

IN THE HIGH COURT OF MANIPUR AT IMPHAL

WP(C)No.314 of 2014

Md. Riyaj Ahmad, aged about 39 years, S/o (L) Md. Siraj Ahmad, resident
of Sangaiyumham Puleipokpi, PO & PS and District Thoubal, Manipur.

.....Petitioner

– Versus –

1. The Union of India, through the Secretary, Ministry of Home Affairs,
Government of India, New Delhi.
2. The Director General, Central Industrial Security Force(CISF),
Government of India, New Delhi.
3. The Inspector General/APS, Central Industrial Security Force(CISF),
APS Head Quarter, Government of India, New Delhi.
4. The Deputy Inspector General, CASO, CISF Unit, IGI Airport, New
Delhi.
5. The Commandant, CISF Unit, IGI Airport, New Delhi.

.... Respondents

BEFORE
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the Petitioner : Mr. Kh. Tarunkumar, Sr. Adv. &
Mr. Jamon, Advocate

For the Respondents : Mr. S. Samarjeet, Sr. PCCG.
Date of Hearing : 11.01.2024.
Date of Judgement : 25.04.2024

J U D G E M E N T & O R D E R
(CAV)

[1] Heard Mr. Kh. Tarunkumar, learned senior counsel on behalf of the petitioner and Mr. S. Samarjeet, learned Sr. PCCG for Union of India.

[2] The present writ petition has been filed by the petitioner praying inter alia for issuance of a writ in the nature of Certiorari/ Mandamus or any other appropriate direction to quash and set aside the impugned dismissal order dated 18.07.2013 and appeal rejection order dated 24.10.2013 and proceedings of the departmental initiated against the petitioner coupled with a prayer to reinstate the petitioner to his post of constable in the CISF with full back wages and other consequential benefits.

[3] The brief facts of the case narrated in the petition are that the petitioner was earlier serving as a constable in the Central Security Force and was officially posted at the Indira Gandhi International Airport, New Delhi at the relevant time. On 27.09.2012, he received a telephone call from his home by his brother to join at a prayer session at his home for Haj pilgrims

and on 28.09.2012, his brother, Md. Imdadur Rahman booked a ticket for him from New Delhi to Imphal and on the same day he was to return back to his place of posting. Thereafter, he proceeded for IGI Airport and after reaching terminal No.3, one person approached him and asked in Manipuri language with a request to carry a briefcase which was to be handed over at Imphal to one person called Azim Khan. After reaching Imphal Airport, 5(five) person in civilian dress who identified themselves as police, stopped the petitioner for checking and they asked him to open the said briefcase but the petitioner told them that the said brief case would be opened in front of the owner of the briefcase. Thereafter, the petitioner was arrested and taken to the Porompat Police Station, Imphal East. At the Police station, the briefcase was opened and it was found that there were some tablets. Accordingly, Mr. Azim Khan, whom the petitioner identified to be the owner of the briefcase, along with Mr. Imaz Hussain were also arrested.

[4] Later on, the petitioner was handed over to Singjamei Police Station, Imphal West and FIR being No.430(09) 2012 Singjamei PS U/s 9-A, 25-A/29 ND&PS Act was registered against him and later on, he was released on bail by the Ld. Special Court (ND& PS), Manipur. While he was under police custody, the Commandant, CISF Unit, IGI Airport, Palam, New

Delhi issued an order dated 02.10.2012 whereby the petitioner was placed under suspension in terms of Sub Rule(2) of Rule 33 of CISF Rules, 2001 and on 05.11.2012 a charge Memorandum against the petitioner under Rule 36 of CISF Rules, 2001 was issued whereby 3(three) article of charges and statement of imputation of misconduct were framed against him.

[5] Thereafter, on 07.11.2012, the petitioner submitted a representation to the Commandant, CISF Unit, IGI Airport, New Delhi wherein a request was made to allow him to enjoy subsistence allowance during his suspension period. Again on 29.11.2012, the petitioner while under Judicial Custody submitted a representation wherein a request was made to supply notice and other relevant departmental enquiry papers either in English or Manipuri version as he was not acquainted with Hindi language/script. He also submitted a written statement of defense dated 12.01.2013 wherein he denied all the charges levelled against him and not to proceed any departmental enquiry against him and not to terminate him from service.

