

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

Judgment Reserved on: March 19, 2015

% *Judgment Delivered on: March 26, 2015*

+ **W.P.(C) 51/2006**

EX. CONST. J.S. TOMAR Petitioner

Represented by: Mr.Raisuzzaman, Advocate for
Dr.Ashwani Bhardwaj,
Advocate for the petitioner

versus

UOI & ORS Respondents

Represented by: Mr.Ruchir Mishra,
Mr.Ramneek Mishra &
Mr.Mukesh Tiwari, Advocates

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

1. The present petition challenges the order dated January 29, 2005 passed by the Disciplinary Authority imposing a penalty of compulsory retirement from service as also the order of rejection dated June 06, 2005 by the Appellate Authority and June 29, 2005 by the Revisional Authority.
2. The petitioner was a Constable in CISF posted at IOC Mathura Refinery. On December 24, 2003 the petitioner was performing duty in 'A' shift at New Gate of CISF Unit, IOC Mathura Refinery. On receiving a complaint about petitioner allegedly accepting illegal gratification from the vehicles passing through that gate, the Company Commander advised petitioner to perform his duty honestly. At about 12:40 hrs Inspector (Works) Mahender Pratap approached the Company Commander Inspector

Salim Mohd. with a request to conduct the personal search of the petitioner. The petitioner Ct.J.S.Tomar was called but instead of obeying the command, he started going out and tried to remove his hand gloves. On seeing that Ct.R.S.Pathak checked him and in the process there was a scuffle. The petitioner along with Ct.R.S.Pathak was brought to the duty room and searched. Nothing was recovered during personal search of the petitioner but from his hand gloves a sum of ₹120/- was recovered.

3. The petitioner was chargesheeted as under :-

'CHARGE-I

Working against the appropriate the orders and discipline as force No.874550098-Constable J.S.Tomar, CISF, Unit IOC, Mathura has failed to maintain complete integrity towards his duty. Accordingly, on 24.12.2003, during his duty is Ist shift, he collected a total sum of ₹120/- illegally from the drivers of the vehicles entering from vehicle incoming outpost at New Gate of IOC Refinery and the said sum was seized from his possession after his personal search, conducted at the spot at 12:45 hours, in the presence of gate-in-charge Assistant Sub-Inspector/works-Sh. Ram Prasad, Inspector/Works Salim Mohd., Constable R.S.Pathak and Inspector Mahendra Pratap/Intel-licence, which he admitted to have taken from the truck-drivers. Accordingly, the said official has failed to maintain complete integrity towards his duty. This act is indicated of his gross-indiscipline towards his duty, misconduct, unbecoming of a member of a disciplined force showing the force is bad image. Hence, he is charged.

CHARGE-II

Being a habitual offender of gross-indiscipline, misconduct, carelessness towards duty and non-compliance of appropriate orders and Rules, Force No.874550098-Constable J.S.Tomar, CISF, IOC, Mathura has already been punished with of various minor/major penalty during his entire of service

for his carelessness towards his duty and for defying the orders which proves that he is a habitual offender of defying proper and rules, carelessness towards his duty and indiscipline who has failed to bring any improvement in his working. It is indicative of his gross misconduct during his duty and indiscipline inspite of being a member of a disciplined force. Hence, he is charged.'

4. In response to the chargesheet, the petitioner denied the charge and disputed the legality of the seizure memo as well power of the officers who conducted search. The seizure memo was also termed by the petitioner as fabricated document prepared at his back and not bearing his signature. He also questioned the act of the superior officers as to why he was singularly subjected to personal search and not other members of force and how under the supervision of superior officers he could indulge in such practice. In respect of Article of Charge-II, citing various judicial pronouncement on the subject submitted that the issue of previous punishment cannot be reopened and fresh proceedings in the chargesheet may be dropped.

5. The Disciplinary Authority decided to conduct inquiry under Rule 36 of CISF Rules 2001 against the petitioner and in exercise of its power conferred by sub rule 5(a) of the said Rule, Insp/Exe. R.C.Bodh of CISF Unit IOC, Mathura (UP) was appointed as Inquiry Officer to inquire into the charges framed against the petitioner

6. During inquiry seven witnesses namely Inspector Salim Mohd., Company Commander PW-1, Ct.R.S.Pathak PW-2, ASI Rajvir Singh PW-3, Ct.Udaibhan PW-4, Inspector Mahender Pratap PW-5, ASI Bhagwan Singh PW-6 and ASI Ram Prasad, PW-7 were examined by the department to prove the charges against the petitioner. The petitioner also produced Sh.Kotwal Singh DW-1 and Sh.Anil Kumar DW-2 in his defence.

