

HIGH COURT OF CHHATTISGARH AT BILASPURWrit Petition (S) No.1621 of 2013Order reserved on 8-7-2021Order delivered on 4-8-2021

G.L. Sharma, S/o Shri Gorelalji Sharma, Aged about 40 years,
Constable, Central Industrial Security Force Unit, CISF Colony
Manikpur, House No. B6/88, Distt. Korba (C.G.)

--- Petitioner

Versus

1. Union of India, Through Secretary Home Ministry of India, New Delhi.
2. Commandant, Central Industrial Security Force Unit, South East Coalfield Limited, Company Bankimongar Company, Distt. Bilaspur (C.G.)
3. Deputy Inspector General, Central Industrial Security Force, South East Coalfield Limited, Distt. Bilaspur (C.G.)
4. Inspector General, Central Industrial Security Force Western Unit, CISF Campus Sector 35, Kharghar, Navi Mumbai 10.

--- Respondents

For Petitioner: Mr. Parag Kotecha, Advocate
For Respondent No.1: Mr. Rajkumar Gupta, Advocate

Hon'ble Shri Justice Sanjay K. AgrawalC.A.V. Order

1. The petitioner, who at relevant point of time was working as a Constable in Central Industrial Security Force (CISF), was subjected to departmental proceeding for two charges and ultimately, he was inflicted with a minor penalty by the Disciplinary Authority vide order dated 24/01/2012 (Annexure P/3) within the meaning of Rule 34(viii) of the Central Industrial Security Force Rules, 2001 (for short 'Rules of 2001'), that is, reduction of pay by one level from ₹ 8590/- + 2400/- to ₹ 8270/- + 2400/- for two years with further direction that during this period he will not receive any increment, but this penalty will not have

any effect on his future increments. The petitioner did not question the said order (Annexure P/3) inflicting minor penalty upon him, but the Revisional Authority, on 31/03/2012, took suo motu cognizance of the order inflicting minor penalty upon the petitioner and issued a show cause notice to him and proposed infliction of major penalty upon the petitioner within the meaning of Rule 54 of the Rules of 2001. Subsequently, the petitioner filed his reply on 16/04/2012 (Annexure P/6), but the Revisional Authority did not accept the reply filed by the petitioner and ultimately, vide order dated 21/05/2012 (Annexure P/7) imposed major penalty upon him within the meaning of Rule 34(iv) of the Rules of 2001.

2. The petitioner questioned the order inflicting major penalty passed by the Revisional Authority (Annexure P/7) by way of filing an appeal, but the Appellate Authority did not interfere with the order passed by the Revisional Authority and dismissed the appeal vide order dated 23/08/2012 (Annexure P/9). In the instant writ petition, petitioner has called in question the order passed by the Revisional Authority enhancing his punishment and inflicting major penalty upon him as well as the order of dismissal of appeal passed by the Appellate Authority.
3. Mr. Parag Kotecha, learned counsel appearing for the petitioner, would submit that the order imposing minor penalty has already become final as petitioner did not question it and accepted it as it is and the Appellate Authority merely by issuing notice on 31/03/2012 formulated the opinion that penalty imposed upon the petitioner by the Disciplinary Authority deserves to be enhanced, which is contrary to proviso to Rule 54(1) of the Rules of 2001. The Revisional Authority ought to have firstly issued show cause notice to the petitioner giving

the grounds on which the penalty already imposed upon him deserves to be enhanced and only after hearing him or after considering his representation, the proposed enhanced penalty could have been inflicted, as such, Proviso to Rule 54(1) of the Rules of 2001 has not been complied with and in haste, impugned order (Annexure P/7) enhancing minor penalty already imposed upon the petitioner has been passed by the Revisional Authority. The Appellate Authority also did not consider the case of the petitioner and dismissed his appeal summarily. He would further submit that the Disciplinary Authority has regularized petitioner's suspension from 01/04/2011 to 20/09/2011 which has also been interfered with by the Revisional Authority and it is absolutely without jurisdiction and without authority of law as it does not fall within the province of the Revisional Authority to interfere with the order passed by the Disciplinary Authority. Therefore, the order enhancing penalty passed by the Revisional Authority as well as the order of dismissal of appeal passed by the Appellate Authority deserves to be set aside.

