

\$~22

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 9520/2019 and CM APPL. 3666/2020 (int. directions)**

SUMIT ANAND

..... Petitioner

Through: Mr. P. Sureshan, Advocate.

versus

DIRECTOR GENERAL CISF, CISF HEAD QUARTER AND ORS.

..... Respondents

Through: Mr. Satya Ranjan Swain, Senior Panel
Counsel with Mr. Sahaj Garg, GP
with Mr. Jay Prakas, SI/Exe (CISF).

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
29.01.2020

%

1. The Petitioner has filed this writ petition seeking quashing of the orders dated 30th August, 2017, 9th November, 2017 and 1st February, 2018, passed by the Disciplinary Authority, the Appellate Authority and the Revisional Authority respectively, by which the punishment of 'Censure' was imposed on the Petitioner.

2. In brief, the facts are that the Petitioner joined as Constable/GD in the Central Industrial Security Force ('CISF') on 23rd August, 2010 and after completion of training he got his regular posting in April, 2011. Since 2012, the Petitioner has been performing his duties at various DMRC stations till

he was transferred to CGBS unit. When the Petitioner was posted at BETA line of CISF, DMRC unit, Delhi, he was allotted a quarter within the premises of CISF unit, SSG, NOIDA.

3. On 23rd March, 2017, after finishing his second shift duty the Petitioner went for depositing his weapon at the 'Kote' (Armoury) of CISF, SSG, NOIDA Unit and in the mean time one of his civilian relative came on a scooty at the campus area for picking him up after completing the 'Kote' formalities. When the Petitioner came out after depositing the weapon, he found that SI/Ex Sunil, who was on duty as Night Duty Officer, SSG, NOIDA Kote questioning the civilian for parking the scooty in front of the Kote, SSG. SI/Ex Sunil shouted at the relative of the Petitioner. The Petitioner informed the senior officer that he is staying within the premises and if the department did not wish that he stays in the premises of SSG, he would change his quarter. Thereafter, the Petitioner went to his quarter on his relative's scooty. At the time of leaving, the above said senior officer shouted at him to provide number of the scooty. After reaching the quarter and leaving his relative there, the Petitioner came back to the control room and provided the registration number of the scooty to the concerned senior officer. The said senior officer was arrogant and shouted at him without any reason and thereafter, he made an entry of the incident in the diary.

4. On the next day, the Petitioner was asked to appear before DC of SSG, NOIDA in the presence of Assistant Commandant as well as SI/Exe Sunil, who was scolded for using such language against the Petitioner.

5. After a few months, the Petitioner was issued a charge memorandum dated 22nd August, 2017, with the allegation of misconduct which was vague and unclear. There was no mention anywhere in the memorandum of charge as to what kind of threat the Petitioner had given and on which date he failed to appear before the Enquiry Authority. It was mentioned in the memorandum of charge that on 23rd March, 2017 at 23:25 hours, the Petitioner went to the control room and threatened the senior officer and it was further alleged that he had evaded to attend the preliminary enquiry for about three months, but no dates were mentioned on which he failed to appear before the preliminary enquiry.

6. The charge against the Petitioner is reproduced hereunder:

“Force number 104473964 Const/GD Sumit Anand on 23.03.2017 After finishing his duty in second shift duty and depositing his weapon in the SSG NOIDA KOT at around 23.10, hours, in front of the 'Kote' there was some argument with respect to the issue of civil personal and Civil scooty that too inspite of convincing by his Senior Mr. Sunil Kumar sub Inspt./ /Exe who was deputed as NDO Duty Personal and thereafter Mr. Sumit Annand const./GD force No. 104473964 went to NDO control room and threatened Mr. Sunil Kumar sub Inspt./ /Exe and in respect of this, when called to attend preliminary inquiry he has shown inattentiveness up to three months. This act indicates your indiscipline.”

7. The Petitioner submitted his reply on 23rd August, 2017 denying the allegations. The Disciplinary Authority who was the Assistant Commandant Beta Line DMRC, Delhi passed the impugned and non-speaking order on 30th August, 2017, by awarding a punishment of Censure against the Petitioner.