7. The gist of the statement of PW-1 to PW-7 is to the following effect:-

(i) Inspector Salim Mohd., Company Commander PW-1 was on duty on the project gate at 11:00 hrs when he was telephonically informed by Inspector Mahender Pratap Singh about Ct.J.S.Tomar collecting money from incoming vehicles with further request to see the petitioner and make him understand. Again at 12:40 hrs Inspector (Works) Mahender Pratap came to the project gate for conducting the personal search of the petitioner as he had not stopped collecting money. Ct.R.S.Pathak, PW-2 has also stated that the petitioner was called, instead of coming towards them he started going out and try to remove his hand gloves. Ct.R.S.Pathak, PW-2 when tried to stop, that led to a scuffle between the two. The petitioner and Ct.R.S.Pathak were brought to duty room. Search of the petitioner was conducted but nothing was recovered from his pocket. However, ₹ 120/- was recovered from inside the finger portion of the hand gloves.

(ii) Ct.R.S.Pathak PW-2 has stated that on December 24, 2003 the petitioner was at the project gate of the refinery and he saw the petitioner collecting money from the incoming vehicles which he telephonically conveyed to the Inspector Mahender Pratap. PW-2 further stated that when Inspector Mahender Pratap came to the Project gate and called the petitioner who instead of coming towards him started going out and tried to remove his hand gloves but prevented to do so. The petitioner was searched in the duty room and from his gloves a sum of ₹120/- was recovered. Seizure memo was prepared but petitioner refused to sign the same.

(iii) ASI Rajvir Singh PW-3 & Ct.Udaibhan PW-4 while on 'B' shift duty had seen Inspector Mahender Pratap, Inspector Salim Mohd, Ct.R.S.Pathak and Ct.J.S.Tomar in the duty room on December 24, 2003 at about 12:50

hrs. On inquiry they came to know that the petitioner had collected money from the vehicles.

(iv) Inspector Mahender Pratap PW-5 stated that on getting information about the petitioner receiving money from incoming vehicles he informed the Inspector Salim Mohd., Company Commander, PW-1 asking him to see what was happening and at about 12:45 hrs he reached the project gate and in the presence of PW-1 asked the petitioner to come to the office but he started moving out and tried to remove his gloves. Ct.R.S.Pathak tried to prevent him from doing so and both of them had a scuffle in the process. Then he along with Inspector Salim Mohd PW-1 brought Ct.R.S.Pathak and the petitioner to the duty room. The petitioner was searched though nothing was recovered from his pocket ₹120/- was recovered from the gloves for which seizure memo was prepared in the presence of Inspector Salim Mohd and Ct.R.S.Pathak. The petitioner refused to sign the seizure memo.

(v) ASI Bhagwan Singh, PW-6 has produced the service record of the petitioner which contains the punishments awarded to the petitioner.

(vi) ASI Ram Prasad, PW-7 was on duty on December 24, 2003 as a duty officer at the project gate in shift 'A'. He has stated that he has briefed the force personnel not to harass the vehicle drivers or to take money from them. At about 12:45 hrs Inspector Mahender Pratap came to the project gate and called the petitioner but he did not comply. He had seen some scuffle between Ct.R.S.Pathak and the petitioner and both of them were brought to the duty incharge room. In his presence ₹ 120/- were recovered from the hand gloves of the petitioner. during his cross-examination PW-7 had stated that when Ct.J.S.Tomar come for duty in the morning he had not seen the petitioner in hand gloves.

8. Sh.Kotwal Singh DW-1 had stated that on December 24,2013 at about 1230 hrs he visited Project Gate to meet Sh.Ravi Sharma, Manager, L&T Company and had sent a message. Ct.R.S.Pathak asked money from him for '*chai-pani*' but he was carrying only Rs.5/-. Then Ct.R.S.Pathak took away his gloves. In the meantime L&T officer also came out and while he (DW-1) was busy in talking to him, Ct.R.S.Pathak left the gate alongwith Inspector Mahender Pratap and gloves in which he has kept Rs.120/-.

9. Sh.Anil Kumar DW-2 had stated that on the date of incident, he met his friend who wanted to accompany with him to the village. After meeting a person in the Project, his friend kept money in his hand gloves. He waited for his friend Kotwal Singh at the gate and at that time a person in civil dress came to Kotwal Singh and took away his hand gloves from his pocket.

10. The Inquiry Officer submitted his report to the Disciplinary Authority wherein after referring to the testimony of the above named witnesses held that both the charges against the petitioner have been proved.

11. The petitioner was served with the copy of the inquiry report giving him an opportunity to submit his response. After considering the report of the Inquiry Officer and the response of the petitioner, the Disciplinary Authority vide impugned order dated January 29, 2015 levied the penalty of compulsory retirement on the petitioner which was maintained by the Appellate and Revisional Authority.