[6] On 20.03.2013, the petitioner submitted another representation to the DIG/CASO, CISF, Unit, IGI Airport, New Delhi wherein he made a request to let him know whether he was to report to the IGI Airport or stayed

at Manipur to attend further enquiry. In response, the Commandant, CISF Unit, IGI Airport, New Delhi issued an order dated 04.04.2013 whereby it was ordered that during the suspension period, the petitioner would be at ASG, Imphal till injunction order is vacated by the Court and was ordered that no TA/DA whatsoever would be entitled to him during his stay in ASG, Imphal. Accordingly, a departmental inquiry was initiated against him by appointing Inquiry Officer and Presenting Officer. Based on the enquiry report dated 29.05.20213 submitted by the Enquiry Officer and in pursuance to the findings of the departmental inquiry, the petitioner was dismissed from service on 18.07.2013.

[7] The three heads of charge against the petitioners read as follows:

Article of Charge-I

No 94344191 Constable Md. Riyaj Ahmad of 'K' coy of CISF Unit IGI Airport New Delhi was detailed for extra duty at 1300 hrs on 28.09.2012 at Haj Terminal but the member of the force did not turn for above duty. The above act on the part of the member of the force amounts to dereliction of duty and discipline. Hence the charge.

Article of Charge-II

No 94344191 Constable Md. Riyaj Ahmad of 'K' coy of CISF Unit IGI Airport New Delhi was detailed for day shift duty on 29.09.2012 for Marshal duty in Haj company-3. But the member of the force without any information or permission from Competent Authority was found absent from duty as well as unit. The above act on the part of the member of the force amounts to dereliction of duty, gross misconduct and indiscipline. Hence the charge.

Article of Charge-III

No 94344191 Constable Md. Riyaj Ahmad of 'K' coy of CISF Unit IGI Airport New Delhi without any leave or information from the Competent Authority, left New Delhi to Imphal by Air India flight No. AI-889 on 28.09.2012. After arrival at Imphal Airport, he was arrested by Manipur Police as some objectionable item was found in his possession, thereby tarnished the image of the force. The above act on the part of the member of the force amounts to gross misconduct and indiscipline. Hence the charge.

[8] During the departmental enquiry, 13 PWs, 2 CWs and the charged official (the petitioner herein were examined) and vide report dated 29.05.2013, the Enquiry Officer held that all the three charges were proved. Vide order dated 18.07.2013 passed by the Disciplinary Authority, ie, Commandant, CISF Unit IGI Airport, New Delhi minutely considered the

report of the Enquiry Officer and agreed with findings of the enquiry and imposed major penalty of dismissal from service to the petitioner with immediate effect with disqualification for future employment under the government. The petitioner submitted an appeal to the DIG/CASO, CISF Unit, IGI Airport, New Delhi and prayed for some other form of punishment apart from dismissal from service on humanitarian ground by considering his long unblemished service. Vide order dated 24.10.2023 the appeal was also dismissed holding that the petitioner belonging to a discipline force with high expectation of discipline, deserved stringent punishment in view of his misconduct.

[9] Being aggrieved by the said termination order dated 18.07.2013, passed by Commandant, CISF Unit, IGI Airport, New Delhi order dated 24.10.2013 in appeal by the DIG/CASO, CISF Unit, IGI Airport, New Delhi, the petitioner challenged these order along with the departmental proceedings before this Court by way of the present writ petition amongst on the grounds that – (i) vagueness of charge, (ii) not informing about availability of defense assistance, (iii) Enquiry Officer examined the PWs and charged officer and participated actively in the proceeding, (iv) the punishment is not commensurate with the offence alleged, and (v) the dismissal of the

petitioner from service was in violation of principles of natural justice and in violation of his fundamental rights. It is prayed that the order of termination be set aside and the petitioner be re-instated to service with full back wages and all consequential benefits.

