

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

+ **W.P.(C) 7410/2016**

Reserved on: 18th August, 2017
Date of decision : 6th September, 2017

HC SUBEY SINGH Petitioner
Through Mr.Siddharth, Advocate

versus

UNION OF INDIA & ORS. Respondents
Through Ms.Sangita Rai, SCGC with
Mr.Pradeep Tomar, Advocate

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J.

The petitioner has challenged before us the order dated 21.12.2011 passed by the respondent No.3, Commandant, Central Industrial Security Force (CISF), imposing a punishment of reduction of pay (pay scale 5200-20200) by three stages from Rs.10,260/- + 2800/-(G.Pay) to Rs.9150/- + 2800/- (G.Pay) in the time scale for a

period of three years with immediate effect. It was further ordered that the petitioner would not earn any increment during the period of reduction and that on expiry of this period, the reduction would have the effect of postponing his future increment of pay.

2. The petitioner has further challenged the order dated 19.04.2012 passed by the Deputy Inspector General, Northern Zone by which his appeal has been dismissed.

3. The petitioner, vide memo dated 15.09.2011 was charged as follows:

CHARGE

“On 05/09/2011 between 1300 hrs and 2100hrs No.854300501, HC/GD, Sube Singh, CISF Unit Samadhi Sthal, Delhi, was detailed in B shift to perform duty with arms at Vijay Ghats and to perform his duty he was issued with 01 SMG (butt no.2, registration no.16006372), 03 magazines and 96 rounds of 9 mm at 1220 hours, after completion of duty, member of force deposited one SMG (butt no.2, registration no.16006372), 03 magazines and 64 rounds of 9 mm in the kot at 2125 hours. Force personnel was personally responsible for safe guarding by keeping in custody, arms and ammunition issued to him for performance of his duty by the kot, and after completion of his duty he ought to have deposited the arms and ammunition in correct numbers and in safe condition in the unit Kot but he did not do so and has been negligent in the safe condition of ammunition and lost 32 rounds of 9 mm.

Being a head constable of armed and disciplined force, he has been negligent in keeping arms and ammunition under proper safe guard and lost 32 rounds of 9 mm, shows gross negligence towards his responsibility and duty and indiscipline. Thus he charged."

4. The Departmental Inquiry ordered against him finally culminated in the impugned order dated 21.12.2011 awarding the above mentioned penalty to the petitioner.

5. The main grievance of the petitioner is that the missing rounds of ammunition were later recovered, which fact was ignored by the Disciplinary Authority while imposing punishment and also by the Appellate Authority while dismissing the appeal. Further there was failure to make sincere effort to trace the missing rounds of ammunition.

6. We are unable to appreciate the said arguments. The petitioner does not deny that 32 rounds of ammunition issued to him went missing on 05.09.2011 while he was posted at Vijay Ghat. He in fact admitted having removed the magazines from his pouch when he went to fetch drinking water. We find nothing wrong with the impugned orders holding him guilty of the charges levelled against him. Recovery of ammunition at a later stage would not absolve the

petitioner of the gross negligence and remissness in misplacing the ammunition at the first stage. Regarding immediate effort made by the respondents to recover the ammunition, the respondents have submitted in their counter affidavit that sincere steps were taken, including registration of FIR. In any case, the assertion is again of no relevance to the charge proved against the petitioner because in case the ammunition was not recovered, the charge would have been different.

7. The petitioner, as stated above, has sought to contend that he had gone to fetch water from a nearby source, there being no portable water/provision of washroom at the ground post, and that since there was no other person on ground duty at the material time, the said circumstances should have been taken into account while imposing punishment on him. We, however, do not find any merit in this submission made by the petitioner. The submission predicated on disproportionality must be rejected and repelled, as the charge of failure to keep and take care of the ammunition was grave and serious. It was not a trivial and minor matter.

8. Supreme Court in the case of ***Government of India and Anr. v. George Philip***, (2006) 13 SCC 1 has summarized the position of law with respect to the jurisdiction of High Court, while hearing petition against the quantum of punishment imposed by the Disciplinary Authorities, in the following words:

“11. It is trite that the Tribunal or the High Court exercising jurisdiction under Article 226 of the Constitution are not hearing an appeal against the decision of the disciplinary authority imposing punishment upon the delinquent employee. The jurisdiction exercised by the Tribunal or the High Court is a limited one and while exercising the power of the judicial review, they cannot set aside the punishment altogether or impose some other penalty unless they find that there has been a substantial non-compliance with the rules of procedure or a gross violation of rules of natural justice which has caused prejudice to the employee and has resulted in miscarriage of justice or the punishment is shockingly disproportionate to the gravamen of the charge.”

9. Similarly in ***Union of India v. Diler Singh***, (2016) 13 SCC 71, the Supreme Court has held that unless the punishment imposed by the Disciplinary Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. The Court further held that as a member of a disciplined force, deviation from discipline and failure to follow the rules would not normally warrant any leniency.

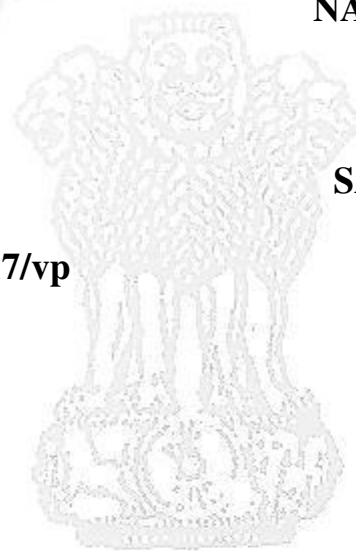
10. In the present case, the petitioner has been found guilty of misplacing 32 rounds of ammunition. This was a serious misconduct and we find nothing disproportionate in the penalty imposed.

11. Resultantly we find no merit in the present writ petition. The same is accordingly dismissed, with no order as to cost.

NAVIN CHAWLA, J

SANJIV KHANNA, J

SEPTEMBER 06, 2017/vp



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