

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.17083 OF 2010

ORDER:

1. This writ petition is filed seeking to issue a writ of Mandamus declaring the order dated 6.5.2009 passed by the disciplinary authority imposing the punishment of reduction of pay by two stages from Rs.10,710/- to Rs.10,080/- in the pay band of Rs.5,200---20,200 with grade pay of Rs.2,400/- for a period of one year with immediate effect, which was confirmed by the appellate authority vide order dated 4.9.2009 and revisional authority vide order dated 28.4.2010 as illegal and arbitrary, and consequently, to set aside the same.

2. Heard Smt. K. Udaya Sri, learned Counsel for the petitioner; Sri K. Lakshman, learned Assistant Solicitor General, Smt. M. Indrani, Smt. B. Vaijayanthi, for the respondents.

3. It is the case of the petitioner that he joined in Central Industrial Security Force (CISF) as constable on 3.4.1989 and he came on transfer to Visakhapatnam Steel Plant on 30.6.2008 from Cochin Port Trust. On 13.11.2008 he was allotted day shift duty from 5.00 hours to 17.00 hours at

New Out going Vehicle BC-7 for making entries of outgoing vehicles in computer. He performed his duties as usual and after relieving himself from duty, while he was checking out and coming towards shift in-charge room to go by shift vehicle to unit lines, one O.S. Tyagi, Inspector checked him and found no material with him. At that time, along with him, one K. Govindaraju, Head Constable was passing. The said Inspector checked the tiffin box which was carried by the said Govindaraju and found a piece of paper with some currency notes worth Rs.795/-. An entry was made in General Diary to that effect. The petitioner signed on the seizure memo. Thereafter, on 14.11.2008, the Commandant, CISF, Visakhapatnam placed the petitioner under suspension with immediate effect. On 28.11.2008, a Memo was issued by the Senior Commandant, CISF, Visakhapatnam Steel Plant alleging that the petitioner involved in collection of money in illegal manner. The petitioner submitted his explanation. Being not satisfied with the same, enquiry was conducted. The enquiry officer after conducting enquiry held that the charge levelled against the petitioner was not proved. However, disagreeing with the said finding, the disciplinary authority issued a memo on 25.3.2009, for which the petitioner

submitted his representation. Thereafter, the disciplinary authority issued final order dated 6.5.2009 imposing punishment of reduction of pay by two stages from Rs.10,710/- to Rs.10,080/- in the pay band of Rs.5,200/- - 20,200/- with grade pay of Rs.2,400/- for a period of one year with immediate effect. It was ordered that the period of suspension from 14.11.2008 to 6.5.2009 shall be treated as suspension only (non-duty). The appeal and revision preferred by the petitioner against the order of the disciplinary authority were rejected. Aggrieved by the same, the petitioner filed this writ petition.

4. Learned Counsel for the petitioner contended that there is no iota of evidence to establish the charge leveled against the petitioner and that the amount recovered from the tiffin box belongs to the Head constable K. Govindaraju and that the enquiry officer has rightly concluded that the charge against the petitioner was not proved and in spite of the same, on surmises and conjectures, the disciplinary authority imposed punishment disagreeing with the findings of the enquiry officer on the ground that the petitioner put his signature in seizure memo. She further contended that there are interpolations

in the seizure memo and therefore, the seizure memo should not have been relied upon by the disciplinary authority. Further, she contended that before issuing disagreement note, the disciplinary authority can only indicate the areas of disagreement, but the disciplinary authority cannot hold that the charge framed against the petitioner is proved, and that the action of the disciplinary authority in holding as such and issuing show cause notice to the petitioner to submit his representation to the said disagreement note, is nothing but an empty formality, and the disciplinary authority already came to conclusion before submission of the objections by the petitioner and it would indicate the mind of the disciplinary authority. She further contended that the disciplinary authority failed to appreciate the evidence in a proper perspective and that the findings of the disciplinary authority are perverse and that the petitioner rendered 22 years of unblemished service, and except this incident, there are no other incidents and therefore, impugned orders are liable to be set aside. In support of her contentions, the learned Counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in ***S.P. Malhotra Vs. Punjab National***

Bank and others¹ wherein the Hon'ble Supreme Court extracted the judgment rendered in **Punjab National Bank Vs. Kunj Behari Misra** (1998) 7 SCC 84 as under:

Kunj Behari Misra itself was the case where the Disciplinary Authority disagreed with the findings recorded by the Enquiry Officer on 12.12.1983 and passed the order on 15.12.1983 imposing the punishment, and immediately thereafter, the delinquent officers therein stood superannuated on 31.12.1983. In Kunj Behari Misra (supra), this court held as under:

"The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

5. The learned Counsel for the respondents contended that the petitioner is a member of Armed Force and he put in 22 years of long service and by virtue of his experience, it is known to him that it is not necessary for him to put his signature on the seizure memo as a token of acceptance of recovery of money, if the money was not recovered from him as pleaded by him, and that the petitioner is

¹ (2013) 7 SCC 251

responsible for the present act of misconduct and dishonesty and that the punishment imposed by the disciplinary authority is well commensurate with the gravity of offence committed by the petitioner and therefore, the orders impugned do not warrant any interference.

6. This Court has considered the submissions made by the parties and the material available on record. In the instant case, the disciplinary authority disagreed with the findings of the enquiry officer vide memo dated 25.3.2009 in the following manner:

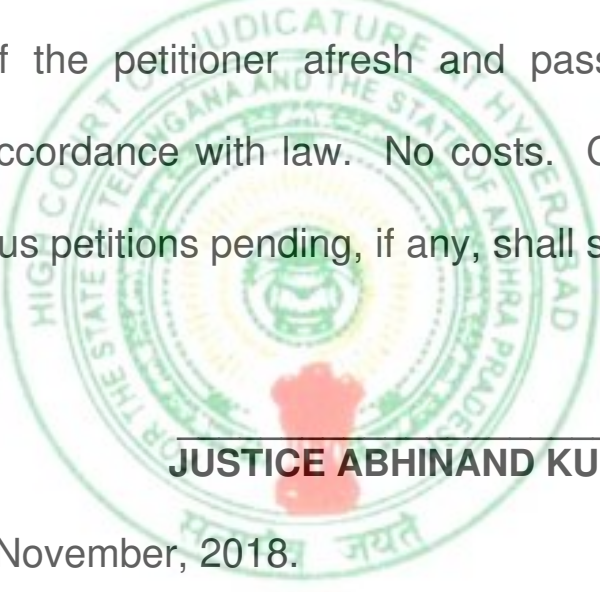
“The Disciplinary authority is of the opinion that misconduct of collection of money in illegal manner on the part of constable Varghese V.M. is proved. Hence, I hold that the charge framed against the charged official is proved.”

In the next paragraph, the disciplinary authority gave opportunity to the petitioner to submit his representation against the findings of the disciplinary authority within 15 days.

7. Perusal of the above finding of the disciplinary authority would indicate that the disciplinary authority has already come to a conclusion that the charge levelled against the petitioner was proved in spite of the fact that

the enquiry officer gave report holding that the charge was not proved. This lacuna of prejudging the issue was pointed out by the petitioner to the disciplinary authority and the appellate authority, but the same was not considered. Therefore, the impugned orders are liable to be set aside and accordingly, set aside.

8. Accordingly, the Writ Petition is allowed and the matter is remanded to the disciplinary authority to consider the case of the petitioner afresh and pass appropriate orders, in accordance with law. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.



JUSTICE ABHINAND KUMAR SHAVILI

Dated: 23rd November, 2018.
Nn.

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.17083 OF 2010



23/11/2018

Nn.