

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

*Judgment Reserved on: March 18, 2015*

%

*Judgment Delivered on: March 23, 2015*

+

**W.P.(C) 1401/2014**

LAXMAN SINGH, CISF

..... Petitioner

Represented by: Mr.Ankur Chhibber, Advocate

versus

UNION OF INDIA & ORS

..... Respondents

Represented by: Mr.Ripu Daman Bhardwaj,  
CGSC with Mr.T.P.Singh,  
Advocate

**CORAM:**

**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**

**HON'BLE MS. JUSTICE PRATIBHA RANI**

**PRATIBHA RANI, J.**

1. The petitioner is a young recruit who was enrolled as a Constable (GD) in CISF in the year 2009. He has assailed the order dated December 10, 2012 passed by the Disciplinary Authority whereby penalty of removal from service has been inflicted on the petitioner for the misconduct that while performing duty in 'B' shift from 14:00 hrs to 22:00 hrs on July 23, 2012, he assaulted one Sonu, a private guard of Bedi and Bedi Company and Ct.Ashok Kumar Jena of CISF at the Rajender Place Metro Station. Statutory remedy availed by the petitioner did not yield the desired result hence the petitioner has filed the instant writ petition assailing the order of removal from service imposed by way of penalty upon him.

2. Learned counsel for the petitioner on instructions from the petitioner submitted that he is not pressing the various grounds urged in the writ petition and limited the submissions only on the proportionality of the

penalty imposed.

3. The Article of Charge against the petitioner reads as under:-

*“Force Serial No.097360179 constable (suspended) Lakshman Singh, CISF unit, DMRC, Delhi was posted on 23.07.2012 in second shift at Rajinder Place (North side) Metro Station of Blue Line. At about 2020 ‘o’ clock, private Guard Sonu Kumar posted at AFC (North Side) of the metro station came and stood adjacent to constable Lakshman Singh. In the mean while constable Lakshman Singh openly beat private Guard Sonu Kumar and along with it he suddenly attacked with his leg and fists upon constable Ashok Kumar Jena posted at Exbex Machine. Force serial No.097360179 constable (suspended) Lakshman Singh in discharge of his duty unnecessarily attached upon his colleague Constable Ashok Kumar Jena at a public place which shows his grave carelessness, misbehaviour and misconduct against his duty.”*

4. During the inquiry five witnesses were examined by the prosecution and one was examined as a Court Witness. Thus, the number of witnesses examined were six. Out of the six, only three were present at the Rajendra Place, (North Side) Metro Station of the Blue Line, and the others have deposed about facts post the incident. The three witnesses who have deposed about the incident are : (i) Ct.Ashok Kumar Jena PW-1; (ii) Ct.Rajinder Singh PW-2; and (iii) Ct.Deepak Kumar Ahirwar CW-1.

5. The incident was recorded in the memory of the Closed Circuit Television equipment installed at the place of the occurrence, which was the security check point where the commuters were to be frisked before entering the precincts of the platform of the metro station.

6. The footage Ex.PW-5/ExP-03 which records the incident has been narrated in writing in Ex.P-03. It records the following facts:-

(i) Time:20:19:46. Ct.D.K.Ahirwar-frisking point

Constables Laxman Singh & Rajendra Singh Ex- near BIS Machine

Constable A.K.Jena Ex- on BIS Machine

(ii) Time: 20:20:06. Ct.Laxman Singh checking the baggage, near the table Guard Sonu in bending position and talking to constable A.K.Jena.

(iii) Time: 20:20:20. Guard Sonu moves from A.K.Jena and goes towards Laxman Singh.

**(The video footage for the duration 20:20:20 to 20:20:38 being dark nothing about the incident can be ascertained)**

(iv) Some talks between Ct.Laxman Singh and Guard Sonu at about 20:20:39 and all of sudden Laxman Singh slapped Sonu.

(v) Time 20:20:50 Ct.Laxman Singh pushed Guard Sonu, proceeded towards Ct.A.K.Jena and hit him with fist and leg and Ct.Rajendra Singh separates them.

(vi) Lady Constable on duty seeing the incident.

(vii) Ct.D.K.Ahirwar posted at DFMD, stops frisking of the passenger for a moment and reaches near EX- BIS machine to counsel them.

(viii) Time 20:24:40 Guard Sonu Kumar enters AFC through IN.