4. Mr. Rajkumar Gupta, learned counsel on behalf of A.S.G. appearing for respondent No. 1/Union of India, would submit that the after finding that the punishment imposed is disproportionate to the misconduct of the petitioner, the Revisional Authority has rightly enhanced the penalty already imposed upon the petitioner after issuing show cause notice to the petitioner on 31/03/2012. He would rely upon the decision passed by this Court in the matter of **Sheetal Das Mahant v. State of Chhattisgarh**¹ to buttress his submission.

¹ (2007) 2 MPHT 277

5. I have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.
6. The question that involves in this writ petition is, whether the revisional authority is justified in enhancing the punishment awarded to the petitioner invoking suo motu revisional jurisdiction under sub-section (2B) of Section 9 of the Central Industrial Security Force Act, 1968 (for short, 'the CISF Act') read with Rule 54 of the CISF Rules?
7. In order to decide the plea, it would be appropriate to notice Section 9 of the CISF Act which provides as under: -

“9. Appeal and revision.—(1) Any enrolled member of the Force aggrieved by an order made under section 8 may, within thirty days from the date on which the order is communicated to him, prefer an appeal against the order to such authority as may be prescribed, and subject to the provisions of sub-section (2A), sub-section (2B) and sub-section (3) the decision of the said authority thereon shall be final:

Provided that the prescribed authority may entertain the appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) In disposing of an appeal, the prescribed authority shall follow such procedure as may be prescribed.

(2A) Any enrolled member of the Force aggrieved by an order passed in appeal under sub-section (1) may, within a period of six months from the date on which the order is communicated to him, prefer a revision petition against the order to such authority as may be prescribed and in disposing of the revision petition, the said authority shall follow such procedure as may be prescribed.

(2B) The authority, as may be prescribed for the purpose of this sub-section, on a revision petition preferred by an aggrieved enrolled member of the force or *suo moto*, may call for, within a prescribed period, the records of any proceeding under section 8 or sub-section (2) or sub-section (2A) and such authority may, after making inquiry in

the prescribed manner, and subject to the provisions of this Act, pass such order thereon as it thinks fit.

(3) The Central Government may call for and examine the record of any proceeding under section 8, sub-section (2), sub-section (2A) or sub-section (2B) of this section and may make such inquiry or cause such inquiry to be made and subject to the provisions of this Act, may pass such order thereon as it thinks fit:

Provided that no order imposing an enhanced penalty under sub-section (2) or sub-section (3) shall be made unless a reasonable opportunity of being heard has been given to the person affected by such order.”

8. A careful perusal of the aforesaid provision would show that under Section 9(3) of the CISF Act, only the Central Government is empowered to review and pass appropriate order including modifying the order of the disciplinary authority. However, sub-section (2B) of Section 9 of the CISF Act has been amended by Act 40 of 1999 and it empowers the authority superior to the authority making the order either on his own motion or otherwise call for the records of any inquiry and revise any order made. Rule 54 of the CISF Rules states as under: -

“54. Revision.—(1) Any authority superior to the authority making the order may either on his own motion or otherwise call for the records of any inquiry and revise any order made under these rules, and may—

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or

(d) pass such orders as it may deem fit, within six months of the date of communication of the order proposed to be revised:

Provided that no order imposing or enhancing any penalty shall be made by any revisioning authority unless the enrolled member of the Force concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (i) to (v) of rule 34 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, and if any, inquiry under rule 36 of Central Industrial Security Force Rules, 2001 has not already been held in the case no such penalty shall be imposed except after an enquiry in the manner laid down in the aforesaid rules.

