

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

% **Date of decision: 30th July, 2021.**

+ **W.P.(C) 4024/2021**

SI/EXE JITENDRA KUMAR

..... Petitioner

Through: Mr. Himanshu Gautam with Mr.
Lokesh Sharma, Advocates.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Jivesh Kumar Tiwari, Sr. Panel
Counsel with Mr. Jitendra Kumar,
Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

[VIA VIDEO CONFERENCING]

AMIT BANSAL, J.

1. The petitioner was appointed as a Sub-Inspector with the respondent Central Industrial Security Force (CISF) in the year 2017. An incident occurred, on 7th October, 2017 while the petitioner was posted at the Metro Station at Shahdara involving the petitioner and one metro commuter, Lakshya Beriwal which resulted in a charge sheet being issued against the petitioner under Rule 36 of CISF Rules. The petitioner was charged with following offence:

“On 07.10.2017, Force No. 120201677 Sub Inspr/Exe Jitendra Kumar, Red Line, CISF Unit, DMRC, Delhi was posted at Shahdara Metro Station in the first shift from 0700 to 1400 PM in the capacity of shift incharge. During the bag scanning of one Sh. Lakshya Beriwal at about 0845 AM, argued with the said passenger and along with the Force No. 014511196 Guard/GD Vijay Kumar, the said passenger was taken to the CCTV room where the said passenger was assaulted whereas, strict orders have already been issued by the administration that in any circumstances, no passenger is required to be taken to the CCTV room but the force member has violated the above order and no information about incident has been given to any higher officer. During the duty, creating unnecessary dispute with metro passenger, to assault him, not conveying the information of the incident to any higher officer and not complying with the directions related to the duty, grave indiscipline, and violating the orders of the higher officer by the Force No. 120201677 Sub Inspr/Exe Jitendra Kumar shows tarnishing the image of the force. Hence, the charge”

2. This was followed by a departmental inquiry against the petitioner. The inquiry report was issued on 9th March, 2018 holding the petitioner guilty of the offence charged. Subsequently, the Disciplinary Authority passed an order dated 14th April, 2018 in terms of which the petitioner was held guilty of misconduct and the penalty of ‘reduction of pay by one stage for a period of 2 years with further direction’ was imposed. The petitioner

preferred statutory appeal against the aforesaid order dated 14th April, 2018 which was rejected by the Appellate Authority vide order dated 31st January, 2019. The petitioner preferred a statutory revision against the aforesaid appellate order, however the same was also dismissed by the respondents vide order dated 20th July, 2020.

3. The present petition has been filed by the petitioner impugning the aforesaid three orders dated 14th April, 2018, 31st January, 2019 and 20th July, 2020.

4. The counsel for the petitioner contends that; (i) none of the prosecution witnesses gave any evidence against the petitioner that he had assaulted the passenger Mr. Lakshya Beriwal; (ii) this is a case of no evidence; (iii) Lakshya Beriwal had also given an apology letter to the petitioner in respect of his mis-behaviour with the petitioner; and (iv) even in the FIR which was registered against the petitioner by Lakshya Beriwal, he gave a statement that he does not wish to pursue the matter against the accused person and in light of the statement given by Lakshya Beriwal the offences were compounded and the petitioner was acquitted.

5. The counsel appearing on advance notice on behalf of the respondent controverts the above submissions. He relies upon the medical report in respect of Lakshya Beriwal as well as the photographs filed by the respondents to contend that the petitioner had in fact assaulted the said Mr. Lakshya Beriwal and had caused injuries. He further contends that in terms of the standard operative procedure (SOP) issued by the respondents, the petitioner could not have taken the Metro commuter to the CCTV room, instead the petitioner should have taken him to the control room.

6. We have gone through the impugned order dated 14th April, 2018 passed by the Disciplinary Authority. It is a well-reasoned order based on appreciation of all material evidence on record including the statements given by various witnesses. After analysing the evidence on record, the Disciplinary Authority came to the conclusion that the petitioner took the passenger to the CCTV room, where he was assaulted by the petitioner and was made to forcefully write an apology. Further, the information about the incident was not given to the control room or to his superior officer and it was only discovered later.

7. Even the Appellate Authority has passed a well-reasoned order taking into account all submission made by the petitioner. Relevant portions from the Appellate Authority's order are extracted below:

“5. AND WHEREAS I have carefully gone through the proceedings of the departmental inquiry held on record and submission made by the petitioner in his revision petition and observed that the petitioner manhandled and assaulted the passenger namely Mr. Lakshya Beriwal by taking him to CCTV room despite standing instructions that passenger should not be taken to CCTV Room. Merely because the passenger made a statement before the Trial Court about not pursuing the criminal complaint, does not mean that the petitioner was not at fault and he cannot derive any benefit out of this. Moreover, the Medico Legal Case (MLC) report of Lok Nayak Hospital and photographs of injuries submitted by the complainant clearly proved assault on him. The petitioner has already been dealt

very leniently as compared to the gravity of proven misconduct of assaulting a passenger. The petitioner has not brought out any new fact which may change the complexion of the case requiring my interference in the matter.”

8. The Revisionary Authority has affirmed the aforesaid findings of the Appellate Authority as well as the Disciplinary Authority.

9. It is settled law that in matters of departmental disciplinary proceedings against an employee, scope of interference under Article 226 of the Constitution of India is very limited. It is only in those cases where the principles of natural justice have not been followed and the respondent has acted in violation of the corresponding Rule or the punishment is disproportionate that Courts ought to exercise their powers of judicial review. In this regard reference may be made to ***B.C. Chaturvedi Vs. Union of India & Ors.*** (1995) 6 SCC 749, ***Govt. of A.P. & Ors. Vs. Mohd. Nasrullah Khan*** (2006) 2 SCC 373 and ***Deputy General Manager (Appellate Authority) & Ors. Vs. Ajai Kumar Srivastava*** (2021) 2 SCC 612.

10. Based on the elaborate findings of the departmental inquiry, all three authorities have come to the conclusion that the petitioner manhandled and assaulted the passenger namely Lakshya Beriwal by taking him to CCTV room and therefore was guilty of misconduct. Even the punishment awarded to the petitioner in the facts and circumstances of the present case, is not unconscionable that requires interference by this Court.

11. All the contentions raised by the counsel for the petitioner are in the nature of appreciation/re-appreciation of evidence, and under powers of judicial review, the Court is not to act as an appellate body to re-appreciate evidence and arrive at its own independent findings. Reference in this regard may be made to ***B.C. Chaturvedi*** supra. It is evident from the record that the passenger was made to write the apology letter under coercion. Similarly, the contention of the petitioner's counsel that merely because the passenger had decided not to press the criminal complaint against the petitioner should be a ground to drop disciplinary proceedings against the petitioner is completely baseless. The scope of the two proceedings are entirely different and merely because the passenger has decided not to pursue the police complaint against the petitioner would not absolve the petitioner from charges of misconduct in the departmental proceedings.

12. No case is made out for interference.

Dismissed.

AMIT BANSAL, J.

RAJIV SAHAI ENDLAW, J.

JULY 30, 2021

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