12. Learned counsel for the petitioner has submitted that it is a case where the petitioner had objected to appointment of Insp./Exe. R.C.Bodh as Inquiry Officer at the initial stage. His request to furnish the relevant documents to enable him to prepare his defence was not fully acceded to. Thus, it is a case where Inquiry Officer was biased and in the absence of

relevant documents not being supplied, principles of natural justice have been violated and petitioner had not been given a fair trial. It has been further submitted that despite many loopholes in the testimony of the prosecution witnesses regarding the manner in which the petitioner was taken to the Duty Room and searched as well the alleged recovery and the authenticity of the seizure memo, there was convincing evidence in the form of DW-1 and DW-2 to establish that the gloves belonged to DW-1 Sh.Kotwal Singh which were taken by Ct.R.S.Pathak and money was found hidden in the gloves and not recovered from the person of petitioner, the charges have been held to be proved without any basis and it is a case of no evidence. Learned counsel for the petitioner has also submitted that the punishment of compulsory retirement awarded to the petitioner is disproportionate to the gravity of the misconduct.

13. The above contentions raise the following issues:-

- (i) Whether the Inquiry Officer being of the same unit was biased?
- (ii) Whether the petitioner was not provided the relevant documents and has not been given a fair trial?
- (iii) Whether it is a case of no evidence?
- (iv) Proportionality of the penalty?

Contention No.1

14. Annexure P-3 to the writ petition is inquiry notice dated June 02, 2004 and Annexure P-5 is a request by the petitioner for change of Inquiry Officer wherein he requested for change of Inquiry Officer on the ground '*I do not see any possibility of getting justice from any officer of this Unit*'. Annexure P-6 is communication dated June 12, 2004 by the Commandant asking the petitioner to explain the basis of his apprehension of not getting

justice from an officer of the Unit. Annexure P-7 dated June 14, 2004 is a response from the petitioner repeating his earlier assertion and insisting for an Inquiry Officer from another Unit. This request was rejected by the Commandant vide letter dated June 17, 2004 (Annexure P-8) informing the petitioner that he had not been able to give any reason on the basis of which he feared denial of justice. Thus, the request for appointment of Inquiry Officer from some other Unit was unjustified being rejected. The petitioner had failed to bring on record any rule which requires the Inquiry Officer to be from some other Unit. In his various requests to the Commandant, CISF the petitioner did not allege any malice or bias towards the Inquiry Officer appointed by the Disciplinary Authority. Rather in his request dated June 07, 2004 for change of officer the petitioner expressed his apprehension of not getting justice from any officers of the Unit which shows that the petitioner had absolutely no reason to allege bias/malice against the Inquiry Officer Inspector/Exe. R.C.Bodh who conducted the inquiry. In the absence of any material we are unable to agree with the learned counsel for the petitioner that Inquiry Officer had any bias towards the petitioner. The petitioner cannot take any advantage by just making such assertions against the entire Unit.

Contention No.2

15. On June 05, 2004 the petitioner submitted an application (Annexure-P4) for providing the following documents:-

- 1. Complaint made by the complainant,*
- 2. Seizure letter,*
- 3. Copy of memo conducting personal search,*
- 4. Copy of statement made by the complainant,*

5. Any G.D.in this regard,

6. Copy of the letter accepting the guilt, as has been mentioned in the charge-sheet,

7. Certified copy of the order of the Disciplinary Authority with regard to conducting personal search,

8. The process of initial enquiry.

16. During personal hearing on July 12, 2004 in departmental inquiry the petitioner was put Question No.8 : whether he required copy of any document in connection with the inquiry to which he replied that he would apply by July 13, 2004 by filing an application.

17. The request of the petitioner to supply the documents was acceded to vide letter dated August 03, 2004 (Annexure P-10) as under :-

1. Company Commander is fully authorized to conduct search in case of suspicion in respect to his subordinate for which there is no need of complaint, and no such document has been shown in relation to complaint in the issued Annexure-3.

2. Copy of seizure memo is annexed.

3. Copy of search memo is not mentioned in annexure No.3, on which basis charge was alleged.

4. Copy of statement of witnesses attached.

5. There is no such type of document as displayed in memo item-3.

6. In the requesting room, charge was admitted by the applicant and a request was made for pardon photocopy of comments in requesting room register SL No.297 is enclosed.

7. In this connection it has been clarified in Sl.No.1 and there is no document shown of such type in memo item No.3.

8. *Copy of preliminary enquiry is given.'*

18. There is another communication dated August 23, 2004 (Annexure P-11) on the subject addressed by the Commandant to the petitioner intimating him that all the required documents under Rule 36 of CISF Rules 2001 shown in Section 3 of the memo have been given to him vide letter No.6146 dated August 07, 2004, receipt of which was given by the petitioner to the office on August 12, 2004.

