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

+ **W.P.(C) 553/2016**

RAN VIJAY SINGH

.... Petitioner

Through: Mr. C. Mohan Rao, Advocate.

versus

CENTRAL INDUSTRIAL SECURITY FORCE

.... Respondent

Through: Ms. Anju Gupta, Advocate with
Mr. Roshan Lal Goel, Advocate.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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02.12.2019

Dr. S. Muralidhar, J.:

1. The Petitioner, a former Constable in the Central Industrial Security Force ('CISF') has filed the present petition challenging the order dated 23rd January, 2015 of the Disciplinary Authority ('DA') whereby the Petitioner has been awarded the punishment of compulsory retirement with all admissible pensionary benefits. The Petitioner has also challenged an order dated 27th May 2015 of the Appellate Authority ('AA') dismissing his appeal and the order dated 5th October, 2015 dismissing his Revision Petition.

2. The Petitioner joined the CISF as a Constable on 25th August, 2001. In the Petitioner's version of the events on 2nd September 2014, while he was posted

at the CISF unit at the Rajiv Gandhi Thermal Power Plant in Khedar, Haryana, the Petitioner developed a severe stomach ache and requested the Deputy Commandant, in the presence of the Assistant Commandant, to be referred for medical treatment. The Petitioner states that his request for medical assistance was construed as an “affront” by the above officers, and that 9-10 CISF personnel were ordered to enter the Petitioner’s barracks and forcibly take him to the Civil Hospital in Hissar in order to confirm whether he had been consuming liquor. In para 6 of the petition, the Petitioner states that “the Doctor gave a report that fruity smell is coming from the petitioner and the petitioner refused to give the blood and urine samples”. On the same day, the Deputy Commandant passed an order placing the Petitioner under suspension.

3. On 13th September 2014, a charge memo under Rule 36 of the CISF Rules, 2001, was issued to the Petitioner containing three charges, which may be summarized as under:

- i. Charge I: The Petitioner insulted Head Constable GD Ramesh Chand working in Quarter Masters Store under intoxication without any reasonable cause at about 3:30 pm and obstructed the working of staff in the Quarter Master Store.
- ii. Charge II: The Petitioner came to the main gate of the unit at about 4:10 pm in an intoxicated state and caused disturbance in a public place by his aggressive behavior. Further, the Petitioner entered the office of the Deputy Commandant and abused him in the presence of the Assistant

Commandant (Fire). While he was being taken to the hospital he used unparliamentary language with the staff in the van.

- iii. Charge III: As per his service records, the Petitioner was punished with eight minor punishments and one major punishment by various disciplinary authorities for negligence in duty and breach of peace under intoxication, overstaying leave, etc. and that this record demonstrated the “indiscipline and the incorrigible character of the petitioner.”

4. On 21st September, 2014, the Petitioner submitted a written defence denying the above charges. Thereafter, the DA by an order dated 23rd September, 2014 appointed an Enquiry Officer (‘EO’). On 7th October, 2014 a preliminary hearing took place in which the Petitioner, upon confirming that he understood the charges leveled against him, denied all of them. He also stated that neither did he require the assistance of any force member to present his case nor did he have any defence witness.

5. On 13th October 2014, an enquiry commenced, through the course of which the statements of the Petitioner and of 15 Prosecution Witnesses (‘PWs’) were recorded. The Petitioner submitted a brief statement in which he stated that no facts had emerged during the investigation that would bear out the charges and further that the charges were contrary to the judgments of the High Court and the Supreme Court.

6. The EO submitted his report to the DA on 4th December 2014, wherein he held the charges against the Petitioner to have been proved. The DA sent a

copy of the EO's report to the Petitioner on 6th December 2014, with a letter stating that the Petitioner could, within 15 days of receipt of the said report, submit a representation to the DA. On 23rd December, 2014, the Petitioner submitted a representation against the report to the DA, which the Headquarters received on 30th December, 2014.

7. By an order dated 23rd January 2015, the DA on a combined consideration of the prosecution evidence and the defence statement of the Petitioner found the Petitioner to be guilty of the charges leveled against him and awarded him the punishment of compulsory retirement with all admissible benefits. In the said order, the DA noted that the Petitioner's version of what transpired in the barracks, and subsequently in the van to the hospital, was not supported by any evidence whatsoever and that to the contrary, the statements of the PWs revealed that the Petitioner had indeed used abusive language. The DA also rejected the Petitioner's defence that the medical officer had "out rightly rejected" the allegation of him having consumed liquor by taking note of the medical officer's remarks of "slurred speech present and fruity smell coming out of patient gait also some disturbances present. Personally refused to give Blood & Urine Sample". The DA also observed that the Petitioner was provided with a full opportunity to lead evidence, but that he had failed to do so.

8. The appeal preferred by the Petitioner against the above order of the DA, which came to be dismissed by the AA on 27th May, 2015. He challenged the

order of the AA, as also the order of the DA, before the Revisional Authority ('RA'). By an order dated 5th October, 2015, the RA dismissed the Petitioner's revision petition, observing that there was ample oral and documentary evidence to find the charges to be proved and that despite being provided reasonable opportunity to rebut such evidence, the Petitioner did not adduce any substantiating evidence in support of his statements. The RA also emphasized that the Petitioner's contention that the medical officer's report had conclusively rejected the presence of alcohol was "devoid of merit" and that the report in fact demonstrated the contrary.

