

HON'BLE SRI JUSTICE SURESH KUMAR KAIT

AND

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT APPEAL No.283 OF 2018

JUDGMENT: (Per Hon'ble Sri Justice Suresh Kumar Kait)

Vide present Writ Appeal, the appellants viz., Union of India and Central Industrial Security Force (Ministry of Home Affairs), challenged validity of the order dated 10.10.2017 in W.P. No.20359 of 2007.

2. Brief facts of the case are that the respondent viz., B.S. Rao, is a Constable in Central Industrial Security Force (for short 'CISF') and has been discharging duty as such since 20.12.1991. While he was working at CISF Unit, Bharat Heavy Electricals Limited, Ramachandrapuram, Hyderabad, on 22.11.2004, appellant No.4 issued a charge memo dated 14.12.2004 on the ground that he committed gross misconduct and negligence in discharging his duties and is responsible for unauthorized loading of 4.04 tonnes of extraneous scrapped material, valued approximately at Rs.3.00 lakhs, in vehicle bearing registration NoAP-28-U-263 of M/s. Shiva Enterprises, Subhash Nagar, IDA Jeedimetla, Hyderabad. Accordingly, the respondent submitted a 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 was to observe the entire plant area and

material movements. The entire plant consists of about 5 to 6 kilometers and to observe the movements, nearly three (3) persons are to be deployed. One Mr. M. Zaman, Constable, was deployed at the said premises as loading witness and when the respondent questioned the said M. Zaman, Constable, he replied that everything is normal. But, without considering his explanation, appellant No.4 viz., Commandant, Central Industrial Security Force (Ministry of Home Affairs) CISF Unit, BHEL, Hyderabad, passed final orders removing him from service.

3. Aggrieved of the order of removal from service, the respondent preferred appeal before the appellate authority i.e., appellant No.3 herein viz., The Deputy Inspector General/SZ, Central Industrial Security Force (Ministry of Home Affairs), CISF South Zone Head Quarters, 'D' Wing, Rajaji Bhavan, Besant Nagar, Chennai. Respondent No.3, after considering the appeal grounds, modified the punishment of "removal from service" into "reduction of pay by three stages i.e., from Rs.3,710/- to Rs.3,455/- in the time scale of pay for a period of three years." The appellate authority 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 respondent preferred revision before the revisional authority i.e., appellant No.2 herein viz., The Inspector General, Central Industrial Security Force (Ministry of Home Affairs), South

Sector Head Quarters, Chennai, which was futile. The criminal case which was filed by the authorities ended in acquittal, but the said fact was also not considered by the appellants. Being aggrieved of the punishment imposed by the appellate authority, the respondent filed W.P. No.20359 of 2007.

4. The case of the appellants is that the respondent has accepted that he had checked the material invoice of M/s. Shiva Enterprises, when its truck was parked for loading at Platform No.1, 32 Stores area, in the presence of Constable Moniru Zaman and others. When the respondent had checked the documents, he may have checked the materials lying at Platform No.1, 32 Stores area, loading site of Vehicle No.AP-28-U-263, but, he did not take any preventive measures to avoid loading of extraneous material. It is evident from the surprise check report at the scrap yard conducted at 16-35 hours on 22.11.2004 which was also signed by the charge official along with PW.01, PW.03, PW.04, PW.09 and others that there was no lot number marked on the scrap material and it was lying mixed which has been exhibited by PW.01 as Ex.01.

5. Further case of the appellants is that M/s. Shiva Enterprises has accepted that the respondent had visited the loading site of vehicle for three times i.e., at 10.15 hours, 12.40 hours and 13.40 hours, but he has not mentioned duration of his each visit. He has nowhere mentioned in his written defence statement that as to how many times

and at what time he has visited the other three scrap loading vehicles during his duty on 22.11.2004. Secondly, in his written defence statement, he has submitted duties and responsibilities of BHEL/CISF employees detailed for loading duties, but not about his duties. In addition to above, he has taken a plea that he was not detailed for a particular vehicle scrap loading duties, but, it was the duty of CIW staff i.e., charge official's duty to prevent and detect the crime.

6. During arguments, the learned Assistant Solicitor General of India appearing for the appellants has furnished some papers and the same are taken on record. As per page No.7 of the said papers, the first weight of the registered vehicle No.AP-28-U-263 recorded on 22.11.2004 at 08.53.36 hours was '3.28' tonnes when the it entered into BHEL factory area. The out time of the said vehicle is 14.04.42 hours and weight recorded is '9.28' tonnes. As per the admitted case of the appellants, M/s. Shiva Enterprises was allowed to load 6.00 tonnes in the registered vehicle No.AP-28-U-263. Thus, the weight of the vehicle while it was going out was six (6) tonnes. It is nowhere mentioned as to how much scrap was allowed to be loaded in the said vehicle. However, it is stated in the charge memo that '4.04' tonnes of extraneous material was loaded, due to dereliction of duty of the respondent. Only during the course of arguments, it is stated that the said vehicle was allowed to load (to be loaded) six (6) tonnes, however, thereafter, on verification, it was found that at

around 15.30 hours that '4.04' tonnes of extraneous material was loaded in the said vehicle over and above the sanctioned load.