19. From the above communications it is ample clear that copies of all the documents which existed were furnished to the petitioner and for the remaining documents the petitioner was informed about non-existence of such documents. In the absence of any material to establish bias against the Inquiry Officer or not supplying the documents despite being in existence, it is not open to the petitioner to allege bias against the Inquiry Officer or denial of fair trial for non-supply of the documents which were infact not in existence and petitioner was duly informed accordingly.

Contention No.3

20. Learned counsel for the petitioner has infact required us to appreciate the evidence to support his contention that it was a case based on no evidence. The legal position on the subject as summarised in the case of AIR 2006 SC 1214 Govt. of A.P. & Ors. vs. Mohd. Narsullah Khan and noted as under:

'11. By now it is a well-established principle of law that the High Court exercising power of judicial review under Article 226 of the Constitution does not act as an Appellate Authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by re-appreciating the evidence as an Appellate Authority.

21. Now the question arising for consideration is whether on appreciation of testimony of witnesses the Inquiry Officer was right in arriving at the conclusion that the charges have been proved or it was a case of no evidence.

22. The inquiry report was submitted after analysing the testimony of prosecution witnesses as well defence witnesses. The Disciplinary Authority while passing the final order on January 29, 2005 took into consideration the inquiry report as well the response of the petitioner to the said report. The Disciplinary Authority has noted that in his response dated December 23, 2004 the petitioner raised the following issues :-

- (i) Charge has been levelled against him by some officer to spoil his career.
- (ii) Ct.Harbir facing similar allegations stands acquitted,
- (iii) No direct evidence to prove the charge.
- (iv) ASI Ram Prasad did not see the petitioner wearing the gloves.
- (v) As per the petitioner gloves were taken from Sh.Kotwal Singh DW-1 by Ct.R.S.Pathak and given to Inspector Mahender Pratap. Even the gloves have not been seized.
- (vi) Signature of the petitioner not appearing in seizure memo.
- (vii) The petitioner was not supplied the documents requested by him.
- (viii) His request for change of Inquiry Officer was not acceded to.
- (ix) Signatures of Ct.R.S.Pathak do not appear in seizure memo.
- (x) Inquiry Officer had put twenty questions to him.
- (xi) One Head Constable and two other Constables posted with him have not been searched nor cited as a witness for acceptance of money by the petitioner from the Drivers.

(xii) Inspector Mahender Pratap was not authorised to conduct the search when Company Commander Salim Mohd. was present.

(xiii) Seizure of bribe money is not admissible in the absence of ocular evidence.

(xiv) Punishment cannot be given on the basis of those cases where final orders have been passed.

23. The Disciplinary Authority individually dealt with all the contentions while accepting the report of the Inquiry Officer. The testimony of the witnesses cumulatively examined by the Inquiry Officer before returning the finding of guilt was also considered by the Disciplinary Authority in the light of various contentions raised by the petitioner in his representation. The petitioner has failed to show that the conclusion arrived at in the matter is perverse or based on no evidence as to require interference by this Court in exercise of its power of judicial review.

Contention No.4

24. The offence said to have been committed by the petitioner was of accepting bribe from the Drivers passing through the New Gate of CISF Unit, IOC, Mathura Refinery where the petitioner was on duty. The gravity of the offence has to be measured with the nature of the duty the offender was performing. The petitioner was a member of disciplined force and he was performing duty at New Gate of CISF Unit, IOC, Mathura Refinery. His misconduct in permitting the vehicles to pass after greasing his palm could have led to a serious security lapse at important Industrial Establishment i.e. IOC, Mathura Refinery. We notice that when the oral complaint was received about the misconduct, no disciplinary action was taken rather a chance was given to the petitioner to stop indulging in

collecting money from the Drivers passing through the gate. It was only when the counselling by Company Commander Salim Mohd. fell on deaf ear and complaint continued pouring that Inspector Mahender Pratap alongwith Company Commander Salim Mohd. decided to conduct a search which ultimately led to the recovery of ₹120/- from the gloves worn by the petitioner.

25. In the various judicial pronouncements the Supreme Court has held that the punishment should always be proportionate to the gravity of misconduct, however, in a case of corruption/misappropriation, the only punishment is dismissal. (Ref. AIR 2006 SC 2730 Divisional Controller N.E.K.R.T.C. vs. H.Amaresh, (2008) 1 SCC 115 U.P.S.R.T.C. vs. Uniod Kumar and AIR 1996 SC 1249 Municipal Committee, Bahadurgarh vs. Krishnan Bihari & Ors.).

26. The petitioner has been awarded penalty of compulsory retirement with full pensionary benefits. The punishment awarded to the petitioner cannot be termed to be shockingly disproportionate to the gravity of the misconduct as to call interference by this Court.

27. The writ petition has no merits and the same is dismissed.

28. No costs.

(PRATIBHA RANI)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

March 26, 2015
pg/st