8. The Petitioner filed an appeal before the Deputy Commandant Beta Line, CISF Unit, DMRC, Delhi, which was dismissed by a non-speaking order on 9th November, 2017. The Revisional Authority also failed to consider any of the facts raised by the Petitioner and it was noted that the preliminary enquiry was completed on 29th June, 2017 and Petitioner had refused to give his statement before Inspector/Exe R.K. Shah. It was held that the Petitioner had insulted his senior. This revisional order was passed on 1st February, 2018.

9. In the meantime, the Respondent issued notification dated 17th October, 2017 for filling the vacancies of ASIs/Exe through a Limited Departmental Competitive Examination (LDCE) process and one of the eligibility criterion was that the candidate must have 'good' in his/her ACRs for five years and an unblemished service record till the date of appointment. As the minor penalty of 'Censure' imposed upon the Petitioner was coming in his way of applying for the post of ASI/Exe through LDCE, he, therefore, sought the interference of DIG, CISF unit DMRC, Delhi by way of an application dated 9th April, 2018.

10. The application of the Petitioner for the post of ASI /Exe CISF through LDCE was turned down by the Respondents by their communication dated 20th December, 2018 in view of the fact that the Petitioner had been awarded minor punishment on 30th August, 2017. The Petitioner also submitted another application which was again turned down on 16th March, 2019.

11. The grounds taken by the Petitioner in support of his contentions are that the Disciplinary Authority, Appellate Authority and the Revisional Authority failed to give any finding on the issues raised by the Petitioner; these authorities passed no speaking orders thereby violating the principle of natural justice; the award of punishment of Censure is a minor penalty and it has an impact on his entire service career; judicial review is imperative and necessary; the clause regarding the unblemished record in the vacancy notification dated 17th October, 2017 is illegal and violative of principles of equal opportunity and the same is also violative of the judgment of this Court in W.P.(C) No.7563/2015 dated 11th August, 2015. Under these circumstances, the Petitioner has prayed for the relief of quashing of the orders of the aforesaid authorities and for exonerating him of all charges and further set aside the eligibility criteria for filling up of vacancy of ASI/Exe in CISF through LDCE.

12. Notice was issued in the petition on 2nd September, 2019, in response to which a counter affidavit has been filed by the Respondents in which it has been submitted as under:

“2. THAT as per a special report dated 24.03.2017 submitted by Insp/Exe R.S. Negi of SSG NOIDA and G.D. No. (3304) dated 23.03.2017, it is held on record that while CISF No. 104473964 Const/GD Sumit Anand of CISF Unit DMRC Delhi after completion of his 'B' shift duty on 23.03.2017 at about 2310 hrs came to the Unit Quarter Guard at SSG NOIDA for depositing his Arms & Ammunition. Meanwhile, SI/Exe Sunil detailed as Night Duty Officer also came to the Unit 'Kote' for checking. On seeing a civilian person in civil clothes sitting on a Scooty in front of the Unit 'Kote', he observed the same and questioned

from him for parking his Scooty in front of Unit 'Kote'. In turn, civilian person who was sitting on Scooty replied that his brother Sumit Anand is serving in CISF Unit DMRC and he is depositing his Arms in the 'Kote' and was waiting for him. In the mean time, CISF No. 104473964 Const/GD Sumit Anand came out from the 'Kote' after depositing his Arms & Ammunition. Being a Night Duty Officer, SI/Exe Sunil instructed him not to park private civil vehicle near to the 'Kote', in response to the above instruction. Const/GD Sumit Anand got annoyed and started arguments with him in very loud voice and stated that all the personnel are parking their private vehicle regularly at this place. After that Const/GD Sumit Anand at about 2325 hrs again came to the Control Room and asked the CISF number from SI/Exe Sunil and threatened to him that he will see him and also recorded registered number of his Scooty as UP16 AM 4947. Accordingly, SI/Exe Sunil at about 2330 hrs on 23.03.2017 made a GD entry vide Serial No. 3304 and informed the higher authority.”