(2) The provisions of rule 52 relating to appeals shall apply so far as may be to such orders in revision.

(3) Orders and instructions issued by the Central Government on this subject from time to time shall be applicable *mutatis mutandis* as applicable under Central Civil Services (Classification Control and Appeal) Rules 1965.”

9. Sub-section (2B) of Section 9 of the CISF Act would show that the authority exercising suo motu power of revision by virtue of proviso to Section 9 of the CISF Act before enhancing penalty has to give a reasonable opportunity of being heard to the person affected by such order. As such, the revisional authority must also give reasonable opportunity of being heard to the delinquent under Rule 54 of the CISF Rules before enhancing the punishment imposed upon him.

10. In the matter of Khem Chand v. Union of India and others², the Supreme Court has considered the decision of the Privy Council in the matter of High Commissioner for India v. I.M. Lall³ and held that the Government servant must not only be given an opportunity to defend

² AIR 1958 SC 300

³ AIR 1948 PC 121

but such opportunity must be a reasonable one. In order that the opportunity to show cause against the proposed action may be regarded as a reasonable one, it is quite necessary that the Government servant should have the opportunity to say, if that be his case, that he has not been guilty of any misconduct to merit any punishment at all and also that the particular punishment proposed to be given is much more drastic and severe than he deserves. It has been held in paragraph 19 of Khem Chand's case (supra) as under: -

“19. To summarise : the reasonable opportunity envisaged by the provision under consideration includes:

(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;

(b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally

(c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the government servant tentatively proposes to inflict one of the three punishments and communicates the same to the government servant.”

11.As such, from the aforesaid decision of the Supreme Court, it is quite vivid that reasonable opportunity means something more than a mere representation.

12.At this stage, it would be appropriate to notice that a court / authority sitting in appeal against a punishment imposed in the disciplinary proceedings will not normally substitute its own conclusion on penalty. However, if the punishment imposed by the disciplinary authority or

the appellate authority shocks the conscience of the court, then the court would appropriately mould the relief either by directing the disciplinary/appropriate authority to reconsider the penalty imposed or to shorten the litigation it may make an exception in rare cases and impose appropriate punishment with cogent reasons in support thereof. If the punishment imposed by the disciplinary authority is totally disproportionate to the misconduct proved against the delinquent officer, then the court would interfere in such a case. (See Dev Singh v. Punjab Tourism Development Corporation Ltd. and another⁴.)

13. Reverting to the facts of the case in the light of the aforesaid legal position, it is quite vivid that in the instant case, the petitioner was imposed with minor penalty by order Annexure P-3 dated 24-1-2012 within the meaning of Rule Rule 34(viii) of the CISF Rules which the petitioner did not question further meaning thereby, that order has become final and it was implemented by him. The Deputy Inspector General of CISF in exercise of its revisional jurisdiction under subsection (2B) of Section 9 read with Rule 54(1) of the CISF Rules issued show cause notice to the petitioner on 31-3-2012 simply holding that charges found proved against him are serious and therefore proposed further major penalty and also proposed to suspend the regularised period from 1-4-2011 to 29-9-2011 for all the purposes which the petitioner replied by memo dated 16-4-2012 and then on 21-5-2012, the revisional authority thereafter passed the impugned order enhancing the punishment and awarded major punishment to the petitioner.

