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

+ **W.P.(C) 9415/2021 & CM APPL. 29240/2021**

SHASHI KUMAR SHARMA

..... Petitioner

Through **Mr. KK Sharma, Advocate.**

versus

UNION OF INDIA & ORS.

..... Respondents

Through **Mr. Avnish Singh with
Mr. Kavindra Gill (GP) for
UOI/Respondent**

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Date of Decision: 8th September, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

MANMOHAN, J. (Oral)

1. The hearing has been done by way of video conferencing.
2. Present writ petition has been filed challenging the order dated 05th July, 2018 passed by Respondent No. 4, DIG, CISF, South Zone, Chennai, whereby the Petitioner was removed from service. Petitioner also challenges the orders dated 18th January, 2019 and 14th May, 2020 whereby his appeal and revision petition were dismissed respectively. Petitioner also challenges the minor penalties awarded to him vide orders dated 03rd October, 2016, 12th December, 2016, 20th February,

2017, 05th May, 2017 and 24th May, 2018. Petitioner seeks direction to the respondent to reinstate the Petitioner into service since 05th July, 2018 with all consequential benefits.

3. Learned counsel for the petitioner states that the impugned orders have been passed in violation of the principles of natural justice as the petitioner had not been given an opportunity of a proper hearing and was not allowed to submit a reply or written submission. He states that the penalties imposed on the Petitioner are grossly disproportionate and have been imposed on him due to bias, malice and personal vendetta towards the Petitioner. He further states that during his tenure the petitioner had found serious irregularities in the dog diet, which he reported to the senior authorities. He states that after this he was maliciously prosecuted.

4. Learned counsel for the petitioner states that the impugned order has been passed in violation of Rule 36 of the CISF Rules as the Enquiry Officer was appointed by the Deputy Inspector Commandant even though he was not the Disciplinary authority.

5. A perusal of the paper book reveals that the petitioner is an habitual offender. He has been awarded as many as six punishments during the period 2011 to 2017. In fact the petitioner had been meted out punishments even prior to the alleged complaint by him with regard to dog diet. The relevant portion of the order dated 05th July, 2018 is reproduced hereinbelow:-

“As far as the Article of Charge-III, it has been well substantiated during the course of enquiry from the statement and exhibits produced by HC/CLK Hariom Meena of CISF Unit CPT Cochin (PW-09) In-charge of

document section and holding the responsibility of maintaining of service record of the unit personnel including Charged Official that the Charge Official has not improved himself despite having been awarded penalties on 06 occasions in his past for improving his conduct as mentioned below:-

- A. Awarded the penalty of “Censure” for 09 days AWL w.e.f. 18.01.2011 (AN) to 26.01.2011 from NISA Campus during Basic Training vid AC/Trg. CISF NISA Hyderabad Final Order No. (549) dated 19.03.2011 (PW-IX/Exhibit-01).*
- B. Awarded the penalty of “Withholding of one increment for one year without cumulative effect” for found sleeping during night shift duty on 02/03.07.2014 vide DIG, IGI Airport review order No. (14183) dated 28.07.2015 (PW-IX/Exhibit-02).*
- C. Awarded the penalty of “Fine equivalent to three days pay” for failure to detect live ammunition from the hand of passenger during screening while on screening duty on 01.07.2016 at XBis-1 of CISF ASG Imphal vide AC, CISF Unit ASG Imphal Final Order No. (3190) dated 03.10.2016 (PW-IX/Exhibit-03).*
- D. Awarded the penalty of “Fine equivalent to five days pay” for disobeying orders in the Official Order No. (3430) dated 02.11.2016 regarding handing/taking over of charge of Dog Squad and Training In-charge vide AC, CISF ASG Imphal Final Order No. (3860) dated 12.12.2016 (PW-IX/Exhibit-04).*
- E. Awarded the penalty of “One day pay fine” for absence from duty on 08.01.2017 vide AC, CISF ASG Imphal*

Final Order No. (446) dated 20.02.2017 (PW-IX/Exhibit-05).

F. Awarded the penalty of “Three days fine” for absence from duty on 17.01.2017 vide AC, CISF ASG Imphal Final Order No. (445) dated 20.02.2017 (PW-IX/Exhibit-06).

6. In the present case, the petitioner not only refused to accept the charge memorandum but also did not attend the enquiry as is apparent from the order dated 05th July, 2018. Consequently, the grievance with regard to lack of opportunity to file reply or hearing is misplaced on facts. The relevant portion of the said order is reproduced hereinbelow:-

“11. It has also been found that the Enquiry Officer had extended the charged member with reasonable and sufficient opportunities to defend his side in the departmental enquiry proceedings, but the Charged Official failed to attend the enquiry proceedings throughout even after receiving the Enquiry Notices for which the Enquiry Officer was compelled to conduct the enquiry process as ex-parte. From the statement of CW-I, it is clearly established that the Charged Official refused to receive the Charge Memorandum intentionally while it was serving upon him. Hence, it is a positive proof that the Charged Official purposely refused to accept the charge sheet when tendered to him on several occasions. Refusal to receive Official Communications issued by the Competent Authorities, indicates the sign of his highly arrogant, disobedient and indisciplined attitude which not only amounts to unbecoming of a member of the discipline Force but also severely affects the discipline and decorum of the Force. The Charged Official being a Sub-Officer of the Force, is expected to exhibit required standard of discipline; obey the lawful orders of his seniors, conduct himself in manner befitting that of a sub-officer and thereby set an example for his sub-ordinates. But, the Charged

Official has shown a adamant attitude by means of refusing to receive the official communications like APARs and Appellate Orders even after making all possible efforts to serve upon him on several occasions. The Charged Official was given sufficient opportunity to join in the process of Departmental Enquiry but he chose to abstain from the enquiry proceedings at his own. Despite acknowledging certain Enquiry Notices, he did not bother to attend the enquiry and co operate with the Enquiry Officer in conducting the enquiry proceeding peacefully and also denied to receive the written Brief Note of Presenting Officer and Report of Enquiry Officer, when the same were served to him in the presence of others. Such type of Irresponsible adamant attitude is not expected from a member of a disciplined Armed Force of the Union. As per case records, the Charged Official has failed to advance any cogent and convincing evidence or reason to disprove the prosecution charges. On the other hand, the corroborative statements of PWs and corelated and clinching corroborative evidences produced by those witnesses are strong enough to substantiate the prosecution side. The proven charges are very serious nature. Maintenance of good conduct, strict discipline is some of the essential qualities required to be followed being Member of the Armed Force. The Charged Official is an appointee of the year 2010, being a Sub Officer in the Force and by virtue of which he is expected to exhibit high standard of discipline and conduct to emulate but the Charged Official has miserably failed on this count. He has also been given ample opportunities to defend his case during the course of Departmental Enquiry but the Charged Official failed to prove his innocence. Therefore, the Articles of Charge-I, II & III levelled against No. 102160020 SI/Exe Shashi Kumar Sharma of CISF Unit CPT Cochin vide Charge Memorandum No.(8115) dated 16.12.2017 have been proved. ”

7. From the aforesaid, it is apparent that the only consistent factor during petitioner's tenure in CISF was his lack of discipline and efficiency. Consequently, this Court finds no grounds to interfere in

writ jurisdiction. Accordingly, the present writ petition alongwith pending application is dismissed.

8. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

NAVIN CHAWLA, J

SEPTEMBER 8, 2021
AS