(ix) Ct. A.K.Jena also moves from Ex-BIS and enters AFC through IN towards washroom and Ex-BIS monitor being watched by Ct.Rajendra Singh.

(x) Ct.Laxman Singh passed through south side AFC towards unit incharge.

(xi) Ct.Laxman Singh along with unit incharge Sub-Inspector (Executive) Baldev Singh moves towards south side AFC through 'IN'.

7. In the defence statement submitted by the petitioner on September 17, 2012, the petitioner has admitted to have slapped Sonu and assault Ct.A.K.Jena, but upon a provocation by the two. Being relevant, we note the version of the petitioner:-

*“The continued systematic campaign had a deep impact on my psyche. Once I joined the Blue Line, Ct. Ashok Kumar Jena, in particular, made my life miserable through highly critical observations which were not only directed towards me but also towards my family. Then, my immediate seniors, who were the cohorts of persons like Ct. Jena, had forfeited the trust and faith they ought to have otherwise commanded. As the support from my colleagues was not forthcoming, and I had no trust in the impartiality and effectiveness of my seniors, I was in a quandary. The simmering anger inside me was however slowly and gradually building up. When Ct Jena used a civilian (Private Gurad Sonu Kumar) as a tool to humiliate me, I lost control over my senses and hit Sonu Kumar with my hand. But given the circumstances, anybody at my place would have done the same thing. I, however, have no grudge against Sonu Kumar because he was acting like a puppet in the hands of Ct. Jena. The genesis of the whole problem was, undoubtedly, Ct Ashok Kumar Jena who first used Sonu Kumar and then provoked me further by calling names and saying, “KYA TUMARA SAMAN (i.e. penis) HE KI NAHI?” I respectfully submit that a sustained insult is more injurious than the physical assault. The courage of Ct. Ashok Kumar Jena was getting emboldened due to my passive reaction and the support of immediate superiors. It was due to these reasons that after having used a civilian to humiliate me, he himself crossed all limits of civility and called me names. It was under extreme provocation from Ct. Jena that I reached by slapping him in a fit of anger, to give vent to my pant up feelings.*

*In view of above, I respectfully submit that the incident dated July 23, 2012 was directly attributable to a denigrating campaign launched by persons like HC Ali, Ct. Hemant Kumar and Ct. Ashok Kumar Jena. I, therefore, humbly pray your goodself to exonerate me of the charge, in view of the facts and circumstances of the case, in totality, as explained above.”*

8. While noting the testimony of the three eye witnesses, Ct.A.K.Jena PW-1 (who was also a victim of the assault by the petitioner), Ct.Rajinder Singh PW-2 and Ct.Deepak Kumar Ahirwar CW-1, the Inquiry Officer has

noted that as per the testimony of Ct.A.K.Jena, when guard Sonu went near him (the petitioner) and made a gesticulation, the petitioner assaulted Sonu, at which Ct.A.K.Jena intervened and asked the petitioner why did he slapped Sonu at which the petitioner started assaulting him. Regarding the testimony of Ct.Rajinder Singh PW-2, the Inquiry Officer has noted that he separated the petitioner and Ct.Ashok Jena. Regarding the testimony of Ct.Deepak Kumar Ahirwar CW-1, the Inquiry Officer has noted that he saw the petitioner grapple with Ct.Ashok Jena.

9. With respect to the CCTV footage which was blanked for 18 seconds from 20:20:20 hrs. to 20:20:38 hrs. except for noting said fact and that the preceding footage till 20:20:20 hrs. showed Sonu move from A.K.Jena towards Laxman Singh and that the succeeding footage evinced a dialogue between Ct.Laxman Singh and guard Sonu and all of a sudden petitioner having slapped Sonu, the Inquiry Officer has not discussed anything further.

10. It is settled law that exercising a writ review jurisdiction a Court would not re-appreciate the evidence which has been appreciated by the Inquiry Officer, but that does not mean that the Writ Court would not be obliged to ensure the fairness in the decision making process resulting in an opinion formed by the Inquiry Officer. It is the duty of the Court to see whether the pros and cons of the entire relevant evidence have been taken note of by the Inquiry Officer. If a relevant evidence is ignored it would amount to not only a procedural violation in the decision making process but even a substantive violation.