4 (2003) 8 SCC 9

14. The revisional authority has exercised the suo motu revisional power within the meaning of sub-section (2B) of Section 9 of the CISF Act read with Rule 54(1) of the CISF Rules, but while exercising the suo motu revisional jurisdiction, the revisional authority did not make any inquiry and also did not assign any reason except holding that charges proved are serious, and simply issued show cause notice proposing enhanced punishment after prejudging the issue that since the charges proved are serious in nature therefore it calls for exercising the suo motu revisional jurisdiction. The memo issuing show cause notice dated 31-3-2012 only states that since the charges proved are serious, therefore punishment deserves to be enhanced. The revisional authority while issuing show cause notice should have recorded sufficient reasons that the penalty imposed by the disciplinary authority is totally disproportionate to the misconduct proved against the petitioner and then only the suo motu revisional jurisdiction case could have been registered and thereafter, notices could have been issued to the petitioner. But that is missing in the show cause notice dated 31-3-2012. It is also apparent from the record that after the show cause notice was issued, the revisional authority failed to consider the defence raised by the petitioner and it was not dealt with at all in the impugned order and reasonable opportunity of being heard was not afforded within the meaning of proviso to Section 9 of the CISF Act read with Rule 54 of the CISF Rules.

15. Apart from this, the revisional authority while issuing show cause notice had already made up its mind to propose major penalty to the petitioner while issuing notice, whereas the procedure that was expected to follow was, after recording brief reasons that penalty

inflicted by the disciplinary authority is disproportionate to the misconduct alleged to have been committed by the petitioner, the revisional authority could have issued show cause notice and thereafter, making enquiry as required under sub-section (2B) of Section 9 of the CISF Act along with the CISF Rules and if it is satisfied that it is a case for enhancement of penalty proposed in terms of Rule 54 of the CISF Rules, then, after hearing the petitioner, he should have issued fresh notice giving the proposed punishment asking the petitioner to file representation in terms of Rule 54, as he was acting as a quasi judicial authority and thereafter it could have also taken decision to enhance the punishment as the disciplinary authority looking to misconduct inflicted the petitioner with minor penalty which the petitioner has accepted and implemented and thereafter, could have interfered with in the order of penalty enhancing it to major punishment.

16. In the considered opinion of this Court, the revisional authority has firstly failed to record brief reasons for exercising the suo motu revisional jurisdiction in terms of sub-section (2B) of Section 9 of the CISF Act read with Rule 54 of the CISF Rules. He ought to have firstly recorded reasons that the penalty inflicted by the disciplinary authority is disproportionate to the misconduct committed by the petitioner and shocks its conscience and thereafter could have exercised the suo motu revisional jurisdiction. Merely because the charges proved are serious, that cannot be a ground to invoke the suo motu revisional jurisdiction unless a clear cut prima facie opinion is formed by the revisional authority that the penalty inflicted is grossly disproportionate to the misconduct found proved. Thereafter, the revisional authority could have issued show cause notice to the

petitioner and after hearing him and dealing with the grounds raised by him opposing the enhancement of penalty, if the revisional authority is still of the opinion that it requires enhancement of penalty, then he could have again given opportunity to the petitioner to file representation against the proposed enhanced penalty as contemplated under Rule 54 of the CISF Rules and as also held by the Supreme Court in Khem Chand (supra). As such, the revisional authority has failed to exercise the jurisdiction in accordance with sub-section (2B) of Section 9 of the CISF Act read with the proviso appended to it and Rule 54 of the CISF Rules. Accordingly, the impugned order passed by the revisional authority enhancing the punishment is hereby set aside.

17. Furthermore, the disciplinary authority by its order regularised the period of suspension of the petitioner from 1-4-2011 to 29-9-2011 which the revisional authority has also set aside. This part of the order could not have been interfered by the revisional authority, as regularisation of the period of suspension is not subject to revision suo motu by the revisional authority under sub-section (2B) of Section 9 of the CISF Act read with Rule 54 of the CISF Rules, therefore, this part of the order passed by the revisional authority is also liable to be set aside.

18. As a fallout and consequence of the aforesaid discussion, the order of the revisional authority enhancing the punishment as well as setting aside the order of regularising the suspension period is without jurisdiction and without authority of law and is hereby quashed. However, the order of punishment as imposed by the disciplinary authority is restored.

19. The writ petition is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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