13. It is further stated in the counter affidavit that a special report was lodged on 24th March, 2017 and the Competent Authority ordered a preliminary enquiry to be conducted on 29th March, 2017. Inspector R K Sah was appointed as the preliminary enquiry officer who was later on replaced by Inspector Narender Kumaron 21st May, 2017. During the preliminary enquiry, a *prima facie* case of misbehaviour was made out against the Petitioner and a report was submitted to the Competent Authority on 27th July, 2017.

14. It is stated that a memorandum of charge was issued to the Petitioner by the Assistant Commandant, CISF on 22nd August, 2017. The reply of the Petitioner dated 23rd August, 2017 was duly considered and the Competent

Authority awarded the punishment of Censure by final order dated 30th August, 2017. Later on, his appeal and the revision were also rejected by the concerned authorities. He had also submitted certain memorandums thereafter. However, the Petitioner was informed that there was no provision for considering any representation beyond the revision petition, but he kept on submitting the said representations.

15. In the para wise reply, the above narrated facts have been reiterated. The version of the Petitioner has been denied. The Petitioner was called upon by Deputy Commandant on 24th March, 2017 but he could not give any satisfactory answer to the said authority regarding incident dated 23rd March, 2017. Hence, the Competent Authority ordered a preliminary enquiry to be conducted and after completion of the preliminary enquiry, a memorandum of charge under Rule 37 of CISF Rules, 2001 was issued on 22nd August, 2017 to Petitioner for acts of misbehaviour and indiscipline.

16. As per the Respondents, the Disciplinary Authority had considered the memorandum of charge, the reply thereto and other available records, such as the preliminary enquiry report, special report and an extract of the general diary and thereafter, awarded the punishment of Censure vide order dated 30th August, 2017. The acts of misbehaviour and indiscipline were done by the Petitioner with his senior officer and he further adopted dilatory tactics to avoid appearing before the enquiry officer. Although, the enquiry officer, after his appointment on 29th March, 2017, had immediately asked the Petitioner to appear before him for discharging his statement, the Petitioner failed to pay any heed and finally he appeared before the enquiry officer

only on 29th June, 2017.

17. Reference has also been made by the Respondents to Rule 37 of CISF Rules, which is reproduced hereunder:

“37. Procedure for imposing minor penalties. – (1) No order imposing any of minor penalties specified in rule 34 shall be made except after-

(a) Informing the enrolled member in writing of the imputations of misconduct or misbehaviour on which it is proposed to be taken and giving him a reasonable opportunity of making such representation as he wishes to make against the proposal;

(b) Holding an inquiry, if the disciplinary authority so desires, in the manner laid down in sub-rules (3) to (22) of rule 36;

(c) Taking the representation, if any, submitted by the enrolled member under clause (a) and the record of inquiry, if any, held under clause (b) into consideration; and

(d) Recording the findings on each imputation of misconduct of misbehaviour.

(2) Notwithstanding anything contained in clause (b) of sub-rule (1), if in a case it is proposed after considering the representation, if any, made by the Government servant under clause (a) of that sub-rule to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the government servant or to withhold increments of pay for a period exceeding 3 years or to withhold increments of pay with cumulative effect for any period an enquiry shall be held in the manner laid down in sub-rules (3) to (22) of rule 36 before making any order imposing on the enrolled member of the Force any such penalty.

(3) The records of the proceedings in such cases shall include –

(i) a copy of the intimation to the enrolled member so charged of the proposal to take action against him;

(ii) a copy of the statement of imputation of misconduct or misbehaviour delivered to him;

(iii) his representation, if any;

(iv) the evidence produced during the enquiry, if any;

(v) the findings on each imputation of misconduct or misbehaviour; and

(vi) the orders on the case together with the reasons therefor.”

18. The stand of the Respondents is that as per the aforesaid provision of the CISF Rules, on completion of the preliminary enquiry, the enquiry officer submitted his preliminary enquiry report on 27th July, 2017 to the Competent Authority, concluding that a *prima facie* case of misbehaviour had been made out against the Petitioner and accordingly a charge sheet was issued to him on 22nd August, 2017. Due opportunity was granted to the Petitioner. No major punishment was awarded to the Petitioner. The minor punishment awarded to the Petitioner is justified according to the offence committed by him. The said punishment is commensurate to the acts of the Petitioner.

