

THE HON'BLE SRI JUSTICE M.S.K. JAI SWAL

WRIT PETITION No.20359 of 2007

ORDER:

This writ petition is filed questioning the order of the 2nd respondent, dated 05.01.2007, by and under which, the 2nd respondent confirmed the order of the 3rd respondent, dated 01.08.2006, whereunder, the penalty of reduction of pay and also treating the period from 02.07.2005 to 18.01.2006 as *dies non* imposed against the petitioner was confirmed.

Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents. Perused the material on record.

The petitioner is a constable in Central Industrial Security Force (for short "CISF") and was discharging duties as such since 20.12.1991. While he was working at CISF Unit, BHEL on 22.11.2004, respondent No.4 issued a charge memo, dated 14.12.2004 on the ground that the petitioner committed gross misconduct and negligence in discharging his duties and is responsible for unauthorized loading of 4.04 tones extraneous scrapped material, valued approximately Rs.3 lakhs in vehicle, bearing registration No.AP-28 U-263 of M/s.Shiva Enterprises. The petitioner has submitted detailed explanation stating that on 22.11.2004 he was given general shift duty from 06.00 hours to 18.00 hours and his duty is to observe the entire plant area and material movements. The entire plant consisting of about 5 to 6 k.ms and to observe the movements, nearly 3 persons are to be deployed. One Mr.M.Zamam was deployed at the said premises to watch the loading witness duty and when he questioned the said M.Zamam, he replied that the things are

normal. But without considering his explanation, the 4th respondent passed the final orders, removing him from service.

Aggrieved by the order of the 4th respondent, the petitioner preferred appeal before the 3rd respondent/appellate authority. The 3rd respondent, after considering his appeal grounds, modified the punishment of "removal from service" into "reduction of pay by three stages from Rs.3710/- to Rs.3455/- in the time scale of pay for a period of three years." The 3rd respondent while modifying the punishment, further directed to treat the period from 02.07.2005 to 18.01.2006 as *dies non* for all purposes. Questioning the said order, the petitioner filed revision before the 2nd respondent, which was futile. It is further stated that the criminal case, which was filed by the authorities, ended in acquittal, but the said fact was also not considered by the respondents. Hence the writ petition.

The 2nd respondent filed counter denying the contentions of the petitioner. Being a crime and intelligence wing person, the petitioner must have been more vigilant and watchful than the person deployed for loading purpose. It is the duty of the petitioner to observe the unauthorized loading of extraneous materials along with scrap material in which he failed, and hence, the disciplinary authority after considering all the facts and materials, passed the orders in question, in consonance with Rule-55 of CISF Rules, 2001. It is further contended that the departmental enquiry is entirely different from a judicial enquiry and hence the acquittal of the petitioner in criminal case is nothing to do with the departmental enquiry, where the charges against the petitioner were proved beyond any shadow of doubt.

The admitted fact is that the petitioner was working as a Constable entrusted with the Intelligence and Security of the premises of BHEL. It is also not in dispute that the scrap was sold in auction by the officials of the company and that was to be lifted by the transporter M/s.Shiva Enterprises. The charge against the petitioner was as under:-

“An act of gross misconduct and negligence on duty in that No.9122945623 Constable B.S.Rao of CISF Unit BHEL (R) Hyderabad while performing duty in Crime and intelligence wing and detailed for General shift duty at plant/area/material movement from 0600 hours to 1800 hrs on 22.11.04, failed to detect fraudulent/unauthorized loading of 4.04 tones extraneous scrapped materials valued approximately Rs.3 lakhs in vehicle No.AP-28-U-263 of M/s.Shiva Enterprises along with authorized scrap materials and allowed the said truck to go out of 32 stores with dishonest intention knowing it fully well about the unauthorized loading which amounts to an act unbecoming of a member of CISF.”

Learned Counsel appearing for the petitioner vehemently submits that it is not the duty of the petitioner to verify as to whether the material that is loaded by the authorized transporter was the one sold in auction or whether any additional scrap was being loaded in the lorry. It is submitted that it is not as though that any theft has taken place. The purport of the allegation is that when the transporter was authorized to lift the scrap from the premises and in that process, the transporter has loaded an additional scrap of 4.04 tones. Therefore, the petitioner being a Security personnel cannot ascertain as to whether the scrap that is

loaded by the transporter was, in any way, other than the material that has been authorized to be lifted.

It is on record that several officials of the BHEL along with the petitioner, the transporter, the driver and others were prosecuted in a criminal case in C.C.No.673 of 2005 on the file of the AJFCM, Sanga Reddy. The charge in the said criminal case was identical to the charge in the departmental enquiry. In the said criminal case, the Senior Deputy General Manager, MPC, Stores (CMM), BHEL gave evidence in the Court to the effect that at the time of loading the material, the Store Keeper, CISF Personnel, Stock Verifier and one person from Vigilance will be present, that the Senior Stores Officer after verifying the material will affix his signature and that the gate-pass will be signed by two senior Stores Officers. It is evident from the above and is natural that a person entrusted with the job of security cannot be entirely held to be responsible if the authorized transporter has lifted any material over and above to which he was entitled to lift from the premises. It is the personnel of BHEL particularly the Stores people under whose supervision the material was to be lifted, who have to verify as to what is the quantum of the scrap that was authorized to be lifted and that was actually loaded in the lorry by the authorized transporter.