[10] Mr. Kh. Tarunkumar, learned senior counsel for the petitioner submits that the whole disciplinary proceeding against the petitioner is vitiated for violation of many mandatory requirements. Firstly, it is argued that the charge No. III is very vague and simply stated about arrest of the petitioner for possession of some objectionable item. It is pointed out that the nature of objectionable item was not disclosed during the enquiry and dismissal of the service of the petitioner for arrest in possession of undisclosed item is not warranted. It is submitted that the impugned orders and disciplinary proceeding could be quashed on this ground alone. In this regard, learned senior counsel relies on the decision of the Hon'ble Supreme Court in the case of **Govt. of AP v. A. Venkata Raidu: (2007) 1 SCC 338 @ Para 9** holding that a charge sheet should not be vague but should be specific and details of the charge should be mentioned. It was held that no finding of guilt could be fixed on the basis of such vague charge. Reference is also made to the case of **Anant R. Kulkarni v. Y P Education Society:**

(2013) 6 SCC 515 2 Para 16 that charges should be specific and definite details of the incident which formed the basis of charges of involving penal consequences should be mentioned. It was held that no enquiry could be sustained on such vague charges.

[11] As a second point, learned senior counsel for the petitioner submits that the enquiry proceeding is vitiated for not providing defense assistance to the petitioner during the disciplinary proceeding. It is stated that the petitioner, being a constable, was not aware of the all the technicalities of the proceedings and he was never informed about the availability of the defense assistance to him and he could not properly answer all the questions asked by the Enquiry Officer and as such much prejudiced was caused to him. It is highlighted that the same is in violation of the principle of fair procedure and the disciplinary proceeding is also vitiated on this ground. Mr. Kh. Tarunkumar, learned senior counsel cites the decisions reported as **(2005) 3 GLT 154 @ Para 7 & 9** which held that when the charged officer is a constable, principle of natural justices requires that he be defended properly during the enquiry.

[12] Thirdly, it is strenuously argued that the disciplinary proceeding is vitiated as the Enquiry Officer acted as judge-cum-prosecutor by actively

participating in the prosecution. It is pointed out that in the order dated 18.07.2013 passed by the Commandant (Disciplinary Authority), it was recorded in para 2 that the Enquiry Officer recorded statements of 13 PWs, 2 CWs and examined the petitioner. The relevant portion is reproduced as “.... During the Departmental Enquiry, Enquiry Officer recorded the statements of 13 PWs and 02 CWs in the presence of Charged Official and Presenting Officer and Charge Official was provided all opportunities to cross examine the PWs and CWs...” The Enquiry Officer also asked the charged official 19 questions relating to the three charges. Learned senior counsel has pointed out that the Enquiry Officer actively participated himself in the proceeding by taking the role of Presenting Officer thereby becoming himself as a prosecutor to establish the charges against the petitioner. It is submitted that the same is impermissible and vitiates the whole proceeding for violation of the principles of natural justice and the Enquiry Officer acted as a judge-cum-prosecutor. Reliance is placed on the decision of the Hon’ble Apex Court in the cases of **State of Uttaranchal v. Kharak Singh: (2008) 8 SCC 236 @ Para 17** to the point that the Enquiry Officer cannot act as an investigation, a prosecutor and a judge. In the case of **Moni Shankar v. Union of India: (2008) 3 SCC 484 @ Para 30**, it was held that the Enquiry

Officer acted as a prosecutor and not as an independent quasi-judicial authority by asking many leading questions and accordingly the punishment was set aside. It is pointed out that in the case in hand, the Enquiry Officer asked 19 leading questions to the petitioner in addition of examination of 13 PWs and 2 CWs himself and thus the whole proceeding is vitiated. Decision reported as **(2005) 3 GLT 154 @ Para 7 & 8** is also referred on this point.

[13] Regarding the question of jurisdiction of this Court, it is pointed out that part of the cause of action arose in the State of Manipur as the petitioner was arrested in Manipur and Charge-III is with respect to the factum of this arrest. Relying on the decision in the case reported as **Nawal Kishore Sharma v. Union of India: (2014) 9 SCC 327 @ Para 17**, it is submitted that this Court has jurisdiction to deal with this case.

