts of the body by way of identification, are not included in the expression "to be a witness"; (ii) that "to be a witness" means imparting knowledge in respect of relevant facts by an oral statement or a statement in writing, made or given in Court or otherwise; (iii) that "to be a witness" means bearing testimony in Court or out of Court, by a person accused of an offence, orally or in writing; and, (iv) that to bring the statement in question within the prohibition of Article 20(3), the person accused must have stood in the character of an accused person at the time he made the statement; it is not enough that he should become an accused, any time after the statement has been made.

(E) *Darshan Singh Vs. The District and Sessions Judge* 2011 SCC OnLine P&H 7819 (DB), holding that giving voice sample was not violative of Article 20(3) of the Constitution.

10. In view of the judgments aforesaid of the Supreme Court and of the other High Courts with which we fully concur, the argument of the counsel for the petitioner, that the direction by the Director General, CISF in the present case to the Enquiry Officer, to collect the voice sample of the petitioner for comparison with the voice on the CD, is violative of Article 20(3) of the Constitution of India, does not survive.

11. The learned Amicus Curiae has also contended that the reliance placed by the petitioner on the clarification rendered by the MHA vide Notification dated 8th January, 2015 is also misconceived, inasmuch as the present was not a case of interception at all. It was explained that interception means, by intelligence agencies and which is not the case here.

12. The learned Amicus Curiae has also drawn our attention to Rule 36 titled "Procedure for Imposing Major Penalties" of the CISF Rules and sub-rule 21 whereof empowers the Disciplinary Authority to, after receipt of report of the Enquiry Officer, direct further evidence to be taken.

13. The counsel for the respondents CISF states that the learned Amicus Curiae has done his job and he has nothing else to contribute.

14. As far as the contention of the counsel for the petitioner, that under the Directives of MHA, on the basis of interceptions, no disciplinary proceedings can be initiated, is concerned, we may notice that the petition does not challenge the initiation of the disciplinary proceedings against the petitioner and only challenges the order directing voice sample of the petitioner to be taken. There is also no clarity that the telephonic conversation attributed to the petitioner, was intercepted, within the meaning of Directives of the MHA. The complete Directives has also not been placed before us. As aforesaid, there is no pleading also in this respect. For all the said reasons, we leave the said question open and do not deem it apposite to decide the same in this judgment, on the basis of vague pleas and without any material on record.

15. Thus, the only ground on which the challenge was made in this petition, does not survive.

16. The petition is dismissed.

17. We express our gratitude to Mr. Ankur Chhibber, Advocate for, sacrificing his valuable time and for rendering able assistance to us, saving us the time to research on the subject matter.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

DECEMBER 10, 2020

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