19. We have heard the arguments on behalf of the Petitioner and Respondents.

20. The enquiry officer had recorded statements of the complainant SI/Exe

Sunil Kumar as well as the present Petitioner. The incident dated 23rd March, 2017 is not denied by both of them but they have different versions of the same incident. After considering both the versions, a detailed preliminary enquiry report was submitted wherein the following conclusion was drawn:

“Force No.-104473964, Const/GD Sumit Anand CJSF Unit, DMRC Delhi on 23.03.2017 had gone to his Quarter guard to deposit his weapon after completing his B-shift duty. At around 23:10 hours a civilian was found sitting on a civil inside the quarter guard near the QM Store. When he was intervened by SI/Exe Sunil Kumar who was on duty at the venue. Const/GD Sumit Anand raised an objection with respect to the intervention by the SI/Exe Sunil Kumar and at around 23:25 hours Const/GD Sumit Anand threatened his senior and didn't report to the department till next three months while the preliminary enquiry was in process. Henceforth, the allegations and guilt of Const/GD Sumit Anand has been found to be correct and is established.

Therefore, we submit this Preliminary enquiry report.

27.07.2017
Narender Kumar
Investigating Officer.”

21. After consideration of the preliminary report by the concerned authority, the memorandum of charges was drawn and handed over to the Petitioner on 22nd August, 2018 containing the charge, which has been quoted hereinabove. The enquiry was conducted, report submitted and it culminated in the final order being passed by the Disciplinary Authority on 30th August, 2017 wherein it was held as under:

“03. The undersigned had gone through the case file pertaining

to Force number 104473964 Const/GD Sumit Anand, Beta Line, DMRC Unit, and considered the available documents, evidence and the preliminary report given in respect of this subject thus found that alleged force member had threatened the Personal deputed at SSG NOIDA 'Kote' office as NDO SI/Exe Sunil and behaved indecently with senior officers and not co-operating with the preliminary inquiry depicts the charged members indiscipline. Therefore, the allegation is proved completely.

04. Thus, the undersigned by exercising power under Rule 32 schedule (01) schedule (v1) of Rule 34 and keeping in view of the future of the Force Member Number 104473964 Const/GD Sumit Anand, Beta Line, CISF Unit DMRC Delhi is awarded with punishment of 'Censure'.

05. In case the above-named Force Member is not satisfied with the above-mentioned punishment then he can file his appeal before the Commandant/ Beta Line.

06. Copy of this order is given to the Force Member by free of cost."

22. The Petitioner appealed against the said order and the Appellate Authority passed a detailed order after perusing the appeal and the documents and has observed as under:

"04. It comes to know on perusing the documents available in case file that the appellant after the completing the duty of second shift submitted the weapons in SSG NOIDA Kot and outside the Kot at about 2310 Hrs., the dispute took place on understanding by SI/Duty Sunil posted on NDO duty regarding civil Scooty (UP 16G 4947) and Civil person. Thereafter, Ct./G.D. Sumit Anand came to Control room at about 2325 Hrs. and threatened NDO SI/Duty Sunil. He refused to give his statement to Insp./Duty R. K. Saah and made pretext in appearing for preliminary enquiry for three months which

shows indiscipline and irresponsibility on his part.

05. The appellant has made clear in statement during the preliminary enquiry that on 23.03.2017, his relative (guest) had come at the road opposite to Quarter guard to pick him. Being a responsible force member of a discipline Force, the appellant ought to guide his guest in advance that the nearby area of Quarter guard is restricted for civil persons and he must wait for him by standing with a distance. Had he given this information to his guest, he could have avoided this incident to take place. Hence the above said act of the appellant shows negligence, irresponsibility and carelessness towards his duty.

06. Hence, I under the provisions given in Rule 52 (2) (C) (I) of CISF Rules 2001, have reached on the conclusion after making consideration on the appeal and documents produced by Force No.104473964, Ct./GD Sumit Annand, Beta Line, CISF Unit, DMRC, Delhi that the punishment of “Censor” passed under the Final Order No.V.15014/CISF/DMRC/BEAT/DISC/17-2899 dated 30.08.2017 under Rule 32 of CISF Rules 2001 passed by Assistant Commandant Discipline Officer is equivalent to the offence committed by the force member. Hence, I confirm the punishment given by the Discipline Officer and dismiss the petition filed by the Force No.104473964, Ct./GD Sumit Anand, Beta Line, CISF Unit, DMRC, Delhi.

