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

+ W.P.(C) 96/2018

SARITAH KUMARI Petitioner

Through: Mr.P.Sureshan, Advocate

versus

DIRECTOR GENERAL CENTRAL
INDUSTRIAL SECURITY
FORCE AND ORS.

..... Respondents

Through: Mr.Abhay Prakash Sahay, CGSC
with Mr.R.L.Sinha, Advocate

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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17.04.2018

1. The petitioner has laid a challenge to the order dated 12.11.2016, passed by the Disciplinary Authority i.e. Assistant Commandant, CISF Unit, IGI Airport whereby she was awarded a penalty of "*stoppage of one year increment without cumulative effect*" and the orders dated 01.05.2017 and 27.07.2017, passed by the Appellate Authority i.e. Senior Commandant CISF Unit, IGI Airport and the Revisional Authority i.e. Deputy Inspector General (CASO), CISF Unit, IGI Airport, respectively upholding the penalty imposed on her by the Disciplinary Authority.

2. The petitioner was enrolled as a Constable in the CISF in the year 2007. Prior to her being posting in the CISF Unit at the IGI Airport, Delhi, she had served with various units. On 16.10.2016, the petitioner was

deputed at the IGI Airport International Ladies Frisking Booth No.2 in the third shift. The petitioner was required to check all the female passengers, as provided in SOP Security Check Guidelines.

3. A passenger by the name of Jatinder Kaur Bajaj, who was scheduled to board Flight No.AI-101 to New York, was cleared after a security check by the petitioner, who affixed her seal No.595 on her Boarding Pass. At the time of SLPC, the Air India Security Staff found that the said passenger was carrying a Kirpan on her person.

4. In view of the above security lapse, the petitioner was proceeded against under Rule-37 of CISF Act Rules-2011 vide Charge Memorandum dated 17.10.2016, containing the following imputation:

“Force No.0743801011 Lady constable/GD Sarita Kumari (S-1) Company, CISF Unit, IGI Airport, New Delhi on 16.1.2016 had been deputed for doing frisking duty in her third shift duty at Ladies frisking booth No.2. Time around 0039 one lady passenger name Bajaj Jatinder Kaur who is going by flight number AI-101 to New York was detected with Kirpan by Air India Security staff at the time of SLPC. When the above named female passenger’s security checking was done by Lady Constable Sarita Kumari, and she had permitted to carry the Kripan at the time of frisking. When the international passenger is not permitted to carry Kirpan during their international travel thus the above act from the force member is an act negligence towards duty, security lapse and show of clear breach of S.O.P. Hence the charge.”

5. The petitioner submitted her reply dated 21.10.2016, stating that when she was on duty on 16.10.2016, at the Ladies Frisking Booth No.2, all the lady passengers were checked by her as per the SOP guidelines. She denied having given permission to the passenger, Jatinder Kaur Bajaj to carry a Kripan. She also took a plea that though the Department knew that she was

not a certified screener, she had been posted at the frisking booth, which was improper. It was urged by her that without recording the statement of the lady passenger who was found carrying a Kirpan on her person, it was unfair to point accusing fingers at her and she could not have been held guilty for any negligence in discharging her duties. She thus stated that being a member of the disciplined force, she had been discharging her duties with full dedication.

6. The pleas raised by the petitioner were considered by the Disciplinary Authority and vide order dated 12.11.2016, she was held guilty of misconduct and negligence in discharge of her duties for the following reasons:

“On prima facie accused by adopting grave irresponsibility on herself with an intention to escape from the allegations made a statement that she was not a certified screener. The accused force member had done Basic AVSEC course and she is very well informed about airport duty and she also knows what are the prohibited items and what kinds of items can be taken by the passenger during their travelling and which items can't be carried. That she has also aware that Kirpan can be carried only in International sector while travelling in International flights for this, as per airport rules there is an approved criteria but while travelling in international flights in international sector carrying Kirpan along with the passenger is not permissible as per the airport rules and that is not in accordance with rules. This kind of negligence in security at vulnerable place like airport is deadly and there are chances for loss of life which can't be compensated. That during de briefing and briefing it was told as to how to perform duty to avoid any kind of lapse in security and also to avoid untoward incident. The accused's above mentioned act is unpardonable. In this way becoming part of the armed force her act is a depiction of negligence and apathy and the allegations leveled against her is found to be proved.”

7. The order of the Disciplinary Authority dated 12.11.2016, was challenged by the petitioner by filing an appeal, reiterating therein the pleas as raised in her reply and taking an additional ground that the CCTV footage would have revealed that no Kirpan was detected when the passenger had passed through the frisking gate manned by her and that non-examination of the CCTV footage in the presence of the petitioner by the Disciplinary Authority, was sufficient to exonerate her. The findings of the Disciplinary Authority were also assailed on the ground that if the lady passenger was carrying a Kirpan, then it would have been noticed by the other security staff present or the passengers standing in the queue for a security check and that there was a possibility that the Kirpan might have been kept by the passenger in her hand baggage which had passed through the scanner machine. If that was so, then the said lapse was on the part of the staff on duty on the scanner machine, but in order to save them, she had been made a scapegoat and blamed for the lapse.