[14] Mr. S. Samarjeet, learned Sr.PCCG submits that there is no flaw in the disciplinary proceeding initiated against the petitioner. It is pointed out that the petitioner himself admitted the contents of Charge Nos. I & II of absence from duty and leaving station without permission of his senior and as such the charges are deemed to be proved on admission. Regarding the Charge-III, it is denied that the same is vague. Even though the memo of charge simply mentioned 'objectionable item', the detail of the object seized

from the custody of the petitioner was clearly indicated during the enquiry and the petitioner had enough opportunity to defend himself. It is pointed out that in the written statement [Annexure-a-5] submitted by the petitioner to the Commandant, CISF Unit, IGI Airport, New Delhi, the petitioner himself admitted seizure of objectionable items from his possession by Manipur Police. Mr. S. Samarjeet, learned Sr. PCCG has raised the objection to technical plea to the plea of vagueness of charge and active participation by the Enquiry Officer during the proceeding in his appeal filed before the appellate authority, ie, DIG and hence such plea cannot be raised for the first time in the writ petition. It is also denied that the principles of natural justice have been violated during the enquiry and it is pointed out that during the preliminary hearing dated 18.02.2013, the Enquiry Officer asked the petitioner as to whether he would like defence assistance, the petitioner answered in negative. It is further submitted that Rule 36(15) of CISF Rules, 2001 permits the Enquiry Officer to ask questions to the witnesses and the charged official and hence there is infirmity in the proceeding. It is clarified that in the present case, Enquiry Officer asked few questions only and other parts were done by the Presenting Officer.

[15] Learned counsel for the respondents relies on the following decisions of the Hon'ble Supreme Court-

(a) **Chairman-cum-Managing Director, Coal India Ltd. v. Mukul Kumar Chaudhuri: AIR 2010 SC 75 :**

(b) **High Court of Judicature at Bombay v. Shashikant S. Patil: AIR 2000 SC 22:**

-High Court is not court of appeal and ought not to interfere the finding of the Enquiry Officer in absence of any procedural irregularity.

(c) **Nirmala J. Jhala v. State of Gujarat: AIR 2013 SC 1513-**

Standard of proof in a disciplinary proceeding is preponderance of probabilities and the doctrine of proof beyond reasonable doubt is not applicable.

(d) **Union of India v. Managobinda Samantary: Civil Appeal**

Nos. 1622-1623 of 2022; Judgment dated 24.02.2022 @ Pr.9-

Once the charge is proved, quantum of punishment is the sole discretion of the decision-making authority. The quantum of punishment could be interfered only in case of perversity, gross disproportionality and violation of the principles of natural justice.

[16] Mr. S. Samarjeet, learned Sr. PCCG finally submits that charges I & II are proved by admission and with regard to charge III, there is no infirmity in the proceedings. The petitioner was offered the option of availing defence assistance which he did not accept. Due process was followed and there is no violation of natural justice. In the circumstances, the quantum of punishment for dismissal from service to maintain the discipline in the force ought not to be interfered by this Court in a writ proceeding. It is pointed out that the scope of interference is very limited only in case of perversity and disproportionality. It is prayed that the writ petition be dismissed.

[17] This Court considers the materials on record, the submissions made at bar and the relevant law in this regard.

[18] From the case record it is seen that the petitioner left Delhi for Imphal on 28.09.2012 by Air India flight AI-889 with a return ticket for the same day by AI-890. During the course of hearing, the petitioner admitted that he left Delhi without informing his seniors and due to his arrest at Imphal he could not attend extra duty. He further admitted his arrest at Imphal, but did not admit the fact that he was carrying drug knowingly. It is his specific case that someone at Delhi airport requested him to carry a brief case as gift

for his relative. The outcome of the criminal case with respect to FIR No. 430(09)2012 Singjamei PS u/s9A/25A/29 NDPS Act is not intimated to this Court and perhaps the same is pending.

[19] From the proceedings of the enquiry and related orders, it is seen that the Enquiry Officer had actively participated in the proceeding by recording statements of all 13 PWs and examining the petitioner himself by asking 19 questions. This Court does not find any merit in the submission of Mr. S. Samarjeet, learned Sr. PCCG that Enquiry Officer may ask some questions in terms of Rule 36(15). In the present case, it is not an instance of asking some stray questions, rather the Enquiry Officer took the role of Presenting Officer and the same is impermissible. Accordingly, the enquiry proceedings are vitiated and is liable to be set aside.