07. If the appellant wish so he can file his revision petition against this order as per rules within the 30 days before the competent officer.”

23. The revision petition was filed by the Appellant on 14th April, 2017 in which a detailed order was passed by Commandant, CISF, DMRC Delhi on 1st February, 2018 and the revision petition and the documents were carefully considered as under:

“06. The undersigned had gone through the revision petition,

case file available all connected documents after studying and assessing it, found that on 23.03.2017 after the duty hours of second shift, after depositing weapon at SSG NOIDA 'Kote' there was some argument with regards to the civil personal and civil scooty, outside of the 'Kote' around 23.10. hours that too after explaining by Sub Inspector/ /Exe Sunil and in view of it Constable/GD Sumit Anand had went to control room around 2325 and threatened SI/Exe Sunil and in respect of this, when directed to attend for preliminary inquiry, he had shown inattentiveness for a period of three months. The petitioner had been given sound by SI/Exe Sunil for noting down the scooty number, but at that time the petitioner had gone to his quarter along with his relative through the scooty this depicts the insult to senior officer. The above incident was occurred on 23.03.2017 but the statement of the petitioner was recorded on 29.06.2017 and it was recorded in undisputed fact Number 3 during the course of preliminary inquiry that the petitioner refused to give his statement before the Insp/Exe R.K Sah along with the same the inquiry officer recorded that, in this reason petitioner's statement can't be treated as true. From the entire case file, it is found that the petitioner had insulted the orders of his senior officers and the same is not expected from a member of a disciplined force further the petitioner had not submitted any solid evidence on the basis of which he can be exonerated from the charges.

07. Therefore the undersigned, the revisional authority exercising the power as per rule 54 of CISF rule 2001 does not find any reason to interfere with the punishment of 'Censure' awarded against Force Number 104473964 Const/GD Sumit Anand, Beta Line, CISF unit DMRC by the disciplinary authority vide Letter no. v-15014/CISF/DMRC/Beta law./su/rule17-2899 dated 30.8.2017 and the appellate authority number (97) CISF/ DMRC/ Beta - Violate/ Disc/17-97 dated 9.11.2017 . Therefore, the revision petition dated 14.11.2017 submitted by the petitioner is devoid of any evidence and not eligible and thus rejected accordingly.

08. Copy of the order is provided to Force number 104473964 Const/GD Sumit Anand, Beta Line, CISF Unit DMRC at free of cost.

09. Get an acknowledgment of the receipt of the Copy by Force Number 104473964 Const/GD Sumit Anand Beta Line, CISF Unit DMRC.”

24. From a perusal of the preliminary enquiry report, the charge sheet, the order of the Disciplinary Authority as well as the Appellate and Revisional Authorities, it is clear that detailed orders were passed in each instance and due procedure was followed. There is therefore no merit in the Petitioner’s contention that there are procedural violations that warrant interference by this Court. Further it is seen from the aforesaid orders that a case of misbehaviour with his senior is made out against the Petitioner for which he was rightly awarded with the punishment of Censure by the Disciplinary Authority and his appeal and revision were rightly dismissed. In any event, it is not for the Court in a writ petition under Article 226 of the Constitution to sit in review over the disciplinary authority’s appreciation of the evidence.

25. As far as the question of applicability of the ratio of judgment of this Court in the matter of ***Constable GD Girish Kumar v. Union of India & Ors.*** W.P. (C) No.7563/2015 decided on 11th August, 2015 is concerned, the facts of the said case are not similar to the present case. In the said case, the Petitioner had already got four successive ‘Very Good’ gradings after the award of penalty of ‘Censure.’ But it is not so in the present case. The judgment cited by the learned Counsel for Petitioner was based on peculiar

facts of the said case and its ratio is not applicable to the case in hand.

26. The writ petition is without any merit and the same is dismissed. The pending application is also disposed of.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JANUARY 29, 2020

pa