7. In the defence statement submitted by the respondent to the enquiry officer, it is specifically stated that he was performing duty in CIW since 05.08.2003. Since then, he has been performing his duties very sincerely, for which, he has been rewarded 7 to 8 times by various authorities. On 22.11.2004, he was detailed for general shift duty from 06.00 hours to 18.00 hours for plant area and materials. It is specifically stated that generally three (3) personnel of CIW were always being detailed for general shift duty i.e., one for 'A' Coy PTL, second for 'B' Coy PTL and the third for materials movements of the entire plant. The entire plant of BHEL is about six (6) kilometers, but due to shortage of manpower on 22.11.2004, he alone was detailed for general shift to watch the entire plant area movements including the material movements. It is further stated that his duty in CIW relates to watch the movements of men (employees, society workers, apprentices, LWCs and visitors) at the gates and inside the plant including the duties and movements of CISF personnel deployed for duties inside the plant. Moreover, his duty is also to watch the movements of the material that are coming from outside through 'J' gate (material gate) as well as material going outside the plant from the said gate. In addition to above, the respondent has to watch the movements of other materials lifting from other places to go

outside the plant like S.C.L., CDC, 32 Store auctioned / sold material, garbage shifting and internal movements of the materials from one block to another block.

8. It is pertinent to mention that on 22.11.2004, loading was carried out at 32 Stores area in 04 places and for that purpose, one representative from BHEL Management (Finance Section) and one Constable from CISF security wing was deployed for witnessing the above loading in each vehicle.

9. As per the instructions contained in 'Chapter - V' of 'Witnessing of auction sales and delivery of materials' of stock verification of BHEL Management circular, the stores officer concerned is responsible for delivery of stores and scrap sold based on the authority issued by the officer concerned in the form of SIV/delivery challan. The loading and delivery of the stores and scrap shall be done in the presence of representative of Stores, Stock Verification Section and Security. The nominated representative of stock verification section besides those of Stores and Security will be present at the spot of loading and complete loading will be done in their presence. Accordingly, on 22.11.2004 for loading of scrap material in vehicle No.AP28-U-263 at 32 Stores area, Sri A. Krishna, Artisan Grade-III (Slinger of BHEL Management) was the loading witness along with Constable M. Zaman. The other

representatives of BHEL Management were detailed for remaining three vehicles.

10. In vehicle No.AP-28-U-263, which is in question, Shri A. Krishna, Artisan Grade-III (Slinger), was responsible for loading. He was available full time during the course of loading along with Constable M. Zaman, Shri C.V. Raja Reddy, Senior Stores Officer and Shri P. Sankar Rao, Store Keeper, who are from Stores Department, and that they are fully responsible for scrap loading in the said vehicle as per the instructions of BHEL Management circular Chapter V.

11. It is important to note that on 22.11.2004, during his course of general shift duty, the respondent visited loading point of the vehicle in question at three different times when the loading was under process i.e., at about 10.00 - 10.15 hours, 12.35 - 12.45 hours and 13.30 - 13.40 hours, and enquired with Constable M. Zaman, detailed as loading witness, and verified the documents related to loading of the said vehicle. He has also verified the scrap material, which was being loaded in the said truck. The constable, M. Zaman, replied him that everything is 'O.K.' He has visited '32 Store area' at three times and has seen Shri C.V. Raja Reddy, Senior Stores Officer, Shri P. Sankar Rao, and Shri A. Krishna and Constable M. Zaman, found standing at the loading point where vehicle No.AP-28-U-263 of M/s. Shiva Enterprises was parked and loading was in process.

12. PW.5 - Shri R. Shyam Prasad, Constable, and PW.8 - Shri Veer Shetty, proprietor of M/s. Shiva Enterprises, have stated in their statement that the respondent has visited the site at three different times.

13. It is admitted case of the appellants that, at the entry point, there were no specific instructions to the respondent as to how many items are allowed to be loaded and how much load is to be allowed in the vehicle in question. There is no weighing machine at the gate, which can establish weight of the empty vehicle and loaded vehicle at the time of entry and exit respectively.

14. As per the documents handed over, during the course of arguments, by the Assistant Solicitor General of India, it is clear that the lorry was loaded at 14.04.42 hours and the weight was '9.28' tonnes and first weight of the lorry was 3.28 tonnes. Thus, the said lorry had taken six tonnes of load as authorized by the BHEL Management. It is not disputed that for general shift duty, for which the respondent was deputed, three (3) constables have to be deployed, however, on 22.11.2004, respondent alone was deployed due to shortage of officers. Thus, the respondent had to move around six (6) kilometers to check whether there is any unauthorized entry inside the factory or unauthorised material is taken outside. It is undisputed that the vehicle bearing registration No.AP-28-U-263 has authorizedly entered '32 Store' area to take six tonnes of load. This fact was not

conveyed in writing to the respondent. In addition to the above, it is also not conveyed that the Constable M. Zaman was deputed on three (3) vehicles including the vehicle in question to check the material.

15. For the foregoing reasons, we find no ground to interfere with the order under challenge.

16. Therefore, the Writ Appeal is dismissed at the admission stage itself. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the present Writ Appeal stand dismissed.



SURESH KUMAR KAIT, J

ABHINAND KUMAR SHAVILI, J

July 3, 2018.

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