It is also on record that the petitioner was not the only person entrusted with the security of the area at that time of time. One Mr.Zamam and another were also on duty. It is also on record that they are required to move around the premises by way of security measure and even on the date of the incident, the petitioner is said to have moved around the area from where the scrap was being lifted.

The Enquiry Officer found the petitioner guilty and the disciplinary authority accepted the same and imposed the punishment of removal from service. Appeal was preferred by the petitioner and the appellate authority found that imposition of penalty of removal from service of the petitioner is disproportionate to the offence alleged and accordingly modified the punishment as *reduction of his pay by three stages from Rs.3710/- to Rs.3455/- in the Time Scale of Pay for a period of three years and further directed that during the period of reduction, he will not earn increments of pay and that after completion of punishment, the reduction will have effect of postponing his future increments of pay.*

This, according to the learned Counsel appearing for the petitioner, is also disproportionate to the alleged act of omission on the part of the petitioner. It is submitted that the petitioner cannot at all be said to be responsible for the contractor lifting excess stock and he is not supposed to weigh the scrap that is being taken out by the authorized transporter. Therefore, he prayed that the punishment as imposed by the competent authority to be set aside. In support of his contentions, the learned counsel for the petitioner has placed reliance on the following authorities.

In U.SEKHAR BABU v. GOVERNMENT OF ANDHRA PRADESH AND OTHERS¹, the facts were that the petitioner was working as Sub-Inspector of Police and out of depression, he is alleged to have gone into the room and fired three rounds from his revolver. Enquiry was initiated, report was submitted holding that the charge against the petitioner was proved. The disciplinary authority passed the orders removing the petitioner from service. In the appeal, the appellate authority reduced the punishment to the one of reduction of *time scale of pay* of two stages for

¹ 2014 (2) ALD 239 (DB)

two years with effect on future increments and pension and treating the period of suspension from 06.01.1994 to 09.02.1995 as not on duty. The petitioner filed a revision which was dismissed. He filed O.A. before APAT which was dismissed. After taking into consideration the facts and circumstances of the case, a Division Bench of our High Court allowed the writ petition modifying the punishment as imposed by the appellate authority and in that place, punishment of stoppage of two increments without cumulative effect was imposed. The suspension period was directed to be treated as on leave but the petitioner was not entitled to any back wages.

In M.PERIYA DASAN v. DY.INSPECTOR GENERAL, CHENNAI AND ANOTHER², the petitioner was the Sub-Inspector in the Central Industrial Security Force of Visakhapatnam Steel Plant. The allegation was that he failed in his duties to supervise the constables and on account of which a constable has permitted entry of two labourers by receiving Rs.5/- from each. Enquiry was initiated and charge was held proved. The disciplinary authority imposed punishment of stoppage of two increments with cumulative effect. The appeal was rejected. Hence, the writ petition was filed. The Division Bench of our High Court held that assuming the occurrence was proved, the lapse on the part of the petitioner can be established, if only it was proved that he was not discharged the duties assigned to him. It was further observed that in the CISF, the duties of each and every personnel are defined in clear terms and only when any specific duty, which was assigned to the petitioner, was found to be not discharged, he can be accused of his lapses. In that view of the

² 2014 Law Suit (Hyderabad) 746

matter, the Division Bench allowed the appeal and restored the increments, but, however, directed that the arrears of salary on account of setting aside the punishment shall be restricted only to 50%.

In STATE OF ANDHRA PRADESH AND ANOTHER v. Y.V.RAMANA³, the respondent was working as a Town Planning Supervisor. Alleging that there was failure on his part to prevent unauthorized construction, charge memo was issued, enquiry was conducted and the disciplinary authority imposed the punishment of stoppage of two annual increments with cumulative effect. Appeal was dismissed. The respondent preferred O.A. before the Tribunal which was allowed and aggrieved thereby, the State preferred the writ petition. After taking into consideration the facts and circumstances of the case, the Division Bench of our High Court observed that the punishment imposed against the respondent was one of stoppage of two annual grade increments with cumulative effect, that but for the fact that the stoppage of increments was with cumulative effect, it would have been a minor penalty. The Division Bench has modified the punishment to the one of without cumulative effect instead of with cumulative effect.

Similarly, in W.P.No.968 of 2004, a learned single Judge of our High Court by Judgment, dated 23.12.2010, modified the punishment of withholding of the increments with cumulative effect to be without cumulative effect as the charge against the employee was that there was delay in remittance of professional tax. Enquiry was initiated and the Enquiry Officer found the charge as not proved but the disciplinary

³ 2014 (1) ALD 757 (DB)

authority disagreed with his findings and differed with the same and imposed the punishment without issuing any notice to the delinquent.

Keeping in mind the authoritative pronouncements of our High Court reported supra and having perused the entire material on record, even though it cannot be said that the petitioner was completely innocent, but the record reveal that there are several other people who are more responsible than the petitioner. Therefore, the punishment as imposed by the appellate authority can be modified to the effect that withholding of increments for a period of three years should be without cumulative effect but not as cumulative effect, as ordered by the appellate authority.

In the result, the writ petition is allowed in part, to the extent indicated above. No order as to costs.

The miscellaneous petitions, if any, filed in this writ petition, shall stand closed.

Date: 10th October, 2017
Dsr/smr

M.S.K.Jaiswal, J