11. A perusal of the testimony of Ct.A.K.Jena PW-1 would evince that he has categorically deposed that when Sonu went towards the petitioner after meeting him i.e. Ct.A.K.Jena, he heard Sonu say something to the

petitioner simultaneously making a gesture. He has not stated what he heard Sonu say. A perusal of the testimony of Ct.Rajinder Singh PW-2 and Ct.Deepak Kumar Ahirwar CW-1 shows that they did not see the origin of the assault because they were a little distance away and their attention was drawn to the place where the petitioner hit Sonu after Ct.A.K.Jena intervened and the petitioner grappled with him. They have simply deposed of having witnessed petitioner grapple and hit Ct.A.K.Jena.

12. The Inquiry Officer has not discussed a very relevant aspect of the matter : what triggered the incident?

13. The taint in the report of the Inquiry Officer is of not correctly noting the testimony of A.K.Jena to the effect that A.K.Jena has categorically said that after Sonu left him and went towards the petitioner he said something to the petitioner and made a gesture which invited retribution from the petitioner. He has simply recorded that as per Ct.A.K.Jena, Sonu made a gesture whereupon the petitioner slapped Sonu and he i.e. A.K.Jena intervened and his intervention resulted in petitioner's wrath turning against him.

14. The Inquiry officer ought to have taken a serious note of the very relevant crucial 18 seconds of the CCTV footage being blanked. Obviously, something relevant for the petitioner's defence was effaced.

15. A proper reading of testimony of Ct.A.K.Jena would bring out that after Sonu spoke to him and as he moved towards the petitioner he said something and made a gesture. At this, the petitioner retaliated. As per the petitioner Ct.A.K.Jena used to make personal remarks against the petitioner which were humiliating and on the day of the incident after speaking to Ct.A.K.Jena, Sonu, a puppet in the hand of A.K. Jena, made disparaging remarks about his height, simultaneously making gesticulations, at which he

lost his cool and hit Sonu. Since he believed what Sonu did was under the guidance of Ct.A.K.Jena, when Ct.A.K.Jena intervened, he assaulted Ct.A.K.Jena as well.

16. Two relevant circumstances emerged.

17. The first. The crucial 18 seconds of the CCTV footage being blanked. The origin of the assault lay therein. The second is the testimony of Ct.A.K.Jena which clearly establishes that something was said by Sonu (which was not heard by Ct.A.K.Jena) with simultaneous gesticulation by Sonu, a relevant event, preceding the assault.

18. Both relevant circumstances which are very crucial are overlooked by the Inquiry Officer as also the Disciplinary Authority, the Appellate Authority and the Revisional Authority.

19. Now, a provocation is a relevant factor to be taken into account on the subject of penalty to be levied.

20. The testimony of Ct.A.K.Jena supports the stand of the petitioner that Sonu said something to the petitioner simultaneously making a gesticulation which was a provocation; and we have no reasons to disbelieve that the provocation was as stated by the petitioner for the reason the testimony of Ct.A.K.Jena indicates a provocation being made (sans the nature thereof) and thus the version of the petitioner merits acceptance. Further, there was obviously a hidden hand working against the petitioner which saw that the most crucial part of 18 seconds in the CCTV footage was blanked.

21. Provocation is a conduct which results a loss of self-control even in reasonable people. A taunt, an insult, or even annoyance may be a provocation. Within the realm of penal laws, the nature of the provocation may be relevant for loss of self-control vis-a-vis the offence. A slight provocation may justify an abuse, but not a murder. In other words, the

degree of the retribution having a causal connection and proportionality to the provocation have to be taken into account.

22. Under the circumstances we conclude that the penalty of removal from service inflicted upon the petitioner, who reacted under a provocation, is grossly disproportionate to the gravity of the wrong.

23. We dispose of the writ petition quashing the impugned order dated December 12, 2012 passed by the disciplinary authority; January 30, 2013 passed by the appellate authority; and April 15, 2013 passed by the revisional authority.

24. The disciplinary authority is permitted to levy an appropriate penalty upon the petitioner, but not of a kind where the petitioner loses his job. The petitioner would thus be reinstated in service forthwith. The manner in which the period interregnum the petitioner being removed from service till reinstatement requires to be treated in the service record is left open to be considered and an appropriate order passed by the disciplinary authority as contemplated by FR 54.

25. No costs.

**(PRATIBHA RANI)**  
**JUDGE**

**(PRADEEP NANDRAJOG)**  
**JUDGE**

**March 23, 2015**

*pg*