9. The case of the Petitioner is that the charges against him are entirely fabricated and have been leveled against him for "extraneous reasons". It is averred that there was nothing to corroborate the statement of the Deputy Commandant (PW-7) and that if anything; the statement of PW-7 proved that the Petitioner was in his office to request for treatment. It is contended that the statements of PW-1 to 3 has been taken at "face value" and that none of the witnesses have stated that the Petitioner had insulted Head Constable/GD Ramesh Chand. The Petitioner contests the finding that he was intoxicated by averring that the medical officer's report did not conclusively state that he was in an intoxicated state and that the remark of the officer that there was a "fruity smell" emanating from him could not be equated with the officer as having recorded that he smelt liquor in his breath.

10. By an order dated 29th January, 2016, the Court issued notice in the present petition, pursuant to which a counter affidavit has been filed on behalf of the Respondent/CISF in which the Petitioner's narration of the events of 2nd September, 2014 has been denied. It is submitted that on 2nd September, 2014, at about 3:30 pm, the Petitioner entered into the Quarter Master Stores intoxicated and misbehaved with the staff. Later, at about 4:10 pm, the Petitioner is said to have created nuisance at the main gate of the Headquarters. Thereafter, the Petitioner is said to have entered the office of the Deputy Commandant, CISF Unit, RGTPP, Khedar, and misbehaved with him. Further, when the Petitioner was being taken to the hospital for medical examination, he is said to have used "unparliamentary, filthy language" against the Deputy Commandant and the accompanying personnel.

11. It is stated that the Petitioner has been awarded 1 major and 7 minor penalties through the course of his career. It is further submitted that there is no merit to the Petitioner's contention that the Deputy Commandant had taken affront to the Petitioner's filing an appeal against a previous penalty awarded to him and that the appeal of the Petitioner was duly forwarded to the AA, and dismissed by the latter on 8th January, 2015. The Petitioner's averment that he was pinned down and that money was stolen from him en route to the hospital has been denied as "fabricated and baseless". As regards the enquiry proceedings, it is stated that the Petitioner was afforded all reasonable opportunity to present his case with supporting evidence and that the enquiry was conducted as per the procedure envisaged under the CISF Rules.

12. The rejoinder filed by the Petitioner reiterates his stand in the writ petition.

13. At the outset, the Court considers it necessary to recapitulate the scope of the present proceedings challenging the findings of a disciplinary enquiry. In ***State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaiya* (2011) 4 SCC 584**, the Supreme Court explained as under:

“7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic inquiry, nor interfere on the ground that another view is possible on the material on record. If the inquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations.”

14. In ***Union of India v. P. Gunasekaran* (2015) 2 SCC 610**, the Supreme Court spelt out the do's and don'ts as follows:

“12.In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into re- appreciation of the evidence. The High Court can only see whether:

(a) the inquiry is held by a competent authority;

- (b) the inquiry is held according to the procedure prescribed in that behalf;
- (c) there is violation of the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- (i) the finding of fact is based on no evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

- (i) re-appreciate the evidence;
- (ii) interfere with the conclusions in the inquiry, in case the same has been conducted in accordance with law;
- (iii) go into the adequacy of the evidence;
- (iv) go into the reliability of the evidence;
- (v) interfere, if there be some legal evidence on which findings can be based.
- (vi) correct the error of fact however grave it may appear to be;
- (vii) go into the proportionality of punishment unless it shocks its conscience.”

15. In light of the settled legal position this Court proceeds to examine the above submissions and the impugned orders. The Court has perused the order of the DA wherein the statements of the Petitioner and the PWs have been set out and reasons for the conclusion of guilt have been provided. It is seen that the DA has arrived at such finding upon a collective consideration of evidence that was led before the EO, including the Petitioner's defence statement, which the Petitioner has not substantiated with any oral or documentary evidence. In fact, it must be noticed that the DA has foregrounded his rejection of the Petitioner's defense statement by juxtaposing every aspect of said statement with comprehensive evidence, oral and documentary.

16. Similarly, the RA has also duly considered the evidence led before the EO as well as the conclusions arrived at by the DA to record detailed reasons for rejecting the Petitioner's Revision Petition. Even at this stage, each of the Petitioner's claims in his defence statement has been considered alongside the extensive oral and documentary evidence led by the prosecution.

17. It is not the Petitioner's case that there were any procedural irregularities in the conduct of the enquiry and that he was not afforded sufficient opportunity to adduce evidence in support of his claim. The Petitioner has not been able to demonstrate that there is any procedural infirmity in the enquiry or in the orders of the DA and or the RA on any of the foresaid grounds as explained by the Supreme Court in the aforementioned decisions. The Court refrains from re-appreciating the evidence as they have been considered in detail by all the

authorities at various levels to arrive at a consistent and concurrent finding as to their reliability.

18. Learned counsel for the Petitioner then pleaded that the punishment of compulsory retirement was disproportionately high given the nature of the offence. This Court is unable to agree with this submission. Being drunk and behaving irresponsibly in public is indeed a serious offence when committed by a member of a disciplined force like the CISF. Abusing the senior officer in the public was an equally serious offence in a disciplined para military force. This was further compounded by the Petitioner by taking a false plea in defence and miserably failing to prove such defence. When all of this is viewed in light of the fact that the Petitioner has been awarded 1 major and 7 minor penalties through the course of his career, the punishment of compulsory retirement with all admissible pensionary benefits cannot be said to be disproportionate.

19. The Court therefore finds no reason to interfere with the impugned orders. The petition is accordingly dismissed. No costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

DECEMBER 02, 2019/abc