[20] The petitioner admitted Charge Nos. I & II, but did not admit the contents of Charge No. III even though he admitted his arrest at Imphal. The question of conscious possession of contraband was not considered during the enquiry and/or in the appellate proceeding. The service of the petitioner could not be terminated on the basis of arrest memo and seizure memo mentioning recovery of drug, when this fact was not considered during the enquiry and in absence of any finding from the criminal court. It is the specific

case of the petitioner that he was not aware of the contents of the brief case handed over to him at Delhi airport. Charge No. III is also very vague and mentioned only recovery of 'objectionable item' without specifying the details. There is active participation of the Enquiry Officer during the proceeding. In the circumstances, it is held that finding of Charge-III is vitiated. As the petitioner had admitted Charges- I & II, the technical flaws in the enquiry proceedings shall not affect their legality and the findings of the Enquiry Officer, Disciplinary Authority and Appellate Authority are not disturbed. Accordingly, Charge Nos. I & II are proved on admission. This Court is of the opinion that punishment of dismissal from service with disqualification from future employment is not commensurate with nature of charges of absence from duty and leaving station without permission from the authority.

[21] It is the settled proposition of law that punishment is in the realm of the disciplinary authority and it has full power and discretion in awarding appropriate punishment prescribed by the statutory rules. Usually, High Courts, while exercising the supervisory jurisdiction under Articles 226 & 227 of the Constitution of India, are not to interfere with the punishment awarded by the competent authority as an appellate court and judicial review may be

resorted if the punishment is not proportionate and not commensurate with the alleged misconduct.

[22] In the present case, the disciplinary authority held that all the three charges were proved against the petitioner and imposed punishment of dismissal from service with disqualification from future employment, keeping in view to maintain the strict discipline in the force. The same was upheld by the appellate authority. However, this Court upheld on admission by the petitioner, the findings on the first two charges of absence from duty and leaving station without permission of the seniors, but set aside the third charge of arrest with objectionable items, as the proceeding was perverse due to active participation of the Enquiry Officer who acted both as a prosecutor and judge. Such conduct of the Enquiry Officer is as opposed to settled principles of natural justice as held in various cases by the Hon'ble Supreme Court.

[23] This Court is of the view that punishment of termination of service is shockingly disproportionate with the alleged charge of absence from duty and leaving station without permission after annulling the finding on third charge. It is an admitted fact that the absence from duty was due to the arrest

of the petitioner at Imphal and the same is not deliberate. Therefore, the punishment requires re-consideration.

[24] In the case of **Union of India v. Giriraj Sharma: 1994 Supp (3) SCC 755**, Hon'ble Supreme Court held that the punishment of dismissal from service for overstayed of a period of 12 days was disproportionate and remanded the matter for awarding a minor penalty after re-instating the service of the charged officer. In the case of **Krushnakant B. Parmar v. Union of India: (2012) 3 SCC 178 @ Pr. 24 & 25**, instead of remitting the matter for awarding the minor penalty, Hon'ble Supreme Court molded the relief by re-instating the charged official with 50% back wages, thereby modifying the punishment of dismissal from service.

[25] Accordingly, it is directed that the petitioner be re-instated to his service with immediate effect. Keeping in mind that the incident occurred in the year 2012 and instead of remanding the case to the disciplinary authority for passing an appropriate order in lieu of dismissal from service and to do complete justice, this Court intends to modify the punishment. The quantum punishment of dismissal from service is modified as 'withholding increment of pay for 3 years with cumulative effect'. It is clarified that the period of termination shall be considered as during service, but the petitioner shall not

be entitled to back wages and any amount paid during period of suspension shall not be recovered.

[26] With these directions and observations, the appeal is partly allowed and disposed of. No cost.

[27] Send a copy of this order to the Commandant, CISF Unit, IGI Airport, New Delhi for information and necessary compliance.

JUDGE

FR/NFR
John Kom