8. The Appellate Authority examined the case file, the charge memorandum, the final order, and the plea taken in the appeal petition and opined that a Kirpan is not allowed from International SHA and that the petitioner had failed to detect that a Kirpan was in the possession of the passenger, Jatinder Kaur Bajaj which shows her carelessness, casual approach and negligent attitude towards her duty. The Appellate Authority recorded that frisking is an anti-hijacking measure and there was no scope of committing such a mistake which could otherwise have risked the security of the aircraft and all the passengers. Finding no valid reason to interfere with the order of the Disciplinary Authority, the Appellate Authority

rejected the appeal filed by the petitioner.

9. On dismissal of her appeal, the petitioner preferred a revision petition which was also dismissed on 27.07.2017, holding that she had been found guilty of a serious security lapse and of violation of SOP Guidelines. The Revisional Authority rejected the contention of the petitioner that she was not a certified screener, by noting that she had passed basic AVSEC Course and while briefing and de-briefing, the Company Commander always gives necessary instructions. Therefore, the petitioner was fully aware of the security measures required to be taken at the airport by not permitting any passenger to carry prohibited items. The Revisional Authority perused the report of the Company Commander that said that the Kirpan, which was a prohibited item on an international flight, was detected by the Air India Security Staff during the SLPC and was also noticed from the CCTV footage. On not finding any material from which it could be inferred that she was not responsible for the security lapse during the frisking of the passenger, who was carrying a Kirpan, the petitioner's revision petition was dismissed.

10. During the course of arguments, learned counsel for the petitioner submitted that the statement of the passenger, Jatinder Kaur Bajaj had not been recorded during the disciplinary proceedings and that the CCTV footage was not examined by the Disciplinary Authority before holding her guilty.

11. Since the primary grievance of the petitioner was that the CCTV footage would have proved her innocence, vide order dated 05.01.2018, this court had directed production of the CCTV recording, in respect of the frisking of the passenger, Jatinder Kaur Bajaj, who was found carrying a

Kirpan on an international flight by the Air India Security Staff during the SLPC.

12. Pursuant to the above directions, the CCTV footage has been produced in Court today and the CD played on the laptop and viewed by us as well as the learned counsels for the parties. The said CCTV footage clearly shows that when the passenger entered the enclosure for a security check, the curtains were drawn. As a result, the security check/frisking conducted by the petitioner of the passenger, Jatinder Kaur Bajaj was not visible. But fact remains that the petitioner was present in the frisking box when the passenger had entered it and had moved out from the other side of the box after going through the frisking.

13. It is pertinent to note that while submitting a reply to the Charge Memo, the petitioner did not take a plea that the Kirpan could have been in the hand baggage of the passenger which had passed through the scanner or that the lapse, if any, was on the part of the security staff that had manned the scanner for checking the hand baggages.

14. Learned counsel for the petitioner does not dispute the fact that as per the rules, Kirpan is permissible on domestic flights but not on international flights. It is not the case of the petitioner that she had remained under a bonafide belief that a passenger can carry a Kirpan on her person even on an international flight, and therefore she had cleared the security check of the passenger for an international flight. The fact that the passenger was found carrying a Kirpan on her person, which was later on detected by the Air India Security Staff, was sufficient to establish a security lapse on the part of the petitioner who had checked/frisked the lady passenger, Jatinder Kaur Bajaj scheduled to board the international flight, AI-101 to New York on

16.10.2016. The petitioner was admittedly on duty on 16.10.2016, at the frisking booth No.2 for checking/frisking/Security Check. The lady passenger was cleared by the petitioner by affixing her Seal No.595 on the Boarding Pass of the said passenger. The petitioner, while on duty at the Airport International Ladies Frisking Booth No.2 for frisking the lady passengers boarding international flights, was in the knowledge of the items permitted/prohibited on domestic and international flights. Kirpan being a prohibited item for being carried by a person on an international flight, the passenger, Jatinder Kaur Bajaj was cleared by the petitioner after a security check. The passenger was later on detected carrying a Kirpan on her person by the Air India Security Staff, which, no doubt, is a serious security lapse.

15. It is settled law that adequacy or inadequacy of evidence cannot be gone into by a writ court. As long as there is credible evidence in support of the findings returned during a domestic enquiry, the same cannot be interfered with by the Court. This Court, in exercise of its power under judicial review does not go into the correctness and truth of the charges; nor can it take over the functions of the Disciplinary Authority or sit in appeal against the finding of the Disciplinary Authority.

16. During the course of arguments, learned counsel for the petitioner has just repeated the factual aspects and sought to argue that the passenger might have carried the Kirpan in her hand baggage and later on taken it out from the hand baggage and carried it on her person, which was not even her plea in the reply. These are only surmises and conjectures, not borne out from the record. The decision of the respondents of holding the petitioner guilty for the security lapse by clearing the passenger, Jatinder Kaur Bajaj with a Kirpan to board a flight bound for New York, can neither be termed as

perverse, or arbitrary.

17. Even on the quantum of punishment, we find that the petitioner has been awarded the punishment of stoppage of increment for one year without cumulative effect, which is not disproportionate to the misconduct.

18. For the foregoing reasons, we do not find any illegality, irregularity or perversity in the impugned orders requiring interference by this court in exercise of the powers of judicial review.

19. The writ petition is accordingly dismissed. Parties are left to bear their own costs.

APRIL 17, 2018
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PRATIBHA RANI, J.

HIMA KOHLI, J.



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